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APPROACH FOR REGIONAL PLANNING AND
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COMPACT PLANNING OFFERS A FRESH APPROACH FOR REGIONAL PLANNING AND SMART GROWTH

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FALL 2001

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Compact Planning Offers a Fresh Approach for Regional Planning and Smart Growth: A New York Model

PATRICIA E. SALKIN AND PAUL BRAY*

Introduction

Comprehensive planning and regional planning have made a comeback at the turn of the century. Sprawl has become the identified problem responsible for driving up the cost of infrastructure, raising both housing prices and local property taxes, eating up prime agricultural land and once treasured greenspace, threatening the integrity of significant natural and cultural resources, and emasculating what is left of the urban core. Proof positive that the public has rallied around the anti-sprawl movement is evident from a recently released national poll by the Pew Center for Civic Journalism, which found that local concerns about sprawl and growth are now exceeding more traditional issues such as crime.¹ State governors have

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¹“Managing Growth Is a Major Interest of Governors in Their State-of-the-State Addresses,” National Governor’s Association Online at <http://www.nga.org/Releases/SOS2000224> (site visited March 1, 2000).

responded to public sentiment by advocating support for smart growth principles in their State of the State addresses.²

Land use reform in the United States is experiencing unprecedented popularity,³ with approximately one thousand pieces of legislation introduced in statehouses across the country in 1999,⁴ and the trend has continued through the 2001 legislative sessions. From 1997 to 1999, governors in Maryland, New Hampshire, Oregon, Tennessee, Utah, and Wisconsin spearheaded sweeping reforms, through executive orders, to the statewide systems of land use controls and decisionmaking.⁵ From 2000 to the present, intense land use reform efforts have been proposed in more than a dozen states including: Arizona;⁶ California;⁷ Colorado;⁸ Delaware;⁹ Flori-

²Id. The National Governor's Association reports that of the 45 addresses given through February 14, 2000, about half of the governors addressed one or more aspects of growth and the connections to quality of life and the environment.

³Of interest to the academic community is a recent article in USA Today that reports on the growing popularity of courses in land use and in urban and regional planning across the country. See Haya El Nasser, "Development Spawns Hot New Legal Specialty: Sprawl, Law Students Flocking to Learn Intricacies of Land Use," USA Today 2/29/2000, p. 4A col. 1.

⁴See Planning Communities for the 21st Century, A Special Report of the American Planning Association's Growing Smart Project (December 1999), Chap.IV. This chapter reports that of the approximately 1,000 bills introduced, 20% or 200 were enacted in 1999.

⁵Id. Maryland's Smart Growth Act of 1997 was followed by Governor Glendonning's 1998 Executive Order 01.01.1998.04, and in 2001 SB 204 established the Office of Smart Growth; Public Chapter 1101 in 1998 was enacted in Tennessee; The Quality Growth Act was enacted in Utah in 1999; budget bill A.B. 133 was signed by Wisconsin's Governor Thompson in the Fall of 1999; and New Hampshire Governor Shaheen issued Exec. Order 1999-2 pertaining to the creation of the Council on Resources & Development.

⁶Following a report of the Growing Smarter Commission (Chap. 204 of the Laws of 1998), the legislature passed HB 2001/SB 1001 in February 2000. The bill falls short of the Commission's recommendations.

⁷A.B. 1575 (2000). In addition to legislative proposals, California has a legislative "Smart Growth Caucus."

⁸HB 1223 (2000), entitled "Enhanced Land Use Planning Relationships Among Local Governments."

⁹Exec. Order #14 (2001), entitled "Establishing the Livable Delaware Agenda."

da;¹⁰ Illinois;¹¹ Indiana;¹² Kentucky;¹³ Massachusetts;¹⁴ New York;¹⁵ North Carolina;¹⁶ Oklahoma;¹⁷ Pennsylvania;¹⁸ and South Carolina.¹⁹ Other states, including Connecticut, Iowa, Michigan, Minnesota, Montana, New Mexico, and Virginia continue to grapple with land use reform issues.

One common thread in both proposed and recently enacted land use reform initiatives is the realization that the impacts of local land use decisions know no political boundaries. Addressing the political ramifications of upsetting a tradition of purely locally based land use decision making emanating from the model state and city planning and zoning enabling acts²⁰ continues to be a challenge. Just how to balance the political need for inter-jurisdictional cooperation while respecting the valued tradition of local control, with its attendant built-in intergovernmental tensions and rivalries, is a monu-

¹⁰Exec. Order 2000-196, establishing a Growth Management Study Commission.

