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Making Housing Affordable: Breaking Down Regulatory Barriers

A Self-Assessment Guide for States

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Foreword

Some State and local regulations and procedures concerning land development and construction unnecessarily raise the cost of building or rehabilitating housing. Over the past 20 years, numerous housing policy studies have concluded that many of these regulations can be modified to reduce the cost impact without compromising valid public objectives.

Identifying such regulations and procedures is an important first step in regulatory reform. To this end, the U. S. Department of Housing and Urban Development supported the Council of State Community Development Agencies in preparing *Making Housing Affordable: Breaking Down Regulatory Barriers- -A Self-Assessment Guide for States.*

This guide will assist State and local public officials, housing advocates, and others concerned with increasing the supply of affordable housing in identifying specific regulatory requirements and practices that increase the cost of housing and therefore demand attention and action. It provides a series of thought-provoking strategies and techniques for States to consider when presented with regulatory impediments. These strategies and techniques are suggestions, intended as possible alternatives to current practice, which States and localities can consider on a case-by-case basis.

This publication is one of a series of efforts by HUD to provide States and local governments with new regulatory tools that can reduce the cost of housing and thereby expand housing affordability and opportunity.

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EXECUTIVE SUMMARY:
A Leadership Role for States

There are several reasons why regulatory barriers are very important and deserve far more attention then they get, especially from those concerned with state housing policy or the housing of poor people. One, Congress has placed heavy emphasis on this issue by requiring states to address regulatory barriers in preparing their Comprehensive Housing Affordability Strategies (CHAS). Moreover, the Housing and Community Development Act of 1992 authorized a grant program that provides funds to states to prepare comprehensive strategies that identify regulatory barriers and develop methods to remove or ameliorate such barriers. This guide is intended to assist states in meeting the requirements of both the CHAS and the regulatory barrier grant program.

Secondly, the most commonly mentioned reason for concern about regulatory barriers is housing cost: directly or indirectly, housing costs can be reduced if unnecessary or duplicative regulatory barriers are effectively addressed. Excessive standards which require expenditures that are beyond what is needed to satisfy health and safety concerns and/or regulations that exclude certain types of housing (such as multi-family, modular, and manufactured housing) affect supply and can raise the cost of housing unnecessarily high. Moreover, unnecessary and sequential permitting and processing can add as much to the cost of a house as excessive standards. As a result, the impact of such regulatory barriers makes state housing dollars buy less and less over time.

Finally, another reason for concern over regulatory barriers is that where people are raised and live can have a direct impact on a productive society. Access to decent housing in decent neighborhoods can provide access to good jobs, schooling, and education, as well as a physically safe and secure living environment. And the opposite is often true as well: if housing choice is limited to very poor, low quality neighborhoods, the chances of children raised in this housing and these neighborhoods having good jobs, education, and a physically safe and secure living environment diminish, perhaps substantially.

This self-assessment guide recognizes that most states do not easily or readily intervene in local land use matters. Few issues are as politically sensitive — and potentially damaging to state elected officials — than local zoning, subdivision, and building regulations. But states can assume a leadership role in advancing and encouraging thoughtful modification of land use and development regulations. Approaching regulatory reform in a comprehensive manner can ensure a balance between competing public policy objectives such as promoting the development of mixed-income affordable housing and the necessary infrastructure to meet the needs of the community, protecting the environment and agricultural resources, as well as respecting the autonomy of local government.

The guide has attempted to identify specific regulatory issues and practices which directly affect the cost of housing and thereby command state attention and action. The following represent basic actions that if implemented by states could ameliorate the effects of many regulatory barriers identified in the guide. However, this guide does not presume that one answer fits all circumstances. The guide provides a series of thought-provoking strategies and techniques for states to follow when presented with regulatory impediments. These strategies and techniques are merely suggestions and meant to be possible alternatives to current practice. States and localities should consider the application of these alternatives on a case by case basis. Finally, several of the topics and specific recommendations raised by the guide touch on legal points that may vary according to local jurisdiction and state. Actions in these areas should be undertaken in consultation with legal counsel.

Comprehensive Planning. States should consider requiring local governments to develop comprehensive plans which include mandatory housing elements and are consistent with specific state identified goals, objectives, and policies. These goals and objectives should be implemented through local zoning ordinances and land development and site plan standards that are consistent, by mandate, with the comprehensive plan. A state or regional agency should review and approve comprehensive plans.

Enforcement remains the key issue for comprehensive planning. States can offer technical assistance for plan implementation or other financial incentives. Conversely, states can also enforce sanctions for nonparticipation or noncompliance, such as prohibiting communities not in compliance with their comprehensive plans from participating in federally funded state community development programs or other state grant programs. Moreover, states can modify or suspend authority to levy impact fees and exactions.

Building Codes and Standards. States should consider establishing mandatory, preemptive state-wide building codes and standards based upon model building/fire codes that cover energy conservation, architectural accessibility, plumbing, structural and fire safety requirements. State approval should be required for any local amendments to ensure uniformity.

Infrastructure. Infrastructure needs should be tied to the capital improvement and housing elements approved in the comprehensive plan. States should consider a dedicated tax revenue fund or bond issue specifically created to assist jurisdictions with financing local infrastructure needs. Such assistance could also provide incentives to local governments to maintain their commitment to providing affordable housing.

Administration and Processing. States should consider establishing one-stop permitting and designate one lead agency for the approval process with set time limits for review. Such reviews should occur simultaneously to condense the process as much

as possible. States should consider a "comprehensive permit" for affordable housing thereby allowing an accelerated process for such development. Pre-permitting conferences should be implemented to eliminate confusion and ensure expeditious approval.

Impact fees. States should consider enacting legislation mandating the circumstances and conditions upon which local governments may impose impact fees and exactions. Such legislation should allow exemptions or reduced fee schedules for low and moderate income housing and should provide a fee structure that will ensure a proportional and fair fee assessment.

Education efforts. Many states agree that development of a comprehensive education and technical assistance program for local officials, developers, residents and other interested parties is key in order for state government to advance effectively regulatory reform. Efforts currently undertaken by states include: technical assistance guides, brochures, and pamphlets; workshops; peer to peer training programs; one-stop information centers or designated staff; and innovative "How To" manuals for redesigning regulatory procedures. Training programs should be provided specifically for elected local officials to raise the awareness of the adverse effects of some regulatory practices directly on housing and indirectly on the local economy.

INTRODUCTION: The Importance of Regulatory Reform

Why a self-assessment guide on regulatory barriers?

Why a guide for states?

These two questions may be frequently asked by readers who look at this guide. When many lower income households suffer severe housing problems — often paying way too much of their meager incomes for inadequate housing or, less often, living in substandard housing conditions — why be concerned with the impact of regulations on the cost of producing sound housing?

Why are Regulatory Barriers Significant?

Why should states be concerned about regulatory barriers and housing costs? Some people argue that processes and standards of state government, probably often dealing with environmental concerns, may increase the cost of housing, but that these effects are relatively minimal, and, in any event, often simply follow promulgation of the federal government. Besides, it is also argued these standards and processes usually are taken to achieve sound environmental management or public health objectives.

However, there are several reasons why regulatory barriers are very important, and deserve far more attention than they get, especially from those concerned with state housing policy or the housing of poor people.

One reason is very practical. Title I of the National Affordable Housing Act of 1990 requires states to address regulatory barriers in preparing their Comprehensive Housing Affordability Strategies (CHAS). States need to prepare a CHAS to obtain Community Development Block Grant funds, HOME funds, and other housing funds. This self-assessment guide should help states meet the regulatory barriers requirement of CHAS.

Additionally, a 1992 amendment to the act establishes a grant program that provides funds to states to prepare comprehensive regulatory barrier strategies — identifying regulatory barriers and developing strategies to remove or ameliorate barriers. This guide should help states respond to the requirements of the regulatory barriers grant program.

But states should be concerned about regulatory barriers even in the absence of the federal requirement and the incentive mentioned above. The most commonly mentioned reason for concern about regulatory barriers is housing cost: directly or indirectly, housing costs can be reduced if unnecessary or duplicative regulatory barriers are effectively addressed.

The direct impact of regulatory barriers on housing cost is easy to understand: if standards require expenditures that are above and beyond what is needed for the health and safety of the occupant and the occupant's neighbors, the cost of housing is unnecessarily high. The desire and perhaps need to deal with neighborhood life styles, price stability, and aesthetics can make dealing with regulatory barriers more complex than simple. Yet, there is clearly a point beyond which most neutral observers will agree that neighborhood, price stability, and aesthetics — the "nice but not necessary" — cannot hold up the additional costs required.

Not only standards need to be addressed; processing time can also adversely affect the cost of housing. Perhaps only outside of government (and clearly inside of it if appropriate cost accounting and customer accountability ruled), time really is money. Unnecessary delays and sequential permitting and processing can add as much to the cost of a house as excessive standards.

Where there is a real demand for housing and where there is an open market of suppliers — of builders and developers — the cost impact of regulatory barriers are easy to see and understand. But the indirect impact of regulatory barriers, while less visible, are probably more important, and in the long run more costly. These indirect impacts are less visible because one must look at what's not there to see them. Perhaps the most pernicious regulatory barriers are those that prevent housing from being built in the first place: regulations that exclude housing, or exclude all but single family housing, or exclude modular or manufactured housing. These barriers, usually land use-related barriers, can decrease the supply of housing, making the housing already built more expensive than it need be, and making the land on which new housing must be built much more expensive than it need be. Rapid increases in housing prices occur in many areas simply because supply, even over a period of time, cannot catch up to demand because it is not allowed to.

Yet, even if one were to accept the notion that regulations exist that unnecessarily increase the cost of housing, why should it be a major concern to those active in state housing policy and programs? Why should it not be someone else's concern? One answer is that it really does cost you money and makes doing your job effectively more difficult.

Since the early 1980s, states have increasingly used their own funds to provide affordable housing directly through taxpayer-financed subsidies. The HOME program, with its match requirement, institutionalized the states' financial commitment to housing. From a broad perspective, demographic and economic trends make it likely that housing resources will be under more demand as the years pass. Yet, an era of constraint confronts government at all levels — increased demand cannot be met by shaking a money tree. State housing dollars will continue to buy less and less unless productivity can be improved. The impact of unnecessary regulatory barriers makes a given subsidy dollar buy less and less over time.

Congress and state legislatures, much less the general public and taxpayer, look askance when public funds seem to buy less per unit. The best way to make sure that state housing dollars buy all they could, and should, is to ensure that these dollars are not paying for unnecessary costs — whether one is looking at the construction of a single room occupancy building, the development of single family homes, the rehabilitation of town houses, the construction of site-built or modular multifamily housing, or the provision of tenant based rental assistance.

But another reason why there should be concern over regulatory barriers — *and a reason that is the most encompassing and perhaps the most important in the long run*— resides in the kind of society we want, particularly in light of economic realities. Today, the kind of life you experience may depend on where you were raised and live.

Let's take jobs, for example. Every one needs an income to survive. Some of us inherit our income or live off the income of our parents. But most of us earn our incomes, and our employment not only determines the amount of income we have, but how we live. But jobs are not ubiquitous, and unless you have special skills or a unique trade you simply cannot live where you want and still have sufficient earnings. If you have few skills and little education, you are even more limited, especially if you want a decent level of earnings.

What's been happening to the location of jobs over the past two decades? Job growth has been and is continuing to be dispersed geographically, primarily into suburban, exurban, and metropolitan fringe areas. For example, while total employment rose between 1965 and 1985 by about 70 percent, about 35 percent of all job growth occurred in urban counties in large metropolitan areas and most of balance of job growth was nearly equally spread between and among suburban counties, small metropolitan areas, and "exurban" counties. Manufacturing jobs have been especially dispersed. Manufacturing employment during this period rose by only 10 percent, but urban counties lost manufacturing jobs in amounts equal to 26 percent of all the jobs that were gained, while exurban counties gained 61 percent of all manufacturing job growth, suburban counties and small metropolitan areas gained 21 percent and 18 percent, respectively, of all manufacturing job growth.

This job dispersion, which affects all areas of the country and all major cities (except those cities hemmed in by water or mountains), is a watershed event and an entirely new context for central cities. As one researcher has put it, "Throughout our history spatial mobility and economic mobility have gone hand in hand. Now for the first time that connection is broken."

Where you live — where you are able to live — provides you not only with access to jobs but also access to quality of education. For example, a law suit in the state of Connecticut challenges the state to provide decent schooling for children of the city of Hartford. The suit (*Sheff v. O'Neill*) emphasizes the negative impact of racial segregation and isolation on education in the city of Hartford contrasted to the suburban school districts. However, the core issue is

largely socioeconomic: about one-half of Hartford's school children qualify for free or reduced price lunches contrasted to about 5 percent for the children in the 21 suburban school districts, and about 51 percent of the city's families are headed by single parent families compared to 11 percent in the suburbs. In the words of one analyst, "Those children most dependent on education are concentrated in places with the most rotten education."

In another example, research suggests that school drop out rates, especially for black males, are directly related to the percentage of high-status workers (managerial or professional) in a neighborhood: neighborhoods with a very low percentage of high-status workers has a very high percentage of school drop-outs, and vice versa. A similar correlation occurs between high-status workers and teenage childbearing.

More generally, poor neighborhoods can have very adverse affects on their residents. Holding race and family background constant, girls aged 16 to 19 are substantially more likely to have children out of wedlock if they lived in poor neighborhoods than in average neighborhoods and neighborhoods with high welfare dependencies reduce men's chances of obtaining well paying jobs in adulthood.

