

## NEW PATHS IN EXISTING LAW: OPPORTUNITIES FOR PENNSYLVANIA TO AVOID SPRAWL

James M. McElfish, Jr.\*

There are many things wrong with the prevailing land development pattern known as “sprawl.” But recent and impending changes to Pennsylvania laws and policies offer new paths toward a Commonwealth that sprawls less and uses its competitive advantages more.

### I. WHY IS SPRAWL A PROBLEM IN PENNSYLVANIA?

A recent paper published by the Environmental Law Institute identifies *Ten Things Wrong with Sprawl*.<sup>1</sup> The major critique can be generally summarized as this: Sprawl = Squandering Assets. Sprawl development is an inefficient way of using the land and water resource base and diminishes the future values coming from that base.<sup>2</sup>

Any state considering its development future, just like any community, any corporation, or nonprofit institution, begins by considering its assets. What assets can, with proper management and use, serve as the basis for future growth and development? What competitive advantages are derived from these assets?

Pennsylvania has some very valuable assets indeed. Pennsylvania has seventeen million acres of forest land, out of a total land area of twenty-nine million acres.<sup>3</sup> When you think of

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\* Senior Attorney and Director, Sustainable Use of Land Program, Environmental Law Institute, Washington, D.C. B.A. Dickinson College (1976), J.D. Yale Law School (1979). This article is based on a presentation given at Widener University School of Law, Harrisburg, Pennsylvania, on February 22, 2007.

<sup>1</sup> JAMES M. McELFISH, JR., ENVTL. LAW INST., *TEN THINGS WRONG WITH SPRAWL* 1 (2007), available at [http://www.elistore.org/reports\\_detail.asp?ID=11191](http://www.elistore.org/reports_detail.asp?ID=11191).

<sup>2</sup> See *id.* at 1.

<sup>3</sup> RFA-DISMAL SCIS., INC., *LAND USE TRENDS IN PENNSYLVANIA* A-1, A-18 (2000). Pennsylvania also has seven million acres of farmland. *Id.* at A-1.

Vermont, you think of the Green Mountains, the image of an environmental lifestyle—an attraction for employers and citizens alike. When you think of Colorado, it is the Rocky Mountain state; when you think of California, it is the coast. But in marketing, where is Pennsylvania? You've got a friend in Pennsylvania? America starts here? Open for business? In fact, Pennsylvania is Penn's Woods—the competitive “brand” is right in the state's name. With twelve million people, it is the most forested of the high population states.

And it's not only the forests of Pennsylvania that constitute core assets. Pennsylvania's 83,000 miles of rivers, streams, lakes, and creeks<sup>4</sup> are assets that other states would love to have. Minnesota may be the land of 10,000 lakes and Michigan the Great Lakes State, but Pennsylvania's water resource assets are so prevalent that they go almost unrecognized by its residents. What would in other places be recognized as valuable waterfront property is often just the “crick” to many residents.

These two assets, the forest land base and the well-distributed water resources base, are fundamental to Pennsylvania's future. They provide it with a competitive advantage among populous states in the competition for economic development, retention of residents, and quality of life. Pennsylvania's historic cities, boroughs, and towns offer an asset of a different kind in architecture, design, and layout. But an unrecognized asset is often used ineffectively, sold too cheaply, and traded for a collection of promises and temporary advantages. Like Esau's sale of his inheritance for a quick bowl of soup,<sup>5</sup> Pennsylvania risks undervaluing precisely those things upon which its future should rest.

And all is not well in the Commonwealth. Although Pennsylvania's population has grown very slowly in recent decades, the loss of forest and farmland has accelerated. Indeed, during the 1990s, for each *household* added to Pennsylvania, *four*

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<sup>4</sup> News Release, Commonwealth of Pa., Dep't of Env'tl. Prot., Public's Right of Access to Little Juniata River Wins Critical Protection: Court Decision Confirms Public Ownership of Historic Resource (Jan. 31, 2007), *available at* [http://sites.state.pa.us/PA\\_Exec/Fish\\_Boat/newsreleases/2007/out\\_dep\\_littlej.htm](http://sites.state.pa.us/PA_Exec/Fish_Boat/newsreleases/2007/out_dep_littlej.htm).

<sup>5</sup> *Genesis* 25:29-34.

*acres* of farm or forest land were converted to development.<sup>6</sup> This rapid rate of loss does not mean that new households are living on four-acre lots; what it means is that Pennsylvania's older urban areas and boroughs are hollowing out (losing households) and that in order to support the new development, it has become necessary to build new roads, new shopping centers, new office parks, and new sewer lines.

Governance issues also play a significant role in this unfortunate trend. Pennsylvania has 2561 separate municipalities—autonomous masters of their own taxation, land-use plans and zoning, infrastructure, and services.<sup>7</sup> This is one of the most diffuse local governance structures in the nation.<sup>8</sup> And

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<sup>6</sup> See U.S. CENSUS BUREAU, CENSUS OF POPULATION AND HOUSING, SUMMARY TAPE FILE 1, TABLE DP-1: GENERAL POPULATION AND HOUSING CHARACTERISTICS: 1990: PENNSYLVANIA (1990), *available at* [http://factfinder.census.gov/servlet/QTTable?\\_bm=n&\\_lang=en&qr\\_name=DEC\\_1990\\_STF1\\_DP1&ds\\_name=DEC\\_1990\\_STF1\\_&geo\\_id=04000US42](http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qr_name=DEC_1990_STF1_DP1&ds_name=DEC_1990_STF1_&geo_id=04000US42); U.S. CENSUS BUREAU, CENSUS SUMMARY FILE 1, TABLE DP-1: PROFILE OF GENERAL DEMOGRAPHIC CHARACTERISTICS: 2000: PENNSYLVANIA (2000), *available at* [http://factfinder.census.gov/servlet/QTTable?\\_bm=n&\\_lang=en&qr\\_name=DEC\\_2000\\_SF1\\_U\\_DP1&ds\\_name=DEC\\_2000\\_SF1\\_U&geo\\_id=04000US42](http://factfinder.census.gov/servlet/QTTable?_bm=n&_lang=en&qr_name=DEC_2000_SF1_U_DP1&ds_name=DEC_2000_SF1_U&geo_id=04000US42); U.S. DEP'T OF AGRIC., NATURAL RES. CONSERVATION SERV., SUMMARY REPORT: 1997 NATIONAL RESOURCES INVENTORY 15 (rev. vol. 2000) (annualized rate of conversion to developed lands). Households are the right comparative measure as development is built to accommodate households, not population.

