

# State-Level Programs and Policies Supporting Sustainable Communities within Transportation & Climate Initiative (TCI) Jurisdictions

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## AUTHOR'S NOTE

*Integrating sustainability considerations into infrastructure and transportation investment decisions, land use choices, and economic development policies is a core strategy for reducing the greenhouse gas emissions produced by the transportation sector while at the same time increasing economic and social benefits.*

The federal government recognized the importance of the above approach in 2009 when it launched the Federal Partnership for Sustainable Communities, coordinating efforts among the Environmental Protection Agency, the Department of Transportation, and the Department of Housing and Urban Affairs.

In June 2011, the heads of transportation, environment, and energy agencies of 11 Northeast and Mid-Atlantic states, as well as the District of Columbia, announced their own agreement to promote Sustainable Communities as part of the Transportation and Climate Initiative (TCI). The TCI is a regional collaborative that seeks to develop the clean energy economy and reduce greenhouse gas (GHG) emissions in the transportation sector, and the Sustainable Communities agreement demonstrated the agency heads' commitment to using Sustainable Communities strategies to achieve TCI goals.

This report provides a comprehensive foundation for future TCI work by surveying the programs, policies, and initiatives already undertaken by TCI jurisdictions in support of Sustainable Communities. The participating jurisdictions have already taken many actions that support cleaner transportation options, smart growth land use patterns, and sustainable economic development policies as this report demonstrates. At the same time, the complexity and breath of these interrelated approaches means that there is still much to learn about how state and local governments can most effectively support sustainable communities and achieve resulting economic and environmental benefits. The goal of this report is create a starting point of common knowledge from which the TCI jurisdictions, along with their partners and stakeholders, can further the conversation about how to achieve desired outcomes in the TCI region.

The TCI Sustainable Communities workgroup commissioned this report, which was produced by the Georgetown Climate Center, the convener of TCI, with assistance from consultants at Rutgers University's Bloustein School of Planning and Public Policy. The report is based on input from and review by over 70 state staff in all 12 TCI jurisdictions. Their expertise and involvement were invaluable and this report would not have been possible without it. However, this report does not necessarily reflect the positions of individual jurisdictions or agencies unless explicitly stated.

In addition, special thanks to Elizabeth Semple, chair of the TCI Sustainable Communities workgroup, Jeanne Herb, facilitator of the TCI Sustainable Communities workgroup, and Kate Zyla, Georgetown Climate Center's director of research and policy analysis, for their dedicated support and oversight. Thanks also to Vicki Arroyo, Executive Director, and Peter Byrne, Faculty Director, for their direction and guidance on these important issues.

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## I. Executive Summary

### *Introduction and Background*

*Transportation and Climate Initiative (TCI) jurisdictions already have many programs aligned with sustainable community objectives, with a variety of approaches and legal frameworks. Some of these may serve as models for other states in the region, while others suggest opportunities for cooperation among the TCI states.*

The TCI is a collaborative effort of the transportation, environment, and energy agencies of eleven Northeast and Mid-Atlantic states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont) and the District of Columbia that was founded in June of 2010. It aims to work cooperatively among states and disciplines to address the challenge of reducing greenhouse gas emissions from the transportation sector while promoting sustainable economic development, energy independence, transportation options, and better quality of life.

On June 7, 2011, the TCI agency heads agreed “to work together to promote sustainable communities through enhancement of state level transportation policies that combine a smart growth land use planning approach with sustainable development concepts.” To address these issues, the Sustainable Communities Workgroup was created to work together and to further the states individual efforts.

This analysis responds to research requested by the TCI’s Sustainable Communities Workgroup and is aligned with the TCI agreement to promote sustainable communities. It presents an overview of what TCI jurisdictions are already doing to achieve sustainable communities outcomes, how their legal frameworks govern land use and transportation policies, and what programs or policies state staff have indicated are particularly notable from a sustainable communities perspective. The report also suggests potential program types that individual states may be interested in examining further and areas that may present opportunities for interstate regional cooperation through TCI.

The research concentrates on three focus areas identified by the workgroup:

1. land use and transportation planning,
2. policies that leverage federal and state transportation funding, and
3. initiatives to measure sustainable community outcomes.

TCI states are engaged in a variety of actions to promote clean energy and to reduce greenhouse gas emissions, including comprehensive approaches such as the development of economy-wide energy or climate plans. The report focuses on the subset of policies defined above, although in many cases these policies are aligned with these more comprehensive efforts to promote clean energy and address climate change.

This executive summary provides a brief overview of the types of relevant authorities and commitments in each focus area, and identifies particularly notable efforts as examples. The full report summarizes efforts in all twelve TCI jurisdictions for each focus area.

### *1. Land Use and Transportation Planning*

States in TCI have different levels of statewide planning functions. All states conduct statewide transportation planning mandated by federal law, but some states also conduct statewide land use planning or use principles to guide state action with land use consequences.

All TCI states have adopted principles or goals relevant to sustainable communities (these were used as a foundation for the TCI Agreement to Promote Sustainable Communities). A few states are also committing to specific strategies to reduce GHGs in the land use and transportation sectors: Massachusetts has committed to specific reduction targets through smart growth and livability strategies and to increase the amount of non-auto travel (through its mode shift goal) in its GreenDOT program, and Connecticut, Maryland, New York, and other states are in the process of developing such commitments. TCI states have no uniform legal framework regarding the states' roles in land use planning, and in all cases local governments exert the most direct control over land use. Statewide approaches used in the TCI region include statewide land-use planning, establishment of statewide land use principles or desired outcomes, and place-based approaches that promote compact development and preservation of natural spaces.

Six states – Connecticut, Delaware, Maryland, New Jersey, New Hampshire and Rhode Island – and the District of Columbia conduct statewide land use planning, often with a specific focus on promoting compact development patterns and preserving open space.

States have also created programs and policies that guide or affect statewide land use by reference to specific principles or desired outcomes. The state of New York has developed a suite of programs that both guide state actions according to smart growth principles and promote local and regional planning consistent with sustainable communities efforts. Massachusetts has also established its sustainable development principles as guides for state and local action; one example in previous years was the Commonwealth Capital program (described in the next section).

Many states incorporate place-based approaches to land use policy, such as the designation of specific land areas targeted for growth, development, and infill, with the goal of promoting compact development in those areas and discouraging less dense development (i.e., sprawl) outside those areas.

- States with statewide land use planning programs all include some version of place designations. Delaware has a comprehensive program, categorizing all land in the state as one of five types with an associated level of appropriate development. Connecticut also has a comprehensive designation program. Maryland has an established system of Priority Funding Areas to guide infrastructure investment and has recently launched a new planning area identification process.
- States without statewide land use planning programs also make use of place-based approaches, such as Vermont's Growth Centers Act or Massachusetts' Growth District program, both of which award designations and incentives to infill areas or centers. New York's "Climate Smart Communities" program creates a designation for municipalities that commit to reducing GHG emissions in line with the state's goals, and New York also uses designations as part of its Smart Growth Public Infrastructure Policy Act.

In some cases, state departments of transportation have developed specific initiatives to integrate land use components, or other sustainable communities elements, into transportation planning. For example, the New Jersey Department of Transportation has created a set of strategies to address land use in transportation planning, including use of Complete Streets policies, a guide to linking transportation and land use at the local level, transit-oriented design incentives, and the Mobility and Community Form partnership which works with pilot municipalities to link community planning, zoning and transportation decisions. The Pennsylvania Department of Transportation's Smart Transportation program similarly seeks to link transportation decisions with land use planning.

Land use regulation is typically a local government function, and that tradition is particularly strong in the TCI region. This is in part because of the prevalence of "Home Rule" laws that provide broad grants of authority to municipalities, often explicitly or implicitly including authority over local land use and vehicle travel. States address the state-local relationship in a variety of ways.

Six states – Connecticut, Delaware, Maryland, New Jersey, Rhode Island, and Pennsylvania – require local or intrastate regional planning. The remaining states enable planning; in some cases, municipalities that choose to plan must follow statutorily defined processes and requirements. Some of these states create incentives for municipalities to plan; in Maine, only municipalities with a comprehensive plan may pass certain types of zoning ordinances, and Vermont awards planning grants to municipalities funded by a property transfer tax.

One of the most sensitive issues is whether local plans must be consistent with state plans or principles. Delaware and Rhode Island require state and county plans to be reviewed by the state for approval as consistent with the state plan. New Jersey implemented a “cross acceptance” process by which regional entities worked with a state planning commission to identify inconsistencies and then negotiate changes to the state or local plan that would achieve consistency, though this process is now being revisited as the state revises its plan. Connecticut is implementing a similar process.

Similarly, states vary in the degree that they require state land use plans or principles to be integrated with a state’s federally mandated transportation planning. Rhode Island’s long-range transportation plan is an element of a broader state plan that includes land use as a central component, and is developed by the state’s planning body in partnership with the Department of Transportation (DOT). Connecticut’s transportation plan must be approved as consistent with the state’s land use plan by another state agency. Maryland and Delaware generally require consistency in their planning.

Finally, several states have developed permitting or review mechanisms to encourage consistency at the project level with state land use plans, relevant principles, or goals. Examples of these programs include:

- Delaware’s Preliminary Land Use Service (PLUS) provides a multi-agency review of major land use decisions to provide feedback on consistency with state and local plans;
- Vermont’s Act 250 requires a permit for significant new developments, and the permitting authority considers development impacts.
- New York is in the process of revising its statutory environmental review process (i.e., “baby NEPA”) to include a greater focus on sustainable community elements.
- Massachusetts has issued guidelines for incorporating GHG reduction analysis as part of its process.
- Pennsylvania is developing guidance to link transportation planning and environmental review.

## *2. Leveraging Federal and State Funding*

Jurisdictions in TCI use a variety of mechanisms to leverage federal and state infrastructure and other investments to promote sustainable community outcomes, including compact, transit-oriented, and infill development.

How a state chooses to invest its transportation funding is a major factor in sustainable community outcomes. The federal transportation-funding framework requires states to select projects for funding in four-year statewide transportation improvement programs (STIPs), and these are, in turn, required to incorporate transportation improvement programs (TIPs) developed by metropolitan planning organizations (MPOs). States and MPOs have significant discretion in how they select projects. Some states formally require the project selection process to take into account state planning or policies; different approaches are noted below.

In addition to transportation investments, funding for other public infrastructure, such as water and sewer infrastructure, and the targeted use of development incentives can also have a significant effect on land

use and transportation outcomes.

One of the most comprehensive approaches to leveraging funding is to prioritize or limit state infrastructure investments to geographical areas designated as priority growth areas. Notable examples include:

- Maryland law prohibits the state from funding growth-related infrastructure outside of designated Priority Funding Areas (PFAs); and
- Delaware similarly guides state infrastructure investment on the basis of five land area categories, including categories that prohibit or severely limit investments.

Several states also use geographic designations to focus development incentives and assistance. For example, Maryland's Sustainable Communities initiative provides designated communities eligibility for coordinated incentives and assistance from multiple agencies, including historic tax credits, infrastructure support, and project-level gap finance. Vermont's Growth Center designations similarly provide preference in certain state grant scoring and make available tax increment financing, which allows municipalities to generate capital for a specific development project on the basis of projected tax revenue from future growth related to that development. New York State's Climate Smart Communities are also granted credit in grant scoring.

Some states guide funding and investment on the basis of sustainable communities-related criteria or principles:

- New York's Smart Growth Public Infrastructure Policy Act requires state-supported infrastructure projects to be consistent, to the extent practicable, with statutory smart growth criteria, and applies to all projects administered by the state DOT, including projects selected through the MPO process; and
- New York's GreenLITES program has a planning component involving the selection of projects through the use of a project solicitation tool. This tool provides a mechanism for project sponsors to review and rate the sustainability of a proposed transportation project. The tool measures a project's consistency with regional planning efforts, along with environmental, social and economic factors.
- In Massachusetts, municipal grant and loan applicants were scored in part on sustainable development criteria through the Commonwealth Capital program. (The program has ended and a new program is being developed based on similar principles.) Currently, in some regions, municipalities do annual self-scoring to be eligible for funding<sup>1</sup> The Partnership for Southeastern Massachusetts' Smart Growth Audit is one such example.

Principle-based approaches can also include broader policies tied to transportation investment, such as the following:

- Fix-it-first policies that prioritize maintenance of existing infrastructure over new construction in Connecticut, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont; and
- Complete Streets policies that require transportation infrastructure projects to be designed to accommodate all modes of travel, including pedestrian and bicycle travel. Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont all have some form of Complete Streets law or policy.

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<sup>1</sup> <http://www.epa.gov/dced/scorecards/SEMAauditform.pdf>



Other forms of state support for programs or projects supporting sustainable communities include:

- tax credit programs for specific purposes, such as New Jersey’s Urban Transit Hub Tax Credit Program or historic preservation tax credits available in most TCI states;
- direct funding for transit-oriented development, including programs in Maryland, New Jersey, and Vermont. In Maryland, for example, officially designated TOD projects are defined as serving a “transportation purpose” which allows the DOT to more effectively partner with local jurisdictions to directly invest in transit supportive development; and
- support for local or regional planning, such as New York’s Cleaner Greener Communities grants for regional sustainability planning and Massachusetts’ program to reimburse municipalities for costs associated with adopting smart-growth overlay districts.

### *3. Measuring Outcomes and Progress*

All TCI states use some measures or indicators relevant to sustainable communities, although implementation varies greatly. Some states use specific indicators on a one-time basis in transportation plans or other documents, while other states are implementing broad measurement programs to be used year after year.

- Maryland provides a broad example of a statewide measurement program, although many components are the result of recent legislation and are therefore still in development. Maryland statutes require both state- and local-level reporting on land use and livability goals, with specific indicators, and also require local governments to set land use targets. Maryland’s DOT is similarly required to provide an annual report on transportation system performance relative to goals articulated in the statewide transportation plan, including goals relevant to sustainable communities.
- New York’s GreenLITES program provides an example of a different type of measurement program. It is a sustainability-metrics self-evaluation program that the department uses to formally rank capital projects as well as operations and maintenance work. GreenLITES is modeled after the building industry’s Leadership in Energy and Environmental Design (LEED) certification program, with points awarded for a range of sustainability criteria through a self-evaluation worksheet.

In general, there are two broad types of formal measurement programs in TCI states: transportation department performance measures and land use measurement programs.

Seven states – Connecticut, Maryland, Massachusetts, New Jersey, Pennsylvania, Rhode Island, and Vermont – and the District of Columbia have formal state DOT transportation measures or reports. These programs or reports generally focus on transportation system performance (e.g., infrastructure maintenance, safety, congestion, and operations), but include sustainable community measures to varying degrees.

States have also developed measures for land use. In addition to Maryland’s program described above, Maine requires periodic evaluations of state, regional, and local efforts to achieve the purposes and goals of the state’s Growth Management Act; and Connecticut will be required to identify three benchmarks for each growth management principle in its upcoming state plan revision.

Massachusetts’ Commonwealth Capital program (a mechanism for scoring municipal grant applications based on sustainability criteria) creates significant data about local land use practices, and the state has summarized data reported in applications.



In addition, a number of jurisdictions, including New Jersey, New Hampshire, Vermont, Pennsylvania and the District of Columbia, are in the process of developing or updating measurement programs.

Closely related to measuring progress is understanding how different transportation or land use approaches will produce different results in the future. Scenario planning uses modeling to project specific outcomes resulting from different land use and transportation-decision scenarios. The outputs that a scenario plan can model will vary, but generally include projections of future development patterns and density, transportation use by mode, and transportation-related emissions, including GHG emissions. Such planning usually takes place at the intrastate regional level (e.g., MPO). At least four regional organizations in the TCI region have undertaken scenario planning efforts that include greenhouse gas measurements:

- Connecticut's Capital Region (through a Regional Plan Association effort);
- the Delaware Valley Regional Planning Commission, serving the Philadelphia metropolitan region in New Jersey and Pennsylvania;
- Vermont's Chittenden County Metropolitan Planning Organization; and
- New York's Capital District Transportation Committee.

In addition, the state of Maryland is conducting scenario planning in its Carbon Neutral Corridor (CNC) project, which seeks to identify land use and transportation policies to reduce or offset all transportation emissions along the US 40 corridor by 2035.

#### *4. Other Notable State or Sub-state Initiatives*

This report identifies several other types of initiatives relevant to sustainable communities, both at the state and sub-state levels.

A number of states have conducted substantial bicycle and pedestrian planning and support, including Connecticut, Maryland, New Jersey, and Vermont.

The TCI region has at least nine substantial corridor planning and development efforts underway, often addressing sustainable communities issues, including accessibility, inter-modal integration, community and environmental preservation, and greenhouse gas emissions. Some of these projects are based around passenger rail improvement projects, including high speed rail, or other transit projects (like the New Britain-Hartford Busway project in Connecticut). Maryland's Carbon-neutral Corridor study specifically seeks to reduce greenhouse gas emissions from a transportation corridor through a broad range of carbon reduction strategies, including land use, transit, and carbon sequestration.

MPOs and other entities in the TCI region have conducted regional sustainability plans. As of October 2012, 19 projects had received federal Sustainable Communities Regional Planning grants, and 16 projects had received HUD community challenge grants or TIGER II planning grants. At least five cities have also conducted sustainability plans, and the District of Columbia is beginning the process of drafting such a plan.

#### *5. Potential Models & Opportunities for Regional Collaboration*

Based on a review of TCI state efforts, discussion with state staff, and workgroup conversations, several types of programs or initiatives are suggested as possible models that may be of interest to other states, as well as areas for interstate regional collaboration.

One category includes programs that appear to require relatively few state resources and that may have a relatively easier time garnering political support. This category includes the following program types:

- Municipal self-designation programs aligned with sustainable community goals. States can combine such programs with state incentives such as preferences in grant scoring. These programs may also help local communities compete for federal sustainable communities grant awards;
- Infrastructure project self-evaluations that include sustainable community criteria for use in state project selection;
- Programs to leverage federal funding by including smart growth criteria in state-administered federal grant programs, such as community block development grants or state clean water revolving loan funds; and
- Formal transportation investment policies aligned with sustainable communities goals, such as priority funding areas approaches, sustainable communities investment criteria, fix-it-first policies, and Complete Streets policies.
- Integration of sustainable community goals into corridor planning and development, including GHG reduction goals or scenarios (i.e., “zero emissions corridors”).

A second category of potential models are those programs that are more comprehensive and direct in addressing sustainable community outcomes, but that may require significant resources or political support. This category includes the following program types:

- Alignment of infrastructure permitting and environmental review with sustainable communities outcomes. This can include permitting for significant developments, pre-permitting review by state land use and transportation agencies to promote consistency with plans or principles, and inclusion of sustainable communities elements in statutory environmental impact review;
- Comprehensive land use and transportation measurement programs, potentially with goals or targets; and
- State funding or technical assistance for local or intrastate regional planning, with local or regional plans required to be aligned with smart growth principles or statewide plans.

Similarly, several areas could be fruitful for interstate cooperation within TCI, and could support all states. These include the following areas of potential collaboration:

- Development of expertise on measurement of sustainable community outcomes, including infrastructure investment performance measures;
- Development of a regional scenario planning tool kit. Scenario planning has the potential to be a powerful tool in guiding land use and transportation decisions, but its costs can be very high, in part because of the customization necessary for local data, assumptions, and input/output customizations; and
- Exploring the value and feasibility of identifying interstate regional goals based on sustainable community principles. This could complement efforts to implement standardized measurements.
- This could include exploring corridor-based GHG emission goals, building on the zero-emission corridor program being developed by Maryland.

## *6. Conclusion*

TCI jurisdictions have already implemented many programs and initiatives aligned with sustainable community objectives, reflecting a variety of approaches and legal frameworks. These existing programs can serve as a basis for states to compare experiences with the goal of improving sustainable community outcomes, and they may also suggest opportunities for interstate regional collaboration through TCI.

## II. Background and Methodology

This report is the result of research commissioned by the Transportation and Climate Initiative's (TCI) Sustainable Communities workgroup.

### A. Transportation and Climate Initiative's Sustainable Communities Workgroup

The TCI is a collaborative effort of the transportation, environment, and energy agencies of eleven Northeast and Mid-Atlantic states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont) and the District of Columbia that was founded in June of 2010. It aims to work cooperatively among states and disciplines to address the challenge of reducing greenhouse gas emissions from the transportation sector while promoting sustainable economic development, energy independence, transportation options, and better quality of life.

The Georgetown Climate Center, a part of Georgetown University's Law School, and its consultants facilitate the work of TCI with the financial support of the Rockefeller Foundation, Oak Foundation, Barr Foundation, Surdna Foundation, Emily Hall Tremaine Foundation, Rockefeller Brothers Fund, Kresge Foundation, Energy Foundation, Thomas W. Haas Foundation and funding from the Department of Energy through a subaward from the New York State Energy Research and Development Authority (NYSERDA).

One of the core work areas identified by TCI is sustainable communities. On June 7, 2011, the TCI agency heads agreed "to work together to promote sustainable communities through enhancement of state level transportation policies that combine a smart growth land use planning approach with sustainable development concepts."<sup>2</sup> The agreement focuses on advancing transportation systems that will:

- Expand clean, safe and affordable transportation options;
- Promote economic prosperity;
- Enhance natural resource protection;
- Strengthen communities; and
- Minimize environmental impacts.

In furtherance of this agreement, the TCI Sustainable Communities Workgroup is developing initiatives to strengthen the ability of states and sub-state entities to achieve greenhouse gas reductions and other sustainable community outcomes through transportation and land use planning and policy.

### B. The Research Task and Scope

The workgroup asked the research team to conduct two broad, overlapping tasks:

- Inventory what TCI states are already doing with regard to sustainable communities, by reviewing underlying legal authorities and existing commitments within each TCI state; and
- Through conversations with state staff, identify "sustainability practices" that are particularly

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<sup>2</sup> Transportation and Climate Initiative, Agreement of the Northeast and Mid-Atlantic States to Support Sustainable Communities (2011), [http://www.georgetownclimate.org/about/files/TCI\\_Sustainable\\_Communities\\_June2011.pdf](http://www.georgetownclimate.org/about/files/TCI_Sustainable_Communities_June2011.pdf).

relevant to sustainable communities goals.

For both tasks, the workgroup asked that the research focus on three areas of interest:

- Innovative land use and transportation planning policies;
- Policies that leverage existing federal and state transportation funding to achieve sustainable community outcomes; and
- State initiatives to measure sustainable community outcomes.

This report responds to the workgroup's request by providing an overview of the laws, regulations, and initiatives in TCI states that are most relevant to the sustainable community goals, with a particular focus on the three focus areas.

As many TCI states are working actively to refine and enhance their sustainable communities programs and initiatives, and because this report is necessarily a snapshot of a moment in time, there may be emerging programs and initiatives that are not fully captured in this report.

In addition, the TCI states are engaged in a variety of actions to promote clean energy and to reduce greenhouse gas emissions, however this report only focuses on a small subset of those policies as identified above. For example, many TCI states are developing comprehensive approaches to promoting clean energy and reducing economy-wide greenhouse gas emissions, and in many cases, the programs and policies identified in this report are aligned with these approaches. In the interest of space, this report does not provide a general overview of these comprehensive approaches.

### **C. Methodology**

Researchers held calls with each TCI jurisdiction. State staff were asked to provide an overview of relevant authorities and commitments in each state, and to identify potential sustainability practices.

Researchers subsequently conducted a review of relevant laws, regulations, state agency documents and websites, and relevant white papers. State staff again provided input through several rounds of review of the report text. Ultimately, more than 70 state staff in all 12 TCI jurisdictions participated in the research of this report.

### **D. Organization of this report**

This report is loosely organized on the three focus areas identified by the workgroup. Section II addresses planning. Section III addresses leveraging funding. Section IV addresses metrics.

The strategies that are available to states to address sustainable communities policies are significantly dependent on how a state's land use and transportation functions are organized. Within the TCI region, there are significant differences among states in the degree of state-level land use planning. Accordingly, the section on land use combines background information about different approaches to statewide land use functions with information about how states use these land use and transportation planning policies to achieve sustainable communities outcomes.

Section V draws on the research and conversations with state staff to suggest several types of program models that state staff may want to consider, as well as some potential opportunities for regional collaboration.

### III. Transportation and Land Use Planning

A key strategy for TCI jurisdictions in achieving sustainable community outcomes is to incorporate sustainable community goals in their transportation and land use planning efforts. When integrated together, transportation and land use planning can help states guide state-level decision making, and potentially local government decision making, in a way that reduces GHGs from transportation; expands clean, safe and affordable transportation options; promotes economic prosperity; and otherwise achieves sustainable community goals.

All states and the District of Columbia are required to conduct statewide transportation planning under the federal transportation funding framework. This framework has been established through a series of Congressionally-enacted transportation funding authorizations, most recently amended by the passage of Moving Ahead for Progress in the 21st Century Act (MAP-21), signed into law on July 6, 2012.<sup>3</sup> This federal framework creates minimum planning requirements, but states may establish additional policies or processes that more directly align transportation planning with sustainable community policies.

In contrast, there are no federal requirements for states to conduct statewide land use planning. TCI jurisdictions take different approaches to land use planning, with different degrees of state-level involvement. An important factor in state approaches to land use is that local governments often control many types of land use decisions,<sup>4</sup> a tradition that is particularly strong in the TCI region.

This section begins in Part A with an overview of the different statewide approaches to land use.

- A few states have committed to or are in the process of developing commitments to implement specific land use and transportation strategies to reduce GHGs in accordance with broader statewide targets.
- All TCI states have adopted principles or goals relevant to sustainable communities.
- There are two broad types of approaches to land use planning in the TCI region at the state level: some states directly conduct spatial (i.e., “place-based”) planning; states that do not conduct spatial planning attempt to influence land use through the use of principles or criteria. Six states and the District of Columbia conduct statewide land use planning, often with a focus on effecting compact development patterns and preserving open space.

Part B describes how, as a key part of their land use planning approaches, many states use place designations to target areas for growth, development, or infill, with the goal of promoting compact development in those areas and discouraging less dense development, or sprawl, outside those areas.

Part C explores different state approaches to address local government authority over land use, including whether states require local governments to conduct local planning, and whether they require or promote consistency between local plans and statewide plans or principles.

Part D examines the integration of state land use planning policies with state transportation planning.

Part E identifies mechanisms used by states to encourage or require projects to conform to statewide plans

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<sup>3</sup> Pub. L. No. 112-141; H.R. 4348, 112th Cong. (2012) (enacted).

<sup>4</sup> As a matter of legal doctrine, states generally have very broad authority to determine the degree of autonomy that counties and municipalities may exercise. In practice, however, local governments have traditionally held authority over land use and vehicle travel within their boundaries, and in many cases, states have explicitly conferred this authority to localities through their state constitutions or statutes. Richard Briffault, *Our Localism: Part I--The Structure of Local Government Law*, 90 COL. L. REV. 7 (1990).

or principles through project review or permitting.