¹¹H.B. 3287 (2000) entitled, “Local Planning and Technical Assistance Act,” Exec. Order 2000-8 created the Balanced Growth Cabinet.

¹²Exec. Order 2001-3 creating the Indiana Land Use Forum.

¹³H.B. 524 (2000) entitled, “Land Use Planning--Smart Growth.” In May 2001 Governor Patton issued Exec. Order 2000-628, establishing a task force on smart growth.

¹⁴Governor Cellucci issued Executive Order 418, providing funding for local community development plans.

¹⁵Governor Pataki issued Executive Order 102, Establishing the Quality Communities Interagency Task Force. The Task Force reported back in 2001.

¹⁶Governor Hunt has created the 21st Century Communities Task Force.

¹⁷S.B. 1151 (2000), to create a planning and land use legislative study task force.

¹⁸On February 2, 2000, the Governor’s Center for Local Government Services presented its first Annual Report on Land Use to the Governor, with proposed changes to the State’s land use code. See http://www.dced.state.pa.us/PA__Exec/DCED/government/land-use.htm.

¹⁹G.B. 945, the 2000 Comprehensive Infrastructure and Sustainable Development Act.

²⁰The State Standard Zoning Enabling Act was released by the U.S. Department of Commerce in 1924. It is reprinted in full, with official commentary, in 8 Zoning and Land Use Controls § 53.01[1] (P. Rohan and E. Kelly eds. 1997).

mental task, and one that often presents a barrier to meaningful land use reform.²¹

Compact planning is not in and of itself a new approach to regional planning. For example, the compact approach has been used to establish various interstate planning agencies such as the New England Interstate Planning Compact,²² the Interstate Environmental Compact,²³ the Columbia River Gorge Compact,²⁴ The Chattahoochie River Compact,²⁵ and many others. Interstate compacts can offer solutions to myriad regional problems such as water supply, sewage disposal, air pollution, transportation infrastructure, and other challenges that are truly indivisible when it comes to municipal boundary lines.²⁶

This article focuses on a unique approach to compact planning purely at the municipal level. Defined as a voluntary agreement whereby local governments agree to plan consistently with one another and with a region-wide vision, compact planning offers a viable option in the search to redefine the local role in planning for sustainable development in the context of regional and statewide concerns. The process, described more fully in this article, combines elements of “bottom-up” planning with a “top-down” framework of incentives to entice the voluntary participation of local governments. The concept has had success in New York and it is being considered as a model for other jurisdictions. This article explains and critiques the proposed compact planning bill against the lessons learned from the ongoing New York experiment in the Hudson River Valley Greenway and the Long Island Pine Barrens.

²¹Douglas Porter, “Reinventing Growth Management for the 21st Century,” 23 *Wm. & Mary Envtl. L. & Pol’y Rev.* 705 (Fall 1999).

²²See, e.g., Gen. Stat. § 8-37c (2001) (creating the New England Interstate Planning Compact among Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island).

²³See, Fla. Stat. § 403.60 (2000).

²⁴Or. Rev. Stat. § 196.150; Wash. Rev. Code Ann. § 43.97 (the Compact between the States of Oregon and Washington and the Federal government includes six counties and four Indian tribes). See also Blair, *Seattle Master Builders and Creative Cooperation Federalism: The Columbia River Gorge National Scenic Area: The Act, Its Genesis and Legislative History*, 17 *Envtl. L.* 863 (1987).

²⁵See Beaverstock, *Learning to Get Along: Alabama, Georgia, Florida and the Chattahoochee River Compact*, 49 *Ala. L. Rev.* 993 (1998).

²⁶Gausman, *The Interstate Compact as a Solution to Regional Problems: The Kansas City Metropolitan Culture District*, 45 *Kan. L. Rev.* 897 (1997).

The New York State Experiment with Compact Planning

Proposed across-the-board planning reform in New York State, including a State Development Plan described as “a workable plan to bring the powerful and complex forces of urban growth under control and in balance with our natural resources,”²⁷ politically crashed and burned in the early 1970’s.²⁸ New York has since spent nearly three decades trying to address the issues involved with a state role in regional planning.²⁹ This failure for statewide reform in a home rule state has doomed across-the-board structural planning reform since that time, and has left the state without a state planning agency. But this situation has not stopped the adoption of a wide range of planning and land use reform initiatives,³⁰ as well as model regional planning frameworks which in more narrow ways address growth and environmental quality issues.