Finally, the famous Gatreaux housing program in the Chicago metropolitan area, where poor inner city households, generally black female headed households into a second generation of welfare dependency, shows that households that move from inner city Chicago to the suburbs not only were more satisfied with their children's schools and with police services but that their children did better in school and they were more likely to obtain employment than their counterparts who chose to stay in Chicago. In answering the question about why they were employed when living in the suburbs when they were not when living in inner city Chicago, the participants answered that there were more jobs available and, secondarily, the safer living environment made them less worried about their own safety in getting to work and their children's safety when left alone, and the fact that their neighbors worked motivated them to work as well.

Simply put, access to decent housing in decent neighborhoods provides us with access to good jobs, access to good schooling and education, and access to physically safe and secure living more so than we often realize. And the opposite is often true as well: if housing choice is limited to very poor, low quality neighborhoods, the chances of children raised in this housing and these neighborhoods having good jobs, education, and physically safe and secure living environment diminish, perhaps substantially.

Gatreaux has been successful in part — and probably successful mostly — because of a good supply of affordable housing in the suburbs of metropolitan Chicago. Regulatory barriers that unnecessarily raise the cost of housing or limit the supply of affordable housing have pernicious effects on our society, especially on those who do not have the wealth to live wherever they want.

Why Are Regulatory Barriers Important to States?

The reasons why one should be concerned about regulatory barriers are important, but why should states be concerned? Aren't the most adverse and most frequent regulatory barriers at the local level? Yes, in most cases. But states can take the key role in identifying and addressing regulatory barriers for four reasons.

First, states are almost invariably the only institution possessing the geographic scope to address regulatory barriers. Housing markets and labor markets are regional, multi-county. With rare exceptions, there is no governmental authority at a regional level that has the legitimate power to address regulatory barriers except states. A locality with no regulatory barriers whose residents are adversely affected by regulatory barriers in another close-by locality cannot intervene or intercede with that close-by locality. Only states have the territorial reach to do this.

Second, it is true states have the general legal authority to address local regulatory barriers. Generally, localities have only those powers delegated to them by states, and states have delegated much land use powers to localities. If necessary, States have the legal sovereignty to take back, restrain, intercede, or otherwise condition local land use and related practices. However, these are extraordinarily difficult and drastic political actions. Instead, States can approach these thorny issues in a much more cooperative manner through education and technical assistance efforts with local governments building consensus support for affordable housing by helping local governments understand that regulatory reform can provide many more economic and social advantages than disadvantages.

Third, state reform efforts can only provide a conducive atmosphere for which localities make decisions. In order for regulatory reform to have a substantive impact, local governments must assume the lion's share of responsibility for implementing such reforms in their decision-making process. To accomplish this, localities must begin to build support within their own communities through concerned groups, individuals, and civic organizations. State leadership can ensure that regulatory reforms are applied in an equitable manner for the common good of all.

Fourth, there is a real financial interest for the state as a consumer in advancing the cause of regulatory reform. Because the cost of producing housing is sensitive to time, streamlining regulatory permitting and processing can shorten construction time and ultimately save money. As a result, precious state dollars can go further in producing more affordable housing.

This self-assessment guide recognizes that most states do not easily or readily intervene in local land use matters. Few issues are as politically sensitive — and potentially damaging to state elected officials — than local zoning and subdivision (and perhaps even building) regulations. Consequently, this guide takes the posture that states should first try to determine

whether a housing affordability or accessibility problem exists. If a potential problem appears, states should then examine specific geographic areas more closely to determine whether and to what extent a problem exists. If further investigation concludes that there is a problem, then states should analyze and address the problem.

This self-assessment guide offers states suggestions on how to undertake a preliminary exploration to determine whether a potential housing affordability problem exists, offers procedures to determine more fully whether there is an actual problem, and then offers alternative suggestions on how states can begin to address the problem.

Although the guide presumes that most adverse regulatory impediments are usually found at the local level, it does not limit itself to local issues. For all the reasons mentioned above, states should try to determine whether their "own house is in order." This internal assessment should be directed at state regulations, practices, or processes that may overtly increase the cost or availability of housing — and these may most often be environmental permits and processes. But states should also consider the extent to which policy and practice omissions may result in problematic local action, now or in the near future. As the guide more fully articulates, states should ask themselves whether they provide guidance to or restrain localities from special and unnecessary "add-ons" to model building codes, whether state law requires local development regulation to be consistent with local land use plans or general comprehensive plans, and so on.

Conversely, the guide does not presume that one answer fits all circumstances. The guide provides a series of thought-provoking strategies and techniques for states to follow when presented with regulatory impediments. These strategies and techniques are merely suggestions and meant to be possible alternatives to current practice. However, it is important that states and localities consider the application of these alternatives on a case by case basis. Each problem will require analysis and circumstances will direct what kind of response is appropriate. States are encouraged to review the reference materials cited at the end of the guide for more information.

In summary, regulatory barriers are important to state housing policy because they can unnecessarily raise the cost of housing directly, can raise the cost of housing indirectly by lowering the supply of housing, can restrain severely the placement of state-assisted housing as well as make the state subsidy increasingly inefficient, and, very importantly, can impede access to a supply of housing to lower income persons, limiting, perhaps dramatically, their opportunity for employment, decent earnings, good schooling for their children, and a safe and secure environment.

States must play the key role in addressing regulatory barriers because (1) they are the nearly always the only institution that has the geographical scope to respond to regional housing and labor market imperfections; (2) states can provide education and technical assistance to encourage localities to see the benefits of local regulation reform; and (3) states' efforts are

limited in ameliorating regulatory barriers without local governments participating as an active partner in reform implementation; and (4) a real financial interest is at stake in utilizing state dollars as efficiently as possible. While local regulatory practices are usually the key location of barrier problems, states should also examine their own practices to minimize unnecessarily adverse affects of their own regulations and processes on housing cost.

ARE THERE REGULATORY BARRIERS?
A Policies and Practices Scan

The availability of developable land and thereby the supply of affordable housing can be significantly affected by burdensome regulatory practices. Before getting into the specifics of zoning, permitting, and other regulatory items, how can a state very roughly judge whether there may be an affordability problem? The Department of Housing and Urban Development's fair market rents and prevailing area wage rates, or possible other data available from the Bureau of Labor Statistics could be used to establish the general parameters of affordability in states. Do fair market rents absorb an inordinate amount of prevailing wages? Another alternative, in some areas local realtors' associations may keep median house sale prices by county or even jurisdiction. These sales price averages can be compared to the median or average income in the metropolitan area or county. High ratios may preliminarily identify those jurisdictions that may not be making a contribution to the supply of affordable housing, perhaps because of the existence of regulatory barriers.

For example, in August 1992, Wisconsin Governor Tommy Thompson signed Executive Order #157 which directed a Task Force to review and provide findings and recommendations on regulatory barriers to affordable housing which may exist at the federal, state, or local levels of government. As a first step, the Task Force analyzed data from the 1990 Population and Housing Census, considering both rental and owner housing, in order to identify the extent to which affordable housing was available in Wisconsin. The Task Force report footnotes an affordable index as the ratio of 30% of the area median gross household income over the income required for the purchase of the median priced house. Indices over 1 (or 100%) denote that the housing market is affordable to the median income household.

While these local affordability indices are above the national average in Wisconsin, it was found that affordability indices drastically drop for below median incomes. For example, in the low-income household category, the state seems to have a sufficient supply of affordable units. However, a large number of these units are occupied by very-low income households due to the lack of affordable very-low income housing. This means, the Task Force found, that at least one-third of the households (76,080) could be forced to pay more than 30% of their gross income on housing due to the short supply of affordable housing.

Another set of relationships involves employment growth and housing starts. Are areas of a region that are experiencing more than average job growth also experiencing increased housing starts? What is the relationship between the salaries of jobs being created and the price of housing in those areas where such employment opportunities are available? If jobs are increasing at a faster pace than housing, an affordability problem may exist, especially if the areas with high rates of job creation have high housing prices. The decennial census provides

data on housing permits and further employment data could be acquired through the Bureau of Labor Statistics.

While these comparisons can very roughly and quickly assess the availability of affordable housing, it does not provide a gauge for the potential housing supply in need of rehabilitation nor can it directly determine whether developable land is available. Many State and local governments restrict the development of land to preserve open space and agricultural land as well as to protect environmentally sensitive lands. States should evaluate whether these regulations work in a coordinated effort or, for example, whether land for open space is set-aside in addition to environmentally protected areas. Significant tracts of non-developable lands in areas where the affordability index ratio is high may indicate an inadequate supply of buildable land as a result of overly restrictive zoning and land development ordinances.

Once problem areas are identified, the following indicators and strategies can assist States in judging the extent and degree to which state-administered controls and local regulatory practices might adversely affect cost of housing. States will begin this evaluation with a quick overall review of current planning policies. Questions will then be posed that initially are intended to identify State practices which create barriers in the areas of zoning, land development and site planning, building codes, administration and processing, infrastructure and impact fees, and environment. Upon closer examination of identified trouble spots in the State, subsequent questions will assist States in identifying specific local regulatory practices that unnecessarily impede the availability of housing for low- or moderate-income households.

INDICATORS: GENERAL PLANNING

1. **Should your state require local and/or county governments to develop comprehensive plans?**

   More than twenty states have enacted laws requiring local comprehensive planning. A comprehensive plan sets forth the policies and goals of a state or local government and may serve as a guide for governmental decision-making, especially in regard to land use, capital improvements, and the enactment of zoning or similar laws affecting land development. A required housing element can ensure that the locality is on record to promote housing affordability and accessibility.

2. Should the State review and approve local comprehensive plans based upon conformance with statewide comprehensive planning goals including affordable housing?

Statewide land-use and growth-management planning can be used to make affordable housing an explicit goal and removal of regulatory barriers an expected means to address that goal. States can mandate that local jurisdictions plan for and assume responsibility for providing low- and moderate-income housing.

3. Are State and local government comprehensive plans required to ensure an atmosphere receptive to affordable housing?

Many states and localities have established policies and programs to meet goals set forth in their comprehensive plans that encourage or require the development of affordable housing. For example, Oregon requires local jurisdictions to prepare plans that identify vacant land available for development, estimate what will be needed to meet future needs in housing and other areas, and provide housing opportunities for people of all income levels through various housing alterntives. Zoning ordinances and other regulatory practices must reflect and implement these State-approved local plans.

4. Should your State require local governments to include a housing element in their general comprehensive plans which represents their proportional share of meeting the housing needs of the region?

Planning approaches for affordable housing can include the notion of regional fair share — the attempt to make each locality in the region provide part of the area's current and future housing need. These fair shares are usually set by regional councils of governments, based on their projections of regional population. In New Jersey, the Council on Affordable Housing (COAH) was created in 1985 as a legislative response to the landmark Mount Laurel State Supreme Court decisions which found that localities are constitutionally obligated to assume their fair share of a region's need for low- and moderate-income housing. An alternative to court action, COAH offers localities the option to develop COAH-approved housing plans. These plans, negotiated between the State Planning Commission and localities, represent COAH established fair share housing goals based upon such factors as population, housing conditions, jobs, median income, and designated growth. These fare share calculations stem from the state's long-term development plan forecasts population and economic activity over a twenty-year period and allocates projected growth to five planning areas: metropolitan, suburban, fringe, rural, and environmentally sensitive. Localities may receive credits to their fair share allocation for existing housing that meets certain criteria such as building costs and occupancy by low-income persons. COAH is revising its rules and housing-obligation

numbers, originally estimated for a six-year period from 1987 to 1993. Using 1990 Census data and the State Plan, the council will set targets for six years beginning in mid-1993.

5. **Is there any state-level rule or program whereby local governments are required or encouraged to implement local regulatory reform?**

Offering financial incentives is one method States might utilize for encouraging jurisdictions to reform regulatory practices, procedures, ordinances and codes. Significant sources of state aid would be made available only to those jurisdictions that meet specific state goals for affordable housing. In effect, the states would make exclusionary land use regulations cost and inclusionary affordable housing provisions pay.

ZONING

Although States have the legal right to regulate the use of land, most have delegated this authority to local governments. States retain, however, the authority to guide how local governments control land development through State enabling legislation. Zoning ordinances which emphasize large undeveloped land parcels exclusively for open space, agriculture, or very low-density, single-family detached housing, are zoning practices which can impact the production of affordable housing. In addition, land zoned for multi-family use may be located in such an area as to make it financially unfeasible for developers because of the site's inaccessibility to transit and other community facilities or have physical characteristics that prove to be adverse for development.

States can oversee local zoning practices through the comprehensive planning process or play a mediation role by allowing recourse for developers through a State appeals process on adverse local zoning decisions. The State can amend their zoning enabling legislation by encouraging innovative zoning options that can facilitate the production of affordable housing. Many such options are discussed later in the strategies and techniques portion of this section.

EVALUATING STATUTES, POLICIES, AND REGULATIONS:

1. **Does your State require that local zoning ordinances be consistent with local comprehensive plans?**

   By requiring that local zoning ordinances be consistent with local comprehensive plans, States will be able to ensure that local governments provide for the area's housing needs of all populations regardless of income and reach affordable housing goals set in state-wide comprehensive plans. Oregon's comprehensive planning requirements have institutionalized a three-prong test for local zoning regulations relative to affordable housing: (1) the fair share principle (does the locality's housing planning consider the needs of the entire region to arrive at a fair allocation of various housing types?); (2) the least-cost principle (does a locality's zoning permit the use of lower cost housing types, such as multifamily homes, modular housing, and manufactured housing?); and (3) the clear standards principle (are the locality's zoning standards clear and objective and not cumulatively discouraging to affordable housing?).