<sup>7</sup> GOVERNOR'S CTR. FOR LOCAL GOV'T SERVS., DEP'T OF CMTY. & ECON. DEV., PENNSYLVANIA LOCAL FACT SHEET (2005) [hereinafter LOCAL FACT SHEET], *available at* <http://www.newpa.com/default.aspx?id=137> (follow "Pennsylvania Local Government Fact Sheet" hyperlink). Joanne Denworth, Governor's Office of Policy, in her remarks at the Widener University School of Law symposium on February 22, 2007, in Harrisburg, Pennsylvania, noted that due to consolidations the number of municipalities (shown as 2565 on the Department of Community & Economic Development ("DCED") website) is now 2561.

<sup>8</sup> Although the Brookings Institution cites the 2002 Census of Governments as putting Pennsylvania slightly behind Illinois and Minnesota in units of general local government, THE BROOKINGS INST. CTR. ON URBAN AND METRO. POLICY, BACK TO PROSPERITY: A COMPETITIVE AGENDA FOR RENEWING PENNSYLVANIA 65-66 (2003) [hereinafter BACK TO PROSPERITY], *available at* <http://brookings.edu/rios/data/sources/report/786a77d44c47ff3d0fc6c2400a1415cb.xml>, the existence of a large number of independent municipal authorities and 501 school districts, with their own revenue-generating and government authority, make Pennsylvania the most diffusely governed state in

Pennsylvania's leadership in disparate units of governance is further reinforced by the existence of over a thousand municipal authorities (nobody knows just how many of these there are) with jurisdiction over numerous services and lands and the ability to incur debt and assess fees for sewers, water, parking, redevelopment, transportation, parks, and many other purposes.<sup>9</sup> Add to these the Commonwealth's 501 independent school districts and 67 counties, also with their own governing bodies and taxing authority.<sup>10</sup> The effects of sprawl are magnified and reinforced by this division.

As new development occurs in rural or exurban townships, initially taxes are low. There are not a great many services to provide, and the addition of households initially increases the tax base. At the same time, in older municipalities the existing infrastructure, police and fire services, and other costs must be supported by a declining taxpayer base. This leads to increases in taxes in the older municipalities, which disadvantages them as individuals and businesses determine whether to locate there or in some exurban municipality.<sup>11</sup> The result is stranded infrastructure in the older communities, even as schools, roads, and other services are being duplicated anew in the sprawl communities—a course that eventually will drive up the taxes in these areas as well. This structure creates winners and losers and encourages competition among municipalities for “ratables”—taxable uses and properties that will generate more in revenue than they demand in services (at least initially).<sup>12</sup> This competition for tax base, in turn, encourages exurban exclusion of most multifamily development and minimal provision of services for poorer residents, not to mention minimal or no provision of professional police or fire services (relying instead on state police and volunteer fire

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the nation. See LOCAL FACT SHEET, *supra* note 7 (listing 501 school districts as of 2005).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See BACK TO PROSPERITY, *supra* note 8, at 51-57.

<sup>12</sup> Norman Williams, Jr., *Halting the Race for “Good Ratables” and Other Issues in Planning Legislation Reform*, in AM. PLANNING ASS’N, MODERNIZING STATE PLANNING STATUTES: 1 THE GROWING SMART WORKING PAPERS 57, 58 (1996).

services). The cycle of abandonment is reinforced as increasing tax rates and a declining population base cause the older municipalities to bear costs for stranded infrastructure, pension and professional costs, and the demands of an older, sicker, and less wealthy population, even as the exurbs beckon with (initially) lower taxes, newer buildings, and shorter commutes.<sup>13</sup>

## II. EXISTING LEGAL OPPORTUNITIES FOR BETTER DEVELOPMENT PATTERNS

The problems of sprawl are exacerbated in Pennsylvania by the existing system of governance, land-use regulation, and taxation.<sup>14</sup> What opportunities does existing law present to ensure that Pennsylvania's core "assets" will be available to support the Commonwealth's future development?

Pennsylvania's recently revitalized State Planning Board has suggested a focus on governance, infrastructure, and economic development.<sup>15</sup> While the Board has made a number of recommendations, including some for long-term changes in law and policy,<sup>16</sup> three areas offer immediate opportunities for implementation without new statutes.

- *Planning.* When lawyers think about sprawl, they often consider whether land-use planning laws offer solutions and better development practices. In Pennsylvania, this means examining the opportunities offered by the

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<sup>13</sup> See JANET MILKMAN, 10,000 FRIENDS OF PA., REVITALIZING OUR SMALL CITIES & BOROUGH: THROUGH ELIMINATION OF BARRIERS TO DEVELOPMENT 3 (2003) (" '[S]prawl' and decline of urban communities . . . are related. They are 'two sides of the same coin.' " (citing THE METRO. PHILADELPHIA POLICY CTR., FLIGHT (OR) FIGHT: METROPOLITAN PHILADELPHIA AND ITS FUTURE (2001))).

<sup>14</sup> BACK TO PROSPERITY, *supra* note 8, at 9-12.

<sup>15</sup> PA. STATE PLANNING BD., 2006 REPORT 3-6 (2006) [hereinafter 2006 REPORT]. The Board's existence was reauthorized in 1989, Act of July 7, 1989, No. 1989-42, § 9, 1989 Pa. Laws 241, 251, and was revived by Governor Rendell in 2004. 2006 REPORT, *supra*, at 3. See generally 71 PA. STAT. ANN. § 161 (West 1990) (discussing the structure and authority of the State Planning Board).

<sup>16</sup> See 2006 REPORT, *supra* note 15, at 5-6.

Municipalities Planning Code (“MPC”).<sup>17</sup> The MPC does in fact offer substantial discretionary authority to improve Pennsylvania’s approach to land development.

- *Infrastructure.* Much of what makes sprawl possible is the infrastructure that is provided on the one hand or stranded and left to decay on the other. In examining infrastructure, it is important to consider both the “hard” infrastructure such as roads, sewers, sewage treatment plants, water lines, storm sewers, and landfills; and the “green infrastructure,” which includes forest lands, agriculture and open space lands, wetlands, low impact development methods to control storm water and reduce impacts, and especially water resources—the use of water in place and in enterprises. Many Pennsylvania laws address these issues including the Sewage Facilities Act,<sup>18</sup> enacted in 1966 (which was ahead of its time in linking land use and municipal decisions with decisions about sewerage and wastewater), and Act 220, enacted in 2002, which provides for the preparation of a State Water Plan by 2008 to determine how waters and watersheds within the Commonwealth will be considered in the future when decisions are made.<sup>19</sup>
- *Investment.* Pennsylvania taxpayers make substantial investments of state funding for a variety of purposes—development, redevelopment, education, conservation, infrastructure, incentives, and other purposes believed to be of value to the Commonwealth, its citizens (and its politicians). Are these investments being made in ways that support and build upon Pennsylvania’s assets or are they made without regard to these goals? In 2005, Pennsylvania became one of the new leaders among states by adopting a set of investment principles and criteria

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<sup>17</sup> 53 PA. STAT. ANN. §§ 10101-11202 (West 1997 & Supp. 2007).