The Adirondack park land use and development plan³¹ established a program of density zoning and protection of statewide resource interests for an area of New York State larger than the State of Vermont. Environmental impact statement requirements for public and private projects,³² single purpose environmental regulation such as wetlands laws,³³ and enabling legislation for transfer of develop-

²⁷New York State Development Plan-1, Office of Planning Coordination, January 1, 1971.

²⁸Salkin, Regional Planning in New York: A State Rich in National Models Yet Weak in Overall Planning Coordination, 13 Pace L. Rev. 505 (1993).

²⁹John R. Nolon, “Intermunicipal Compacts: Regional Land Use Strategies Work at the Grassroots Level,” N.Y.L.J. p. 5, col. 2 (2/17/99).

³⁰From 1990 to 2001, more than 30 revisions were made to the New York planning and zoning enabling acts as a result of the work of the Land Use Advisory Committee to the Legislative Commission on Rural Resources. See NYS Legislative Commission on Rural Resources, Land Use Planning & Regulations in New York Municipalities: A Survey (1999). Among the significant regional reforms were new initiatives specifically authorizing local governments to engage in intermunicipal agreements for a broad array of planning and zoning activities (Chap. 724 on the N.Y. Laws of 1992 offers a framework for joint planning and zoning activities; Chap. 242 of the N.Y. Laws of 1993 specifically allows cities, towns and villages to contract with counties for planning and zoning administration and enforcement).

³¹N.Y. Exec. Law, Art. 38.

³²N.Y. Env’tl. Conserv. Law, Art. 81.

³³N.Y. Env’tl. Conserv. Law, Art. 24.

ment rights have been enacted by the State Legislature.³⁴ A state heritage system³⁵ that includes two regional corridors and the Hudson River Valley Greenway³⁶ are two of the efforts that have bottom-up protection and management of cultural and natural resources of regional and statewide interests. The state has also been active in acquisition of open space, using funds from environmental bond acts³⁷ and dedicated revenue in the State Environmental Protection Fund³⁸ to implement a State Open Space Plan.³⁹

Most recently, New York State has been experimenting with a regional planning and land use management approach called the "compact." As codified, its application in the Hudson River Valley Greenway⁴⁰ and Long Island Pine Barrens⁴¹ was the subject of a recent commentary on compact planning.⁴² Somewhat similar to these applications of the compact approach has been the planning process and implementation of The New York City Watershed Agreement, which created watershed protection programs addressing land use and economic issues for a 2000-square-mile, mostly rural watershed area serving the New York City water supply system.⁴³ This regional plan and program is a compact negotiated between the Governor, New York City, upstate watershed communities, certain environmental organizations, and the U.S. Environmental Protection Agency.

³⁴N.Y. Gen. City Law § 20-f; N.Y. Town Law § 261-a; and N.Y. Village Law § 7-701.

³⁵N.Y. Parks, Recreation and Historic Pres. Law, Title G.

³⁶N.Y. Env'tl. Conserv. Law, Art. 44.

³⁷N.Y. Env'tl. Conserv. Law, Art. 56.

³⁸N.Y. Env'tl. Conserv. Law, Art. 54.

³⁹N.Y. Env'tl. Conserv. Law, Art. 49, Title 2.

⁴⁰Act of Dec. 31, 1991, ch. 748, § 10, 1991 N.Y. Laws 1451 (codified at N.Y. Env'tl. Conserv. Law §§ 44-0101 et. seq.

⁴¹Act of July 25, 1990, ch. 814, § 1, 1990 N.Y. Laws 1645, 1646 (codified at N.Y. Env'tl. Conserv. Law § 57-0103).

⁴²Bray and Salkin, "Planning by Compact: A New Regional Approach," *Land Use Law & Zoning Digest*, vol. 48, no. 3 (March 1996). See also Nolon, *Grassroots Regionalism Through Intermunicipal Land Use Compacts*, 73 *St. John's L. R.* 1011 (1999). For more discussion on the Long Island Pine Barrens, see Jung, "The Pine Barrens: A New Model of Land Use Control for New York," 3 *Buff. Env't'l L.J.* 37 (1995).