## **A. Statewide Approaches to Land Use and Transportation Planning**

### ***Commitments to Reduce Greenhouse Gases***

A few states have created or are working to create plans to reduce statewide GHG emissions through specific strategies, including state strategies to reduce GHG emissions from land use or transportation.

- In 2010, Massachusetts DOT (MassDOT) launched GreenDOT, a comprehensive policy to help meet the GHG reduction targets set by the state's Climate Protection and Green Economy Act<sup>5</sup> by reducing 2.1 million tons of transportation sector emissions by 2020 (7.3 percent below 1990 levels).<sup>6</sup> The policy also aims to promote sustainability in the transportation sector, and applies to the full range of the agency's activities, from strategic planning to construction and system operations. MassDOT has set targets to achieve that goal from three groups of strategies:
  - 5.3 percent reduction by 2020 from construction and operations, more efficient fleets, travel demand management programs, eco-driving, and mitigation of development projects;
  - 0.7 percent reduction by 2020 from promotion of healthy transportation modes of walking, bicycling and public transit; and
  - 1.3 percent reduction by 2020 from support of smart growth development.

The initiatives MassDOT has already planned or is currently implementing to meet the goals of GreenDOT include incorporating the three targets and GHG emissions evaluation into the following: statewide and regional long-range planning; Transportation Improvement Programs (TIP) and state TIP (STIP) project prioritization and selection; project design and construction; and system operations, maintenance, and customer service. In May 2012, MassDOT released a draft implementation plan for GreenDOT.<sup>7</sup>

- Maryland's Greenhouse Gas Emissions Reduction Act required the state to develop a climate action plan by the end of 2011 that achieves economy-wide GHG reductions of 25 percent from 2006 levels by 2020, and to adopt a final plan by the end of 2012.<sup>8</sup>

In March 2012, Maryland's Department of the Environment (MDE) released a draft Plan to Reduce Greenhouse Emissions, designed to meet the 25 percent reduction by 2020 target.<sup>9</sup> As

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<sup>5</sup> MASS. GEN. LAWS ch. 21N § 4 (2011). The state reduction targets were established pursuant to the statute in IAN A. BOWLES, SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS, MASSACHUSETTS CLEAN ENERGY AND CLIMATE PLAN FOR 2020 (2010), <http://www.mass.gov/Eoea/docs/eea/energy/2020-clean-energy-plan.pdf>.

<sup>6</sup> MASSDOT, GREENDOT POLICY DIRECTIVE, NO. P-10-002, (2010), [www.massdot.state.ma.us/Portals/0/Downloads/P-10-002.pdf](http://www.massdot.state.ma.us/Portals/0/Downloads/P-10-002.pdf)

<sup>7</sup> MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, DRAFT GREENDOT IMPLEMENTATION PLAN (2012), <https://www.massdot.state.ma.us/GreenDOT/GreenDOTImplementationPlan.aspx>.

<sup>8</sup> MD. CODE ANN., ENVIR. § 2-1205(c) (LexisNexis 2011). Maryland's 2008 non-binding Climate Action Plan set a goal of returning statewide vehicle-miles traveled (VMT) to 2000 per capita levels by 2020 and ensuring continuing reductions in per capita VMT (light-duty passenger vehicles) of 30 percent by 2035 and 50 percent by 2050 from a 2020 baseline. MARYLAND COMMISSION ON CLIMATE CHANGE, CLIMATE ACTION PLAN 94 (2008), <http://www.mdclimatechange.us/>.

<sup>9</sup> MARYLAND DEPARTMENT OF THE ENVIRONMENT, MARYLAND'S PLAN TO REDUCE GREENHOUSE GAS EMISSIONS (2012), <http://www.mde.state.md.us/programs/Air/ClimateChange/Documents/2011%20Draft%20Plan/2011GGRADRAFT>



part of the plan, the Maryland Department of Transportation offered to address a proportionate share of emissions reductions through a series of policy measures with projected potential for GHG emissions reductions. The plan calls for 22 percent of the emissions reductions to come from the transportation sector, which accounted for 28 percent (29.7 million tons CO<sub>2</sub>e) of statewide emissions in 2006.<sup>10</sup> Policy measures to achieve the transportation-sector reductions include public transit initiatives (projected reductions of 1.97 million tons CO<sub>2</sub>e from doubling ridership), bike and pedestrian initiatives (0.41 million tons CO<sub>2</sub>e), and land use policy changes (1.01 million tons CO<sub>2</sub>e).<sup>11</sup> MDE will solicit public comment on the plan through a series of public workshops before the final version is due at the end of 2012.<sup>12</sup>

Other states are in the process of creating binding climate action or implementation plans pursuant to statewide GHG reduction targets:

- In July 2011, District of Columbia Mayor Vincent Gray launched the Sustainable DC planning initiative, led by the District Department of the Environment and Office of Planning. The District released its first sustainability plan in April 2012, *A Vision for a Sustainable DC*.<sup>13</sup> The plan sets broad policy goals, including reducing citywide GHG emissions by 50 percent by 2032 and 80 percent by 2050, cutting citywide energy use 50 percent by 2032, and shifting transportation modes so that 75 percent of all trips are walking, biking, or transit by 2032. It also provides a framework for developing and implementing policies to achieve these goals. The plan also proposes several pieces of legislation, including measures to facilitate accessing of private financial capital to create energy efficient buildings; promote renewable energy generating systems; and fully fund the ENERGY STAR building benchmarking program.
- In Connecticut, the 2008 Connecticut Global Warming Solutions Act sets mandatory economy-wide GHG emissions reduction targets of 10 percent below 1990 levels by 2020 and 80 percent by 2050.<sup>14</sup> The Act also requires that by January 1, 2012, the State's Commissioner of Environmental Protection file a report including a schedule of proposed regulations, policies and strategies to achieve the GHG targets.<sup>15</sup>
- In New York, a 2009 executive order (continued by current Governor Andrew M. Cuomo) established an economy-wide goal of reducing GHG emissions 80 percent by 2050 from 1990 levels, and created a Climate Action Council responsible for producing a climate action plan.<sup>16</sup> An interim report published by the Climate Action Council on Nov. 9, 2010, proposes a variety of emission reduction strategies to be considered for the land use and transportation sectors, including mode shift to transit and rail, priority growth centers, transit oriented development policies, and location-efficient development policies and incentives.<sup>17</sup> In addition, New York is

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Plan.pdf

<sup>10</sup> *Id.* at 127.

<sup>11</sup> *Id.* at 131-32. Most of the reductions from the transportation sector would be achieved through cleaner vehicles and fuels.

<sup>12</sup> *Id.* at 1.

<sup>13</sup> DC OFFICE OF PLANNING and DISTRICT DEPARTMENT OF THE ENVIRONMENT, *A VISION FOR A SUSTAINABLE DC* (2012),

<http://sustainable.dc.gov/sites/default/files/dc/sites/sustainable/publication/attachments/sustainable%20DC%20Vision%20Plan%202.2.pdf>.

<sup>14</sup> Connecticut Global Warming Solutions Act, CONN. GEN. STAT. § 22a-200a(a) (2010).

<sup>15</sup> CONN. GEN. STAT. § 22a-200a(c) (2010).

<sup>16</sup> N.Y. Exec. Order (David A. Patterson) No. 24, N.Y. COMP. CODES R. & REGS. tit. 9, § 7.24 (2009).

<sup>17</sup> NEW YORK STATE CLIMATE ACTION COUNCIL, CLIMATE ACTION PLAN INTERIM REPORT, at 7-1 to 8-1 (2010), <http://www.nyclimatechange.us/ewebeditpro/items/O109F24147.pdf>.

currently developing a State Energy Plan, pursuant to a 2009 statute that requires adoption of a final plan by March 15, 2013.<sup>18</sup> The plan will include sections on efficient transportation systems and smart growth, according to a scoping document adopted by the State Energy Planning Board in October 2011.<sup>19</sup> Finally, New York is engaged in a number of other potentially relevant planning and implementation efforts as part of its broader statewide energy and climate planning.<sup>20</sup>

### **Statewide Principles**

All TCI jurisdictions have some type of statewide principles, either in statute or in executive policy, that are consistent with sustainable community goals. TCI drew on these principles, as well as on the federal livability principles, in developing the principles articulated in the TCI agency heads' agreement to promote sustainable communities.<sup>21</sup> The way in which these principles guide state or local actions in practice varies widely. In states with statewide planning, plans are generally required to be guided by these principles. In other states, principles may be intended to guide executive branch agencies in their decision making.

#### **Statewide Principles Relevant to Sustainable Communities in TCI States**

<b>State</b>	<b>Principles Name/Document</b>	<b>Topical Coverage:</b>
Connecticut	Growth Management Principles in Conservation and Development Policies Plan (plan adopted by legislature) <sup>22</sup>	Land Use (LU), Environment (Env.)
District of Columbia	2006 Comprehensive Plan Principles (adopted plan pursuant to statute) <sup>23</sup>	LU, Env., Transportation (Transp.)
Delaware	2010 State Strategies for Policies and Spending (adopted plan pursuant to statute) <sup>24</sup>	LU, Transp.
Massachusetts	Sustainable Development Principles (2007) (executive branch policy) <sup>25</sup>	LU, Env., Transp.
Maryland	Twelve Planning Visions (statute) <sup>26</sup>	LU, Env., Transp.
Maine	Growth Management Act (statute) <sup>27</sup> Sensible Transportation Policy Act (statute) <sup>28</sup>	LU, Env., Transp.

<sup>18</sup> N.Y. ENERGY LAW § 6-104 (2011).

<sup>19</sup> New York State Energy Planning Board, Scope for the 2013 New York State Energy Plan 4-5 (2011), <http://www.nysenergyplan.com/meeting/Scope%20for%20the%202013%20Energy%20Plan.pdf>.

<sup>20</sup> See *New York's Portfolio of Energy and Climate Programs*, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, <http://www.dec.ny.gov/energy/43384.html#Statewide> (last visited Oct. 5, 2012).

<sup>21</sup> TRANSPORTATION AND CLIMATE INITIATIVE, AGREEMENT OF THE NORTHEAST AND MID-ATLANTIC STATES TO SUPPORT SUSTAINABLE COMMUNITIES (2011), [http://www.georgetownclimate.org/about/files/TCI\\_Sustainable\\_Communities\\_June2011.pdf](http://www.georgetownclimate.org/about/files/TCI_Sustainable_Communities_June2011.pdf).

<sup>22</sup> CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, CONSERVATION AND DEVELOPMENT POLICIES PLAN, 2005-2010 at 2 (2004), <http://www.ct.gov/opm/lib/opm/igp/cdplan/adopted2005-2010cdplan.pdf>.

<sup>23</sup> DISTRICT OF COLUMBIA, 2006 COMPREHENSIVE PLAN at 2-23 to 2-26 (2006), <http://planning.dc.gov/DC/Planning/Across+the+City/Comprehensive+Plan/2006+Comprehensive+Plan/Volume+1+Acknowledgements,+Introduction+and+Citywide+Elements/Framework>.

<sup>24</sup> DELAWARE OFFICE OF STATE PLANNING COORDINATION, DELAWARE STRATEGIES FOR STATE POLICIES AND SPENDING 19-28, 48 (2010), [http://stateplanning.delaware.gov/strategies/2010\\_state\\_strategies.pdf](http://stateplanning.delaware.gov/strategies/2010_state_strategies.pdf).

<sup>25</sup> *Sustainable Development Principles*, WEBSITE OF THE GOVERNOR OF MASSACHUSETTS, [http://www.mass.gov/Agov3/docs/smart\\_growth/patrick-principles.pdf](http://www.mass.gov/Agov3/docs/smart_growth/patrick-principles.pdf) (last visited Aug. 12, 2011).

<sup>26</sup> MD. CODE ANN., art. 66b § 1.01 (LexisNexis 2011).

<sup>27</sup> ME. REV. STAT. tit. 30-A § 4312 (2011).

New Hampshire	Smart Growth Principles (statute) <sup>29</sup>	LU, Env., Transp.
New Jersey	2001 state plan (adopted plan pursuant to statute); <sup>30</sup> 2011 state plan (draft) <sup>31</sup>	2001: LU, Eng.; 2011: LU, Env., Transp.
New York	Smart Growth Public Infrastructure Act (statute) <sup>32</sup>	LU, Env., Transp.
Pennsylvania	Keystone Principles and Criteria for Growth, Investment and Resource Conservation (executive policy, previous administration) <sup>33</sup>	LU, Env., Transp.
Rhode Island	State Goals and Policies (adopted pursuant to statute) <sup>34</sup>	LU, Env., Transp.
Vermont	State Planning and Development Goals (statute) <sup>35</sup>	LU, Env., Transp.

### ***Statewide Land Use Planning***

Six states – Connecticut, Delaware, Maryland, New Jersey, New Hampshire and Rhode Island – and the District of Columbia conduct statewide land use planning, often with a focus on effecting compact development patterns and preserving open space.

Beginning in the 1970s, some states across the country began to take a more active role in regulating land use in response to concerns about unregulated statewide growth.<sup>36</sup> This “growth management movement” often resulted in legislation that requires some type of statewide planning, as well as some provisions for encouraging consistency between statewide planning and local land use programs.<sup>37</sup> These six TCI states all have statutes dating back to the growth management movement of the 1970s, although state programs have often evolved since that time, and some are continuing to change.

Generally, these statewide planning programs require the state to produce a plan for future statewide land use, based on existing trends and projections, that is aligned with growth management principles either established in statute or developed by a state entity pursuant to the statute. These plans generally involve maps or other spatial elements that identify geographic areas where the state is planning for additional growth and development, and in most cases, areas where the state would like to limit development. (See II.B.).

<sup>28</sup> ME. REV. STAT. tit. 23 § 73 (2011).

<sup>29</sup> N.H. REV. STAT. ANN. § 9-B:3 (LexisNexis 2011).

<sup>30</sup> NEW JERSEY STATE PLANNING COMMISSION, NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN (2001), <http://www.nj.gov/state/planning/plan.html>.

<sup>31</sup> NEW JERSEY STATE PLANNING COMMISSION, STATE STRATEGIC PLAN: NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN, DRAFT FINAL 19-38 (2011), <http://www.nj.gov/state/planning/df.html>.

<sup>32</sup> N.Y. ENVTL. CONSERV. LAW § 6-0107(2) (Consol. 2011).

<sup>33</sup> PENNSYLVANIA ECONOMIC DEVELOPMENT CABINET, KEYSTONE PRINCIPLES FOR GROWTH, INVESTMENT, & RESOURCE CONSERVATION (2005), [pa.gov/portal/server.pt/document/816653/pkp\\_pdf](http://pa.gov/portal/server.pt/document/816653/pkp_pdf).

<sup>34</sup> RHODE ISLAND STATEWIDE PLANNING PROGRAM, STATE GUIDE PLAN, ELEMENT 110: GOALS AND POLICIES (1974), <http://www.planning.ri.gov/sgp/pdf/110.pdf>.

<sup>35</sup> VT. STAT. ANN. tit. 24 § 4302 (2011).

<sup>36</sup> Oregon's growth management legislation in 1973 was the first such act. Or. Rev. Stat. 197.005-.860 (2010).

<sup>37</sup> Douglas R Porter, *State Framework Laws for Guiding Urban Growth and Conservation in the United States*, 13 PACE ENVTL. L. REV. 547, 549 (1995); see also Jerry Anthony, *Do State Growth Management Regulations Reduce Sprawl?*, 39 URBAN AFFAIRS REV. 376, 379 (2004).

- Connecticut's statute requires the development and amendment of the state Conservation and Development Policies Plan, supervised by the Office of Policy and Management (OPM). In addition to planning future land use, recent amendments to the statute require the plan to include transportation elements, and future plans will be required to describe progress toward sustainable community outcomes and to include a goal for reducing carbon dioxide (CO<sub>2</sub>) emissions within the state, consistent with the recommendations of the state's climate action plan. OPM is required to prepare a state plan on a recurring five-year cycle, and the plan must be adopted by Connecticut's General Assembly to become effective.<sup>38</sup> The plan serves as a statement of the development, resource management, and public investment policies for the state, and is used as a framework for evaluating state agency plans and proposals submitted to OPM for review under a mandated review processes. The 2005-2010 Conservation and Development Policies Plan, which will be in effect until 2013, identifies six growth management principles, four development area policies, and four conservation area policies. The plan includes a Locational Guide Map that categorizes the state according to the development and conservation areas.<sup>39</sup> OPM is in the process of developing an update, with a final plan to be submitted to the state legislature by December 1, 2012.<sup>40</sup>
- Delaware's Strategies for State Policies and Spending plan and map is developed and adopted by the Cabinet Committee on Planning to fulfill a statutory requirement to advise the governor on the most desirable general pattern of land use, transportation pattern, location for state infrastructure, and land use planning actions. The plan is to be updated every five years. The plan is to serve as the primary policy guide and to direct state spending into the most efficient use of state resources.<sup>41</sup> The most recent plan was adopted in 2010, and it categorizes the state into four geographic "area levels" and an "out-of-play" area, with corresponding state investment strategies for each area.<sup>42</sup>
- Maryland has one of the oldest statewide planning programs, beginning with the establishment of the nation's first statewide planning commission in 1933 and the publication of a state plan in 1938. Since the 1990s, Maryland has required local planning in accordance with state planning "visions," (see II.C.), and has limited growth-related funding to priority funding areas, (see III.A.1). Maryland recently drafted its first contemporary state development plan, pursuant to a statutory requirement in the Land Use Act of 1974.<sup>43</sup> The statute requires the Maryland Department of Planning to prepare and revise a State Development Plan, which is to include analysis and evaluation of state capital plans, to identify areas of critical state concern, and to inform transportation planning in the state. The plan is reviewed and filed by the governor upon completion.<sup>44</sup> The plan creates a framework for coordinating state and local land use policy, including strategies to guide agency actions; a process to work with local governments to identify different area types (e.g., growth and revitalization areas, low density development areas); alignment of state plans, programs and investments with the plan; and a process for aligning state

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<sup>38</sup> CONN. GEN. STAT. §§ 16a-24 to 16a-33 (2011).

<sup>39</sup> CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, CONSERVATION AND DEVELOPMENT POLICIES PLAN, 2005-2010 (2004), <http://www.ct.gov/opm/lib/opm/igp/cdplan/adopted2005-2010cdplan.pdf> (approved in 2005).

<sup>40</sup> *Conservation and Development Policies Plan Update for 2013-2018*, CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, <http://www.ct.gov/opm/cwp/view.asp?a=2990&q=467686> (last visited Oct. 13, 2011).

<sup>41</sup> DEL. CODE ANN. tit. 29 § 9101 (2011).

<sup>42</sup> DELAWARE OFFICE OF STATE PLANNING COORDINATION, DELAWARE STRATEGIES FOR STATE POLICIES AND SPENDING 19-28, 48 (2010), [http://stateplanning.delaware.gov/strategies/2010\\_state\\_strategies.pdf](http://stateplanning.delaware.gov/strategies/2010_state_strategies.pdf).

<sup>43</sup> *Final Plan*, MARYLAND DEPARTMENT OF PLANNING, <http://plan.maryland.gov/plan/plan.shtml>.

<sup>44</sup> MD. CODE ANN., STATE FIN. & PROC. §§ 5-601 to 5-614 (LexisNexis 2011).

and local implementing mechanisms with the plan.<sup>45</sup> An executive order issued on Dec. 19, 2011, has mandated that state agencies develop implementation strategies for the plan.<sup>46</sup>

- New Hampshire's statute requires the governor to develop a comprehensive state development plan, assisted by the Office of Energy and Planning, and the governor is to transmit the plan to the New Hampshire General Court upon completion. The plan is to establish state policy on development related issues, and to contain sections on land use (including the state's role in land development and in funding projects) and transportation (considering all modes of transportation). The plan is to include a "special emphasis on maximizing" New Hampshire's statutory smart growth principles.<sup>47</sup> A state plan, which focused primarily on economic issues, was last adopted in 2000.<sup>48</sup> The statute requires updates every four years beginning in 2003, however no plan has been endorsed by the legislature since that time.
- New Jersey's State Planning Act established the State Planning Commission and required the commission to develop and amend a Development and Redevelopment plan for the state. The plan is to "represent a balance of development and conservation objectives best suited to meet the needs of the State," and is to establish "statewide planning objectives" for land use and transportation, as well as other areas. The plan is to serve as a tool for assessing suitable locations for infrastructure, growth and conservation; as well as to encourage development, redevelopment and economic growth in locations that are well situated with respect to present or anticipated public services and facilities, giving appropriate priority to the redevelopment, repair, rehabilitation or replacement of existing facilities and to discourage development where it may impair or destroy natural resources or environmental qualities. The State Planning Commission votes on whether to adopt a plan after an extensive "cross-acceptance" process required by statute, where the commission negotiates with county planning boards to achieve consistency between state and local plans. (See III.C). The statute calls for a three-year revision cycle, though in practice, the state plan has not been revised that frequently.<sup>49</sup> The last state plan was adopted in 2001, and particularly focused on revitalization of towns and cities.<sup>50</sup> The State Planning Commission completed a draft plan update in 2011 entitled the State Strategic Plan.<sup>51</sup>
- Rhode Island statute establishes the statewide planning program, and requires the adoption of a State Guide Plan by the state planning council. The state guide plan is to be composed of long-range and strategic elements, including a land use element and the state's long-range transportation plan.<sup>52</sup> The Guide Plan's goals and policies are extensive, and include land use, transportation and environment elements. The current land use element, Land Use 2025, was approved by the state planning council in 2006. It directs the state and communities to concentrate growth inside urban services boundaries and within locally designated centers in rural

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<sup>45</sup> MARYLAND DEPARTMENT OF PLANNING, PLANMARYLAND REVISED DRAFT PLAN (2011), [http://plan.maryland.gov/PDF/draftPlan/PM\\_revisedDraft.pdf](http://plan.maryland.gov/PDF/draftPlan/PM_revisedDraft.pdf).

<sup>46</sup> Md. Exec. Order No. 01.01.2011.22 (Martin O'Malley), <http://www.governor.maryland.gov/executiveorders/01.01.2011.22eo.pdf>.

<sup>47</sup> N.H. REV. STAT. ANN. § 9-A:1 (2011).

<sup>48</sup> New Hampshire in the New Economy: A Vision for Expanded Prosperity (2000), <http://www.nh.gov/oep/programs/SDP/documents/2000StateDevelopmentPlan.pdf>.

<sup>49</sup> State Planning Act, N.J. STAT. ANN. §§ 52:18A-196 to 18A-206 (2011).

<sup>50</sup> NEW JERSEY STATE PLANNING COMMISSION, NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN (2001), <http://www.nj.gov/state/planning/plan.html>.

<sup>51</sup> NEW JERSEY STATE PLANNING COMMISSION, STATE STRATEGIC PLAN: NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN, DRAFT FINAL (2011), <http://www.nj.gov/state/planning/df.html>.

<sup>52</sup> R.I. GEN. LAWS § 42-11-10; State Guide Plan Overview, RHODE ISLAND STATEWIDE PLANNING PROGRAM (last visited Sept. 29, 2011), <http://www.planning.ri.gov/sgp/sgp.htm>.



areas.<sup>53</sup> The current transportation element, also the state's long-range transportation plan, was approved in 2008, and is aligned with the land use plan.<sup>54</sup>

- The District of Columbia is required by its Home Rule Charter to prepare a comprehensive plan for the city, subject to review by the National Capital Planning Commission (the commission acts as the planning agency for the federal government in the District of Columbia).<sup>55</sup> The plan is typically required to include a land use map, and may include transportation or other elements.<sup>56</sup> The District's most recent adopted plan is the 2006 Comprehensive Plan. This plan includes a land use element, which identifies many sustainable community land use strategies such as infill development and transit-oriented development. It also includes a transportation element, with major goals including linking land use and transportation and increasing transportation choice.<sup>57</sup>

### ***Principles-based Approaches to Land Use***

The five TCI jurisdictions without statewide land use planning have developed different approaches that integrate land use considerations without creating a formal statewide land use plan. Common to these approaches is the use of principles for land use to guide state or local actions. These strategies include requiring growth-related state investments to be consistent with principles and creating incentives to encourage local land use actions that are similarly consistent.

- Maine's ten growth management principles serve as the basis for a voluntary local comprehensive planning program, and state grants are required to give preference to communities with plans consistent with the principles.<sup>58</sup> (See III.C). Another Maine statute requires that transportation decisions, including investment decisions, follow specific state policies, including reduction of oil use and consistency with the state's growth management principles.<sup>59</sup>
- Massachusetts agencies are to be guided by the state's sustainable development principles.<sup>60</sup> From fiscal year 2005-2011, Massachusetts aligned its capital spending with these principles through the Commonwealth Capital program, which took sustainability factors into account in project scoring (see **Error! Reference source not found.**).
- New York has established a suite of programs aligned with sustainable community goals. These programs both direct state action and promote municipal and regional planning and actions consistent with smart growth principles and actions. Components of this approach include the following:
  - The 2010 Smart Growth Public Infrastructure Policy Act, which requires that all infrastructure projects approved, undertaken or financed by the state be evaluated for consistency with smart growth criteria, to the extent practicable;

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<sup>53</sup> RHODE ISLAND DEPARTMENT OF ADMINISTRATION, LAND USE 2025: RHODE ISLAND STATE LAND USE POLICIES AND PLAN (2006), <http://www.planning.ri.gov/landuse/121/landuse2025.pdf>.

<sup>54</sup> RHODE ISLAND DEPARTMENT OF ADMINISTRATION, TRANSPORTATION 2030: LONG-RANGE TRANSPORTATION PLAN, 2008 UPDATE (2008), <http://www.planning.ri.gov/transportation/trans2030.pdf>.

<sup>55</sup> D.C. CODE § 2-1002 (2011).

<sup>56</sup> D.C. CODE §§ 2-1002, 1-306.02 (2011).

<sup>57</sup> DISTRICT OF COLUMBIA, 2006 COMPREHENSIVE PLAN (2006), <http://planning.dc.gov/DC/Planning/Across+the+City/Comprehensive+Plan/2006+Comprehensive+Plan>.

<sup>58</sup> ME. REV. STAT. tit. 30-A, §§ 4311 to 4457 (2011).

<sup>59</sup> Sensible Transportation Policy Act, ME. REV. STAT. tit. 23, § 73 (2011).

<sup>60</sup> *Sustainable Development Principles*, WEBSITE OF THE GOVERNOR OF MASSACHUSETTS, [http://www.mass.gov/Agov3/docs/smart\\_growth/patrick-principles.pdf](http://www.mass.gov/Agov3/docs/smart_growth/patrick-principles.pdf) (last visited Aug. 12, 2011).