2. **Does State zoning enabling legislation restrict or otherwise address conditions or circumstances for zoning variance requests?**

   It is important that State enabling legislation exercise some direction and control over zoning ordinances. An inordinate number of zoning variance requests may

mean that communities are working with outdated or ineffective zoning ordinances.

3. Does your State require or encourage a mandatory or incentive-based inclusionary zoning system through either the comprehensive planning process or by State zoning enabling legislation?

Mandatory inclusionary zoning ordinances require the developer to set-aside a designated proportion of housing for low- and moderate-income persons. Incentive-based inclusionary zoning allows the developer the option of receiving increased density bonuses or other regulatory incentives in exchange for the provision of low- and moderate-income housing. Possibly due to previous judicial challenges that have rejected mandatory inclusionary zoning practices as taking of private property, the incentive model seems to be the trend in state enabling legislation.

4. Does your State's zoning enabling legislation encourage planned unit development (PUD) or planned development ordinances?

PUDs are an innovative zoning technique which may involve clustering and/or mixing of housing types within a single subdivision, retaining open space, and providing for recreational amenities. The PUD is a mechanism for protecting environmentally sensitive areas as well as focusing development of a variety of housing types and commercial and industrial employment centers in areas where it is well suited.

5. Does your State zoning enabling legislation encourage linkage zoning ordinances?

Some state and local governments utilize a linkage ordinance approach or mixed-use zoning approval as an incentive for developers to produce affordable housing. The rationale is nonresidential development such as commercial, retail, or institutional development creates a need for additional housing by attracting employers to an area. Many such linkage ordinances require developers to build housing, to pay a fee in lieu of construction into a housing trust fund, or to make equity contributions to a low-income housing project.

6. Does your State require that localities demonstrate a need for down-zoning policies in their comprehensive plans? Does your State, otherwise restrict down-zoning?

Down-zoning is a method to reduce the intensity of land use permitted under existing zoned districts or parcels of land. It is important to note that not all down-zoning practices necessarily exclude development. However, such actions may take the form of increasing minimum lot sizes, reducing height limits, converting multifamily or

commercially zoned lots to single-family or reducing residential zoning to open space or agricultural use, all which can impact the availability of affordable housing.

7. Does your State encourage local governments to allow the development of manufactured housing projects?

At least 19 states have legislation prohibiting discrimination against manufactured housing. Discrimination against manufactured housing can take the form of confining homes to parks, excluding homes from all residential zoning districts, singling out manufactured homes for special permitting procedures, and confining manufactured housing to unreasonably small areas of land. State anti-discrimination laws generally take the following forms: broadly worded prohibitions of ordinances having the effect of excluding prefabricated housing, except on the same terms and conditions of conventional housing; prohibiting discriminatory treatment but giving local governments the right to impose zoning standards and procedural requirements (e.g., setback, minimum square footage, yard, parking, roofing/siding, density) on the same terms as site-built housing; mandating that manufactured homes must be allowed in all residential areas; and prohibiting the complete exclusion of manufactured homes from a community.

Should the state determine that an affordability problem exists and has identified those effected areas or regions of the state, the following series of questions are posed to evaluate how local practices may be exacerbating that problem.

8. Has there been much leapfrogging of development among communities in your state?

Developers may favor outlying areas because of the lower cost of land and the absence of development restrictions creating a "leap-frog" effect on development resulting in costly infrastructure needs. This may indicate that excessive land-use and or development restrictions exist in the areas being bypassed.

9. Do local governments allow exchanging increased density for the provision of low- and moderate-income housing?

Density bonuses are becoming popular incentives for meeting not only affordable housing needs but also the infrastructure needs accompanying new developments. In some jurisdictions density for a project may be increased 10%, 20%, as much as 25 percent depending upon the allocated share of units for low- and moderate income persons provided in that project. Or a community may approve a higher density for a project in return for the developer's contribution for a park or a needed road. However, a red flag in this practice is when a locality will deliberately set low density standards in

order to obtain added amenities from a developer. Such density bonuses should benefit the developer and be tied to specific public policy goals, such as the provision of low-and moderate-income housing or needed infrastructure, and not be a coercive regulation.

10. Do local governments permit the development of new single-room occupancy (SRO) housing?

Some single-room-occupancy programs combine SRO demolition moratoria with relaxed construction standards and below-market interest loans to SRO developers.

11. Is there little variety in the kind of new housing being built in a local jurisdiction?

The consistent development of single-family housing with little or no cluster housing development, such as townhouses or garden apartments, may be more an indicator of exclusionary zoning practices rather than of consumer demand.

12. Are local communities finding that vacant land zoned for residential use is buildable for the type of housing authorized?

a. What percentage of residentially zoned lands allow densities greater than 4 to 6 dwelling units per acre? (None; A little — 0% to 10%; Some — 10% to 25%; Over 25%)

b. Is adequate land zoned for multi-family and other affordable housing marketable for that type of housing?

One State observes that communities will zone vacant land for multi-family housing that is not suitable due to such constraints as wetlands, steep slopes or other factors which reduce the usefulness of the land for higher density housing. Moreover, it has been found that communities which want to discourage multifamily housing will zone land for that purpose far from transit or community facilities making the site less attractive to builders. Timed sequential zoning is considered a good planning method for States to encourage -- districting by use conditioned upon the adequacy of infrastructure, with development timed to the plan to extend capital facilities.

13. Are there localities utilizing urban growth boundaries (UGBs) as a comprehensive planning or zoning mechanism for restricting the amount or location of developable land?

Some jurisdictions may establish urban growth boundaries in order to prohibit development for a specified number of years. The urban limit line may distinguish the

boundaries with which the jurisdiction will provide utility service connections or may identify areas with such low-density zoning that development is economically infeasible. However, Urban Growth Boundaries, when tied to housing planning strategies, may also be used to enhance the supply of affordable housing as in the case of the State of Oregon. Oregon requires, as part of its state planning program, local governments to develop comprehensive plans which inventory buildable lands, in both urban and "urbanizable" areas, that are suitable, available, and necessary for residential uses. Residential uses are required to reflect the availability of a variety of housing types for a wide range of households at all incomes. To advance the goal of urbanization, the State requires localities to establish in it comprehensive plans Urban Growth Boundaries to identify "urbanizable land." The need for housing is one of seven factors to be considered in drawing this boundary. This way, government officials, residents, developers, and other interested parties know exactly where growth is expected to take place and are prepared to meet all the needs.

14. Are local governments' zoning practices providing for a diversity of housing types that meet the region's affordable housing needs?

Even though land may be appropriately zoned for residential purposes, invoking specific height limits, excessive frontage or setback requirements, and high amenity and subdivision requirements all can be prohibitive for multi-family development.

15. Do local government zoning ordinances permit townhouses, multifamily housing, and other forms of affordable housing by right without going through a special exception or other approval process?

Once zoning ordinances are enacted, exceptions to the ordinances usually require highly prescribed, formal procedures, including public hearings, that are time consuming and invariably add to the cost of producing the housing.

16. Do local governments that permit single-family detached housing also permit attached housing?

Attached housing — smaller houses built on smaller lots in attached configurations — allows for more efficient use of the land and more compact utility service and thereby is more affordable to many low- and moderate-income people. One or more zones should be created which permit the full range of attached housing unit types.

17. Do local zoning ordinances allow second unit (accessory apartment) development?

Permitting accessory apartments allows a more efficient use of existing housing. Many units in the housing inventory may be too large for the needs of the current occupants.

Studies by the American Association of Retired Persons have shown that 53% of the homes with five rooms or more are occupied by the older population. Such housing can be relatively inexpensive; the average cost of converting interior space to an accessory apartment is about one-third the cost of constructing new units of comparable size. Several States have authorized the establishment of accessory uses in single-family zoning districts as a mechanism to encourage the production of affordable housing.

18. Are localities encouraging infill development where appropriate?

Infill development promotes affordable housing by using existing infrastructure and services and discourages leap-frog type sprawl in the outer undeveloped areas of a community that would require expensive extensions of roads, water/sewer lines, and other facilities.

ZONING STRATEGIES AND TECHNIQUES

The following represents suggested zoning strategies and techniques which States may: (1) compare current practices to assess the degree with which regulatory barriers exist; and (2) available options that, if implemented, will facilitate the removal of such barriers and enhance the production of affordable housing. It should be emphasized that these are just suggestions and do not represent the absolute solution. States should evaluate regulatory practices and circumstances on a case by case basis and respond accordingly.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Zone sufficient land for all housing types, including medium and high densities.	Allows market or government agencies to provide adequate supply of housing sufficient to accommodate demand. Directly authorizes construction of low-cost housing.	Through the comprehensive planning process, require localities to identify vacant land, allocate and zone based on projected housing needs. Such planning should require localities to provide their fair share of present and future regional housing needs. Fair share allocations can be based on such factors as population housing conditions, jobs, median income, and designated growth areas (New Jersey). Make all housing types permitted by right (instead of conditional uses) in one or more zones. Housing types for which land must be designated includes single- and multi-family housing, subsidized housing, and manufactured housing. (Oregon)

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Enforce commitments made in local comprehensive plans.	Ensures that local governments meet their fair share of the State's affordable housing needs.	A Massachusetts Executive Order permits the State's Executive Office of Communities and Development to withhold state-funded discretionary grants (such as for open space, or water and sewer, or transportation) to localities that have made little progress in contributing to the affordable housing needs of their region.
Reduce minimum lot sizes.	Large lot sizes impede construction of smaller, single-family homes.	2,000-6,000 sq. ft. Some jurisdictions eliminate minimum lot size and regulate only units per gross acre, with standards ranging from 6-10 units/acre. One-half acre considered excessive. Alternative site designs, based on utility availability, soils, and other factors, that minimize land consumption may make larger lot sizes affordable. 15,000+ sq ft for certain housing types may still be reasonable where on site sewage disposal (septic tank systems) are necessary.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Reduce or eliminate minimum site sizes for PUD/cluster developments.	Ordinances requiring minimum site size discourage use of PUD/cluster since large tracts may be hard to find.	100 acres considered excessive.
Reduce minimum lot width.	Permits smaller lot sizes and increased densities.	60 ft. or less. Excessive lot width (together with setback requirements) can increase utility and road costs in subdivision design. While no specific number may be ideal under all circumstances, reductions suited to more flexible subdivision design requirements would enhance affordability.
Reduce lot setback requirements.	Reduces pavement, stormwater control, and utility installation costs. Permits smaller lot size.	Front: 0-5ft. Site buildings perpendicular or at angles to the street; complement narrow setbacks with rear parking and alleys. Side: 0 ft. (zero-lot line)- 10 ft.; reduction to 0 ft. is generally accompanied by 10 ft. for other lot line. Rear: 0-10 ft.; larger setbacks sometimes used to accommodate parking at rear of lot.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Allow cluster, zero lot line, or "Z" lot/herringbone lot configurations.	Allows developers to maintain gross density of lot and to concentrate development on nonsensitive portions of a site. Enhances efficiency of site infrastructure.	The most common standard is 0 ft. on one side and 10 ft. on the other.
Encourage second unit (accessory apartments) development or conversion activities on existing single family housing sites to enhance supply of affordable housing.	Increases availability of the affordable housing stock while at the same time affording the elderly an effective housing and health care alternative to relocating to a retirement home. Maintains sense of community.	Modify state zoning enabling legislation to encourage development of accessory apartments within single-family housing, or conversion of single-family dwellings to duplex or triplex units. Single family homes, with flat roofs, have had a second unit built on top of the original home (Florida). Many row houses have been converted to two or three unit houses (Philadelphia, PA and Baltimore, MD).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Amend zoning enabling legislation to allow modification of "family" definition.	Maximizes options and the availability of affordable housing.	Frequently, consenting adults with children will opt to reside in a house with sufficient space for financial reasons or convenience. However, often zoning ordinances define "family" as married couples with children prohibiting these situations. Such prohibitions may require single parent families into housing they cannot afford.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
States and local jurisdictions allow placement of permanently sited manufactured and modular housing which conforms in appearance standards to site built housing in the same community.	Enables lower cost housing alternative to conventional site built housing in community.	States enabling legislation should ensure that local government zoning ordinances include a minimal set of appearance requirements such as double-wide, pitched roofs, upgraded energy efficiency package, and vinyl siding in order to facilitate the siting of manufactured housing in single family neighborhoods. In some cases, modular units may be excluded in a similar manner to manufactured housing. Because such housing typically meets the same code standards as site built units, there is no rational basis founded upon safety or health concerns to support this exclusion.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
States should encourage communities to not only promote conversion of appropriate existing structures into single room occupancy (SRO) housing but also stimulate production of SROs.	This housing option affords opportunity for many individuals who otherwise might be rendered homeless to have inexpensive "affordable" housing.	States should encourage, through zoning enabling legislation and state-wide building codes, communities to adopt zoning and building code provisions which allow for conversion of any existing structures into SROs that are suitable including the hotel inventory, schools, factories, warehouses, or even apartments over stores.

LAND DEVELOPMENT AND SITE PLANNING

Site planning and land development represent major areas of cost reduction that can enhance the production of affordable housing. The modification of development standards, including street widths, off-street parking requirements, site improvement requirements (e.g. sewer, drainage, and curb and gutter), and landscaping can reduce development costs. State subdivision enabling legislation should require local governments to replace discretionary development standards with clear and objective ones wherever possible.