⁴³See David Markell, *Lessons From the New York City Watershed Agreement*, *Environmental Outlook*, vol. 2 no. 2 (Winter 1996).

Success with negotiating land use plans and management programs in specific regions of New York State led to the question of whether a generic model for compact planning could be enacted which would encourage and facilitate regional planning in the remainder of the State, even without an overall state or regional planning structure in place. Such a proposal would be premised, in part, on the belief that the necessary tools and authority, such as transfer of development rights and authority for time and sequence controls, exist. What is missing are regional plans and the appropriate entity to prepare regional plans and oversee their implementation.⁴⁴ A model could provide for identifying an appropriate planning area, stakeholders, criteria, a negotiated compact or plan, incentives, and a structure for implementation.

A Proposed New York State Planning Compact Act

The “New York State Planning Compact Act” was first introduced to be that model by Assemblyman Richard Brodsky (D-Westchester Co.) who chairs the Environmental Conservation Committee.⁴⁵

The findings of the Act point out (1) the impacts across municipal borders of a wide range of public policies and actions in areas including transportation, solid waste, housing and water; and (2) that coordination thereof “within the complex web of local, regional and state jurisdictions is essential if the state is to maintain its economic competitiveness and environmental quality.” The compact approach is declared to be a way to achieve necessary coordination on planning and public investment matters “in a cooperative and consensual manner consistent with existing home rule and allocation of jurisdictions.”

Designation

Compact areas are defined as “geographic regions or areas based on environmental, economic and social factors specifically designed

⁴⁴In New York, regional planning councils are permissive, not mandatory, and the scope of their work is often focused on the collection and dissemination of regional demographics and trends (see Salkin, *New York Zoning Law & Practice*, 4th ed. § 9:03). Furthermore, although counties are permitted to establish county-wide planning boards and to have these boards develop county land use plans, there is no mandate that local governments within the county adopt these plans, nor are they required to plan and/or act in accordance with these plans (N.Y. Gen. Mun. Law § 239-c).

⁴⁵A. 130 (1999-2000 Regular Session). Assemblyman Brodsky began introducing this bill in 1995 (then A.2970).

by amendment of this section by the state legislature.’’ The only limitation provided is that no such area can be less than one full county. The legislature retains the authority to designate Compact areas on a case-by-case basis. The Governor is directed to make an annual report on the implementation of the act, and to propose potential Compact areas for designation by the legislature.

Compact Board

Once a Compact area has been designated, the Act provides for the establishment of a Compact board to consist of three appointments by the Governor, one appointment each from the leaders of the two legislative houses, and the Mayors, Supervisors, County Executive or other Chief Executive Officer of each county, city, town, and village in whole or in part within the boundary of the Compact area. The board elects a chair from among its members. An ex-officio members may designate a representative to exercise his or her powers. A quorum is a majority of the members, and a majority thereof may exercise the powers of the board, except that adoption of the Compact plan requires a unanimous vote.⁴⁶ The appointments by the Governor and Legislature at the state-level run the risk of local distrust, but these appointees should more appropriately be viewed as conduits to accessing better attention by their designators to the regional compact process and the fiscal and other needs of the area. The automatic appointment of the chief elected local officials in the area helps to ensure that the work of the board retains a purely local focus and remains sensitive to the local political and cultural climates.

Each board is a public corporation empowered as necessary to carry out its functions and duties, for instance, to sue and be sued, to make and execute contracts, to establish and maintain facilities necessary to transact its business, and to hold hearings. This is essential for the smooth operation of activities, including the attraction of non-state funding to support planning activities.

State agencies and public corporations having jurisdiction over public infrastructure in the Compact area are directed, to the fullest extent practicable, to offer full cooperation and assistance to the appropriate Compact board. Local and regional agencies are also authorized to offer assistance to the Compact board in their area. These provisions may in fact be aspirational, as there is no clear mandate

⁴⁶This part of the proposed Act most closely resembles the provisions in the legislation creating the Long Island Pine Barrens Preserve. See N.Y. Envtl. Conserv. Law § 57-0103.

to provide services under any circumstances, although the political pressure that could be applied by local and state powers could be sufficient to guarantee cooperation. The lack of forcefulness, however, may be politically necessary to garner the support of executive agencies, who may not be able to predict the full extent of requests for assistance that could arise should the Compact approach become desirable in multiple areas.

