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**STATE OF MAINE  
119TH LEGISLATURE  
SECOND REGULAR SESSION**

**FINAL REPORT  
OF THE  
TASK FORCE TO STUDY  
GROWTH MANAGEMENT**

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## EXECUTIVE SUMMARY

The Task Force to Study Growth Management was established in the Second Regular Session of the 119<sup>th</sup> Legislature and by Joint Order S.P. 1090. The Task Force was co-chaired by Senator Neria Douglass and Representative David Lemoine and was composed of 14 voting members representing the Legislature, regional councils, and planning, environmental, municipal, real estate, business, and farming, fishing and forestry interests. In addition, the Task Force was composed of four nonvoting members representing the State Planning Office, the Department of Environmental Protection, the Department of Economic and Community Development and the Department of Conservation.

The Task Force was charged with studying the growth management laws with the goal of making them more responsive to the issues of sprawl. Due to the relatively short time frame that the Task Force had to complete its work and the complexity of the issues before it, the Task Force formed two working groups and primarily focused on reviewing a proposal to implement an outcome-based approach to growth management in Maine and a proposal to amend the subdivision law to make it less conducive to abuse.

The impetus for the Task Force to review an outcome-based proposal to growth management in Maine was the realization that there is no mechanism in the Growth Management Act to determine whether the planning process undertaken by a municipality, including the preparation and adoption of comprehensive plans, actually works to encourage development in growth areas and discourage growth in areas designated to remain rural.

Under the outcome-based proposal reviewed by the Task Force, specific performance measures would be enacted and municipalities would be expected to plan for and manage their growth in accordance with those performance measures. Failure of a community to meet the performance measures, without good cause, would result in assessment of penalties to that community. The performance outcomes would be measured over five-year periods and the penalties for failing to meet the outcomes would be in effect for five-year periods. Under the proposal, two different levels of multi-regional concepts were explored, multi-municipal regions and land use planning regions.

Task Force members concluded that continued discussion of the outcome-based approach is required. However, the Task Force also concluded that certain changes to the Growth Management Act are required without delay and, therefore, reviewed an intermediate proposal to amend the Growth Management Act.

The Task Force's review of the subdivision law primarily focused on the definition of subdivision and the exemptions to that definition. The Task Force concluded that the exemptions to the definition of subdivision have diluted the intended protections afforded by the subdivision law.

The Task Force makes the following seven recommendations:

1. ***Ongoing Legislative Oversight of Growth Management and Sprawl Issues.*** The Task Force recommends that the 120<sup>th</sup> Legislature continue legislative investigation of issues related to patterns of development and growth by establishing a Joint Select Committee on Growth Management and Smart Growth. The committee should be charged with integrating legislative efforts on those activities that affect growth management and patterns of land development, including, but not limited to:
  1. Implementing an outcome-based approach to growth management;
  2. Crafting a regional solution to promote smart growth;
  3. Evaluating the impact that tax policies have on land use;
  4. Evaluating the impact that education policies have on land use; and
  5. Evaluating the use of impact fees and growth caps as growth management tools, whether positive or negative.
  
2. ***Outcome-based Approach to Growth Management.*** The Task Force recommends development of an outcome-based approach to growth management in Maine. Among the outcomes included in any outcome-based approach should be the following three measurable performance outcomes:
  - a. At least 70% of new residential growth must occur in areas designated for growth;
  - b. At least 10% of new housing must be affordable (The definition of “affordable housing” should be defined to mean decent, safe and sanitary dwellings, apartments or other living accommodations for persons or families whose incomes are less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less.”; and
  - c. Commercial development should be located in such a way that the capacity of arterial and major collector roadways is not exceeded.
  
3. ***Intermediate Step to Amend the Growth Management Act.*** The Task Force recommends that the following amendments be made to the Growth Management Act:
  - a. The goals of the Growth Management Act should be expanded to include the three performance standards set forth in Recommendation 2 above, with existing plans and plans under development being grandfathered;
  - b. The current deadline for towns to adopt a comprehensive plan should be revised by establishing three staggered deadlines, one for high growth municipalities, a second for moderate growth municipalities and a third for slow growing municipalities; and



## **I. INTRODUCTION**

### **A. Joint Order**

The Task Force to Study Growth Management was established in the Second Regular Session of the 119<sup>th</sup> Legislature by Joint Order S.P. 1090. A copy of the Joint Order is attached as *Appendix A*.

### **B. Membership**

The Task Force was composed of 18 members: 14 voting members and 4 nonvoting members.

- The 14 voting members were selected as follows:
  - One member from the Senate,
  - Two members of the House of Representatives,
  - Two members representing environmental interests,
  - Three members representing municipal interests,
  - Two members representing regional councils,
  - One member representing a statewide planning association,
  - One member representing real estate or development interests,
  - One member representing business interests, and
  - One member representing farming, fishing and forestry industries.
  
- The 4 nonvoting members included the following:
  - The Director of the State Planning Office or the director's designee,
  - The Commissioner of Environmental Protection or the commissioner's designee,
  - The Commissioner of Economic and Community Development or the commissioner's designee, and
  - The Commissioner of Conservation or the commissioner's designee.

Senator Neria Douglass served as the Senate chair and Representative David Lemoine served as the House chair. A list of Task Force members is included as *Appendix B*.

### **C. Charge to the Task Force**

The charge to the Task Force was specified in the Joint Order. The broad duty of the Task Force was to review the growth management laws with the goal of improving the laws to make them more responsive to the issues of sprawl. Generally, the Task Force was charged with the duty to study the Growth Management Act, regional models for growth management, the subdivision law and impact fees.



## **D. Focus of the Task Force**

Due to the number and complexity of the issues before it, the Task Force decided to form two working groups that included members who were not task force members. The Outcome-based Approach/Regional Approach Working Group consisted of 20 members and considered issues related to an outcome-based approach to growth management and regional models for growth management. This group's focus was on review of an outcome-based approach to growth management. The Subdivision Law/Impact Fee Working Group consisted of 12 members and considered issues related to making the subdivision law and impact fee legislation more effective tools in improving growth management. This group, while acknowledging that growth caps and impact fees as they are currently implemented may lead to sprawl, focused most of its review on the subdivision law. Membership of these working groups is included in *Appendix C*.

## **II. TASK FORCE PROCESS**

### **A. Meetings**

The Task Force was convened on August 31, 2000. In addition to this first meeting, the Task Force held 6 other meetings. These meetings were held on September 13<sup>th</sup>, September 27<sup>th</sup>, October 25<sup>th</sup>, November 15<sup>th</sup>, November 29<sup>th</sup> and December 13<sup>th</sup>. The working groups each held 3 meetings. Task Force meeting summaries are included as *Appendix D*.

### **B. Report and Legislation**

Joint Order S.P. 1090 established November 1, 2000 as the date by which the Task Force was to complete its work and submit its report to the Joint Standing Committee on Natural Resources. However, the Task Force requested and received authorization from the Legislative Council to extend the reporting date to December 15, 2000. Joint Order S.P. 1090 authorized the Task Force to submit a bill implementing its recommendations for consideration by the First Regular Session of the 120<sup>th</sup> Legislature.

## **III. BACKGROUND INFORMATION**

### **A. History of Sprawl Initiatives in the 119<sup>th</sup> Legislature**

**i. 1999 Sprawl Task Force.** The Task Force to Study State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development (often referred to as the Sprawl Task Force) was established by the 119<sup>th</sup> Legislature through Resolve 1999, chapter 63. The Sprawl Task Force met from September 1999 through early January 2000 primarily to review legislation carried over from the First Regular Session of the 119<sup>th</sup> Legislature. Bills introduced during that session were focused on stimulating the health and well-being of both service center communities and rural areas, including proposals to direct state investments to locally-designated growth

areas and downtowns, to value farmland at current use, to support the productive use of farms and to preserve agricultural land and farming activities. The impetus for the Sprawl Task Force came from the perception that Maine is experiencing the negative effects of sprawl and that many state policies inadvertently promote sprawl. Land use patterns and choices are changing the character of Maine and have unseen costs and implications.

The Sprawl Task Force defined 'sprawl' as low-density development beyond the edge of service and employment, that results in escalating costs for schools, services and infrastructure, and that impacts the continued viability of a natural resource-based economy and the vitality of Maine's traditional downtowns. As part of their work, the Sprawl Task Force focused on the broad policy areas of land use, transportation and taxation and within these policy areas developed legislation to address sprawl within Maine

**ii. Legislation enacted by the 119<sup>th</sup> Legislature.** The following laws dealing with land use issues, transportation issues and tax issues were enacted by the 119<sup>th</sup> Legislature.

**a. Land use issues.** Several initiatives relating to land use, including state investment policy, downtowns, service centers and rural lands were enacted. 1999 PL, ch. 776 requires certain state growth-related capital investments (construction or extension of utility lines, development of industrial or business parks, public service infrastructure and public facilities, state office buildings, state courts and other state civic buildings, newly constructed multifamily rental housing) to be located in locally designated growth areas as identified in local comprehensive plans, or if there is no comprehensive plan, in areas with public sewers capable of handling the development; in areas identified as census-designated places; or in compact areas of urban compact municipalities. Chapter 776 also required the Bureau of General Services to develop site selection criteria for state facilities that give preference to priority locations in service centers and downtowns. It established, but did not fund, the Downtown Leasehold Improvement fund to assist state agencies in securing suitable space in downtowns by providing for capital improvements to real property leased by the State in downtowns. Chapter 776 also required the State Board of Education to adopt rules relating to siting of new school construction projects that receive state funding. Additionally, Chapter 776 established the Maine Downtown Center to encourage downtown revitalization. It also established, but did not fund, a downtown improvement loan program for municipalities. Finally, it required the State Planning Office to develop model land use ordinances that accommodate smart growth design standards and provide for flexibility in zoning regulations to allow for traditional, compact development in designated growth areas and to preserve and revitalize existing neighborhoods.

1999 PL, ch. 731 provided for one-time additional state-municipal revenue sharing for municipalities with a higher than average property tax burden. It appropriated \$1.7 million for planning grants to municipalities, grants to regional councils to provide technical assistance to municipalities, grants to municipalities for plan implementation

and plan updates and alternative growth management initiatives and pilot projects. Additionally, it reduced the withdrawal penalty under the Farmland Tax Law to the minimum required by the Constitution of Maine.

**b. Transportation issues.** Transportation initiatives enacted by the 119<sup>th</sup> Legislature included access management, planning, transit funding and innovative transportation projects. 1999 PL, ch. 676 established a new process for permitting new driveways, entrances and approaches on Maine's major highways. Chapter 676 required the Department of Transportation to provide assistance to municipalities on road planning, road maintenance, sidewalks and neighborhood involvement to assist them in addressing smart growth issues by preserving traditional downtowns, walkable communities and compact neighborhoods. It also required the department to begin a strategic planning process relating to transit, including marketing of transit, innovative financing of transit projects, connectivity to airports and rail and other issues. Finally, it required the department to work with other agencies to identify funding sources for innovative transit and transportation projects that address sprawl and air quality issues.

**c. Taxation issues.** Tax issues relating to sprawl that were considered by the 119<sup>th</sup> Legislature include tax policies that tend to push rural lands into development and to place unintended burdens on service center communities. 1999 PL, ch. 757 provided for a refund of sales tax paid on electricity purchased for use in commercial agricultural production, commercial fishing and commercial aquaculture production.

**iii. Related studies.** Several state agencies were directed by the 119<sup>th</sup> Legislature to undertake various actions and studies in connection with addressing the issue of sprawl. These studies included the study of newly constructed homes, model ordinances, school siting, street construction, administrative streamlining and innovative transit. A list of studies and the status of those studies is attached as *Appendix E*.

## **B. Community Planning and Land Use Regulation Act**

**i. History of the Act.** In 1987, Maine enacted the Community Planning and Land Use Regulation Act (commonly known as "the Growth Management Act"), 30-A MRSA, chapter 187. As initially enacted, the Act required municipalities, on a tiered basis, to undertake local planning. The local plans had to address and be consistent with legislatively adopted state goals. The state provided substantial funding to facilitate the local planning efforts. High-growth areas were to receive funds first. Towns experiencing less growth were given a longer time to comply with the Act. However, in 1991, budget cuts removed the state financial support and technical assistance, and dismantled most of the mandatory provisions of the Act. The tiered-deadlines to regulate land uses were replaced by a flat 2003 deadline.

**ii. The Growth Management Act today.** The Act identifies 10 state goals to provide for orderly growth and development, including preventing development sprawl, providing affordable housing, safeguarding of agricultural and forest resources

and protecting natural and historic resources. (30-A MRSA §4311, sub-§3). The Act encourages municipalities, except those municipalities within the jurisdiction of LURC, to develop a local growth management program that is consistent with the ten state goals. A local growth management program consists of two steps, the preparation of a comprehensive plan that complies with the Act and the preparation of an implementation program that is consistent with the comprehensive plan. The comprehensive plan is the primary mechanism in the local growth management program. It sets forth a vision of the municipality's future and is a source of basic information about existing and expected conditions in the municipality. However, the comprehensive plan is not effective until it is implemented through policies and ordinances or other land use regulations that carry out the purposes and general policy statements and strategies of the comprehensive plan. These policies and ordinances constitute the implementation program.

The comprehensive plan and implementation program must be consistent with the Act. The State Planning Office is responsible for reviewing municipal plans and implementing ordinances to determine whether the documents adequately address the ten state goals.

Small grants are provided to municipalities for local growth management. The Act outlines how the State Planning Office must administer financial and technical assistance to municipalities. Typically, a municipality is offered a planning grant to prepare a comprehensive plan. The plan is reviewed by the State Planning Office for consistency with the Act. Once a consistent plan is adopted by the municipality, the municipality is eligible for an implementation grant. Based on State Planning Office statistics, approximately 120 municipalities have not yet received a planning grant and 287 municipalities have not received an implementation grant.

Currently, any municipal land use ordinance that is not consistent with a comprehensive plan is void after January 1, 2003. There are approximately 455 municipalities that are subject to the Growth Management Act and the January 1, 2003 deadline. According to statistics compiled by the State Planning Office, there are only 23 municipalities with consistent comprehensive plans and a consistent set of ordinances. There are 25 municipalities with adopted consistent plans that are known to have a zoning ordinance that is inconsistent with the local plan. There are 125 municipalities with adopted consistent plans that may have a zoning ordinance that is inconsistent with the local plan, however they have not yet been reviewed for consistency by the State Planning Office.

**iii. Review of proposals to amend the Growth Management Act.**

**a. Outcome-based approach.** As discussed above, the current growth management program requires municipalities to prepare planning and implementation documents, including a comprehensive plan and a package of implementing ordinances. The purpose of the program is to encourage residential and commercial development in growth areas and discourage development in areas designated to remain rural. However, there is no mechanism in the Act to determine

whether the preparation and adoption of the required documents by the municipality actually produces the desired results. In fact, some evidence suggests that the majority of development activity in Maine that has occurred during the last decade has occurred in areas that were either undesignated or designated to remain rural.

Effective local planning is dynamic in nature. In light of this, the Act was originally intended to require the frequent and periodic updating and maintenance of the required documents. However, funding constraints have basically limited local compliance with the Growth Management Act to a one-time event.

For these reasons, the Task Force determined that it might be desirable to redesign the Growth Management Act so that it identifies and responds to certain growth management “outcomes” rather than specific planning and implementation documents. To accomplish this end, the Task Force reviewed an outcome-based approach proposal that would amend the Growth Management Act by going beyond the broad state goals identified in the Act, and define specific, measurable outcomes that the state wants municipalities or regions to achieve. The focus of the outcome-based approach reviewed by the Task Force involved only the state goal and underlying strategies dealing with the prevention of development sprawl (30-A MRSA §4312, sub-§3, ¶A).

Under the Outcome-based proposal reviewed by the Task Force, specific performance measures would be enacted by the Legislature and individual municipalities or groups of municipalities (“multi-municipal regions”) would be expected to plan for and manage their growth in accordance with those performance measures. Under this approach, a municipality’s compliance with the Growth Management Act, as it deals with the state goal dealing with sprawl, could be measured by its performance with respect to specific and measurable patterns of land use development rather than on the production of documents.

