

STATE PLANNING IN NEW JERSEY

By

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December 1998**

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Sam I am, that Sam I am!  
I do not like that new State Plan ...  
You do not like it, so you say.  
Try it! Try it! And you may! ...  
Sam, if you let me, I will try.  
"Cross-acceptance" though sounding dry,  
Is a process to open senses.  
It permits a peek through novel lenses.  
In a manner non-contentious,  
It has enhanced consensus.  
For the house, and for the park,  
I will take the train and leave my car.  
I will clean up tox, and save the fox,  
And create the town, so that jobs abound.  
I will like it here and there,  
Say, I will like it everywhere.  
I do so like the new state plan.  
Thank you, Thank you, Sam I am!

Martin Bierbaum  
Assistant Director,  
New Jersey Office of State Planning  
(With apologies to Dr. Seuss)

Bierbaum's poem -- read at a 1990 conference on state planning in New Jersey -- was greeted with knowing laughter because many conference attendees had been active participants in the more than five-year effort to pass a State Planning Act and to produce a state plan. They were intimately familiar with the controversy that surrounded both the substance of the plan and the debates over how, if at all, the plan would be implemented.

They knew, for example, that in enacting the State Planning Act in 1985, Governor Thomas Kean and the state legislature had called for the development of a state land use plan but explicitly rejected provisions requiring localities and state agencies to be guided by the new plan. They knew, moreover, that in the late 1980s, local governments and powerful real estate interests had easily rebuffed a draft state plan that would, if officially adopted, have mandated that both localities and other state agencies comply with the state plan. Now, the plan's supporters were hoping that "cross-acceptance" -- required mutual efforts by the State Planning Commission, localities, and counties to reconcile their plans -- would produce a state plan that local governments and key state agencies would implement voluntarily. Many were skeptical, however, that this approach would produce significant results. Speaking in 1988, when the plan was still being developed, for example, Princeton University Professor Michael Danielson, a long-time student of politics and planning, warned:

I'm not at all sure that we can expect widespread acceptance [of the plan] merely because we've gone through [an intricate political] process. We've had all kinds of complicated processes that have produced pretty ineffective results.<sup>1</sup>

By 1996, four years after the plan was officially adopted, however, at least one prominent scholar asserted that Danielson and other skeptics had been wrong. Professor Judith Innes of the University of California at Berkeley judged that the cross-acceptance process in New Jersey demonstrated the feasibility of effective, democratic comprehensive planning solidly rooted in consensus among all pertinent stakeholders.<sup>2</sup>

But what exactly has New Jersey's planning process accomplished? The answer lies in a close reading of the history of state planning in New Jersey.

### Context

The nation's fourth smallest state but its ninth largest in terms of population, New Jersey is an small older industrial state sandwiched between New York City and Philadelphia. (See Figure 1). Once a center of industry and agriculture, the state became increasingly suburban in the four decades after World War II. Between 1950 and 1985, for example, more than half of all farmland in New Jersey was converted to residential and commercial uses, while the state's six largest cities (Camden, Elizabeth, Jersey City, Newark, Paterson, and Trenton) lost about 13 percent of their population and one-quarter of their jobs.

Initially, the urban decline meant that large areas of the state were effectively suburbs of New York and Philadelphia. Subsequently, a growing number of the state's residents both lived and worked in suburban locales. These patterns accelerated during an unprecedented economic boom and restructuring from about 1982 until 1989. During this period, the state added 541,000 private-sector jobs, an increase of about 20 percent (from 2.6 million to 3.1 million).

These figures, moreover, mask a profound transformation in the state's economy. Manufacturing, which was the leading source of employment in the state in 1982, *lost* more than 88,000 jobs (a decline of about 12 percent), many of them in the state's six largest cities. Meanwhile, the state gained more than 500,000 jobs in the service and financial sectors, most of them in the suburbs. Accommodating these new workers required massive new construction. Office space in the state, for example, grew by 50 percent during the 1980s and as of 1990, northern New Jersey alone had more office space than midtown Manhattan.<sup>3</sup> (See Table 1)

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<sup>1</sup> Program for New Jersey Affairs (1989).

<sup>2</sup> Innes (1996).

<sup>3</sup> Fishman (1990).

**Figure 1****The State of New Jersey**

The state's population grew much more slowly than employment in the 1980s, increasing by only about 5 percent (from 7.4 million to 7.7 million). Major shifts occurred, however, in the geographic distribution of population. Nine counties in central and southern New Jersey each grew by more than ten percent, while the three counties closest to New York City all lost population.<sup>4</sup>

As a result of this growth and these shifts, more than 60 percent of the state's roads were congested by the mid-1980s.<sup>5</sup> The growth also put great strains on other infrastructure systems. In 1988, for example, 167 of the state's 567 municipalities faced at least a partial ban on further sewage hookups pending upgrades of their treatment plants. In this context, public concern about development and sprawl began to show up as a major voter concern in surveys.

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<sup>4</sup> Data provided by the New Jersey Office of State Planning.

<sup>5</sup> Epling (1993).

**Table 1: Changes in Employment, 1982-1989**

<b>ENTIRE STATE</b>	<i>1982</i>	<i>1989</i>	<i>Total</i>	<i>Change</i>	
					<i>Percent</i>
Services	616,862	899,035	282,173		46%
Retail Trade	497,342	601,828	104,486		21%
Manufacturing	725,706	637,556	-88,150		-12%
Wholesale Trade	215,609	284,104	68,495		32%
Financial, Insurance, and Real Estate	170,941	240,807	69,866		41%
Transportation	107,037	142,911	35,874		34%
Construction	112,534	172,946	60,412		54%
Communication and Utilities	84,588	85,685	1,097		1%
Agriculture and Mining	25,017	31,654	6,637		27%
<b>Total</b>	<b>2,557,618</b>	<b>3,098,515</b>	<b>540,897</b>		<b>21%</b>
<b>SIX LARGEST CITIES ONLY</b>					
	<i>1982</i>	<i>1989</i>	<i>Total</i>	<i>Change</i>	
					<i>Percent</i>
Services	70,673	94,035	23,362		33%
Manufacturing	96,783	75,475	-21,308		-22%
Transportation	29,441	37,974	8,533		29%
Retail Trade	35,976	38,219	2,243		6%
Financial, Insurance, and Real Estate	26,743	26,389	-354		-1%
Wholesale Trade	24,489	24,855	366		1%
Communication and Utilities	12,716	10,479	-2,237		-18%
Construction	8,408	12,505	4,097		49%
Agriculture and Mining	100	121	21		21%
<b>Total</b>	<b>307,311</b>	<b>322,041</b>	<b>14,730</b>		<b>5%</b>