The board is required to appoint and meet periodically with an advisory committee of not less than nine nor more than twenty-one members that includes “persons representative of environmental, economic development and real estate, civic and minority and housing interests.” The advisory committee component is critical to ensuring adequate buy-in by the various stakeholder interests in the community. It also provides a convenient forum to bring together diverse interests to work on principles to achieve common community-wide goals.

Compact Plan

Within 15 months of the first meeting of a Compact board, the board is directed to prepare, or cause to be prepared, a Compact plan. A statutory time frame is an important aspect of the compact process to keep the board and advisory committee committed to the goal of developing a plan. Without the statutorily imposed time frame, the process of developing a compact can go on indefinitely, such as the situation today with the Hudson River Valley Greenway Communities Council compact planning process. Since the enactment of the legislation enabling that process in 1991, only one county has come forward with a county plan ready for negotiation as a compact plan with the municipalities therein.⁴⁷ And at that, it took until 1999 for the draft plan to be released. The long process has, however, begun to pay-off. On March 8, 2000, the Hudson River Greenway Communities Council adopted, by resolution, the Dutchess County compact Strategy - *Greenway Connections*.⁴⁸

While it can be concluded that nine years is too long to wait for the compact process to work, it can be surmised that it took that

⁴⁷See *Greenway Connections: Compact Program and Guide for Dutchess County Communities*, DRAFT, 1999.

⁴⁸Resolution for the Adoption of the Dutchess County Compact Strategy, *Greenway Connections*, Hudson River Valley Greenway Communities Council, March 8, 2000. See also Press Release, “Greenway Adopts First Hudson Valley Compact Plan,” Hudson River Valley Greenway (undated, 2000).

long for at least some local governments to begin to believe that they could use the compact as a means of having a greater voice in the allocation and placement of state resources.

The proposed Act specifies purposes and planning studies and reports, as well as the elements that must be in a Compact plan which is intended to be comprehensive and resource-based with a level of balance between social, economic and environmental considerations. Regarding purposes, the Act provides that a Compact plan shall be designed to:

- (a) protect, preserve and enhance environmental quality;
- (b) encourage orderly growth, sustainable development and public transportation, while protecting the state's agricultural economy, rural and community character and cultural heritage;
- (c) discourage piecemeal and scattered development and foster affordable housing;
- (d) provide for coordinated and cost effective planning, maintenance and development of public infrastructure; and
- (e) fully consider and take into account demographic and social considerations including the availability of affordable and decent housing opportunities for all citizens of the state.

The Compact plan is required to provide for, address, and include at least twelve specified elements. Among these elements are statements of objectives, resource mapping, development criteria and performance standards, provisions for intergovernmental coordination and consistency, a financial component, land protection mechanisms, provision for use of best management practices for all resource-based commercial and industrial activity, provisions for resource restoration, description of developments of regional significance, and recommendations for any legislation that may be necessary to fully implement the Compact. It is important to note that these are not the same statutory criteria required for local comprehensive land use plans.⁴⁹

The board is designated lead agency under the Act for purposes of preparing a generic environmental impact statement on the

⁴⁹N.Y. Gen. City Law § 28-a; N.Y. Town Law § 272-a; N.Y. Village Law § 7-722. These statutes merely suggest that local comprehensive plans address:

- 1) General statements of goals, objectives, principles, policies, and standards upon which proposals for the immediate and long range enhancement, growth and development of the town are based.
- 2) Consideration of regional needs and the official plans of other government units and agencies within the region.

Compact plan, as required under New York's environmental impact statement law (SEQRA).⁵⁰ Although this provision of the proposed Act continues the efforts began by the work of the State Land Use Advisory Committee, to wit, coordinating SEQRA with comprehensive planning,⁵¹ local governments are still expressing uneasiness with the concept of the generic environmental impact statement (GEIS), and absent a concerted training and education effort on the GEIS, localities could shy away from the compact planning process.

Upon completion of a draft Compact plan within fifteen months, the board is directed to hold an informational meeting and a public hearing within a three-month period. After considering comments on the draft Compact plan/generic environmental impact statement, the board completes and recommends for ratification and adoption these documents to the legislative bodies of each county, city, town, and village within the Compact area. This is an essential recognition of the local nature of adopting planning and zoning.