<sup>18</sup> 35 PA. STAT. ANN. §§ 750.1-.20 (West 2003).

<sup>19</sup> Act of Dec. 16, 2002, No. 2002-220, § 3111, 2002 Pa. Laws 1776, 1784 (codified as amended at 27 PA. CONS. STAT. § 3111).

intended to support smart expenditure of state funds. The *Keystone Principles for Growth, Investment & Resource Conservation* put Pennsylvania in the vanguard (with Maryland and Massachusetts) of using state funding to sustain development that supports the long-term health of development and conservation by recognizing and building upon key state assets for the long term in all state programs.<sup>20</sup>

### III. MUNICIPALITIES PLANNING CODE

Pennsylvania's MPC, enacted in 1968, provides comprehensive authority for planning, zoning, and subdivision regulation for the Commonwealth's municipalities.<sup>21</sup> It has been updated a number of times since its enactment, most recently in 2000, with amendments intended to encourage cooperative multimunicipal planning and consideration of additional factors for planning. The MPC offers a substantial number of tools for willing municipalities and counties to improve their plans for growth and to integrate growth with revitalization of existing communities and conservation of natural resources.

#### *A. Elements for Constructing Sprawl-Resistant Comprehensive Plans*

Section 301 identifies the contents of comprehensive plans and offers a number of very substantial opportunities to overcome sprawl. It provides that:

- (a) The municipal, multimunicipal or county comprehensive plan . . . shall include, but need not be limited to, the following related basic elements:

. . .

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<sup>20</sup> See COMMONWEALTH OF PA., ECON. DEV. CABINET, INTERAGENCY LAND USE TEAM, *KEYSTONE PRINCIPLES FOR GROWTH, INVESTMENT & RESOURCE CONSERVATION* (2005) [hereinafter *KEYSTONE PRINCIPLES*], available at <http://www.phmc.state.pa.us/bhp/pkp.pdf>.

<sup>21</sup> 53 PA. STAT. ANN. §§ 10101-11202 (West 1997 & Supp. 2007).

(2.1) A plan to meet the housing needs of present residents and of those individuals and families anticipated to reside in the municipality, which may include conservation of presently sound housing, rehabilitation of housing in declining neighborhoods and the accommodation of expected new housing in different dwelling types and at appropriate densities for households of all income levels.

...

(4) A plan for community facilities and utilities, which may include public and private education, recreation, municipal buildings, fire and police stations, libraries, hospitals, water supply and distribution, sewerage and waste treatment, solid waste management, storm drainage, and flood plain management, utility corridors and associated facilities, and other similar facilities or uses.

(4.1) A statement of the interrelationships among the various plan components, which may include an estimate of the environmental, energy conservation, fiscal, economic development and social consequences on the municipality.

...

(5) A statement indicating that the existing and proposed development of the municipality is compatible with the existing and proposed development and plans in contiguous portions of neighboring municipalities, or a statement indicating measures which have been taken to provide buffers or other transitional devices between disparate uses, *and* a statement indicating that the existing and proposed development of the municipality is generally consistent with the objectives and plans of the county comprehensive plan.

(6) A plan for the protection of natural and historic resources . . . .<sup>22</sup>

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<sup>22</sup> In 2000, the legislature enacted "Growing Smarter" amendments to the MPC (Acts 67 and 68), which provided that comprehensive plans hereafter must contain: "A plan for the protection of natural and historic resources to the extent not preempted by Federal or State law. This . . . includes, but is not limited to, *wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, flood plains, unique natural areas* and historic sites." 53 PA.



...

(b) The comprehensive plan shall include a plan for the reliable supply of water, considering current and future water resources availability, uses and limitations, including provisions adequate to protect water supply sources. Any such plan shall be generally consistent with the State Water Plan and any applicable water resources plan adopted by a river basin commission. . . .

...

(d) The municipal, multimunicipal or county comprehensive plan may identify those areas where growth and development will occur so that a full range of public infrastructure services, including sewer, water, highways, police and fire protection, public schools, parks, open space and other services can be adequately planned and provided as needed to accommodate growth.<sup>23</sup>

These provisions offer municipalities the opportunity to take into account a broad array of housing, infrastructure, and land-use opportunities, and subsection 301(a)(4.1) invites a rational view of economy, environment, and community that corresponds directly to the “sustainable development” triad developed in the last two decades.<sup>24</sup> Identifying where infrastructure will and will not be provided, providing for multiple types and prices of housing, linking the availability of water resources to development, and

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STAT. ANN. § 10301(a)(6) (West Supp. 2007) (emphasis added). This natural resources element provides new mandatory authority for future plans and amendments to address issues that are significant for the forestry and water resources asset base upon which future prosperity depends. A separate and additional provision, applicable only to county comprehensive plans, requires that they “[i]dentify land uses as they relate to important natural resources” as well as land uses with a regional impact, a plan for preservation and enhancement of prime agricultural land, and a plan for historic preservation. *Id.* § 10301(a)(7).

<sup>23</sup> *Id.* § 10301.

<sup>24</sup> WORLD COMM’N ON ENV’T AND DEV., OUR COMMON FUTURE 43-46 (1987).

providing for environmental resources are all forward-looking planning approaches that can combat sprawl tendencies.

So with all of these authorities, why is Pennsylvania not already a land use paradise—at least insofar as planning is concerned? Section 301 also provides: “(c) The municipal or multimunicipal comprehensive plan shall be reviewed at least every ten years. . . .”<sup>25</sup>

However, many plans are not reviewed and updated. Many plans in Pennsylvania municipalities date from the 1970s and 1980s, and while they may have been amended from time to time, most do not reflect current planning principles nor many of the specific planning elements cited above.<sup>26</sup> Pennsylvania residents interested in addressing sprawl need to provide incentives for reviewing and updating comprehensive plans. If you are on a planning commission or local governing body, consider undertaking such a review, or as a citizen, ask for the commencement of such a review in your community. At the state level, funding could be made available to support review and updating of these plans, particularly in areas where there is rapid development or substantial threats to water and land resources. Pennsylvania law authorizes funding support for municipal planning, provided that the legislature makes sufficient funding available.<sup>27</sup> The LUPTAP program, administered by the Governor’s Center for Local Government Services in DCED, awards grant funding on a competitive basis to municipalities seeking to prepare or update comprehensive plans, with preference to municipalities engaging in cooperative planning with adjacent municipalities.<sup>28</sup>

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<sup>25</sup> 53 PA. STAT. ANN. § 10301(c) (West Supp. 2007). The plan must also be sent to county planning commissions at ten year intervals or upon update (whichever comes first) for review of their *general consistency* with county comprehensive plans. *Id.*

<sup>26</sup> RFA-DISMAL SCIS., INC., *supra* note 3, at A-44 to A-45.