Source: Hughes and Seneca (1995 and 19966b)

The structure of New Jersey government encouraged the demographic changes (and the problems they created) in three notable ways. First, as a bastion of "home rule," the state allowed its cities and towns to grow without state or regional guidance. Second, the state built an extensive highway system, opening up previously rural areas for development. Third, since the state's local governments rely on property taxes for most their revenues, there has been fierce competition for "ratables," land uses such as offices, shopping centers, and luxury housing that appear to produce net fiscal surpluses for their host communities.<sup>6</sup>

These factors led some to conclude that growth in New Jersey has generally been "unplanned." State law has long required comprehensive planning at the municipal level, however, and a state office of planning has been in operation since the mid-1930s (except for a brief period during the mid-1980s). This office, moreover, produced a variety of important plans over the years, such as the 1951 State Development Plan, which included proposals for what later became the Garden State Parkway and the New Jersey Turnpike -- roads that facilitated suburban growth.

The state legislature has been willing on occasion, furthermore, to supersede "home rule" in the service of explicit goals such as environmental protection and economic development. In 1968, for example, it established the Hackensack Meadowlands Development Commission to encourage economic development in the Meadowlands, 20,000 acres of undeveloped salt meadows and marshes spread over 14 older industrial communities in northern New Jersey. The commission has extensive powers including the authority to develop and implement a master plan for the area, review and regulate local subdivision and development plans for parcels within the district, and create tax-sharing schemes so that all the affected communities may benefit from the development in the Meadowlands.

In 1979, after a long battle, New Jersey also adopted the Pinelands Protection Act, which placed 1.1 million acres of ecologically unique and fragile land in southeastern New Jersey under direct state control. This act established a Pinelands Commission, charged it with developing a comprehensive management plan for this area, and authorized it to review and approve all local land use plans within its jurisdiction.<sup>7</sup>

These two state programs, and a third program protecting coastal areas, covered almost 50 percent of the state's land area by 1980. Statutes governing flood control, wastewater treatment, drinking water supplies and other natural resources also impacted almost every other community in the state.

The legislature has steadfastly refused, however, to authorize state intervention to address many other land use issues, including the regional impacts of local land use policies, the decay of older urban places, exclusionary zoning, affordable housing, and inequalities in the state's education system. Where the legislature has been reticent, though, New Jersey's State Supreme Court has occasionally stepped in. In 1973, for example, the court ruled that

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<sup>6</sup> See Michael Danielson and Doig, Jameson (1982).

<sup>7</sup> See Beaton, (1991), Berger (1985), Goldstein (1981), and McPhee, (1968).

the state's locally based education finance system was unconstitutional because it led to wide disparities in education spending among communities.<sup>8</sup> In response the state enacted its first income tax and used much of the money to reduce the amount of inequality in public school expenditures across school districts.

In 1975 the court also ruled (in the Mt. Laurel I case) that growing suburban communities had a responsibility to meet regional needs for affordable housing and were not legally empowered to engage in exclusionary zoning.<sup>9</sup> In its landmark Mt. Laurel II ruling of 1983,<sup>10</sup> the court ruled further that communities had an affirmative obligation to help create affordable housing through such measures as zoning incentives for builders. In seeking a basis for the allocation of obligations among local communities, the court seized on the State Development Guide Plan (SDGP), an obscure (and never implemented) state plan developed in the late 1970s to comply with the requirements of several federal-aid grant programs. In particular, the court relied on the SDGP's population and employment projections and its establishment of "growth" and "no-growth" areas, noting that the SDGP: "represents the only official determination of the state's plan for its own future development and growth."<sup>11</sup> The court, moreover, took the position that statewide comprehensive planning had become a "necessity," noting:

The lessons of history are clear, even if rarely learned. One of those lessons is that unplanned growth has a price: natural resources are destroyed, open spaces are despoiled, agricultural land is rendered forever unproductive, and people settle without regard to the enormous cost of the public facilities needed to support them. Cities decay; established infrastructure deteriorates for lack of funds; and taxpayers shudder under a financial burden of public expenditures resulting in part from uncontrolled migration to anywhere anyone wants to settle ... Statewide comprehensive planning is no longer simply desirable, it is a necessity, recognized by both the federal and state governments.<sup>12</sup>

Finally, the court specified that unless the state maintained an ongoing planning process, the court -- using the State Development Guide Plan -- would determine where affordable housing should be built. In addition, the court opened the door to "builder's remedy" lawsuits -- enabling builders to obtain a court override of local zoning

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<sup>8</sup> See *Robinson v. Cahill*, 118 N.J. Super. 223, 227-29.

<sup>9</sup> *Southern Burlington County NAACP v. Township of Mt. Laurel*, 67 N.J. 151, 336, A.2d 713 (S. Ct. 1975). See Kirp, Dwyer, and Rosenthal (1995) and Haar (1996).

<sup>10</sup> *Southern Burlington County NAACP v. Township of Mt. Laurel*, 92 N.J. 158, 456A.2d 713 (S. Ct. 1983).

<sup>11</sup> Court use of the guide plan meant that about 100 of the state's 567 communities became targets of fair share housing allocations. See Bierbaum and Nowicki (1991).

<sup>12</sup> *Southern Burlington County NAACP v. Township of Mt. Laurel*, 92 N.J. 158, 456A.2d 713 (S. Ct. 1983). See also Kirp, Dwyer, and Rosenthal (1995), Haar (1996), Burchell, (1983), Chall. (1985/1986), and Hughes and Vandoren (1990).

requirements if their proposed projects included units set aside as affordable housing and the locality concerned was failing to meet its "fair-share" obligations.