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- 3) The existing and proposed location and intensity of land uses.
 - 4) Consideration of agricultural uses, historic and cultural resources, coastal and natural resources, and sensitive environmental areas.
 - 5) Consideration of population, demographic and socio-economic trends, and future projections.
 - 6) The location and type of transportation facilities.
 - 7) Existing and proposed general locations of public and private utilities and infrastructure.
 - 8) Existing housing resources and future housing needs, including affordable housing.
 - 9) The present and future general locations of educational and cultural facilities, historic sites, health facilities, and facilities for emergency services.
 - 10) Existing and proposed recreation facilities and parkland.
 - 11) The present and potential future general locations of commercial and industrial facilities.
 - 12) Specific policies and strategies for improving the local economy in coordination with other plan topics.
 - 13) Proposed measures, programs, devices, and instruments to implement the goals and objectives of the various topics within the comprehensive plan.
 - 14) All or part of the plan of another public agency.
 - 15) Any and all other items consistent with the orderly growth and development of the [city][town][village].

⁵⁰6 NYCRR Part 617 et seq.

⁵¹New York State Legislative Commission on Rural Resources, Land Use Planning & Regulations in New York Municipalities: A Survey (1999), Part Two.

Upon ratification and adoption by all local legislative bodies within the Compact area, the board must adopt the Compact, which becomes effective upon the signature of the Governor. This requirement of unanimous approval by all local governments and the Governor mirrors the Long Island Pine Barrens Compact law, with its drop-dead provision if any one of the three towns, the county, or the Governor failed to adopt the Compact. It placed pressure on each participant to come up with a Compact agreeable to all so as to not have to have the stigma of breaking the deal for everyone. It is interesting to note that the pressure to agree to the Compact was political in the case of the Pine Barrens, due to a decision by the New York Court of Appeals calling upon the Legislature to take action to preserve a significant aquifer threatened by hundreds of pending requests for building permits.⁵² The Pine Barrens Compact was not initiated because the local governments desired to work together from the start; rather, the State created the Compact framework through the enabling legislation after significant input by the affected environmental and development interests. Absent an immediate crisis such as the one in the Pine Barrens, or active encouragement by an Executive Department, it may be questionable just how often local governments will voluntarily decide to take advantage of the compact process.

Under the Hudson River Valley Greenway model, focusing on the Dutchess County experience, communities in the county are now asked to enact a law providing that: 1) when they have discretion under current zoning or planning documents, they will utilize the newly adopted growth and design guidelines contained in the compact strategy; and 2) when they undertake a revision of their planning and zoning documents, they will incorporate the guidelines into those revisions.⁵³

Provision is made for the Compact to be reviewed and updated not less than once every five years, with appropriate notice requirements for amendments. The board is also directed to hold a public hearing on the effectiveness of implementation of the Compact within the five-year period. The automatic review trigger is significant, since in New York local comprehensive plans need not be

⁵²Long Island Pine Barrens Soc., Inc. v. Planning Bd. of Town of Brookhaven, 80 N.Y.2d 500, 591 N.Y.S.2d 982, 606 N.E.2d 1373 (1992).

⁵³Hudson River Valley Greenway Press Release (undated 2000).

reviewed or updated at any particular time. Therefore, it can be argued that the law allows for complacency.⁵⁴

Implementation of the Compact

Local governments have three months after the Compact takes effect to adopt and amend, as necessary, land use regulations to conform to the land use provisions of the Compact. These actions in conforming local land use regulations are exempt from state environmental impact statement requirements that would otherwise apply. Before local action is complete, proposed regulations are to be submitted to the board for review. If the board does not approve the proposals, it is to return them to the local government with comments on what needs to be done so that they can be approved. Upon its adoption of approved land use regulations, a local government becomes a “participating community” and is thereby eligible for certain incentives. This power by the board to reject local land use regulations represents a regional review of local action. On one hand, the locality has already agreed to the substance of the Compact plan by the time this stage is reached, and, consistent with local planning requirements that zoning be in accordance with a comprehensive plan⁵⁵ this provision requires nothing more. On the other hand, local governments are giving up some degree of control in the area of self-determination as to whether the proposed regulations are in accordance with the plan. This step, perhaps controversial, is critical to ensuring consistency and the credibility of a regional planning process.