There was broad support among task force members for three measurable performance outcomes. The measurable performance outcomes identified by the Task Force are:

- **At least 70% of new residential growth must occur in areas designated for growth;**
- **At least 10% of new housing must be affordable (The definition of “affordable housing” should be amended to mean decent, safe and sanitary dwellings, apartments or other living accommodations for persons or families whose incomes are less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less.”; and**
- **Commercial development should be located in such a way that the capacity of arterial and major collector roadways would not be diminished.**

There was some consensus among task force members to move forward with an outcome-based approach. The Task Force spent considerable time reviewing the language of the proposal and found it to be promising, but also identified several shortfalls with the proposal. Below is a summary of the major provisions of the proposal along with the concerns identified by the Task Force.

<p align="center"><b>Summary of Major Provisions of Proposal Reviewed by Task Force</b></p>	<p align="center"><b><u>Task Force Concerns</u></b></p>
<p><b>Penalties.</b> Failure of a community to meet the performance measures, without good cause, would result in assessment of the following penalties to those communities:</p> <ol style="list-style-type: none"> <li>1. Denial of access to growth-related financial assistance from the state;</li> <li>2. Denial of assistance from the Land For Maine’s Future program;</li> <li>3. Denial of state aid for minor collector capital projects;</li> <li>4. Prohibition on imposing impact fees;</li> <li>5. Prohibition on adopting uniform minimum lot size ordinances more stringent than the state’s minimum lot size law; and</li> <li>6. Prohibition on adopting growth caps.</li> </ol> <p align="center">The penalties associated with failing to meet or exceed the performance measures would not apply to municipalities in labor market areas that were experiencing less than a 5% growth rate (measured over five-year periods) unless an individual community within a labor market area exceeded a 25-unit-per-five-year growth threshold.</p>	<p>Task Force members cited serious concern with the penalties contained in the proposal. The concern is that the penalties are so watered down that municipalities will not pay attention to them. This concern is exacerbated when combined with the 5-year evaluation and penalty cycles that do not see penalties being implemented until 2010.</p> <p>Some task force members believe that there is a problem with the underlying premise that penalties will drive towns to take action on planning for growth. Their concern with the proposal is that there are no incentives to encourage compliance.</p>
<p><b>Good-cause failure.</b> Good-cause failure to meet the performance standards would include actual growth rates that exceed projections by 50% or more, or the non-property tax revenues that were identified as necessary to implement functioning growth areas are not provided by the state.</p>	<p>Concern that the proposal would allow municipalities to abdicate their financial responsibilities to plan for and fund growth.</p>



<p><b>Five-year evaluation cycles.</b> The performance outcomes would be measured over five-year periods (years ending in “0” and “5”) and the penalties for failing to meet the outcomes would be in effect for five-year periods. The first measurement cycle would be for the 5-year period beginning in 2005, with the penalties imposed beginning in 2010.</p>	<p>There was concern among task force members that waiting until 2005 to make the first determination of whether towns are meeting the outcomes and waiting until 2010 to impose any penalty was waiting too long. However, consensus as to identification of a different timeline was not found. The paradox cited by task force members is that the timeline has to be long enough so that there is something meaningful to measure, but not so long that town officials will ignore the potential consequences because they are so far down the road.</p>
<p><b>Deadlines.</b> Under the proposal reviewed by the Task Force, deadlines for municipalities to have a consistent comprehensive plan would be eliminated. The underlying requirement that all zoning ordinances be consistent with a comprehensive plan would be retained.</p>	<p>Under the proposal, the deadlines would be eliminated. An unresolved concern was that since the deadlines drive the planning process in many communities, the elimination of the deadlines might cause the elimination of planning in those communities. Some task force members feel that the deadline schedule should be replaced, not eliminated.</p>
<p><b>Multi-municipal regions and land use planning regions.</b> Under the proposal, two different levels of multi-regional concepts were explored. First, the proposal created the concept of a multi-municipal region. A multi-municipal region is a region made up of two or more municipalities that would work together to cooperatively establish growth management programs that are unified with respect to the implementation of the state goal of preventing sprawl. By encouraging the creation of growth management regions, one or more municipalities could become the designated rural area for another municipality or group of municipalities. Second, the concept of a special type of multi-municipal region is created, called a land use planning region. A land use planning region is a multi-municipal region that includes a service center community. The special purpose of these regions (which like all multi-municipal regions would be voluntary in nature) is to implement a regional comprehensive plan as adopted</p>	<p>There was strong consensus among task force members that any land use management scheme must have a strong regional planning aspect and that there should be real incentives for municipalities to work together in a regional approach. Also, the Task Force agreed that for any growth management system to be effective, vital regional planning agencies are needed throughout the state.</p> <p>Given the time constraints the Task Force operated under, it did not have sufficient time to address this major issue. The Task Force’s primary concern with this outcome-based proposal is that it does not incorporate a well thought out and workable regional approach.</p>



<p>by a regional planning agency. Land use planning regions would have priority access to municipal infrastructure resources, but would otherwise have the same rights and responsibilities as municipalities or multi-municipal regions.</p>	
<p><b>Land Use Regulation Commission.</b> LURC would be allowed to participate in multi-municipal planning regions for towns, townships and plantations within LURC's jurisdiction.</p>	<p>There was no concern with allowing LURC to participate, for areas within its jurisdiction, in regional planning with organized communities.</p>

The draft outcome-based proposal reviewed by the Task Force is attached as *Appendix F*.

**b. Intermediate proposal.** Although there was philosophical agreement among task force members for the need for continued review and discussion of the outcome-based approach, the Task Force determined that, given the complexity of the issue, there was insufficient time to fully explore and move forward with submitting the outcome-based proposal as an amendment to the Growth Management Act. Once that determination was made, the Task Force considered an intermediate proposal. This intermediate proposal would make the following amendments to the Growth Management Act:

1. Expand the goals of the Growth Management Act to include the three measurable performance outcomes identified in the outcome-based proposal. Under this proposal, these objectives would be included in the Act as goals for towns to achieve through the implementation of their comprehensive plans.

2. Revise the current deadline for towns to adopt comprehensive plans. As noted above, the current deadlines for towns to have a consistent comprehensive plan or risk having their land use ordinances voided is January 1, 2003. Under this proposal, the deadlines would be revised to establish three staggered deadlines, one for fast growing towns, a second for moderate growth towns and a third for slow growing towns. Task force members recognize that administrative hurdles must be overcome in order for this change to take place.

3. Exempt towns that agree to enter into regionally based comprehensive plans from the established deadlines for enacting a consistent comprehensive plan.

**c. Thrust of Growth Management Act discussions.** As noted above, the Task Force charge directed the Task Force to study how the Growth Management Act could be improved to assist in the reduction of sprawl in Maine. The Task Force reviewed two proposals that would amend the Act. However, neither proposal would change the primary contributing factor to sprawl; Neither proposal



would strengthen the ability of towns to work together to address growth on a regional basis.

### **C. Municipal Subdivision Law**

**i. Overview of the law.** Subdivision is the process of dividing land into smaller units. Subdivision review in Maine is triggered when a tract of land is divided into three or more lots. Maine’s subdivision law was originally enacted in 1943 and substantially revised in 1971. In 1972, the Attorney General’s Office in an “Informational Bulletin” advised that the “statute enables municipalities to protect themselves against unplanned growth.” The subdivision law and municipal subdivision review is intended to protect the public health and safety by assuring that structures are situated in a healthy and safe manner, and by providing a means to guide the growth that is occurring in a municipality. (Report of the Joint Standing Committee on Energy and Natural Resources on its Study of Subdivision Law, March 1986).

Unfortunately, the Task Force determined that the protections afforded by the subdivision law have been diluted by exemptions to the definition of subdivision. Basically, the term “subdivision” is defined to mean:

. . . the division of a tract or parcel of land into 3 or more lots within any 5-year period . . . In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3<sup>rd</sup> lot . . .” 30-A MRS §4401, sub-§4.

However, the definition contains at least nine exemptions to the definition. The exemptions include the following:

- Homestead exemption
- Open space exemption
- 40-Acre lot exemption
- Devise exemption
- Condemnation exemption
- Order of the court exemption
- Gifts to relatives exemption
- Gifts to municipalities exemption
- Abutters exemption

**ii. Review of working group proposal to amend the Subdivision Law.** The Task Force reviewed a proposal to amend the subdivision law that was developed by the Subdivision Law Working Group. The working group proposal included the following amendments:

*a. Home rule ordinance authority.* Clarify in statute that municipalities are authorized to adopt ordinances that define subdivision more narrowly than state law. For example, by ordinance, a municipality could define subdivision as division into less than 3 lots. The specific inclusion of a division of a structure for commercial or industrial use would be deleted from the statute. However, the intent is to allow a municipality to include such a division in its definition of subdivision if the municipality chooses to do so.

*b. Homestead exemption.* Retain the exemption, but add the requirement that the single-family residence on the lot to be exempted has been the subdivider's principal residence for the immediate past 5 years prior to the division.

*c. Open space exemption.* Remove the exemption.

*d. 40-Acre lot exemption.* Retain the general exemption for 40-acre lots and the exception for when the land being divided is located within a shoreland area. However, the exception for when a municipality has, by ordinance or regulation, elected to count lots of 40 or more acres as a lot for purposes of subdivision review would be deleted. That exception would be deleted because it would no longer be necessary if 'paragraph a' above ("a. Home rule ordinance authority") is enacted. The change proposed in 'paragraph a' would clarify that a municipality has the authority to expand the definition of subdivision. This authority would include the ability of a municipality to include 40-acre lots within the definition of subdivision. One Task Force member suggested the further study of whether the 40-acre lot exemption should be eliminated.

*e. Devise exemption.* Retain the exemption.

*f. Condemnation exemption.* Retain the exemption.

*g. Order of the court exemption.* Retain the exemption.

*h. Gifts to relatives exemption.* To qualify for the exemption:

- the lot being divided must be held for 5 years prior to the transfer;
- the recipient of the gift must hold the lot for 5 years after the transfer;
- the recipient of the gift must be related to the donor by blood, marriage or adoption and be a parent, grandparent, sibling, spouse, child or grandchild;
- there must be no consideration component given for the gift; and
- there should be a limit on the number of receipts of gifts allowed to one relative before subdivision review is required (1 lot per relative per tract). This proposal was discussed, but is not included in the Task Force recommendation.

*i. Gifts to municipalities exemption.* Retain the exemption, but add a requirement that the municipality must accept the gift.

*j. Abutters exemption.* Retain the exemption for transfers that do not create a new separate lot. Also, add provision that the abutter cannot sell the acquired tract as a separate lot (although he could sell the merged tract) and receive the exemption unless he held the tract for 5 years.

The Task Force also discussed a proposal that would eliminate the current practice that enables a town to require more restrictive minimum lot and setback ordinances for development that is occurring in a subdivision. There is no clear reason why lot sizes should be required to be larger in subdivisions and smaller in non-subdivision areas. Additionally, careful attention should be given to lot size specifications to avoid the unintended consequences of sprawl.

The Task Force has included these proposals in the recommendation section of this report.

#### **IV. FINDINGS AND RECOMMENDATIONS**

##### **1. Ongoing Legislative Oversight of Growth Management and Sprawl Issues.**

*Findings:* The magnitude of the issues surrounding unplanned residential and commercial growth in the state is so great that the Task Force was unable to complete a full study of its causes or develop complete solutions for all relevant issues. The causes and consequences of unplanned growth require a comprehensive solution that must involve changes to several areas of state policy: state taxation; education; and transportation funding, among others. Most importantly, a full and complete solution to the causes and consequences of “sprawl” requires interlocal cooperation among municipalities and development of a regional approach. The Task Force found that multi-year institutional involvement to address growth management is required to adequately develop solutions to this on-going issue.

*Recommendation:* The Task Force recommends that the 120<sup>th</sup> Legislature continue legislative investigation of issues related to patterns of development and growth by establishing a Joint Select Committee on Growth Management and Smart Growth. The committee should be charged with integrating legislative efforts on those activities that affect growth management and patterns of land development, including, but not limited to:

1. Implementing an outcome-based approach to growth management;
2. Crafting a regional solution to promote smart growth;
3. Evaluating the impact that tax policies have on land use;
4. Evaluating the impact that education policies have on land use; and

5. Evaluating the use of impact fees and growth caps as growth management tools, whether positive or negative. (Draft Joint Order that implements the Task Force’s recommendation is included as *Appendix G.*)

## **2. Outcome-based Approach to Growth Management.**

*Findings:* The Task Force found that the Growth Management Act would more effectively govern land use in Maine if it focused on growth management outcomes rather than simply specifying planning and implementation documents, i.e. comprehensive plans and implementing ordinances. The Task Force also found that the Growth Management Act would be more effective if it took into account regional solutions, tax policies and education policies.

*Recommendation:* The Task Force recommends development of an outcome-based approach to growth management in Maine. Among the outcomes included in any outcome-based approach should be the following three measurable performance outcomes:

- a. At least 70% of new residential growth must occur in areas designated for growth;
- b. At least 10% of new housing must be affordable (The definition of “affordable housing” should be defined to mean decent, safe and sanitary dwellings, apartments or other living accommodations for persons or families whose incomes are less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less.”; and
- c. Commercial development should be located in such a way that the capacity of arterial and major collector roadways is not exceeded.

## **3. Intermediate Step to Amend the Growth Management Act.**

*Findings:* The Task Force found that there may not be sufficient time to explore, develop and implement legislation setting up an outcome-based approach to growth management during the first session of the 120<sup>th</sup> Maine Legislature. The Task Force also found that certain prompt changes in the Growth Management Act are needed and that a move toward performance standards should begin.

*Recommendation:* The Task Force recommends that the following amendments be made to the Growth Management Act:

- a. The goals of the Growth Management Act should be expanded to include the three performance standards set forth in Recommendation 2 above, with existing plans and plans under development being grandfathered;

- b. The current deadline for towns to adopt a comprehensive plan should be revised by establishing three staggered deadlines, one for high growth municipalities, a second for moderate growth municipalities and a third for slow growing municipalities; and
- c. Towns that enter into regionally based comprehensive plans should be exempt from the established deadlines for enacting consistent comprehensive plans.

#### **4. GIS Funding.**

*Findings:* The Task Force found that that the development, coordination and maintenance of a regionally based geographic information system is an essential aspect of tracking patterns of development and associated land use planning. The Task Force found that current land use-related record keeping is not uniform throughout the State and that many records require manual retrieval. The Task Force found that the counting of houses must begin immediately as the first step in a tracking process.

*Recommendation:* The Task Force recommends that funding be provided to the State Office of Geographic Information Systems to develop, coordinate and maintain a regionally based geographic information system and to assist regional councils and municipalities in the development and use of geographic information systems. The Task Force further recommends development of a uniform, flexible system for tracking patterns of development and associated land use planning. (Draft legislation that implements the Task Force's recommendation is included as *Appendix H.*)

#### **5. Municipal Investment Trust Fund.**

*Findings:* In 1994, the Legislature created, but did not fund, a Municipal Infrastructure Trust Fund (Title 30-A MRSA sec. 5953-D). The fund was designed to provide grants and loans to eligible municipalities or groups of municipalities to acquire, design, plan, construct, enlarge, repair, protect or improve public infrastructure. Municipalities are eligible to apply for grants or loans only if they have adopted a certified local growth management program. The fund was intended to serve as an incentive for municipalities to undertake land use and capital improvement planning consistent with Maine's ten state growth management goals. Since 1994, individual legislators have proposed financing the fund, but no funding has been approved by the Legislature.

The Task Force on Regional Service Center Communities established by the 118<sup>th</sup> Legislature and the Task Force to Study State Office Building Location, Other State Growth-related Capital Investments and Patterns of Development established by the 119<sup>th</sup> Legislature both recommended that the Legislature fund the Municipal Infrastructure Trust Fund. The Task Force on Regional Service Center Communities recommended at least a \$10 million bond issue and that a set aside of dollars in the fund be considered for use as a revolving loan fund to prepare and implement regional infrastructure plans for service center communities. The Task Force to Study State Office Building Location,

Other State Growth-related Capital Investments and Patterns of Development recommended a \$5 million one-time appropriation for downtown improvement loans to municipalities with designated downtowns for infrastructure improvements.