### **Drafting a New State Plan**

Governor Thomas Kean, a moderate Republican who had been elected in 1981, bitterly criticized the court's Mt. Laurel II decision and ignored the planning mandate. Indeed, only weeks after the court decision he abolished the state agency that had written the SDGP (citing budget constraints and the agency's failure to engage in meaningful dialogue with local officials as his ostensible reasons).

Though the Kean administration was disinclined to comply with the court's mandate, the decision energized a number of people who had long believed that the state should exercise stronger land use authority. Many local officials, moreover, were pressing for development of a new state plan as a way to reclaim some control over land use from the courts. In mid-1983 a small group of these planning advocates and local officials met with W. Cary Edwards, Kean's chief counsel, to discuss responses to Mt. Laurel II. Together they agreed to convene an Ad Hoc Committee on state planning that would receive staff support from state employees. (Among the organizations represented on the committee were the NJ Federation of Planning Officials, the County Planners Association, the New Jersey Bar Association, the Consulting Planners Group, the Land Use Section of the New Jersey Bar Association, the League of Municipalities, the New Jersey Builders Association, the Regional Plan Association, the Mercer-Somerset-Middlesex Regional Study Council, the New Jersey Conservation Foundation, and representatives from the state's departments of transportation, environmental protection, and community affairs.)

Working over the next year, this committee considered three basic approaches. The first -- backed by planning advocacy groups and environmentalists -- would have mandated comprehensive state planning, local compliance with the state plan, and arbitration by the state planning agency of disputes among state agencies and local governments.<sup>13</sup> Key constituencies, such as the New Jersey Builders Association and its League of Municipalities, opposed this approach for two reasons. First, they were unwilling to limit development. Second, the localities wanted to make it clear for Mt. Laurel purposes that localities were not bound by an official state plan.

The second approach envisioned a state plan intended mainly to guide the state's own capital investment decisions. Though this idea had considerable appeal within the Ad Hoc Committee, the home builders and the League of Municipalities balked at its potential to prevent development in rural areas and the Kean administration opposed making the plan more than advisory to state agencies.

The third alternative, which the committee ultimately accepted, sought to win state agency support for the plan by making the heads of those agencies members of the commission that would develop the plan. To further strengthen state agency use of the plan, the new Office of State Planning was to be located in the powerful Treasury

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<sup>13</sup> New Jersey State Legislature (1983).

Department, which oversees all state capital spending.<sup>14</sup> Finally, rather than mandating local compliance with the plan, the committee agreed that the new state planning commission would, in the language of statute eventually enacted, "negotiate plan cross-acceptance with each county planning board, which shall [in turn] solicit and receive findings, recommendations, and objections concerning the plan from local planning bodies." The legislation went on to describe cross-acceptance as:

... a process of comparison of planning policies among governmental levels  
... The process is designed to result in a written statement specifying areas of agreement or disagreement and areas requiring modification by parties to cross-acceptance.<sup>15</sup>

These provisions overcame the concerns of many long-time state planning foes. John Trafford, then the executive director of the New Jersey League of Municipalities for example, commented that the League "signed off on the bill ... because there were no real teeth in it."<sup>16</sup>

Though key constituencies had been neutralized, the bill's passage was delayed for several months because legislators also demanded another bill that would move oversight of communities' response to the Mt. Laurel decision from the courts to a new state entity. After that was done in a new state housing act, the State Planning Act easily passed in late 1985.<sup>17</sup> The latter law established a 17-member, gubernatorially-appointed planning commission, to include six citizens, four state and county officials, and seven members of the administration, including representatives of the governor's office and key state agencies such as the departments of transportation and environmental protection.

The new commission and John Epling, the new state planning director who had previously directed a regional planning agency in Virginia, had two distinct tasks. First, they had to perform the technical work needed to develop the plan. Though this was an arduous and difficult task, the State Planning Act provided significant guidance. It envisioned channeling development into older cities with underutilized infrastructure, new mixed-use centers in suburban locales, and, in rural areas lacking environmental infrastructure, compact villages and hamlets rather than sprawling new subdivisions.

The more difficult question was how to achieve this vision. Did the absence of implementation language in the State Planning Act give the commission only a limited mandate for action? Alternatively, did the act's sweeping mandate provide leverage to establish a powerful state growth management system? The commission, with Epling's support, adopted the latter interpretation, instructing the staff to prepare a plan mandating

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<sup>14</sup> The planning division eliminated by Kean had been housed in the state's Department of Community Affairs.

<sup>15</sup> State Planning Act, Section 7.

<sup>16</sup> Unless otherwise noted, all quotations come from interviews done by the author.

<sup>17</sup> See Kirp (1996), Haar (1996) and Rose (1986).

local and state agency compliance. Epling says they did so for political, strategic, moral, and legal reasons.

Politically, some key members of the planning commission, such as long time environmental activist Candace Ashmun, believed that the public really wanted an aggressive growth management system. She based this view in part on a poll that the State Planning Commission had commissioned. Conducted by the Gallup organization, the survey indicated that a majority of New Jersey's residents felt that the state's natural areas were threatened by development and that controls on growth should be stricter. When asked which level of government could best manage growth, 35 percent said local cities and towns; 23 percent named counties; and 30 percent named the state.<sup>18</sup>

Strategically, some advocates of a strong growth management system believed the commission had to outline an aggressive compliance strategy so that people would pay attention to the planning process. According to Epling:

When you think about going into cross-acceptance and no one takes you seriously the whole process could fall apart. So I just felt that we needed to come out and really tell the story of ... what it is going to take and shock some people.

Morally, Epling believed the commission had an obligation to call for mandatory compliance with aggressive policies as the only way to achieve the explicit goals of the State Planning Act. Not to do so, he explained, "would be like asking the Surgeon General not to come out against cigarettes because it might hurt the tobacco industry."

Legally, it seemed possible that the commission had more statutory power than it appeared. Robert Freilich, a noted land use lawyer, advised the commission that it had considerable implied implementation power because the state planning act stated that the commission "shall take all actions necessary and proper to carry out the provisions of this act."<sup>19</sup>

In April 1987 the staff presented the commission with a draft plan dividing the state into eight tiers (ranging from urban centers to conservation areas). The plan called for directing growth to urban areas and to compact developments in suburban and rural tiers using a combination of infrastructure investments, state regulations, and local actions.