<sup>27</sup> 53 PA. STAT. ANN. § 10301.5 (“Priority for State grants to develop or revise comprehensive plans shall be given to those municipalities which agree to adopt comprehensive plans generally consistent with the county comprehensive plan . . . . No more than 25% of [grants under this priority status].”).

<sup>28</sup> GOVERNOR’S CTR. FOR LOCAL GOV’T SERVS., DEP’T OF CMTY. & ECON. DEV., LAND USE PLANNING AND TECHNICAL ASSISTANCE PROGRAM: PROGRAM GUIDELINES 1-2, 7 (2006), *available at* <http://newpa.com/programDetail.aspx?>

These newly mandated reviews present a significant target of opportunity for the Commonwealth and for private organizations to provide technical assistance and support to municipalities, to enable them to identify the importance of conservation and revitalization goals in making plan revisions, and to provide models effectively integrating information and goals into amended comprehensive plans. The ten-year review period is coming soon (2010 for those plans that have not been updated and reviewed since before the year 2000 amendments to the MPC).

*B. Coordination with Other Municipalities*

The year 2000 amendments to the MPC provided some new opportunities for coordination among communities. Under the amendments, municipalities may coordinate planning and specific land-use decisions with one another. For example, the MPC now has provisions that can assure greater review of the approval of a massive new development at one end of a township that may be adjacent to the open space or biodiversity conservation area of the adjoining township. Neighboring municipalities have the explicit right to comment on proposed subdivisions, land-use changes, and land-development approvals in adjacent municipalities and to seek mediation if they believe an adjacent municipality's approval of land development or subdivision will adversely affect their citizens.<sup>29</sup>

The law also requires each municipal comprehensive plan to include either a statement that existing and proposed development under the plan is compatible with the existing and proposed development and plans in *contiguous portions* of neighboring municipalities, or a statement that buffers have been provided between the conflicting uses.<sup>30</sup>

The amendments to the MPC further require “general consistency” of municipal and cooperative comprehensive plans

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id=100 (follow “LUPTAP Guidelines 2006” hyperlink).

<sup>29</sup> 53 PA. STAT. ANN. § 10502 (West Supp. 2007).

<sup>30</sup> *Id.* § 10301(a)(5).

with county comprehensive plans—a greater level of coordination than under prior law.<sup>31</sup>

These new provisions do not prevent conflicting choices and uses, but they provide a greater opportunity to avoid problems resulting from conflicting visions or claims of lack of authority to take a broader area into account. This is critical for sustainable use of land and avoiding the unnecessary squandering of assets because most effects on land and water occur at a scale that transcends municipal boundaries.

### *C. Opportunities for Multimunicipal Collaboration*

Multimunicipal collaboration is another important feature of improved land-use planning that may be essential for avoiding sprawl in the long term. Under the year 2000 amendments, municipalities may enter into cooperative agreements to adopt joint comprehensive plans without giving up their separate zoning boards and planning commissions.<sup>32</sup> Communities that participate in cooperative plans are authorized to designate growth areas, future growth areas, and public infrastructure areas.<sup>33</sup> Within these areas, the plan identifies the municipalities' intent to provide for publicly-funded infrastructure; while outside them, the plan makes it clear that the public will not fund such infrastructure.<sup>34</sup> The amendments also authorize cooperating municipalities to designate "rural resource area[s]" in which uses like forestry and agriculture will be "encouraged and enhanced" and taxpayer-funded "public infrastructure services are not provided except in villages."<sup>35</sup>

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<sup>31</sup> 53 PA. STAT. ANN. §§ 10105, 10301(a)(5) (West Supp. 2007). Unfortunately, the MPC also provides that "no action" by the governing body of a municipality is invalid nor "subject to challenge or appeal" on the basis that such action is inconsistent with a comprehensive plan (including not only a county plan, but the plan of the municipality itself). *Id.* § 10303(c). This provision has been criticized by the Brookings Institution in its evaluation of Pennsylvania's competitiveness vis-à-vis other states. BACK TO PROSPERITY, *supra* note 8, at 96.

<sup>32</sup> 53 PA. STAT. ANN. § 11103(a)-(b).

<sup>33</sup> *Id.* § 11103(c).

<sup>34</sup> *Id.* § 11103(b), (d).

<sup>35</sup> *Id.* § 10107(a). See also *id.* § 11103(a)(3).

“Certain [additional] benefits result from participation in cooperative plans.”<sup>36</sup> “A cooperating municipality is not subject to legal challenge for failure to provide for a particular use within the municipality so long as the use is provided for in any of the participating municipalities within a reasonable geographic area.”<sup>37</sup> “Participating municipalities may also adopt a specific plan for nonresidential areas which may include ‘standards for the preservation, conservation, development and use of natural resources, including the protection of significant open spaces, resource lands and agricultural lands within or adjacent to the area covered by the specific plan.’”<sup>38</sup> “Municipalities that have entered into cooperative implementation agreements are authorized to provide for sharing of tax revenues and impact fees and to adopt a [transfer of development rights (“TDR”)] ordinance that allows transfers across municipal boundaries within the area covered by the plan.”<sup>39</sup> And the Commonwealth’s agencies “shall consider and may rely upon [these] plans and . . . ordinances when reviewing applications for the funding or permitting of infrastructure or facilities” and “shall consider and may give priority consideration to applications for financial or technical assistance for projects consistent with” these plans.<sup>40</sup>

In addition to these MPC incentives for cooperation, all Pennsylvania municipalities are authorized to create by ordinance (or the voters may create by initiative or referendum) an environmental improvement compact among municipalities.<sup>41</sup> These multimunicipal bodies can take on “one or more municipal functions” and are governed by a board elected by the voters.<sup>42</sup> The board may “[f]ix and collect taxes not to exceed two mills [on] real estate” to provide for property, facilities, operations, and other

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<sup>36</sup> ENVTL. LAW INST., *FORESTS FOR THE BAY* 100 (2000).

<sup>37</sup> ENVTL. LAW INST., *supra* note 36. *See also* 53 PA. STAT. ANN. §§ 10916.1(h), 11006-A(b.1) (West Supp. 2007).

<sup>38</sup> ENVTL. LAW INST., *supra* note 36. *See also* 53 PA. STAT. ANN. § 11106(a)(4).

<sup>39</sup> ENVTL. LAW INST., *supra* note 36. *See also* 53 PA. STAT. ANN. §§ 11105(b), 10619.1(d).

<sup>40</sup> 53 PA. STAT. ANN. § 11105(a)(2)-(3).

<sup>41</sup> 53 PA. CONS. STAT. §§ 2511, 2521 (1997).

<sup>42</sup> *Id.* § 2501.

necessary expenses.<sup>43</sup> The environmental improvement compact functions like an authority or special district for environmental infrastructure purposes. It is, however, more directly accountable to the voters than a typical municipal authority.

Coordination and collaboration among municipalities and between municipalities and counties support the promise of reconciling the demands of growth and conservation of the land and water resources upon which such growth depends.