*Recommendation:* The Task Force recommends capitalizing the Municipal Investment Trust Fund in the amount of \$20,000,000. (Draft legislation that implements the Task Force's recommendation is included as *Appendix H.*)

## **6. Comprehensive Plan Preparation and Updating.**

*Findings:* The Task Force found that without the necessary technical assistance to prepare and implement comprehensive plans, municipalities are failing to meet the requirements of the Growth Management Act. What started out as significant funding for this technical assistance has virtually disappeared over the years.

*Recommendation:* The Task Force recommends increased funding for growth management to be used for planning and implementation grants, plan updates, smart growth initiatives, pilot projects and for additional financial and technical assistance to municipalities through the regional councils. (Draft legislation that implements the Task Force's recommendation is included as *Appendix H.*)

## **7. Municipal Subdivision Law.**

*Findings:* The definition of subdivision with all of its exemptions is difficult to interpret and is subject to abuse by using it to circumvent the intent of the law.

*Recommendation:* The Task Force recommends that the subdivision law be revised to amend the definition of subdivision by modifying or eliminating certain exemptions, to clarify municipalities' home-rule authority to adopt ordinances more narrowly than state law, and to prohibit municipalities from adopting more restrictive minimum lot size ordinances and minimum setback ordinances for lots within a subdivision. (Draft legislation that implements the Task Force's recommendation is included as *Appendix H.*)

**JOINT STUDY ORDERS**  
**Second Regular Session of the 119th**

**S.P. 1090**

**JOINT STUDY ORDER ESTABLISHING THE TASK FORCE TO STUDY  
GROWTH MANAGEMENT**

**ORDERED**, the House concurring, that the Task Force to Study Growth Management is established as follows.

**1. Task force established.** The Task Force to Study Growth Management, referred to in this order as the "task force," is established.

**2. Appointments.** The task force consists of 14 members appointed as follows:

- A. One member from the Senate appointed by the President of the Senate. When making the appointment, the President of the Senate shall give preference to a member who serves on the Joint Standing Committee on Natural Resources;
- B. Two members from the House of Representatives, at least one of whom is a member a political party that does not hold a majority of seats in that body, appointed by the Speaker of the House;
- C. Two members representing environmental interests, one of whom is appointed by the President of the Senate and one of whom is appointed by the Speaker of the House;
- D. Three members representing municipal interests, 2 of whom are appointed by the President of the Senate and one of whom is appointed by the Speaker of the House;
- E. Two members representing regional councils, one of whom is appointed by the President of the Senate and one of whom is appointed by the Speaker of the House;
- F. One member representing a statewide planning association, appointed by the Speaker of the House;
- G. One member representing real estate or development interests, appointed by the President of the Senate;
- H. One member representing business interests, appointed by the Speaker of the House; and
- I. One member representing farming, fishing and forestry industries, appointed by the Speaker of the House.

The Director of the State Planning Office or the director's designee, the Commissioner of Environmental Protection or the commissioner's designee, the Commissioner of Economic and Community Development or the commissioner's designee and the Commissioner of Conservation or the commissioner's designee serve as nonvoting members.

**3. Chairs; appointments; convening of task force.** The Senate member is the Senate chair and the first named House member is the House chair. All appointments must be made no later than 30 days following the effective date of this order. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. The chairs of the

## APPENDIX A

task force shall call and convene the first meeting of the task force within 30 days of the date the last member is appointed. The task force may hold up to 6 meetings.

**4. Duties.** The duties of the task force are as follows.

A. The task force shall conduct a targeted review of the growth management laws with the goal of improving the laws to make them more responsive to the issues of sprawl. In its review, the task force shall evaluate whether the growth management program works well in very small municipalities and in municipalities experiencing greater or less growth. The task force shall also consider ways to clarify and improve the State's enabling legislation for impact fees in order to make impact fees useful as a tool to manage growth. The task force shall consider differentiated levels of impact fees based on the costs of infrastructure improvements in different areas and designed to provide an incentive for growth to occur within locally designated growth areas, the effect of impact fees on the affordability of homes, the effect of impact fees on land and real estate values and impact fees related to regional impacts of development such as the cost of regional school facilities. The task force shall develop recommendations to make the growth management laws more effective in controlling sprawl, including recommendations on funding, staffing and statutory changes. In developing its recommendations, the task force shall consider appropriate regional models for growth management.

B. The task force shall establish an advisory working group, including people outside of the task force, to review municipal subdivision law and its impact on local planning and growth management and to consider recommendations to streamline the local review process and to make the law a more effective tool in the planning process. The task force may establish additional advisory working groups as it considers appropriate.

**5. Report.** The task force shall complete its work by November 1, 2000 and submit its report to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The task force may submit a bill implementing its recommendations for consideration by the First Regular Session of the 120th Legislature. If the task force requires an extension of time to make its report, it may apply to the Legislative Council, which may grant the extension.

**6. Compensation.** Members of the task force who are Legislators are entitled to receive the legislative per diem and reimbursement of necessary expenses for their attendance at authorized meetings of the task force. Public members not otherwise compensated by their employers or other entities whom they represent are entitled to receive reimbursement of necessary expenses for their attendance at authorized meetings of the task force.

**7. Staff.** Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the task force.

**8. Budget.** The cochairs of the task force, with assistance from the task force staff, shall administer the task force's budget. Within 10 days after its first meeting, the task force shall present a work plan and proposed budget to the Legislative Council for approval. The task force may not incur expenses that would result in the task force exceeding its approved budget.

**Passed by the Senate April 27, 2000 and the House of Representatives April 28, 2000.**



GROWTH MANAGEMENT STUDY  
Membership

Category	Member
1 member from the Senate	S: <b>Senator Neria Douglass</b> (Chair)
2 members from the House	H: <b>Representative David Lemoine</b> (Chair) H: <b>Representative David Tobin</b>
2 members representing environmental interests (1 by Senate; 1 by House)	S: <b>Tim Glidden</b> , NRCM H: <b>Ted Koffman</b> , COA
3 members representing municipal interests (2 by Senate; 1 by House)	S: <b>John Simko</b> , <i>Greenville Town Manager</i> S: <b>Joseph Gray</b> , <i>Portland Director of Planning and Urban Development</i> H: <b>Janet McLaughlin</b> , <i>Yarmouth Planner</i>
2 members representing regional councils (1 by Senate; 1 by House)	S: <b>Tom Martin</b> H: <b>Neal Allen</b> <i>GPCOG</i>
1 member representing statewide planning association (by House)	H: <b>Jonathan Lockman</b>
1 member representing real estate or development interests (by Senate)	S: <b>Ed Suslovic</b> , <i>Ed Suslovic Real Estate</i>
1 member representing business interests (by House)	H: <b>David Sewall</b>
1 member representing farming, fishing and forestry industries (by House)	H: <b>Steven Hudson</b> Mgr of Public and Regulatory Affairs Mead Corporation
<b>Nonvoting</b> - Director of SPO	• <b>Evan Richert</b>
<b>Nonvoting</b> - Commissioner of Environmental Protection designee	• <b>David Van Wie</b>
<b>Nonvoting</b> - Commissioner of DECD designee	• <b>Jim Nimon</b>
<b>Nonvoting</b> - Commissioner of Conservation designee	• <b>Dawn Gallagher</b>

**TASK FORCE TO STUDY GROWTH MANAGEMENT  
WORKING GROUP MEMBERSHIP**

**OUTCOME-BASED APPROACH/REGIONAL APPROACH WORKING GROUP:**

Sen. Douglass  
Rep. Lemoine  
Rep. Tobin  
Rim Glidden  
Evan Richert  
Jim Nimon  
David Van Wie  
Neal Allen  
Joe Gray  
J.T. Lockman  
John Simko  
Steve Hudson  
Geoff Herman, MMA  
Valerie Iverson, MSHA  
John Maloney, AVCOG  
Jen Cost, Maine Audubon Society  
Chris Hall, Maine Chamber  
Maryann Hayes, SPO  
Greg Smith, Fleet Bank  
Lucinda Pyne, Questor

**SUBDIVISION LAW/IMPACT FEE WORKING GROUP:**

Sen. Douglass  
Rep. Lemoine  
Rep. Tobin  
Janet McLaughlin  
Dawn Gallagher  
Bob Faunce, planning consultant  
Matt Nazar, SPO  
Rebecca Warren Seel, MMA  
Terry Turner, Union Water Co.  
Dan Fleishman, Arundel Town Planner  
Linda Gifford, Central Maine Title Co.  
Will Johnston, SPO

## TASK FORCE TO STUDY GROWTH MANAGEMENT

Meeting Summary from the August 31, 2000 Meeting

Task Force Members Present:

- Sen. Neria Douglass, Co-Chair
- Rep. David Lemoine, Co-Chair
- Rep. David Tobin
- Timothy Glidden
- Joseph Gray
- Thomas Martin
- Ed Suslovic
- Neal Allen
- Theodore Koffman
- Jonathan Lockman
- Janet McLaughlin
- Jim Nimon, DECD
- Evan Richert, SPO
- David Van Wie, DEP
- Dawn Gallagher, DOC

Task Force Staff: Susan Johannesman, Alison Ames

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**Convening of Task Force:** Rep. Lemoine welcomed the Task Force members and thanked them for their willingness to participate in this legislative study.

**Review of Joint Order SP 1090:** Task Force staff reviewed SP 1090, the joint order that established the Task Force. The general charge to the Task Force, as spelled out in SP 1090, is to review the growth management laws and develop recommendations and to establish an advisory working group to review municipal subdivision law.

**Comments by Co-Chair's of last interim's legislative task force on sprawl:** Senator Sharon Treat and Rep. Ken Gagnon provided their comments and perspectives on last interim's task force as well as where this Task Force should concentrate its efforts. Focus areas identified include: (1) Regional approaches; (2) Small vs. large – is the growth management program working for differing-sized towns; and (3) Money for planning, implementation and pilot projects.

**Comments by State Planning Office:** Evan Richert, Director, State Planning Office, provided a brief overview of the status of Maine's growth management program. Additionally, he identified the following potential issues for consideration by the Task Force: (1) Housekeeping issues to the growth management act; (2) Opening the way for regional cooperation in land use; (3) Paying for the infrastructure needed to support development; (4) Tracking effectiveness – use of a GIS-based tracking system; (5) Exemptions under the subdivision law; (6) Subsurface wastewater disposal rules; and (7) Site location of development act.

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**Comments by Maine Municipal Association:** Geoffrey Herman, Director of State & Federal Relations, MMA, identified obstacles to full implementation of the growth management act. Additionally, he identified the following problems from the municipal point of view: (1) The January 1, 2003 deadline; (2) Not enough flexibility; (3) No state-level comprehensive plan; and (4) Lack of state participation in funding of planning and implementation assistance and infrastructure to create growth areas.

**Task Force Discussion:** Task Force members commented on the shortness of time within which the Task Force is required to submit a report. Task Force members present voted to submit a request to extend the deadline for submission of its report to December 15, 2000.

Task Force members identified the following areas to be studied:

1. Subdivision law, focusing on the recommendations in the 1/7/00 report prepared by SPO and MMA;
2. Impact fees, including the effect of impact fees on the affordability of homes;
3. Regional approaches/regional cooperation, including the impact that building caps and moratoriums have on regional cooperation;
4. Funding issues, including planning, implementation and infrastructure; and
5. Growth management act housekeeping issues, including the 1/1/03 deadline, ambiguous definitions in the act.

After discussing the option of creating sub-groups to meet on individual issues and report back to the full Task Force, it was decided that at the next meeting there would be a full Task Force discussion on the areas identified above. Task Force staff was asked to prepare an agenda for the next meeting.

**Future Meetings:** The Task Force scheduled the next 5 meetings (subject to change):

- Wednesday, September 13<sup>th</sup> – Room 126 State House
- Wednesday, September 27<sup>th</sup> – Room 427 State House
- Wednesday, October 11<sup>th</sup> – Room 427 State House
- Wednesday, October 18<sup>th</sup> – Room 427 State House
- Wednesday, October 25<sup>th</sup> – Room 427 State House

## TASK FORCE TO STUDY GROWTH MANAGEMENT

Meeting Summary from the September 13, 2000 Meeting

Task Force Members Present:

- Rep. David Lemoine, Co-Chair
- Rep. David Tobin
- Timothy Glidden
- Joseph Gray
- Thomas Martin
- John Simko
- Ed Suslovic
- David Sewall
- Neal Allen
- Theodore Koffman
- Jonathan Lockman
- Janet McLaughlin
- Steven Hudson
- Jim Nimon, DECD
- Evan Richert, SPO
- David Van Wie, DEP
- Dawn Gallagher, DOC

Task Force Staff: Susan Johannesman, Alison Ames

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### I. *Overview of Growth Management Act*

*Mary Ann Hayes, State Planning Office* provided an overview of the Growth Management Act including background information, funding issues and program characteristics. (See Handout for details.)

Potential issues that need to be addressed are:

- the availability of funds and the 2003 deadline
- towns that need assistance with updating their plans
- "a number of ambiguities in the law"
- the fundamental question of whether plans are the proper mechanism for managing patterns of development.

### II. *Overview of Subdivision Law*

#### A. *Municipal Subdivision*

*Joseph Gray* reviewed the basic definition, characteristics and exemptions of municipal subdivision law. (See Handout for details.) He also referred members to Maine's Municipal

## APPENDIX D

Subdivision Law report compiled by the State Planning Office and Maine Municipal Association and distributed to Task Force members at the first meeting.

*Janet McLaughlin* discussed the practical difficulties of applying a town's specific subdivision standards considering major subdivision, minor subdivision, and cluster development especially when adding the additional dimension of 'back lot provisions'. (See Handout.)

Potential issues that need to be addressed are:

- exemptions
- subdivision vs. development (the appropriate distinctions as well as consistencies)
- subdivision standards
- 'home rule'

### *B. Unorganized Territory Subdivision Provisions*

*John Williams, LURC* spoke abt the similarities and differences of subdivision treatment between municipalities and unorganized territories. (See Handout for details.) LURC is interested in working with the Task Force to make mutual improvements to subdivision provisions. Although LURC growth management provisions are not specifically within the charge of the Task Force it will be important to keep overlapping issues in mind to help maintain consistency of treatment in the two jurisdictions within the context of subdivisions.

### *III. Definition of Smart Growth*

*Ted Koffman* gave a brief background on sprawl and smart growth. (See Handout for a comparison of the two concepts.)

### *IV. Impact Fees*

*J.T. Lockman* discussed the difference between an impact fee and a tax. (See Handout for details.) Impact fees are a tool for towns to use to raise revenue from new development and not a mechanism for controlling growth.

Potential issue: Current enabling statute already provides fairly good direction—should the task force really concentrate on impact fees?

Possible suggestions for improvement:

- require town to have a comprehensive plan or capital improvement plan in order to implement impact fees
- apply impact fees uniformly to building permits for additional capacity as well as new construction
- apply impact fees uniformly for subdivision development and non-subdivision development
- prohibit impact fees for towns that have imposed a growth cap
- require review by state agency (possibly SPO) if town implements an impact fee

## APPENDIX D

- establish an appeal process or mediation step before court resolution
- ensure that impact fee is not an attempt at 'snob zoning'

### V. *Overview of Regional Approaches/Regional Cooperation*

*Tom Martin* spoke of the importance of using a cautious approach and providing testimonials of successful operations when discussing regional cooperation. He suggested the need to develop specific links between a regional effort and smart growth using such tools as financial incentives or demonstration projects. (See Handout.)

*Neal Allen* stressed the potential of regional development as a mechanism for towns to address issues they are facing on their own—provided there is a balance between regulatory requirements and encouragement to act. Financial incentives provide the best motivation for regional cooperation whereas regulatory structure is more difficult to implement. The Task Force should look to other New England models of regional cooperation and be prepared to develop strategies that will build the capacity to assist communities.