Local compliance was to be mandatory -- a proposal that quickly generated vociferous opposition from municipal leaders, builders, and agricultural interests. The League of Municipalities' John Trafford recalled, for example that:

We were absolutely appalled by the tone [of the document]. I told John [Epling] he was using a faulty word processor that kept sticking on the

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<sup>18</sup> DeGrove (1992).

<sup>19</sup> State Planning Act, Section 4g.

words "shall," "will," and "must." We weren't going to be happy until they removed the "shalls" and changed them to "shoulds."<sup>20</sup>

Responding to the critics, state legislators filed several bills calling for legislative oversight of the planning process. The most notable of these, sponsored by Republican State Representative Robert Franks, a member of the Assembly's leadership team, called for the state plan to become effective only upon formal adoption by the legislature. To head off such legislation, the planning commission let it be known that the offensive implementation language would be removed from subsequent drafts of the plan. The Franks bill easily passed but Governor Kean vetoed it, reiterating his support for state planning, and no effort was made to override his veto. The point had been made, however. The state plan would be merely advisory.<sup>21</sup>

The next version of the plan, labeled the "draft preliminary" plan, was released in January 1988. It was followed eleven months later by the three-volume "preliminary" plan, released in November 1988. Both of these plans divided the state into seven "tiers" (vs. eight in the staff's April 1987 plan). Specific tier designation was based on planners' estimates of how much development an area's infrastructure and ecology could support. Land was classified as agricultural, for example, on the basis of prime soils; environmentally sensitive areas were chosen on the basis of any one of a broad array of characteristics, such as aquifers, scenic views, and steep slopes. The plan also created a "regional design system" designed to "organize growth within the tiers in a hierarchy of central places, such as cities, towns, and villages."<sup>22</sup>

Though the plan did not mandate local consistency, it included more than 500 pages of suggested guidelines and regulations. State, county, and local entities, for example, were urged to coordinate water supply programs with development approvals. Counties and municipalities were advised to define acceptable levels of service on local roads and ensure that land use regulations were in keeping with level-of-service guidelines. Rural localities were counseled to avoid densities that would, by generating congestion, reduce peak-hour travel speeds below 35 mph or make left-turning cars wait longer than 15 seconds.<sup>23</sup>

To plan critics, it appeared that the state planners were now seeking mandatory compliance by the back door. Consequently, development and agricultural interests continued their vociferous opposition to the state plan and the League of Municipalities continued to express its concerns. Meanwhile, urban leaders were tepid in their support. They did not believe the plan represented an actual commitment of resources and they felt it

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<sup>20</sup> Gottlieb, (1988).

<sup>21</sup> Kean and the planning commission did accept a bill requiring an expert assessment of the plan's impacts before final adoption. Kean also agreed to appoint a developer to the commission.

<sup>22</sup> Epling (1993).

<sup>23</sup> New Jersey State Planning Commission (1988b).

did little to address their most urgent priorities, notably property-tax reform, educational improvement, redevelopment of polluted urban sites, and stopping drug-related crime.<sup>24</sup>

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<sup>24</sup> See Civic League of Greater New Brunswick (1989), *New Jersey Future and the Urban Aid Mayors* (1990), and New Jersey Public Policy Research Institute (1990).

**Table 2: Change in Employment 1989-1992**

<b>ENTIRE STATE</b>	<i>Change</i>			
	<i>1989</i>	<i>1992</i>	<i>Total</i>	<i>%</i>
Services	899,035	922,063	23,028	3%
Retail Trade	601,828	550,221	-51,607	-9%
Manufacturing	637,556	526,401	-111,155	-17%
Wholesale Trade	284,104	260,163	-23,941	-8%
Financial, Insurance, and Real Estate	240,807	218,936	-21,871	-9%
Transportation	142,911	136,757	-6,154	-4%
Construction	172,946	115,858	-57,088	-33%
Communication and Utilities	85,685	89,088	3,403	4%
Agriculture and Mining	31,654	30,381	-1,273	-4%
<b>Total</b>	<b>3,098,515</b>	<b>2,851,860</b>	<b>-246,655</b>	<b>-8%</b>
<b>SIX LARGEST CITIES</b>				
	<i>1989</i>	<i>1992</i>	<i>Change</i>	
			<i>Total</i>	<i>%</i>
Services	94,035	92,457	-1,578	-2%
Manufacturing	75,475	56,742	-18,733	-25%
Transportation	37,974	36,703	-1,271	-3%
Retail Trade	38,219	32,610	-5,609	-15%
Financial, Insurance, and Real Estate	26,389	26,552	163	1%
Wholesale Trade	24,855	20,108	-4,747	-19%
Communication and Utilities	10,479	10,090	-389	-4%
Construction	12,505	7,617	-4,888	-39%
Agriculture and Mining	121	91	-30	-25%
<b>Total</b>	<b>322,041</b>	<b>284,962</b>	<b>-37,079</b>	<b>-12%</b>

Source: Seneca and Hughes (1996b)

Environmental groups consistently expressed support for the planning process, but they did not view it as a top priority, preferring to focus on specific environmental issues where victory was more likely, such as wetland and coastal zone protection. Additionally, whatever enthusiasm they had tended to wane as the plan was weakened to mollify plan critics.

The combination of intense opposition from critics and only lukewarm support from potential beneficiaries left the planning commission with very limited political capital. A small group of planners, environmentalists, and sympathetic business leaders tried to rectify this situation by forming New Jersey Future to advocate for state planning. This group attracted some media attention but it was unable to turn the tide toward merely advisory state planning.

### **A New Governor and A Different Economy**

Kean, who had been strongly supportive of the planning process (though not necessarily of plan implementation), was ineligible to run in 1989. His successor, James Florio, had been a Democratic member of Congress from Camden, one of the state's poorest cities. Florio generally expressed support for the state planning process when asked during the campaign, and he had been a strong supporter of environmental and planning-related legislation while in Congress. So the advocates of state land use planning were heartened by his victory.

