

# **PROGRESS REPORT ON THE SMART GROWTH POLICY RECOMMENDATIONS OF THE PLENARY LEADERSHIP GROUP AND TASK FORCES**

July 25, 2003

**Wirth Chair in Environmental and Community Development Policy**

**Institute for Policy Research & Implementation**

**Graduate School of Public Affairs**



**University of Colorado at Denver**



## University of Colorado at Denver

Wirth Chair in Environmental and Community Development Policy  
Graduate School of Public Affairs

---

1445 Market Street, Suite 350  
Denver, Colorado 80202-1727  
Phone (303) 820-5602  
Fax (303) 534-8774

July 25, 2003

Dear Colleague:

I am pleased to provide you with a brief report summarizing smart growth progress made by the State of Colorado as well as its regional and local governments. The report tracks the recommendations made by the Plenary Leadership Group and Task Forces, a group of over 100 public sector, non profit and business leaders. The recommendations were presented to decision makers and the public prior to the 2003 legislative session in a report entitled Colorado: The Problems, Challenges and Opportunities Concerning Growth, Summary Report of The Plenary Leadership Group and Task Forces.

The initial response of the legislature was not overwhelming. However, progress was made in developing a sustained dialogue with key legislators regarding the need to balance economic and community development priorities with equally important environmental priorities. Many legislators concur with the plenary group that the State "should take advantage of the time provided by current economic problems to address weaknesses in the state's ability to influence likely future growth." We should take the time to create an efficient, equitable and effective set of coordinated smart growth policies now when we have the opportunity to do so without the political, fiscal, environmental and social pressures caused by the fast paced development recorded in the recent past.

Ann Livingston, Esq, a senior research associate of the Wirth Chair has prepared an important description of recent legislative activities as well as progress made by Colorado's regional and local governments. Her paper should hopefully help us all begin to think again about legislative initiatives during the next session. The Wirth Chair will convene a meeting of the Plenary Leadership Group before the end of the summer.

Sincerely,

Marshall Kaplan  
Executive Director

# TABLE OF CONTENTS

<b>Introduction.....</b>	<b>1</b>
<b>Creating More Effective Planning.....</b>	<b>1</b>
<b>Enforceability of Comprehensive Plans.....</b>	<b>2</b>
<b>Minimum Elements to be Contained in Comprehensive Plans.....</b>	<b>2</b>
<b>Urban Growth Boundaries or Urban Service Areas as a     Component of Comprehensive Plans.....</b>	<b>3</b>
<b>Protection of Existing Land use Authority of Local Governments.....</b>	<b>4</b>
<b>Improving Understanding and Decision Making Concerning Major Public and Private Investments that Stimulate Growth Beyond the Borders of One Jurisdiction .....</b>	<b>5</b>
<b>Increasing the Institutional Capacity of Regional Governments.....</b>	<b>5</b>
<b>Opening the Decision Making Process Associated with Major     Public or Private Investments Affecting Land Use.....</b>	<b>6</b>
<b>Assuring Consistency Between State, Regional, and Local Plans and Development Initiatives.....</b>	<b>8</b>
<b>Providing Incentives to Encourage Regional and Inter-Jurisdictional Collaboration Concerning Smart Growth.....</b>	<b>9</b>
<b>Balancing the Interests of Private Property Owners, including Farmers, and the Public Interest in Preserving Open Space and Natural Resources: Development of an Effective Transfer of Development Rights (TDR) Program.....</b>	<b>9</b>
<b>Extending Affordable Housing Opportunities for Low and Moderate Income Households and Expanding Opportunities to Acquire Open Space Lands Critical to the Quality of Life in Colorado.....</b>	<b>10</b>
<b>Minimizing the Negative Impact of Land Use Regulations, Impact Fees and Review Times on Affordable Housing and Related Smart Growth Objectives.....</b>	<b>11</b>
<b>Assuring Adequate Water and Water Quality.....</b>	<b>12</b>
<b>Conclusion.....</b>	<b>13</b>

## **Introduction**

In December of 2002 the Wirth Chair released a report summarizing the conclusions of the Smart Growth Leadership Group and Task Forces which met throughout the year. The Leadership Group consisted of almost 100 leaders from the public, private, non-profit and community sectors in Colorado. The report, entitled “Colorado: The Problems, Challenges and Opportunities Concerning Growth,” contained numerous recommendations on how Colorado should more effectively manage growth.

The need to manage growth in the state of Colorado will not diminish in the near future. Despite the current economic downturn, Colorado is projected to reach a population of over 7 million by 2030—an increase of more than 65% between 2000 and 2030. In fact, given the effects of the recent drought on the state’s water supply and the impacts of the economy on the finances of our local governments, the need to address the manner in which Colorado grows and develops is more pressing than ever.