EVALUATING STATUTES, POLICIES, AND REGULATIONS

1. **Has your State developed state-wide subdivision and site plan standards?**

   a. **Can local governments amend these standards without state approval?**

   New Jersey has enacted a residential site improvement act that will set statewide standards for residential subdivisions. The law will prevent localities from promulgating excessively costly standards for such items as streets, sidewalks, and drainage. The law followed several years of preparation of a model subdivision code that was developed under the auspices of the New Jersey Department of Community Affairs.

2. **Does your State require that local governments adopt subdivision and site planning standards consistent with the goals set forth in their comprehensive plan and that such standards will facilitate reaching those goals?**

   Local governments should adopt clear and specific design criteria and development standards that are consistent with zoning policies and together will act as appropriate "implementing measures" for affordable housing goals articulated in the comprehensive plan.

3. **Does enabling legislation include provisions encouraging zero-lot-line, clustering, and other innovative siting techniques?**

   Innovative site planning techniques, such as the use of Zero Lot Lines (ZLL) and cluster zoning, create cost savings by allowing more compact lot sizes and arrangements, more efficient use of infrastructure, and greater densities than is possible under traditional ordinances. Cluster zoning allows increased densities on concentrated portions of a proposed development tract, thereby reducing infrastructure costs both in the aggregate and on a per-unit basis. ZLL standards allow buildings to abut one another on common lot boundaries, there by eliminating the side-yard setback. Most local jurisdictions,

however, allow cluster and ZLL regulations as part of a PUD or only as a conditional use, which can require a lengthy and unpredictable approval process.

4. Does your State prohibit local governments from adding preferential requirements which discourage low- and moderate income housing production?

Although certain site planning and land development changes can produce cost savings, it is important that each local government decide which combination of design standards can be relaxed and removed on a project by project basis. Local officials should apply these questions to each application for regulatory barrier removal:

1) Does the proposed project "work" for its specific site?
2) Do the proposed changes make the project stronger or weaker?
3) Will the resultant project have public safety problems or be unattractive?
4) Would the persons making these decisions want to live in these communities, or have their children live there?

5. Does your State establish maximum parking standards?

Parking is one of the most expensive components of multi-family housing and most jurisdictions tend to require too much (more than two spaces per unit). Lower-income residents, especially families in need of three- and four-bedroom apartments, have relatively fewer cars than inhabitants of market-rate units and thus should be given special consideration in parking standards.

6. Does your State or local governments set standards for street systems based on a four-category hierarchy of streets including arterial, collector, subcollector, and access streets?

Standards for street widths and classifications vary from jurisdiction to jurisdiction. States should adopt standards for local use which classifies the streets according to the anticipated volume of traffic each category will handle. Radii, horizontal and vertical alignments, banking, sight distances, etc. derived from speed considerations also play important roles and should be subject to performance based standards that prevent over-designed and over-constructed facilities. Standards should be based on factors such as anticipated vehicle usage and trip generation and not on a more arbitrary hierarchical street classification.

7. Does your State encourage local government to consider the possible use of alternative wastewater treatment methods?

Some sites in areas not served by public sanitary utilities may also not be suitable for conventional septic installations because of peculiar local soil conditions or hydrography. Alternative technologies — e.g.,sand mounds, constructed wetlands — should not be hamstrung by inflexible regulatory systems.

Should the state determine that an affordability problem exists and has identified those effected areas or regions of the state, the following questions are posed to evaluate how local practices may be exacerbating that problem.

8. Have local governments updated their standards relating to wire utilities to reflect the most innovative and cost-effective techniques available?

Rethinking the appropriate use of buried electric, CATV, and telephone networks might be another source of savings. Common trenching or other methods that reduce the need for extensive excavation could produce construction cost savings.

9. Do local governments implement minimal soil erosion and sediment control measures?

Sedimentation and erosion control measures deployed during development phases should be examined to assure that they meet but do not exceed what is necessary to assure the protection of the environment.

LAND DEVELOPMENT AND SITE PLANNING STRATEGIES AND TECHNIQUES

The following sets forth recommended land development and site planning strategies and techniques which States may: (1) compare current practices to assess the degree with which regulatory barriers exist; and (2) available options that, if implemented, will facilitate the removal of such barriers and enhance the production of affordable housing. The "suggested techniques" may also serve as a useful tool for those States considering enacting state-wide land development and site plan standards. It should be emphasized, however, that these are just suggestions and do not represent the absolute solution. States should evaluate regulatory practices and circumstances on a case by case basis and respond accordingly. Moreover, it may be helpful to use national standards when dealing with engineering standards. The Proposed Model Land Development Standards currently under development by the Department of Housing and Urban Development and the NAHB Research Center might be a useful reference. (See Resources List at the end of the guide.)

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Reduce street width requirements.	Reduces direct capital costs for pavement and cut and fill. Reduces incidental costs associated with utility installation, and maintenance costs.	Widths under 20 ft. may be sufficient (e.g., a one-way street), typical range is 20-30 ft. depending upon vehicle usage, trip generation, availability of off-street parking and intensity of development. (Widths may be as high as 36 ft. depending on the type of street and if on-street parking is permitted). Special classifications may be developed for neighborhood streets carrying lower average daily traffic volumes, such as subcollectors, access streets, and special purpose streets (alleyways, marginal access streets).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Modify cul-de-sac and turnaround street widths.	Reduces pavement costs, but ensures adequate mobility for emergency vehicles.	30 ft. radius is adequate for most vehicles; radii exceeding 40 ft. should be discouraged. T- or Y-shaped turnarounds effect adequate mobility and avoid wasteful layout.
Modify curb and gutter requirements.	Can reduce capital costs, but inadequate construction standards can increase O&M costs.	Swales, mountable or roll-over curbs can be used as an alternative to concrete barrier curbs.
Modify sidewalk standards.	Reduces direct capital costs for pavement; can increase development potential of a site.	Require sidewalks on one side of street only; use alternative pedestrian systems such as pathways; use less expensive paving materials such as bituminous concrete. Width should be limited to 3 ft. for residential streets and 4 ft. for collectors. Infrequently used sidewalks can be replaced with pathways. .
Modify stormwater management requirements.	Reduces direct construction costs, ongoing maintenance requirements.	Allow natural stormwater management systems. Replace prescriptive design requirements with performance standards. Allow detention/retention basins, precast structures. Reduce manholes/inlets by increasing spacing between structures or replacing with "Ts", and "Ys".

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Modify landscaping standards.	Reduces direct capital costs and, since aesthetic standards are inherently subjective, can remove a source of delay and confusion.	Future maintenance costs should be factored into local landscaping standards. Such standards should encourage preservation of existing vegetation and promote plantings that do not require extensive irrigation and fertilization. Require buffers only around intensely developed areas or parking areas rather than entire site perimeter.
Modify parking standards.	Reduces capital costs and avoids overconsumption of land otherwise available for housing.	1-2 spaces depending on number of bedrooms. Width/length of stalls from 7'x 16.5' to 8'x 18' depending on the size of the automobile. Parking lanes requiring an 8-foot width may not be needed where off-street parking is available. Base standards on number of bedrooms rather than units; allow a portion of stalls to be devoted to compact cars.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Reduce right-of-way widths.	Increases development potential and enhances efficiency of infrastructure.	Rights-of-way shall be measured from lot line to lot line. The minimum right-of-way width should not exceed by 1 ft. on each side of the street the area needed to contain the traveled way, curbs (if required), utilities, and sidewalks (if not located in an easement). Use of easements or sidewalks/bicycle paths for utilities can be a useful alternative to right-of-way requirements.
Modify sanitary sewer installation standards.	Reduction in capital costs for piping and manholes.	Reduce pipe lengths through curvilinear design and replace manholes with clean-outs where possible. 600- to 800-ft spacing between man-holes can be acceptable with adequate cleanout devices. Consider use of 4-6 inch diameter distribution lines and 3-inch laterals. Replace site inspection with television cameras. Common laterals can be used to reduce pipe length.
Modify water supply and service requirements.	Reduces capital costs for pipe lengths and diameters as well as operational costs.	Consider plastic pipes for distribution lines, corporation stop assemble connections, and multiple service connections.

BUILDING CODES AND STANDARDS

The U.S. Constitution also reserves to the States as a police power, the right to regulate health and public safety in buildings. In over one-half of the States, this authority is shared between State and local governments with the State adopting or mandating the issuance of a code (or codes) statewide and the local units of government enforcing that code. In the remaining States, both code adoption and enforcement remain in the hands of local governments.

Experience with statewide building codes for residential construction dates back to the turn of this century. Since the late 1970's numbers of states with statewide residential regulation grew from a handful to the current number of twenty-eight.

Effective enforcement of residential construction codes has been shown to exist where the codes are uniform, where authoritative interpretation of code provisions are available and where local jurisdictions retain qualified code enforcement personnel. In states with statewide codes, local governments frequently are assisted in the education training, and/or certification of their code enforcement officials.

EVALUATING STATUTES, POLICIES, AND REGULATIONS

1. **If the jurisdiction encourages the development of manufactured housing projects, does it mandate that such houses meet certain aesthetic standards, e.g., pitched roofs, multi-sectional, siding, foundations? Is this a state or local standard?**

   By mandating excessive aesthetic requirements, the jurisdiction may inadvertently force manufactured housing builders to modify their homes to such an extent as to render them less affordable. For example, in order to comply with the high pitched roof requirement and still clear highway underpasses during transport, the builder may be forced to use more expensive hinged trusses. Care should be taken to assure the cost-effectiveness of such requirements. The State of California Planning, Zoning, and Development Laws state that, with the exception of architectural requirements, localities must apply the same development standards to manufactured housing as are applied to conventional single-family housing. Moreover, any architectural requirements for roofing and siding material shall not exceed those which would be required of conventional single-family dwellings on the same lot.

2. **Does the state facilitate the long term affordability and durability of manufactured housing by adopting and overseeing the effective enforcement by state and/or local code enforcement personnel of a statewide mandatory installation program for manufactured housing? Where a state has such a program, does it include licensing, bonding and testing and certification requirements for manufactured home dealers and installers of such housing? Is the state participating in the Federal Manufactured Housing Construction and Safety Standards Program as a State Administrative Agency (SAA)?**

   In an increasing number of states, manufactured (mobile) homes are comprising over fifty percent of all new single family housing.

   Seventeen years of experience with the Federal Manufactured Housing Construction and Safety Standards Program has proven that despite federal preemption of state authority over the design and construction of manufactured housing, the states still have a significant role to play in helping to determine the long term affordability and durability of manufactured homes for the residents of their state.

   Data gathered in federal manufactured housing program has shown that over 50 percent of the problems associated with manufactured housing come from improper installation of these homes, an area not preempted by federal statute. States have shown that they can significantly reduce the number of consumer problems and expand the years of usability of manufactured homes by adopting and enforcing mandatory statewide manufactured housing installation standards. To further help assure the affordability of such homes, a growing number of states have added licensing and/or bonding requirements for manufactured home dealers and installers. The testing and certification of manufactured home installers also has been shown to be cost effective to consumers.

   At present, thirty-six states participate in the federal manufactured housing program as a State Administrative Agency (SAA). Through this mechanism, states provide oversight of problems found with manufactured homes sited within their state and work cooperatively with the U.S. Department of Housing and Urban Development and with industry and other states in resolving consumer complaints. State participation as an SAA is supported in part by the state's receipt of a portion of the federal manufactured housing program label fee.

3. **Does state law require communities to adopt, <u>unamended</u>, a statewide building code for (1) single family, (2) multi-family, (3) modular housing?**

   Which code areas are covered by statewide law?

_____	**Energy conservation**	_____	**Plumbing**
_____	**Architectural Accessibility**	_____	**Fire Safety**
_____	**Electrical**	_____	**Structural**
_____	**Mechanical**	_____	**Sprinkler Ordinance**
_____	**Rehabilitation/Historic Building**		

4. Is the statewide code written, based upon a model code?

The first statewide building codes were "home grown", written with little or no coordination with the text of one of the nation's then existing model building and/or fire codes. In the 1960s and 1970s, as model codes became more widely used, state governments increasingly found it more cost effective and technically efficient to base their state codes on one of the nation's model codes. In this era of extremely tight state budgets, state building code agencies are finding it impossible to retain their own professional code writing staffs and gradually are converting their "home grown" codes into a model code-based document.

5. Is the statewide code an unamended model code?

States may modify model codes to encourage the use of a particular material, industry, or construction practice or to discourage the use of competitive materials. They may impact the cost of housing by prohibiting the use of more cost-effective materials or methods of construction. A uniform statewide adoption of a code simplifies education and training of builders contractors, code enforcement personnel and helps builders achieve economies of scale.

6. Have communities adopted modifications to the statewide code?

Communities may modify statewide codes to encourage the use of a particular material, industry, or construction practice or to discourage the use of competitive materials. They may impact the cost of housing by prohibiting the use of more cost-effective materials or methods of construction.

Must this modification first be approved by the state?

If there is not a systematic process for amending or updating building codes, neighboring communities may use substantially different versions of the same code. Differing codes

in jurisdictions in the same region can drive up builder's costs by denying them the economies of buying materials in bulk at a discount.

7. Is the statewide or local code update process by legislation (state legislature or city council) or by administrative procedure (e.g., public hearing)?

8. Is the code updated at least once every three years?

Outdated codes may not allow developers to take advantage of the benefits of emerging technologies incorporated into the new codes. Cumbersome legislative adoption of updated codes can significantly slow down the code update process.