Upon taking office at the beginning of 1990, however, Florio was confronted with three major challenges. First, the state had entered a recession and development had slowed. For example, New Jersey's gross state product, which rose rapidly from 1982 to 1989, declined by 2.1 percent between 1989 and 1992. Even worse, state employment declined by 8 percent, almost 250,000 jobs. This decline, moreover, was felt even harder in the "Big Six" cities, which lost 12 percent of their jobs. In addition, the number of residential building permits issued, for example, fell from a peak of 57,074 units in 1986 to only 14,777 units in 1991 and construction employment fell by more than 30 percent.<sup>25</sup> (See Table 2). The result was a major shift in public sentiment from concerns about development to concerns about its absence.

Second, the state faced a half-billion dollar shortfall in the current-year budget that Florio inherited, with a full billion-dollar shortfall projected for the following year. Florio was committed, finally, to reforming the state's school finance system, which was again being challenged in the courts because great disparities remained between spending in wealthy and poor communities.<sup>26</sup> In June 1990 (after Florio proposed his budget but before it became law) the court ruled that the state had to bring per pupil spending in its poorest school districts up to same level as the wealthiest districts and to maintain that parity over time.

To close the budget gap, respond to the education issue, and provide some property tax relief, Florio proposed and convinced the Democrat-controlled legislature to pass a \$2.8 billion tax increase. (\$1.3 billion of the increase was in higher income taxes for the state's wealthiest residents; another \$1.3 billion came from a one percent hike in the state's sales tax; the remaining \$200 million came from extending the sales tax to previously untaxed

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<sup>25</sup> See Hughes and Seneca (1995 and 1996a).

<sup>26</sup> See *Abbott v. Burke*, Supreme Court of New Jersey, 119 N.J. 287; 575 A.2d 359; 1990 N.J. LEXIS

items.) Of the money, \$1.1 billion was devoted to a new school aid program, an amount later reduced to \$700 million in order to fund a property tax rebate program designed to quell the controversy provoked by the original legislation. These taxes proved wildly unpopular with the state's voters, who in 1991 defeated so many Democratic candidates that the Republicans achieved veto-proof control of both houses of the state legislature.

In this turbulent political and economic context, Florio retained Epling and many members of the State Planning Commission, and he allowed the state planning process to move forward with little interference. He did not, however, provide visible leadership or support for the planning process.

State planning officials had already begun work on cross acceptance in the spring of 1989, before the election. As a first step, they had broken the process into three stages: a comparison of county and local plans with the preliminary state plan, an effort to reconcile disagreements through negotiations, and a process to resolve remaining differences after the negotiations had ended.

They soon found that most communities were indifferent to the preliminary plan. According to a 1989 survey, most municipal officials involved in cross-acceptance believed their communities had neither negative nor positive reactions to the draft plan. Few believed, moreover, that the plan would help stabilize the local economy or improve environmental quality.<sup>27</sup> (See Table 3)

**Table 3: Views of Cross Acceptance**

Effect of Tier Designation on the Local Economy?	
Very Helpful	10%
Moderately Helpful	16%
Neutral	41%
Not Very Helpful	33%
Effect of Tier Designation on Environmental Quality	
Very Helpful	17%
Moderately Helpful	23%
Neutral	33%
Not Very Helpful	27%

Source: Anglin (1991)

Cross acceptance did, however, seem to change the frequency and nature of contacts between local, county, and state officials. The cross-acceptance report from Hunterdon County, a fast-growing area in the west/central part of the state, for example, noted that: "These sessions have been unique because for the first time all municipalities -- and the County -- have been talking about the same issues at the same time."<sup>28</sup> Such

<sup>27</sup> Anglin (1991).

<sup>28</sup> Hunterdon County Planning Office (1990). See also Anglin (1995)

contacts, however, did not reveal much readiness for plan implementation. Hunterdon officials also commented that:

While the concept of clustering most development in concentrated areas where infrastructure can be efficiently provided has widespread appeal ... real concerns exist with regard to the impact on current land values that such a change would have. Accordingly, the concept of [cluster development] will only be realistic once an adequate compensatory system is adopted to . . . address these equity concerns.

The [preliminary plan] also advocates siting of jobs and housing in close proximity to one another. ... Local officials see the wisdom in this approach yet they are unwilling to implement it until such time as the property tax system has been reformed to eliminate the burden that residential development places on local taxpayers.<sup>29</sup>

As the comparison phase ended and the negotiation phase was scheduled to begin, the planning office and commission had to find ways to resolve the many differences that had emerged. Epling's strategy was to resolve issues where possible but otherwise merely to acknowledge disagreements. He recalled:

I was driving home and I said, "Wait a minute, we can't be negotiating implementation. We'll never get the plan out because there is no answer." ... I came back to the staff and said ... "What happens if when the local negotiating committee says, 'We don't like the plan because of home rule,' the first question you ask is 'What specifically in the plan ... is of concern to you on that subject? Can you show me?' One of two answers will occur. If they can cite a specific concern, look at it and say, 'We will agree to amend that statement in this way.' Then you have an agreement. If they can't point to something in the plan and instead say 'As far as I am concerned it is the whole process' ... then you say, 'I'm going to agree or disagree with you. You've got that concern but there is nothing specific ... Tell you what, we will list it as a concern in the written statement of agreements and disagreements required by the law ... Now let's move on to the next set of complaints.'"

By early 1991 the commission and the state planning office had completed negotiations with all the state's counties on their 548 initial disagreements. While few issues were cited in the end as disagreements, more than 100 issues were deferred as "implementation" questions.<sup>30</sup> Such results, contended Judith Innes, a national scholar on

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<sup>29</sup> Hunterdon County Planning Office (1990).

<sup>30</sup> Office of State Planning. (1991).

planning, showed that cross acceptance had "identified and resolved many of the issues that remain problematic in other states."<sup>31</sup>

Many local officials were much less sanguine, however. Illustratively, more than 70 percent of local officials who participated in the cross acceptance process said that, in their view, the state plan would not influence local land use and zoning regulations.<sup>32</sup> (See Table 4) In fact, no local plans were significantly amended to conform to the state plan.