- Alignment of the state’s environmental review statute (“baby NEPA”) with sustainable community factors (see III.D);
  - The Cleaner, Greener Communities program, which will provide direct funding for local government consortiums to create and implement a regional sustainability plan (see **Error! Reference source not found.**);
  - The Climate Smart Communities program, a self-designation program for municipalities pledging to reduce GHG emissions, including through transportation (see III.B).
- Pennsylvania’s Keystone Principles, developed by an Interagency Land Use Team and adopted by the Economic Development Cabinet in 2005, are intended to guide a coordinated interagency state investment process. The principles are aligned with sustainable community policies, including “fix-it-first” and “concentrated development” among its principles. Criteria for implementing these principles were released in 2010.<sup>61</sup> (See IV.A).
  - Vermont’s Act 200 aimed to create a statewide planning framework for state, local and regional agencies and included specific land use and transportation goals to guide planning. The act provides financial incentives for towns to plan, but does not require local planning.<sup>62</sup> The state-level planning aspects of the act have not been implemented.<sup>63</sup> A subsequent Growth Center Law also codifies smart growth principles.<sup>64</sup>

### ***Department of Transportation Planning Initiatives***

There are many ways in which transportation departments in TCI jurisdictions align their work with sustainable community goals. A few state DOTs have developed major departmental initiatives that bear directly on the integration of land use and transportation, and are included here as notable examples of state-level transportation planning. (Other state DOTs are engaging in similar work as parts of statewide programs).

- New Jersey’s Department of Transportation established the Future in Transportation (NJ FIT) program, a “comprehensive and cooperative approach to transportation and land use planning” with the aim of improving the “quality of life, safety and ease of travel.” The program has eight sustainable communities-aligned goals, including healthy streets and communities, sensible land use and sustainability, and more ways to travel. It also includes eight tools to address these goals, including Complete Streets, context sensitive design, main street design, the NJ Transit Village and Hubs program that promotes transit-oriented development, and a Smart Transportation guidebook (developed with Pennsylvania DOT).<sup>65</sup>
- Beginning in 2004, Pennsylvania’s Department of Transportation (PennDOT) adopted the Smart Transportation initiative.<sup>66</sup> Smart Transportation, which is supported by the Rockefeller Foundation and the federal Department of Transportation, aims to promote “smart transportation” practices that foster equitable economic development and environmental sustainability. A major

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<sup>61</sup> BROCHURE, KEYSTONE PRINCIPLES AND CRITERIA FOR GROWTH, INVESTMENT AND RESOURCE CONSERVATION (2010), [http://www.newpa.com/sites/default/files/uploads/Keystone-Principles-brochure\\_rev91.pdf](http://www.newpa.com/sites/default/files/uploads/Keystone-Principles-brochure_rev91.pdf).

<sup>62</sup> VT. STAT. ANN. tit. 24, § 4302.

<sup>63</sup> See VT. DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS, STATUS REPORT: 15 YEARS AFTER ACT 200 (2004), [www.dhca.state.vt.us/Planning/ACT200\\_15Years.doc..](http://www.dhca.state.vt.us/Planning/ACT200_15Years.doc..)

<sup>64</sup> VT. STAT. ANN. tit. 24, § 2791(13).

<sup>65</sup> *New Jersey Future in Transportation Overview*, NEW JERSEY DEPARTMENT OF TRANSPORTATION, <http://www.nj.gov/transportation/works/njfit/> (last visited Oct. 14, 2011).

<sup>66</sup> PENNSYLVANIA SMART TRANSPORTATION, <http://www.smart-transportation.com/> (last visited Oct. 14, 2010).

focus of the program is to integrate transportation investments with land use planning and community revitalization. Key components of the program, as identified in a 2010 assessment conducted by the State Smart Transportation Initiative,<sup>67</sup> include

- A shift in capital investment strategies based on a “fix-it-first” policy;
- A fundamental change in project design and development guidelines, exemplified by the Smart Transportation Guidebook, produced with New Jersey DOT;
- Creation of the Pennsylvania Community Transportation Initiative (PCTI), a competitive funding program for sustainable communities-aligned projects (see **Error! Reference source not found.**).
- The District of Columbia Department of Transportation developed a Sustainability Plan as a decision-making guide to ensure that sustainable practices are incorporated into agency activities. The plan identifies eight priority areas, including promoting transportation and land use linkages; improving mode choices, accessibility, and mobility and promoting livability.<sup>68</sup>

## B. Use of Geographic Growth, Infill and Protection Designations

A key strategy used by states to plan or encourage specific land use outcomes is to target areas for development or infill through special designations, and to identify areas that are to be conserved and where growth or development is to be limited or even prohibited.

These designation approaches range from statewide planning programs that identify each part of a state as a particular area type with a corresponding level of desired development or conservation to voluntary stand-alone designation programs that provide incentives to communities that identify specific areas as targeted for infill or development.

### **Geographic Designations as Part of Statewide Planning**

Five of the TCI states that have statewide planning functions include some type of geographic designation as part of their plans. Delaware, Connecticut, Maryland, and New Jersey all use approaches that apply designations to all land in the state, and each of these states aims to align

**Figure 1: Delaware's State Strategies Area Designations**

All land in Delaware is designated as one of four area types.

Area Level	Investment Strategy
<b>1 Cities, Towns &amp; Villages</b> City/town/village areas where population is concentrated, commerce is bustling, and a wide range of housing types already exists; contains core commercial area, several modes of transportation and a variety of housing options.	<b>Redevelop and Reinvest</b> State policies will encourage redevelopment and reinvestment.
<b>2 Suburbs &amp; Small Towns</b> Rapidly growing suburbs and smaller towns that have, or plan to have, public water, wastewater and utility services. These areas serve as a transition between Investment Level 1 Areas and the state's more open, less populated areas.	<b>Well-Designed Development</b> Promote well-designed development, including a variety of housing types, user-friendly transportation systems, recreation and other public facilities.
<b>3 Farmland &amp; Natural Resources</b> Significant areas of important farmland and natural resources located either adjacent to, or contained within, more rapidly growing areas; regional roadways.	<b>Maintain Existing + Phased Growth</b> Maintain existing infrastructure. Invest in phased, guided future growth only after Levels 1 and 2 are substantially built out, or when the infrastructure or facilities are logical extensions of existing systems.
<b>4 Rural &amp; Undeveloped Areas</b> Rural areas with agribusiness, farms and settlements, typically located at historic crossroads. Also undeveloped natural areas such as forestlands; state and county parks; fish and wildlife preserves.	<b>Discourage Additional Development</b> Retain the rural landscape and preserve open spaces and farmlands. Discourage additional development.

<sup>67</sup> STATE SMART TRANSPORTATION INITIATIVE, REVIEW OF PENNDOT'S SMART TRANSPORTATION (2010), [www.cows.org/pdf/rp-SSTI-PennDOT.pdf](http://www.cows.org/pdf/rp-SSTI-PennDOT.pdf).

<sup>68</sup> DISTRICT DEPARTMENT OF TRANSPORTATION, SUSTAINABILITY PLAN (2010), <http://ddot.dc.gov/DC/DDOT/Projects+and+Planning/Environment/Sustainability+Plan>.

state policies with their geographic designations. As detailed in Part 0, this includes using the designations to limit state infrastructure investments to designated growth or infill areas.

- Delaware's Strategies for State Policies and Spending includes a map that designates all land area in the state as one of four "area levels" or as an "Out-Of-Play" area. Each area level has an associated investment strategy. (See Figure 1: Delaware's State Strategies Area Designations). For Levels 1-3, state policies support growth and economic development activities in different degrees. In these areas, the state encourages local government land use policies that promote higher densities and mixed-use type development. In Level 4, state policies support agriculture and open-space activities, and the state encourages local land use policies that are rural in nature but discourages other development. Out-of-Play areas are lands that are not available for development or for redevelopment, such as publicly-owned lands, lands with serious legal constraints on development, and conservation lands.<sup>69</sup>
- Connecticut's Conservation and Development plan (C&D Plan) similarly defines four types of development areas and four types of conservation areas. The development area types are regional centers, neighborhood conservation areas, growth areas, and rural community centers. Conservation areas include preserved open space, preservation areas, conservation areas, and rural lands. All lands are designated as one of these eight types, and state agencies are required to consider the plan in making agency plans and certain growth-related actions are required to be consistent with the area types.<sup>70</sup> Beginning with the 2013 C&D Plan, the Office of Planning and Management is to develop recommendations for creating "Priority Funding Areas."<sup>71</sup>
- New Jersey's Development and Redevelopment Plan uses a "centers" hierarchy as a key organizing principle. Centers are defined as compact forms of development, ranging in scope from hamlets to urban centers, with defined cores, neighborhoods, and boundaries or "edges," and are intended to designate areas for future growth and development. Outside of centers are "environs," which contain large contiguous areas of farmland, open space and forests or woodlands, and designated areas where growth is to be minimized. Centers and environs act as target areas for future development or conservation, and they are framed within a broader category of "planning area" designations that categorize lands by their existing conditions, such as density, infrastructure, level of development and natural resources. Identified planning areas include metropolitan, suburban, fringe, rural, and environmentally sensitive areas.<sup>72</sup> Under the 2011 State Strategic Plan, the focus will shift from defined "planning areas" to a criteria-based process which will result in four categories: Priority Growth Investment Areas, Priority Preservation Investment Areas, Alternate Growth Investment Areas, and Limited Growth Investment Areas.<sup>73</sup>

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<sup>69</sup> DELAWARE OFFICE OF STATE PLANNING COORDINATION, DELAWARE STRATEGIES FOR STATE POLICIES AND SPENDING 13, 18 (2010), [http://stateplanning.delaware.gov/strategies/2010\\_state\\_strategies.pdf](http://stateplanning.delaware.gov/strategies/2010_state_strategies.pdf).

<sup>70</sup> CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, CONSERVATION AND DEVELOPMENT POLICIES PLAN, 2005-2010 4-6 (2004), <http://www.ct.gov/opm/lib/opm/igp/cdplan/adopted2005-2010cdplan.pdf> (approved in 2005).

<sup>71</sup> An Act Concerning Plans of Conservation and Development, 2005 Conn. Pub. Acts 205; CONN. GEN. STAT. ch. 297a, § 16a-35c to 16a-35g (2010).

<sup>72</sup> NEW JERSEY STATE PLANNING COMMISSION, NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN 234-254 (2001), <http://www.state.nj.us/state/planning/docs/execsumm030101.pdf>.

<sup>73</sup> NEW JERSEY STATE PLANNING COMMISSION, STATE STRATEGIC PLAN: NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN, DRAFT FINAL 38-39 (2011), <http://www.nj.gov/state/planning/df.html>; see OFFICE FOR PLANNING ADVOCACY, NEW JERSEY DEPARTMENT OF STATE, ADVANCE NOTICE OF RULES: PRIORITY INVESTMENT AREA CRITERIA (2012), <http://www.nj.gov/state/planning/docs/priority-investment-criteria.pdf>.

- Maryland is in the process of refining its approach to geographic designations. Beginning in 1997 after passage of the Priority Funding Act, Maryland required jurisdictions to designate Priority Funding Areas (PFAs) based on criteria including zoned densities and infrastructure. After the locally proposed areas were reviewed by the Maryland State Planning Department, major sectors of state spending for growth-related programs and infrastructure were limited to these areas.<sup>74</sup> (see 0). In some cases, Maryland found that municipalities designated PFAs that did not meet the criteria, and the Maryland Department of Planning (MDP) has challenged these designations.<sup>75</sup> A 2009 statute establishes a statewide land use goal “of increasing the current percentage of growth within the PFA and decreasing the percentage of growth outside the PFA.” It also requires that local jurisdictions develop a percentage goal toward achieving the statewide goal, and that the jurisdictions report their progress toward the goal (see V.B).<sup>76</sup>

In 2010, Maryland’s Sustainable Communities Act created a new “Sustainable Communities” designation, intended to create a common platform for state investment in the revitalization of existing communities. Designation of appropriate boundaries and implementation plans associated with them are developed by local jurisdictions and subject to review and approval by Maryland’s Smart Growth Sub-cabinet. (See **Error! Reference source not found.**)

Maryland’s draft state plan would further build on these designations, establishing five “place” designations and five “special area” designations in order to better direct growth and protection/conservation. The place designations, identifying different types of potential growth areas, are: growth and revitalization areas; established community areas in priority funding areas; future growth areas; low density development areas; and rural resource areas. Special area designations are: priority preservation areas for agriculture; ecological areas; water resource areas; historic and cultural areas; and areas subject to the effects of climate change. The plan does not apply these designations, but rather establishes a joint process by which local governments and the state may nominate areas for designations. Ultimately, the state’s Smart Growth Subcabinet will make determinations of place designations.<sup>77</sup>

- Rhode Island’s Land Use Plan 2025 includes two types of geographic designations. First, it delineates urban services boundaries on the future land use map, with the aim of encouraging a distinct urban/rural demarcation. Areas within the urban services boundaries are intended to accommodate more intensive development. Conversely, public services in areas outside the Urban Services Boundary are anticipated to be more limited, and planned development intensities should accordingly be lower. The plan also identifies growth centers, which are areas in both developed and rural locations that have the potential to become higher-density compact development areas.<sup>78</sup>

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<sup>74</sup> MD. CODE ANN., State Fin. & Proc. §§ 5-7B-04(a), § 5-7B-05.

<sup>75</sup> MDP refers to these areas as “comment areas” and recommends that other state agencies do not fund projects in those areas. *Note on Priority Funding Areas Boundaries*, MARYLAND DEPARTMENT OF PLANNING, [http://www.planning.maryland.gov/msdc/PFA/pfa\\_note.shtml](http://www.planning.maryland.gov/msdc/PFA/pfa_note.shtml) (last visited Oct. 14, 2011).

<sup>76</sup> The Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions, MD. CODE ANN., art. 66B, § 3.10 (b)(2) (2011).

<sup>77</sup> MARYLAND DEPARTMENT OF PLANNING, PLAN MARYLAND, REVISED DRAFT PLAN, chs. 4, 6 (2011), [http://plan.maryland.gov/PDF/draftPlan/PM\\_revisedDraft.pdf](http://plan.maryland.gov/PDF/draftPlan/PM_revisedDraft.pdf).

<sup>78</sup> RHODE ISLAND STATE GUIDE PLAN, ELEMENT 121: LAND USE 2025, RHODE ISLAND STATE LAND USE POLICY AND PLAN at 01 (2006), [http://www.planning.ri.gov/landuse/121\\_10.pdf](http://www.planning.ri.gov/landuse/121_10.pdf).



## Other Geographic Designations

In other cases, states may have stand-alone designation programs.

- Vermont's Act 183 creates a framework for designation of different types of growth centers, including "downtown," "village center," and "growth center," with the goal of maintaining a settlement pattern of compact village and urban development surrounded by rural countryside.<sup>79</sup> Designated centers qualify for benefits such as tax credits, financing options, and grant preferences. Designation is a voluntary process undertaken by the local governments, with the ultimate decision on the designation granted by the state's "Expanded Downtown Board." Local governments applying for the designation must delineate a proposed growth center, amend their municipal plans, and draft policies and implementation measures that meet statutory criteria for a given designation in a way that is most appropriate for the municipality.<sup>80</sup>
- The New York Climate Smart Communities program is a voluntary self-designation program to encourage GHG emission reductions through strategies including land use and transportation.<sup>81</sup> Towns, cities, villages, and counties can join CSC by adopting the Climate Smart Communities Pledge, which includes commitments to inventory GHG emissions and set reduction goals, and to promote climate protection through community land use tools, among other reduction strategies. New York provides dedicated outreach and technical support related to data gathering and tracking, goal setting, and guidance and resources to assist with implementation, funded through a portion of the state's Regional Greenhouse Gas Initiative (RGGI) funding (\$1.7 million for fiscal year 2011-2012).<sup>82</sup>
- New York's Smart Growth Public Infrastructure Policy Act also includes several location-related criteria -- such as infill and redevelopment in "municipal centers," Transit-Oriented Developments, and brownfield areas, among others -- in its list of ten Smart Growth criteria, under which public infrastructure projects must be evaluated for consistency to receive funding and/or approval from state agencies.<sup>83</sup>
- The Massachusetts Growth Districts Initiative provides support to designated infill areas, such as support with local and state permitting, site preparation, infrastructure improvements, and marketing, to encourage "development readiness." The Massachusetts Executive Office of Housing & Economic Development is to identify growth districts on an on-going basis in partnership with regional planning agencies and local communities. In order to be eligible, communities must meet fundamental characteristics, including pre-planned zoning, streamlined permitting, market-based planning, and transit availability.<sup>84</sup>

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<sup>79</sup> VT. STAT. ANN. tit. 24, § 2791(13).

<sup>80</sup> VERMONT PLANNING COORDINATING GROUP, GROWTH CENTER PLANNING MANUAL FOR VERMONT COMMUNITIES 8-11 (2007), <http://www.dhca.state.vt.us/Planning/GCManualPart1.pdf>.

<sup>81</sup> *Climate Smart Communities*, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, <http://www.dec.ny.gov/energy/50845.html> (last visited Aug 4, 2011).

<sup>82</sup> RGGI is a regional greenhouse gas cap-and-trade program. Participating states, which include most of the states in the TCI region, set a cap on GHG emissions from power plants, and issue allowances that covered sources must hold for their GHG emissions. Most allowances are auctioned, and state's typically use the revenues for activities related to addressing climate change. NEW YORK STATE ENERGY RESEARCH DEVELOPMENT AUTHORITY, OPERATING PLAN FOR INVESTMENTS IN NEW YORK UNDER THE CO2 BUDGET TRADING PROGRAM AND THE CO2 ALLOWANCE AUCTION PROGRAM at 4-15 to 4-16 (2010). 2011-2012 allocation figure per New York State Department of Environmental Conservation.

<sup>83</sup> State Smart Growth Public Infrastructure Act, N.Y. ENVTL. CONSERV. LAW § 6 *et seq.* (Consol. 2011).

<sup>84</sup> MASSACHUSETTS EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT, GROWTH DISTRICTS INITIATIVE

- A Maryland statute establishes a process by which the transportation secretary and a local jurisdiction can jointly designate Transit-Oriented Development (TOD) projects. The designation establishes the project as a “transportation purpose” and makes it eligible for a number of benefits, including financing, use of state land, prioritization for state facility location, planning and technical support, and tax credits.<sup>85</sup>

### C. Relationships to Local Planning and Land Use Authorities

Local governments traditionally exercise a high level of control over land use, and that tradition is particularly strong in the TCI region. This is due in part to the fact that nearly all TCI states have Home Rule statutes that provide broad grants of authority to municipal governments.

This can be a challenge for statewide approaches to sustainable communities, because state land use goals and visions are often dependent on the actions, or non-actions, of local governments. An additional challenge is that different municipalities and counties have different planning and zoning capacities, and this can vary among, and even within, states.

A key mechanism in coordinating state-level planning and decision making with local government actions is the legal framework for local planning. In all TCI jurisdictions, local governments derive their planning authorities through state law.

TCI jurisdictions either enable or require local-level land use planning. Some jurisdictions that enable planning create structural or financial incentives to encourage planning. Some TCI states have also developed mechanisms to encourage consistency between state plans or principles and local land use plans.

States may also provide technical assistance to inform the development of local level land use regulations that support sustainable outcomes, such as overlay zones to promote transit-oriented development, measures to promote transfer of development rights, and others.

#### **Background: Home Rule in the TCI Region**

As a matter of law, states generally have very broad authority to determine the degree of autonomy that counties and municipalities may exercise.”<sup>86</sup> In practice, however, local governments have traditionally held authority over land use and vehicle travel within their boundaries,<sup>87</sup> and in many cases, states have explicitly conferred this authority to localities through their state constitutions or statutes. One way that states have conferred such authority is through “Home Rule” constitutional amendments and statutes, which confer some degree of legislative autonomy to local governments, often explicitly or implicitly including authority over land-use and local vehicle traffic.<sup>88</sup> In the TCI region, ten states have

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DESCRIPTION,

[http://www.mass.gov/Ehed/docs/permitting/final\\_gdi\\_description.doc](http://www.mass.gov/Ehed/docs/permitting/final_gdi_description.doc).

<sup>85</sup> TRANSP. § 7-101(m); § 7-102(a)-(b). Eligible projects must be adjacent to or within a half-mile of a transit facility, and must be “planned to maximize the use of transit, walking, and bicycling by residents and employees.”; MARYLAND DEPARTMENT OF TRANSPORTATION, THE DESIGNATION OF TRANSIT ORIENTED DEVELOPMENT PROJECTS, FREQUENTLY ASKED QUESTIONS (2011),

<http://www.mdot.maryland.gov/Planning/TOD/Documents/Revised%20TOD%20FAQ%204%206%202011.pdf>.

<sup>86</sup>“As a matter of conventional legal theory, the states enjoy complete hegemony over local governments.” The relationship between states and local governments has been described as that between a government and an agency - the agency is only able to exercise authority explicitly delegated to it by the state. Richard Briffault, *Our Localism: Part I--The Structure of Local Government Law*, 90 COL. L. REV. 7, 7-8 (1990).

<sup>87</sup>*Id.*

<sup>88</sup>Paul S Weiland, *Federal and State Preemption of Environmental Law: A Critical Analysis*, 24 HAR. ENVNT'L L. REV. 237 (2000).



constitutional amendments or statutes that confer Home Rule to most municipalities, or allow municipalities to opt in. These states are: Connecticut, Delaware, Maine, Maryland, Massachusetts, New York, Pennsylvania, New Hampshire, New Jersey, and Rhode Island.<sup>89</sup>

At the same time, one legal constraint on municipalities is the doctrine known as “Dillon’s rule.” Dillon’s rule, named after the 1868 decision written by Judge John F. Dillon of Iowa, holds that local governments may exercise only those powers explicitly granted to them by the statute, necessarily or fairly implied by statute, or essential to the object and purpose of the municipal corporation.<sup>90</sup> Among TCI states, all but Massachusetts and New Jersey apply Dillon’s rule to some degree.<sup>91</sup>

Where both Home Rule and Dillon’s rule apply, the question of whether a municipality has authority to take a particular action will be determined by whether the grant of Home Rule, or some other state statute, provides such authority.<sup>92</sup>

### ***State Requires or Enables Local Planning***

Maryland,<sup>93</sup> Massachusetts,<sup>94</sup> New Jersey,<sup>95</sup> and Rhode Island<sup>96</sup> all require municipal governments to develop local land use plans. Maryland and Rhode Island both require these plans to include transportation elements and Maryland has several additional required elements intended to help ensure that planning takes critical sustainability questions into account, such as the strength and stability of available water resources.

Pennsylvania<sup>97</sup> and Delaware<sup>98</sup> require their counties to develop land use plans, although they are optional for municipalities.<sup>99</sup>

The remaining TCI states – Connecticut,<sup>100</sup> Maine,<sup>101</sup> New Hampshire,<sup>102</sup> New York,<sup>103</sup> and Vermont<sup>104</sup> –

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<sup>89</sup> See *Home Rule in the States*, COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND, <http://celdf.org/home-rule-in-the-states> (last visited Oct. 11, 2012).

<sup>90</sup> Briffault, *supra* note 86, at 8.

<sup>91</sup> JESSE J. RICHARDSON JR., MEGHAN ZIMMERMAN GOUGH & ROBERT PUENTES, IS HOME RULE THE ANSWER? CLARIFYING THE INFLUENCE OF DILLON’S RULE ON GROWTH MANAGEMENT 17-21(2003), [http://www.brookings.edu/reports/2003/01/metropolitanpolicy\\_richardson.aspx](http://www.brookings.edu/reports/2003/01/metropolitanpolicy_richardson.aspx); *Local Government Authority*, NATIONAL LEAGUE OF CITIES, [http://www.nlc.org/about\\_cities/cities\\_101/153.aspx](http://www.nlc.org/about_cities/cities_101/153.aspx) (last visited Oct. 12, 2010).

<sup>92</sup> Briffault, *supra* note 86, at 17.

<sup>93</sup> MD. CODE ANN. § 66B-3.01 (2011).

<sup>94</sup> Required for towns above 10,000 in population. MASS. GEN. LAWS ch. 41, §§ 81A, 81D (2011).

<sup>95</sup> N.J. STAT. ANN. § 40A:12A-7 (2011).

<sup>96</sup> R.I. GEN. LAWS § 45-22-1 (2011).

<sup>97</sup> 53 PA. CONS. STAT. § 10301-7 (2011).

<sup>98</sup> DEL. CODE ANN. tit. 22, § 702 (2011). Most of Delaware’s local governments have developed comprehensive plans. *Municipalities*, DELAWARE OFFICE OF STATE PLANNING COORDINATION, <http://stateplanning.delaware.gov/information/municipalities.shtml> (last visited Oct. 14, 2011).

<sup>99</sup> As noted previously and emphasized by TCI state staff, county planning and zoning capacity varies within and among states. The role of counties also depends on the extent that a state’s land area is encompassed within municipal boundaries. In some states a majority of the land area is within municipal boundaries and therefore subject to municipal land use regulations. In others, a greater portion is outside of municipal boundaries, and therefore the role of the county is more important.

<sup>100</sup> CONN. GEN. STAT. § 8-19(a) (2011). Connecticut enables the creation of municipal planning commissions and requires those commissions to submit plans at least once every ten years, though that requirement has been suspended until 2013. An Act Concerning the State Plan of Conservation and Development and Dissolving the Wolcottville School Society, Public Act No. 10-138, Sec. 5(3).

<sup>101</sup> ME. REV. STAT. tit. 30-A, § 4323 (2011).

<sup>102</sup> N.H. REV. STAT. ANN. § 673 (2011).

have enabling statutes that authorize local governments to conduct land use planning. In many cases, these state enabling statutes require a certain type of planning model and process for governments that choose to undertake land use planning.

In some cases, such an enabling statute may create a structural incentive for municipalities to undertake planning and other land use authority. In Maine, a municipality that does not adopt a comprehensive plan may not create a shoreland zoning ordinance that goes beyond state minimum requirements, nor create an impact fee ordinance or a rate of growth or building cap ordinance.<sup>105</sup>

Some states have also created incentives to encourage local planning where such planning is voluntary.

- Maine provides preferences in state grants to municipalities that have received a state certification for a comprehensive plan or growth management program.<sup>106</sup> (See **Error! Reference source not found.**).
- New York's Cleaner, Greener Communities<sup>107</sup> grant program and Vermont's Municipal and Regional Planning Fund<sup>108</sup> both provide planning grants to municipalities. (See **Error! Reference source not found.**).

### ***Mechanisms for Requiring Consistency between Local Plans and State Plans or Principles***

TCI states have developed a variety of mechanisms to encourage consistency between local land use plans and state land use plans or land use principles. In a reflection of the strong tradition of local control over local land use, no state outright requires consistency between local plans and state plans or principles, although Delaware is an example of a state with a very strong review process. Several TCI states do have comprehensive mechanisms for encouraging consistency, generally following one of two models. In one model, the state uses a negotiation or "cross acceptance" process between the state and local levels to achieve a consistent vision. In another model, the state reviews local planning for consistency, sometimes coupled with incentives or defacto penalties for municipalities that are found to be inconsistent.