Potential issues that need to be addressed:

- inform communities about successful regional operations
- develop links that translate common municipal goals into potential regional efforts
- explore impact of regional pressures on building moratoriums
- develop financial incentives to help promote common growth interests

VI. *Where do we go from here?* The Legislative Council has not yet met or acted upon the Task Force's request for an extension.

### VII. *Next Meeting Agenda items Discussed:*

- Use main agenda topics of Subdivision Law, Impact Fees and Regional Approaches and use discussion to develop issues to be addressed
- Hear reports/answers to questions raised during meeting 2 discussion
  - number of towns in jeopardy of 2003 deadline re: comprehensive plans and implementation plans
  - 'ambiguities' to Growth Management Act
  - outcome based approach to growth management
  - mapping sprawl in Maine—where is it
  - identification and updates of other Task Force groups working on related issues

After discussing the option of creating sub-groups to meet on individual issues and report back to the full Task Force, it was decided that at the next meeting there would be a full Task Force discussion on the areas identified above. Task Force staff was asked to prepare an agenda for the next meeting with guidance from the chairs.

**Future Meetings:** The Task Force schedule includes the next 4 **morning** meetings (subject to change):

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- Wednesday, September 27<sup>th</sup> – Room 427 State House
- Wednesday, October 11<sup>th</sup> – Room 427 State House
- Wednesday, October 18<sup>th</sup> – Room 427 State House
- Wednesday, October 25<sup>th</sup> – Room 427 State House



## TASK FORCE TO STUDY GROWTH MANAGEMENT

Meeting Summary from the September 27, 2000 Meeting

Task Force Members Present:

- Sen. Neria Douglass, Co-Chair
- Rep. David Lemoine, Co-Chair
- Rep. David Tobin
- Timothy Glidden
- John Maloney, alternate for Thomas Martin
- Ed Suslovic
- David Sewall
- Neal Allen
- Jonathan Lockman
- Janet McLaughlin
- Jim Nimon, DECD
- Evan Richert, SPO
- John Wathen, alternate for David Van Wie, DEP
- Dawn Gallagher, DOC

Task Force Staff: Susan Johannesman, Alison Ames

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### I. *Growth Management Act*

*Matt Nazar, State Planning Office* provided statistics on municipalities' involvement with the Growth Management Act. (See Multiple Handouts for details.)

*Statistics on municipalities:*

- *120 Towns have not received comprehensive planning grants*
- *287 Towns have not received implementation grants*
- *17 Towns applied but did not received grants because of insufficient funds*

*Towns that have ordinances that will be void under current statute:*

A discussion about ordinances potentially voided by the three statutory deadlines (Title 30-A § 4314 subsections 2, 3A, and 3B) indicated that ordinances are not automatically void after the appropriate deadline. In order to be void, the ordinance would need to be challenged in court and the court would decide if the town's comprehensive plan was consistent with its ordinances. Two of the statutory deadlines have already passed and none of the voided issues have been litigated at this point so it is difficult to estimate the eventual impact of the 2003 deadline. Any ordinance may be challenged in court, however the benefit for those towns that have received a consistency review by SPO would be a letter from SPO indicating that their ordinances are consistent. Evan Richert indicated that because of the complexity of determining consistency the court is apt to look favorably upon towns that show that SPO has already completed a review—although the court still holds the final determination.

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While the court is the final arbiter it still does not address the issue of what is actually happening to the land. Currently there is no tracking program to systematically look at development. The current approach is 'output-based', checking documents—comprehensive plans, implementation plans, ordinances, sub-division plans, etc. - rather than 'outcome-based', checking what actually happens to the land. Often, towns change their plans and amend the ordinances over time without subsequent SPO review. Plans become a 'moving target' with the possibility that some towns manipulate the process to accommodate wanted development and discourage unwanted development.

### *Evidence of sprawl in each region of state:*

*Mary Ann Hayes, State Planning Office* provided information concerning the evidence of sprawl throughout the state. On display was a map of Maine showing the change in population density over time starting with the year 1940 and projected through the year 2050. The progression from white to yellow to red indicated the increased pressure of development on communities over the years. Another map showed some of the fastest growing communities. Additionally, 2 handouts demonstrated the percentage of change in population, housing growth and school enrollment for the towns in the Bangor area and towns in the Machias area. (See Handouts for details.) These areas were chosen as the most northern and eastern areas of the state that are experiencing some significant effects of sprawl. Highlighting the changes in those areas helps overcome the common perception that sprawl is currently only an issue affecting southern Maine.

*Joyce Benson, State Planning Office* provided information illustrating the towns with the highest rate of residential growth. (See Maps for details.) One map showed the towns with changes in housing stock in excess of 20%. (The average growth rate in housing stock in Maine is 9.5 %.) The second map indicated those towns that had already met or exceeded their year-2000 housing projection by the year 1998.

II. *Housekeeping list for fixing the Growth Management Act* – Not addressed this meeting although SPO distributed a handout of suggested housekeeping items.

III. *Alternative approaches – Outcome-based approach*

*Geoff Herman, MMA* presented an initial draft of the 'outcome-based approach'. If adopted, this approach would present a distinct challenge to the Legislature to develop specific outcomes expected from enacted legislative policies. The current growth management program is an output-based approach requiring the development of documents with the assumption that the proper documents will help create the proper development. This approach is static and while the plans may be fine when they are initially approved, the plans do not take into account changes over time. (See handout for additional concerns with the current system)

An outcome-based approach would define specific measurable outcomes. To meet those measurable growth standards, municipalities may opt to pair up—with one community serving as the 'growth area' and the other(s) designated as the 'rural area'. (See handout for outcome characteristics.) The outcome approach would move away from analysis of the quality of the

## APPENDIX D

documents to an analysis of meeting measurable growth standards. A sample amendment to current statute could include the concept of 'multi-municipal regions' that would allow municipalities to work cooperatively to establish a unified growth management program. (See Handout for proposed language.)

### IV. *Continuation of Task Force Discussion*

After a short break, the Task Force discussed the concept of an outcome-based approach. Areas of concern included:

- Consequences—penalties versus rewards
- Monitoring program and time frame for review
- Practicality of delay between plan consistency and ordinances to allow municipalities to make required adjustments
- Link between outcome-based approach and regional impact
- Ability to accurately project regional growth over long term period
- Capacity of local officials to manage/administer with inadequate resources

Essential Elements:

- Established baseline (will require time and resources)
- Tracking System with review (Quarterly? Annually?)—possibly through increased capacity at the Regional Council level
- Enforceable consequences with close, identifiable link to non-compliant activity
- Financial support of infrastructure development through grant or fund

### V. *Subdivision Law, Impact Fees and Subcommittee Discussion*

The Task Force decided to create 2 working groups. One working group (the Outcome-based Approach Working Group) will look at the outcome-based approach to growth management. The group will look at the issues and implications of that approach, which may include the issue of regionalism.

The second working group (the Subdivision and Impact Fee Working Group) will look at the subdivision law and impact fee issues.

### VI. *Next Meeting*

After discussing the option of creating sub-groups it was decided that the next meeting date would be used as a time for the two working groups to meet. Sen. Douglass and Rep. Lemoine requested that if Task Force members or other interested parties were interested in serving on either of the groups, they should e-mail them (cc. to Susan Johannesman and Alison Ames) indicating the group they are interested in working with.

The working groups will meet on Wednesday, October 11th in lieu of the regularly scheduled meeting. The Outcome-based Approach Working Group will meet in the morning and the Subdivision/Impact Fee Working Group will meet in the afternoon. This will enable people to attend both meetings if desired.

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**Future Meetings:** The Task Force schedule includes the next 3 meetings (subject to change):

- Wednesday, October 11<sup>th</sup> – Working Group Meetings—
  - Outcome-based Approach – 9:00 a.m. - Room 427 State House
  - Subdivision/Impact Fee – 1:00 p.m. – State Planning Office Conference Room
- Wednesday, October 18<sup>th</sup> – Room 427 State House
- Wednesday, October 25<sup>th</sup> – Room 427 State House
- Other meetings to be announced

### TASK FORCE TO STUDY GROWTH MANAGEMENT

Meeting Summary from the October 25, 2000 Meeting

Task Force Members Present:

- Sen. Neria Douglass, Co-Chair
- Rep. David Tobin
- Timothy Glidden
- Thomas Martin
- Ed Suslovic
- Ted Koffman
- Janet McLaughlin
- Evan Richert, SPO
- Dawn Gallagher, DOC

Task Force Staff Present: Susan Johannesman

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#### I. *Report from Outcome-based Approach Working Group*

Geoff Herman, MMA, presented an update on the first tier, outcome-based approach. Under the first tier, specific performance measures would be enacted by the Legislature. Individual municipalities or groups of municipalities would be expected to plan for and manage their growth in accordance with those performance standards and with financial support from the state. Failure of a municipality or group of municipalities to meet the performance standards, without good cause, would result in those municipalities receiving less state subsidies to support infrastructure demanded by the unmanaged growth.

Evan Richert, SPO, presented an update on the second tier approach. Under the second tier, land use planning regions could be formed on a voluntary basis. The planning regions would include municipalities that are within commuting proximity of each other. At least one of the municipalities must be a service center community. The land use planning regions would not be subject to the performance standards or penalties established under the first tier approach. The land use planning regions would be eligible for enhanced access to infrastructure resources to implement regional comprehensive plans adopted by regional planning agencies.

The following issues were raised by task force members and flagged for further discussion:

1. How do state expenditures on education fit into this proposal (for both tier 1 and tier 2)? Are there incentives or penalties relating to education that can be included in this proposal?

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### Re: Tier 1:

2. If we extend the consequences of this policy out 10 or 20 years, what will the landscape look like?
3. There is an overlap between SADs and municipalities – An SAD may contain 11 municipalities, some municipalities within that SAD may have met standards and some may have not. Who incurs the penalties regarding school funding?
4. In the current draft under the penalties section §4350(3)(), page 24 – all funds that are not distributed to municipalities (because they were penalized for not meeting standards) are retained in the fund from which they would have been distributed. Should that saved money be redirected to those towns that have met their goals as a further incentive?
5. In the current draft, performance standards would be measured at 5-year intervals. Should it be a 3-year term instead of a 5-year term to keep municipality focused and keep their eyes on the penalties?
6. Consider adding affordable housing to the standards that must be met.
7. Potential problem in towns that have previously plotted subdivisions.
8. Consider funding for a tracking system.

### Re: Tier 2:

9. Consider other incentives: School funding formulas and revenue sharing?
10. Consider bonus points for affordable housing so that it would not affect school funding.
11. Consider whether areas under LURC jurisdiction should still be totally excluded from participation.
12. Consider other transportation related standards – i.e. Driveway related crashes (crashes per mile due to driveways)

## *II. Report from Subdivision Law/Impact Fee Working Group*

Janet McLaughlin presented an update on the draft proposals of the Subdivision Law/Impact Fee Working Group. She reviewed the handout prepared by OPLA staff that included proposals for changes to the subdivision exemptions and a proposal regarding impact fees. Issues raised by task force members for further discussion include:

1. Gift to relatives exemption – Consider changes to proposal for situations where parent A gives to son B who wants to give to grandchild C without holding for 5 years.
2. “Smart growth” amendments to Subdivision Law submitted by Dan Fleishman.
3. Impact Fee issues:
  - a. relationship of impact fees to building caps;
  - b. requiring municipalities to have in place comprehensive plans and capital investment plans prior to the ability to assess impact fees;

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- c. requiring uniform application of impact fees to all development, not just to subdivisions.

**Future Meetings:** The Task Force discussed future meetings and decided on the following schedule:

- Wednesday, November 1<sup>st</sup> – Working Group Meetings
- Wednesday November 15<sup>th</sup> – Full Task Force Meeting
- Wednesday, November 29<sup>th</sup> – Full Task Force Meeting - Public input
  - Final Report Due December 15<sup>th</sup>

### TASK FORCE TO STUDY GROWTH MANAGEMENT

Meeting Summary from the November 15, 2000 Meeting

Task Force Members Present:

- Sen. Neria Douglass, Co-Chair
- Rep. David Lemoine, Co-Chair
- Rep. David Tobin
- Timothy Glidden
- Ted Koffman
- Janet McLaughlin
- Joseph Gray
- J.T. Lockman
- Neal Allen
- David Sewall
- Evan Richert, SPO
- Peggy Schaffer for Jim Nimon, DECD

Task Force Staff Present: Susan Johannesman and Alison Ames

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Introductions and "Welcome!" to the new legislators-elect Janet McLaughlin and Ted Koffman.

#### I. *Outcome-based Approach Walk-thru of the 4<sup>th</sup> Draft*

Geoff Herman, MMA, presented an update on the outcome-based approach. Following task force discussion, the 3 specific performance measures are:

- At least 70 % of residential growth in the designated priority or secondary growth areas. At least 50% of residential growth in priority growth areas;
- Highway access must be managed so that posted highway speeds are maintained; and
- Ten percent of new residential housing and rehabilitated housing stock must be affordable.

There would be 2 reasons why a municipality might legitimately not meet the performance goals.

- Adequate resources are not available; and
- Significantly more growth than expected

Failure of a municipality or group of municipalities to meet the performance standards, without good cause, would result in those municipalities receiving less state subsidies to support infrastructure demanded by the unmanaged growth. The performance measures would be evaluated over 5-year periods (years ending in 0 and 5) and the penalties would be in effect for the subsequent 5-year period. As a change from the previous draft, school bus funding would not be affected.

LURC suggestions were incorporated into the new draft, with LURC areas able to participate with LURC approval.



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Following this overview of the new draft, considerable time was spent discussing and fine-tuning many of the definitions covered in the draft including:

- Affordable housing,
- Critical rural area,
- Critical waterfront area,
- Land Use Planning Region,
- Local planning committee,
- Multi-municipal region,
- Priority growth area,
- Rural area,
- Secondary growth area,
- Service Center Community and
- Zoning ordinance.

In discussing the “Transition” provisions there was general agreement that land use ordinances need some type of connection or consistency with comprehensive plans, although there was some disagreement about eliminating the dates since the date is seen by some towns as the sole motivating factor to complete their comprehensive plans.

There was considerable discussion concerning the performance measure of "no net loss in posted speed."

Further discussion of "affordable housing" questioned the adequacy of the 10% standard listed as a performance measure. A suggestion was made and accepted by the Task Force members present to replace the phrase "commuting area" with "labor market" to more accurately describe the area for affordable housing and to leave the 10% standard as is for now.

During discussion of possible other performance measures, there was a suggestion to impose a standard of 30% affordable housing (to include new, rehab and existing stock) for an area. Comments centered on the difficulty in determining the right 'numbers' despite the concept being on target and the potential need to produce funding resources for the necessary rehabs.

Another suggestion for other performance standards focused on “critical rural areas” and lead to the proposal that 80% of critical rural areas be maintained as open space. Comments included the difficulty in measuring and deciding exactly what gets measured; the need for some sort of mechanism to compensate those areas (tax breaks?); and the realization that municipalities will not be required to designate critical rural areas. A motion to require the 80% limitation on critical rural areas was opposed by the majority of those present.

After a brief discussion, a majority of the Task Force accepted the following penalties. The penalties for failing to meet the performance standards would result in loss of eligibility for:

## APPENDIX D

- Grants or other incentives for growth related capital investments;
- Assistance from the Land for Maine's Future Program; and
- State aid for minor collector projects.

Also, municipalities subject to the penalties would not be allowed to:

- Impose impact fees;
- Adopt a minimum lot size (more stringent than the state's minimum lot size); and
- Adopt growth caps.

Due to time constraints, the Task Force decided to forego discussion of multi-municipal regions, land use planning regions and other regional approaches and invite comment on these issues at the upcoming public hearing.

### *II. Subdivision Law/Impact Fees*

There was a motion to present the Working Group's proposal on subdivisions for public comment without further discussion because of time constraints. Comments included the desire for the full Task Force to further discuss subdivisions; the need for towns to have similar standards for subdivision and non-subdivision lots; and the recognition that time did not allow for full review of subdivision law. It was recommended that the Task Force report make note that further review of various Subdivision/Impact fee issues is necessary given the number of the duties and the deadlines presented to this Task Force.