**Table 4: Projected Impacts of the State Planning Process On...**

	<b>Very Strong</b>	<b>Strong</b>	<b>None</b>	<b>Negative</b>	<b>Very Negative</b>	<b>Don't Know</b>
<b>Long-term strategic planning</b>	2%	24%	65%	4%	--	5%
<b>Capital Budgeting</b>	3%	7%	78%	5%	1%	6%
<b>Land Use and Zoning Regulations</b>	--	17%	73%	3%	1%	6%
<b>Infrastructure Placement</b>	1%	15%	69%	7%	1%	7%

*Source: Anglin (1995)*

Under pressure from Florio's office to complete the plan by mid 1992, the commission and the Office of State Planning, as required by law, redrafted the plan to respond to the concerns that had emerged during the cross-acceptance process. The draft plan they produced, labeled "interim," was released in July 1991. It divided the state into six planning areas (rather than the seven "tiers" proposed in 1988) and placed even greater emphasis on the notion of "central places" as a focus of the planning effort. (See Figure 2)

Critics of the plan were greatly strengthened, however, by the great Republican victory in legislative elections of November 1991. When the new legislature convened in January 1992, its leaders explicitly targeted the Office of State Planning as one of two state agencies they intended to abolish before the year was out.<sup>33</sup> They also endorsed legislation specifying that the plan would go into effect only upon formal approval by the legislature.

<sup>31</sup> Innes (1992).

<sup>32</sup> Anglin (1995).

<sup>33</sup> Buchsbaum (1993).





Plan supporters were able to defuse some controversy about the plan via release of an impact study carried out under the direction of Rutgers University economist Robert Burchell. The study (required by law) found that if the plan was fully implemented, by the year 2010 it would produce:

- \$380 million in annual operating cost savings for municipalities and school districts
- \$1.4 billion in reduced capital costs for roads, water and wastewater treatment facilities, and school buildings,
- Protection of 30,000 additional acres of environmentally fragile lands and 40,000 additional acres of farmland, and
- A 40 percent reduction in water pollution.<sup>34</sup> (See Table 5)

The study's conclusions were widely reported and were generally unchallenged. There was, however, some criticism of the study's methodology. Peter Buchsbaum, a leading land-use lawyer in the state, for example, criticized Burchell for assuming that full-scale implementation of the plan would not slow population and employment growth but merely redirect that growth to cities and older suburbs. This assumption, Buchsbaum noted, led Burchell and his colleagues to project that plan adoption would lead to an additional 120,000 people and 43,000 households living in the state's six major cities -- a figure that represented one quarter of the projected state population growth between 1992 and 2010. Similarly, Burchell and his colleagues projected that about 30 percent of all state job growth, about 180,000 jobs, would be shifted from suburban and rural areas to inner suburbs and urban centers. Such shifts, Buchsbaum concluded, "seem improbable under any real-world scenario. Yet the [study's] conclusions as to land use savings, water pollution reduction, infrastructure savings, etc. would appear all to derive" from such projections.<sup>35</sup> Responding to the criticisms -- which were not widely reported -- Burchell claimed that Buchsbaum overstated the projected growth of jobs and in cities because he failed to take into account the fact that many communities would designate centers where growth would occur. Such policies, he added, would ensure that plan implementation would not lead to people and jobs fleeing to other states.<sup>36</sup>

More significantly (and in seeming contradiction to Burchell's working assumption that the plan would be fully implemented), the commission emphasized that the plan was purely advisory, "not a regulation but a policy guide for State, regional and local agencies to use when they exercise their delegated authority."<sup>37</sup> The commission added that while it

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<sup>34</sup> See Center for Urban Policy Research (1992).

<sup>35</sup> Buchsbaum, 1992, p. 258. See also Newton (1993).

<sup>36</sup> Burchell, 1992, p. 259-260.

<sup>37</sup> New Jersey State Planning Commission (1992).

**Table 5: Projected Impacts**

	<b>Trend Development</b>	<b>Planned Development</b>	<b>Difference</b>	<b>Percent Difference</b>
<i>Population Growth (persons)</i>	520,012	520,012	0	0%
<i>Household Growth (households)</i>	431,000	431,000	0	0%
<i>Employment Growth (employees)</i>	653,600	653,600	0	0%
<i>Infrastructure (all figures in millions of 1990 dollars)</i>				
Roads				
Local	\$2,197	\$1,630	\$567	25.8%
State	\$727	\$595	\$132	18.2%
Total Roads	\$2,924	\$2,225	\$699	23.9%
Water	\$634	\$550	\$84	13.2%
Sewer	\$6,790	\$6,313	\$477	7.0%
Total Utilities	\$7,424	\$6,863	\$561	7.6%
<i>Land Consumption</i>				
Overall land (acres)	292,079	117,607	174,472	59.7%
Frail lands (acres)	36,482	6,139	30,343	83.2%
Agricultural lands (acres)	108,000	66,000	42,000	38.9%
<i>House Prices</i>				
Median Cost per Unit (1990 \$)	\$172,567	\$162,162	10,405	6.0%

*Source: Burchell and Listokin as cited by Diamond and Noonan (1995)*

hoped that state agencies would incorporate the plan's recommendations into their own plans and regulations, it well understood that the first priority for state agencies had to be

consistency with statutory mandates. Consequently, state agencies could use the plan only if they sought authorization via either legislation or formal rule-making procedures.<sup>38</sup> After intense negotiations with agricultural interests, the final plan also specified that property owners negatively affected by the plan should be compensated for their losses.

With most opposition defused by such assurances, the Republican legislative leadership killed the bill requiring legislative approval of the plan. In the interim the State Planning Commission unanimously adopted the plan in June 1992 amidst widespread praise.

<sup>38</sup> New Jersey State Planning Commission (1992).