- New Jersey developed an extensive process for negotiating a consistent vision between local and state level plans, referred to as the "cross-acceptance" process. In cross acceptance, the negotiation takes places between the state planning commission and local negotiating entities (usually the county planning board) made up of representatives of local governments in a given intrastate region. The cross-acceptance process works as follows:
  - The State Planning Commission published a preliminary plan and took comments on it;
  - The negotiating entity creates a work program to review relevant local plans and data and compare them to the preliminary plan, and to engage the public;

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<sup>103</sup> N.Y. GEN. MUN. LAW §§ 20(25) (Consol. 2011).

<sup>104</sup> VT. STAT. ANN. tit. 24, § 4321 (2011).

<sup>105</sup> MAINE STATE PLANNING OFFICE, BROCHURE: WHY CREATE A COMPREHENSIVE PLAN CONSISTENT WITH MAINE'S GROWTH MANAGEMENT ACT?, <http://www.maine.gov/spo/landuse/docs/complanning/reasonsforcompplan.pdf>.

<sup>106</sup> ME. REV. STAT. tit. 30-A, § 4349-A(3-A) (2011).

<sup>107</sup> NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, FUNDING AVAILABILITY ANNOUNCEMENT: CLEANER, GREENER COMMUNITIES REGIONAL SUSTAINABILITY PLANNING PROGRAM (2011), [www.nyserda.org/cfa/files/cgc-guidance-document.pdf](http://www.nyserda.org/cfa/files/cgc-guidance-document.pdf)

<sup>108</sup> NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, FUNDING AVAILABILITY ANNOUNCEMENT: CLEANER, GREENER COMMUNITIES REGIONAL SUSTAINABILITY PLANNING PROGRAM (2011), [www.nyserda.org/cfa/files/cgc-guidance-document.pdf](http://www.nyserda.org/cfa/files/cgc-guidance-document.pdf)

- Negotiating entities may apply for state grants to fund the cross-acceptance process;
- The negotiating entity reviews the preliminary plan according to its work program, and creates cross-acceptance report that outlines the degree of consistency or inconsistency with the preliminary plan and includes proposed modifications to either the preliminary plan or the municipal, county, regional or state plans;
- The negotiating entity and the state planning commission's negotiating committee attempt to resolve the differences through negotiation, with the aim of achieving an agreement calling for specific modifications in the local and regional plans, or the state plan, to achieve consistency;
- Both parties prepare statements of agreement and disagreement reflecting results of negotiations;
- The State Planning Commission incorporates statements of agreement and disagreement into draft final plan;
- Local governments have another opportunity to comment on draft final plan before approval by State Planning Commission.<sup>109</sup>

New Jersey's 2011 Draft Final State Strategic Plan recognizes the complexities of this process and is working toward a comprehensive but less cumbersome process to be effective in the future.<sup>110</sup>

- Connecticut is required by a 2010 law to develop a new process for adoption of its state plan based on "cross-acceptance," referring specifically to New Jersey's process.<sup>111</sup> The Connecticut Office of Policy and Management conducted a review of the New Jersey process in 2010 and proposed a similar model for Connecticut for its upcoming Conservation and Development Plan revision.<sup>112</sup> Under current statutes, the state agency reviews regional plans for consistency, and regional entities review state plans, but the state does not require consistency.
- Delaware also uses a state review and certification process of county and municipal plans for consistency with the state's goals, strategies and policies, and negotiation is required where local plans are required to be inconsistent. Ultimately the executive may choose not to "certify" a local plan due to inconsistency, although the state may not compel consistency.<sup>113</sup>

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<sup>109</sup> N.J. REV. STAT. § 52:18A-202 (b); NEW JERSEY OFFICE OF SMART GROWTH, 2004 CROSS-ACCEPTANCE MANUAL (2004), <http://www.nj.gov/state/planning/docs/crossacceptancemanual041904.pdf>.

<sup>110</sup> Comment from New Jersey state staff; NEW JERSEY STATE PLANNING COMMISSION, STATE STRATEGIC PLAN: NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN, FINAL (2011), <http://www.state.nj.us/state/planning/plan-draft-final.html>

<sup>111</sup> An Act Concerning the State Plan of Conservation and Development and Dissolving the Wolcottville School Society, Public Act No. 10-138, Section 1.

<sup>112</sup> CONNECTICUT OFFICE OF POLICY AND MANAGEMENT FOR THE CONTINUING LEGISLATIVE COMMITTEE ON STATE PLANNING AND DEVELOPMENT, DRAFT PROCESS FOR THE REVISION, ADOPTION, IMPLEMENTATION AND AMENDMENT OF THE CONSERVATION AND DEVELOPMENT POLICIES PLAN FOR CONNECTICUT ( 2011), [http://www.ct.gov/opm/lib/opm/igp/org/cdplan/opm\\_cross\\_acceptance\\_report.pdf](http://www.ct.gov/opm/lib/opm/igp/org/cdplan/opm_cross_acceptance_report.pdf).

<sup>113</sup> DEL. CODE ANN. tit. 29 § 9103 (2011).

- Rhode Island requires municipal comprehensive plans to be approved by the state prior to the plans becoming effective for state purposes. In order to be approved, municipal plans must be consistent with the state guide plan.<sup>114</sup> The approval decision may be appealed to a special board.<sup>115</sup>
- In Maine, municipalities that choose to prepare comprehensive plans may have those comprehensive plans reviewed by the Maine State Planning Office for consistency with the procedures, goals and guidelines in the state’s Growth Management Act, which includes reviewing consistency with the state’s growth management goals and with requirements that the plan includes transportation and future land use elements.<sup>116</sup> If a plan is certified as consistent, the municipality qualifies for preferential eligibility for state grants.<sup>117</sup> (See 0).
- In Maryland, the local plans must also reflect Maryland’s twelve planning “visions.”<sup>118</sup>
- In Pennsylvania, municipal plans are required to be generally consistent with mandatory county plans and abutting municipalities.<sup>119</sup>
- In Vermont, in areas where a regional planning commission has been formed it is required to create a regional plan consistent with statutory smart growth criteria.<sup>120</sup>

#### **D. Integration of Statewide Land Use Approaches or Climate Goals to Federal Transportation Planning Framework**

Federal transportation funding to states is conditioned on states implementing required planning and project selection processes. States and MPOs are required to create long-range transportation plans (LRTPs) and shorter-term transportation improvement programs (“TIPs” or, in the case of statewide transportation improvement plans, “STIPs”) that identify projects selected to receive federal funding. These federal requirements serve as minimum criteria – states are free to integrate or not integrate other state planning efforts, such as statewide land use planning efforts, into their transportation planning and project selection but are not required to do so.

TCI states generally address relevant state-level sustainable community initiatives in their long-range transportation plans. In some TCI states, there are more formal policies that require integration of a state’s transportation and land use planning, such as requirements that: a LRTP or STIP be approved as consistent with a broader state plan; that a LRTP or STIP be consistent with a state’s relevant sustainable communities-type principles; or that a LRTP or STIP be consistent with state GHG emission reduction goals.

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<sup>114</sup> R.I. GEN. LAWS § 45-22.2-8 (2011).

<sup>115</sup> R.I. GEN. LAWS § 45-22.3-2 (2011).

<sup>116</sup> ME. REV. STAT. tit. 30-A, §4347-A (2011); MAINE STATE PLANNING OFFICE, FOUR-YEAR GROWTH MANAGEMENT PROGRAM EVALUATION (2011), [http://www.maine.gov/spo/landuse/docs/2011\\_Evaluation.pdf](http://www.maine.gov/spo/landuse/docs/2011_Evaluation.pdf). Municipalities that receive state comprehensive planning and implementation grants were required to submit the resulting plans for review, however those grants were eliminated in 2007.

<sup>117</sup> ME. REV. STAT. tit. 30-A, §4349-A (2011).

<sup>118</sup> Economic Growth, Resource Protection, and Planning Act, MD. CODE ANN., art. 66b § 3.05 (LexisNexis 2011). The Maryland Department of Planning is authorized to comment on local plans, but does not currently have legal authority to formally contest those that do not comply.

<sup>119</sup> 53 PA. CONS. STAT. §§ 10603(j), 10606, 10608.1.

<sup>120</sup> VT. STAT. ANN. tit. 24 § 4345a.

## **Background: Federal Planning Requirements**

The federal transportation funding framework establishes constraints on the use of federal transportation funding and other related requirements as conditions of states receiving such funding.<sup>121</sup> The framework has been established through a series of Congressionally-enacted funding authorizations, most recently through the passage of Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), signed into law on July 6, 2012.<sup>122</sup> MAP-21 builds on the framework established by previous Congressional transportation funding authorizations, including most recently the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU or SAFETEA), which governed federal transportation funding from 2005 to 2012.<sup>123</sup> MAP-21 makes significant changes to SAFETEA-LU but generally maintains the federal funding framework<sup>124</sup> (some of these changes are noted below). The federal DOT is in the process of developing specific regulations and policies for implementing the MAP-21 changes, however, and therefore many of the details pertaining to these new requirements are unknown as of this writing.<sup>125</sup>

Federal government transportation funding represents nearly half (46 percent) of total capital expenditures for transportation projects and approximately one-fifth of total government expenditures on highways and mass transit (including operating costs).<sup>126</sup> In 2009, the federal government provided \$52 billion in federal funding for surface transportation projects to the 50 U.S. states.<sup>127</sup>

MAP-21 consists of combined federal highway and transit funding programs, mostly funded through federal excise taxes on motor fuels.<sup>128</sup> Funding is made available through federal aid programs, including

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<sup>121</sup> The first federal transportation law was the Federal Highway Act in 1921. The scope of the federal role in transportation has increased over time, and the shape of the current framework, referred to as the post-Interstate era, began with the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. See generally ROBERT JAY DILGER, CONGRESSIONAL RESEARCH SERVICE, FEDERALISM ISSUES IN SURFACE POLICY: PAST AND PRESENT, R40431 (2009).

<sup>122</sup> Pub. L. No. 112-141; H.R. 4348, 112th Cong. (2012) (enacted).

<sup>123</sup> Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. No. 109-59, 119 Stat. 1144 (2005).

<sup>124</sup> For a summary of state-related provisions relevant to addressing climate change in MAP-21, see GABRIEL WEIL AND CASSANDRA POWERS, GEORGETOWN CLIMATE CENTER, OVERVIEW OF STATE-RELATED PROVISIONS IN THE FEDERAL TRANSPORTATION REAUTHORIZATION LEGISLATION, “MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT” (MAP-21), <http://www.georgetownclimate.org/legislative-analysis-climate-related-provisions-of-the-federal-transportation-reauthorization-map-21> [Hereinafter GCC MAP-21 SUMMARY].

<sup>125</sup> For information on DOT’s ongoing development of regulation and guidance pursuant to MAP-21, see *Moving Ahead for Progress in the 21st Century Act (MAP-21)*, U.S. DEPARTMENT OF TRANSPORTATION <http://www.dot.gov/map21> (last visited Oct. 9, 2012).

<sup>126</sup> ROBERT JAY DILGER, CONGRESSIONAL RESEARCH SERVICE, FEDERALISM ISSUES IN SURFACE POLICY: PAST AND PRESENT, R40431, at 5 (2009).

<sup>127</sup> 2 U.S. DEPARTMENT OF TRANSPORTATION, TRANSPORTATION’S ROLE IN REDUCING U.S. GREENHOUSE GAS EMISSIONS: REPORT TO CONGRESS, at 4-2. (2010), [http://ntl.bts.gov/lib/32000/32700/32779/DOT\\_Climate\\_Change\\_Report\\_-\\_April\\_2010\\_-\\_Volume\\_1\\_and\\_2.pdf](http://ntl.bts.gov/lib/32000/32700/32779/DOT_Climate_Change_Report_-_April_2010_-_Volume_1_and_2.pdf).

<sup>128</sup> Ninety percent of funding for SAFETEA-LU programming was derived from excise taxes on motor fuels. Other sources of revenue include sales taxes on tires, trucks, buses and trailers. In the past, this funding structure was sufficient to fully fund federal transportation expenditures, but it is no longer sufficient to maintain the same level of expenditures into the future due to increasing fuel economy (reducing gas tax revenues) and rising transportation infrastructure costs. JOHN W. FISCHER ET AL., CONGRESSIONAL RESEARCH SERVICE, SURFACE TRANSPORTATION REAUTHORIZATION LEGISLATION IN THE 111TH CONGRESS: SUMMARY OF SELECTED MAJOR PROVISIONS, R40780, at 1 (2009). MAP-21 maintains these revenue sources, but also adds \$21.2 billion in additional “one-time” revenue sources to fully fund transportation expenditures over the 27-month period covered by MAP-21. GCC MAP-21 SUMMARY, *supra* note 124, at 20.



four core highway programs<sup>129</sup> and four major transit funding programs.<sup>130</sup> Each program establishes allowed uses for that funding, although states are allowed some flexibility to shift funding between programs. In general, MAP-21 will allow states greater flexibility in how they use funding while at the same time establishing a framework of performance measures aligned with national transportation goals.<sup>131</sup>

State DOTs “largely determine where and how money is spent” through this framework, although these decisions must be arrived at through a federally-prescribed planning and decision-making process that takes into account specific statutory factors and requires consultation with regional and state entities.<sup>132</sup>

Under MAP-21, the U.S. DOT will be required to establish national performance measures for categories prescribed by the statute within 18 months of enactment, including for on-road mobile source emissions, traffic congestion, freight movement, and transportation infrastructure.<sup>133</sup> States will in turn be required to establish state performance targets for each of the established measures, and MPOs will be required to establish targets aligned with the state targets.<sup>134</sup> States and MPOs will generally be required to describe how their plans and transportation funding decisions will impact progress toward the targets in their federally-required planning requirements (described below).<sup>135</sup>

MAP-21 maintains the basic federal planning requirements that were also in place under SAFETEA-LU. States and MPOs are required to carry out planning processes that consider how projects, strategies, and services will “protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns.”<sup>136</sup>

An important component of the federal framework is the requirement that all metropolitan areas with populations over 50,000 establish MPOs.<sup>137</sup> MPO boards are composed of local elected officials, state officials, and transportation agency administrators and receive federal funds for specific activities through a set-aside from federal transportation programs. MPOs in metropolitan areas of 200,000 residents or more have the authority to select projects for federal funding, in consultation with the state and public transit operators.<sup>138</sup>

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<sup>129</sup> MAP-21 consolidated seven major categories of highway funding into four core programs: the National Highway Performance Program, the Surface Transportation Program, Highway Safety Improvement Program, and the Congestion Mitigation and Air Quality (CMAQ) Program. GCC MAP-21 SUMMARY, *supra* note 124, at 1. .

<sup>130</sup> MAP-21 maintains four major transit-funding programs, albeit with some changes. They are the Urbanized Area Formula Program; Fixed Guideway Modernization; New Starts Program; Bus and Bus-Related Facilities Capital Program. *See* FISCHER, *supra* note 128 at 6 (SAFETEA-LU major programs); GCC MAP-21 SUMMARY, *supra* note 124, at 18-19.

<sup>131</sup> GCC MAP-21 SUMMARY, *supra* note 124, at 1.

<sup>132</sup> CRS TRANSPORTATION REAUTHORIZATION, *supra* note 42, at 3. States and MPOs are required to consider eight factors in their transportation planning, broadly in the areas of “topic areas of economic vitality, safety, security, mobility, environment, connectivity, efficiency, and preservation.” SAFETEA-LU §§ 3005, 3006, 49 U.S.C. §§ 5303(h)(1), 5304(d)(1) (2010)

<sup>133</sup> MAP-21, Pub. L. No. 112-141, § 1203(a), amending 23 U.S.C. § 150(c); GCC MAP-21 SUMMARY, *supra* note 124, at 11-12.

<sup>134</sup> MAP-21, Pub. L. No. 112-141, §§ 1201-02; GCC MAP-21 SUMMARY, *supra* note 124, at 11-12.

<sup>135</sup> MAP-21, Pub. L. No. 112-141, §§ 1201-02, amending 23 U.S.C. §§ 134(c)(1); 135(d)(2).

<sup>136</sup> 23 U.S.C. §§ 134 (h)(1)(E), 135 (d)(1)(E).

<sup>137</sup> MAP-21 Pub. L. No. 112-141, § 1201, amending 23 U.S.C. § 134(d).

<sup>138</sup> MAP-21 Pub. L. No. 112-141, § 1201, amending 49 U.S.C. § 5303(k)..



The federal framework requires each state and MPO to develop a long-range transportation plan (LRTP) with a minimum twenty-year forecast, and to include a discussion of potential environmental mitigation activities and potential areas to carry out these activities.<sup>139</sup>

States and MPOs are also required to create transportation improvement programs (STIPs in the statewide context and TIPs for MPOs), which are prioritized listings of programs or transportation projects covering a period of four years that are consistent with long-term plans and with each other. TIPs and STIPs are to cover four-year periods, and are to be updated at least every four years. A MPO's TIP must be approved by the state.<sup>140</sup> A state's STIP is required to include all federally-funded projects within the state, incorporating all TIPs from MPOs within the state, and the state must anticipate full funding for all projects listed.<sup>141</sup> For non-metropolitan areas, projects are selected for listing and funding by the state in cooperation with affected local officials with responsibility for transportation.<sup>142</sup> STIPs must be submitted to Federal Highway Administration/Federal Transit Administration for joint approval, and only projects included in an approved STIP may be eligible for federal transportation funding.<sup>143</sup>

Under MAP-21, statewide and MPO long-range transportation plans will be required to include descriptions of performance measures and targets, and will be assessed based on their progress towards these measures.<sup>144</sup> STIPs, and TIPs will also be required to include descriptions of anticipated effects of selected transportation projects towards achieving performance targets.<sup>145</sup> As U.S. DOT is still in the process of identifying the performance measures in each category and establishing regulations for its use in transportation planning, the details of these requirements are still unknown.

### ***Approaches to Integrating Sustainable Communities with Federally-Required Transportation Planning***

TCI states have established a variety of mechanisms to integrate federally-required transportation planning with other sustainable community goals.

Several states have formal requirements that the state transportation plan be consistent with a broader statewide planning effort or principles:

- Connecticut requires state agencies to consider its statewide Conservation and Development Policies plan when preparing their agency plans. Where agencies are required to prepare plans by state or federal law – including LRTPs, STIPs, and TIPs – those plans must be submitted to Connecticut's Office of Policy and Management for a review of conformity between the state plan and the agency plan. State agencies are required to be consistent with the plan when acquiring or developing property, acquiring transportation equipment or facilities, or making grants for those actions, if costs are over \$200,000.<sup>146</sup>
- In Delaware, an executive order of Governor Jack Markell requires all state agencies, including the Department of Transportation, to use the state's Strategies for State Policies and Spending plan and map "as a guide to making all decisions on policy, infrastructure and other investments, and resource management."<sup>147</sup>

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<sup>139</sup> MAP-21, Pub. L. No. 112-141, §§ 1201-02, amending 23 U.S.C. §§ 134(i); 135(f).

<sup>140</sup> MAP-21 Pub. L. No. 112-141, § 1201, amending 23 U.S.C. §134(j).

<sup>141</sup> MAP-21 Pub. L. No. 112-141, § 1201, amending 23 U.S.C. §135(g).

<sup>142</sup> MAP-21 Pub. L. No. 112-141, § 1201, amending 23 U.S.C. §135(g)(2)(B)..

<sup>143</sup> 23 C.F.R. § 450.218(a).

<sup>144</sup> MAP-21, Pub. L. No. 112-141, §§ 1201-02, amending 23 U.S.C. §§ 134(i)(2); 135(f)(7).

<sup>145</sup> MAP-21, Pub. L. No. 112-141, §§ 1201-02, amending 23 U.S.C. §§ 134(j)(2)(D); 135(g)(4).

<sup>146</sup> CONN. GEN. STAT. § 16a-31 (2011).

<sup>147</sup> Del. Exec. Order No. 26 (Jack Markell), [http://governor.delaware.gov/orders/exec\\_order\\_26.shtml](http://governor.delaware.gov/orders/exec_order_26.shtml) (2011);

- As noted above (see III.A), Maine's Sensible Transportation Policy Act requires that the state's transportation decisions, including its transportation investment decisions, be consistent with the state's growth management goals and other specific policies.<sup>148</sup>
- Rhode Island's transportation planning process is integrated into its State Guide Plan planning process, and the state's long-range transportation plan is one element of the State Guide Plan. As an element of the state guide plan, it is subject to the state plans, goals, and objectives, which form another element of the State Guide Plan. The Rhode Island Division of Planning is responsible for drafting both the transportation and land use plans (the state DOT acts a partner), and the State Planning Council ultimately adopts both the transportation plan and other elements. The transportation plan directly references and builds on the land use plan.<sup>149</sup>

In other states, Departments of Transportation integrate transportation planning with broader statewide planning or principles without a formal legal requirement.

- New Hampshire's Draft 2010 Long Range Transportation Plan focuses on sustainable community-related outcomes, including, as its first strategic outcome, the unification of transportation planning and investment with broader state goals and actions, including its State Development Plan.<sup>150</sup> Additionally, every four years agencies are to report on their progress to encourage smart growth and to consider the state's smart growth principles in expending funds.<sup>151</sup>
- New Jersey's 2008 Long Range Transportation Plan refers to the State Development and Redevelopment Plan, noting the importance of giving priority funding to transportation projects that are consistent with its land use principles and demonstrate coordination between land use and transportation planning.<sup>152</sup>

Several states also explicitly require that transportation planning take into account the states' GHG emission reduction goals.

- Massachusetts' Department of Transportation's GreenDOT initiative, which responds to the state's comprehensive GHG emission reduction law and other mandates, establishes as a matter of policy that the state is to address GHG emission reductions in transportation planning and project selection. In the Clean Energy and Climate Plan a number of measures are spelled out. The state and MPO LRTPs have been encouraged to integrate the three GreenDOT goals of reducing GHG emissions; promoting the healthy transportation modes of walking, bicycling, and public transit; and supporting smart growth development. They also need to ensure that GHG emissions are reduced over time, consistent with the Climate Protection and Green Economy Act. Similarly, TIPs and STIPs are to include an evaluation of overall greenhouse gas emissions from the project programs, and are to be developed in a manner that aligns with the state's overall GHG reduction target.<sup>153</sup> (See 0).

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replacing and rescinding Del. Exec. Order No. 59 (Ruth Ann Minner), 95 Del. Gov. Reg. 2 (2004).

<sup>148</sup> 23 M.R.S. § 73(3).

<sup>149</sup> RHODE ISLAND STATEWIDE PLANNING PROGRAM, TRANSPORTATION 2030, AMENDMENT #1 (2010), <http://www.planning.ri.gov/transportation/TIPamendment2.pdf>.

<sup>150</sup> NEW HAMPSHIRE DOT, NEW HAMPSHIRE DRAFT LONG-RANGE TRANSPORTATION PLAN (2010), <http://www.nh.gov/dot/org/projectdevelopment/planning/documents/CompleteLRTP083110.pdf>.

<sup>151</sup> N.H. REV. STAT. ANN. § 9-B:6 (2011).

<sup>152</sup> NEW JERSEY DEPARTMENT OF TRANSPORTATION, NEW JERSEY'S LONG-RANGE TRANSPORTATION PLAN: FOR PUBLIC DISCUSSION 35 (2008).

<sup>153</sup> MASSDOT, GREENDOT POLICY DIRECTIVE 1,

- In Maryland, a 2010 law (Ch. 725) requires the state’s annual consolidated transportation plan to include a description of the extent to which the proposed construction projects satisfy state goals, which include “current state transportation goals, and climate action plan goals required by the Greenhouse Gas Emissions Reduction Act of 2009.”<sup>154</sup> The same law required that the Department of Transportation and advisory committee consider climate action plan goals alongside other factors, in defining the state transportation goals, benchmarks, and indicators. Maryland’s Greenhouse Gas Emissions Reduction Act required the state to submit a climate action plan by the end of 2011 that will achieve statewide GHG reductions of 25% from 2006 levels by 2020.<sup>155</sup> (See 0). As part of the annual consolidated plan, the Department reports on progress towards such goals – as are also reflected in the five-year policy plan (the Maryland Transportation Plan).
- Connecticut’s planning statute requires the state’s next Conservation and Development Policies Plan to include a goal for reducing carbon dioxide emissions consistent with the state’s forthcoming Climate Action Plan. As mentioned above (see III.D), the state and MPO long-range transportation plans, STIP, and TIPs must be consistent with the statewide plan.<sup>156</sup>

### ***Integrating CO2 Emission Reductions Targets into the Transportation Conformity Process***

Under the federal Clean Air Act, states retain the primary responsibility for achieving National Ambient Air Quality Standards (NAAQS) for certain traditional pollutants, such as ozone and particulate matter. In order to meet these federally-established standards, states submit State Implementation Plans (SIPs) to the U.S. Environmental Protection Agency. These plans consist of a mix of emission limitations and other pollution control measures designed to meet the NAAQS, either by further reducing pollution in areas that have not attained the NAAQS (“non-attainment areas”) or by maintaining air quality in areas that have attained the NAAQS (“attainment areas”). The pollution control measures included in SIPs may include transportation control measures, such as rideshare incentives, improved public transit, and HOV lanes.<sup>157</sup> The Clean Air Act requires that for non-attainment areas and designated “maintenance areas,”<sup>158</sup> federally-funded transportation plans and projects must be in “conformity” with these SIPs, and states are required to incorporate regulations for determining conformity into their Clean Air Act SIPs.<sup>159</sup>

Under federal law, these conformity requirements apply only to the “criteria” pollutants for which EPA has established ambient air quality standards; greenhouse gases are not one of these pollutants. The conformity process, however, provides one model for integrating air quality goals into the federal transportation planning framework through the use of targets. Importantly, many of the strategies used by MPOs in reducing criteria pollutants are travel demand strategies that aim to reduce vehicle miles traveled, and they would have the effect of also reducing GHG emissions.

Maryland’s Department of the Environment has proposed an update to the state’s transportation conformity regulations that would require two of the state’s largest MPOs to consider CO<sub>2</sub> emissions in their transportation planning. The new regulations would only apply to the state’s two largest MPOs, the

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<http://www.massdot.state.ma.us/main/Documents/HealthyTransportationCompact/P-10-002.pdf>

<sup>154</sup> MD. CODE ANN., TRANSP. § 2-103.1 (c)(3)(vi).

<sup>155</sup> MD. CODE ANN., Envir. § 2-1205(c).

<sup>156</sup> CONN. GEN. STAT. § 16a-32a (2011).

<sup>157</sup> The Clean Air Act provides a non-exhaustive list of allowable transportation control measures. CAA § 108(f), 42 U.S.C. § 7408(f).