#### IV. INFRASTRUCTURE

Many of the development choices that lead to sprawl and the inefficient use of the land and water assets of the Commonwealth are linked to public infrastructure.

Roads have long been identified as important drivers of sprawl,<sup>44</sup> and the Pennsylvania Department of Transportation ("PennDOT") has recently promoted a major initiative to better coordinate transportation planning with local land-use goals.<sup>45</sup> The Pennsylvania Transportation Funding and Reform Commission also identified transportation investments as a key component of growth and called for stronger links between transportation investments and land-use planning.<sup>46</sup> But sewage facilities (whether centralized, on-lot, or community systems) are also important to the land-development process.<sup>47</sup> And water resources,

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<sup>43</sup> 53 PA. CONS. STAT. § 2555(b)(7) (1997).

<sup>44</sup> Don Chen & Nancy Jakowitsch, *Transportation Reform and Smart Growth: A Nation at the Tipping Point*, TRANSLATION PAPER (Funders' Network for Smart Growth and Livable Communities, Coral Gables, Fla.), No. 6, Aug. 2001, at 1, 2, available at [http://www.fundersnetwork.org/usr\\_doc/transportation\\_paper.pdf](http://www.fundersnetwork.org/usr_doc/transportation_paper.pdf).

<sup>45</sup> COMMONWEALTH OF PA., DEP'T OF TRANSP., PENNDOT'S SOUND LAND USE IMPLEMENTATION PLAN: LINKING LAND USE AND TRANSPORTATION 2 (2005), available at <ftp://ftp.dot.state.pa.us/public/bureaus/ProgCenter/2005SoundLandUseImplementationPlan.pdf>.

<sup>46</sup> COMMONWEALTH OF PA., TRANSP. FUNDING AND REFORM COMM'N, INVESTING IN OUR FUTURE: ADDRESSING PENNSYLVANIA'S TRANSPORTATION FUNDING CRISIS 61 (2006), available at <http://www.dot.state.pa.us/Internet/pdCommissCommitt.nsf/HomePageTransFundReformComm?OpenForm>.

<sup>47</sup> See, e.g., 10,000 FRIENDS OF PA., SEWAGE FACILITIES AND LAND DEVELOPMENT: STUDY SUMMARY 3 (2005), available at [http://www.10000friends.org/downloads/ExecutiveSummary\\_text1.pdf](http://www.10000friends.org/downloads/ExecutiveSummary_text1.pdf).

too, are an important part of the development puzzle.<sup>48</sup> Pennsylvania law offers some impending opportunities to address both of these latter infrastructure issues.

#### *A. Sewage Facilities Act*

In 1966, the Pennsylvania Legislature enacted Act 537, the Sewage Facilities Act.<sup>49</sup> Once ahead of its time in requiring that every municipality prepare and update a sewage facilities plan, the Act still provides a substantial opportunity to address infrastructure issues in the land-use context. In 1998, Pennsylvania's 21st Century Environment Commission recommended that the Commonwealth "[i]ntegrate water and wastewater planning with watershed plans and local land use plans" and further recommended that action be taken to address the compatibility of Act 537 with local land-use planning under the Municipalities Planning Code.<sup>50</sup> Neither the Act nor the regulations have been updated since these recommendations were made.

The Sewage Facilities Act requires each municipality to prepare and update a sewage facilities plan.<sup>51</sup> The Act provides that every sewage plan must "take into consideration all aspects of planning, zoning, [and] population estimates . . . so as to delineate with all practicable precision" areas which are likely to need community systems and where such need is not reasonably foreseeable.<sup>52</sup> It requires that sewage facilities plans be reviewed by municipal planning agencies for "consistency with programs of planning for the area," but it does not expressly mandate that they

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<sup>48</sup> TAXPAYERS FOR COMMON SENSE, BANKING ON THE FUTURE: INVESTING IN SMART WATER STRATEGIES FOR PENNSYLVANIA AND THE NATION i-ii (2005), available at <http://www.taxpayer.net/waterinfrastructure/banking.pdf>.

<sup>49</sup> See 35 PA. STAT. ANN. § 750.1 (West 2003).

<sup>50</sup> PA. 21ST CENTURY ENV'T COMM'N, REPORT OF THE PENNSYLVANIA 21ST CENTURY ENVIRONMENT COMMISSION 51 (1998), available at <http://www.21stcentury.state.pa.us/2001/final.htm>.

<sup>51</sup> This discussion of the Sewage Facilities Act and potential administrative reforms is adapted from Environmental Law Institute, *Planning for Development and Sewage Infrastructure: Can We Be Consistent?* (2005), available at [http://www2.eli.org/pdf/research/planning\\_development\\_sewage.pdf](http://www2.eli.org/pdf/research/planning_development_sewage.pdf).

<sup>52</sup> 35 PA. STAT. ANN. § 750.5(d)(4).

be consistent.<sup>53</sup> The absence of an explicit consistency link has led to observations that comprehensive planning “has no binding effect on sewage facilities decisions.”<sup>54</sup> The Department of Environmental Protection’s (“DEP’s”) regulations do not supply this missing connection. Under the regulations, sewage facilities plans must “[d]elineate and describe” municipal land-use designations, zoning and subdivision regulations, comprehensive plans, and other existing land and water resources plans, and must document consideration of “consistency” between the proposed sewage facilities alternative and the objectives and policies of comprehensive plans, but are not required to achieve consistency.<sup>55</sup>

The Pennsylvania DEP is undertaking a revision of the Sewage Facilities regulations, which it last revised in 1997.<sup>56</sup> This ongoing revision, launched in late 2005, is expected to result in final regulations by 2008.<sup>57</sup> There are numerous opportunities to harness the provisions of Act 537 to the goals of controlling sprawl and assuring efficient use of the Commonwealth’s assets. These could include, for example, amending the regulations to provide that a municipality may not adopt a proposed revision to a sewage facilities plan, conditional or otherwise, until it determines that the proposal complies with municipal zoning, land-use, and comprehensive plans.

DEP could use its authority to require updates of sewage facilities plans whenever increases in a municipality’s population or number of dwelling units exceeds a threshold, in order to assure that sewage plans do not lag far behind development pressures and become disconnected with land-use plans. The Act allows DEP to

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<sup>53</sup> 35 PA. STAT. ANN. § 750.5(d)(8) (West 2003).

<sup>54</sup> *Oley Twp. v. Dep’t of Env’tl. Prot.*, No. 96-198-MG, 1996 WL 660644, at \*4 (Pa. Env’tl. Hearing Bd. Nov. 6, 1996), *aff’d*, 710 A.2d 1228 (Pa. Commw. Ct. 1998). But *Oley* did not hold that land use issues are irrelevant, only that they are not reviewable in the context of litigation over the sewage facilities plan. *Compare with* *Cnty. Coll. of Del. County v. Fox*, 342 A.2d 468, 478 (Pa. Commw. Ct. 1975) (“[I]t is not a proper function of the DER to second-guess the propriety of decisions properly made by individual local agencies in the areas of planning, [and] zoning . . .”).

