

## State Mandates and Guidance for Local Planning

See also Assessments of Development Capacity; State-Level Fair Share and Remedy Programs (in Other Strategies)

### Strategy description

Planning for housing is conducted by state and local governments for a variety of purposes. Consolidated plans are prepared to qualify jurisdictions for federal funding sources for housing, and many states require local communities to create comprehensive plans. However, these plans do not necessarily include projections of either job growth or population growth, leading to jobs/housing imbalances, pressure on housing costs, and housing cost burdens among low- and moderate-income households.

To prevent this, a number of states require local communities to create housing needs assessments and plans, or housing elements as part of a comprehensive plan. These plans are generally required to meet state criteria, including an assessment of current and future housing needs and plans for meeting these needs.

### History of the strategy

The first state to mandate local planning for affordable housing may have been California, where it has been a requirement since 1980.

### Target population

Local housing plans generally account for renters and homebuyers at all income levels, but may be required to set specific goals for constructing units affordable to low- and moderate-income renters and homebuyers.

### How the strategy is administered

States mandate that local governments adequately plan to meet existing and projected housing needs for all income levels by developing local housing plans. Local governments may not be obligated to construct the homes outlined in the plan, but they may risk losing large sums of state grant money if they fail to comply with the state mandate to create a plan. In addition, they may be subject to overrides of zoning decisions through a state-level housing appeals process.

### How the strategy is funded

No funding required, although the most effective state mandates provide incentives to local governments to meet affordable housing needs. These incentives, which may include planning grants and priority for state infrastructure funding, may be funded through state general tax revenues or bond issuance.

## Extent of use of the strategy

Moderately used.

## Locations where the strategy is being used

- California's Housing Element Law is the state's major tool for ensuring that local governments are planning appropriately for housing needs of all economic segments of the community. The Housing Element Law requires that all cities and counties in California develop a local housing plan that identifies land sites for current and projected housing needs. It must also include a program for removing local government barriers to development of affordable housing.
- Florida's Growth Management Program requires that the state and all local governments develop and implement a comprehensive growth-management plan that includes affordable housing.
- Washington's Growth Management Act requires the state's fastest growing counties and cities (26 counties making up 85 percent of the state's population) to comprehensively plan to meet the state's goals on elements that include affordable housing.
- Oregon's Land Use Act requires that all cities and counties must adopt a comprehensive plan that meets mandatory state standards and goals that include affordable housing.
- Rhode Island passed a fair share housing law in 1991 requiring each community to contribute its fair share of the state's goal of having 10 percent of the housing stock be affordable. Local planning to meet this goal became a requirement in 2004, when the Comprehensive Housing Production and Rehabilitation Act was passed. This Act requires communities that had not yet met the state's 10 percent fair share housing affordability goal to submit affordable housing plans describing how they will meet the goal.
- Wisconsin requires local communities' comprehensive plans to include a housing element.
- Many communities' comprehensive plans incorporate projections of housing and job growth. Some examples include the Village of McFarland, WI, Battle Creek, MI, and Scott County, MN.

## Pros and cons to using the strategy

### Pros:

- Ensures that local governments plan appropriately for current and prospective housing needs.
- Can spur communities to change zoning and provide other assistance to developers to produce affordable housing.

### Cons:

- A lack of incentives or sanctions may make the planning process ineffective in actually accomplishing change.

- The planning requirement can be burdensome for communities, particularly smaller towns with limited planning staff.

### Sources of information about the strategy

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# State and City Comprehensive Development Initiatives

## Strategy description

Initiatives created at the state and metropolitan area level can foster affordable housing by prioritizing infrastructure and other funding for particular types and locations of development, by providing planning grants and technical assistance, and by combining existing resources into a single source for easier access.

## Target population

Initiatives often target renters and homeowners generally; some target low- and moderate-income renters or homebuyers specifically.

## How the strategy is administered

State and city comprehensive development initiatives create processes for ensuring that state grants, loans and other resources are utilized effectively to increase production of affordable housing. In some cases, these initiatives offer technical assistance for specific development projects.

## How the strategy is funded

State and city comprehensive development initiatives often simply combine pre-existing sources of funding such as state grants, loans, and other resources. They may also include new sources of funding from general revenues, a housing trust fund, or government agency budgets.

## Extent of use of the strategy

Limited use.

## Locations where the strategy is being used

- The New Jersey Transit Village aims to encourage revitalization efforts in communities near transit facilities, reducing reliance on the automobile while make the community an appealing choice for people to live, work and play. Applicants for designation as a transit village must commit to grow in jobs, housing, and population, and must document how affordable housing will be incorporated into the transit village.
- In Michigan, cities and organizations engaged in community development projects that meet the goals of the Cool Cities Initiative have access to the Michigan Cool City Resource Toolbox, which combines 110 of the State's existing community improvement grants, tax credits, loans, and assistance programs into a single source. The goal of Cool Cities is to create safe, mixed-income, mixed-use, high-density, and pedestrian-friendly neighborhoods that attract young people and knowledge workers that companies would be interested in hiring.