This report discusses the progress made on the Leadership Group’s policy recommendations at the state, regional, and local levels during the first half of 2003. There was some progress at the state level including momentum for transfer of development rights programs to protect rural lands and policies to encourage coordination between neighboring local governments regarding annexations. However, a large gap still remains between what is needed and what the state has initiated to date. More significant efforts are necessary if we are going to meet the smart growth objectives put forward by the Leadership Group.

## **Creating More Effective Planning**

Colorado’s more populated cities and counties are required by state law to develop comprehensive land use plans. However, these plans, designed to guide the future growth and development of communities, are currently not enforceable under Colorado law. Further, the only required element of these “advisory” plans is a recreation and tourism element. The Leadership Group recommended that comprehensive plans be made enforceable through land use regulations and the development and implementation of capital budgets. It also recommended that the plans contain a basic set of planning elements commonly regarded as essential to effective comprehensive plans as well as the designation of an urban growth boundary or urban service area. Finally, the group recognized that the planning proposals it put forth protected the authority to regulate land use historically held by home rule governments; they did not constrain local efforts, but instead worked within or enhanced existing authority.

Unfortunately, there has been little progress at the state, regional, or local level towards increasing either the enforceability or the substantive requirements of local comprehensive land use plans. There was some progress in the Denver metro area at both the regional and local levels in terms of the establishment of urban growth boundaries. Additionally, there were steps backwards due to attempts at the state level, some

successful, to reduce the existing land use regulatory authority of local governments (see “Protection of Existing Land Use Authority of Local Governments” on page 4).

### Enforceability of Comprehensive Plans

There has been very little progress in terms of raising comprehensive plans from their status of “advisory only” to a status where they are enforceable documents. There was no legislation introduced during the 2003 session of the Colorado General Assembly to increase the enforceability of comprehensive plans. However, some educational efforts have been made. The Office of Smart Growth, housed in the Department of Local Affairs, has held “Planning 101” workshops across the state at the request of local governments with an interest in long range planning.<sup>1</sup> The presentations at these workshops contain information on how to enforce the provisions of comprehensive plans should the jurisdiction choose to do so.

At the local level, conversations with growth management leaders and officials indicate that during the first half of 2003 no local governments have taken the steps to codify the provisions of their comprehensive plans in land use regulations.<sup>2</sup> Codification requires a significant dedication of resources, but allows local governments to enforce the provisions of their comprehensive plans. The plans themselves remain advisory even when the substantive material of the plan is codified. While not codifying the comprehensive plan entitled Blueprint Denver, the City and County of Denver is taking steps towards implementation. As part of this process, staff is currently working to modify the existing zoning regulations in order to make them consistent with the plan. They have already simplified the zoning code significantly, reducing the number of possible land use combinations from 24,000 to 6,500, making it much more accessible to the public.

### Minimum Elements to be Contained in Comprehensive Plans

There are certain basic elements that are commonly accepted as central to balanced and effective comprehensive plans. Those elements include land use designations and mapping, transportation, water supply and quality, affordable housing, and environmental quality. The Leadership Group urged state lawmakers to require that these elements be included in the comprehensive plans developed by Colorado’s local governments. Interestingly, under Colorado law, a recreation and tourism element is the only element currently required to be contained in comprehensive plans. This year a bill was introduced in the Colorado Senate to create a second required element, one that addressed water supply in the context of planning for growth. Unfortunately, the bill was assigned

---

<sup>1</sup> The Office of Smart Growth has held eight workshops so far this year.

<sup>2</sup> There may, in fact, be additional cities or counties that are currently undergoing this process. However, since there is not a state database or monitoring system in place to assess the land use policies of Colorado’s local governments, it is extremely difficult to track the current state of affairs of each of Colorado’s cities and counties. This lack of information on the activities of local governments means that the discussions of local policy developments throughout the report may not include some jurisdictions that have made progress in 2003.

to two committees in the Senate and did not pass out of the second.<sup>3</sup> The state has provided some educational assistance in this regard as the Office of Smart Growth suggests a list of “Standard Plan Elements” in their Planning 101 workshops; their list includes the five elements listed above as well as others.<sup>4</sup> At the regional level, DRCOG has continued to address all of these basic planning elements in Metro Vision, the region’s long range land use and transportation plan.