**Future Meetings:** The Task Force discussed the upcoming public hearing and decided that the number of people wishing to speak and the number of groups being represented would help determine the need to impose any sort of time limit.

- Wednesday, November 29<sup>th</sup> – Full Task Force Meeting - Public input
- TBA – Final Task Force Meeting to review draft report
  - Final Report Due December 15<sup>th</sup>

### TASK FORCE TO STUDY GROWTH MANAGEMENT

Meeting Summary from the November 29, 2000 Meeting

Task Force Members Present:

- Sen. Neria Douglass, Co-Chair
- Rep. David Lemoine, Co-Chair
- Rep. David Tobin
- Timothy Glidden
- Ted Koffman
- Janet McLaughlin
- Joseph Gray
- J.T. Lockman
- Neal Allen
- David Sewall
- Thomas Martin
- Ed Suslovic
- Steven Hudson
- Mary Ann Hayes for Evan Richert, SPO
- Jim Nimon, DECD

Task Force Staff Present: Susan Johannesman and Alison Ames

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During the morning, after introductions and a brief overview of the Task Force's duties, process and status, members of the public commented and presented their reactions to the preliminary proposals developed by the Task Force. After a short question and answer period, the Task Force took a lunch break and reconvened for final discussion and decision making on the preliminary proposal.

The task force made the following decisions:

Subdivision Law.

The Task Force decided to submit a bill that includes the subdivision package with some minor changes. Along with legislation on its proposals to amend the subdivision law, the Task Force would provide comments and suggestions concerning unresolved subdivision issues to the legislative committee of jurisdiction in the text of the Task Force report.

Growth Management Act.

The Task Force decided to describe the outcome-based approach in the report and include the statutory language they worked on as an appendix to the report, but not submit it as a piece of legislation. The Task Force as a whole was intrigued with the approach but they had too many concerns to move forward with it as a recommendation at this time. The concerns to be identified in the report are:

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- length of time for penalties to take effect,
- effectiveness of the penalties (too weak),
- elimination of the deadline schedule (1/1/03),
- timing of when the program starts and
- not enough emphasis on a regional approach.

Also in the report, the Task Force would identify an alternative proposal that includes:

- incorporating the 3 measurable performance outcomes into the GMA as aspirations for towns to achieve;
- revising the current deadlines by establishing 3 staggered deadlines - for fast growing, moderate growth and slow growing towns; and
- exempt towns that enter into interlocal agreements from the established deadlines.

Neither this proposal nor the outcome-based proposal would be included in the task force bill submitted to the Revisors Office. The intent is to present both proposals in the report to the Natural Resource Committee and leave it to the Committee to see if they want to do anything with the proposals during the session or to send it on for more study.

The Task Force decided to recommend that the output based approach, along with other sprawl issues be further studied by a select committee or other multi-year comprehensive legislative entity. See below.

The Task Force decided to recommend funding for cost of statewide coordinated GIS system for uniform tracking of development and funding of \$20M for the Municipal Investment Trust Fund.

The Task Force also decided to recommend establishment of a group with multi-year involvement (such as a select committee) to deal with activities that influence growth management and patterns of development.

Tasks to include such issues as:

- further study of the outcome-based approach,
- the development of a regional solution to growth management and sprawl,
- the impact that tax policies have on land use planning and
- the impact that education policies (general purpose aid and renovation) have on land use planning.

The Task Force recognized the difficulty in getting a select committee established by the legislature and suggested strong language to help put the request in perspective framed by the issues of

- the Task Force's short schedule and time constraints;
- the complexity and immensity of the related growth management issues;
- the vital importance of a regional plan; and
- the need for an institutional mechanism to provide for a comprehensive approach.

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**Future Meetings:** The Task Force will use its final meeting to review the draft report and the draft legislation.

- Wednesday, December 13<sup>th</sup> – Final Task Force Meeting to review draft report and draft legislation
- Final Report Due December 15<sup>th</sup>

**Task Force to Study Growth Management**

Other studies relating to sprawl issues

AGENCY, CONTACT & PHONE	TASK	STATUS
Department of Economic and Community Development  <b>(P.L. 1999 C. 776, §16)</b>	<b>Downtown Redevelopment</b> Directed to develop an investment policy to assist municipalities and private property owners in the redevelopment of downtowns. Report due to the Legislature (BEC) by 1-15-01.	Meeting regularly with Downtown Initiative Workgroup since September to draft report; hosting Smart Codes Forum on 11/30 with state officials from NJ & MD as part of effort.
Land and Water Resources Council, SPO  <b>(P.L. 1999 C. 776, §17)</b>	<b>Productive Lands</b> Directed to evaluate and make recommendations on the use of incentives to keep land in productive farming, fishing and forestry use. Report due to the Legislature (NAT and ACF) by 1-15-01.	LWRC discussed report at 9/14 meeting and agreed on interagency coordination approach to compiling. Will review draft at 12/14 meeting and final at 1/11 meeting.
Executive Office, SPO and DEP  <b>(P.L. 1999 C. 776, §18)</b>	<b>Brownfields</b> Directed to evaluate and make recommendations for the Brownfields initiative. (Report due to the Legislature (NAT) by 1-15-01.	2 grants awarded for Site Assessment (Rumford; Auburn later withdrew); 2 other towns pursuing funds (Richmond, Belfast)
Maine State Housing Authority  <b>(P.L. 1999 C. 776, §19)</b>	<b>Home Ownership Program</b> Directed to prepare a status report on MSHA's efforts to design and implement a home ownership program for service center downtowns that is designed to encourage owner-occupied 3-to-4-unit buildings in low-income areas.  <b>Newly Constructed Homes</b> Also to include recommendations for making MSHA's programs for newly constructed single-family homes consistent with the purposes of 30-A MRSA §4349-A [restricts the state to making growth-related capital investments only in locally designated growth areas, areas served by public sewer systems, or other areas for specially designated projects). Report due to the Legislature (NAT and BEC) by 2-15-01.	MSHA has applied for and received a \$600,000 HUD Rural Housing grant to expand a New Neighbors type program to service centers. Program is currently in redesign phase with implementation expected in 2001.  MSHA will review its programs for newly constructed single-family homes and make recommendations concerning 30-A MRSA §4349-A prior to 2-15-01.
Executive Department, SPO	<b>Model Ordinances</b> Directed to work with municipalities	SPO solicited proposals and selected a consultant to develop a municipal

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<p>(P.L. 1999 C. 776, §20)</p>	<p>and regional planning commissions to develop model land use ordinances that accommodate “smart growth” design standards and provide for flexibility in zoning regulations. SPO, with State Board of Education, shall also develop model land use ordinances relating to new school construction outside of locally designated growth areas.</p>	<p>smart growth handbook. Preliminary meetings were held with the consultant and project advisors. A draft handbook will be circulated for review in early 2001.</p>
<p>State Board of Education  (P.L. 1999 C. 776, §21)</p>	<p><b>School Siting Rules</b> Directed to adopt rules relating to siting of new school construction projects that receive state funding. Rules adopted are major substantive rules and must be submitted to the Legislature by 2-1-01 for review by NAT and EDU.</p>	<p>At the last of two stakeholder meetings, strong support was expressed for revision of the rules to clarify that the State Board consider a preference for new schools to be sited in a locally designated growth area identified in a municipality’s comprehensive plan, in sewerred areas, census-designated places, or urban compact areas and that when a school administrative unit does not select a school building site in a preferred area it be required to provide a written explanation to the Board and authorizing use of State funds only if there are no practical alternative building sites within a preferred area (burden of proof is on school unit). The State Board shall consider criteria that define practical building sites. While the draft substantive rules will be provided by 2/1/01, final rulemaking will not be completed until at least April.</p>
<p>State Board of Education and Executive Department, SPO  (P.L. 1999 C. 776, §22)</p>	<p><b>Land Use Near Schools</b> Directed to make recommendations regarding land use ordinances and zoning ordinances near newly constructed schools. Report due to the Legislature (NAT) by 2-1-01.</p>	<p>Work on this task will be coordinated with work to develop Model Ordinances (described above).</p>
<p>Department of Transportation  (P.L. 1999 C. 676, §3)</p>	<p><b>Smart Growth Assistance</b> Directed to work with SPO and regional councils to provide training, tech. assistance and information to municipalities on road planning, road maintenance, sidewalks and neighborhood involvement to assist municipalities in addressing “smart growth”. <b>Street Construction Standards</b> Also, by 1-2-01, to develop model subdivision and road ordinances that</p>	<p>MDOT coordinates with SPO and RPCs via contract and on an as needed basis (upon request of municipality) to provide technical assistance and training relative to smart growth issues.  The model ordinances project is also being coordinated with SPO. SPO is managing a consultant contract to develop such models. See SPO/Model Ordinances.</p>

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	provide options to municipalities for construction standards for new residential streets.	
Department of Transportation  <b>(P.L. 1999 C. 676, §4)</b>	<b>Administrative Streamlining</b> Directed to begin a strategic planning process to address challenges such as administrative streamlining of transit funding, marketing and redesign of transit, innovative financing of transit projects, connectivity to airports and rail.	Initial study provided limited information. DOT will wait for results of the Innovative Transit Analysis study (see next item) before continuing.
Department of Transportation  <b>(P.L. 1999 C. 676, §5)</b>	<b>Innovative Transit Analysis</b> Directed to work with DHS and DEP to identify funding sources for innovative transit and transportation projects that address sprawl and air quality issues.	After an initial meeting, DOT hired a consultant to develop a questionnaire. Preliminary results expected in late 2001.

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**Preliminary Proposal  
to instill an “outcome-based” approach  
in Maine’s Growth Management Act**

- To summarize the outcome-based approach:
  1. Specific performance measures will be enacted by the Legislature and individual municipalities or groups of municipalities (see Note 9 below) will be expected to plan for and manage their growth in accordance with those performance standards, with appropriate financial support from the state. The performance standards are that 70% of new residential growth should occur in areas designated for growth, at least 10% of new housing is affordable, and commercial development should be located in such a way that the capacity of arterial and major collector roadways is not diminished.
  2. Failure without good cause to meet the performance standards will result in those communities being denied access during five-year penalty periods to growth-related financial assistance from the state, assistance from the Land For Maine’s Future program, and the right to adopt or administer slow-growth, impact fee, or minimum lot size ordinances.
  3. Good-cause failure to meet the performance standards include actual growth rates that exceed projections by 50% or more, or the lack of availability of non-property tax revenues that were identified as necessary to implement functioning growth areas.
  4. The performance measures will be taken at five-year intervals and the penalties will apply for five-year periods, measured in intervals of years ending in ‘0’ or ‘5’.
  5. The penalties associated with failing to meet or exceed the performance measures will not apply to municipalities in Labor Market Areas that are experiencing less than a 5% growth rate (measured over five-year periods) unless an individual community within such a Labor Market Area exceeds a 25-unit-per-five-year growth threshold.
  6. Definitions are given for two types of growth area (priority and secondary) and two types of rural area (“rural area” and “critical rural area”).
  7. (See Note 9 below) The concept of a special type of multi-municipal region is created, called a land use planning region, which is a multi-municipal region including a service center community. The special purpose of these regions (which like all multi-municipal regions are voluntary in nature) is to implement a regional comprehensive plan as adopted by a regional planning agency. Land use planning regions would have priority access to municipal infrastructure resources, but would otherwise have the same rights and responsibilities as municipalities or multi-municipal regions.

8. **The municipalities within LURC will be allowed to participate with LURC approval and LURC representation in multi-municipal planning regions.**
  9. **The Task Force did not fully considered the regional approaches (the use of multi-municipal regions and the creation of Land Use Planning Regions) that are preliminarily presented in this proposal.**
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## TITLE 30-A: MUNICIPALITIES AND COUNTIES

### § 4301. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Affordable housing.** “Affordable housing” ~~has the same meaning as set out in section 5002, subsection 2.~~ means decent, safe and sanitary dwellings, apartments or other living accommodations for persons or families whose incomes are less than or equal to eighty percent of the area median income or eighty percent of the state median income, whichever is less.

**2. Coastal areas.** “Coastal areas” means all municipalities and unorganized townships contiguous to tidal waters and all coastal islands. The inland boundary of the coastal area is the inland line of any coastal town line.

**3. Comprehensive plan.** “Comprehensive plan” means a document or interrelated documents containing the elements established under section 4326, subsections 1 to 4, including the strategies for an implementation program which are consistent with the goals and guidelines established under subchapter II.

**4. Conditional zoning.** “Conditional zoning” means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned.

**4-A. Critical rural area.** “Critical rural area” means a rural area specifically identified and designated by a local, multi-municipal, or regional comprehensive plan as deserving maximum regulatory protection from development incompatible with preserving prime farmland, forested land of exceptional quality, the continued use of such lands for farming and forestry, scenic values of significant state or local importance, wildlife habitat identified by the Department of Inland Fisheries and Wildlife as high value, scarce or especially vulnerable natural resources, or open lands functionally necessary to support a vibrant rural economy. Critical rural areas will receive priority consideration for proactive strategies designed to enhance rural industries, manage wildlife habitat, preserve sensitive natural areas, and other similar purposes.

**4-B. Critical waterfront area.** “Critical waterfront area” means a waterfront area characterized by development functionally related to commercial fishing activities or functionally water-dependent uses, as those terms are defined in Title 38, chapter 3, Article 2-B, and which are specifically identified and designated by a local, multi-municipal, or regional comprehensive plan as deserving maximum regulatory protection from development incompatible with commercial fishing activities and functionally water-dependent uses in order to preserve the infrastructure necessary to support and maintain a viable fishing industry.

**5. Contract zoning.** “Contract zoning” means the process by which the property owner, in consideration of the rezoning of that person's property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

**5-A. Downtown.** “Downtown” means:

- A. The central business district of a community that serves as the center for socioeconomic interaction in the community and is characterized by a cohesive core of commercial and mixed-use buildings, often interspersed with civic, religious and residential buildings and public spaces, typically arranged along a main street and intersecting side streets, walkable and served by public infrastructure; or
- B. An Area identified as a downtown in a comprehensive plan adopted pursuant to chapter 187, subchapter II.

**5-B. Growth-related capital investment.** “Growth-related capital investment” means investment by the State in only the following projects, whether using state, federal or other public funds and whether in the form of a purchase, lease, grant, loan, loan guarantee, credit, tax credit or other financial assistance:

- A. Construction or acquisition of newly constructed multifamily rental housing;
- B. Development of industrial or business parks;
- C. Construction or extension of sewer, water and other utility lines;
- D. Grants and loans for public service infrastructure, public facilities and community buildings; and
- E. Construction or expansion of state office buildings, state courts and other state civic buildings that serve public clients and customers.

“Growth-related capital investment” does not include investment in the following: the operation or maintenance of a governmental or quasi-governmental facility or program; the renovation of a governmental facility that does not significantly expand the facility's capacity; general purpose aid for education; school construction or renovation projects; highway or bridge projects; programs that provide direct financial assistance to individual businesses; community revenue sharing; or public health programs.

**6. Development.** “Development” means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

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**6-A. Impact fee.** “Impact fee” means a charge or assessment imposed by a municipality against a new development to fund or recoup the cost of new, expanded or replacement infrastructure facilities necessitated by and attributable to the new development.

**6-B. Growth Area.** “Growth area” means a priority growth area or a secondary growth area.

**7. Implementation program.** “Implementation program” means that component of a local growth management program which includes the policies and ordinances or other land use regulations which carry out the purposes and general policy statements and strategies of the comprehensive plan in a manner consistent with the goals and guidelines of subchapter II.

**8. Land use ordinance.** “Land use ordinance” means an ordinance or regulation of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land and the standards for those uses.

**8-A. Land use planning region.** “Land use planning region” means a group of two or more municipalities located within commuting proximity of each other, at least one of which is a service center community, that enters into an interlocal agreement for the purposes of implementing a regional comprehensive plan for that region as adopted by a regional council.