9. If the state and locality use an unamended model building code, are code enforcement personnel encouraged to attend/participate in a model code update process?

Active participation in the code update cycle brings a local community the added benefit of making the local code enforcement official more knowledgeable of code interpretations.

10. Are there any education/training and or licensing/ certification requirements for state/local code enforcement personnel?

Because enforcement rests with building officials, differing interpretations of what constitutes acceptable compliance may also differ, even when statewide codes are in effect. Effective ways to help assure uniform interpretations is through education and training and/or licensing and certification of code enforcement personnel.

11. Is the jurisdiction code enforcement program "self-sustaining", or must it rely upon either "general fund" or annual legislative authorization processes?

Lack of adequate funding to perform code evaluations has been shown to have a negative impact on communities.

12. Does the local jurisdiction use state agency or model code organization for code interpretation questions?

Because enforcement rests with local building officials, differing interpretations of what constitutes acceptable compliance may also differ, even when statewide codes are in effect. Reliance on one code interpretation organization would help eliminate such discrepancies.

13. For industrialized/modular housing, does the statewide code pre-empt all local code requirements (except for zoning)?

If the statewide code is not preemptive, local code requirements may require modular units to be dismantled for inspection or may insist on the use of more expensive and unnecessary materials that may result in costly on-site alterations.

14. For industrialized/modular housing, does state law allow interstate reciprocity with other states with "equivalent" regulatory systems? Does the locality comply with this reciprocity system?

For states that do not allow interstate reciprocity, producers of Industrialized/modular housing will be forced to obtain duplicate approvals and fees on a state-by-state basis that are both time consuming and costly.

15. Does a statewide code facilitate cost effective conversion or rehabilitation of an abandoned building into housing?

Infill projects and conversions of abandoned buildings into low-income housing has proven, in many cities, to be an effective affordable housing policy. The application of construction codes to existing structures must provide performance-based criteria to enable compliance in a cost-effective manner while maintaining a satisfactory level of life safety. Some cities and states utilize detailed scoring systems to compare existing building safety features to new code requirements, with mandatory minimum thresholds. This flexible approach to building analysis provides a quantified method of determining overall code equivalency, while individual components do not necessarily comply with new code requirements.

16. Do state and local laws provide sufficient latitude for construction of new buildings and renovation of existing buildings within "historic preservation districts"? Does the state intervene in the identification and designation of historic structures?

New construction and alterations within "historic preservation districts" can entail an additional level of aesthetic and functional review, potentially increasing cost of construction. In addition, the designation of a structure or street as "historically significant" at the local level is not necessarily based on architectural or local history. Some cities have review processes which encourage design flexibility for construction within a "historic preservation district", including innovative approaches toward existing "historic preservation" requirements. It also has involved allowing certain "historic buildings" to be demolished in exchange for a new building with similar architectural fabric.

BUILDING CODES AND STANDARDS STRATEGIES AND TECHNIQUES

The following sets forth recommended building code and standards strategies and techniques which States may: (1) compare current practices to assess the degree with which regulatory barriers exist; and (2) available options that, if implemented, will facilitate the removal of such barriers and enhance the production of affordable housing. The "suggested techniques" may also serve as a useful tool for those States considering enacting state-wide building codes and standards. It should be emphasized, however, that these are just suggestions and do not represent the absolute solution. States should evaluate regulatory practices and circumstances on a case by case basis and respond accordingly.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Enact a statewide building code based upon model building/fire codes.	Statewide uniformity allows local builders to use economies of scale for construction designs and materials, reduces chances of mistakes being made in design and construction due to multiple codes. Reduces chances of technical amendments being made for non-safety or affordability reasons.	A mandatory, preemptive statewide building code should cover energy conservation, architectural accessibility, electrical, mechanical, plumbing, structural and fire safety requirements. State amendments should be limited to those necessary to provide consistency. If local amendments are allowed, they should be approved by the state to ensure statewide uniformity and coordination with the national model code agencies (New Jersey).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Statewide building code adoption and update process should be handled administratively, not by legislation.	States which have gone the legislative update route have found it extremely difficult to keep their codes up to date and nearly impossible to keep a number of "special interest" non-health and safety technical amendments out of the codes. Where legislatures have placed the code adoption and update processes in the hands of an administrative agency which then uses public hearings and other open administrative procedures, codes are more current and less hampered by technical amendments which frequently add unnecessarily to the cost of housing.	The initial legislation to mandate a statewide building code should create a building code council with authority to revise or amend the code as needed through the state's administrative procedures process. The council should have representation from all areas of the design, construction, and enforcement communities. For statewide uniformity, the council should be directed to discourage state and local amendments and encourage the use of the national code change process of its model code for any code changes (North Carolina). Where the state wants additional oversight, the legislature could retain the authority to review and approve code revisions before becoming effective (Virginia).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Residential construction codes should be updated at least every three years.	The nation's model building and fire codes are on a three year update cycle. Such an update cycle for state and/or local jurisdiction residential construction codes (building, electrical, mechanical, plumbing, fire and accessibility) offers consumers and builders the opportunity to use the latest construction techniques, design systems and materials which an updated model code may allow that previous editions of the code may not.	A time schedule to amend the state construction regulations can be established in a state's administrative procedures act. Although this schedule should call for yearly review, it is the responsibility of the building code authority to ensure that the most recent editions of the model codes are utilized by adopting new codes every three years, immediately following publication (Virginia).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Statewide preemptive industrialized/modular building laws.	Thirty-six states have adopted statewide industrialized/modular buildings laws which afford the factory built, all non-HUD code (manufactured homes) residential single-family and multi-family structures the advantages of statewide market aggregation. If this statewide law does not preempt local codes, local jurisdictions may require modular units either disallowed for local use or be dismantled for inspection and reconstruction using more expensive and unnecessary materials that result in costly on-site alterations.	Through legislation, states should establish a program to regulate the construction of industrialized buildings and their components and provide for a statewide uniform inspection process. A state agency should be given authority to adopt construction codes and to inspect all units manufactured or shipped into the state. Local governments could retain their zoning and regulatory authority over unit installation and site-built features (Maryland).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED BENEFITS
Establish a reciprocity mechanism for statewide industrialized/modular buildings law.	National and/or regional market aggregation for industrialized or modular residential structures afford significant savings to consumers. Since there are 36 states which regulate such structures statewide, there have been several efforts to establish interstate reciprocity (one state recognizing without reinspection units built in another state for modular buildings). In 1987 the states began to develop uniform administrative rules regulations and procedures upon which regional or national reciprocity could be established. Other states are in the process of joining an interstate compact, established by three states in 1992, to coordinate state regulation and create national uniformity and reciprocity for such structures. The net effect is to go from overlapping and conflicting rules/regulations and procedures to a single and cost effective set of consensus-based regulations and regulatory fees.	After adopting a statewide regulatory program for industrialized/modular buildings, states should consider joining the Industrialized Buildings Commission (IBC), an interstate compact through which states coordinate their laws and enforcement efforts to assure interstate reciprocity of properly constructed industrialized/modular buildings. The cost of participation is covered through compact labels required on all residential and commercial structures produced within or shipped into compact member states or states that have signed an interim reciprocal agreement with the IBC. In January 1994, the IBC's compact became mandatory in New Jersey and Rhode Island. The compact remains voluntary in Minnesota until June 1994 at which time it will become mandatory. The Commission is holding discussions with other states regarding their joining the IBC.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED BENEFITS
Establish statewide building rehabilitation codes which allow flexibility and trade-offs for affordable housing while maintaining adequate protection of health and safety.	Existing state and local construction codes have effectively blocked conversion of abandoned buildings into affordable or low-income housing by mandating compliance with codes for new construction. This has led to a loss of considerable affordable housing stock and the "gentrification" of the core in many of our cities. States and local jurisdictions should utilize a performance-based system of analysis of existing buildings which permits various solutions to existing constraints while affording code equivalency.	State and local building codes should allow for the rehabilitation of an existing building without requiring full compliance with current codes. By adopting a performance-based system of analysis, an existing building's life safety components (means of egress, fire protection, height and area, and fire department access) are evaluated with a scoring system. The scoring system quantifies the overall threshold of safety by assigning points to each component relative to each other. Such a system allows buildings to be deficient in one area of protection, as long as the required safety threshold is achieved This scoring system provides greater flexibility in design and construction while maintaining a satisfactory overall level of life safety (Ohio).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Develop statewide historic preservation building rehabilitation laws which unify the review and identification of designated historic properties based on prescribed criteria, enabling design flexibility.	Existing state and local "historic preservation" laws have effectively hindered low-income and affordable housing in "historic preservation districts" with unreasonable aesthetic and functional restrictions on new construction and alterations.	State and local preservation laws should be reviewed and rewritten to reduce the economic impact of design requirements and should focus only on buildings and districts with true historic significance, based on state developed criteria. Provisions which do not enhance life safety and effectively block affordable housing should be repealed. Historical requirements can be relaxed for certain categories of construction, such as low-income housing. Permit the demolition of historic buildings which cannot be rehabilitated in a cost effective manner in exchange for a new building with similar mass, architectural fabric, and historic elements (Maryland).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Adopt and enforce a mandatory statewide installation program for manufactured housing and a bonding/licensing and certification program for dealers and installers of manufactured homes. Consider becoming a State Administration Agency (SAA) in the Federal Manufactured Housing Construction and Safety Standards Program.	Improper installation of manufactured homes causes over one-half of the consumer complaints for such housing and can measurably shorten the habitability of this housing, thus reducing long term affordability to purchasers or renters of these homes. By adopting and effectively enforcing a mandatory statewide installation code for manufactured homes and then effectively overseeing the work of dealers and installers of such homes, states can help assure the long term durability and affordability of these homes. The cost of improper installation can most dramatically be seen in the wake of natural disasters. Peripheral winds in the wake of the 1992 Hurricane Andrew in Florida and Louisiana overturned thousands of improperly installed manufactured homes. Preliminary surveys of manufactured homes in Southern California in the January 17, 1994 Northridge Earthquake showed that nearly 3,000 homes were either overturned or shifted off their foundations by the quake. State participation	States should adopt and enforce the NCSBCS/ANSI Installation Standard for Manufactured Housing, A-225.1. States should adopt and enforce licensing and/or bonding programs for dealers and installers of manufactured housing. Effective programs include those in the states of Arizona, Arkansas, and California. Support current efforts to develop a national testing and certification program for the installers of manufactured housing.

as a State Administrative Agency affords the opportunity to participate directly in the Federal Manufactured Housing Construction and Safety Standards program, ultimately ensuring that these homes conform with the federal law.

INFRASTRUCTURE

Land cannot be used for housing unless, at a minimum, it is accessible by roads and meets other basic infrastructure needs such as has water and wastewater treatment facilities. Without addressing these infrastructure needs in a comprehensive, coordinated manner, such costs can have a prohibitive impact on the production of affordable housing. Frequently, jurisdictions will increase infrastructure requirements in fear that multi-family dwellings and other intensive uses will add to traffic congestion, and as a result, create more pollution. Moreover, because such housing consumes more in services compared to the amount of tax revenue generated by these properties, localities fear such multi-family developments will also reduce the tax base. Setting planning goals and objectives with appropriate implementation strategies for both residential and non-residential growth may effectively combat the environmental and congestion problems that lead to local growth control efforts.

EVALUATING STATUTES, POLICIES, AND REGULATIONS

1. **Have localities adopted a capital improvement program (CIP) consistent with or as an element of their comprehensive plans?**

   Florida and Washington have implemented versions of these "concurrency" methods for both residential and non-residential growth which requires that development proposals not be approved by local governments if sufficiency infrastructure (i.e. roads, sewers, water, solid waste, drainage, parks, and recreation) is not available or programmed for simultaneous construction in the capital improvements element of the comprehensive plan.

2. **Does your state enabling legislation authorize localities to enact adequate public facilities ordinances (APFO)? Are Level-of-Service standards required in capital improvement elements of local comprehensive plans?**

   An adequate public facilities ordinance (APFO) is a method used to tie the level of growth and development to the capacity of existing facilities and those provided in the CIP. Regulatory restrictions and fiscal policies mandated in APFOs are driven by level-of-service standards (LOS) adopted in the capital improvements element of a local comprehensive plan.

3. **Are infrastructure services mandated for new developments equitable to that which existing neighborhoods receive?**

Critics of APFOs fear that local jurisdictions will "gold plate" their LOS standards in order to discourage growth. However, jurisdictions have no incentive to gold plate LOS standards under an APFO, since such gold-plating will result in high tax bills to correct existing infrastructure deficiencies.

4. **Are local governments allowed to phase in their regional share of affordable housing commitments as warranted by infrastructure capacity limitations?**

Infrastructure concerns should not excuse the failure to designate and zone appropriate sites for affordable housing. New infrastructure capacity must be reserved for low- and moderate-income housing as it becomes available. The State of Oregon has encouraged localities to involve schools and other such affected institutions in their planning processes.

5. **Does your State have a dedicated tax revenue fund or bond issue specifically created to assist jurisdictions with financing local infrastructure needs.**

States can give local jurisdictions incentive to provide affordable housing by paying in part or entirely financing the infrastructure needs of the development. California is currently in the developmental stages of creating an Infrastructure Bank which would be provided to local governments who have accommodated infrastructure needs in their housing element as part of their comprehensive plan.