### Urban Growth Boundaries or Urban Service Areas as a Component of Comprehensive Plans

Urban growth boundaries (UGBs) and urban service areas (USAs) can help promote the orderly and efficient development of land and assist in the implementation of other smart growth policies.<sup>5</sup> For example, the use of UGBs or USAs can help ensure that zoning or other land use regulations are achieving their desired effects in terms of promoting compact development or infill by providing a target or goal. However, there was little progress on this aspect of comprehensive planning at the state level. There were no bills introduced in this past legislative session that promoted or required the use of either UGBs or USAs.<sup>6</sup> Within the Denver metro region, there was some progress at the regional and local levels in terms of the adoption of UGBs and USAs.

At the regional level, DRCOG worked to revise its policies regarding the regional urban growth boundary as part of the Metro Vision update.<sup>7</sup> DRCOG is likely to approve policies adding a minimal amount of area to the existing regional UGB and establishing the use of a “bank” to phase in the expansion of the urban growth boundary in order to prevent premature increases in the amount of land available for urban level development.<sup>8</sup> The regional boundary necessarily requires that the region’s cities and

---

<sup>3</sup> Typically a bill is assigned to a single committee unless there is an appropriation required in which case the second committee is the appropriations committee. A “double assignment” is most often an effort to hinder the passage of a particular piece of legislation.

<sup>4</sup> The Office of Smart Growth suggests the following “Standard Plan Elements:” land use, transportation, utility and facility plan, affordable housing, environmental, cultural/historical, urban influence area, educational facilities, energy, economic development, and parks and open space. In the past, proposals at the state level have combined some of these elements into single elements. For example, affordable housing is often included under the land use element.

<sup>5</sup> Both UGBs and USAs are used to map out the area within which jurisdictions will allow urban level development within a given planning horizon. Urban level development should not occur outside of this area. The designation of USAs may be more closely linked to the ability or desire to provide the services associated with urban level development than the designation of UGBs.

<sup>6</sup> Past proposals to require UGBs or USAs have raised concerns regarding rural land owners and housing affordability. While these potential negative impacts are undesirable. However, the impact of UGBs or USAs, like all land use regulations, is dependent on the details of a particular policy and its implementation.

<sup>7</sup> DRCOG approved Metro Vision 2020 in 1997 as the Denver region’s long range land use and transportation plan. Metro Vision 2020 is currently being revised and updated. The revised plan will extend ten years further into the future than Metro Vision 2020 and will be renamed Metro Vision 2030. Metro Vision contains provisions regarding a regional UGB which is allocated amongst the local governments in the region.

<sup>8</sup> The increases to the regional UGB will be held by the bank until allocations are requested from local governments. Requests for allocations will be evaluated against a set of smart growth criteria. Since the

counties also adopt a local urban growth boundary or area,<sup>9</sup> therefore, all of the jurisdictions within the Denver region will be examining their urban growth boundaries or areas within the next year.<sup>10</sup>

Additionally, there was some progress in terms of local governments adopting UGBs and USAs. The City of Lafayette is set to adopt a UGB by the end of 2003. The adoption of the boundary by the City Council is necessary to achieve compliance with a city charter amendment approved by the voters in 2001. The other municipalities within Boulder County are expected to sign an intergovernmental agreement with the county by August that will establish de facto urban growth boundaries for the signatories.<sup>11</sup> The jurisdictions signing the agreement are committing to not annex lands outside of their designated "Influence Areas."

### Protection of Existing Land Use Authority of Local Governments

The Leadership Group urged the legislature to fortify state law regarding smart growth policies through means that protected existing home rule land use regulatory authority. The 2003 legislative session, however, not only failed to produce laws to promote smart growth through enforceable balanced comprehensive plans, it also saw the passage of numerous bills aimed at reducing local government authority regarding land use. Senate Bill 67 changed the existing authority of counties to merge contiguous lots under the same ownership in order to address issues related to non-conforming lots<sup>12</sup> and obsolete subdivisions.<sup>13</sup> Under the new provisions, counties must obtain the land owner's affirmative permission prior to merging lots, a standard that far surpasses traditional

---

bank phases in allocations as needed and appropriate, it will help prevent the need to reallocate lands among jurisdictions. In the past there has been pressure to expand the regional boundary due to difficulty in redistributing the existing UGB between jurisdictions that are growing either more quickly or more slowly than anticipated. This policy change is working its way through the DRCOG decision making process and will be considered when the board discusses the proposed revisions to Metro Vision in early 2004.

<sup>9</sup> Metro Vision allows for jurisdictions to establish an urban growth boundary or to establish an urban growth area. The use of an urban growth area provides more flexibility for local governments because they can move the areas designated for urban level development more easily. However, it makes regional projections and modeling more complicated because it allows for a less accurate mapping of areas slated for urban level development. The models depend on accurate mapping for projections of vehicle miles traveled, water quality, and numerous other indicators used to evaluate the potential effects of various policies.