**9. Local growth management program.** “Local growth management program” means a document containing the components described in section 4326, including the implementation program, which is consistent with the goals and guidelines established by subchapter II and which regulates land use beyond that required by Title 38, chapter 3, subchapter I, article 2-B.

**10. Local planning committee.** “Local planning committee” means the committee established by the municipal officers of a municipality or combination of municipalities which has the general responsibility established under sections 4324 and 4326. Municipalities within the jurisdiction of the Land Use Regulation Commission that may be participating on the local planning committee of a multi-municipal region or land use planning region will be represented on that local planning committee by the Commission or its designee.

**11. Moratorium.** “Moratorium” means a land use ordinance or other regulation approved by a municipal legislative body which temporarily defers development by withholding any authorization or approval necessary for development.

**11-A. Multi-municipal region.** A “multi-municipal region” means a region made up of two or more municipalities that work together to cooperatively establish a unified growth management program or independent growth management programs that are unified with respect to the implementation of the statewide goal identified in section 4312(3)(A). The municipalities in a multi-municipal region may establish the region pursuant to section 4326-A or sections 2201 et seq.

**12. Municipal reviewing authority.** “Municipal reviewing authority” means the municipal planning board, agency or office, or if none, the municipal officers.

**13. Office.** "Office" means the State Planning Office.

**13-A. Priority growth area.** Priority growth area means a compact area designated in a local, multi-municipal or regional comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combinations of such development, and into which a significant amount of such development forecast over 10 years is directed.

**14. Regional council.** "Regional council" means a regional planning commission or a council of governments established under chapter 119, subchapter I.

**14-A. Rural area.** "Rural area" means a geographic area identified and designated in a local, multi-municipal or regional comprehensive plan as an area deserving of some level of regulatory protection from unrestricted development for the purpose of preserving farmland, forest land, open space, wildlife habitat, outdoor recreational space and access thereto, or scenic lands.

**14-B. Secondary growth area.** "Secondary growth area" means an area designated in a local, multi-municipal, or regional comprehensive plan as suitable for a share of forecasted residential, commercial or industrial development, but which is not intended to accept the amount or density of development appropriate for a priority growth area.

**14-C. Service Center Community.** "Service Center Community" means a municipality or group of municipalities identified by the Office as a primary, secondary, small or specialized service center community according to a methodology established by rule that includes four basic identifying criteria including level of retail sales, jobs-to-workers ratio, the amount of federally assisted housing and the volume of service sector jobs.

**15. Zoning. Repealed.**

**15-A. Zoning ordinance.** "Zoning ordinance" means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.

## **§ 4302. Nuisances**

Any property or use existing in violation of a municipal land use ordinance or regulation is a nuisance.

## **§ 4312. Statement of findings, purpose and goals**

**1. Legislative findings.**

**2. Legislative purpose.** The Legislature declares that it is the purpose of this Act to:

A. Establish, in each municipality of the State, local comprehensive planning and land use management;

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B. Encourage municipalities to identify the tools and resources to effectively plan for and manage future development within their jurisdictions with a maximum of local initiative and flexibility;

C. Encourage local land use ordinances, tools and policies based on local comprehensive plans;

D. Incorporate regional considerations into local planning and decision making so as to ensure consideration of regional needs and the regional impact of development;

E. Repealed.

F. Provide for continued direct state regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital state interests; and

G. Encourage the widest possible involvement by the citizens of each municipality in all aspects of the planning and implementation process, in order to ensure that the plans developed by municipalities have had the benefit of citizen input.

H. Repealed.

**3. State goals.** The Legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The Legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the State, it is in the best interests of the State to achieve the following goals:

A. To encourage orderly growth and development in appropriate areas of each community or multi-municipal region, while protecting the State's rural character, making efficient use of public services and preventing development sprawl;

B. To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;

C. To promote an economic climate which increases job opportunities and overall economic well-being;

D. To encourage and promote affordable, decent housing opportunities for all Maine citizens;

E. To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great ponds, estuaries, rivers and coastal areas;

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F. To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas;

G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public;

H. To safeguard the State's agricultural and forest resources from development which threatens those resources;

I. To preserve the State's historic and archeological resources; and

J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters.

**3-A. Measurable performance outcomes.** In addition to the broad goals identified in section 3, the Legislature declares that in order to manage the patterns of land development in Maine for the purposes of conserving important resources, building and maintaining an efficient public infrastructure and preventing development sprawl, it is in the best interests of the State to achieve the following measurable performance outcomes:

- A. Beginning on January 1, 2005, at least 70% of all residential development occurring in a municipality or multi-municipal region over each 5-year period measured in years ending in '5' or '0' must be located in designated priority or secondary growth areas. Beginning on January 1, 2005, at least 50% of all residential development occurring in a municipality or multi-municipal region over each 5-year period measured in years ending in '5' or '0' must be located in designated priority growth areas. In calculating these percentages, housing units built on lots in subdivisions approved and filed with a county registry of deeds prior to January 1, 2001, will be excluded. The number of housing units built will be based on municipal assessment records.
- B. Beginning on January 1, 2005, highway access must be managed so there will be no decrease from the posted speed that exists on January 1, 2003 on rural portions of arterial roads that run between urban compact boundaries or on major collectors that have a posted speed of 45 miles per hour and above. "Major collectors" means major collectors as defined by the Maine Department of Transportation.
- C. Beginning on January 1, 2005, 10% of new residential development constructed and existing housing stock rehabilitated in a municipality or multi-municipal region over each 5-year period measured in years ending in '5' or '0' must be affordable to the persons or families residing in the labor market statistical area associated with the municipality, multi-municipal region or land use planning region.

**4. Limitation on state rule-making authority.** This section shall not be construed to grant any separate regulatory authority to any state agency beyond that necessary to implement this subchapter.

**§ 4314. Transition; savings clause**

**1. Comprehensive plan.** A municipal comprehensive plan or land use regulation or ordinance adopted or amended by a municipality under former Title 30, chapter 239, subchapter V or VI remains in effect until amended or repealed in accordance with this subchapter.

**2. Zoning ordinances.** ~~Notwithstanding section 4352, subsection 2, any portion of a All zoning ordinances that regulates land use beyond the geography that required by Title 38, chapter 3, subchapter I, article 2-B and that is not must be consistent with a comprehensive plan adopted under this subchapter is void. 24 months after adoption of the plan or by July 1, 1994, whichever date is later.~~

**3. Land use ordinances.** ~~Any land use ordinance not consistent with a comprehensive plan adopted according to this subchapter is void:~~

~~A. After January 1, 1998, in any municipality that received a planning assistance grant and an implementation assistance grant under former section 4344, subsection 4 prior to December 23, 1991; and~~

~~B. After January 1, 2003, in all other municipalities.~~

**4. Encumbered balances at year-end.** At the end of each fiscal year, all encumbered balances accounts for financial assistance and regional planning grants may be carried twice.

**§ 4321. Local comprehensive planning**

There is established a program of local growth management to accomplish the goals of this subchapter.

**§ 4322. Exception**

This article and section 4343, subsection 1, do not apply to municipalities within the jurisdiction of the Maine Land Use Regulation Commission unless the Commission elects to include one or more municipalities in its jurisdiction as participants in a multi-municipal region or land use planning region that includes municipalities outside of the Commission's jurisdiction.

**§ 4323. Local authority for growth management**

Through the exercise of its home rule authority, subject to the express limitations and requirements of this subchapter, every municipality may:

**1. Planning.** Plan for its future development and growth;



**2. Growth management program.** Adopt and amend local growth management programs, including comprehensive plans and implementation programs, consistent with this subchapter; and

**3. Other.** Do all other things necessary to carry out the purposes of this subchapter.

**§ 4324. Local or regional responsibility for growth management**

This section governs a ~~municipality's~~ the responsibility of a municipality, multi-municipal region or land use planning region for the preparation or amendment of its local or regional growth management program. Where procedures for the adoption of comprehensive plans and ordinances are governed by other provisions of this Title or municipal charter or ordinance, the municipality, the multi-municipal region or land use planning region may modify the procedural requirements of this section as long as a broad range of opportunity for public comment and review is preserved.

**1. Growth management program.** Each municipality, multi-municipal region or land use planning region may prepare a local growth management program in accordance with this section or may amend its existing comprehensive plan and existing land use ordinances to comply with this subchapter.

**2. Local planning committee.** If a municipality, multi-municipal region or land use planning region chooses to prepare a local growth management program, the municipal officers of a municipality or combination of municipalities shall designate and establish a local planning committee.

A. The municipal officers may designate any existing planning board or district established under subchapter IV, or a former similar provision, as the local planning committee. Planning boards established under former Title 30, section 4952, subsection 1, continue to be governed by those provisions until they are superseded by municipal charter or ordinance.

B. The local planning committee may develop and maintain a comprehensive plan and may develop an initial proposed zoning ordinance or an initial revision of an existing zoning ordinance. In performing these duties, the local planning committee shall:

(1) Hold public hearings and use other methods to solicit and strongly encourage citizen input; and

(2) Prepare the comprehensive plan and proposed zoning ordinance and make recommendations to the municipal reviewing authority and municipal legislative body regarding the adoption and implementation of the program or amended program.

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**3. Citizen participation.** In order to encourage citizen participation in the development of a local growth management program, municipalities, multi-municipal regions or land use planning regions may adopt local growth management programs only after soliciting and considering a broad range of public review and comment. The intent of this subsection is to provide for the broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination and consideration of and response to public comments.

**4. Meetings to be public.** The local planning committee shall conduct all of its meetings in open, public session. Prior public notice must be given for all meetings of the local planning committee pursuant to Title 1, section 406. ~~Prior to April 1, 1990, if the local planning committee provided notice in compliance with Title 1, section 406, that notice was sufficient for all legal purposes.~~

**5. State review.**

**6. Comments sent to municipality.**

**7. Comments and revisions.**

**8. Public hearing required.** The local planning committee shall hold at least one public hearing on its proposed comprehensive plan.

A. Notice of any public hearing must be posted in the municipality at least ~~2 times~~ 30 days prior to the hearing.

B. A copy of the proposed comprehensive plan shall be made available for public inspection at the municipal office or other convenient location with regular public hours at least 30 days before the hearing.

**9. Adoption.** A comprehensive plan or land use ordinance is deemed to have been adopted as part of a local growth management program when it has been ~~accepted~~ adopted by the municipality's legislative body.

**10. Amendments to an adopted plan.** When amending an adopted comprehensive plan, a municipality shall follow the same procedures for citizen participation, public notice and public hearing that are required for adoption of a comprehensive plan.

**Note:** The following section, §4325, has been removed to follow §4326, rather than come before it, to improve the flow of the statute **NOTE** to Task Force Members: For drafting reasons, this change will not appear in the final bill

### ~~§ 4325. Cooperative municipal growth management activities~~

~~—This section governs cooperative local growth management efforts conducted by 2 or more municipalities.~~

~~—1. **Within municipality.** A municipality may exercise its land use planning and management authority over the total land area within its jurisdiction.~~

~~—2. **Agreement.** Any combination of contiguous municipalities may conduct joint planning and regulatory programs to meet the requirements of this subchapter upon adoption of a written comprehensive planning and enforcement agreement by the municipal legislative bodies involved. The municipalities must agree:~~

~~A. On procedures for joint action in the preparation and adoption of comprehensive plans and land use regulations;~~

~~B. On the manner of representation on any such joint land use body; and~~

~~C. On the amount of contribution from each municipality for any costs incurred in the development, implementation and enforcement of the plan and land use ordinances.~~

~~—3. **Requirements.** The agreement must be in writing, approved by the municipal legislative bodies and forwarded to the office.~~

### § 4326. Local growth management program

A local growth management program shall include at least a comprehensive plan, as described in subsections 1 to 4, and an implementation program as described in subsection 5.

**1. Inventory and analysis.** A comprehensive plan shall include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance the municipality, multi-municipal region or land use planning region considers important. The inventory must be based on information provided by the State, regional councils and other relevant local sources. The analysis must include 10-year projections, split at least into 5-year periods, of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.

The inventory and analysis section must include, but is not limited to:

A. Economic and demographic data describing the municipality and the region in which it is located. The demographic inventory must include a reasonable estimate, calculated in consultation with the Office, of the amount of residential, commercial and industrial development that will occur in the municipality or multi-municipal region during the 10-year period subsequent to the adoption of the comprehensive plan or any amendments to the comprehensive plan;

B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, where applicable, their vulnerability to degradation;

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- C. Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under Title 5, section 3316, and unique natural areas;
- D. Marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas;
- E. Commercial forestry and agricultural land;
- F. Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality;
- G. Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities;
- H. Residential housing stock, including affordable housing;
- I. Historical and archeological resources including, at the discretion of the municipality, stone walls, stone impoundments and timber bridges of historical significance;
- J. Land use information describing current and projected development patterns; and
- K. An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services.

**2. Policy development.** A comprehensive plan must include a policy development section that relates the findings contained in the inventory and analysis section to the state goals and the measurable performance outcomes established in section 4312, subsection 3-A. The policies must:

- A. Promote the state goals under this subchapter;
- B. Address any conflicts between state goals under this subchapter;
- C. Address any conflicts between regional and local issues; and
- D. Address the State's coastal policies.

The comprehensive plan of any municipality or multi-municipal region satisfies this section with regard to the state goal established in section 4312, subsection 3, paragraph A if the municipality or multi-municipal region meets or exceeds the measurable performance outcomes established in section 4312, subsection 3-A. The comprehensive plan of any municipality or municipality within a multi-municipal region or land use planning region will not be reviewed by the Office for consistency with the measurable performance outcomes established in section 4312, subsection 3-A if the municipality, multi-municipal region or land use planning region is

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entirely located in a labor market area, as defined by the U.S. Department of Labor, experiencing residential housing growth rates of 5% or less during the most recent 5-year period as measured in years ending in '5' or '0', provided that during the same period the municipality has had a net increase of housing units of 25 or less.

**3. Implementation strategy.** A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, designed to address ensuring that the goals and meet or exceed the measurable performance outcomes established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances. The implementation strategies of any municipality or multi-municipal region satisfy this section as it applies to the state goal identified at section 4312, subsection 3, paragraph A if the municipality or multi-municipal region meets or exceeds the measurable performance outcomes established in section 4312, subsection 3-A. The comprehensive plan of any municipality or municipality within a multi-municipal region or land use planning region will not be reviewed by the Office for consistency with the measurable performance outcomes established in section 4312, subsection 3-A if the municipality or multi-municipal region is entirely located in a labor market area, as defined by the U.S. Department of Labor, experiencing residential housing growth rates of 5% or less during the most recent 5-year period as measured in years ending in '5' or '0', provided that during the same period the municipality has had a net increase of housing units of 25 or less. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality shall employ the following guidelines consistent with the goals of this subchapter:

A. Identify and designate at least 2 basic types of geographic areas:

(1) Priority growth areas where most of the development forecasted for the next 10 years will be directed. A plan may also designate secondary growth areas. Unless limited by natural conditions, a growth area designated for residential development must permit development at densities of at least 2 dwelling units per acre where public sewerage is available, or at least 1 dwelling unit per acre where on-site, individual wastewater disposal is used. which are those areas suitable for orderly residential, commercial and industrial development or any combination of those types of development, forecast over the next 10 years, and. Each municipality shall:

(a) Establish standards for these developments;

(b) Establish timely permitting procedures;

(c) Ensure that needed public services are available within the growth area; and

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~~(d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion; and~~

~~(2) Rural areas, as defined in this chapter, which are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Where residential development is allowed in a rural area, it must be at a sufficiently low density and contain other proactive measures to allow for contiguous, undeveloped blocks of land large enough to accommodate economically viable farming and forestry and habitat for a diversity of wildlife, including wildlife that needs interior space to thrive. A comprehensive plan should distinguish between critical rural areas and other rural areas.~~

In order to meet or exceed the measurable performance outcomes established in section 4312, subsection 3-A and to effect the goals established by this chapter, each municipality or multi-municipal region is encouraged to shall adopt land use policies and ordinances to discourage incompatible development, establish standards to govern these all development, establish timely permitting procedures, ensure that the needed public services are available within the growth area, and prevent inappropriate development in natural hazard areas including flood plains and areas of high erosion.