<sup>158</sup> Areas that were designated in attainment after the 1990 Amendments to the Clean Air Act and are required to file maintenance plans under Clean Air Act § 175(a), 42 U.S.C. § 7505(a).

<sup>159</sup> Clean Air Act § 176(c), 42 U.S.C. § 7506(c).

Baltimore Regional Transportation Board in the Baltimore region nonattainment area and the Transportation Planning Board in the Washington, DC, region nonattainment area. Whenever a transportation conformity analysis of a long-range transportation plan or TIP is required under federal law, the MPOs would be required to submit a progress report showing how transportation CO<sub>2</sub> and NO<sub>x</sub> emissions compare to the targets established in the regulation. If the report shows a gap between projected emissions and targets, the progress report must include a summary of planned activities that will be implemented to “make better progress” toward the long-term targets. For the Washington region, the CO<sub>2</sub> targets are 12.3 million metric tons per year (MMTY) of CO<sub>2</sub> in 2030 and 7.3 MMTY of CO<sub>2</sub> in 2040. For the Baltimore region, the CO<sub>2</sub> targets are 8.1 MMTY of CO<sub>2</sub> in 2025 and 5.4 MMTY of CO<sub>2</sub> in 2035.<sup>160</sup> The proposed regulations are being developed under Maryland’s regulation development process, which includes stakeholder meetings and eventual legislative review. Several public and private stakeholders have questioned the viability of the regulation, which continues to be debated by state agencies, MPOs, counties, and business organizations.

## E. Mechanisms for Enforcing or Encouraging Project-Level Consistency with State Plans or Principles

Closely related to statewide land use planning initiatives are state mechanisms to enforce or encourage project-level consistency with a state’s land use plan or principles. Such mechanisms include permitting or review for development projects, consideration of sustainable community criteria in environmental impact assessments required under state laws (i.e., “baby NEPA” laws), and permitting or funding incentives for certain types of projects.

### **Project Permitting or Review**

- Delaware’s Office of State Planning Coordination developed the Preliminary Land Use Service (PLUS), now codified in statute, which requires all major land use decisions and very large projects to undergo a pre-permitting review by all relevant state agencies. The review includes discussion of all relevant issues, including all potentially required permits and the project’s consistency with Delaware’s Strategies for State Policies and Spending plan and map. The review is intended to provide technical input to developers and local governments and to ensure that projects and decisions are aligned with local and state plans. It also includes a provision for expediting review for project proposals that are included in a local comprehensive plan certified by the state.<sup>161</sup> In at least one case, a water permit was denied because a project was not in compliance with the state comprehensive plan and the developer did not alter the design to address concerns.
- Vermont’s Act 250 requires developers to acquire a permit for construction of large industrial projects, subdivisions, new roads and new government development. Permitting includes a public hearing before the District Environmental Commission, which is to consider the project’s impact on growth, cost of scattered developments, and impact on public investments.<sup>162</sup> The permitting agency is to give special weight to the master plans of areas that have been designated Growth Centers under the state’s designation program, if those master plans are relevant to the

<sup>160</sup> Draft Maryland Chapter 26 Conformity Regulations, COMAR 26.11.26, available at <https://www.mwcog.org/uploads/committee-documents/aF1dXVZY20120611135238.pdf>.

<sup>161</sup> DEL. CODE ANN. tit. 29, §§ 9203-06 (2011); *The Preliminary Land Use Service (PLUS)*, STATE OF DELAWARE, <http://stateplanning.delaware.gov/plus/plus.shtml> (last visited Oct. 17, 2011). Projects and decisions subject to mandatory PLUS review include major residential subdivisions, large non-residential subdivisions, rezonings in environmentally sensitive areas, and annexations inconsistent with a local comprehensive plans.

<sup>162</sup> VT. STAT. ANN. tit. 10, §§ 6001-6108 (2010).

applicant.<sup>163</sup>

- The District of Columbia DOT (DDOT) is also developing a checklist with smart growth considerations for projects that need DDOT permits. Maryland also adopted a state-level expedited review process as part of a broader set of initiatives to facilitate development in designated areas. This process includes an open application process, by which developers or local jurisdictions may apply to have a project put through the expedited environmental and access permit review process.<sup>164</sup>

### ***Environmental Impact Assessment Processes***

- Massachusetts has developed a Greenhouse Gas Emissions Policy and Protocol as part of its environmental impact assessment program under the Massachusetts Environmental Policy Act.<sup>165</sup> The policy requires that certain projects undergoing review by the MEPA Office quantify their GHG emissions and identify measures to avoid, minimize, or mitigate such emissions. In addition to quantifying project-related GHG emissions, the Policy also requires developers to evaluate project alternatives that may result in lower GHG emissions and to quantify the impact of proposed mitigation in terms of emissions and energy savings. The policy requires that applicants model the indirect emissions from transportation, including travel by employees, vendors, customers, and others, and should also identify and quantify proposed transportation emission mitigation strategies.<sup>166</sup>
- The New York Department of Environmental Conservation has proposed an update to the model Environmental Assessment Form (EAF) that state agencies use to conduct an initial environmental review of agency actions pursuant to New York's "baby NEPA statute," the State Environmental Quality Review Act (SEQRA). The proposed model form reflects a much greater focus on sustainable communities elements, including questions about consistency with local plans and impacts on transportation.<sup>167</sup>
- The Pennsylvania Department of Transportation is undertaking an initiative to link program development and project delivery process with environmental review, called Linking Planning & NEPA. The objectives of the new process are centered on: integrated collaboration and decision-making, up-front problem analysis and planning, fiscally sound project selection and a well-defined and consistent scoping process. The Department is developing detailed guidance for a seven-step project delivery process to guide transportation problems from assessment to project identification and ultimately to construction.<sup>168</sup>

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<sup>163</sup> VT. STAT. ANN. tit. 24, § 2793c(i)(5)(B) (2011); *see also* VERMONT PLANNING COORDINATING GROUP, GROWTH CENTER PLANNING MANUAL FOR VERMONT COMMUNITIES 7 (2007), <http://www.dhca.state.vt.us/Planning/GCManualPart1.pdf>.

<sup>164</sup> *See FastTrack*, MARYLAND.GOV, <http://easy.maryland.gov/wordpress/fasttrack/>.

<sup>165</sup> MASS. GEN. LAWS ch. 30, §§ 61-62I (2011).

<sup>166</sup> MASSACHUSETTS EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS, REVISED MEPA GREENHOUSE GAS POLICY AND PROTOCOL 8-9, 11 (2010), <http://www.env.state.ma.us/mepa/downloads/GHG%20Policy%20FINAL.pdf>.

<sup>167</sup> Notice of Availability of Draft Model Environmental Assessment Forms for Public Review and Comment, 32 N.Y. Reg. 7 (Nov. 24, 2010), *available at* <http://www.dec.ny.gov/permits/70293.html>.

<sup>168</sup> *Linking Planning and NEPA*, PENNSYLVANIA SMART TRANSPORTATION, <http://www.smart-transportation.com/lpn.html> (last visited Oct. 26, 2011).



## Other Mechanisms

- In Maryland, a statute requires that local zoning be consistent with mandatory local comprehensive plans,<sup>169</sup> which are required to incorporate state planning visions. A number of states provide funding preferences to projects consistent with state plans or principles. Those programs are described below in IV.A, and include Maine’s grant preferences and Massachusetts’ Commonwealth Capital program. Several states have also created specific funding mechanisms to help provide gap finance for projects that support community revitalization and historic preservation. Maryland, for example, has had been able to leverage considerable private sector investment for revitalization through its use of historic tax credits, through investment in designated Heritage Areas, and by creating a “Community Legacy” fund to support key projects. Multiple agencies participate in outreach to local governments and other stakeholders to assist in the identification of targeted areas for reinvestment and historic preservation and to develop long term plans to help guide state and local investment. Applications are then reviewed on an annual basis to ensure that grants, technical assistance, and loan program allocations are allocated to maximize benefits and other outcomes consistent with statewide goals.

## IV. Leveraging Resources to Achieve Sustainable Community Goals

States in TCI use a variety of mechanisms to leverage federal and state infrastructure and other investments to promote sustainable community outcomes, including compact, transit-oriented, and infill development. All of the TCI region states use some types of strategies that leverage state or federal funding towards these ends.

Part A describes approaches to leveraging funding based on geographic designations (i.e., “place-based” approaches). One of the most comprehensive approaches to leveraging funding is to prioritize or limit state infrastructure investments to geographical areas designated as priority growth areas. States may also use geographic designations, including voluntary designation programs, to provide development incentives.

Part B describes a different approach where funding and investment is prioritized on the basis of sustainable communities-related criteria or principles. Principles-based approaches can also include broader policies tied to transportation investment, such as “Fix-it-First” policies that prioritize maintenance of existing infrastructure over new construction, and “Complete Streets” policies that require transportation infrastructure projects to be designed to accommodate all modes of travel, including pedestrian and bicycle travel.

Part C describes programs or initiatives that are directly funded by TCI states, including programs supporting local or regional planning, zoning, downtown revitalization, and transit-oriented development initiatives.

Part D describes states efforts’ to incorporate sustainable communities considerations when administering federal programs, such as the federal Community Development Block Grant program and the federal Clean Water State Revolving Loan Fund program.

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<sup>169</sup> Smart and Sustainable Growth Act of 2009, MD. CODE ANN., art. 66B, § 1.02.



## A. Comprehensive Infrastructure Prioritization Mechanisms

### ***Leveraging Funding or Resources Based on Priority Funding Areas or Other Geographic Designations***

Several states have policies that direct state funding and resources to geographic areas designated for growth or infill development and constrain investments in areas designated for open space or rural preservation.

A pioneering policy of this type, Maryland's 1997 Priority Funding Areas Act prohibits state-funding for "growth-related" projects if the projects are not within a designated priority funding area (PFA). As described in **Error! Reference source not found.**, PFAs are to be self-designated by communities in accordance with statutory criteria such as permitted density, water and sewer availability, and designation as a growth area in the comprehensive plan. "Growth-related projects" are defined to include most state programs that encourage growth and development such as highways, sewer and water construction, economic development assistance, and state leases or construction of new office facilities. The Act does provide exceptions for extraordinary circumstances.<sup>170</sup> In some cases, The Maryland Department of Planning has identified areas certified by local municipalities as PFAs that do not appear to meet the PFA criteria in the statute, and has designated these areas as "PFA comment areas." In those circumstances, the agency recommends that other state agencies do not fund projects in those areas and the project goes before the state's Growth Commission for special approval.<sup>171</sup>

Delaware's Strategies for State Policies and Spending creates a model with a more graduated approach to investment. Delaware designates all land in the state as one of four "area levels" or as an "out-of-play" area, and establishes a corresponding state investment strategy for each area level. (See Figure 1 in **Error! Reference source not found.**). Area level 1, "cities towns and villages," for example, has a corresponding investment strategy of "redevelop and reinvest," and area level 4, "rural and undeveloped areas," has a corresponding investment strategy of "discourage additional development." An executive order directs state agencies to use the state's Strategies for State Policies and Spending plan and map "as a guide to making all decisions on ... infrastructure and other investments."<sup>172</sup>

Similar to Delaware's model, Connecticut's Conservation and Development Policies Plan designates all land as one of four types of "development areas" or four types of "conservation areas." (See **Error! Reference source not found.**). The Connecticut plan also articulates policies to go with each designated area. The rural community centers designation, for example, has a corresponding policy of promoting mixed-use development in a village setting, while the rural lands designation has a corresponding policy of avoiding development that exceeds on-site water supply.<sup>173</sup> State agencies are required to be consistent with the plan when acquiring or developing property, acquiring transportation equipment or facilities, or making grants for those actions, if costs are over \$200,000.<sup>174</sup> Connecticut's Office of Policy and Management is also required by a 2005 statute to develop recommendations for the delineation of "Priority Funding Areas" that take into consideration the development area designations. The PFAs are to

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<sup>170</sup> MD. CODE ANN., STATE FIN. & PROC. §§ 5-7B-01 to 5-7B-10 (LexisNexis 2011); MARYLAND DEPARTMENT OF PLANNING, SMART, GREEN, AND GROWING: PLANNING GUIDE (2010), [http://www.mdp.state.md.us/PDF/OurProducts/Publications/OtherPublications/SGG\\_Guide\\_09\\_Web.pdf](http://www.mdp.state.md.us/PDF/OurProducts/Publications/OtherPublications/SGG_Guide_09_Web.pdf).

<sup>171</sup> *Note on Priority Funding Areas Boundaries*, MARYLAND DEPARTMENT OF PLANNING, [http://www.planning.maryland.gov/msdc/PFA/pfa\\_note.shtml](http://www.planning.maryland.gov/msdc/PFA/pfa_note.shtml) (last visited Oct. 14, 2011).

<sup>172</sup> Del. Exec. Order No. 26 (Jack Markell), [http://governor.delaware.gov/orders/exec\\_order\\_26.shtml](http://governor.delaware.gov/orders/exec_order_26.shtml) (2011); replacing and rescinding Del. Exec. Order No. 59 (Ruth Ann Minner), 95 Del. Gov. Reg. 2 (2004).

<sup>173</sup> CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, CONSERVATION AND DEVELOPMENT POLICIES PLAN, 2005-2010 (2004), <http://www.ct.gov/opm/lib/opm/igp/cdplan/adopted2005-2010cdplan.pdf> (approved in 2005).

<sup>174</sup> CONN. GEN. STAT. § 16a-31 (2011).

be submitted along with the draft 2013 plan to the General Assembly for approval. Once the PFAs are approved, the statute will prohibit state agencies from funding “growth-related projects” outside PFAs.<sup>175</sup>

Several states have programs that designate “growth centers” or similar designations that garner preferential allocation of state resources including land, funding, and technical assistance.

New Jersey’s current State Development and Redevelopment Plan designates land as one of five planning areas based on existing conditions, and also uses “centers” designations for areas that are targeted for future growth or infill. The 2011 draft State Strategic Plan focuses instead on Priority Growth Investment Areas.<sup>176</sup> New Jersey’s Business Action Center defines metropolitan or suburban areas and designated centers as “smart growth areas.” The smart growth area designation provides certain benefits, such as allowing eligibility or preference in certain state programs, including grant programs.<sup>177</sup> (See **Error! Reference source not found.**). The state also has a Development Opportunities Inter-agency Team whose mission is to provide support, advice, and guidance to developments in designated smart growth areas.<sup>178</sup>

Vermont’s Growth Centers Act establishes benefits for municipalities that apply for and receive center designations. (See 0). Benefits vary with the particular designations, which are downtown, village center, new town center, and growth center. Designated downtowns are to receive priority consideration from all state agency funding programs. Other designations receive priority consideration for specific funding programs, such as municipal planning grants, transportation enhancement improvements, brownfield redevelopment grants, community development block grants, wastewater funding, state affordable housing funds and locating of state buildings. Other available benefits, depending on the designation, include tax-increment financing authority, tax credit eligibility, and special assessment district authority.<sup>179</sup>

Maryland’s Sustainable Communities designation, established by a 2010 statute, is awarded by the state to communities that meet criteria such as a demonstrated need for reinvestment and proximity to urban or transportation centers, provides benefits to designated communities. Officially designated “Transit-Oriented Developments” are automatically to be included in the “Sustainable Community” category. Commercial rehabilitations that are not historic are eligible for a 10 percent tax credit, and historic commercial and residential rehabilitations can receive a 20 percent tax credit on qualified expenditures.<sup>180</sup> In addition, the DOT is to “consider sustainable communities” during its annual transportation planning, and consult twice a year with the Smart Growth Subcabinet “on how the DOT may work cooperatively to make mutual investments toward creating and supporting sustainable communities across the state.”<sup>181</sup> As

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<sup>175</sup> An Act Concerning Plans of Conservation and Development, 2005 Conn. Pub. Acts 205; CONN. GEN. STAT. ch. 297a, § 16a-35c to 16a-35g (2010).

<sup>176</sup> NEW JERSEY STATE PLANNING COMMISSION, STATE STRATEGIC PLAN: NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN, DRAFT FINAL 39 (2011), <http://www.nj.gov/state/planning/df.html>; see NEW JERSEY OFFICE OF PLANNING ADVOCACY, ADVANCE NOTICE OF RULES: PRIORITY INVESTMENT CRITERIA (2011), <http://www.state.nj.us/state/planning/docs/priority-investment-criteria.pdf>.

<sup>177</sup> *Smart Growth Areas*, NEW JERSEY DEPARTMENT OF STATE, <http://www.nj.gov/state/planning/resources-sga.html> (last visited Oct. 11, 2012).

<sup>178</sup> *Development Opportunities InterAgency Team*, NEW JERSEY DEPARTMENT OF STATE, <http://www.nj.gov/state/planning/programs-doit.html> (last visited Oct. 11, 2012).

<sup>179</sup> VT. STAT. ANN. tit. 24, §§ 2790-97; VERMONT PLANNING COORDINATING GROUP, GROWTH CENTER PLANNING MANUAL FOR VERMONT COMMUNITIES 5-8 (2007), <http://www.dhca.state.vt.us/Planning/GCManualPart1.pdf>,

<sup>180</sup> MD. CODE ANN., STATE FIN. & PROC. § 5A-303(b) (LexisNexis 2011); MARYLAND DEPARTMENT OF PLANNING, FACT SHEET, HB 475: THE SUSTAINABLE COMMUNITIES ACT OF 2010, [http://www.mdp.state.md.us/PDF/YourPart/SustainableCommunities/SustainableCommunitiesAct2010\\_HB475.pdf](http://www.mdp.state.md.us/PDF/YourPart/SustainableCommunities/SustainableCommunitiesAct2010_HB475.pdf).

<sup>181</sup> TRANSP. § 2-702.

part of this process, the DOT also confers with the Subcabinet regarding proposals to officially designate Transit-Oriented Developments.

- New York's Climate Smart Communities (CSC) program is a partnership between New York state agencies and local governments. Towns, cities, villages, and counties can join CSC by adopting the Climate Smart Communities Pledge,<sup>182</sup> which includes commitments to inventory local GHG emissions and to take steps to reduce such emissions, including through the use of "community land use tools." The state provides dedicated outreach and technical support to designated communities related to data gathering and tracking, goal setting, and guidance and resources to assist with implementation. The program is funded through a portion of the state's revenues from the Regional Greenhouse Gas Initiative.<sup>183</sup>

Several states also have programs that provide funding or incentives based on transit-oriented development designations, described below at **Error! Reference source not found..**

### ***Leveraging of Funding or Resources Based on Principles***

TCI states also have developed funding prioritization policies based on or related to smart growth or sustainable community principles.

One model requires state investments or funding to be consistent with smart growth criteria.

- New York's 2010 Smart Growth Public Infrastructure Act requires any public infrastructure project financed or supported by a designated "State Infrastructure Agency" to be consistent, to the extent possible, with smart growth criteria specified in the statute. In order to determine whether an agency's policies or programs are in compliance with the smart growth criteria, agency heads are required to create a smart growth advisory committee of agency staff, and the committee is required to solicit input from representatives and organizations of affected communities. Before beginning any public infrastructure project, agency heads of "public infrastructure agencies" must either certify in a smart growth impact statement that the project meets relevant criteria, or provide a justification why such criteria are impracticable.<sup>184</sup> The Smart Growth Infrastructure Act will apply to all projects in the STIP, including locally administered federal aid projects and state projects.
- Massachusetts' Commonwealth Capital policy gave preference to communities applying for state grants and loans that had a high level of consistency with a set of land use and regulatory practices aligned with the Commonwealth's Sustainable Development Principles. The sustainable development portion of the Commonwealth Capital application was used to determine 30 percent of possible points on the application. The program is suspended for fiscal year 2012 while a revised policy is being developed.<sup>185</sup> Communities received points for zoning, planning, housing, environmental, energy, transportation, and other measures already in place at the time of application, for measures they committed to implement by the end of the year, and bonus points for every commitment from the previous year that was actually implemented. Points were received for specified actions and targets corresponding to criteria categories that included the following:

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<sup>182</sup> *Text for the Climate Smart Communities Resolution*, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, <http://www.dec.ny.gov/energy/65494.html> (last visited Aug 4, 2011).

<sup>183</sup> *Climate Smart Communities*, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, <http://www.dec.ny.gov/energy/50845.html> (last visited Aug 4, 2011).

<sup>184</sup> State Smart Growth Public Infrastructure Act, N.Y. ENVTL. CONSERV. LAW § 6 *et seq.* (Consol. 2011).

<sup>185</sup> Commonwealth Capital – 2011 Summary, [http://www.mass.gov/Agov3/docs/smart\\_growth/commcap\\_summary\\_fy11.doc](http://www.mass.gov/Agov3/docs/smart_growth/commcap_summary_fy11.doc).

- Plan for and promote livable communities and plan regionally;
  - Zone for and permit concentrated development and mixed use;
  - Expand housing opportunities;
  - Make efficient decisions and increase job and business opportunities;
  - Protect land and ecosystems; use natural resources wisely; promote clean energy; provide transportation choice; advance equity and promote sustainable development via other actions.<sup>186</sup>
- Pennsylvania’s Keystone Principles and Criteria for Growth, Investment & Resource Conservation specified ten principles and accompanying criteria used to evaluate all investment decisions made by state agencies, to be integrated into existing program criteria or used as additional considerations in the scoring or decision-making process. A core criterion is that projects are supported by local, regional, or county plans. Projects are also to receive preference if they include sustainable community elements, such as being located in an infill site or on a brownfield, if they make use of existing transportation infrastructure, and if they are mixed use.<sup>187</sup>
  - Maine requires state agencies to provide preference in grants to municipalities that have voluntarily adopted comprehensive plans or growth management programs in accordance with the state statute, and that have had those plans or programs certified as consistent with state’s procedures, goals and guidelines.<sup>188</sup> (See 0). Programs that provide some type of preference to municipalities with a certified plan include Community Development Block Grants, the Land for Maine’s Future conservation fund, the Municipal Investment Trust Fund, 319(h) Non-Point Source Protection Grants, the Clean Water State Revolving Loan Fund, and the Land and Water Conservation Fund.<sup>189</sup> A recent review by the state planning office found that 40 percent of relevant state funding programs provide preference to municipalities with certified comprehensive plans, but that those programs award over 80 percent of the total funds available through all relevant programs.<sup>190</sup> The consistency review process was also recently streamlined.

## B. Fix-it-First and Complete Streets Policies

There are two other types of policies that are commonly adopted by departments of transportation that support sustainable community outcomes. “Fix-it-First” or “Preservation First” policies support the goal of reducing emissions-intensive travel by discouraging construction of new road capacity, instead focusing on repair and/maintenance of existing transportation infrastructure. Complete Streets policies require that transportation infrastructure policies consider all modes of transportation, supporting pedestrians and cyclists. Both types of policies are widely implemented by TCI states to various degrees.

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<sup>186</sup> Fiscal Year 2011 Commonwealth Capital Application, [http://www.mass.gov/Agov3/docs/smart\\_growth/commcap\\_application\\_fy11.pdf](http://www.mass.gov/Agov3/docs/smart_growth/commcap_application_fy11.pdf).

<sup>187</sup> STATE OF PENNSYLVANIA, KEYSTONE PRINCIPLES AND CRITERIA FOR GROWTH, INVESTMENT & RESOURCE CONSERVATION, CRITERIA BROCHURE (2010), <http://www.newpa.com/sites/default/files/uploads/Criteria-for-Investment-final.pdf>.

<sup>188</sup> ME. REV. STAT. tit. 30-A, §4349-A (2011).

<sup>189</sup> MAINE STATE PLANNING OFFICE, BROCHURE: WHY CREATE A COMPREHENSIVE PLAN CONSISTENT WITH MAINE’S GROWTH MANAGEMENT ACT (2010), <http://www.maine.gov/spo/landuse/docs/compplanning/reasonsforcompplan.pdf>.

<sup>190</sup> MAINE STATE PLANNING OFFICE, FOUR-YEAR GROWTH MANAGEMENT PROGRAM EVALUATION 10 (2011), [http://www.maine.gov/spo/landuse/docs/2011\\_Evaluation.pdf](http://www.maine.gov/spo/landuse/docs/2011_Evaluation.pdf).

## ***Fix-it-First***

Many TCI states use Fix-it-First policies as a principle to prioritize infrastructure spending toward maintaining and upgrading existing structures and facilities over constructing new infrastructure. This policy is generally used for transportation and water infrastructure, but is also applicable to schools, housing, and other public facilities. For many states this approach is premised on increasing budgetary efficiency by capitalizing on existing assets. It is also promoted as a sustainable development tool on the premise that improving existing infrastructure can shift development pressure from outlying areas toward growth in existing communities. A Fix-it-First approach has been a central focus of Pennsylvania's Smart Transportation initiative. A 2011 report on the initiative found that over the course of the past decade, Pennsylvania reduced its spending on capacity projects from 25 percent to less than four percent. This included a major policy decision in March 2004 when Pennsylvania DOT announced that it was re-evaluating, and in some cases cancelling, twenty-six projects, including some major capacity expansion projects. PennDOT cited both fiscal constraints and a need to make the state more economically competitive by encouraging smart-growth development patterns.<sup>191</sup> Pennsylvania's transportation performance report identifies asset management, focused on increasing performance of existing infrastructure, as one of the agency's four main goals, and the state's guidance to MPOs for long-range transportation planning directs MPOs or RPOs to dedicate a minimum of 90% of their funding to system preservation.<sup>192</sup> In addition, the first one of the state's Keystone Principles, "Provide Efficient Infrastructure," explicitly directs the state to "Fix-it-First."<sup>193</sup>

The New Jersey legislature instituted a Fix-it-First policy in the 2000 Transportation Trust Fund reauthorization as a mandate for NJDOT to reduce the amount of infrastructure considered to be deteriorated by half within five years. This concept is endorsed by New Jersey Future in Transportation (NJFIT), NJDOT's interagency land use and transportation planning initiative and strongly emphasized in the FY2012 Transportation Capital Program.<sup>194</sup>

The New York State Department of Transportation (NYSDOT) is currently undertaking a broader effort to specifically incorporate sustainability considerations into its regional capital investment programs and projects. The capital program update is a biennial broad review of regional policies and procedures that are used to develop NYSDOT's five-year capital program. In its current program update, NYSDOT has specifically asked regions to consider sustainability (economic, social, and environmental) factors in all projects and as an overarching approach for its program of projects. NYSDOT's current program update is taking a "Preservation First" focus, emphasizing prolonging the current condition of the majority of system assets which are in good to fair condition through the use of cost-effective maintenance type treatments during the appropriate "window of opportunity" to maximize the life of the infrastructure.<sup>195</sup>

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<sup>191</sup> STATE SMART TRANSPORTATION INITIATIVE, REVIEW OF PENNDOT'S SMART TRANSPORTATION (2010), [www.cows.org/pdf/rp-SSTI-PennDOT.pdf](http://www.cows.org/pdf/rp-SSTI-PennDOT.pdf).