<sup>10</sup> While some local governments have not signed the intergovernmental agreement implementing Metro Vision, they have participated in the Metro Vision process including the allocation of the regional UGB.

<sup>11</sup> The intergovernmental agreement is expected to be signed by mid-August 2003 by Boulder County and the following cities and towns: Boulder, Longmont, Louisville, Erie, Jamestown, Lyons, Nederland, and Superior. Lafayette is not expected to sign the IGA. Boulder has a legally enacted growth boundary (also through agreement with the County); Lafayette will have a legally enacted boundary by December 31, 2003. The agreement will remain in effect for 20 years; it may then be extended indefinitely in 5 year increments.

<sup>12</sup> These lots are often related to old mining claims or lands platted for mining cabins, parcels too small to meet the requirements of current land use regulations.

<sup>13</sup> Obsolete subdivisions typically consist of lands that were subdivided in the past (sometimes decades ago), but never sold or developed. They often no longer meet the comprehensive plan, zoning regulations, or desires of a community.

notice and hearing requirements. Senate Bill 251 prohibits local governments from using the longstanding tool of amortization, a process whereby land uses are phased out over a period of time in order to move incompatible uses out of an area while protecting the economic interests of existing businesses. Finally, Senate Bill 154, which did not pass out of the Senate, would have prohibited controlling the sale price of housing units for purposes of affordable housing. Currently, local governments and non-profit entities use deed restrictions and other mechanisms to essentially slow the rate of inflation on housing units so that they remain attainable for lower income constituencies. In this way lower income individuals and families are able to achieve home ownership.

### **Improving Understanding and Decision Making Concerning Major Public and Private Investments that Stimulate Growth Beyond the Borders of One Jurisdiction**

The impacts of development are not constrained by jurisdictional boundaries. For example, a new retail center in one jurisdiction may create an increased need for housing and infrastructure in another. As a result, strengthened regional governance and impact analyses are vital to the long term sustainability of Colorado's communities. There has been no progress on increasing the capacity of the regional governments at the state level. There has been some work on the part of DRCOG and the Pike's Peak Area Council of Governments (PPACG) to increase their institutional capacity. There have also been some efforts at the state, regional, and local level to open the decision making process associated with major public or private investments or decisions affecting land use.

#### Increasing the Institutional Capacity of Regional Governments

While there was no action at the state level to increase the institutional capacities of the regional Councils of Governments (COGs) in Colorado, there has been some work by the regions themselves. The COGs consist of representatives from the local governments in the region. They do not have direct enforcement authority to implement their policies. DRCOG has developed a set of regional policies and goals including a regional land use and transportation plan titled Metro Vision. In order to give force to the policies adopted by the voluntary organization, DRCOG drafted the Mile High Compact which is an intergovernmental agreement wherein the vast majority of the region's local governments have committed to implement the policies of Metro Vision. Three of the most populated counties in the region have not signed the agreement although they have implemented many of the Metro Vision policies.<sup>14</sup> In order to increase institutional capacity, DRCOG is working to get the remaining local governments to sign the agreement; this may require a re-examination of some of the provisions in the Mile High Compact. Additionally, this summer the PPACG board will hear a staff proposal to initiate a four part regional planning exercise that will include examining the comprehensive planning area boundaries of the region's local governments for contiguity, reviewing the land uses designated within one mile of those boundaries, creating a build out scenario for the region based on the locally adopted comprehensive plans, and comparing the build out

---

<sup>14</sup> Adams County, Arapahoe County, and Jefferson County have not signed the Mile High Compact.

scenario to established water rights. This will be the first effort by the PPACG to go beyond the planning requirements imposed by state law.<sup>15</sup>

There also has been some progress at the regional level regarding the coordination of regional and local planning. The Leadership Group recommended a course of action that included pursuing reciprocal approval of policies that significantly affect the quality of life in the region. DRCOG has decided to strengthen the existing “Voluntary Plan Consistency” provisions, but the process has not yet begun in a substantial way. The existing provisions create a structured self-evaluation process that allows local governments to assess the level of consistency between local policies and the core elements of Metro Vision. The local governments then provide a report to DRCOG on how the local or regional plan could be improved to increase consistency. Numerous local governments have used the process recently in evaluating their local plans. The PPACG has asked to review the comprehensive plans of the local governments in the region for consistency and adopted a policy that the local governments not assume growth forecasts that are larger than those assumed by the region—compliance with this policy has been linked to the prioritization of transportation funding in the region.