If at any time the board finds that a local government has changed its land use regulations so that they no longer are consistent with the Compact, or that a local government has administered its approved land use regulations in a manner “substantially inconsistent” with the Compact, it shall after notice and a public hearing withdraw approval of such land use regulations. At that point, the local government loses its “participating community” status. While it seems appropriate to strip the locality of that status, preventing any future incentives from inuring to its benefit, withdrawal or removal of even

⁵⁴However, the courts have indicated that in addition to looking at the written comprehensive plan, they will also look to minutes of meetings and other evidence of an ongoing planning process to demonstrate a comprehensiveness of local planning. See *Randolph v. Town of Brookhaven*, 37 N.Y.2d 544, 375 N.Y.S.2d 315, 337 N.E.2d 763 (1975).

⁵⁵N.Y. Town Law § 263; N.Y. Village Law § 7-704; and N.Y. Gen. City Law § 20(25) (requiring a “well considered plan”).

one locality can threaten the future viability of the Compact. Therefore, consideration should be given to active rather than passive penalties for the purpose of keeping communities working together. The penalties, however, cannot outweigh the benefits of initial participation, otherwise the compact process will not get off the ground.

The board has ongoing land use jurisdiction to review and approve development in critical resource areas and developments of regional impact, as identified in the Compact. It also has jurisdiction over any development found by the board, after petition of any member thereof, to have "significant adverse impact on the goals of the Compact plan."

The Act goes on to provide that notwithstanding any law or regulation to the contrary, "no application for development within the Compact area subject to the Compact plan shall be approved by any municipality or county or agency thereof or the board, and no state approval, certificate, license, consent, permit, or financial assistance for the construction of any structure or the disturbance of any land within such area shall be granted, unless such approval or grant conforms to the provisions of such Compact plan." This provision for strict compliance is subject to waiver by the board if such waiver is deemed necessary "to alleviate hardship according to the conditions and finding of extraordinary hardship or compelling public need, is consistent with the purposes and provisions of this article and would not result in substantial impairment of the resources of the Compact area."

Incentives

The Act provides a number of no-cost and low-cost (to the State) incentives for participating communities. Exemption from the state's strict environmental impact statement law is provided for public actions, and private actions subject to public approval, if they are "in conformance with the conditions and thresholds of the Compact plan and the generic environmental impact statement" therefor. This exemption does not cover "further project-specific compliance" with such impact statement requirements. This incentive is designed to provide developers great predictability and an expedited project approval process, based on the pre-planning done in the Compact.

Participating communities are given a five percent advantage, or the equivalent thereof, in the ranking system for allocating state funds for infrastructure, land acquisition, farmland preservation, or park projects identified in a Compact plan.

Legal defense and indemnity is provided under the Act to participating communities and their agents in the event of a legal action resulting from a land acquisition or land use regulatory action consistent with a Compact plan. However, indemnity will not apply if the court finds intentional wrongdoing, recklessness or an unlawful discriminatory practice. Exactly how the indemnification process will work is not clearly defined. This incentive could be a cost item for the State, but not unless and until a challenge is made. This same provision appears in the Hudson River Valley Greenway legislation, and, since it has not yet been called into action, no one is quite certain whether the Attorney General will provide legal representation to localities, or whether the State will simply reimburse the cost of legal services under this section.

In addition, specific provision is made to authorize a participating community in furtherance of a compact plan to enter into an agreement to condition a zoning amendment.

A future version of a compact process might, picking up from the “smart growth” notion of designating priority funding areas for state programs,⁵⁶ use the compact plans to determine priority funding targets.

By way of example, the compact process that has been initiated in the Hudson Valley through Dutchess County and the Greenway Council offers the following incentives to local governments who join the compact: 1) grants, when funding is available, to implement planning and zoning changes to the compact; 2) potential priority ratings on competitive state grants; 3) local control of shoreline docks, moorings and boathouses; 4) consistency of state agency actions “to the fullest extent practicable” with local Compact agreements; 5) protection from lawsuits against community actions taken pursuant to the Compact; and 6) inclusion of local Compact provisions in environmental and historic preservation reviews.⁵⁷

The New York State Smart Growth Compact Act

During the 2001 Legislative Session, the Smart Growth Compact Act was introduced to “facilitate coordinated urban and regional planning and public investments in a cooperative and consensual

⁵⁶See Salkin, *Smart Growth at Century’s End: The State of the States*, 31 *The Urban Lawyer* 601 (Summer 1999), discussing the Maryland Priority Funding Program at 616.

⁵⁷Hudson River Valley Greenway, “Greenway Adopts First Hudson Valley Compact Plan,” Press Release (undated 2000).

manner consistent with existing home rule powers and allocation of jurisdictions and to foster smart growth[.]”⁵⁸ Closely paralleling the earlier proposed compact legislation, this bill would add a new article 20-A to the state’s General Municipal Law.