<sup>55</sup> 25 PA. CODE § 71.21(a)(3), (5)(i)(D) (2007).

<sup>56</sup> 27 Pa. Bull. 5877 (Oct. 4, 1997).

<sup>57</sup> Personal communication from Jay Africa, Chief, Act 537 Mgmt, Dep’t of Env’tl. Prot., to the author (Oct. 3, 2006).



require such updates “from time to time . . . as may be required by rules and regulations adopted hereunder or by order of the department.”<sup>58</sup> DEP could also establish a policy to require joint updates of sewage facilities plans whenever new land development is occurring in jurisdictions adjacent to those with existing capacity.<sup>59</sup> Intermunicipal cooperation on sewage infrastructure provides for resource efficiency and facilitates development-related planning. The Sewage Facilities Act specifically has a purpose “[t]o promote intermunicipal cooperation in the implementation . . . of [sewage facility] plans by local government.”<sup>60</sup> DEP and the Department of Community and Economic Development could promote multi-municipal planning under the MPC that includes water resources and joint Act 537 sewage facilities planning.

Additional administrative incentive approaches might include adopting policies to deny funding for sewage facilities under PENNVEST,<sup>61</sup> the Commonwealth Financing Authority, or other grants and loans unless the proposed facilities demonstrate consistency with municipal and county comprehensive land-use plans that use the authority provided by the MPC to identify *specific* development areas where public infrastructure will and will not be provided.<sup>62</sup> Such a policy would reward sound coordination of land use planning with infrastructure, not just the absence of inconsistency as under current land use review policies.

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<sup>58</sup> 35 PA. STAT. ANN. § 750.5(a) (West 2003).

<sup>59</sup> 25 PA. CODE § 71.13(c) (2007).

<sup>60</sup> 35 PA. STAT. ANN. § 750.3(2).

<sup>61</sup> PENNVEST is the Pennsylvania Infrastructure Investment Authority Act, which was created in 1988 to provide a unified entity to administer funding for water and sewer infrastructure investments. *Id.* §§ 751.1–.20.

<sup>62</sup> While current PENNVEST policies call for review of consistency with existing comprehensive plans, it may be possible to further condition funding eligibility upon the existence of, and consistency with, a more detailed element of comprehensive planning that specifies infrastructure service areas, as provided for in the year 2000 amendments to the MPC. *See, e.g.*, 53 PA. STAT. ANN. § 10301(d) (West Supp. 2007) (detailed specification of infrastructure areas).

*B. Water Resources Planning Act*

No less important than the “hard” infrastructure of sewers and treatment plants is planning for the “green infrastructure,” including Pennsylvania’s waters.<sup>63</sup>

Act 220 of 2002 is the Pennsylvania Water Resources Planning Act.<sup>64</sup> It requires the Commonwealth to prepare a new State Water Plan (which was last prepared in the 1970s).<sup>65</sup> The Plan, due March 2008, will be prepared with the assistance of DEP, under the guidance of a Statewide Water Resources Committee, and must be adopted by the State Committee.<sup>66</sup> The Act provides that six regional committees (corresponding to the major basins in the Commonwealth—Delaware, Upper Susquehanna, Lower Susquehanna, Ohio, Potomac, and Lake Erie) are to identify “needs, objectives and priorities”<sup>67</sup> and that the statewide committee is to determine the same on a statewide basis

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<sup>63</sup> See generally KAREN S. WILLIAMSON, GROWING WITH GREEN INFRASTRUCTURE (2003), available at [http://www.greeninfrastructure.net/pdf/growingwithgi\\_hc.pdf](http://www.greeninfrastructure.net/pdf/growingwithgi_hc.pdf). Municipalities across the United States are beginning to adopt local ordinances that protect important environmental resources. See, e.g., CHRISTOPHER DUERKSEN & CARA SNYDER, NATURE-FRIENDLY COMMUNITIES: HABITAT PROTECTION AND LAND USE 121-410 (2005) (discussing nineteen communities across the United States that have conserved habitats); JAMES M. MCELFISH, JR., NATURE-FRIENDLY ORDINANCES: LOCAL MEASURES TO CONSERVE BIODIVERSITY 4-5 (2004) (discussing ordinances that support environmental resources); JOHN R. NOLON, OPEN GROUND: EFFECTIVE LOCAL STRATEGIES FOR PROTECTING NATURAL RESOURCES 4-7, 16-37 (2003) (providing a compilation of ordinance language). A new publication, *Biodiversity Conservation Handbook: State, Local & Private Protection of Biological Diversity*, has a substantial focus on Pennsylvania laws and policies that can sustain wildlife habitat. ROBERT B. MCKINSTRY, COREEN M. RIPP & EMILY LISY, BIODIVERSITY CONSERVATION HANDBOOK: STATE, LOCAL & PRIVATE PROTECTION OF BIOLOGICAL DIVERSITY (2006).

<sup>64</sup> 27 PA. CONS. STAT. §§ 3101-3136 (Supp. 2007). The Act is discussed in the context of Pennsylvania’s other laws governing water resources in Joseph W. Dellapenna, *Developing a Suitable Water Allocation Law for Pennsylvania*, 17 VILL. ENVTL. L.J. 1, 76-81 (2006). See also Marc Davies & Brian Ercole, *Water Resource Planning Act: Pennsylvania’s Blueprint for Land Development*, 23 TEMP. ENVTL. L. & TECH. J. 1 (2004) (law’s potential effects on land development decisions).

<sup>65</sup> 27 PA. CONS. STAT. § 3111(a).

<sup>66</sup> See *id.* § 3114(a).

<sup>67</sup> *Id.* § 3112(a), (b)(2).

after taking into account the regional recommendations.<sup>68</sup> Other provisions require the identification of critical water planning areas<sup>69</sup> and the registration of water users of over 10,000 gallons per day.<sup>70</sup>

“The State [W]ater [P]lan is intended to serve as a policy and guidance document, providing information, objectives, priorities and recommendations to be considered and weighed in a broad range of State, local and private decisions.”<sup>71</sup> But it “is not intended to constitute or contain legally binding regulations, prohibitions or prescriptions.”<sup>72</sup> Despite these limitations inserted in the legislation by state legislators, it is nevertheless likely that the Plan may have substantial influence on land use, development, and investment choices.