#### Opening the Decision Making Process Associated with Major Public or Private Investments Affecting Land Use

The decision making process surrounding major public or private investments affecting land use across jurisdictional lines should be opened up to allow greater input from affected parties including community groups, contiguous jurisdictions and the regional planning entity. In order to achieve this end, the Leadership Group recommended that the legislature require the development of a neutral, independent and public analysis of major or significant investments that will impact growth in the region and in contiguous communities upon the request of affected jurisdictions or the regional planning entity. The legislature did not require the development of a neutral analysis where requested; however, it did make some progress toward the spirit of this goal with the passage of House Bill 1077.

House Bill 1077 provides that where local governments have entered into a mutually binding and enforceable comprehensive development plan and a municipality that is not a party to the agreement receives a petition for annexation of lands within the planning area, that municipality will, at the request of any of the parties to the agreement, be required to attend mediation proceedings with the jurisdiction(s) requesting the mediation. House Bill 1077 opens the decision making process to allow for formal comment by affected jurisdictions. However, neither the regional planning entity nor the public are eligible to participate in the new process. The final decision still rests with the municipality that received the petition.

---

<sup>15</sup> The PPACG will also release a report in the late summer or early fall of 2003 that examines water quality and land use issues across the Fountain Creek Watershed. This comparative study will include information on the policies of local governments within the watershed regarding land use, water quality, drainage, drainage fees, and fees related to impervious surfaces (e.g., parking lots, rooftops, and other surfaces that prevent runoff being absorbed into the ground).

At the regional level, both DRCOG and the PPACG have made progress in terms of opening the decision making process. DRCOG is in the process of developing criteria by which future proposed expansions of the urban growth boundary will be evaluated. These criteria will be applied evenly to all jurisdictions requesting an expansion. Since the decision whether or not to grant the expansion will be made by the DRCOG board, all of the region's local governments will have an opportunity to comment and vote on the proposal in light of the criteria. While many large projects or policy changes will necessitate local governments going through this process, many will not even if they have regional impacts or affect growth in other jurisdictions. Only projects or policies that require an adjustment to the regional urban growth boundary will be subject to the review.

The PPACG board has approved a new process whereby the impacts of transportation facilities will be examined. Under this process PPACG will examine the local and regional transportation impacts resulting from the development of large transportation facilities. The COG will provide information and develop evaluative thresholds. However, it will not recommend a position on the development proposals. Further, the position responsible for implementing the new policy has not yet been funded and remains vacant.

There has also been progress at the local level in the form of intergovernmental agreements regarding growth in both Boulder and Douglas Counties. Boulder County and most of the municipalities within the county have negotiated an intergovernmental agreement, the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement. It establishes procedures to be followed in order to minimize conflict over potential annexations. Under the agreement, signatories must disclose to each other when petitions to annex are received regarding lands outside of the jurisdictions "Influence Area," lands set aside for urban level development by that jurisdiction. The parties have also committed, in the agreement, to reconvene to discuss issues that cross jurisdictional boundaries including revenue sharing, affordable housing, and library services.<sup>16</sup>

Douglas County and the Town of Parker recently enacted an intergovernmental agreement regarding development surrounding the existing town.<sup>17</sup> The agreement is intended to increase intergovernmental cooperation and to establish a community separation buffer so that Parker is preserved as a distinct community. It provides that, under certain circumstances, a joint development review process will apply whereby each jurisdiction will notify the other and provide an opportunity to comment.

---

<sup>16</sup> The intergovernmental agreement is expected to be signed by mid-August 2003 by Boulder County and the following cities and towns: Boulder, Longmont, Louisville, Erie, Jamestown, Lyons, Nederland, and Superior.

<sup>17</sup> The agreement was signed by the parties in October 2002, but became effective in May 2003 when Douglas County amended its zoning resolution.

## **Assuring Consistency Between State, Regional, and Local Plans and Development Initiatives**

The political structure in Colorado has created a situation where there are frequently many public and private entities responsible for planning and development. There is often an insufficient amount of coordination between these entities which may include all levels of government from the state to the special district. As a result, the Leadership Group recommended that the legislature require collaborative planning and reciprocal review of growth inducing or shaping plans and projects initiated by these public entities.

During the 2003 legislative session, two bills were introduced that would have increased the consistency between transportation planning processes at the local, regional, and statewide level. Both of the bills focused on improving the communication between the Colorado Department of Transportation (CDOT) and other relevant entities. Neither of the bills made it out of committee (the first of the series of votes necessary to the passage of a legislative proposal). The first, House Bill 1125 would have required CDOT to work with the metropolitan planning organizations and regional transportation agencies in the state. The bill would have required the establishment of criteria to determine priority projects as well as the consolidation of the regions' long range plans into the state transportation plan. The second, House Bill 1179 would have required CDOT to conduct a study to determine how to best minimize (or eliminate where possible) the overlap of the transportation commission districts, transportation planning regions, and transportation engineering regions in the state. The bill also required CDOT to examine ways to streamline the transportation planning and decision making process in order to facilitate public participation. The study would have required consultation with local governments, the metropolitan planning organizations, and citizens.