The League of Municipalities' Jack Trafford, for example, enthused that the plan "was a remarkable achievement" and represented the will of the people."<sup>39</sup> Judith Innes, a planning professor at the University of California at Berkeley, commented that final plan adoption was "eloquent testimony to the success of [the] consensual model of state planning."<sup>40</sup> On the other hand, Buchsbaum asserted:

Clearly, over five years, New Jersey developed a planning process that deeply involved local government, the commission itself, and some segments of the private sector. The non-directive, cross-acceptance process of comparing and adjusting local, state, and county planning is unique to New Jersey. The state's planning procedure and coordination has thus been strengthened. However, the outcome of the process -- and whether it will really will change New Jersey -- remains very much in doubt. In five more years, the New Jersey chapter in a book [on state planning] may be as long and as filled with cases as the Oregon or Florida chapters; yet New Jersey's contribution to the literature of the state planning movement could equally as well shrink. Only time will tell.<sup>41</sup>

### **Implementing the Plan**

Florio, who had never fully recovered his popularity following enactment of his 1990 tax program, and who faced a difficult reelection campaign in 1993, generally supported the plan as consistent with his own policies. Carl Van Horn, Florio's chief policy advisor, claimed that the administration had been "implementing parts of the plan before it was adopted" through measures such as increased investment in transit, the new school-aid program, and a proposal to tighten development controls in environmentally sensitive areas along the New Jersey shore. Thomas Downs, who served as DOT secretary under Florio, also said that his department used the various drafts of the plan in arriving at some of its capital budgeting and regulatory decisions, most notably in discussions of the circumstances in which property owners should be granted curb cuts onto non-limited-access state roads.

Given that the Republican-controlled legislature -- which cut the Office of State Planning's budget in half in FY 1993 and in half again in FY 1994 -- was hostile to the plan, Florio decided to proceed cautiously, merely asking state agencies to report to him on how the plan should be implemented. In the context of Florio's general support, key agencies and the planning commission negotiated a series of agreements on use of the state plan. DOT and the commission agreed in June 1993, for example, that they would "establish policies to facilitate the development of 'centers' and to encourage development in ways consistent" with the plan. DOT and DEP, moreover, agreed that they would use the plan's demographic projections as a basis for preparing transportation and air quality analyses required by the federal Clean Air Act Amendments of 1990. DOT cautioned, though, that

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<sup>39</sup> Innes (1992).

<sup>40</sup> Innes (1992).

<sup>41</sup> Buchsbaum (1993).

its actions had to be guided first and foremost by its federal and state statutory mandates.<sup>42</sup> Finally, the state's Council on Affordable Housing, which establishes communities' affordable housing responsibilities, agreed to use the plan's demographic projections in allocating future "fair-share" housing responsibilities, a policy that for the first time would assign some responsibility for affordable housing to rural areas. (Since the previous state plan had designated those areas as "no-growth" areas, they previously had no official responsibility to provide affordable housing.)

In a 1996 interview, Florio contended that if he had been reelected he would have used the plan more aggressively in his second term as a way to prioritize infrastructure investments and as a guide to regulatory decision-making, though without usurping local zoning powers. He added, however, that the effects of the plan on his policies in a second administration would have been relatively minor. The plan was simply "an additional tool," he opined, adding, "you don't have to have a state plan to argue for some minimum degree of rationality and coordination." What the plan does, he continued, is offer "one more means of trying to focus attention" on key issues such as urban revitalization. "The plan," he concluded, "was an intellectual structuring" for a variety of decisions the governor and key officials had to make.

### **New Governor, Old Debates**

Christine Todd Whitman, who narrowly defeated Florio in 1993, generally supported the state plan, but the centerpiece of her campaign was a promise of dramatic tax cuts. In keeping with this approach, during her first two years in office she said relatively little about planning. She did restore funding for the Office of State Planning to its FY 1992 level (after targeting it for virtual elimination in her first budget proposal). In general, however, her focus was on cutting taxes, encouraging economic growth, and regulatory reform.

Whitman -- who proclaimed that the state was "open for business" in her inaugural address -- maintained that she intended to focus on environmental results with fewer procedural hassles. Many environmentalists claimed, however, that deep budget cuts for environmental regulation, combined with an emphasis on attracting business investment, were undermining the state's longstanding efforts to protect the environment. Consequently a coalition of 20 state environmental groups issued a "Green Plan" for New Jersey in mid-1995, calling upon Whitman -- who in her previous public posts as president of the state's Board of Public Utilities and director of a board of freeholders in a rapidly-growing county in central New Jersey had garnered a reputation as a moderate environmentalist -- to take a more activist stance on environmental issues. Among other things, they urged Whitman to require state agencies plan and act in consistency with the state plan.<sup>43</sup> Whitman responded in late 1995 by informing her Cabinet members and the media that she supported the plan and asking the former to prepare reports on how they were implementing it. She also

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<sup>42</sup> New Jersey Department of Transportation (1993).

<sup>43</sup> American Littoral Society, et. al. (1995).

delivered a well-publicized speech before the planning commission in February 1996, stating: "Your plan is the map to a sustainable New Jersey."<sup>44</sup>

Whitman declined, however, to seek mandatory local compliance with the plan. Jane Kenny, who served as Whitman's chief policy advisor until early 1996, when she became the state's commissioner of community affairs, explained:

In this state, if you try to ram something down somebody's throat you are going to get legislation saying you can't do that.... So if we tell municipalities and people of this state that this is a document they have to obey, we are not going to have a planning process.

In keeping with this philosophy, in 1996 and 1997 when the commission, as required by law, began drafting a new plan, they did not seek to impose mandatory compliance on localities. The decision not to seek mandatory compliance disappointed several environmental groups, which mounted a petition effort to make the plan's recommendations binding on localities and state government. In the words of the Audubon Society's Bill Neil, "the voluntary people have had their day. They've had a model out there for five years and it hasn't worked."<sup>45</sup> Not surprisingly, municipal representatives on the planning commission, the state's League of Municipalities, builders associations and farm groups, strongly and successfully opposed these efforts and a preliminary draft plan issued in mid 1997 did not call for such compliance.

Instead of mandatory local compliance, the Whitman administration decided to seek plan compliance by raising the plan's profile and offering communities that complied with the plan financial incentives and expedited processing of state permits. According to Kenny:

What I'm talking about is a cultural change. That's what a leader like the governor can do. The governor has a limited amount of time. There are a zillion demands on that limited time. So basically you can focus on a few priorities. If her priorities are on an issue like encouraging good land use policy, caring about rebuilding cities, and providing the technical and financial resources to do that ... then you are going to effect positive change.