The Act specifically states that:

[I]t is intended that the State water plan will be used to: . . . [p]rovide information to public and private decision makers regarding water availability to help guide efficient investment and economic development[,] . . . [i]dentify opportunities for improving operation of . . . existing water resources infrastructure[,] . . . [and] [g]uide policies on activities that directly and significantly affect the quantity and quality of water available with the objective of balancing and encouraging multiple uses of water resources.<sup>73</sup>

Moreover, there are specific links between the Plan and land-use planning. The Act provides that the State Water Plan and regional plans must consider “[t]he needs and priorities reflected in comprehensive plans and zoning ordinances[,]” where municipalities have adopted plans and zoning ordinances generally consistent with the county comprehensive plan and implemented

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<sup>68</sup> 27 PA. CONS. STAT. § 3112(c) (Supp. 2007).

<sup>69</sup> *Id.* § 3112(a)(6), (d).

<sup>70</sup> *Id.* § 3118(a).

<sup>71</sup> *Id.* § 3116(a).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* § 3116(b).

the many provisions of MPC section 301 discussed above, or where county or multimunicipal comprehensive plans under the MPC are being implemented by county or municipal zoning ordinances.<sup>74</sup>

Importantly, under a pre-existing provision of the MPC, all county, municipal, or multimunicipal comprehensive plans are already required to include “a plan for the reliable supply of water, considering current and future water resources availability, uses and limitations, including provisions adequate to protect water supply sources” and all comprehensive plans must be “generally consistent with the State Water Plan.”<sup>75</sup> Thus, despite the limiting language of Act 220 cited above,<sup>76</sup> it is clear that, as a matter of law, the Plan has the potential to shape the outcome of comprehensive planning by Pennsylvania’s municipalities and counties. A similar provision in the Sewage Facilities Act, requiring sewage facilities plans (and plan revisions in the future) to “[t]ake into consideration any existing State plan affecting the development, use and protection of water and other natural resources[,]” also offers an immediate future impact for the new State Water Plan.<sup>77</sup>

Drawing upon successful planning efforts and goal statements in other states, Pennsylvania’s State Committee could develop a set of core water resources principles that might be useful to local and state agencies and private entities using the State Water Plan in the future. Such principles might be applied when evaluating potential land-development scenarios that affect water resources, in determining how to identify resource lands for protection or in

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<sup>74</sup> 27 PA. CONS. STAT. § 3112(b)(4) (Supp. 2007).

<sup>75</sup> 53 PA. STAT. ANN. § 10301(b) (West Supp. 2007).

<sup>76</sup> 27 PA. CONS. STAT. § 3116(a).

<sup>77</sup> 35 PA. STAT. ANN. § 750.5(d)(5) (West 2003). The current DEP regulations implementing this section, 25 PA. CODE § 71.21(a)(5)(i)(F) (2007), refer to “State [W]ater [P]lans developed under the Water Resources Planning Act (42 U.S.C.A. §§ 1962-1962d-18)[,]” which is not the source of the current water resources planning requirement. But the language of the Sewage Facilities Act (“any existing State plan”) should require consideration of the new Act 220 State Water Plan in future sewage facilities plan updates and revisions. *See* 35 PA. STAT. ANN. § 750.5(d)(5).

determining what technologies to consider when governments make capital investments. They could include such principles as:

- watershed and ecological integrity;
- water-use efficiency and conservation;
- sustainable economic growth;
- consistency between land-use and water-resource planning policies; and
- intergovernmental coordination.

Currently, the regional committees are preparing their action agendas—including needs, priorities, and objectives—for consideration by the State Committee. The State Committee has asked them to focus on a number of issues including: data needs for decision making, sustainability and economic development/innovative technology, and a holistic approach connecting land-use planning and management as it relates to water-resources management.<sup>78</sup> If the process successfully addresses these areas and leads not only to statewide data but also to a set of principles for Pennsylvania's water resources, then Act 220 will have provided a useful foundation for the Commonwealth's future development and sustainable land use.

#### V. KEYSTONE PRINCIPLES FOR GROWTH, INVESTMENT & RESOURCE CONSERVATION

State agencies provide large amounts of money in grants and expenditures for public purposes. These expenditures influence the exercise of local governance, private investments, individual and corporate decisions about land use, and impacts on the Commonwealth's natural resources. Yet most of them are made within the confines of programs that have limited goals—economic development, school rehabilitation, highway construction and repair, health care, historic preservation, and the like.

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<sup>78</sup> Memorandum from Lori Mohr, Water Planning Office, Dep't of Env'tl. Prot., to Reg'l Comm. Members (Jan. 26, 2007) (on file with author).

Some of them, historically at least, have promoted or subsidized sprawl, hastened the abandonment of older cities and their infrastructure, and prompted private development in important watersheds or on prime agricultural lands.<sup>79</sup> But in 2005, Pennsylvania's Economic Development Cabinet signed on to a set of principles and criteria to guide state expenditures and investments.<sup>80</sup> The adoption and implementation of these principles and criteria have vaulted Pennsylvania to the forefront of states demonstrating recognition that their expenditures should support a coherent vision of progress that takes into account state assets and land-use goals and objectives.<sup>81</sup>

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<sup>79</sup> BACK TO PROSPERITY, *supra* note 8, at 75-81.

<sup>80</sup> KEYSTONE PRINCIPLES, *supra* note 20, at 1-6. Although adopted by the participating agencies in May 2005, they were announced and released to the public on October 24, 2005, in conjunction with the Environmental Law Institute and 10,000 Friends of Pennsylvania conference titled *Sewage Facilities and Land Use: Collaborating for a Sustainable Future*, held in Harrisburg, Pennsylvania.

<sup>81</sup> Maryland, in 1997, enacted its Priority Funding Areas law as part of a package of "Smart Growth" legislation. The law provided for local governments to designate priority funding areas, where the state, counties, and local government want to target their efforts to retain and support economic development and growth. *See* PLANNING ASSISTANCE & NEIGHBORHOOD DEV. UNIT, MD. OFFICE OF PLANNING, SMART GROWTH: DESIGNATING PRIORITY FUNDING AREAS 1 (1997), *available at* <http://www.mdp.state.md.us/smartgrowth/pdf/PFA.PDF>. Priority funding areas include all existing urban areas. *See* MD. CODE ANN., STATE FIN. & PROC. § 5-7B-02 to -03 (LexisNexis Supp. 2006). The law provides that after October 1, 1998, state funding for growth-related infrastructure (roads, sewers, and economic development) will be made available only within these funding areas. *Id.* § 5-7B-04. More recently, beginning in 2004, the Commonwealth of Massachusetts, Office for Commonwealth Development, adopted a Commonwealth Capital Scorecard, *available at* [http://www.epa.gov/smartgrowth/scorecards/commonwealthcapital\\_fy06.pdf](http://www.epa.gov/smartgrowth/scorecards/commonwealthcapital_fy06.pdf), which was designed to prioritize state funding for capital/infrastructure based on whether cities and towns in Massachusetts are engaged in smart growth.