<sup>192</sup> PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, STATE OF THE SYSTEM 2010, <http://www.pamobilityplan.com/pubs/PaMobilityPlanStateOfSystemReport080110.pdf>; PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, DEVELOPING REGIONAL LONG-RANGE PLANS: RESOURCE GUIDANCE FOR PENNSYLVANIA PLANNING PARTNERS (2010), <ftp://ftp.dot.state.pa.us/public/Bureaus/Cpdm/FinalLRTPGuide.pdf>. Pennsylvania's current strategic plan has as a key objective to maximize efficiency and performance of existing transportation infrastructure. PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, STRATEGIC PLAN (year unknown, on file with author).

<sup>193</sup> PENNSYLVANIA ECONOMIC DEVELOPMENT CABINET, KEYSTONE PRINCIPLES FOR GROWTH, INVESTMENT, & RESOURCE CONSERVATION (2005), [pa.gov/portal/server.pt/document/816653/pkp\\_pdf](http://pa.gov/portal/server.pt/document/816653/pkp_pdf).

<sup>194</sup> NEW JERSEY DEPARTMENT OF TRANSPORTATION, TRANSPORTATION CAPITAL PROGRAM FY 2012 (2011), <http://www.state.nj.us/transportation/capital/tcp12/pdf/tcp12.pdf>.

<sup>195</sup> Comments from New York state staff.



Most states promote system preservation through the transportation planning process.

- Connecticut's LRTP identifies Fix-it-First as its highest priority for targeting resources.<sup>196</sup>
- Maryland's transportation plan and transportation capital budget program identify system preservation amongst their main priorities.<sup>197</sup>
- Massachusetts' LRTP articulates Fix-it-First as one of its key guiding principles and recommends that state transportation agencies dedicate between 75 percent and 90 percent of new capital investments to preserving and improving existing infrastructure.<sup>198</sup>
- New Hampshire's LRTP identifies system preservation and maintenance as one of eight policy goals.<sup>199</sup>
- Rhode Island's recent Surface Transportation Plans have retained a focus on "Fix-it-First" to improve the serviceability and quality of current assets.<sup>200</sup>
- Vermont's LRTP<sup>201</sup> identifies maintenance of existing infrastructure as the state transportation agency's major focus and the 2004 Highway System Policy Plan<sup>202</sup> suggests that preserving the existing system is a key policy principle.

A 2011 report by Smart Growth America and Taxpayers for Common Sense examined state annual spending on road repair and preservation as a percentage of the state's total highway capital budget over the period 2004-2008. The report found that in the TCI region, repair and preservation spending ranged from 12 percent to 59 percent.<sup>203</sup> A separate analysis of the percentage of road spending from the American Recovery and Reinvestment Act (ARRA) surface transportation funds found that most TCI states allocated over 90 percent of ARRA funds to maintenance and repair as opposed to new capacity.<sup>204</sup>

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<sup>196</sup> Connecticut Department of Transportation, Strategic Long-Range Transportation Plan 2009-2035 (2009).

<sup>197</sup> Maryland Department of Transportation, State Report on Transportation (2010), [http://www.mdot.maryland.gov/Planning/Plans\\_Programs\\_Reports/Index.html#MarylandTransportationPlan](http://www.mdot.maryland.gov/Planning/Plans_Programs_Reports/Index.html#MarylandTransportationPlan).

<sup>198</sup> Massachusetts Department of Transportation, THE COMMONWEALTH OF MASSACHUSETTS LONG-RANGE TRANSPORTATION PLAN, <http://www.eot.state.ma.us/default.asp?pgid=content/longplanIndex&sid=level2>.

<sup>199</sup> New Hampshire Department of Transportation, NH Long-range Transportation Plan 2010 – 2030, <http://www.nh.gov/dot/org/projectdevelopment/planning/documents/CompleteLRTP083110.pdf>.

<sup>200</sup> Rhode Island Department of Administration, Division of Planning, Statewide Planning Program, UNIFIED TRANSPORTATION PLANNING WORK PLAN FY 2012 (2011), Providence, RI, <http://www.planning.ri.gov/misc/Upwp.pdf>.

<sup>201</sup> VERMONT AGENCY OF TRANSPORTATION, LONG-RANGE TRANSPORTATION BUSINESS PLAN (2009), <http://www.aot.state.vt.us/planning/Documents/Planning/LRTBPfinalMarch2009.pdf>.

<sup>202</sup> VERMONT AGENCY OF TRANSPORTATION, VERMONT'S HIGHWAY SYSTEM POLICY PLAN (2004), <http://www.aot.state.vt.us/planning/HSPP.htm>.

<sup>203</sup> The report found the following for 2004 to 2008 state annual spending on road repair and preservation as a percentage of total highway capital budget, and in parentheses, percentage of major roads in good condition: Connecticut: 25% (36%); Delaware: 21% (45%); District of Columbia: 44% (0%); Maine: 59% (45%); Maryland: 18% (48%); Massachusetts: 12% (53%); New Hampshire: 46% (45%); New Jersey: 24% (19%); New York: 39% (39%); Pennsylvania: 27% (30%); Rhode Island: 16% (24%); Vermont: 51% (34%). SMART GROWTH AMERICA AND TAXPAYERS FOR COMMON SENSE, REPAIR PRIORITIES – TRANSPORTATION SPENDING STRATEGIES TO SAVE TAXPAYER DOLLARS AND IMPROVE ROADS (2011), <http://www.smartgrowthamerica.org/documents/repair-priorities.pdf>.

<sup>204</sup> Connecticut, Maine, New Jersey, Rhode Island, Vermont and the District of Columbia allocated 100% toward preservation; Maryland 99%; Pennsylvania 96%; New York 94%; Massachusetts 90%; New Hampshire 66% and Delaware 55%. SMART GROWTH AMERICA, RECENT LESSONS FROM THE STIMULUS – TRANSPORTATION FUNDING AND JOB CREATION (2011), <http://smartgrowthamerica.org/documents/lessons-from-the-stimulus.pdf>.



## ***Complete Streets Policies Addressing Cycling and Pedestrians***

Complete Streets policies require roadway design and operation that enable safe and comfortable access for all users, including public transportation vehicles and users, bicyclists, and pedestrians of all ages and abilities. Nearly all TCI states have some form of statewide Complete Streets policy, in the form of legislation, executive orders, or department policy and design manuals. Many local jurisdictions in the TCI region have also adopted plans, policies, or resolutions in support of Complete Streets design.

Six TCI states – Connecticut,<sup>205</sup> Rhode Island,<sup>206</sup> Massachusetts,<sup>207</sup> Vermont,<sup>208</sup> Maryland,<sup>209</sup> and New York<sup>210</sup> – are among the 16 U.S. states with legislation supporting Complete Streets or similar accommodations for bicyclists and pedestrians. Other TCI state Complete Streets policies include an executive order in Delaware,<sup>211</sup> DOT policy in New Jersey and Washington, D.C.,<sup>212</sup> and DOT design guidance in Pennsylvania<sup>213</sup> and Massachusetts.<sup>214</sup>

A nationwide analysis of state and local Complete Streets policies<sup>215</sup> – limited to a review of written policies with respect to criteria such as guidance for street connectivity, design, evaluation measures, and implementation – identified the strengths of a number of policies in the TCI region. New Jersey DOT's policy and Connecticut's legislation were found to be particularly strong, in part because of their broad jurisdiction extending to state funds passing to localities, MPOs, and private developers. NJDOT's policy, identified as the “top-ranked” DOT policy in the nation in the analysis, was also noted for laying out an implementation plan. Massachusetts, which enacted one of the earliest Complete Streets laws, was noted for having strong DOT design guidance, including a clear directive and encompassing all users and modes. The District of Columbia's DOT policy was also noted for its clarity. Among TCI municipal jurisdictions with strong policies, New York City DOT's Sustainable Streets Strategic Plan was noted for strong design guidance and performance measures.

New Jersey DOT has developed an extensive program to implement its complete streets policy and encourage local jurisdictions to adopt complete streets policies. NJDOT trained all of its in-house engineers and planners in its complete streets policy, and conducted workshops for hundreds of county and municipal decision makers, planners and engineers across the state.<sup>216</sup> The department has also

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<sup>205</sup> CONN. GEN. STAT. § 13a-153f (2011); An Act Improving Pedestrian and Bicycle Access, Pub. Act No. 09-154.

<sup>206</sup> R.I. Gen. Laws § 31-18-21 (2011).

<sup>207</sup> Mass. Gen. Laws ch. 90E § 2A (2011).

<sup>208</sup> Vt. Stat. Ann. tit. 19, § 10b, tit. 24, § 4302 (2011); H. 198, 2011

<sup>209</sup> Transportation Code §2-602, 2000

<sup>210</sup> S5411A/A8366, 2011

<sup>211</sup> State of Delaware, Executive Order Six, Creating a Complete Streets Policy (2009),

[http://governor.delaware.gov/orders/exec\\_order\\_06.shtml](http://governor.delaware.gov/orders/exec_order_06.shtml)

<sup>212</sup> District of Columbia, Department of Transportation, DEPARTMENTAL ORDER NO. 06-2010 (2010),

[http://ddot.dc.gov/DC/DDOT/Publication%20Files/About%20DDOT/Policies/ddot\\_completestreetspolicy.pdf](http://ddot.dc.gov/DC/DDOT/Publication%20Files/About%20DDOT/Policies/ddot_completestreetspolicy.pdf)

<sup>213</sup> Pennsylvania Department of Transportation, PUBLICATION 10A, DESIGN MANUAL PART 1X (2010), APPENDIX S, BICYCLE

AND PEDESTRIAN CHECKLIST, [ftp://ftp.dot.state.pa.us/public/bureaus/design/PUB10X/Pub10X\\_Cover.pdf](ftp://ftp.dot.state.pa.us/public/bureaus/design/PUB10X/Pub10X_Cover.pdf)

<sup>214</sup> Massachusetts DOT, PROJECT DEVELOPMENT AND DESIGN GUIDE (2006),

<http://www.mhd.state.ma.us/default.asp?pgid=content/designguide&sid=about>

<sup>215</sup> National Complete Streets Coalition, NATIONAL COMPLETE STREETS POLICY ANALYSIS 2011: INCLUSIVE. DIVERSE. ACCOUNTABLE (2012), <http://www.completestreets.org/webdocs/resources/cs-policyanalysis.pdf>; National Complete Streets Coalition, NATIONAL COMPLETE STREETS POLICY ANALYSIS 2010 – A STORY OF GROWING STRENGTH (2011), <http://www.completestreets.org/webdocs/resources/cs-policyanalysis.pdf>. The coalition is in the process of developing tools for assessing implementation of Complete Streets policies.

<sup>216</sup> Comments from New Jersey state staff; see *Complete Streets Workshops and Training*, STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION, <http://www.state.nj.us/transportation/eng/completestreets/training.shtml> (last

established Complete Streets incentives in its Local Aid and Economic Development grant program by providing extra points to municipalities that meet benchmarks, such as having a state-approved Complete Streets policy.<sup>217</sup> NJDOT has provided resources that include a Complete Streets curriculum, a guidebook and recently launched website.<sup>218</sup> Through the department's outreach efforts, the state has 35 municipalities and three counties that have adopted policies.<sup>219</sup> NJDOT has also dedicated funding to build infrastructure for pedestrians. Since 2007, 136 bicycle and pedestrian projects have been constructed which includes 187,000 linear feet of new sidewalk. To compliment this initiative, funding has been earmarked to upgrade intersections to ensure that ADA curb ramps are installed where missing. Recently, a Bus Stop Inventory was conducted to identify bus stops and shelters located on state highways to begin the process of improving the permitting and placement process.<sup>220</sup>

### C. Programs or Initiatives Directly Financed by the State

Several states have programs to finance specific types of planning, zoning, downtown revitalization, and transit-oriented development initiatives directly:

- Maryland's Main Street Improvement Program offers grants to local jurisdictions and non-profits to promote the development and revitalization of business districts for Main Street projects, focused on downtown revitalization and "Maple Street" projects, for residential revitalization in neighborhoods surrounding commercial districts.<sup>221</sup>
- Massachusetts' MassWorks Infrastructure Program consolidates six former types of grant programs, including the Transit Oriented Development (TOD) program, into one program that provides infrastructure grants to: community revitalization and sustainable development; and housing development meeting minimum density requirements. Goals include increased funding for TOD, redevelopment of existing sites, and mixed-use developments.<sup>222</sup>
- Massachusetts also offers a numbers of financial incentives, including direct payments and preference for discretionary grants, to encourage municipalities to adopt new overlay smart growth zoning districts to promote affordable housing and smart growth development through its Chapter 40R program. Smart growth zoning districts can be in one of three locations: areas near transit; areas of concentrated development; and other areas that are particularly suited for residential or mixed-use smart growth districts. The zoning overlay district generally cannot exceed 15 percent of local land area. The district must provide a minimum allowable density of eight units per acre for single-family homes, twelve units per acre for two and three family buildings, and/or twenty units per acre for multi-family dwellings, although exception are allowed for communities under 10,000 in population. Twenty percent of the housing in the district must be affordable to those earning 80 percent or less of the median income and be deed restricted for at least 30 years. Upon approval of a district, a municipality receives a zoning incentive payment.

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visited Oct. 5, 2012),

<sup>217</sup> *Complete Streets Implementation*, STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION,

<http://www.state.nj.us/transportation/eng/completestreets/implementation.shtm> (last visited Oct. 5, 2012),

<sup>218</sup> NEW JERSEY BICYCLE & PEDESTRIAN RESOURCE CENTER, <http://www.njbikeped.org> (last visited Oct. 5, 2012).

<sup>219</sup> Comments from New Jersey state staff.

<sup>220</sup> Comments from New Jersey state staff.

<sup>221</sup> *Main Streets Maryland*, DIVISION OF NEIGHBORHOOD REVITALIZATION AT THE MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT,

<http://www.neighborhoodrevitalization.org/programs/mainstreet/mainstreet.aspx> (last visited Oct. 20, 2011).

<sup>222</sup> MASSWORKS INFRASTRUCTURE PROGRAM 2011-12 PROGRAM GUIDELINES (2011),

[http://www.mass.gov/Ehed/docs/permitting/2011-](http://www.mass.gov/Ehed/docs/permitting/2011-12%20MassWorks%20Infrastructure%20Program%20Guidelines%20-%20205-1-11%20v2.pdf)

[12%20MassWorks%20Infrastructure%20Program%20Guidelines%20-%20205-1-11%20v2.pdf](http://www.mass.gov/Ehed/docs/permitting/2011-12%20MassWorks%20Infrastructure%20Program%20Guidelines%20-%20205-1-11%20v2.pdf).

The amount of the incentive payment is based on the potential number of new housing units that can be constructed in the district. The incentive payment is disbursed to the community after approval by the Department of Housing and Community Development. Payments range from \$10,000 for up to twenty units to \$600,000 for more than 500 units of housing. A community will also receive a bonus payment of \$3,000 for each unit of new housing unit built in the district which is payable once the building permit has been issued for the housing unit.<sup>223</sup> Communities are reimbursed for any net cost of educating students living in new housing in a smart growth district.<sup>224</sup> When awarding discretionary funds, several state agencies, including housing and transportation agencies, must give preference to municipalities with an approved smart growth zoning district.

- New York's Cleaner, Greener Communities Program (CGC) is a two-phase grant program totaling \$100 million to provide the necessary resources for each economic region in the state to develop and implement regional sustainability plans. Phase one provides up to a \$1 million grant in each of New York's 10 economic development regions to develop a regional sustainability plan. An applicant must be a city or town acting on behalf of a representative consortium of the region's municipalities. The plans are to outline strategies consistent with the statewide goal of achieving 80 percent GHG reductions by 2050, including specific GHG reduction goals for transportation and land use sectors. Phase two will fund specific GHG reduction, energy efficiency, and renewable energy projects consistent with a region's sustainability and strategic plans.<sup>225</sup>
- Vermont's Downtown Community Development Act established a Transportation and Related Capital Improvement fund to aid designated downtown districts with loans and grants, totaling approximately \$360,000 in fiscal year 2010.<sup>226</sup>
- Vermont's Act 200 created the Municipal and Regional Planning Fund (MRPF) to provide limited planning grants.<sup>227</sup> The planning encouraged by Act 200 is funded through a property transfer tax. Seventeen percent of the collected tax goes to the MRPF. The MRPF is divided between the Regional Planning Commissions (70 percent) and the municipal planning grants program (20 percent).<sup>228</sup> Towns that have adopted a plan are made eligible for municipal planning grants by submitting their plans for regional review; municipalities with a local planning process formally approved by the Regional Planning Commission may apply for full grants, while municipalities with confirmed planning processes may apply for funding to create a municipal plan.<sup>229</sup>

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<sup>223</sup> MASS. GEN. LAWS ch. 40R §§ 1-14 (2011); *Chapter 40R (and Chapter 40S)*, MASSACHUSETTS SMART GROWTH/SMART ENERGY TOOLKIT, [http://www.mass.gov/envir/smart\\_growth\\_toolkit/pages/mod-40R.html](http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-40R.html) (last visited Oct. 20, 2011).

<sup>224</sup> MASS. GEN. LAWS ch. 40S §§ 1-4 (2011).

<sup>225</sup> NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, FUNDING AVAILABILITY ANNOUNCEMENT: CLEANER, GREENER COMMUNITIES REGIONAL SUSTAINABILITY PLANNING PROGRAM (2011), [www.nyseda.org/cfa/files/cgc-guidance-document.pdf](http://www.nyseda.org/cfa/files/cgc-guidance-document.pdf)

<sup>226</sup> VERMONT DIVISION FOR HISTORIC PRESERVATION, APPLICATION GUIDELINES FOR THE DOWNTOWN TRANSPORTATION AND RELATED CAPITAL IMPROVEMENT FUND 2 (2009), <http://www.historicvermont.org/programs/dfguide.pdf>.

<sup>227</sup> VT. STAT. ANN. tit. 24, § 4306(a).

<sup>228</sup> VT. DEPARTMENT OF HOUSING & COMMUNITY AFFAIRS, STATUS REPORT: 15 YEARS AFTER ACT 200 (2004), [www.dhca.state.vt.us/Planning/ACT200\\_15Years.doc](http://www.dhca.state.vt.us/Planning/ACT200_15Years.doc).

<sup>229</sup> VERMONT DEPARTMENT OF ECONOMIC, HOUSING AND COMMUNITY DEVELOPMENT, FY12 MUNICIPAL PLANNING GRANT PROGRAM DESCRIPTION 2 (2011), <http://www.dhca.state.vt.us/Planning/GMS/ProgramDescriptionFY12.pdf>.

## D. Programs to Leverage Federal Funds

Many states support sustainable community goals through the use of preferences or eligibility requirements in their disbursements of federal aid to local governments and other entities. Federal aid programs that are subject to this type of strategy include federal transportation funding, particularly transportation funding through the Transportation Alternatives program (a new program established by MAP-21 that consolidating the Transportation Enhancements, Safe Routes to School, and Recreational Trails programs);<sup>230</sup> federal funding through the Community Development Block Grant program, administered by the Department of Housing and Urban Development; and air and water quality funding programs administered by the Environmental Protection Agency, including funding for clean water state revolving loan funds.

One universal form of federal transportation funding that is used to support sustainable communities is funding under what was previously known as the Transportation Enhancements (TE) program, and is now consolidated as the Transportation Alternatives program under MAP-21. Transportation Alternatives funds may be used to fund specified activities, including construction, planning, and design of facilities for pedestrians and bicycles, environmental mitigation, recreational trails, and activities that improve the safety of pedestrian and bicycle routes in the vicinities of schools.<sup>231</sup> A state's Transportation Alternatives funding will be derived from a set-aside from the federal highway trust fund, and that amount will be apportioned among states in the same proportion as states received Transportation Enhancements funds.<sup>232</sup>

Examples of how states have leveraged federal funding include the following:

- The Pennsylvania Community Transportation Initiative (PCTI) used money set aside from the STIP to support projects exemplifying PennDOT's Smart Transportation principles, such as planning, bicycle and pedestrian safety, streetscape improvement, and traffic calming projects. Both planning and construction proposals are eligible to receive the PCTI funds, as long as they meet one or more of Pennsylvania's Smart Transportation themes and are eligible for federal funding. Two rounds of funding under PCTI have been announced. In 2009, \$59.2 million was allotted to 50 Smart Transportation-related projects. On Jan. 6, 2011, PCTI announced \$24.7 million in awards to 41 projects.<sup>233</sup>
- Rhode Island's Planning Challenge Grants, funded through Federal Highway Administration metropolitan planning funds, address resource and expertise gaps to facilitate implementation of the state long-range plan through funding projects such as corridor, access management, and commuter rail feasibility studies and training programs for local officials.<sup>234</sup>

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<sup>230</sup> MAP-21, Pub. L. No. 112-141, § 1122, amending 23 U.S.C. § 213; GCC MAP-21 SUMMARY, *supra* note 124, at 10.

<sup>231</sup> MAP-21, Pub. L. No. 112-141, § 1122, amending 23 U.S.C. § 213(b) (identifying eligible programs to include those defined as Transportation Alternatives and those under the Recreational Trails Program and the Safe Routes to School Program); GCC MAP-21 SUMMARY, *supra* note 124, at 10.

<sup>232</sup> GCC MAP-21 SUMMARY, *supra* note 124, at 10. *See also Transportation Enhancement Activities Program Brief*, FEDERAL HIGHWAY ADMINISTRATION, <http://www.fhwa.dot.gov/environment/te/brief.htm> (last visited Oct. 20, 2011).

<sup>233</sup> PENNSYLVANIA DEPARTMENT OF TRANSPORTATION, PRESS RELEASE, PENNDOT ANNOUNCES \$24.7 MILLION FOR SMART TRANSPORTATION PROJECTS IN 41 COMMUNITIES (Jan. 6, 2011), <http://www.smart-transportation.com/assets/download/PennDOT2ndRoundPCTIPressRelease.pdf>

<sup>234</sup> Rhode Island Department of Administration, Division of Planning, Statewide Planning Program, UNIFIED TRANSPORTATION PLANNING WORK PLAN FY 2012 (2011), Providence, RI, <http://www.planning.ri.gov/misc/Upwp.pdf>.

- As described earlier, Maine law requires state agencies to give funding preference to communities that have completed a voluntary growth management plan that has been certified as consistent with Maine's growth management law. This includes providing preferences for a number of state-administered federal funding programs, including Community Development Block Grants, Non-Point Source Protection Grants funded under Section 319 of the Clean Water Act by the EPA, and the Clean Water State Revolving Loan Fund.<sup>235</sup> As an example, in its fiscal year 2011 Program Statement, the Maine Department of Economic and Community Development states that "a municipality that does not obtain a certificate or finding of consistency [between a local plan and the state growth management act] within 4 years ... will receive a low priority."<sup>236</sup>
- New York's Clean Water State Revolving Fund, funded through federal funds pursuant to the Clean Water Act, will begin applying the state's Infrastructure Act criteria to score applicants. New York State's Final Intended Use Plan for Federal Fiscal Year 2011 states that "it is expected that EFC will be requiring applicants to provide information related to the planning efforts for their projects ... and may ask about Comprehensive Land Use Plans, local zoning ordinances, regional land use master plans, or other planning tools utilized in the development of your project." EFC may also ask whether the project serves specific types of compact development, including downtown areas and transit-oriented developments.<sup>237</sup>
- In Maryland, several state level funding programs have been developed to parallel and better leverage federal funding initiatives. These include a Community Safety and Enhancement Program, a new Bikeways Program and a state-level designation of Scenic Byways.<sup>238</sup>
- Maine DOT's Quality Communities program consolidates multiple state and federal funding opportunities, including TE and Safe Routes to School, into a single, "common" application for quality of life and community improvements funding opportunities.<sup>239</sup>

## E. Tax Credits and Other Incentive Programs

### **Tax Credits**

Most TCI states also use some form of tax incentives to encourage redevelopment in existing communities and urban centers.

Some tax incentives focus explicitly on smart growth goals. Among the benefits of a Sustainable Community designation under Maryland's 2010 Sustainable Communities Act is eligibility for tax credits for all commercial rehabilitations along with a higher tax credit for historic commercial and residential rehabilitations (See 0). New Jersey's Urban Transit Hub Tax Credit Program offers tax credits to developers, owners, and tenants of qualifying properties in proximity to transit centers in one of nine

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<sup>235</sup> MAINE STATE PLANNING OFFICE, BROCHURE: WHY CREATE A COMPREHENSIVE PLAN CONSISTENT WITH MAINE'S GROWTH MANAGEMENT ACT (2010),

<http://www.maine.gov/spo/landuse/docs/compplanning/reasonsforcompplan.pdf>.

<sup>236</sup> MAINE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FISCAL YEAR 2011 PROGRAM STATEMENT 9 (2010),

<http://www.maine.gov/tools/whatsnew/attach.php?id=97691&an=1>

<sup>237</sup> NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND ENVIRONMENTAL FACILITIES CORPORATION, FINAL INTENDED USE PLAN, CLEAN WATER STATE REVOLVING FUND, FEDERAL FISCAL YEAR 1,8 2011 (2011), <http://www.health.ny.gov/environmental/water/drinking/iup/2011/contents.htm>

<sup>238</sup> Comments from Maryland state staff.

<sup>239</sup> *Quality Community Program Application Announcement*, MAINE DEPARTMENT OF TRANSPORTATION, <http://www.maine.gov/mdot/projects-grant-applications/qcp/index.htm> (last visited Oct. 20, 2011).



designated Urban Transit Hubs.<sup>240</sup>

Most TCI states – New York, Vermont, Rhode Island, Connecticut, Delaware, Maine, Maryland, and Massachusetts – have implemented historic preservation tax credits, complementing federal historic preservation tax incentives, to rehabilitate historic residential and commercial properties.<sup>241</sup> These programs are often aligned with sustainable community goals because they support redevelopment. New York’s program focuses particularly on “distressed” or low-income areas<sup>242</sup> and Vermont offers the credit for historic properties in designated downtowns and village centers.<sup>243</sup>

### ***Policies to Support Transit-Oriented Development***

States use a number of different tools to create incentives for transit-oriented development. Examples include the following:

- Legislation enabling Massachusetts’ Transit Oriented Development Infrastructure and Housing Support program, now incorporated into MassWorks Infrastructure Program, authorized \$30 million to support pedestrian improvements, housing projects, and bicycle and parking facilities within 0.25 miles of transit stations or ferry terminals.<sup>244</sup>
- Legislation creating Maryland’s Transit-Oriented Development designation authorizes MDOT to use department resources including land, funds, and personnel to support designated TOD projects. Benefits available to designated projects include prioritization of funds and resources, financing assistance, and tax credits.<sup>245</sup> As a result of the Sustainable Communities legislation of 2010 these designated areas are now also eligible for related state discretionary programs associated with revitalization.
- New Jersey’s Transit Village Initiative provides benefits to designated areas including priority funding, technical assistance and eligibility for NJDOT grants.<sup>246</sup> In addition, developers, owners, or tenants within a designated New Jersey Urban Transit Hub may qualify for tax credits up to

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<sup>240</sup> *Urban Transit Hub Tax Credit Program*, NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, [http://www.njeda.com/web/Aspx\\_pg/Templates/Npic\\_Text.aspx?Doc\\_Id=888&menuid=1295&topid=718&levelid=6&midid=1175](http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=888&menuid=1295&topid=718&levelid=6&midid=1175) (last visited Oct. 20, 2011).