These policies and ordinances may include, without limitation: density limits; cluster or special zoning; acquisition of land or development rights; or performance standards.

A municipality or a multi-municipal region is not required to identify growth areas for residential growth if it demonstrates that it is not possible to accommodate future residential growth in these areas because of severe physical limitations, including, without limitation, the lack of adequate water supply and sewage disposal services, very shallow soils or limitations imposed by protected natural resources. ~~or it demonstrates that the municipality has experienced minimal or no residential development over the past decade and this condition is expected to continue over the 10 year planning period.~~ A municipality or multi-municipal region exercising the discretion afforded by this paragraph shall review the basis for its demonstration during the periodic revisions undertaken pursuant to section 4327.

The penalties listed in section 4350 that apply to municipalities, multi-municipal regions or land use planning regions that fail to meet or exceed the measurable performance outcomes established in section 4312, subsection 3-A do not apply to any municipality or municipality within a multi-municipal region or land use planning region that is entirely located in labor market areas, as defined by the U.S. Department of Labor, experiencing residential housing growth rates of 5% or less during the most recent 5-year period as measured in years ending in '5' or '0', provided that during the same period the municipality has had a net increase of housing units of 25 or less.

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Once the growth areas and rural areas in the municipality, multi-municipal region or land use planning region have been identified and designated pursuant to an adopted comprehensive plan or plans, and the Office has found that the relative size and configuration of those designated areas are consistent with this chapter, the municipality or multi-municipal region shall ensure that the measurable performance outcome identified in section 4312, subsection 3-A, paragraph A is met or exceeded. The percentage of allowable development governing the patterns of development may be modified to account for regional variance in accordance with subsection L.

B. Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development. The capital investment plan must include a calculation of the resources needed from sources other than the property tax, including resources from the municipal investment trust fund and the community development block grant program, in order to provide the functionally necessary infrastructure so that the designated growth area will reasonably be able to accommodate and support the anticipated growth, recognizing that contributions for that infrastructure are a shared state and local responsibility. Pursuant to section 4347, and in the context of the municipality's, multi-municipal region's or land use planning region's overall capital investment plan, the Office shall review the calculation of the non-property tax resources necessary to implement a functional growth area to ensure that it meets the criteria of this section;

C. Protect, maintain and, when warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter I, article 4-A and ensure that the water quality will be protected from long-term and cumulative increases in phosphorus from development in great pond watersheds;

D. Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality may adopt ordinances more stringent than applicable state law;

E. Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal municipality may identify and designate a critical waterfront area and implement policies to ensure that area's protection or shall discourage new development that is incompatible with uses related to the marine resources industry;

F. Ensure the protection of agricultural and forest resources. Each municipality may identify and designate critical rural areas and implement policies to ensure that area's protection or shall discourage new development that is incompatible with uses related to the agricultural and forest industry;

G. Ensure that its land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of section

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4358 pertaining to individual mobile home and mobile home park siting and design requirements. The municipality or multi-municipal region shall ensure that the measurable performance outcome identified in section 4312, subsection 3-A, paragraph C is met or exceeded;

H. Ensure that the value of historical and archeological resources is recognized and that protection is afforded to those resources that merit it;

I. Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking; and encourage the creation of greenbelts, public parks, trails and conservation easements. Each municipality shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting that protection; and

J. Develop management goals for great ponds pertaining to the type of shoreline character, intensity of surface water use, protection of resources of state significance and type of public access appropriate for the intensity of use of great ponds within a municipality's or multi-municipal region's jurisdiction. Representatives of the Departments of Marine Resources, as applicable, Conservation, Inland Fisheries and Wildlife, Environmental Protection, and the State Planning Office shall attend public hearings convened within the municipality or multi-municipal region for the purpose of developing these management goals and provide clearly-stated recommendations at those public hearings with respect to the criteria listed in this section.

K. Ensure the efficient use and functional integrity of state and state aid highways. The municipality or multi-municipal region shall ensure that the measurable performance outcome identified in section 4312, subsection 3-A, paragraph B is met or exceeded.

L. The Office may adopt rules in accordance with the procedures of Title 5, chapter 375, that modify the measurable performance outcomes established in section 3412, subsection 3-A according to regional variation. In the process of promulgating those rules, the Office shall conduct public hearings within the regions of the state where the proposed modifications to the measurable performance outcomes would apply. The Office shall also adopt rules that will govern the determination of good-cause failure of a municipality or multi-municipal region to meet or exceed the measurable performance outcomes established in section 4312, subsection 3-A. At a minimum, municipalities and multi-municipal regions shall have good cause reason not to meet or exceed the measurable performance outcomes if:

1. The actual development growth occurring in the municipality or multi-municipal region over the ~~10~~ 5-year period exceeded the growth rate estimates calculated pursuant to section 1(A) by 50%; or
2. Either the financial assistance grants identified in section 4346 or the non-property tax resources identified pursuant to subsection B have not been made available to the municipality or multi-municipal region.



**4. Regional coordination program.** A regional coordination program must be developed with other municipalities to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others. This program must provide for consistency with the comprehensive plans of other municipalities for these resources and facilities.

**5. Implementation program.** An implementation program must be adopted that is consistent with the strategies in subsection 3.

**~~§ 4325. §4326-A. Cooperative municipal growth management activities~~**

This section governs cooperative local growth management efforts conducted by 2 or more municipalities.

**1. Within municipality.** A municipality may exercise its land use planning and management authority over the total land area within its jurisdiction.

**2. Agreement.** Any combination of contiguous municipalities may conduct joint planning and regulatory programs to meet the requirements of this subchapter upon adoption of a written comprehensive planning and enforcement agreement by the municipal legislative bodies involved. The municipalities must agree:

- A. On procedures for joint action in the preparation and adoption of comprehensive plans and land use regulations;
- B. On the manner of representation on any such joint land use body; and
- C. On the amount of contribution from each municipality for any costs incurred in the development, implementation and enforcement of the plan and land use ordinances.

**3. Requirements.** The agreement must be in writing, approved by the municipal legislative bodies and forwarded to the office.

4. Land Use Planning Regions. Two or more municipalities including at least one service center community and a municipality within commuting proximity to the service center community may form a land use planning region. The benefits and responsibilities of forming a land use planning region are governed by this subsection.

- A. The primary purpose of forming a land use planning region is to implement the regional comprehensive plan as adopted by a regional council pursuant to section 4347, subsection 3.
- B. All municipalities that are members of land use planning regions must enter into an interlocal agreement pursuant to the procedures established in Chapter 115. The interlocal agreement governing a land use planning region must provide a governance structure sufficient to ensure the effective implementation and maintenance of a cooperative land use regulatory system among the participating

- municipalities. The regional councils may assist the participating municipalities in the development of the interlocal agreement, and all interlocal agreements shall be submitted to the Office for review and approval pursuant to section 2205.
- C. All land use planning regions must identify priority growth areas and critical rural areas in the region. They must develop, adopt, implement, and maintain a mechanism or mechanisms by which the office determines there is a high probability that critical rural areas will be permanently protected for use as working farms and forestland, open space, wildlife habitat, and other resource-related functions, and that most new development will be located in priority growth areas.
- D. Municipalities within a land use planning region are entitled to receive and shall have first access to non-property tax resources that have been identified in the regional comprehensive plan as necessary for the purpose of building, acquiring, providing, rehabilitating, renovating and maintaining the necessary infrastructure to support the region's growth areas and implement the regional comprehensive plan. These non-property tax revenues may be made available, without limitation, through the municipal investment trust fund, the community development block grant program, any similar infrastructure grant programs and the state's General Fund. Providing access to an adequate level of non-property tax revenues to land use planning regions for the purpose of implementing regional comprehensive plans is a responsibility of the Legislature, and the degree to which the Legislature meets that responsibility shall be part of the report submitted by the office pursuant to section 4351.

**Note:** This draft slightly re-orders the remaining 6 sections of the Growth Management Act in an effort to improve the flow of the law. **NOTE** to Task Force Members: For drafting reasons, this change will not appear in the final bill

### **§ 4345. Purpose; office to administer program**

Under the provisions of this article, a municipality multi-municipal region, or land use planning region may request financial or technical assistance from ~~the State Planning Office, referred to in this article as the office,~~ for the purpose of planning and implementing a local growth management program. A municipality multi-municipal region or land use planning region that requests and receives a financial assistance grant shall develop and implement its growth management program in cooperation with the office and in a manner consistent with the provisions of this article.

To accomplish the purposes of this article, the office shall develop and administer a technical and financial assistance program for municipalities, multi-municipal regions, and land use planning regions. The program must include direct financial assistance for planning and implementation of local growth management programs, standards governing the review of local growth management programs by the office, technical assistance to municipalities, multi-municipal regions, and land use planning regions ~~and a voluntary certification program for local growth management programs.~~

### **§ 4346. Technical and financial assistance program**

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The technical and financial assistance program for municipalities, multi-municipal regions, land use planning regions and regional councils is established to encourage and facilitate the adoption and implementation of local growth management programs throughout the State.

The office may enter into financial assistance grants only to the extent that funds are available. In making grants, the office shall consider the need for planning in a municipality, multi-municipal region or land use planning region the proximity of the municipality or region to other towns that are conducting or have completed the planning process and the economic and geographic role of the municipality, multi-municipal region or land use planning region within a regional context. The office may consider other criteria in making grants, as long as the criteria support the goal of encouraging and facilitating the adoption and implementation of a local growth management program consistent with the provisions of this article.

### **1. Planning assistance grants.**

### **2. Implementation assistance grants.**

#### **2-A. Financial assistance grants.** A contract for a financial assistance grant must:

- A. Provide for the payment of a specific amount for the purposes of planning and preparing a comprehensive plan;
- B. Provide for the payment of a specific amount for the purposes of implementing that plan; and
- C. Include specific timetables governing the preparation and submission of products by the municipality, multi-municipal region or land use planning region.

The office may not require a municipality, multi-municipal region or land use planning region to provide matching funds in excess of 25% of the value of that municipality's financial assistance contract.

#### **2-B. Use of funds.** A municipality, multi-municipal region or land use planning region may expend financial assistance grants for:

- A. The conduct of surveys, inventories and other data-gathering activities;
- B. The hiring of planning and other technical staff;
- C. The retention of planning consultants;
- D. Contracts with regional councils for planning and related services;
- E. Assistance in the development of ordinances;
- F. Retention of technical and legal expertise for permitting activities;

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G. The updating of growth management programs or components of a program; and

H. Any other purpose agreed to by the office and the municipality or multi-municipal region that is directly related to the preparation of a comprehensive plan or the preparation of policies, programs and land use ordinances to implement that plan.

**2-C. Additional funding to fully implement growth management programs.** The office shall assist municipalities, multi-municipal regions and land use planning regions in securing the non-property tax resources identified in a growth management program's capital improvement plan that are determined reasonably necessary for the municipality or multi-municipal region to meet or exceed the measurable performance outcomes established in this chapter.

**3. Technical assistance.** Using its own staff, the staff of other state agencies and the resources of the regional councils, the office shall provide technical assistance to municipalities, multi-municipal regions and land use planning regions in the development, administration and enforcement of local growth management programs. The technical assistance component of the program must include a set of model land use ordinances or other implementation strategies developed by the office that are consistent with this subchapter.

**4. Regional council assistance.** As part of the technical and financial assistance program, the office ~~may~~ must develop and administer a program to develop regional education and training programs, regional policies to address state goals and regional assessments. Regional assessments ~~may~~ include, but are not limited to, public infrastructure, inventories of agricultural and commercial forest lands, housing needs, recreation and open space needs, and projections of regional growth and economic development. The program ~~may~~ must include guidelines to ensure methodological consistency among the State's regional councils. To implement this program, the office ~~may~~ must contract with regional councils to assist the office in reviewing local growth management programs, ~~to~~ develop necessary planning information at a regional level, ~~or to~~ provide support for local planning efforts, ~~and develop, adopt and maintain regional comprehensive plans in order to provide context for the comprehensive planning and growth management efforts of municipalities, multi-municipal regions, and land use planning regions.~~ The regional comprehensive plans must be designed to achieve the state goals and measurable performance outcomes identified in this chapter, and shall be reviewed by the office for consistency with this chapter in the same manner and according to the same criteria as local growth management programs are reviewed pursuant to section 4347.

**5. Coordination.** State agencies with regulatory or other authority affecting the goals established in this subchapter shall conduct their respective activities in a manner consistent with the goals established under this subchapter. Without limiting the application of this section to other state agencies, the following agencies shall comply with this section:

A. Department of Conservation;

B. Department of Economic and Community Development;

- C. Department of Environmental Protection;
- D. Department of Agriculture, Food and Rural Resources;
- E. Department of Inland Fisheries and Wildlife;
- F. Department of Marine Resources;
- G. Department of Transportation;
- H. Finance Authority of Maine; and
- I. Maine State Housing Authority.

**§4347. Review of local programs by office**

A municipality or multi-municipal region that chooses to prepare a local growth management program and receives a planning or implementation assistance grant under this article must submit its comprehensive plan ~~and may submit any proposed zoning ordinances~~ to the office for review. The office shall review ~~plans and zoning ordinances~~ local and regional growth management programs for consistency with the goals and guidelines established in this subchapter. Any contract for a planning assistance grant or an implementation assistance grant must include specific timetables governing the review of the comprehensive plan or ~~zoning ordinance~~ growth management program by the office.

**1. Review of program.** In reviewing a local growth management program, the office shall do the following.

A. The office shall solicit written comments on any proposed comprehensive plan or zoning ordinance from regional councils, state agencies, all municipalities contiguous to the municipality or multi-municipal region submitting a comprehensive plan or zoning ordinance and any interested residents of the municipality or of contiguous municipalities. The comment period extends for 45 days after the office receives the proposal.

(1) Each state agency reviewing the proposal shall designate a person or persons responsible for coordinating the agency's review of the proposal.

B. The office shall prepare all written comments from all sources in a form to be forwarded to the municipality or multi-municipal region.

C. The office shall send all written comments on the proposal to the municipality or multi-municipal region within 60 days after receiving its proposal. The office shall also forward its comments and suggested revisions to any applicable regional council.

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D. ~~If warranted, the~~ The office shall issue findings specifically describing how the submitted plan or ordinance is not consistent with this subchapter and the recommended measures for remedying the deficiencies. In its findings, the office shall clearly indicate its position on any point on which there are significant conflicts among the written comments submitted to the office.

E. With respect to a determination of consistency between any growth management program adopted by a municipality, multi-municipal region or land use planning region and the state goal identified in section 4312(3)(A), the office shall review the identification of growth and rural areas for size and configuration in accordance with section 4326, subsection 3, paragraph A and otherwise only consider whether the municipality, multi-municipal region or land use planning region failed, without good cause, to meet or exceed the measurable standards established in section 4312, subsection 3-A.

**2. Updates and amendments.** A municipality or multi-municipal region may submit proposed amendments to a comprehensive plan or zoning ordinances to the office for review in the same manner as provided for the review of new plans and ordinances. Subsequent to voluntary certification under section 4348, the municipality or multi-municipal region shall file a copy of an amendment to a zoning ordinance with the office within 30 days after adopting the amendment.

**3. Regional councils.** Subject to the availability of funding and pursuant to the conditions of a contract, each regional council shall review and submit written comments on the proposal of any municipality within its planning region. The comments must be submitted to the office and contain an analysis of:

A. How the proposal addresses identified regional needs; and

B. Whether the proposal is consistent with those of other municipalities that may be affected by the proposal.

### **§ 4348. Certification; revisions (currently §4327)**

Except as provided in subsection 1, certification by the office of a municipality's or multi-municipal region's local growth management program under this article is valid for 5 years. To maintain certification, a municipality or multi-municipal region shall periodically review its local growth management program and submit to the office in a timely manner any revisions necessary to account for changes, including changes caused by growth and development.

**1. Lack of resources to conduct recertification reviews.** Certification does not lapse in any year in which the Legislature does not appropriate funds to the office for the purposes of reviewing programs for recertification.