Unlike the previously proposed “compact board,” the present approach proposes the establishment of “smart growth compact councils.”⁵⁹ These Councils would consist entirely of locally designated members, as opposed to the earlier approach that included a gubernatorial designee. The absence of a formal link to State government, however, was not entirely lost on the drafters, who propose that “Every State agency and public corporation having jurisdiction of land or water, housing, economic development, transportation, parks or other public facilities or infrastructure within the compact area or of programs relating to the fullest extent practicable, offer full cooperation and assistance to the Council in carrying out the provisions of this article.”⁶⁰

The Smart Growth Compact Act would give participating local governments up to one year, not the previously proposed three months, to adopt and amend as necessary land use regulations to conform with the adopted compact plan.⁶¹ In addition to the incentives for voluntary participation that were previously suggested, the new Act proposes significant enhancements. For example, participating jurisdictions would receive priority funding for consolidated drinking water and water pollution control projects.⁶² Furthermore, priority status would be given to open space land acquisition and easements by the state for areas located outside growth or redevelopment areas as certified in the smart growth plans, and there is a proposed restriction on industrial development authority project funding to local governments that have certified smart growth plans.⁶³ Energy assistance would be available, as well as grants for the purchase of homes in older urban neighborhoods and homes in close proximity to employment.⁶⁴

Dovetailing with other proposed smart growth legislation, the bill proposes that municipalities with certified smart growth plans, or

⁵⁸A.1710-B (Member of the Assembly Brodsky).

⁵⁹A.1710-B, § 2052 (6/5/2001).

⁶⁰A.1710-B, § 2052(3) (6/5/2001).

⁶¹A.1710-B, § 2054.

⁶²A-1710-B, § 2055.

⁶³Id.

⁶⁴Id.

certified smart growth compact plans, be eligible for low-interest loans from a New York State Smart Growth Revolving Growth Fund.⁶⁵ Accessing funding to update and conform existing plans and land use regulations may prove critical to the success of the smart growth compact approach.

International Interest Noted

The compact approach has also caught the attention of Italian park and protected area professionals and advocates. Italian parks and protected areas are inhabited landscapes, requiring that management of natural and cultural resources be integrated with the social and economic needs of the communities within the park or protected area. Needless to say, reconciling conservation and economic imperatives can be difficult.

Some Italian professionals have been particularly interested in the way the compact approach was applied for the Long Island Pine Barrens Preserve. That Compact was worked out and adopted by three neighboring towns, the County of Suffolk, and the Governor of the State of New York.⁶⁶ It covered steps to preserve 50,000 acres in suburban Suffolk County as a preservation area and to manage growth in a 50,000-acre managed growth area that would get some of the development rights from the preservation area.

An outgrowth of Italian interest is a twinning agreement expected to be signed this Spring by the respective authorities of the Long Island Pine Barrens Preserve and the Pisa Regional Parks. Studying the Long Island Compact and how it was arrived at is one of the objectives for the Pisa Authority.

Conclusion

The proposed Compact Act offers a blueprint and incentives for establishing multi-jurisdictional land use programs. Its success, if enacted, depends on there being sufficient political will from local governments in a prospective compact area to call for designation to be made by the state legislature. The compact approach may be flexible, consensual, and attractive enough with its incentives (which can be augmented by additional appropriations) to carry out the Compact, as was the case with the Long Island Pine Barrens

⁶⁵A.1710-B, § 2056(2).

⁶⁶Stephen L. Kass and Michael B. Gerrard, "Pine Barrens: The Fruitful Compromise," N.Y.L.J. (Aug. 27, 1993) at 3.

Compact to attract the interest of local governments in additional regions of New York State. While it is still regionalism, the compact approach assures local governments a role and a voice in preparing the Compact plan.

The compact approach is also proposed in a statewide smart growth initiative,⁶⁷ with compacts being referenced as the mechanism for regions to develop land use strategies that include the identification of priority funding areas subject to state guidelines.

As an alternative to across-the-board state and regional planning reform, which to date has been impossible to accomplish, New York and other states similarly situated may achieve significant levels of reform by cobbling together regional compacts.

⁶⁷The Smart Growth and Economic Competitiveness Act of 1999, S.1367/A.1969 (1999).