Efforts outside of the legislative process also focused on transportation related issues. There was progress on improving the consistency of transportation planning. In an unprecedented effort to create the strongest case possible in the quest for funding under the TEA-21 reauthorization,<sup>18</sup> CDOT, DRCOG, the Denver Regional Transportation District (RTD), and numerous transportation planning regions, local governments, public interest organizations, transportation advocacy organizations, federal agencies, and staff of federal elected officials developed "Colorado's Principles for TEA-21 Reauthorization." It remains to be seen if the principles will result in increased consistency regarding specific projects and proposals.

The process through which the COGs interact with CDOT has also been examined recently. The Federal Highway Administration hosted a best practices workshop with CDOT, DRCOG, PPACG, and the North Front Range Transportation and Air Quality Planning Council (NFRT & AQPC). There will be a follow-up meeting regarding how to improve funds allocation and transportation planning. Additionally, DRCOG is rewriting

---

<sup>18</sup> The transportation funding and policies of the states are significantly impacted by federal legislation, the most important of which is known as TEA -21. This legislation originated in 1991 as the Intermodal Surface Transportation Efficiency Act (ISTEA), was reauthorized in 1998 as the Transportation Equity Act for the 21<sup>st</sup> Century (TEA -21), and is now scheduled for a second reauthorization.

the prospectus that lays out how CDOT, DRCOG, RTD and local governments work together on transportation issues. The prospectus has not been reviewed and rewritten in twenty years. Finally, the front range COGs have initiated discussions that may result in a transportation plan that encompasses the areas covered by the planning processes of DRCOG, the NFRT & AQPC, and the PPACG.

### **Providing Incentives to Encourage Regional and Inter-jurisdictional Collaboration Concerning Smart Growth**

Tax-base sharing between jurisdictions has the potential to minimize land use competition between jurisdictions and to create a more even distribution of the impacts of growth. The Leadership Group proposed that the legislature take the initial step of enabling regions to initiate tax base sharing plans subject to a vote of their jurisdictions. There was no state action on this issue. At the local level, there are currently a few tax base or revenue sharing plans in place across the state. No new plans were adopted this year.<sup>19</sup>

### **Balancing the Interests of Private Property Owners, including Farmers, and the Public Interest in Preserving Open Space and Natural Resources: Development of an Effective Transfer of Development Rights (TDR) Program**

Due to the rapid growth and development in Colorado in recent decades, there have been a variety of efforts to protect valuable open space and agricultural lands. Efforts to purchase open space and agricultural lands or even conservation easements on those lands with public or private funds are hampered by the fact that there is not enough funding to achieve the land preservation goals of Colorado's communities. Efforts to prohibit or restrict development on these lands in order to promote a public interest in preservation may result in a disproportionate burden being placed on rural land owners.<sup>20</sup> Fortunately, there are policy solutions that avoid these restrictions and negative impacts including transfer of development rights (TDR) programs. The Leadership Group recommended that the legislature pass legislation that would provide clear enabling authority for Colorado's local governments to adopt TDR programs. These programs, designed to protect open space and agricultural lands, direct growth into areas desirable for development while providing economic benefits to Colorado's rural land owners who need to generate income but do not wish to develop their property.

Senate Bill 152 was introduced in the 2003 session of the legislature. It provided a framework under which local governments could choose to adopt balanced TDR programs. The bill was actively supported by many individuals and organizations in the

---

<sup>19</sup> The Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement contains a commitment by the signatories to reconvene on issues that cross jurisdictional boundaries including revenue sharing. A work group in the Colorado Springs/El Paso County area is examining the potential for a regional transportation authority funded by a countywide sales tax; they are considering utilizing the PPACG as the decision making body regarding funds allocation.

<sup>20</sup> While there is not an inherent right to develop a given parcel of land, the restriction of development in rural areas may have negative financial impacts on rural land owners. Under some policies these impacts are not shared by the public despite the public benefits being achieved.

Leadership Group. The provisions of the bill required that local governments adopting such programs designate areas from which development rights would be sent. By transferring the development rights off of those lands they would be protected from development. Local governments would also be required to designate receiving areas, areas where higher density would be allowed with the application of purchased development rights. Additionally, the bill enabled the creation of a TDR bank that could facilitate the transfer of development rights and encouraged programs that crossed jurisdictional boundaries (this would allow the transfer of rights from county lands to municipal properties, for example).