## Pros and cons to using the strategy

### Pros:

- Pools funding and other resources, making them more likely to be effective in meeting affordable housing and other goals.
- Raises public awareness.
- Encourages collaboration between government agencies and the public and private sector for addressing housing needs.
- Often engages neighborhood input.

### Cons:

- Because some funding for infrastructure is targeted to designated areas, funding for other areas is likely to decline.

## Sources of information about the strategy

- Michigan's Cool Cities Initiative website, <http://www.coolcities.com/>
- New Jersey Transit Village Initiative, <http://www.state.nj.us/transportation/community/village/>

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# Assessments of Development Capacity

## Strategy description

Improved community planning for current and future housing needs can improve opportunities for new construction of housing in general and affordable housing in particular. Since land is an increasingly costly component of a finished home, an important tool in doing this is measuring the development capacity of state and local areas. Tools used to do this include land market monitoring systems, buildable land inventories (BLI), development capacity analysis, or build-out analysis.

A development capacity analysis provides a quantitative analysis of where, how, and what type of development could occur in a given jurisdiction under current zoning. The system can be used to help explain why certain areas have or have not developed and to reveal how current land use controls can help or hinder further development. In addition, it can be used to identify possibilities for redevelopment. The number of vacant buildable lots is estimated based on zoning and natural resource constraints (such as floodplains). The analyses are often conducted using GIS, running data and assumptions through geoprocessing procedures to create reports, tables, and maps to demonstrate the outcomes. Others are conducted manually.

## History of the strategy

- Development capacity analyses were used in the late 1980s and 1990s in many areas of the U.S. to help answer questions raised by “sprawl” patterns of residential growth.
- The Center for Rural Massachusetts produced in 1992 a “Manual of Build-Out Analysis.”
- As the concept of Smart Growth has taken shape across the country, land use assessment systems have grown in importance and utilization. Technology such as GIS mapping systems have allowed for more sophisticated and useful analyses.

## Target population

All community stakeholders located within the zone being assessed. Some cities make parcel-specific information available online, allowing developers to more easily identify parcels that may be suitable for housing development.

## How the strategy is administered

Development capacity analyses are typically conducted and monitored by city planning staff and GIS experts. Developers and other community representatives may also have input.

## How the strategy is funded

Planning department budgets.

### Extent of use of the strategy

- GIS systems for land use planning are used in the majority of large cities throughout the U.S.

### Locations where the strategy is being used

- Maryland's Development Capacity Task Force conducted a development capacity for 10 counties and towns in 2004. Since then, all jurisdictions in the state have committed to regularly conducting development capacity analysis as part of the comprehensive planning process (see case study).
- Fort Collins, CO conducted a buildable land inventory in 2004.
- Many communities in Oregon are required by law to maintain a 20-year buildable land inventory to ensure that available land within urban growth boundaries satisfy housing needs for the region's long-range population and housing projects.

### Pros and cons to using the strategy

#### Pros:

- BLIs are useful for all stakeholders within a community – developers, environmental and city planners, local governments, and citizens – to see how certain development plans/outcomes might affect what is important to them.
- Allows for a sophisticated view of potential development options prior to any actual land sale or construction, therefore maximizing use of the land for the most beneficial community outcome.

#### Cons:

- There are many assumptions and factors that the model cannot incorporate.
- Local politics play an important role in making recommendations for development based on the assessment's results.
- Inventories are only as accurate as the underlying data, which may not exist or may not be accurate.

### Sources of information about the strategy

- Orenstein, Adam, "Developing a Residential Buildable Land Inventory for Carroll County Maryland: A Geographic Information Systems Approach," Carroll County Department of Planning, undated. Available at: [http://www.ruralgis.org/conference/2004proceedings/thurs/session4/thurs\\_4\\_10\\_30.pdf](http://www.ruralgis.org/conference/2004proceedings/thurs/session4/thurs_4_10_30.pdf)
- Carpenter, Katy, and Timothy Wilder, "City of Fort Collins Buildable Land Inventory Project," June 2004. Available at: <http://gis2.esri.com/library/userconf/proc04/docs/pap1751.pdf>
- "Final Report of the Development Capacity Task Force," Maryland Department of Planning, July 2004.

- “Land Market Monitoring for Smart Urban Growth,” Gerrit Knaap, editor, Lincoln Institute of Land Policy, December 2001.
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# STATE LEGISLATION

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## State-Level Fair Share and Remedy Programs

### Strategy description

Several states provide an appeals process for developers whose development proposals are rejected at the local level. Proposals must include affordable housing, and the locality must have less than a specified number of affordable units in its housing inventory. The required number of affordable units in each locality is established based on a “fair share” mandate, which requires that every community in the jurisdiction must contribute equally toward meeting the affordable housing needs of that region, county or state.