<sup>241</sup> NATIONAL TRUST FOR HISTORIC PRESERVATION, STATE TAX CREDITS FOR HISTORIC PRESERVATION: A STATE BY STATE SUMMARY (2007), <http://www.preservationnation.org/resources/find-funding/additional-resources/taxincentives.pdf>.

<sup>242</sup> 2009 N.Y. Laws ch. 239; N.Y. TAX LAW § 606(oo).

<sup>243</sup> VT. STAT. ANN. tit. 24, § 2794.

<sup>244</sup> MASSACHUSETTS’ EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS, TOD INFRASTRUCTURE AND HOUSING SUPPORT PROGRAM, TOD PROGRAM GUIDELINES (2008).

<sup>245</sup> MARYLAND DEPARTMENT OF TRANSPORTATION, THE DESIGNATION OF TRANSIT ORIENTED DEVELOPMENT PROJECTS, FREQUENTLY ASKED QUESTIONS (2011), <http://www.mdot.maryland.gov/Planning/TOD/Documents/Revised%20TOD%20FAQ%204%206%202011.pdf>.

<sup>246</sup> *Transit Village Initiative, Frequently Asked Questions*, NEW JERSEY DEPARTMENT OF TRANSPORTATION, <http://www.state.nj.us/transportation/community/village/faq.shtm> (last visited Oct. 20, 2011). The 2012 Transportation Capital Plan did not include separate funding to provide incentives for municipalities, however Transit Village communities continued to receive funding from the Municipal Aid Program. New Jersey Department of Transportation, TRANSPORTATION CAPITAL PROGRAM FY 2012 (2011), <http://www.state.nj.us/transportation/capital/tcp12/pdf/tcp12.pdf>. The FY 2013 Transportation Capital Program has restored \$1M of line item funding to the Transit Village program. New Jersey Department of Transportation, TRANSPORTATION CAPITAL PROGRAM FY 2013 at 8 (2012), <http://www.state.nj.us/transportation/capital/tcp13/pdf/tcp13.pdf>.



100 percent of qualified capital investments.<sup>247</sup>

### ***Other Policies***

New York's new land banking/vacant property re-use law – modeled on a similar Michigan statute – establishes land banks as a legal public/private corporate entity in state law, and reforms the state's municipal tax lien foreclosure statute to facilitate the acquisition and re-development of vacant and abandoned properties by the land banks.<sup>248</sup>

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<sup>247</sup> *Urban Transit Hub Tax Credit Program*, NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, [http://www.njeda.com/web/Aspx\\_pg/Templates/Npic\\_Text.aspx?Doc\\_Id=888&menuid=1295&topid=718&levelid=6&midid=1175](http://www.njeda.com/web/Aspx_pg/Templates/Npic_Text.aspx?Doc_Id=888&menuid=1295&topid=718&levelid=6&midid=1175) (last visited October 20, 2011).

<sup>248</sup> N.Y. NOT-FOR-PROFIT CORP. LAW §§ 1600-1617 (Consol. 2012); *New York State Land Bank Program*, NEW YORK STATE'S EMPIRE STATE DEVELOPMENT, <http://www.esd.ny.gov/BusinessPrograms/NYSLBP.html> (last visited October 20, 2011).

## V. Measuring Progress on Sustainable Community Outcomes

All TCI states use some measures or indicators relevant to sustainable communities, though implementation varies greatly. Some states use specific indicators on a one-time basis in transportation plans or other documents, while other states are implementing broad measurement programs to be used year after year.

Two state efforts are particularly notable.

- Maryland provides a broad example of a statewide measurement program that specifically requires both transportation and land use measures, and that is explicitly connected with statewide GHG emission reduction goals. Many components of Maryland's efforts are the result of recent legislation and are therefore still in development.
- New York's GreenLITES program provides an example of a different type of measurement program, which uses self-evaluation worksheets to create information for ranking capital projects.

In general, there are two broad types of formal measurement programs in TCI states: transportation department performance measures and land use measurement programs.

Part A describes transportation performance measurement programs, usually implemented by state Departments of Transportation. Seven states and the District of Columbia have implemented formal programs.

Part B describes efforts developed by states to measure land use related outcomes.

Closely related to measuring progress is the understanding of how different transportation or land use approaches will produce different results in the future. Scenario planning is a technique that uses modeling to project how different land use and transportation decisions will affect communities in the future. Such planning usually takes place at the intrastate regional (i.e., MPO) level, and Part C identifies six scenario-planning efforts undertaken in the TCI region that include greenhouse gas measurements.

Finally, it should be noted that the TCI Sustainable Communities workgroup is working to develop a set of measures that will be a resource for participating TCI states' efforts to track benefits and outcomes of state sustainable community efforts.<sup>249</sup>

### A. Transportation Metrics Programs

Many state DOTs have designated formal performance measures. Most are broad-based programs that address many issues including safety, infrastructure maintenance, congestion levels, and environmental stewardship. In some cases, these measures may be included in state long-range transportation planning documents. These programs vary in the degree to which they incorporate indicators relevant to sustainable communities.

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<sup>249</sup> For more information about the ongoing work, see TRANSPORTATION AND CLIMATE INITIATIVE, DEVELOPMENT OF INDICATORS TO SUPPORT THE TCI AGREEMENT TO PROMOTE SUSTAINABLE COMMUNITIES (2012), <http://www.georgetownclimate.org/tcis-work-on-sustainable-transportation-indicators-0>.

**TCI state DOT performance measures programs or reports include the following:**

State	Metrics Program or Document	Types of Measures
<b>Connecticut</b>	DOT Performance Metrics <sup>250</sup>	<ul style="list-style-type: none"> <li>▪ % of funds for bicycle/pedestrian access (in response to state law)</li> <li>▪ Bus, rail, and CT Transit ridership, timeliness, reliability and age of fleet.</li> </ul>
<b>Maryland</b>	MDOT Annual Attainment Report (required by statute) <sup>251</sup>	<ul style="list-style-type: none"> <li>▪ Transportation-related GHG emissions</li> <li>▪ Mode share</li> <li>▪ Pedestrian and bicycle facilities</li> <li>▪ Daily Reductions in Trips and VMT from TDM</li> </ul>
<b>Massachusetts</b>	MassDOT Performance Management Report: MassDOT Highway Division Score Card <sup>252</sup>	<ul style="list-style-type: none"> <li>▪ Bicycle, pedestrian fatalities</li> <li>▪ Transit ridership</li> <li>▪ Generally more highway operations focused</li> </ul>
<b>New Jersey</b>	DOT Centerline Performance Measures Report; <sup>253</sup> 10 Year Performance Measure Targets <sup>254</sup>	<ul style="list-style-type: none"> <li>▪ Focus on infrastructure maintenance, safety, congestion, operations</li> </ul>
<b>Rhode Island</b>	2008 Long-range Plan, 2010 Amendment <sup>255</sup>	<ul style="list-style-type: none"> <li>▪ Reduce GHGs, VMT from transportation sector</li> <li>▪ Increase transit ridership, intermodal connections</li> <li>▪ Cycling, pedestrian mode share, facilities</li> <li>▪ Achieve more concentrated development patterns</li> </ul>
<b>Vermont</b>	Performance Measures <sup>256</sup>	<ul style="list-style-type: none"> <li>▪ Bicycle, pedestrian accidents, facilities</li> <li>▪ Park and ride programs</li> <li>▪ Passenger rail ridership</li> </ul>
<b>District of Columbia</b>	Performance Assessment Report, <sup>257</sup> DDOT Dashboard <sup>258</sup>	<ul style="list-style-type: none"> <li>▪ Project-focused; includes projects such as expanding bike sharing, adding pedestrian and bicycle amenities, conducting livability studies</li> <li>▪ “Dashboard” provides dynamic visual presentation key indicators, including bus on-time performance (DC Circulator)</li> </ul>

<sup>250</sup> CTDOT, PERFORMANCE MEASURES: 2010 SUMMARY (2010), <http://www.ct.gov/dot/cwp/view.asp?a=3815&q=448402>.

<sup>251</sup> MDOT, 2012 Annual Attainment Report on Transportation System Performance (2012), [http://www.mdot.maryland.gov/Office%20of%20Planning%20and%20Capital%20Programming/CTP/CTP\\_Documents/Final\\_CTP/2012\\_Attainment\\_Report.pdf](http://www.mdot.maryland.gov/Office%20of%20Planning%20and%20Capital%20Programming/CTP/CTP_Documents/Final_CTP/2012_Attainment_Report.pdf).

<sup>252</sup> MASSDOT PERFORMANCE MANAGEMENT REPORT (2010), <http://www.massdot.state.ma.us/InformationCenter/DocumentsPresentations.aspx>.

<sup>253</sup> STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION, CENTERLINE: AN ASSET MANAGEMENT PERFORMANCE REPORT (2010), <http://www.state.nj.us/transportation/about/asset/pdf/centerline0810.pdf>.

<sup>254</sup> Asset Management, STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION, <http://www.state.nj.us/transportation/about/asset/performance.shtm>.

<sup>255</sup> RI STATEWIDE PLANNING PROGRAM, DEPARTMENT OF ADMINISTRATION, TRANSPORTATION 2030, AMENDMENT 1 (2010), <http://www.planning.ri.gov/transportation/trans2030.pdf>.

<sup>256</sup> VERMONT AGENCY OF TRANSPORTATION, PERFORMANCE MEASURES (2008), <http://www.aot.state.vt.us/planning/assessmanagement.htm>.

<sup>257</sup> District Department of Transportation, Government of the District of Columbia, FY11 Performance Accountability Report (2012), [http://capstat.oca.dc.gov/Pdf.aspx?pdf=http://capstat.oca.dc.gov/docs/fy11/DDOT\\_FY11PAR.pdf](http://capstat.oca.dc.gov/Pdf.aspx?pdf=http://capstat.oca.dc.gov/docs/fy11/DDOT_FY11PAR.pdf).

<sup>258</sup> Dashboard, DDOT, <http://dashboard.ddot.dc.gov/ddotdashboard/#Home>; see also DDOT Performance, TRACK-DC, <http://track.dc.gov/Agency/KA0>.

Almost all state transportation departments use metrics in some way, even those states for which we did not find a formal metrics program. For example, states may use specific indicators, often on a one-time or irregular basis, in strategy or policy documents, in conformity analyses, or in state climate action plans.

A few states have particularly robust metrics programs aligned with sustainable community goals:

- Maryland DOT's Annual Attainment Report on Transportation System Performance, which is required by statute,<sup>259</sup> provides a particularly robust example of state performance measures. The controlling statute requires the report to include indicators examining the effectiveness of mode shifting efforts, projected effect of transportation investments on inducing travel demand, effectiveness of travel-demand reduction programs, and cost-effectiveness of investments for achieving relevant performance goals and benchmarks. In addition, a 2010 law (Ch. 725) requires MDOT to consider Maryland's forthcoming binding Climate Action Plan in developing future goals, benchmarks, and indicators, and requires a review of transportation indicators by the state's Smart Growth Cabinet.<sup>260</sup>
- In New York State, NYSDOT has developed GreenLITES, a sustainability-metrics self-evaluation program that the department uses to formally rank capital projects and operations/maintenance work on a sub-regional basis, and all region-wide investments made (and not made) on an annual cycle for internal review and comparison.<sup>261</sup> GreenLITES is modeled after the building industry's Leadership in Energy and Environmental Design (LEED) certification program. The project development and operations management tools are the most developed, with a points awarded for a range of sustainability criteria through a self-evaluation worksheet.<sup>262</sup> Certification is provided for a sufficient score, and high scoring projects can earn GreenLITES Silver, Gold and Evergreen certifications.
- Vermont's modal plans, including its Rail Policy Plan<sup>263</sup> and Bicycle and Pedestrian Policy Plan,<sup>264</sup> establish a list of performance measures categories specific to these modes, and steps to be taken in order to establish targets for each performance measure.

A number of states are developing metrics programs:

- New Jersey indicated in its 2010 Long-range Transportation Plan that it was developing a set of performance indicators to achieve the goals of its plan. It released a set of draft indicators for comment, including categories for integrating transportation and land use planning and enhancing

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<sup>259</sup> TRANSP. § 2-103.1(g)-(l). Requires MDOT to publish an annual report "on the attainment of transportation goals and benchmarks" for the approved and proposed Maryland Transportation Plan (Maryland's long-range transportation plan) and the approved and proposed Consolidated Transportation Program (Maryland's STIP).

<sup>260</sup> *Id.* at (i).

<sup>261</sup> *GreenLITES*, NEW YORK STATE DEPARTMENT OF TRANSPORTATION, <https://www.dot.ny.gov/programs/greenlites>; see also Gary R. McVoy et al., *Moving Towards Sustainability: New York State Department of Transportation's GreenLITES Story*, (submitted to Am. Soc'y Civ. Engineers for 2010 November Conference publication 2010), available at <https://www.nysdot.gov/programs/greenlites/repository/ASCE%20GreenLITES%20Final%20Paper%207-12-10.pdf>.

<sup>262</sup> *Project Design Certification Program*, NEW YORK STATE DEPARTMENT OF TRANSPORTATION <https://www.nysdot.gov/programs/greenlites/project-design-cert>.

<sup>263</sup> STATE OF VERMONT, STATE RAIL AND POLICY PLAN (2006), [http://railroads.vermont.gov/Documents/railpolicyplan/AOT-PLN-Rail\\_PP\\_fullreport.pdf](http://railroads.vermont.gov/Documents/railpolicyplan/AOT-PLN-Rail_PP_fullreport.pdf).

<sup>264</sup> VERMONT AGENCY OF TRANSPORTATION, VERMONT PEDESTRIAN AND BICYCLE POLICY PLAN (2008), <http://www.aot.state.vt.us/planning/Documents/Planning/VTBPPP2-10-08Final.pdf>.

the environment.<sup>265</sup> New Jersey DOT also reported that it was developing a “Smart Growth Management” system that could be used in a more systematic fashion for evaluating transportation capital projects.

- New Hampshire committed in its 2010 Long-range Transportation Plan to developing performance measures and includes some proposed metrics categories, including land use and transportation integration, mobility and modal choice, and environment categories.<sup>266</sup>
- Vermont is working to develop new performance indicators, including new GHG modeling capacity.<sup>267</sup>
- PennDOT’s Smart Transportation program, which aims to integrate transportation and land use, was seeking to develop a metrics component.<sup>268</sup>
- The District of Columbia is in the process of developing a “green dashboard” to track the District’s progress on a variety of sustainability measures, including commute mode share, transit ridership, walkability, bicycle share use, EV registration, and others. The dashboard will also compare the District’s outcomes to other cities.<sup>269</sup>

## B. Land Use Metrics

Several states have developed, or are in the process of developing, metrics programs to measure outcomes related to the state’s land use goals. States with dedicated state planning authority usually have some type of evaluation program.

In Maryland, the 2009 The Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions statute requires that local planning commissions or boards include in their required annual reports specified smart growth measures and indicators on local land use goals. Specified criteria include share of growth inside and outside PFAs, net density, new construction outside the PFA, and information about progress toward achieving a local land use goal. The State Department of Planning is

**Table 1: Key Indicators from National Center for Smart Growth Research “Indicators Project” for the State of Maryland**

Category	Key Indicators
Transportation	<ul style="list-style-type: none"> <li>• Roadway capacity;</li> <li>• lane miles;</li> <li>• vehicle registrations;</li> <li>• vehicle registrations per capita;</li> <li>• VMT;</li> <li>• federal Transportation Enhancement spending;</li> <li>• county land area, population, and jobs within ½ mile of a transit facility (i.e. Transit Shed) (total and percent);</li> <li>• for each transit facility, population, population density, percent of average county population density, ridership, number of parking spaces, and number of trains</li> </ul>
Population	<ul style="list-style-type: none"> <li>• Population inside PFAs, and population outside PFAs;</li> </ul>
Land Use	<ul style="list-style-type: none"> <li>• Percent of land developed, acres and number of parcels of improved single family lots, and percentage of land by use;</li> </ul>
Land Conservation	<ul style="list-style-type: none"> <li>• Inventory of acres conserved through various state programs, as well as by conservation organizations;</li> </ul>
Housing	<ul style="list-style-type: none"> <li>• New housing units authorized for construction by type and county, total and percent;</li> </ul>
Infrastructure	<ul style="list-style-type: none"> <li>• Bus route miles traveled, pupils transported, and transportation cost;</li> </ul>
Environment	<ul style="list-style-type: none"> <li>• Green Infrastructure Acres</li> </ul>

<sup>265</sup> NEW JERSEY DEPARTMENT OF TRANSPORTATION, NEW JERSEY’S LONG-RANGE TRANSPORTATION PLAN: FOR PUBLIC DISCUSSION (2008), <http://www.state.nj.us/transportation/works/njchoices/pdf/2030plan.pdf>.

<sup>266</sup> NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, LONG-RANGE TRANSPORTATION PLAN 2010-2030 (2010), <http://www.nh.gov/dot/org/projectdevelopment/planning/documents/CompleteLRTP083110.pdf>.

<sup>267</sup> Interview with VTrans staff.

<sup>268</sup> Interview with PennDOT staff.

<sup>269</sup> *Transportation*, GREEN DASHBOARD BETA: A TOOL OF SUSTAINABLE DC, <http://greendashboard.dc.gov/Transportation>.

required to submit its own annual report on the measures and indicators reported by local planning commissions, and to work with the National Center for Smart Growth Research and Education to recommend or identify additional indicators that should be collected at the state or local level.<sup>270</sup> The National Center for Smart Growth Research published a report as part of its “Indicators Project” in January 2011 that aimed to comprehensively identify and assess smart growth indicators in the state (see accompanying table).<sup>271</sup>

In Connecticut, a 2008 statute requires that during its upcoming revision of the state plan, the responsible agency identify three benchmarks for each growth management principles, including “focus on redevelopment,” “concentrate development,” “provide transportation choice.”<sup>272</sup>

The state of Massachusetts has published analyses of indicators used in its Commonwealth Capital<sup>273</sup> program (a mechanism for scoring municipal grant applications based on sustainable criteria). These include charts showing municipal responses to each of the Commonwealth Capital criterion such as the use of local planning, adoption of smart growth zoning types, pedestrian and bicycle amenities, and other factors. Other graphical data elements show scores for all participating municipalities and levels of participation, as well as state grant spending through the program.<sup>274</sup>

- New Jersey law requires that the state plan include indicators and targets.<sup>275</sup> The state’s 2011 State Strategic Plan recommends that relevant state agencies will develop indicators related to the goals of the plan in “Department Strategic Plans.”<sup>276</sup>
- Maine’s Growth Management Act requires periodic evaluations of state, regional and local efforts to achieve the purposes and goals of the state’s Growth Management Act. An ongoing process is tracking development in the state (i.e., change in impervious surfaces and building locations, and new electrical service connections).<sup>277</sup> The 2011 Evaluation report also includes a survey of voluntary local planning activity, data of state funding on planning, and an evaluation of legally required scoring preference for related grants (finding that while only 40 percent of state grant programs favored projects consistent with local comprehensive plans, this accounted for 80 percent of relevant total funds available).<sup>278</sup>

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<sup>270</sup> MD. CODE ANN., art. 66B § 3.10 (b)(2) (LexisNexis 2011); An Act Concerning Smart, Green, and Growing – Annual Report – Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions, 2009 Md. Laws ch. 178, Section 2.

<sup>271</sup> JASON SARTORI, TERRY MOORE & GERRIT KNAAP, INDICATORS OF SMART GROWTH IN MARYLAND 56 (2011), [http://www.smartgrowth.umd.edu/research/pdf/SartoriMooreKnaap\\_MDIndicators\\_010611.pdf](http://www.smartgrowth.umd.edu/research/pdf/SartoriMooreKnaap_MDIndicators_010611.pdf).

<sup>272</sup> An Act Implementing the Recommendation of the Program Review and Investigations Committee Study of Regional Planning Organizations. 2008 Conn. Pub. Acts 182, § 10(e).

<sup>273</sup> Commonwealth Capital is being replaced by a new program based on similar principles. *Commonwealth Capital*, MASS.GOV, <http://www.mass.gov/governor/priorities/jobs/smartgrowth/capital/>.

<sup>274</sup> *Graphs, Maps and Data on Commonwealth Capital Performance*, MASS.GOV, <http://www.mass.gov/governor/priorities/jobs/smartgrowth/capital/commonwealth-capital-performance-information.html>.

<sup>275</sup> State Planning Act, N.J.S.A. § 52:18A-202.3.

<sup>276</sup> NEW JERSEY STATE PLANNING COMMISSION, STATE STRATEGIC PLAN: NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN, DRAFT FINAL 40 (2012), <http://www.nj.gov/state/planning/publications/192-draft-final-ssp.pdf>.

<sup>277</sup> ME. REV. STAT. TIT. 30 § 4347-A(3).

<sup>278</sup> MAINE STATE PLANNING OFFICE, FOUR-YEAR GROWTH MANAGEMENT PROGRAM EVALUATION (2011), [www.maine.gov/spo/landuse/docs/2011\\_Evaluation.pdf](http://www.maine.gov/spo/landuse/docs/2011_Evaluation.pdf).



- NYSDOT GreenLITES program is also developing a tool for regional assessment, which proposes to take a more holistic view of sustainability at the regional level. Currently, the tool asks regional actors to assess the current and desired levels of a variety of indicators, including CO<sub>2</sub> emissions, petroleum consumption, system connectivity, and others.<sup>279</sup>

### C. GHG Projections / Scenario Planning Efforts

Closely related to measuring progress is the ability to understand how different transportation or land use approaches will produce different results in the future. Scenario planning is a technique that uses modeling to project how different land use and transportation decisions will affect communities in the future. The outputs that a scenario plan can model will vary, but generally includes projections of future development patterns and density, transportation usage by mode, and transportation-related emissions, including GHG emissions. Such planning usually takes place at the intrastate regional (i.e., MPO) level, and the new federal transportation reauthorization, MAP-21, especially allows and provides criteria for scenario planning as mechanism for meeting federal MPO long-range planning requirements.<sup>280</sup>

Several MPOs in the TCI region have conducted scenario planning that includes projections of GHG emissions:

- In Connecticut's Capital Region, the Regional Plan Association,<sup>281</sup> developed alternative scenarios for growth in three corridors of the capital region, including projections for VMT and CO<sub>2</sub>.<sup>282</sup>
- In Pennsylvania and New Jersey, the Delaware Valley Regional Planning Commission (DVRPC, Philadelphia metro area) developed three scenarios in its Long-range Plan, including projections for VMT and CO<sub>2</sub>, avoided costs and other measures. DVRPC also completed an inventory of GHG emissions in the region.<sup>283</sup>
- In Vermont, the Chittenden County Metropolitan Planning Organization developed three regional growth scenarios for their Vision 2060 report, including GHG transit emissions and mode share.<sup>284</sup>
- In New York, the Capital District Transportation Committee's New Visions 2035 regional transportation plan update analyzes four growth scenarios (status quo, concentrated growth, trend hyper-growth, and concentrated growth), and including some projected GHG emissions.<sup>285</sup>

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<sup>279</sup> GreenLITES Regions, <https://www.nysdot.gov/programs/greenlites/regions> (last visited Apr 8, 2011); Interview with Paul Krekeler, NYSDOT - GreenLITES Manager, April 8, 2011.

<sup>280</sup> MAP-21, Pub. L. No. 112-141, § 1201, amending 23 U.S.C. § 134(i)(4).

<sup>281</sup> An independent urban research and advocacy group that prepares long-range plans and policies to guide the growth and development of the New York- New Jersey-Connecticut metropolitan region. *Regional Plan Association, MISSION - REGIONAL PLAN ASSOCIATION*, <http://www.rpa.org/mission.html> (last visited Apr 27, 2011).

<sup>282</sup> REGIONAL PLAN ASSOCIATION, *GROWING ECONOMY, SHRINKING EMISSIONS: A TRANSIT-ORIENTED FUTURE FOR CONNECTICUT'S CAPITAL REGION* (2010), <http://www.rpa.org/2010/03/a-transit-oriented-future-for-connecticuts-capital-region.html>.

<sup>283</sup> DELAWARE VALLEY REGIONAL PLANNING COMMISSION, *CONNECTIONS: THE REGIONAL PLAN FOR A SUSTAINABLE FUTURE* (2009), [http://www.dvrpc.org/asp/pubs/publicationabstract.asp?pub\\_id=09047](http://www.dvrpc.org/asp/pubs/publicationabstract.asp?pub_id=09047).

<sup>284</sup> CHITTENDEN COUNTY METROPOLITAN PLANNING ORGANIZATION, *VISION 2060 SCENARIO PLANNING REPORT iii* (2011), [http://www.ccmppo.us/MTP/2035/Vision\\_2060\\_Scenario\\_Planning\\_Report\\_20110104.pdf](http://www.ccmppo.us/MTP/2035/Vision_2060_Scenario_Planning_Report_20110104.pdf).

<sup>285</sup> CAPITAL DISTRICT TRANSPORTATION COMMITTEE, *DRAFT NEW VISIONS 2035 PLAN UPDATE* (2011), <http://www.cdtempo.org/rtp2035/comments.htm>.

- In Maryland, the Baltimore Regional Transportation Board is working on a long-range vision plan (Imagine 2060) that will analyze and evaluate land use and transportation scenarios.<sup>286</sup>

In addition, Maryland recently completed a “Carbon Neutral Corridor” effort to demonstrate how a combination of initiatives could be deployed towards achieving the state's goal of reducing carbon emissions. The Transportation Department convened a broad group of state and local stakeholders to examine the US 40 corridor in Baltimore and Harford Counties and to outline a set of transportation, land use, and conservation measures that could result in the desired reduction in carbon emissions to below 2006 levels, by the year 2035.<sup>287</sup>

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<sup>286</sup> *Imagine 2060*, BALTIMORE METROPOLITAN COUNCIL, <http://www.baltometro.org/transportation-planning/imagine-2060>.

<sup>287</sup> *Carbon Neutral Corridor*, MARYLAND DEPARTMENT OF TRANSPORTATION, <http://www.mdot.maryland.gov/Planning/CNC/US40.html> (last visited Apr 19, 2011).

## VI. Other Notable Types of State or Local Initiatives

### A. Bicycle and Pedestrian Planning

Some states have developed bicycle and pedestrian plans to improve safety and expand facilities and networks available for cyclists and pedestrians.