Senate Bill 152 passed out of the Senate with solid bipartisan support—32 of Colorado’s 35 senators supported the measure. However, it was killed in the House Committee on Information and Technology. While the proposal did not make it through the legislative process this year, the level of communication and common ground between the various interests involved in discussions regarding the bill increased dramatically. Due to increased understanding of the policies that underlie TDR programs, a proposal similar to Senate Bill 152 has a high chance of success in the near future.

### **Extending Affordable Housing Opportunities for Low and Moderate Income Households and Expanding Opportunities to Acquire Open Space Lands Critical to the Quality of Life in Colorado**

Smart growth policies can help provide affordable housing options as well as protect open space. Both of these goals are reliant on public funding in order to succeed and both could benefit from a more collaborative approach. *The Mind of Colorado—2003 Annual Report* found that proposals to increase open space funding would find additional support among voters if they included funding for affordable housing as well.<sup>21</sup> The Leadership Group proposed that a fund to protect open space and support affordable housing be placed before the voters. Open space advocates and affordable housing advocates met earlier this year to assess whether or not they felt a collaborative effort was mutually beneficial at this point in time. Discussions are continuing. The affordable housing community has conducted initial research on the level of support for and financial impacts of a housing trust fund that does not include open space funding. However, the economy is likely to prevent proposals for additional funding being placed before the voters in the immediate future.

Despite progress on developing a housing trust fund or a combined affordable housing and open space fund, the lack of support for affordable housing on the part of the Colorado legislature was made clear this past legislative session. State funding for affordable housing peaked in 2001 at \$4.5 million; in 2002 and 2003 the legislature failed

---

<sup>21</sup> Wells Fargo Public Opinion Research Program, Institute for Public Policy, Graduate School of Public Affairs, *The Mind of Colorado—2003 Annual Report*, University of Colorado at Denver, June 2003. 55% of respondents indicated that they would be more likely to support a proposal to fund both open space and affordable housing than a proposal to fund only open space preservation. 34% said that they would be less likely to support a proposal to fund both programs.

to allocate any funds.<sup>22</sup> This year the legislature established a line item in the budget to allow the Division of Housing to accept donations and gifts not to exceed \$10,000.<sup>23</sup>

There has been some progress at the local level. Douglas County, Parker, Lone Tree, and Castle Rock created a multi-jurisdictional housing authority, the Douglas County Housing Partnership, in March 2003. The Partnership was established due to the recognition that affordable housing issues (in particular work force housing) crossed jurisdictional lines.<sup>24</sup> Additionally, the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement calls for the signatories to reconvene to discuss potential affordable housing funding and locations within the county. While discussions of the issue are critical, the question of whether or not affordable housing programs will be funded remains unanswered.

### **Minimizing the Negative Impact of Land Use Regulations, Impact Fees and Review Times on Affordable Housing and Related Smart Growth Objectives**

The zoning, subdivision codes, architectural/planning rules, review times, and impact fees in place in communities may have a negative impact on housing costs and community development and design options. For instance, minimum lot sizes may reduce affordable housing options. The Leadership Group proposed to have the state, the legislature, or the regional planning organizations initiate a six month study to examine the impacts of these regulations, policies, and practices on affordable housing and related smart growth goals. In particular, the Leadership Group saw a need for guidelines to promote the following: uniform methodologies to set impact fees, regulations and policies that maximize the benefits of growth while minimizing the negative impacts that may cross jurisdictional boundaries, and regulations and policies that promote expanded affordable housing choices as well as good community design. There was no effort to promote such a study at the state level.<sup>25</sup>

At the regional and local levels, there was some progress towards the goal of studying the impacts of existing land use regulations, impact fees, and review times. There were efforts establish growth related performance criteria to quantify progress or lack of progress towards smart growth objectives. In May of 2003 the DRCOG board approved a project to examine the progress the region has made in regard to the policy goals contained in Metro Vision as well as to determine if the region is better off than before Metro Vision was adopted. This study should be complete by the fall of 2004.

---

<sup>22</sup> Historically these funds have leveraged \$7-10 for every dollar of state funding.

<sup>23</sup> Upon the designation of the line item affordable housing advocates quickly raised \$13,000, exceeding the amount allowed by the line item in an effort to demonstrate the public support for affordable housing.

<sup>24</sup> The Partnership will be funded, for the first three years, by the four local governments. Douglas County will provide 50% of the funding and the remaining 50% will be funded by the three municipalities with each city or town responsible for an equal share.

<sup>25</sup> In past years the Division of Housing, in the Department of Local Affairs, has issued reports on the regulatory barriers to affordable housing in Colorado. Also, the Office of Smart Growth is planning to hold a workshop on paying for growth in the fall of 2003.