INFRASTRUCTURE STRATEGIES AND TECHNIQUES

The following provides some valuable techniques for providing needed infrastructure without adversely impacting the cost of producing housing. Evaluate your current methods for meeting infrastructure needs with those outlined below, you might develop a more coordinated planning policy while at the same time more efficiently utilizing existing infrastructure. It should be emphasized, however, that these are just suggestions and do not represent the absolute solution. States should evaluate regulatory practices on a case by case basis circumstances and respond accordingly.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Promote the use of infill development strategies.	Enhances housing affordability by using existing infrastructure and services rather than requiring expensive extensions of roads, water/sewer lines, and other facilities into new developments. Such strategies can also be used to protect environmentally sensitive lands.	Regulatory techniques promoting infill include: administrative streamlining such as exempting such areas from certain fee or permit requirements; granting tax preferences or density bonuses; eliminating overzoning for industrial uses in urbanized areas; or imposing greater restrictions, reviews, or costs on outlying areas.
Provide State aid to localities for infrastructure.	Reduces housing costs by increasing the supply of developable land.	Set aside funds for grants or loans to localities for infrastructure needs articulated as part of their comprehensive plan. This can also provide incentive to local governments to set aside lands for affordable housing.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Set maximum standards for road construction, water supply, and sewage treatment.Require "concurrent" development of infrastructure and residential and non-residential growth.	Prevents local governments from "gold-plating" infrastructure requirements thus discouraging affordable housing production. Provides for coordinated planning.	Level of service standards that jurisdictions adopt in their capital improvement elements of their comprehensive plans should not exceed standards set by the State.Local comprehensive plans should reflect linkages between development proposals and existing or programmed infrastructure construction in the CIP.

ADMINISTRATION AND PROCESSING

Time can have a decisive impact on development costs which ultimately effects the affordability of housing. Duplicative permits, multiple layers of reviews, and lengthy approval processes all add unnecessarily to housing costs. Such regulatory delays not only increase carrying costs such as property taxes and construction loan interests, but also will force the developer to seek higher profit margins to accommodate the added project risk. State and local agency permitting and approval processes lack coordination, consolidation, or streamlining which results in redundant and duplicative regulation. Moreover, jurisdictions use these processes to restrict growth by limiting the number of permits or extending the approval process such that the project is no longer viable. States can influence local procedural processes by: eliminating successive discretionary reviews; mandating review time limitations; implementing one-stop permitting; and encouraging joint public hearings.

Another regulatory administration that can be cumbersome are environmental-related permitting and approval requirements. Many States have enacted environmentally-related controls such as environmental impact statement requirements and standards for construction in coastal zones, wetlands, and marshlands. Standards for air, water, and noise pollution as well as regulations to reduce energy consumption in housing have all been implemented by State government. Regulations stemming from these laws often overlap and require excessive permitting and time-consuming approval processes. Moreover, environmental protection goals are often used as an excuse for reduced densities and large-lot exclusionary zoning practices. States can improve the local environmental regulatory process by requiring all localities to follow uniform procedures, meeting substantive deadlines, avoiding unnecessary hearings or other time-consuming procedures, and prescribing uniform standards for local reviews.

While most states have chosen not to place all state building, energy, and environmental code adoption and coordination of local enforcement within a single state agency, a growing number of states are finding it beneficial to establish a formal mechanism to assure effective coordination between diverse state agencies with such authority. This enables the state to eliminate the potential problems which can arise not only from conflict, overlap and/or duplication of code adoption, interpretation and enforcement authority, but which may naturally arise from the distinctively different mission statements of these agencies. This effective coordination also assists states in assuring compliance with federal regulations which impact residential construction such as the U.S. Department of Housing and Urban Development's Fair Housing Accessibility Guidelines, the Environmental Protection Agency's safe drinking water and radon mitigation programs, and the Department of Energy's energy conservation requirements for new construction.

EVALUATING STATUTES, POLICIES, AND REGULATIONS

1. **Has your State enacted procedural reforms effecting both State and local processes?**

   Several States (California, Oregon, Minnesota, Washington, Colorado, Connecticut, and North Carolina) have enacted legislation mandating procedural reforms including, in some cases, imposing time limits on project review. Many such options are discussed later in the strategies and techniques portion of this section.

2. **Does the appeals process extend to the state level?**

   An appeals process will enable developers of proposed affordable housing projects the opportunity to petition the state directly for comprehensive permits when they are turned down by localities not acting in good faith to fulfill the state's affordable housing goal. Connecticut's housing appeals law permits developers to appeal the denial by a local government of a permit needed to build affordable housing. The appeal is directly to the State's Superior Court and can be made if the proposed housing is affordable (e.g., 20 percent of the units will be conveyed with the requirement that the housing remain affordable for 20 years) and if the locality has made no commitment to affordable housing. In the appeals process, the burden of proof is on the locality.

3. **Does it take more than 6 months for most projects to be approved after the initial application has been designated as complete?**

   Unless an environmental impact statement is required, projects should be approved or disapproved within six months by the lead agency from the date of determination of completeness. Projects requiring environmental impact statements may involve a longer approval process but should not extend past one year.

4. **As part of your regulatory structure, are procedural and permitting exceptions made for affordable housing development (such as multi-family uses, attached housing, SRO housing, etc.) versus that applied to single-family detached housing?**

   While exceptions will not have marked difference without more comprehensive regulatory reform, such allowances may help to facilitate the production of affordable housing. An example: Massachusetts provides a "comprehensive permit" for public agencies, nonprofit organizations, or limited-dividend developers seeking to construct Federal or State-subsidized housing. The application is submitted directly to a Zoning Board of Appeals and bypasses other permitting entities such as the planning board, building department, board of health, city council, or selectmen. While the Board notifies these other entities and solicits their recommendations, it has the sole authority to override any existing local requirements and issue a comprehensive permit. A public

hearing must be convened within 30 days of receiving the application and a decision reached within 40 after the hearing's conclusion.

5. **Does your State require that local environmental protection regulations not exceed state standards?**

Often times environmental rules can be duplicative and administered inconsistently across levels of government. As a result, project approval at one level of government does not necessarily ensure approval at another level of government.

6. **Are your State environmental protection statutes equivalent to the National Environmental Policy Act of 1969 (NEPA)? If so, do state-required environmental impact statements exceed those required by the federal government?**

State "Little NEPAs" may require additional EIS preparation and review over and above what is specified by the federal government. The costs of meeting these requirements, often duplicative work, add greatly to the expense of housing with little reward for environmental protection.

7. **Is one-stop permitting available?**

Requiring additional permits necessary for construction thereby involving a greater numbers of agencies late in the approval process creates uncertainty and further expense which can endanger the development proposal.

8. **Is there a set time limit for plan review?**

Some States have adopted requirements providing that projects are automatically approved if not acted upon within a specified time period.

9. **Are there sequential plan review processes practiced by the various government agencies or departments?**

Layers of single-issue permitting and reviews is time-consuming and adds confusion. When time required to obtain permits and approvals cannot be built into the development schedule, the project becomes at risk and developer carrying costs increase which are passed onto the consumer.

Should the state determine that an affordability problem exists and has identified those effected areas or regions of the state, the following questions are posed to evaluate how local practices may be exacerbating that problem.

10. Are citizen review and hearing procedures well defined and timely?

Oregon law limits appeal of land use decisions to those issues raised at the local public hearing. This provides applicants and the local jurisdiction an adequate opportunity to respond to objections and to prepare findings in support of a land use decision. Failure to raise an issue with sufficient specificity to afford the decision-maker and the parties an opportunity to respond precludes later appeal on that issue.

11. Does the jurisdiction provide for pre-permit counseling for single and multi-family construction?

Pre-permit conferences prior to submission of a proposal can eliminate confusion, ensure a complete submission, and thereby reduce costly time in the approval process.

12. Does it take less than four weeks to conduct a building plans review for code compliance?

With the increasing number of agencies becoming a part of the approval process, delays in plans review may be the result of overlapping jurisdictions with redundant and duplicative regulations.

13. Does it take less than 24 hours to have an inspection performed?

Inspections can be consolidated by cross-training inspectors or by arranging for inspections from different departments to occur simultaneously.

14. Are "product approvals" for components and building materials handled locally or in conjunction with the state?

Generally, all codes permit building officials to accept alternative materials or methods arising from new technology. However, local officials who are subject to public or professional criticism for the consequences of failure of building materials or methods may be reluctant to allow the introduction of such innovations. While ideally this should be handled at the national level, at a minimum it should be handled statewide as opposed to locally.

15. Are PUD approval procedures equitable with other zoning approval procedures?

Some jurisdictions allow PUDs only in certain areas of zoning districts. Others allow its use in a "floating zone", which may require rezoning or a special use permit. The floating zone approach, with a special use permit, seems preferable because it allows

maximum flexibility in the use of PUD as long as a development proposal meets specific planning criteria.

16. Are regulations and approval procedures governing mixed-use development flexible?

Some localities permit mixed-use development by right, subject to site plan approval. Jurisdictions are beginning to use mixed-use development approvals as incentives for producing affordable housing by requiring developers to construct or rehabilitate housing for lower income persons or contribute to a housing trust fund for such a purpose. However, this type of development could be discouraged if administrative procedures are rigid, complicated, time-consuming, or require excessive design standards.

17. Does the state government have a formal or an informal mechanism to assure the effective and routine coordination between each state agency which may have responsibility for different construction codes or other state regulations (e.g., environmental, public health, architectural accessibility, energy conservation) which impact the cost of residential construction?

The National Governors' Association's State Management Task Force's August, 1993 report, "An Action Agenda to Redesign State Government," identifies what it calls "picket fence bureaucracies": cases in which federal, state, and local government agencies whose services and responsibilities overlap or operate in competition or conflict rather than in coordination with each other. Typically such bureaucracies engender a multiplicity of rules and regulations which are promulgated without first studying their potential impact on other state agencies or state missions, such as helping to provide their citizens with safe, durable affordable housing. A number of the regulatory areas contained in this self-assessment guide, building codes, environment, zoning, and land use, are examples of "picket fence bureaucracies" at work.

To eliminate the problems which can arise from such structures, several states have either chosen to move all such functions into a single state agency (New Jersey serves as such an example), or to establish either a formal or informal coordination mechanism, such as a task force, between different agencies which enables the agencies to periodically review and work to eliminate areas of conflict, overlap or duplication between their regulations which impact housing affordability.

ADMINISTRATION AND PROCESSING STRATEGIES AND TECHNIQUES

The following provides some valuable techniques for consolidating and streamlining the permitting and approval procedures within your State. Compare your current practices with those outlined below, by doing so you may discover time-consuming, inefficient approval methods that are adding to the cost of producing affordable housing in your State. It should be emphasized, however, that these are just suggestions and do not represent the absolute solution. States should evaluate regulatory practices on a case by case basis circumstances and respond accordingly.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
States could establish a one-stop or parallel permit-processing procedures as well as encourage local governments to do the same.	Reduces time delays caused by multiple agency reviews. Such delays can add to the carrying costs of real estate development such as property taxes, construction loan interest, and forcing higher profit margins sought by developers.	State building code agencies should encourage localities to establish a one-stop permit process for residential structures. If a locality establishing such a process needs state approval to change administrative requirements, such as permit application forms or fee structure, the state should expedite this process (Oregon).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
State and local governments could set a one or two week turn around time on all building plan reviews (except for more complex projects such as high rise apartment complexes or extremely large residential, commercial, or mixed-use planned developments).	Builders have stated that in some jurisdictions it takes them longer to get their plans reviewed and approved than it does to actually construct the house. Time is money, an expedited plan review process benefits all - builder, consumer, state and local governments.	State statute setting forth the responsibilities of state and local code administration and enforcement agencies should establish a reasonable maximum number of days to conduct and complete reviewed for residential structures. The state statutes should also provide an effective enforcement mechanism, such as a method of recourse by any person adversely affected by a municipal or state agency's failure to provide timely inspections or plan reviews without reasonable cause (Oregon).
Set time limits for multiple agency review and approval.	Reduces time delays caused by multiple agency reviews.	A coordinating agency will transmit a single master application to interested departments with each department given 15 days to register a response, and is thereafter barred from requiring a permit. After a joint public hearing, departments have within 120 days of the hearing to register its final decision. (Washington)