- Connecticut's Bicycle and Pedestrian Plan establishes visions, goals, action strategies, and implementation options aimed at enabling safe and convenient access to non-motorized transportation modes throughout the state and creating a network of on-road facilities and multiuse trails to create connections between towns, regions, and neighboring states. Other elements of the plan include a survey of existing facilities, maps and evaluations of bicycling routes, and a review of existing bicycle and pedestrian project and program funding.<sup>288</sup>
- Maryland has undertaken several initiatives to evaluate existing bicycle infrastructure and to identify areas for strategic intervention and better connect the state by bike. A statewide analysis conducted in 2009-2010 identified missing links in Maryland's off-road trail network, and these are now being evaluated relative to on-road facilities to enhance overall connectivity for transportation. In fall of 2011, the State also launched the "Cycle Maryland" campaign, which is a series of events and new initiatives to promote cycling as a transportation alternative. As part of the "Cycle Maryland" initiative, the state launched an interactive map for bicycle facilities, and two new funding initiatives to assist stakeholders with the planning, design and construction of bike-related infrastructure. These efforts are designed specifically to leverage other existing programs (state and federal) and to promote enhanced coordination among state and local agencies towards the creation of an integrated bicycle network to better connect residents with key destinations like work, school, and shopping. The state also just launched a similar program to support local jurisdictions in planning for bikeshare programs. MDOT conducts statewide bicycle planning and is authorized to designate bicycle and pedestrian priority areas, in conjunction with local jurisdictions. Maryland's State Highway Administration has also undertaken a major inventory of existing facilities to help ensure that relevant bicycle facilities are enhanced or created as part of their system preservation and project development process.<sup>289</sup> The state coordinates closely with state and local jurisdictions to help ensure that infrastructure for transportation alternatives also supports related sustainability outcomes, such as wetlands restoration, stormwater management, and regional economic development priorities.<sup>290</sup>
- New Jersey DOT has similarly taken a number of actions to promote bicycle and pedestrian planning and expand safe facilities, in addition to its Complete Streets programs noted above. New Jersey delivered its first ever Statewide Bike Map, which rates the suitability of state and county roadways for cycling, along with companion digital versions of New Jersey's Bicycle Tour Guides which are GPS-enabled for smart phones.<sup>291</sup> NJDOT also announced a Railroad Grade Crossing Initiative aimed at preventing pedestrian accidents. The initiative will pilot new

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<sup>288</sup> CONNECTICUT DEPARTMENT OF TRANSPORTATION, 2009 CONNECTICUT STATEWIDE BICYCLE AND PEDESTRIAN TRANSPORTATION PLAN 1-3 (2009), <http://ctbikepedplan.org/>.

<sup>289</sup> *Cycle Maryland*, MARYLAND DEPARTMENT OF TRANSPORTATION, [www.cycle.maryland.gov](http://www.cycle.maryland.gov).

<sup>290</sup> The recently opened Anacostia River Walk Trail segment reflects an example of how state transportation alternatives can also support environmental outcomes: This project reflects strong metro region coordination which has received attention from federal agencies for its contribution towards livability and stewardship. *Anacostia trail network connects communities, offers commuters options*, FASTLANE BLOG, U.S. DEPARTMENT OF TRANSPORTATION, <http://fastlane.dot.gov/2011/11/anacostia-river.html>.

<sup>291</sup> Per phone call with New Jersey Department of Transportation staff.

engineering technology for pedestrians at grade crossings, expand the education outreach to schools, and place a more focused approach to enforcement in high trespassing areas.<sup>292</sup>

## B. Corridor Initiatives

Within TCI states there are specific initiatives designed to encourage development aligned with sustainable communities principles along specific transportation corridors. These projects or initiatives have goals that include reducing emissions, preserving existing corridors, increasing accessibility to transportation facilities, increasing inter-modal integration, and preserving environmental and community resources. Corridor projects include the following:

- The Connecticut-Massachusetts Sustainable Knowledge Corridor is an MPO-led effort<sup>293</sup> to capitalize on existing transit lines and planned improvements – the New Haven-Hartford-Springfield commuter rail line and the New Britain-Hartford Busway – to advance transit-oriented development, to develop a regional sustainability plan, and to support training, studies and other initiatives to increase affordable housing and transit infrastructure.<sup>294</sup>
- Delaware DOT’s Corridor Capacity Preservation Program, enacted by statute,<sup>295</sup> uses tools such as access management, coordination with county and local comprehensive plans, and purchasing development rights or easements to preserve existing statewide or regional transportation corridors.<sup>296</sup>
- Maine DOT, in conjunction with the regional councils and economic development districts, developed 38 Corridors of Regional and Economic Significance for Transportation to coordinate multiple transportation and community investment initiatives and identify transportation, land use, and economic development objectives for each corridor.<sup>297</sup>
- The Massachusetts South Coast Rail project will restore passenger rail transportation between South Station in Boston and the cities of Fall River and New Bedford. The project includes as a goal “Promoting smart and sustainable growth by encouraging residents to reduce their automobile-usage.”<sup>298</sup>
- New Hampshire DOT’s I-93 Community Technical Assistance Program<sup>299</sup> is a five year growth management initiative to address community concerns about traffic and growth-related impacts in

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<sup>292</sup> *New Jersey Transportation Officials Announce Rail Safety Blueprint*, STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION, <http://www.state.nj.us/transportation/about/press/2012/020812rs.shtm> (last visited Oct. 5, 2012).

<sup>293</sup> The project is a joint effort of the Capitol Regional Council of Governments of Hartford, the Central Connecticut Regional Planning Agency, and Massachusetts’ Pioneer Valley Planning Commission, supported by a Regional Sustainable Communities Grant from the U.S. Department of Housing and Urban Development (HUD).

<sup>294</sup> Capitol Region Council of Governments, Press Release: Capitol Regional Council of Governments Receives \$4.2 Million HUD Sustainable Communities Regional Planning Grant (2010), <http://www.crcog.org/publications/CommDevDocs/Sustainable%20Communities/SustainableGrantOpptys/HUDGrantPressRelease10-10.pdf>

<sup>295</sup> The Delaware Code, Title 17, Section 145

<sup>296</sup> Delaware Department of Transportation, CORRIDOR CAPACITY PRESERVATION PROGRAM GUIDE, [http://www.epa.gov/dced/pdf/DelDOT\\_CCPP\\_Manual.pdf](http://www.epa.gov/dced/pdf/DelDOT_CCPP_Manual.pdf).

<sup>297</sup> For maps depicting the CRESTs and investment strategies for each region, see Maine Department of Transportation, CONNECTING MAINE, PLANNING OUR TRANSPORTATION FUTURE, STATEWIDE LONG-RANGE TRANSPORTATION PLAN 2008-2030 (2010), <http://www.maine.gov/mdot/connectingmaine/plan.htm>.

<sup>298</sup> *South Coast Rail*, MASSDOT OFFICE OF TRANSPORTATION PLANNING, <http://www.southcoastrail.com/>.

<sup>299</sup> I-93 Community Technical Assistance Program (CTAP) – New Hampshire Communities Planning Together, <http://www.nhctap.com/>.

a region of 26 towns and cities surrounding the widening and reconstruction of I-93. Initial products include a 20-year regional vision and 5-year implementation plan.

- The New York-Connecticut Sustainable Communities Consortium seeks to integrate planning in the region and develop livable communities with mixed-income housing and employment at key locations along the region's two commuter rail corridors – the MTA Metro-North Railroad and MTA Long Island Rail Road network through 16 interrelated projects including a number of corridor plans.<sup>300</sup>
- The New York-Vermont Bi-State Intercity Passenger Rail Study aims to lay the groundwork for intercity passenger rail services to parts of Vermont and New York that are currently underserved or unserved. The Vermont Agency of Transportation and the New York State Department of Transportation have obtained funding from the Federal Railroad Administration's (FRA) High Speed and Intercity Passenger Rail program to develop a corridor analysis, Service Development Plan and associated preliminary engineering (PE) and environmental documentation for an intercity passenger route between Albany, NY and Rutland, VT.<sup>301</sup>
- The Vermont Agency of Transportation, the Chittenden County Metropolitan Planning Organization, and the five Regional Planning Commissions along western Vermont partnered to develop a multimodal Transportation Management Plan for Western Vermont.<sup>302</sup>
- As described above, (see V.C), Maryland is piloting a Carbon Neutral Corridor.<sup>303</sup>

### C. Regional and Local Sustainability Planning

In all TCI states, local governments and regional entities are acting to promote sustainability through comprehensive planning, zoning modifications, affordable housing and development around existing infrastructure and related activities.

The Federal Partnership for Sustainable Communities, a joint program of HUD, the DOT, and the Environmental Protection Agency (EPA), has been a leading source of funding support for these programs since 2010, and a number of sustainable communities grant recipients are within the TCI region, and are listed below.

#### 1. Federal Sustainable Communities Regional Planning Grant Awardees

The federal Sustainable Communities Regional Planning Grants from HUD support updating and integrating individual local and regional plans into a multi-faceted regional plan addressing transportation, land use, housing, infrastructure, and workforce and economic development.

Of the \$167 million available for the HUD Sustainable Communities Regional Planning Grants in fiscal years 2010 and 2011, TCI states received grants for 19 total projects, totaling \$37.2 million.<sup>304</sup>

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<sup>300</sup> A collaboration of cities, counties and regional planning organizations supported by a HUD grant. NEW YORK & CONNECTICUT SUSTAINABLE COMMUNITIES, <http://www.sustainablenyct.org/> (last visited Oct. 25, 2011).

<sup>301</sup> NEW YORK-VERMONT BI-STATE INTERCITY PASSENGER RAIL STUDY, <http://www.ny-vt-passengerrail.org/index.html>.

<sup>302</sup> VERMONT WESTERN CORRIDOR TRANSPORTATION MANAGEMENT PLAN, <http://www.vtwesterncorridor.org/>.

<sup>303</sup> MARYLAND DEPARTMENT OF TRANSPORTATION, CARBON NEUTRAL CORRIDOR, <http://www.mdot.maryland.gov/Planning/CNC/US40.html>.

<sup>304</sup> U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SUSTAINABLE COMMUNITIES REGIONAL PLANNING GRANTS, FY2010 AWARD DETAILS, GRANT SUMMARIES, <http://portal.hud.gov/hudportal/documents/huddoc?id=FY10RegPlanGrntSum.pdf>; U.S. DEPARTMENT OF HOUSING



### Fiscal Year 2010 HUD Sustainable Communities Regional Planning Grants Awardees in TCI Region

State	Lead Applicant and Consortium/Project Name	Grant Amount	Project
CT	Capitol Region Council of Governments / Bi-state Sustainable Knowledge Corridor	\$4,200,000	<ul style="list-style-type: none"> <li>• Develop regional plan: Sustainable Knowledge Corridor Execution Plan</li> <li>• Advance TOD, job centers around existing federal investments – Springfield-New Haven rail line, New Britain-Hartford Busway</li> <li>• Studies, training, and other initiatives</li> </ul>
CT	Windham Region Council of Governments / Eastern Connecticut Sustainable Communities Regional Planning Consortium	\$225,000	<ul style="list-style-type: none"> <li>• Develop regional plan</li> </ul>
MA	Metropolitan Area Planning Council / Metro Boston Consortium for Sustainable Communities	\$4,000,000	<ul style="list-style-type: none"> <li>• Implement regional plan: MetroFuture</li> <li>• Smart growth policy development</li> <li>• Capacity building through workshops and education</li> </ul>
MA	Berkshire Regional Planning Commission	\$590,700	<ul style="list-style-type: none"> <li>• Develop regional plan</li> </ul>
MA	Franklin Regional Council of Governments	\$425,000	<ul style="list-style-type: none"> <li>• Conduct regional needs assessment</li> <li>• Fund some specific projects</li> </ul>
ME	Northern Maine Development Commission	\$800,000	<ul style="list-style-type: none"> <li>• Develop regional plan</li> </ul>
ME	Greater Portland Council of Governments	\$1,600,000	<ul style="list-style-type: none"> <li>• Update growth plans</li> <li>• Create implementation plan</li> <li>• Develop information on current development trends vs. preferred scenarios</li> </ul>
NY	Regional Plan Association / New York-Connecticut Metropolitan Sustainable Communities Consortium	\$3,500,000	<ul style="list-style-type: none"> <li>• Regional planning</li> <li>• Support TOD</li> <li>• Support local implementation</li> </ul>
VT	Chittenden County Regional Planning Commission	\$995,000	<ul style="list-style-type: none"> <li>• Identify common policies and implementation strategies from existing plans</li> <li>• Update existing plans</li> <li>• New analyses of housing, energy, economy</li> <li>• Consolidate the two county MPOs</li> </ul>

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AND URBAN DEVELOPMENT, SUSTAINABLE COMMUNITIES REGIONAL PLANNING GRANTS, FY2011 AWARD DETAILS, GRANT SUMMARIES,  
[http://portal.hud.gov/hudportal/documents/huddoc?id=SUM\\_OF\\_FY11REGPLANGRANTS.PDF](http://portal.hud.gov/hudportal/documents/huddoc?id=SUM_OF_FY11REGPLANGRANTS.PDF).

### Fiscal Year 2011 HUD Sustainable Communities Regional Planning Grants Awardees in TCI Region

State	Lead Applicant and Consortium/Project Name	Grant Amount	Project
MD	Baltimore Metropolitan Council	\$3,503,677	<ul style="list-style-type: none"> <li>• create regional sustainable development plan</li> <li>• create stand alone regional housing and workforce development plans</li> <li>• develop demonstration efforts including in transit-oriented development</li> </ul>
NH	Nashua Regional Planning Commission	\$3,369,648	<ul style="list-style-type: none"> <li>• increase capacity to create regional plans, establish a consistent planning and policy framework, and coordinate local plans into an overall statewide strategy</li> </ul>
NJ	Rutgers, State University of New Jersey	\$5,000,000	<ul style="list-style-type: none"> <li>• develop a regional plan</li> </ul>
NY	Adirondack Gateway Council	\$750,000	<ul style="list-style-type: none"> <li>• create a comprehensive regional development plan that will serve as a guide for policies and investments</li> </ul>
NY	Niagara Frontier Transportation Authority	\$2,000,000	<ul style="list-style-type: none"> <li>• develop a regional plan for sustainable development for the Erie and Niagara counties</li> <li>• create citizen planning school</li> </ul>
PA	County of Erie Pennsylvania	\$1,800,000	<ul style="list-style-type: none"> <li>• develop the Destination Erie: Regional Plan for Sustainable Development</li> </ul>
PA	Lehigh Valley Economic Development Corporation	\$3,400,000	<ul style="list-style-type: none"> <li>• develop the Lehigh Valley Sustainability Plan, in part to foster transit-related land development</li> </ul>
RI	State of Rhode Island	\$1,934, 961	<ul style="list-style-type: none"> <li>• develop a plan for A Sustainable Rhode Island that will address subject matter gaps related to housing and economic development in Rhode Island's State Guide Plan</li> </ul>
VT	Northwest Regional Planning Commission	\$480,000	<ul style="list-style-type: none"> <li>• develop a plan for Healthy, Vital and Strong Communities in Northwest Vermont for the Counties of Grand Isle and Franklin</li> </ul>
VT	Two Rivers-Ottawaquechee Regional Commission	\$540,000	<ul style="list-style-type: none"> <li>• develop sustainable development plan for the 40-town Two Rivers-Ottawaquechee Regional Commission (TRORC) and the Southern Windsor County Regional Planning Commission (SWCRPC) region of East Central Vermont.</li> </ul>

## Community Challenge & TIGER II Planning Grant Awardees

Similarly, HUD Community Challenge grants, and the related DOT TIGER II Planning grants, support efforts to update local master plans, zoning codes, and building codes to promote mixed-use development, affordable housing and the reuse of older buildings and structures at the jurisdiction, neighborhood, district, or corridor level.<sup>305</sup> Of the \$67.8 million available for the HUD grants during fiscal years 2010 and 2011 and \$35 million available for the DOT grants in fiscal 2010, TCI jurisdictions received 16 grants totaling \$18.7 million.<sup>306</sup>

### Community Challenge & TIGER II Planning Grant Awards in TCI Region, Fiscal Years 2010, 2011

Grant FY	City	Applicant	Grant Amount	Project
2010	Hartford, CT	Connecticut Department of Economic and Community Development	\$2,000,000	Planning, Development, and Livability Initiatives for Communities along New Haven-Hartford-Springfield Corridor (Phase I - New Haven and Meriden)
2010	Washington, DC	DC Department of Housing and Community Development	\$3,000,000	Historic Anacostia Community-Led Comprehensive Revitalization Plan
2010	Somerville, MA	City of Somerville	\$1,800,000	Preparing for Transit in the 21st Century, Somerville, MA
2010	Upper Marlboro, MD	Maryland-National Park and Planning Commission	\$800,000	Metro Green Line Transit-Oriented Development (TOD) Corridor Action Plan
2010	Claremont, NH	City of Claremont	\$58,740	Zoning Analysis for City Center to Identify Zoning Tools to Enact Sustainability Practices Including Increased Travel Mode Choices to Expanded Housing Stock
2010	Lebanon, NH	Upper Valley Lake Sunapee Regional Planning Commission	\$147,878	Policy Opportunities that Cultivate Foundations for Sustainable Communities
2010	Jersey City, NJ	Jersey City Redevelopment Agency	\$2,273,370	JCRA - Canal Crossing TIGER II / Community Challenge Planning Grant

<sup>305</sup> DOT grants for National Infrastructure Investments in the FY 2010 Appropriations Act, although not identical, are similar to the Transportation Investment Generating Economic Recovery or “TIGER Discretionary Grant Program” and thus referred to as “TIGER II Discretionary Grants” and the transportation planning grants as “TIGER II Planning Grants.” *Notice of Funding Availability (NOFA) for the Department of Housing and Urban Development Community Challenge Planning Grants and the Department of Transportation’s TIGER II Planning Grants*, <http://www.dot.gov/livability/source/FINAL%20Joint%20Planning%20NOFA%20061810.pdf>.

<sup>306</sup> *Community Challenge Grants*, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/sustainable\\_housing\\_communities/HUD-DOT\\_Community\\_Challenge\\_Grants](http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities/HUD-DOT_Community_Challenge_Grants) (last visited Oct. 10, 2012). For more details on individual grants, see award details links for FY2011 and FY2010 awards.

2010	Glen Falls, NY	City of Glen Falls	\$200,000	Planning Project
2010	Pittsburgh, PA	City of Pittsburgh	\$1,500,000	Allegheny Riverfront Green Boulevard Plan
2010	Providence, RI	City of Providence	\$910,000	Transportation Corridors to Livable Communities: Building Hubs for Housing, Jobs and the Arts Around Transit
2011	Stamford, CT	Town of Stamford	\$1,105,288	Vita Health and Wellness District plan, focusing on expansion and reinvestment of the Stamford Hospital campus with an adjacent health and wellness districtt
2011	Mansfield, CT	Town of Mansfield	\$610,596	plan for anticipated growth while maintaining rural character
2011	Boston, MA	City of Boston	\$1,865,160	Fairmount Line Smart Growth Corridor Project
2011	Worcester, MA	City of Worcester	\$930,000	Main South to Loomworks Revitalization
2011	NH	New Hampshire Housing Finance Authority	\$1,000,000	Development of New Hampshire Community Planning Grant Program, a statewide, multi-agency consortium to develop and facilitate a competitive grant program for New Hampshire municipalities
2011	Binghamton, NY	City of Binghamton	\$486,058	update the City's 2003 Comprehensive Plan and integrate it into a 1.7 mile Main Street Corridor Plan,

## D. Municipal Sustainability Plans

Many towns and cities, including those in the TCI region, have adopted municipal sustainability plans, with most addressing climate change, natural resources, public health, transportation, land use, housing, and economic elements. A few notable examples from the TCI region include the following:

Municipality	Plan	Highlights
New York, NY	PlaNYC 2030 <sup>307</sup>	<ul style="list-style-type: none"> <li>• GHG Target: reduce emissions over 30% below 2005 levels by 2030</li> <li>• Achieved: 13% below 2005 levels as of 2011</li> <li>• Launched 20 transit-oriented rezonings</li> <li>• Launched Bus Rapid Transit System</li> <li>• Brought additional 250,000 residents within 10-minute walk of park</li> <li>• Updated Plan: 132 initiatives and 400 milestones</li> </ul>
Burlington, VT	Burlington Legacy Action Plan 2030 <sup>308</sup>	<ul style="list-style-type: none"> <li>• GHG Target: reduce emissions 20% below 2007 levels by 2020</li> <li>• By 2030 Burlington should have absorbed bulk of region's growth, up to 65,000 residents</li> <li>• By 2030 every resident should have access to diverse, seamless, multi-modal transportation</li> <li>• Encourage city staff to transition from cars to alternative transportation</li> <li>• Implemented outreach strategy for No Idling Ordinance</li> </ul>
Baltimore, MD	Baltimore Sustainability Plan <sup>309</sup>	<ul style="list-style-type: none"> <li>• GHG Target: reduce emissions 15% by 2015</li> <li>• Reduce energy use 15% by 2015</li> <li>• Double tree canopy by 2037</li> <li>• Improve alternative transportation modes</li> </ul>
Bridgeport, CT	BGreen 2020: A Sustainability Plan <sup>310</sup>	<ul style="list-style-type: none"> <li>• Reduce carbon footprint from green energy and buildings</li> <li>• Reduce VMT and transportation emissions</li> <li>• Adopt "Transit First" policy</li> <li>• Establish incubator to train workers and develop green industries</li> </ul>
Philadelphia, PA	Greenworks Philadelphia <sup>311</sup>	<ul style="list-style-type: none"> <li>• GHG Target: reduce emissions 20% below 1990 levels by 2015</li> <li>• Achieved 60% of GHG goal after 1 year<sup>312</sup></li> <li>• Reduce VMT 10% by 2015</li> <li>• Achieved 47% of VMT goal after 1 year</li> </ul>

<sup>307</sup> The City of New York, PLANYC (2011), <http://www.nyc.gov/html/planyc2030/html/theplan/the-plan.shtml>.

<sup>308</sup> City of Burlington, LEGACY ACTION PLAN (2000), <http://burlingtonlegacyproject.org/files/2009/07/LegacyActionPlan.pdf>.

<sup>309</sup> Baltimore Commission on Sustainability, The Baltimore Sustainability Plan (2009), [http://www.dooconsulting.net/pdf/ref\\_bar/about/051509\\_BCS-001SustainabilityReport.pdf](http://www.dooconsulting.net/pdf/ref_bar/about/051509_BCS-001SustainabilityReport.pdf). Baltimore Office of Sustainability, <http://www.baltimoresustainability.org/index.aspx>.

<sup>310</sup> Bridgeport, Connecticut, BGreen 2020 – A Sustainability Plan for Bridgeport Connecticut (2010), <http://www.rpa.org/bgreen/BGreen-2020.pdf>.

<sup>311</sup> Mayor's Office of Sustainability, City of Philadelphia, GREENWORKS PHILADELPHIA (2009), <http://www.phila.gov/green/greenworks/2009-greenworks-report.html>.

<sup>312</sup> Mayor's Office of Sustainability, City of Philadelphia, 2010 PROGRESS REPORT GREENWORKS PHILADELPHIA (2010), <http://www.phila.gov/green/greenworks/2010-progress-report.html>.



## VII. Potential Opportunities

### A. Potential Model Policies for TCI State Consideration

Based on a review of TCI state efforts, discussion with state staff, and workgroup conversations, several types of programs or initiatives are presented as possible models that may be of interest to other states.

#### ***Easier Lifts: Policies that are Not Resource Intensive and Require a Moderate Degree of Political Support***

One category includes programs that appear to require relatively few state resources and that may have a relatively easier time garnering necessary political support (depending on the particular state). These include the following:

- Municipal self-designation programs aligned with sustainable community goals. States can combine such programs with state incentives such as preferences in grant scoring. These programs may also help local communities compete for federal sustainable communities grant awards. (See III.B and IV.E).
- Infrastructure project self-evaluations that include sustainable community criteria for use in state project selection. (See V).
- Programs to leverage federal funding by including smart growth criteria in state-administered federal grant programs, such as community block development grants or state clean water revolving loan funds. (See IV.D).
- Formal transportation investment policies aligned with sustainable communities goals, such as priority funding areas approaches, sustainable communities investment criteria, Fix-it-First policies, and Complete Streets policies. (See IV).
- Integration of sustainable community goals into corridor planning and development, including GHG reduction goals or scenarios (i.e., “zero emissions corridors”). (See VI.B).

#### ***Heavier Lifts: Potential Models of Most Promising State Policies***

A second category of potential models are those programs that are most comprehensive and direct in addressing sustainable community outcomes, but that may require significant resources or political support. These include:

- Alignment of infrastructure permitting and environmental review with sustainable communities outcomes. This can include permitting for significant developments, pre-permitting review by state land use and transportation agencies to promote consistency with plans or principles, and inclusion of sustainable communities elements in statutory environmental impact review. (See 0).
- Comprehensive land use and transportation measurement programs, potentially with goals or targets.
- State funding for local or intrastate regional planning, with local or regional plans required to be aligned with smart growth principles. (See IV.C).

## B. Potential For Regional Collaboration

Similarly, several areas could be fruitful for interstate cooperation within TCI, and could support all states. Some efforts are already underway or have been discussed within the TCI workgroup.

- The development of expertise on measurement of sustainable community outcomes, including infrastructure investment performance measures.
  - The workgroup is already in the process of researching measures and indicators that align with sustainable community goals.<sup>313</sup> One suggestion has been that TCI jurisdictions adopt a common, region-wide “basket of metrics,” based on readily available data and standardized computation methodologies.
  - A related component would be for TCI to consider how such measurements and indicators can be most effectively used in making infrastructure investment decisions.
- The development of a regional scenario planning tool kit. Scenario planning has the potential to be a powerful tool in guiding land use and transportation decisions, but its costs can be very high, in part because of the customization necessary for local data, assumptions, and input/output customizations. The workgroup has explored whether federal funding might be available to develop a TCI scenario planning tool kit, which would include a customized module for an existing scenario planning tool.
- Exploring the value and feasibility of identifying interstate regional goals based on sustainable community principles. This could complement efforts to implement standardized measurements.

## VIII. Conclusion

TCI jurisdictions have already implemented many programs and initiatives aligned with sustainable community objectives, reflecting a variety of approaches and legal frameworks. These existing programs can serve as a basis for states to compare experiences with the goal of improving sustainable community outcomes, and they may also suggest opportunities for interstate regional collaboration through TCI.

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<sup>313</sup> TRANSPORTATION AND CLIMATE INITIATIVE, DEVELOPMENT OF INDICATORS TO SUPPORT THE TCI AGREEMENT TO PROMOTE SUSTAINABLE COMMUNITIES (2012), <http://www.georgetownclimate.org/tcis-work-on-sustainable-transportation-indicators-0>.