At the local level, Longmont continues to conduct a quarterly examination of the evaluative criteria or “benchmarks” that they have had in place since December of 2000. These “Quality of Life Benchmarks” contain criteria and goals for a wide range of smart growth objectives including water supply, affordable housing, rate of growth, school capacity, fire and emergency response time, traffic congestion, air and water quality, open space, agricultural preservation, parks and recreation, energy supply, and jobs to housing balance. When these benchmarks are exceeded (for example, numerous schools in the city are now over capacity), the planning staff recommends actions that the city council can take to address the problem. The city appears to have made progress towards smart growth objectives under the benchmarks. Additionally, there has been some effort by private and non-profit entities to develop smart growth scorecards.

### **Assuring Adequate Water and Water Quality**

The current water supply issues related to the drought have brought to the surface many of the problems underlying Colorado’s historic and current approach to water supply, particularly as it relates to growth and development. Historically, water supply issues have been discussed in the context of contesting interests advocating for their desired outcomes. However, the Leadership Group found that neutral analysis and not advocacy is needed now in order to best promote the economic, environmental, and social welfare objectives of the state. As a result, the group recommended that the state work with a broad base of constituencies including consumer, business, and community interests from both urban and rural areas to develop a statewide water policy that promotes smart growth objectives.

The state legislature passed Senate Bill 110 which contained, among many other provisions, a directive and an appropriation for the Colorado Water Conservation Board (CWCB) to conduct a statewide water supply initiative (SWSI) evaluating the most promising water development opportunities in each basin and outlining those prospects in a report.<sup>26</sup> Each project listed in the report shall include “consideration of the social, economic, and environmental impacts caused by the project.” However, the legislation also favored project development. It focused specifically on input from water users not the public or other affected interests (at this point the CWCB has selected mostly water development interests to represent the basins).<sup>27</sup> It is linked to population growth, but does not contain language tying land use practices to water supply. While population

---

<sup>26</sup> The legislature also passed House Bill 1318 and Senate Bill 236. House Bill 1318 creates a statewide system for the lease, exchange, or loan of water between water users in the state. Previously, such transactions were allowed, but occurred as private, individually negotiated contracts. Senate Bill 236 places a referendum on the ballot in November 2003. Referendum A asks voters to decide whether or not to approve up to \$2 billion in revenue bonds for water storage projects. There are no requirements in the bill that require the incorporation of a statewide water policy or even the participation of a balanced constituency in the decision making process. Instead, the CWCB is directed to recommend at least two projects from at least two basins and the governor is directed to approve at least one of the projects. The project must have a start date of 2005 which allows significantly less review time than most recent storage projects have required.

<sup>27</sup> House Bill 1233, which did not pass, would have established a statewide study like the SWSI, but provided that the basin groups were self-selected by interested parties within the basins and not selected by the CWCB.

projections are important so are the land use policies through which we provide housing opportunities for new residents—for example, planned compact development can use up to 35% less water than unplanned sprawling development.<sup>28</sup> *The Mind of Colorado—2003 Annual Report* found that 88% of respondents to the poll believe that new development should be permitted only if the water supply could “be sustained indefinitely, is reliable during droughts, and can be used without hurting neighbors’ water supplies.”<sup>29</sup> Similarly, 88% of respondents also believe that “all new residential and commercial development should be required to use conservation measures.”<sup>30</sup>

## Conclusion

While some progress has been made towards the development and implementation of smart growth policies during 2003, the degree of progress is neither sufficient nor evenly distributed between the levels of political authority. The modest progress made in Colorado was largely achieved by a handful of cities and counties as well as by DRCOG. The state did provide some educational assistance through the Office of Smart Growth. However, the state legislature failed to further the smart growth policies necessary to protect the quality of life Coloradan’s currently enjoy. Much more is needed in the way of statewide smart growth policies if we are going to succeed in maintaining our quality of life as Colorado continues to grow and develop.

In order to address the continued need for the implementation of growth management policies in Colorado, the Smart Growth Leadership Group and Task Forces will reconvene in the near future. They will discuss the progress made to date and consider the next steps necessary to the achievement of the Leadership Group’s smart growth objectives.

---

<sup>28</sup> Real Estate Research Corporation, *The Costs of Sprawl*, U.S. Government Printing Office, 1974.

<sup>29</sup> Wells Fargo Public Opinion Research Program, Institute for Public Policy, Graduate School of Public Affairs, *The Mind of Colorado—2003 Annual Report*, University of Colorado at Denver, June 2003.

<sup>30</sup> *Ibid.* The report also indicated support (59%) for allowing the state to issue revenue bonds to fund the construction of new water storage facilities—similar to the funding mechanism in Senate Bill 236.