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED BENEFITS
Enforce time limits for review through "deemed approved" provisions.	Impedes delays in both processing and approval of development permits.	Action required by local decision-making bodies on specified development permits must occur within time limits set forth in statute. For example, this may only apply only to site plans, subdivision plat, special-use permit, and variance administrative approvals. After a lead agency has determined that an application is complete, responsible agency(ies) should act within 180 days. Failure to act within prescribed time limits should result in automatic approval of the permit. (California)
Engage local participation in a streamlined permitting process.	Permit applications should be consistent with local comprehensive plans and zoning ordinances. Prevents duplicative or contradictory requirements at the state and local level.	Prior to processing an application, the state should verify that the local government has certified consistency with local comprehensive plans and zoning ordinances. Establish permitting information centers throughout the state and designate a general office for permit processing within each county.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Conduct preapplication conferences between applicants and interested departments.	This can facilitate the approval process, and alleviate uncertainty and confusion on what the standards will be for the applicant and thereby ultimately reducing the cost of housing.	Preapplication conferences provide the permittee an opportunity to identify technical problems, such as code interpretation issues, new products, or proposed construction techniques, that could be resolved before the plan review process begins. Preapplications can be especially beneficial for large, complex projects. These conferences should proceed submission of any application or permit thereby providing opportunities for the housing industry to reject infeasible projects before starting them, making design and construction changes early on, and cutting state government staff time on infeasible projects. (Pennsylvania) Development of procedural manuals, master forms, and special instructions can help facilitate these discussions and ultimately the process.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Encourage the consolidation of code enforcement services between county and municipal jurisdictions.	Consolidation of services enables localities with no code enforcement program to initiate quickly and efficiently permit, plan review, and inspection services. Where a county and municipalities within the county consolidate existing code enforcement programs, a higher level of uniformity and consistency is obtained by enabling identical regulation of construction without regard to whether it is located in the city or county. Although a municipality contracts with the county and pays per plan review and inspection, the local jurisdiction's operating costs are reduced since they are not maintaining a building department, effectively reducing the cost of code enforcement.	States should encourage or require, through building code legislation, that localities having no code enforcement mechanism contract with a neighboring locality. Alternatively, a locality could retain its rights to issue permits, contracting only for technical services (New Jersey).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Implement long-term protection against last minute additional requirements in the approval process.	Prevents imposition of new and unanticipated requirements late in the approval process causes uncertainty and endangering a development proposal due to added attorney and consultant costs. Some states have "late vesting" rules in effect allowing local governments to change building development regulations up until a building permit has been issued and construction and commenced.	Prohibit local governments from imposing conditions on single-family or multi-family residential subdivisions that could have been imposed on approval of the preliminary plat. This restriction could stay in place for a five-year period following recordation of the final plat. (California)
Provide clear guidance for developers regarding "vested rights" on development projects.	Guards against changes in ordinances, policies, and standards in effect at the time of approval and prior to filing a final map application.	Upon meeting certain criteria, developers should acquire vested rights on an accrual basis for up to three years upon approval of a site-specific development plan or may be granted for two years for such a plan and five years for a phased-development plan. (California, Colorado, North Carolina)

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Encourage the use of development agreements.	Can soften the impacts of discretionary approval processes. Also can be used as conduit for public-private partnerships and a funding source for public infrastructure.	Developers enter into an agreement with the local government which "freezes" the regulations applicable to the development for a period of time specified in the agreement. In the agreement the developer should 1) identify the savings accrued from the regulatory concessions made by the governing body; and 2) pledge his/her commitment to enhancing the community and continued responsibility for the project through its completion. The developer can be required to provide construction of public facilities, production of affordable housing for low- and moderate- income populations, the dedication of environmentally sensitive lands, and preservation of historic structures. (California, Connecticut)

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
State and local governments can encourage building code enforcement personnel to attend/participate in the model code update process.	The cost savings of greater building code uniformity by use of unamended model codes is facilitated by state and/or local jurisdictions being active participants in the development of the nation's model building and fire codes. Through such participation, governments gain greater understanding and appreciation of relevant health, welfare, safety and cost issues which surround each change to a model code. This not only enhances code uniformity but also effective code enforcement.	State and local governments adopting model codes should encourage participation in the model code change process by both building and fire regulatory staff and members of the construction community (New Jersey, North Carolina, and Virginia). Where states require approval of local amendments, the state building code authority could be required to submit all approved local amendments to the model code agency as statewide code change proposals, thereby increasing the uniformity of the statewide code (New Jersey).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
State and local governments can require education, training and certification of code enforcement personnel.	State and local governments are finding public safety and financial cost saving benefits from the "professionalization" of code enforcement personnel. "Certified" code enforcement personnel are kept up-to-date on technical changes in codes, construction design, and product approval systems. Jurisdictions which have taken this approach have seen fewer enforcement problems and increased productivity. A certification system also promotes job security for codes enforcement personnel.	State and local governments should require or establish mandatory certification programs for building code enforcement personnel and provide funding through general budget allocations, building permit surcharges, or participant fees (Wisconsin). Code enforcement personnel could also be required to become certified through one of the model code organizations or national certification programs (New Mexico).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Wherever possible, state and/or local building code administrative and enforcement programs should be "self-sustaining" and operate with dedicated funds.	This practice helps to avoid two problems: 1) the cyclical "boom/bust" nature of construction, and; 2) the tendency of governments, during tight financial times, to divert funds used by building departments for adequately enforcing the codes and providing prompt services to other governmental purposes.	The construction community, in general, does not mind paying for services. State and/or local government building code agencies and state/local legislatures should work with the industry to establish an appropriate funding mechanism for effective code adoption, education and training administration and enforcement. Wherever possible this program should be self-sustaining and operate with dedicated funds. For example, Vermont and Washington have earmarked portions their real estate transfer tax for technical assistance planning grants to localities.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Establish statewide "product approvals".	Often individual "product approvals" are left to each local jurisdiction. Because local building department staffs are usually small and may not include individuals with a wide-range of diverse technical expertise, new and especially innovative products and designs even those with a model code group "evaluation service report" may not be approved for local use. However, a broader range of expertise may exist at the state level and state laboratory testing or national testing/research facilities may be more readily accessible.	A state agency should be authorized to review and list acceptable testing laboratories, standards, and products for use in the state. The local jurisdictions would then rely on this list for review and approval of products (California). A state authoritative agency could be established to handle the review and approval or specific products. A list of state-approved testing organizations and national testing service reports, along with public hearings, can assist the agency in providing fair, consensus-based review consistently applied on a statewide basis (Michigan).
States with statewide mandatory or voluntary building codes should establish an appeals mechanism at the state as well as local level.	An effective state appeals process will enable builders of affordable housing the opportunity to appeal local rulings directly to the state for projects, plans, etc., that have been turned down at the local level.	States should legislatively establish a state building code technical review or appeals board. Members would be appointed by the governor and fairly represent industry and consumers. The board would have the power and duty to hear appeals from decisions of local officials in the application of the state construction codes (Virginia).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Create a uniform statewide building code interpretation and dissemination process.	Because building code enforcement rests at the local level, differing interpretations of what constitutes acceptable code compliance may also differ, even when statewide codes are in effect. Consistent reliance upon one code interpretation authority with statewide distribution of that interpretation promotes uniformity and helps reduce overall construction costs.	In states with statewide building codes, code interpretation should be disseminated by a single authorized body or board or by the model code agency. Procedures for requesting an interpretation along with a request form should be part of the building code's administrative procedures. The interpretation, when complete, should be sent to the party making the request and be made available to all local enforcing agencies (Virginia).
Process land use decisions which require a limited amount of discretionary judgement without a public hearing.	Streamlines the local development review process.	Applies to subdivisions, partitions, design review, and site review. Provides an optional process for a decision without a public hearing. Requires notification of adjacent property owners and allows 14 days for written comments. Issues not raised in writing cannot be the basis for an appeal. Development standards must be included in the local development code; plan policies may not be incorporated by reference into the development code.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Develop a State sponsored regulatory reform and mediation program.	Improves responsiveness of government. Solves problems, while avoiding litigation. Streamlines the development process.	Provide an open line of communication with developers and builders. Provide State technical assistance to local governments to remove "bottlenecks" in local permit procedures. Provide mediation grants to resolve disputes between local governments, citizens and/or interest groups.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Encourage the use of transfers of development rights (TDRs) systems to mitigate the impacts on new construction from environmental protection policies.	If other means are not available for reconciling affordable housing needs, environmental and open space protection, and related concerns, TDRs may be a reasonable response. TDRs may accommodate housing construction while protecting important environmental resources. Also, this does not result in a net reduction of permissible housing construction as compared with the impact of purchase of environmentally sensitive lands.	Development rights are assigned to land that is designated as environmentally protected. These higher density development rights may be sold by the landowner and then transferred to other areas where such development is more desirable. Acquisition of some land will occur due to environmental concerns. However, with TDRs, densities and potential construction are transferred to other sites. It is important, though, not to interfere with the goal of producing affordable housing that is also within reasonable commuting distance or time of employment opportunities.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Establish joint federal-state environmental procedures that local governments must follow.	Streamlines environmental requirements and approval processes.	Set time limits for processing as established by Washington's Environmental Coordination Procedures Act; coordinate with federal agencies so that a combined federal-state impact statement is satisfactory; allow joint federal-state processing of environmental permits (Florida). State and Federal agencies may also use uniform definitions of critical areas, exchange environmental inventory information banks, establish parallel review schedules, and allow reciprocity of review.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Resolve historic and natural resource protection issues in the planning process rather than the permitting process.	Saves time and provides more certainty in the permitting and development process. Eliminates or at least narrows the issues to be decided when a development application is received.	Require resources to be inventoried, evaluated, and protected or not during comprehensive plan updates. Resource protection measures must be clear and objective. A development permit is subject only to resource protection measures in effect at the time the application was submitted. Resources "alleged" or "newly discovered" are not considered in the permitting process, except where federal permits are required. Wetland conservation plans contain site-specific decisions on fill, removal, and mitigation which are binding on the State permitting agency. (Oregon).

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Establish a state affordable housing task force comprised of senior administrators from each state agency which promulgates rules and regulations that affect the cost and availability of safe, durable, and affordable single and multifamily residential structures. Charge this task force with identifying and recommending ways of reducing or eliminating areas of regulatory overlap, duplication, or conflict between their respective rules, regulations, and procedures that adversely affect the availability and/or cost of housing within the state. Include state legislators to facilitate implementation of its recommendations for change.	Empowering a task force to identify and then work to eliminate areas of unnecessary regulatory costs due to conflict, overlap, and/or duplication among these agencies' respective rules, regulation, and procedures can provide significant cost reductions to the regulatory cost of and/or availability of affordable housing within the state.	The governor should appoint a statewide affordable housing task force, comprised of senior representatives from each state agency which promulgates rules and/or procedures that affect housing availability and affordability and representatives from local government and the state legislature (where permitted), to review all existing state statutes and regulations and recommend modifications or elimination of those that create unnecessary costs to or cause conflicts or duplication between agencies or governments in the regulation of residential structures. Some states are considering undertaking a more broadly based focus of creating a statewide "Construction Code and Public Safety Team" comprised of state and local officials to review the cost impact of regulation of all types of construction, both commercial and residential (New Mexico).

IMPACT FEES

Impact fees are charges imposed by local governments on developers and home builders to finance public infrastructure linked with new development such as water systems, roads, streets, police and fire stations, schools, and parks and recreation centers. This authority is exercised under the local jurisdiction's general system of land development regulations or police powers granted by the State. All fees, regardless of the form they take, should be applied uniformly, in equal proportion to demand factors associated with new or renewed development, and demonstrate that they meet a three part "rational nexus" test. To meet the test, fees must benefit those who pay, not exceed the proportional share of the cost of new facilities or services needed by the new development, and be earmarked and expended to ensure a benefit to those who pay.

In recent years, however, local governments have imposed impact fees or exactions on residential development with the theory that "development should pay for itself." Typically, developers have been required to dedicate land and install certain elements of infrastructure that primarily benefit the residents of the project. However, due to fiscal constraints, many jurisdictions have opted to finance deteriorating existing infrastructure through exactions for new development. Before granting building or zoning permits, for example, developers might be required to contribute to the public roadway system or a set-aside of land for a park or school.

While impact fees have been levied to compensate jurisdictions for expenditures made to extend basic services for new development, some fee programs have been expanded to offset the costs of operating off-site facilities indirectly serving the new development thus unnecessarily raising the cost of that housing. Additionally, excessive fees have also been used as barriers to new construction, especially low- and moderate-income housing. Other fees and exactions have taken the form of utility charges (tap fees, connection charges, etc.), special assessment district fee required to support transportation improvements and other services, and conditions proffered in connection with rezoning requests.

EVALUATING STATUTES, POLICIES, AND REGULATIONS

1. Does your State have enabling legislation which empowers localities to impose impact fees?

Local power to assess impact fees is granted by the state directly through state enabling legislation or indirectly through home-rule charters. States without home-rule provisions require specific enactment of legislation that empowers local government to impose impact fees. In states with home-rule, authority to impose fees derives from enabling legislation or the exercise of the police powers of land use regulation. Statewide legislation can: eliminate differences in impact fee implementation; establish mandatory standards and uniform procedures; and ensure equity, fairness, and nondiscrimination

thereby reducing costly court challenges. Such legislation can provide a uniform statewide fee structure and basis for fee use, calculation, time of payment, and other administrative requirements. Currently, 16 states have enacted statewide legislation that specifically enables localities to impose impact fees. This count does not include states such as Hawaii, North Carolina, and Tennessee which have delegated impact fee authority to specific jurisdictions. Localities in California, under broad authority to tax, are able to assess fees whereas Florida jurisdictions are provided such power under the state Growth Management Act.

2. Does your state enabling legislation require local ordinances meet a "rational nexus" or direct relationship test?

Impact fee ordinances will not sustain legal challenge unless they can substantiate a close nexus or a direct relationship between the fee and the purpose it serves. The "rational nexus" test comprises three parts: the need for the facility by the new development; the benefit to the new development of the new facility; and the fairness of the fee. This "relationship" provision is essential for an effective local impact fee program and the basis for a successful defense of the state legislation if challenged.

3. Does your State mandate under what conditions and circumstances local governments may levy impact fees?

States should enact legislation setting forth eligible public facilities for which fees may be charged and guidelines indicating how the schedule of fees should be calculated, collected, spent, and refunded. Widely accepted technical guideline provisions include: type of jurisdiction authorized to impose impact fees; specific type of development eligible for fee assessment; type of expenditures eligible for funding by impact fees; rational nexus or relationship requirement; capital improvement plan (CIP) requirement; level-of-service requirement; system of credits requirement; system of fee exemption requirement; time of fee payment; separate interest-bearing accounts for impact fees; fee refund plan; and fee calculation. Georgia, Idaho, Indiana, and Nevada provide definitive guidance to localities on each of these provisions to ensure equitable assessment of impact fees.