### History of the strategy

Massachusetts’ Comprehensive Permit Law, adopted in 1969, may have been the first to require that each community in the state contribute its fair share of affordable housing. The law provides for an appeal at the state level to override local zoning ordinances if the proposed development will include affordable housing units and the community has not met its statutorily mandated number of affordable housing units.

The same concept was introduced in New Jersey in 1975 by the New Jersey Supreme Court’s decision in the *Mount Laurel* case. This decision required communities to use zoning to provide opportunities for the production of affordable housing and was followed by passage in 1985 of the state’s Fair Housing Act that created an agency to set affordable housing requirements for each community.

### Target population

Affordable housing units produced under state-level appeals and fair share programs are targeted to low- and moderate-income renters and homebuyers.

### How the strategy is administered

Fair share housing mandates and the appeals processes used to enforce them are the result of legislation enacted at the state level. A formula determines each jurisdiction’s fair share of affordable housing based on factors such as available land and the current and projected affordability of the housing stock. State-level mandates often require that local jurisdictions prepare plans that demonstrate how they will meet their housing goals. A state agency or board hears appeals of local zoning decisions for developers whose permit applications are rejected by a local jurisdiction, if the proposed developments include affordable housing and the jurisdiction has not met its fair share goal.

### How the strategy is funded

Besides costs associated with ensuring compliance, no additional funds are needed.

## Extent of use of the strategy

Moderate use.

## Examples of locations where the strategy is being used

- Rhode Island’s Low and Moderate Income Housing Act (LMIHA) requires that all jurisdictions in the state must submit an affordable housing plan that lays out a strategy for meeting the law’s requirement that 10 percent of housing in each community be affordable. The State Housing Appeals Board can overturn local zoning decisions for communities that are not in compliance with the law.
- Massachusetts’ Comprehensive Permit Law, called 40B, sets affordable housing requirements for each community in the state. The statute allows local zoning ordinances to be overridden if the community has not achieved its affordable housing requirement and if the development proposal includes affordable housing.
- Connecticut has an Affordable Housing Appeals Procedure, established in 1989, that provides a judicial appeals process for developers whose affordable housing projects are denied. Under the law, zoning decisions based on insubstantial or inappropriate reasons that exclude affordable housing can be overturned. Developers building housing using the appeals process must set aside at least 30 percent of the units as affordable. Towns that have made significant progress in providing new affordable housing are not subject to the law.
- Since the 1980s, municipalities in California have been required by law to plan for their fair share of affordable housing. The regional council of governments allocates to each city and county a number of new housing units for which it must plan, broken down into four income categories from “very low” to “above moderate.” Cities and counties are required to establish housing programs and policies that encourage affordable housing; demonstrate that they have enough land zoned for multifamily housing to build all of the homes needed for lower-income families; reduce obstacles to housing development; and describe how they will use available funding for affordable housing.
- In response to the 1975 Mount Laurel ruling, New Jersey required all communities to meet their fair share of affordable housing needs in their regions. Each community must submit a plan indicating how it will meet its fair share through means such as inclusionary zoning and development fees on market rate units that are used to subsidize affordable housing.

## Strategy results

- A third of all affordable housing units constructed in Massachusetts since 1969 have been built using comprehensive permits, which bypass local zoning ordinances, under the 40B law. A total of 30,000 units have been built.
- In New Jersey, nearly 29,000 low- and moderate-income housing units were completed or under construction by 2001, and 11,000 units occupied by low-income households had been

up to code.<sup>142</sup> In addition, more than \$200 million has been transferred to urban areas to pay for housing and redevelopment under “Regional Contribution Agreements,” in which suburbs pay urban areas to satisfy their affordable housing obligations.<sup>143</sup>

### **Pros and cons to using the strategy and/or types of markets where the strategy is more or less effective**

#### **Pros:**

- Requires each jurisdiction to contribute to meeting affordable housing needs.
- Provides incentives for all jurisdictions to consider new strategies toward meeting affordable housing needs.
- Does not necessarily require direct public subsidies for affordable housing.

#### **Cons:**

- In New Jersey, jurisdictions can pay other jurisdictions to create their “fair share.” As a result, poverty may become increasingly concentrated in poorer jurisdictions that lack job and education opportunities.
- Local jurisdictions are likely to resist any loss of control over development in their community.

### **Sources of information about the strategy**

- The New Jersey Fair Housing Act, available on the Council on Affordable Housing website: <http://www.state.nj.us/dca/coah/fha.shtml>
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## Research on State and Local Means of Increasing Affordable Housing



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