Communities fill out the scorecard and explain what they have or are committed to institute in a range of categories . . . . Based on responses to questions in these categories, each community gets a score. That score counts for 30[%] of the decision on whether they get a grant or loan in the Commonwealth Capital "family" of grants and loans. . . . Nearly 280 cities and towns have filled out the

The *Keystone Principles* were developed by consensus among the cabinet agencies. They lay out “goals and objectives for economic development and resource conservation agreed upon among the agencies” that participated in their development.<sup>82</sup> There are ten principles, with explanatory (interpretive) information for each. The ten are: redevelop first, provide efficient infrastructure, concentrate development, increase job opportunities, foster sustainable businesses, restore and enhance the environment, enhance recreational and heritage resources, expand housing opportunities, plan regionally and implement locally, and be fair.<sup>83</sup> These include many of the elements that promote efficient use of the Commonwealth’s assets and avoid unnecessary, sprawl-inducing investments.

The principles are implemented by specific criteria, which are of two types. *Core Criteria* “should be given primary consideration in all investment decisions made by Commonwealth agencies when making grants or loans to public or private projects using agency funds[,]” while *Preferential Criteria* “should be used by Commonwealth agencies . . . to evaluate projects and make decisions on grants or loans using agency funds.”<sup>84</sup>

Among the core criteria are findings that a project in a suburban or rural area is “consistent with multi-municipal or county [and] local comprehensive plans and implementing ordinances” and that a project in a core-developed area is “supported by [a] local comprehensive vision [and] plan,” while another core criterion is that the project “supports other state

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Commonwealth Capital scorecard over the past two years of the program.

U.S. Env’tl. Prot. Agency, *Smart Growth Scorecards: Municipal Level Scorecards*, <http://www.epa.gov/smartgrowth/scorecards/municipal.htm> (last visited Apr. 16, 2007).

<sup>82</sup> KEYSTONE PRINCIPLES, *supra* note 20, at 1.

<sup>83</sup> *Id.* at 2-3. “Be fair” is explained as providing for the “equitable sharing of the benefits and burdens of development” and ensuring that rural communities as well as urban communities benefit from the application of the principles and criteria where the benefits are sustainable. *Id.* at 3.

<sup>84</sup> *Id.* at 1.

investments and community partnerships.”<sup>85</sup> Avoiding or mitigating high-hazard areas and avoiding adverse impacts to “environmentally sensitive areas, productive agricultural lands, or significant historic resources” round out the core criteria.<sup>86</sup>

Preferential criteria give weight to the use or reuse of brownfields and previously developed sites, the use of existing transportation capacity, mixed uses accessible by walking, the inclusion of affordable housing, and other characteristics that implement the principles.<sup>87</sup>

Commonwealth agencies are currently using the Principles and Criteria to tailor state investments toward goals that reflect an understanding of Pennsylvania’s core assets and economic development potential. These goals are very close to the Principles of Smart Growth developed a decade ago by the national Smart Growth Network.<sup>88</sup> But these Principles and Criteria are a Pennsylvania product, reflecting the Commonwealth’s understanding of its needs and opportunities—especially with the emphasis on a restoration economy, the importance of brownfields redevelopment, and the substantial value of Pennsylvania’s farms, forests, and waters.

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<sup>85</sup> KEYSTONE PRINCIPLES, *supra* note 20, at 4. These also require a finding that there is sufficient local public/private capacity, technical ability, and leadership to implement the project.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 4-6.

<sup>88</sup> These are:

1. Mix land uses[;]
2. Take advantage of compact building design[;]
3. Create a range of housing opportunities and choices[;]
4. Create walkable neighborhoods[;]
5. Foster distinctive, attractive communities with a strong sense of place[;]
6. Preserve open space, farmland, natural beauty, and critical environmental areas[;]
7. Strengthen and direct development towards existing communities[;]
8. Provide a variety of transportation choices[;]
9. Make development decisions predictable, fair and cost effective[;]
10. Encourage community and stakeholder collaboration in development decisions.

SMART GROWTH NETWORK, GETTING TO SMART GROWTH: 100 POLICIES FOR IMPLEMENTATION ii (2002), *available at* [http://www.smartgrowth.org/pdf/getto\\_sg.pdf](http://www.smartgrowth.org/pdf/getto_sg.pdf).



Just as Pennsylvania became nationally recognized as a leader in brownfields redevelopment<sup>89</sup> and a leader in forest management with two million acres of certified sustainable state forest,<sup>90</sup> so too is it a leader in its adoption of investment principles and criteria. The *Keystone Principles*, if implemented consistently and well, point the way to sustainable land use for the twenty-first century.

## VI. CONCLUSION

Pennsylvania law and policy offer significant opportunities to halt the wasteful land-development practices of the last fifty years and to capitalize on Pennsylvania's core assets. Yes, there are many obstacles, including governance, tax structure, and diffuse municipal services. But there are some significant opportunities that can be implemented now: taking advantage of the MPC's provisions for periodic review and the new provisions for the content of comprehensive plans, improving the implementation and interpretation of the Sewage Facilities Act, establishing principles for water resources in a new State Water Plan, and using state investments and expenditures to promote sustainable land use.

Implementation does not require new legislation.<sup>91</sup> It requires understanding, perseverance, and community support. The way

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<sup>89</sup> See BUREAU OF LAND RECYCLING AND WASTE MGMT. & OFFICE OF FIELD OPERATIONS, DEP'T OF ENVTL. PROT., DEPARTMENT OF ENVIRONMENTAL PROTECTION LAND RECYCLING PROGRAM: ENHANCEMENTS REPORT 3 (2004).

<sup>90</sup> See Robert Kobet, *Greener Pastures: Pittsburgh Pennsylvania: Where Sustainable Ways Are Gaining Ground*, MOTHER EARTH NEWS, Aug.-Sept. 2002, available at <http://www.motherearthnews.com/Homesteading-and-Self-Reliance/2002-08-01/Greener-Pastures-Pittsburgh-Pennsylvania.aspx>.

<sup>91</sup> Certainly, legislation will be essential for some areas of governance and tax reform, but the State Planning Board, no less than the author of this article, has recognized that many of the needed tools are already in hand. There are, of course, many other tools in Pennsylvania law than those discussed in this article. Professor John Dernbach has argued that the environmental guarantee in Pennsylvania's Constitution offers a great deal more opportunity for interpreting Pennsylvania laws in ways that sustain the Commonwealth's natural and historic resources. John C. Dernbach, *Taking the Pennsylvania Constitution Seriously When It Protects the Environment: Part I—An Interpretative Framework for Article I, Section 27*, 103 DICK. L. REV. 693 (1999); John C. Dernbach, *Taking*

forward is to beat sprawl by investing in Pennsylvania's assets, by recognizing its competitive advantages, and by taking full advantage of its current set of legal opportunities.

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*the Pennsylvania Constitution Seriously When It Protects the Environment: Part II—Environmental Rights and Public Trust*, 104 DICK. L. REV. 97 (1999).