4. Does your State enabling legislation provide guidance to local jurisdictions on establishing a system of fee exemptions for specific types of development consistent with planning priorities?

State enabling legislation can: direct local jurisdictions on specific allowable fee exemptions; leave decisions on exemptions to local discretion; or require exemptions for special priority housing types. For example, Washington state's legislation permits localities to exempt low-income housing and "other development activities with broad

public purposes" or Georgia's impact fee statute empowers municipalities and counties to exempt from payment of impact fees "projects that are determined to create extraordinary economic development, employment growth, or affordable housing." If a jurisdiction is permitted to waive fee assessments for certain housing types, forgone fees should be paid from the jurisdiction's general revenue and not passed on to other units in the development.

5. **Does your state's enabling legislation provide that impact fees must be based upon solid research documenting the impact of the proposed development on public facilities?**

The practice of levying impact fees has been scrutinized by the courts to assess such an action constitutes unauthorized taxes. As a result, courts expect that these fees must be supported by research proving the impact of the new development on infrastructure. Such research may reflect an analysis that determines, through past and future tax payments, what contribution the land has made to existing facilities, in addition to other revenue calculations.

6. **Does your state's enabling legislation require that impact fees imposed on developers represent the marginal impact of a new housing development?**

Fees should reflect the impact on vital infrastructure requirements of the development provided by the local government (i.e. water, waste water, storm water, sewer, roads, etc.). The Capital Improvement Plan (CIP), comprehensive plan, and other projections of community needs should be used to determine the need for facility expansion. The CIP and other such planning devices help to maintain the integrity of the impact fee.

7. **Is there a standard formula or method of calculation provided in your state's enabling legislation for determining "proportional" impact fee assessments?**

There are instances where local impact fees are calculated in such a manner to discriminate against certain types of development (i.e. attached housing, multi-family use, SRO housing, etc.) For example, education fees based on a per unit basis discriminates against multi-family units, which statistically generate fewer school-age children than single-family homes. To avoid discretionary assessment of impact fees, state enabling legislation would require a standard formula or method of calculation. Georgia, Idaho, Indiana, Pennsylvania, Texas, Vermont, and West Virginia enabling legislation include requirements for impact fee calculation.

8. Does your state enabling legislation require fee revenues to be dedicated to specific facilities or services?

A common technical provision for impact fee legislation is one which specifies facilities and services eligible for funding from impact fee revenues. Such revenues should not be deposited into a general fund, but rather held in a fund designated for use only on the capital improvement projects serving the new development or a proportional share of off-site improvements. By maintain impact fee revenues in a dedicated fund for specific project activities, jurisdictions can avoid the legal challenge of classifying the fee as a "tax". Possible "eligible activities" range from all capital investment infrastructure (e.g., Arizona and West Virginia), to only one of those facilities (e.g., roads in Illinois and Virginia), to any combination of infrastructure facilities (e.g., roads and water, sewer, and storm water facilities in Nevada).

IMPACT FEES STRATEGIES AND TECHNIQUES

The following recommended strategies and guidelines provide approaches that States could mandate through impact fee enabling legislation which would control the extent that such fees unnecessarily contribute to the cost of housing. It should be emphasized, however, that these are just suggestions and do not represent the absolute solution. States should evaluate impact fee policies on a case by case basis circumstances and respond accordingly.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Enact explicit impact fee enabling legislation.	Guards against jurisdictions levying impact fees as an impediment to the development of low- and moderate-income housing.	Such legislation should specify: public facilities for which impact fees may be charged; conditions local government must meet prior to implementing impact fee ordinances and charges; and how fees should be calculated, collected, and spent (Georgia). Impact fees should: bear a reasonable relationship to the benefits received by the new development; do not exceed the new development's proportionate share of the improvements; and be earmarked for specific projects. Fee revenues should be specifically excluded from correcting existing deficiencies in the infrastructure system and prohibited for routine maintenance, operating, and administrative expenses.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
State legislation should state the time of fee payment.	When setting the time of payment, States should consider a fee program that has the least impact on housing affordability.	If one assumes that the home buyer will ultimately pay the impact fee, jurisdictions might consider arranging payment upon occupancy to avoid additional carrying charges caused by the developer borrowing funds for a fee payment required early in the development stage.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED ACTIONS
State legislation should require refunds of fee revenues if they remain unspent for extended period of time.	Ensures expeditious expenditure of fee revenues.	A "reasonable" time period should be provided for expenditure of impact fee revenue (typically 5 to 7 years) or be refunded to the owner. A fee should be refunded if a facility for which it was dedicated is not built or if all funds for a particular facility are not spent. Pennsylvania requires a refund if expenditures are less than 95 percent of what is planned or the developer's building permit for the new development expires before commencement of the impact fee-funded facility. Georgia requires that fees not spent or encumbered within six years for a dedicated projected must be refunded to the developer with interest.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
State legislation should require that credits be given for a variety of other contributions by the developer.	Impact fee ordinances should ensure that new developments are not "overcharged" and as a result end up paying for needs they did not create nor benefits they will not receive.	Credits might be given for the following: general property taxes paid by the assessed development and used for infrastructure improvements; land dedication; off-site infrastructure work performed by the developer of the type authorized for funding by impact fees.

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Authorize exemptions for low- and moderate-income housing from local impact fees or apply reduced fee schedules.	Soften the effect of impact fees on affordable housing.	States can provide such exemptions in impact fee enabling legislation and require local governments to follow these principles: revenue shortfalls arising from the exemption cannot be passed on to market-rate units; the exemption can only apply to target beneficiaries and restrictions ensuring the units remain affordable should apply to developments benefiting from the exemption. Tie exemptions to goals, objectives, and policies for production of affordable housing set forth in the comprehensive plan providing a policy basis for differentiating lower income housing development from projects subject to the fee. (Georgia, Florida, Indiana, New Jersey, Arizona, and Vermont)

STRATEGIES	RATIONALE-BENEFITS	SUGGESTED TECHNIQUES
Develop impact fees based upon the new development's proportional share of cost and need of infrastructure.	Provides a fee structure that responds to actual impact and achieves a reasonable or proportional fee.	Assess the impact fee on the basis of the square footage of a unit or number of bedrooms. Such data can be derived from either a field survey or analysis of U.S. Census Public Use Sample data and should be used to determine the cost of the fee. (Palm Beach County, Florida) This method could also be used to determine the impact of a development on infrastructure.

EDUCATION AND TECHNICAL ASSISTANCE:
A First Step In Breaking The Barriers.

This guide recognizes that many of these recommended actions are sensitive and may be controversial depending upon the political and social environment within your state. States capacity to effect wholesale regulatory reform is limited and requires a working partnership with local governments, community leaders, and home builders and developers. In order to achieve this partnership, States need to pursue an education and technical assistance program in order to illustrate the negative effects of cumbersome regulatory practices on the cost of producing housing as well as the social and economic advantages achieved by enhancing the affordability housing through regulatory reform.

The following states have initiated or are in the process of implementing such educational efforts:

OREGON

The Oregon Department of Land Conservation and Development (DLCD) administers a Regulatory Reform Program to provide technical assistance to local jurisdictions for: streamlining permit issuing processes; codifying plan documents; developing new hearing/review processes; revising ordinances for clearer standards and procedures; and provide seed money to establish hearing officers programs. Grants have been awarded, with localities providing matching funds, for such activities as: streamlining land use hearing and appeal procedures, incorporating clear and objective standards for allowed uses, and providing early notice to interested parties; reducing the number of appeals through early mediation intervention in land use cases prior to public hearing; making land use regulations more clear and objective; developing a land use planning "How To" manual for city recorders of small towns; streamlining administrative procedures for variances and condition use permits; developing standards for redeveloping properties; clarifying and streamlining ordinances for both slope and flood hazard areas; and providing clarity and predictability to subdivision and partitioning ordinances. Grant funds were also provided to conduct a seminar designed to heighten awareness of regulatory reform and to provide information on streamlining ordinances and processes.

In addition, the Department has established a half-time position for a regulatory reform coordinator that works directly with housing development groups outside the state's periodic local comprehensive plan review to identify existing or proposed regulations that may add unnecessarily to the cost of residential development. Such input offers a more balanced perspective for local officials and often provides the necessary encouragement to implement revisions.

Moreover, has initiated meetings with contractors to provide a convenient forum for airing concerns over specific regulations. In a pilot program cosponsored by the Home Builders

Association of Metropolitan Portland, a DLCD regulation specialist is available one day each month at the Home Builders' offices to conduct an ongoing dialogue with builders and developers. Similar meetings will be scheduled for other jurisdictions and will include representatives of local government agencies to help answer questions and explore solutions.

WASHINGTON

Affordable Housing: Local Government Regulatory and Administrative Techniques, a handbook produced a handbook by Washington State in 1984, for localities to use in evaluating their land-use systems by featuring developments and policy changes actually undertaken by local jurisdictions. Since, the guide has encouraged other cities and counties to adopt planning and regulatory improvements.

More recently, however, the Department of Community Development (DCD) has produced, through a contract with the University of Washington, *Designing for Density* along with a companion booklet, *Envisioning the Urban Village: The Seattle Commons Design Charrette*, which depict several innovative design strategies for increasing density while making more compact developments acceptable to the public. However, these studies emphasize that new design strategies cannot overcome the old political problems created by excluding community participation in the planning and design process. *Designing for Density* recommends that developers invite early community involvement in the process of selecting key design consultants to raise the level of public trust and comfort with the design process and the eventual development. Early community involvement beyond the officially required public review procedures and selecting appropriately trained design professionals to orchestrate that involvement, will have a positive impact on neighborhoods as well as produce attractive and **popular** higher-density communities.

Additional studies are anticipated in the near future focusing on alternative policies and laws to current regulations that drive up construction costs, building code impediments to affordable housing, and potential cost savings in codes and permit processing. The hope is that these studies will not only offer guidance for local innovations, but also will help the State devise ways to influence barrier removal.

FLORIDA

Communities in Florida are required to develop Local Incentive Plans in order to access housing funds provided in the State Housing Initiatives Partnership Program. These plans require local governments to examine their permitting processes and land development regulations and adopt specific steps to reduce regulatory barriers, including a mandatory provision for expedited review of affordable housing projects. Technical assistance on removing regulatory barriers is offered to local governments in the State of Florida from training teams through a series of workshops and local meetings. These workshops cover a wide spectrum of

housing issues and programs, but a prominent topic addressed is regulatory reform and assistance for localities in developing their Local Incentive Plans.

Other technical assistance techniques Florida would recommend include:

Creation and dissemination of model ordinances;

Provision of information about regulatory barrier reduction in a state-generated newsletter about housing programs;

Development of a series of articles, possibly appearing in state-based association publications, citing actual examples of the impact on affordable housing resulting from removal of certain regulatory barriers;

Creation and dissemination of a series of technical memoranda by the state to all local governments receiving state or federal housing funds; and/or

Establishment of a state-level position responsible for creating and disseminating information about regulatory barrier removal to local governments.

PENNSYLVANIA

Expanding existing educational and technical assistance programs to include regulatory barriers and affordable housing issues has been a top priority in the Commonwealth of Pennsylvania. The **Circuit Rider Program** is designed to improve the delivery of basic municipal services through the sharing of key professional personnel by two or more municipalities. For example, the Circuit Rider Program has funded several shared code enforcement officers, and established several joint code enforcement programs. The **Municipal Training Program** provides training programs to Pennsylvania's municipal, community development, environmental and nonprofit agency officials and employees to improve operations, service delivery and productivity. The Environmental Training Partnership, offered as part of the Municipal Training Program, is planned to also provide educational services to builders, developers, and engineers to improve understanding about environmental protection requirements and procedures. **Peer to Peer Technical Assistance** is offered to expand the technical assistance capabilities of the Department of Community Affairs by recruitment and selection of highly qualified local officials and professionals, and to match their expertise to the specific needs of other local officials. These programs are designed to raise the awareness of the adverse effects of cumbersome regulatory practices on the cost of producing housing affordable to persons of all incomes.

WISCONSIN

The Task Force on Regulatory Barriers to Affordable Housing created as a result of the Executive Order signed by Governor Thompson, issued a phase one report which among its recommendation, advocates for the creation of a "Central Access Information Counter". Multiple regulating agencies, apart from inconvenient and time consuming, perpetuate expensive delays and costly mistakes due to oversights that can occur due to fragmented information sources.

Such problems can be remedied by the creation of a "Central Access Information Counter". Information concerning regulations, programs and permits required by different state agencies would be collected and updated regularly. This information source would be available to local governments, professional associations, non-profit organizations, and other individuals involved in various housing activities. Fact Sheets, produced by the individual agency individuals, should contain the following information:

simple explanation of programs/regulations as they apply to new construction, rehabilitation, financing, and/or other housing-related activities;

outlines of procedures and materials required;

official time frames and deadlines, as well as typical processing times;

directories of officials and/or administrators with (a) the name of the agency, (b) names and phone numbers of responsible personnel;

legal and/or other documents required;

appeal procedures.

The Task Force envisions one agency, in Wisconsin the Division of Housing, acting as liaison between the various state agencies, local governments, non-profits, developers, etc. Constant contact with individual agencies would be maintained as well as semi-annual meetings conducted in order to facilitate the flow of information among state entities and coordinate activities.

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