### **§4349. Voluntary certification (currently §4348)**

## APPENDIX F

A municipality or multi-municipal region may at any time request a certificate of consistency for its local growth management program. Upon a request for review under this section, the office shall review the program and determine whether the program is consistent with the local growth management goals and guidelines established in this subchapter.

**1. Solicitation of comments.** In conducting a review under this section, the office shall solicit written comments on the local growth management program from regional councils and state agencies, all municipalities contiguous to the municipality or multi-municipal region submitting the program and any interested residents of the municipality or contiguous municipalities.

A. Any regional council commenting on a program shall determine whether the program is compatible with those of other municipalities that may be affected by the program and with regional needs identified by the regional council.

B. Within 90 days after receiving the municipal request, the office shall issue a certificate of consistency or request revisions to the program. If the same local growth management program or a component of the program has been previously reviewed by the office under this article, denial of certification or requested revisions must be based on written findings prepared by the office at that time.

C. If the office requests revisions to the program, it shall provide the municipality or multi-municipal region with findings specifically describing the deficiencies in the submitted program and the recommended measures for remedying the deficiencies.

D. The office shall provide ample opportunity for the municipality or multi-municipal region submitting a local growth management program to respond to and correct any identified deficiencies in the program.

E. The office shall provide an expedited review and certification procedure for those submissions that represent minor amendments to certified local growth management programs.

G. The office's decision on certification constitutes final agency action.

### § 4350. State capital investments (currently §4349-A)

**1. Growth-related capital investments.** The State may make growth-related capital investments only in:

A. A locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the goals and guidelines of this subchapter;

B. In the absence of a consistent comprehensive plan, an area served by a public sewer system that has the capacity for the growth-related project, an area identified in the latest Federal Decennial Census as a census-designated place or a compact area of an urban compact municipality as defined by Title 23, section 754; or

## APPENDIX F

- C. Areas other than those described in paragraph A or B for the following projects:
- (1) A project certified to the Land and Water Resources Council established in Title 5, section 3331 by the head of the agency funding the project as necessary to remedy a threat to public health or safety or to comply with environmental cleanup laws;
  - (2) A project related to a commercial or industrial activity that, due to its operational or physical characteristics, typically is located away from other development, such as an activity that relies on a particular natural resource for its operation;
  - (3) An airport, port or railroad or industry that must be proximate to an airport, a port or a railroad line or terminal;
  - (4) A pollution control facility;
  - (5) A project that maintains, expands or promotes a tourist or cultural facility that is required to be proximate to a specific historic, natural or cultural resource or a building or improvement that is related to and required to be proximate to land acquired for a park, conservation, open space or public access or to an agricultural, conservation or historic easement;
  - (6) A project located in a municipality that has none of the geographic areas described in paragraph A or B and that prior to January 1, 2000 formally requested but had not received from the office funds to assist with the preparation of a comprehensive plan or that received funds to assist with the preparation of a comprehensive plan within the previous 2 years. This exception expires for a municipality 2 years after such funds are received;
  - (7) A housing project serving the following: individuals with mental illness, mental retardation, developmental disabilities, physical disabilities, brain injuries, substance abuse problems or a human immunodeficiency virus; homeless individuals; victims of domestic violence; foster children; or children or adults in the custody of the State; or
  - (8) A project certified to the Land and Water Resources Council established in Title 5, section 3331 by the head of the agency funding the project as having no feasible location within an area described in paragraph A or B if, by majority vote of all members, the Land and Water Resources Council finds that extraordinary circumstances or the unique needs of the agency require state funds for the project. The members of the Land and Water Resources Council may not delegate their authority under this subparagraph to the staffs of their member agencies.

**2. State facilities.** The Department of Administrative and Financial Services, Bureau of General Services shall develop site selection criteria for state office buildings, state courts and other state civic buildings that serve public clients and customers, whether owned or leased by the State, that give preference to the priority locations identified in this subsection while ensuring safe, healthy, appropriate work space for employees and clients and accounting for agency requirements. Preference must be given to priority locations in the following order: service center downtowns, service center growth areas and downtowns and growth areas in other than service center communities. If no suitable priority location exists or if the priority location



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would impose an undue financial hardship on the occupant or is not within a reasonable distance of the clients and customers served, the facility must be located in accordance with subsection 1. The following state facilities are exempt from this subsection: a state liquor store; a lease of less than 500 square feet; and a lease with a tenure of less than one year, including renewals.

For the purposes of this subsection, “service center” means a community that serves the surrounding region, drawing workers, shoppers and others into the community for jobs and services.

**3. Preference for other capital investments.** When awarding grants or assistance for capital investments or undertaking its own capital investment programs other than for projects identified in section 4301, subsection 5-B, a state agency shall give preference to a municipality that receives a certificate of consistency under section 4348 or that has adopted a comprehensive plan and implementation strategies consistent with the goals and guidelines of this subchapter over a municipality that does not obtain the certificate or finding of consistency within 4 years after receipt of the first installment of a financial assistance grant or rejection of an offer of financial assistance.

**4. Application.** Subsections 1 and 2 apply to a state capital investment for which an application is accepted as complete by the state agency funding the project after January 1, 2001 or which is initiated with the Department of Administrative and Financial Services, Bureau of General Services by a state agency after January 1, 2001.

**5. Penalties.** Municipalities and multi-municipal regions that fail without good cause to meet or exceed the measurable performance outcomes established in this chapter shall bear their share of the financial consequences of inefficient development patterns and unmanaged development growth.

A. The penalties described in this section apply to any municipality or municipality that is part of a multi-municipal region that has failed without good cause to meet or exceed the measurable performance outcomes established in section 4326, subsection 3-A during a defined 5-year period. The period of the penalty shall run during the 5-year period immediately following the 5-year period in which the failure to meet or exceed the measurable standards occurred. For the purposes of this section, the first 5-year period runs from January 1, 2005 to January 1, 2010, and all subsequent 5-year periods run consecutively, beginning and ending in a year that ends in ‘5’ or ‘0’.

B. A municipality or municipality located within a multi-municipal region subject to penalties pursuant to subsection A is not eligible for:

1. Grants or other financial assistance from or through the State for growth-related capital investments, as defined in section 4301, subsection 5-B, paragraphs A through D;

2. Assistance from the Land for Maine’s Future Program for locally significant recreation and conservation projects; and

3. State aid for minor collector capital projects as might otherwise be provided under Title 23, section 1803-B, subsection 5.

C. A municipality or municipality located within a multi-municipal region subject to penalties pursuant to subsection A may not:

1. Impose or administer impact fee ordinances;
2. Adopt or administer uniform minimum lot size ordinances more stringent than the state's Minimum Lot Size law, unless the municipality provides to the office, and the office approves, clear documentation that the regulations are required to protect the public health or a critical natural resource; and
3. Adopt regulations or ordinances that cap or set quotas for the amount of development or growth in the municipality except outside of priority growth areas as identified in a consistent comprehensive plan.

D. All funds that are not distributed to municipalities due to the application of this section must be retained in the fund from which they would otherwise be distributed and made available to other participating municipalities during the appropriate fiscal year and in accordance with the systems of distribution applicable to those programs.

### **§4351. Evaluation (currently §4331)**

The office shall conduct an ongoing evaluation process to determine the effectiveness of state and local efforts under this chapter to achieve the purposes and goals of this chapter. Working through the Land and Water Resources Council, the office shall seek the assistance of other state agencies. If requested, all state agencies shall render assistance to the office in this effort.

**1. Criteria.** In conducting the evaluation, the office shall develop criteria based on the goals of this chapter. The criteria must be objective, verifiable and, ~~to the extent practicable,~~ quantifiable.

**2. Baseline conditions.** The office shall establish a baseline of land use conditions at a level of detail sufficient to permit general comparison of state and regional trends in future land use development patterns.

**3. Public input.** The office shall incorporate opportunities for public input and comment into the evaluation process.

**4. Level of analysis.** The office shall evaluate the program generally at a regional and statewide level. To illustrate the impact of the program, the office shall compare land use development trends and patterns in a sample of towns that have participated in the program with a matched sample of towns that have not participated. The evaluation performed by the office must include an analysis of the state's financial commitment to growth management. Specifically, and in the context of sections 4326(3)(L), 4326-A(4)(G), and 4346, the office shall

## APPENDIX F

determine to what degree the Legislature made resources available to the municipalities, multi-municipal regions, land use planning regions, regional councils and the office in order to effectively implement their respective growth management responsibilities.

**5. Periodic reports.** Beginning on January 1, 1995, the office shall report in writing on the results of its evaluation process every 4 years and more frequently if necessary. The office shall submit its report to the joint standing committees of the Legislature having jurisdiction over natural resource matters and appropriations and financial affairs, who shall submit the report to the full Legislature with any comments or recommendations they may wish to include.

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## APPENDIX G

### *Draft Joint Order to Establish a Joint Select Committee on Growth Management and Smart Growth*

**ORDERED**, the House concurring, that the Joint Select Committee on Growth Management and Smart Growth is established as follows:

**1. Establishment.** The Joint Select Committee on Growth Management and Smart Growth, referred to in this order as the “committee,” is established.

**2. Membership.** The committee consists of 3 members from the Senate appointed by the President of the Senate and 10 members from the House of Representatives appointed by the Speaker of the House. The members must include at least one member from each of the following joint standing committees: the Joint Standing Committee on Appropriations, the Joint Standing Committee on Agriculture, Conservation and Forestry; the Joint Standing Committee on Business and Economic Development; the Joint Standing Committee on Education and Cultural Affairs; the Joint Standing Committee on Natural Resources; the Joint Standing Committee on State and Local Government; the Joint Standing Committee on Taxation; and the Joint Standing Committee on Transportation. The first Senate member named is the Senate chair and the first House member named is the House chair.

**3. Staffing.** The committee, with the approval of the Legislative Council, may hire professional staff. The Office of Policy and Legal Analysis may provide assistance to the committee in evaluating prospective staff.

**4. Responsibilities.** The responsibilities of the committee include the following:

A. To conduct an on-going analysis of the activities that influence growth management with the goal of making the growth management laws more responsive to the issues of sprawl, and to consider and make recommendations about regional mechanisms for promoting smart growth, including strengthening the existing regional entities and developing the outcome-based approach to growth management;

B. To conduct a study of the impact of state educational funding on land use and development decisions;

C. To clarify and improve the State's enabling legislation for impact fees in order to make impact fees useful as a tool to manage growth;

D. To conduct a study of tax policy as it affects land use decisions, with a goal of promoting smart growth land use patterns. In conducting its study, the committee shall review property taxes, including highest and best use taxation and current use taxation, estate taxes, tax incentives and other tax policy;

E. To evaluate an outcome-based approach to growth management;

F. To review legislation referred to it by the Legislature and, with the approval of the President of the Senate and the Speaker of the House, to report out legislation relating to patterns of development, development sprawl and smart growth;

## **APPENDIX G**

G. To conduct oversight and review of the State's policies that impact service center communities and development sprawl and to make recommendations to the Legislature on those policies; and

H. To perform other tasks assigned to it including conducting studies on assigned topics and issuing reports to the Legislature on policy issues related to smart growth.

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**AUTHORIZATION: Pursuant to Joint Order, SP 1090**

LR #:

Sponsor: Task Force to Study Growth Management

Drafted by: SZJ

Date: 11/30/00

File Name: G:\OPLAGEA\STUDIES\Growth Management\REPORT\Appendices\draft legis.doc

**Title: An Act to Implement the Recommendations of the Task Force to Study Growth Management**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 30-A MRSA §4401, sub-§4, ¶A, sub-¶1 is amended to read:**

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence ~~or for open space land as defined in Title 36, section 1102,~~ for a period of at least 5 years immediately preceding before the 2<sup>nd</sup> division dividng occurs; or

**Sec. 2. 30-A MRSA §4401, sub-§4, ¶C is amended to read:**

C. A lot of 40 or more acres shall not be counted as a lot, except:

(1) When the lot or parcel from which it was divided is located entirely or partially within any shoreland area as defined in Title 38, section 435, or a municipality's shoreland zoning ordinance; ~~or~~

~~(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435, or a municipality's shoreland zoning ordinance.~~

**Sec. 3. 30-A MRSA §4401, sub-§4, ¶D is repealed.**

**Sec. 4. 30-A MRSA §4401, sub-§4, ¶D-1 is enacted to read:**

D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

**Sec. 5. 30-A MRSA §4401, sub-§4, ¶D-2 is enacted to read:**

D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

**Sec. 6. 30-A MRSA §4401, sub-§4, ¶D-3 is enacted to read:**

D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

**Sec. 7. 30-A MRSA §4401, sub-§4, ¶D-4 is enacted to read:**

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph may not be given for consideration that can be assessed a monetary value.

**Sec. 8. 30-A MRSA §4401, sub-§4, ¶D-5 is enacted to read:**

D-5. A division accomplished by a gift to a municipality does not create a lot or lots for the purposes of this definition if that municipality accepts the gift, unless the intent of the transferor is to avoid the objectives of this subchapter.

**Sec. 9. 30-A MRSA §4401, sub-§4, ¶D-6 is enacted to read:**

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person so as to create a separate lot, then the previously exempt division creates a lot or lots for the purposes of this subsection.

**Sec. 10. 30-A MRSA §4401, sub-§4, ¶H is amended to read:**

H. Nothing in this subchapter may be construed to prevent a municipality from enacting an ordinance under its home rule authority which expands the definition of subdivision ~~to include the division of a structure for commercial or industrial use or which otherwise regulates land use.~~

**Sec. 11. 30-A MRSA §4401, sub-§4, ¶A, sub-¶1 A is amended to read:**

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence ~~or for open space land as defined in Title 36, section 1102,~~ for a period of at least 5 years immediately preceding before the 2<sup>nd</sup> division dividng occurs; or

**Sec. 12. 30-A MRSA §4402-A is enacted to read:**

§4402-A. A municipality may not adopt or administer more restrictive minimum lot size ordinances or minimum setback ordinances for lots that are within a subdivision than for lots that are not within a subdivision, unless the lots within the subdivision are arranged in the form of a cluster development approved by the municipality. This section does not apply to municipalities that are administering the state minimum lot size law.

**Sec. 13. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**2001-02                      2001-02**

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

**Information Services**

Positions – Legislative Count	(1,000)
Personal Services	\$50,000
All Other	\$25,000
Capital Expenditures	\$10,000

Provides for the appropriation of funds to establish a Statewide Geographic Information System Coordinator position.



# APPENDIX H

## DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES TOTAL

\$85,000

## EXECUTIVE DEPARTMENT

### Office of Geographic Information Systems

All Other  
1,200,000

\$1,500,000

Provides for funds that the Office of Geographic Information Systems shall use to develop, coordinate and maintain a regionally based geographic information system and to assist regional councils and municipalities in the development and use of geographic information systems for tracking patterns of development and associated land use planning.

### EXECUTIVE DEPARTMENT TOTAL

\$1,500,000 1,200,000

**Sec. 14. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**2001-02**

## EXECUTIVE DEPARTMENT

### State Planning Office

All Other

\$4,000,000

Provides funds for planning and implementation grants, plan updates, smart growth initiatives, pilot projects, grants for financial and technical assistance to municipalities and grants to regional councils. At the end of each fiscal year any unexpended balance may not lapse

## APPENDIX H

but must be carried forward to be used for the same purpose.

**EXECUTIVE DEPARTMENT TOTAL** \$4,000,000

**Sec. 15. Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

**2001-02**

### MAINE MUNICIPAL BOND BANK

#### Municipal Investment Trust Fund

All Other \$20,000,000

Provides for the appropriation of funds to capitalize the Municipal Investment Trust Fund.

**MAINE MUNICIPAL BOND BANK TOTAL** \$20,000,000

### SUMMARY

This bill implements the recommendations of the Task Force to Study Growth Management. It amends the definition of subdivision in the subdivision law; it appropriates funds for the development of a regionally based geographic information system for tracking patterns of development; it appropriates funds for grants for financial and technical assistance to municipalities for the preparation, updating and implementation of comprehensive plans; it capitalizes the Municipal Investment Trust Fund.