In keeping with this approach, the State Planning Commission established a process to certify that local master plans would create centers as envisioned by the state plan. Communities that received this certification, along with eight cities identified in the plan, would be eligible for priority assistance from the state's discretionary funding programs. By late 1996 23 of the state's more than 500 communities had sought and received this designation. None of those seeking such designation, however, made substantial changes to

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<sup>44</sup> Whitman (1996).

<sup>45</sup> *New York Times*, May 4, 1997, Section 13NJ, p. 8.

their plans (though several made minor changes in response to concerns expressed by the commission).

For their part, key state agencies gave communities modest credit for complying with the state plan. The state DOT, for example, altered its scoring system for capital projects to give 10 percent credit for projects that benefited designated centers, distressed municipalities, or urban areas. In addition, DOT set aside about \$1 million (in an annual budget of more than \$1 billion) to fund small projects in communities designated as "centers" by the state plan.<sup>46</sup> Similarly, DEP began using plan consistency as one of its criteria in scoring local requests for funds from the state's wastewater treatment financing program and its "Green Acres" open space purchase program.<sup>47</sup>

Many plan supporters contended, however, that these were merely cosmetic changes. The Tri-State Transportation Campaign, a regional coalition of environmental groups, for example, criticized the state DOT for a five-year capital plan that spent 32 percent of available highway funds on capacity expansion projects, many of them in areas where the plan aimed to prevent sprawl. This was double what New York and Connecticut devoted to such projects and a higher percentage than in 20 other states. Observing such policies, former State Planning Commissioner Candace Ashmun (an ardent environmentalist who Whitman did not reappoint to the State Planning Commission)<sup>48</sup> commented: "The governor is saying and thinking all the right things. But in the meantime the builders are doing their thing with cabinet members."

Key legislators, however, explicitly warned the governor not to make more significant use of the plan in allocating capital funds. State Senator Robert Littell, a rural Republican who chaired the Budget and Appropriations Committee, for example warned that any effort to reallocate infrastructure funding from rural to urban areas "isn't going to happen. We [in rural areas] pay our fair share in taxes. We intend to get our fair share back. If we don't, our constituents will throw us out of office."

### **Regulatory Implementation**

On the regulatory front, an early controversy involved COAH, which in 1995 had issued new rules stating that it generally would not approve new local affordable housing plans requiring substantial construction in areas where the state plan discouraged new development. Towns that sought such development had to ask the state planning commission to designate the proposed sites as a new "center," or obtain a waiver from the planning commission.

In early 1996 this policy was tested when officials in Hillsborough, a fast-growing town in central New Jersey, asked COAH to rule that the inclusion of 450 affordable units in a proposed 3,000-unit elderly housing development would satisfy its Mt. Laurel

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<sup>46</sup> New Jersey Department of Transportation (1995b). See also New Jersey Department of Transportation (1995a).

<sup>47</sup> New Jersey Department of Environmental Protection. (1995).

<sup>48</sup> Whitman did however, reappoint Ashmun to the Pinelands Commission.

requirement. Local elected officials strongly backed this development proposal, viewing elderly housing as a land use that would generate significantly more in tax revenues than the cost of local services it would need. In addition, since the proposed site was in a remote part of town, the officials believed the project could be built without creating unacceptable traffic or visual impacts. About 95 percent of the site, however, was on land that the state plan classified as environmentally sensitive, and thus unsuitable for development.

Environmentalists and plan supporters bitterly opposed the proposed plan as did some Hillsborough residents who felt the proposed development was not in keeping with the town's generally rural character. Despite these protests, the State Planning Commission granted a waiver on the ground that some of the site was in areas where the plan encouraged growth. In response, New Jersey Future, a coalition of plan supporters, sued to overturn the planning commission and COAH decisions as not in keeping with the state plan.

To further complicate matters, local officials (who now included a project opponent) did not apply to the state's Department of Environmental Protection for a permit to extend a sewer line to the site. The lack of a sewer permit convinced COAH that the town was not planning to proceed with the project. In early 1998 the court remanded the issue to COAH, which ultimately withdrew its certification on the ground that the town had no intention of pursuing the project.<sup>49</sup>

A second controversy involved DEP Commissioner Robert Shinn, who in mid 1996 issued an administrative order telling DEP's assistant commissioners to make the policies and regulations that guide their respective programs consistent with the state plan "to the extent permitted by law."<sup>50</sup> Not long after Shinn issued this order, DEP officials requested that several localities and counties applying for DEP permits explain how the projects and plans in question related to the state plan. Convinced that the order and the requests showed that DEP was planning to implement the state plan via its regulatory authority, the New Jersey Builders Association sued to overturn Shinn's order on the ground that he had illegally established new DEP rules without following proper administrative procedures.

In the ensuing court case, Shinn contended that his subordinates' requests were inappropriate and that his order was merely an intra-agency communication designed to encourage DEP officials to use the plan's concepts in formal rulemaking procedures, not in assessing particular permit requests. In 1997, a state superior court accepted this explanation and upheld Shinn's action as appropriate.<sup>51</sup>

Plan advocates, such as New Jersey Future, believed that the court ruling allowed DEP to take steps such as banning sewer extensions in areas where the plan discouraged

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<sup>49</sup> For more on this dispute see various issues of New Jersey Future's newsletter, which are available on the World Wide Web at [www.njfuture.org](http://www.njfuture.org).

<sup>50</sup> New Jersey Department of Environmental Protection (1996).

<sup>51</sup> See *New Jersey Builders Association v. New Jersey DEP*, N.J. Super. Lexis 486. See also *The Beattystown Community Council v. The Department Of Environmental Protection, Green Eagle Property Resources Limited Partnership, And Township Of Mansfield*, 1998 N.J. Super. Lexis 290.

growth, if the agency followed official procedures in drafting such new rules. In fact, during the court case DEP officials indicated that they were seriously considering such a policy.

Plan skeptics, however, warned that they would fight such efforts to implement the plan via agency regulations. Senator Littell, for example, warned in late 1996 that:

The law is clear. ... Planning and zoning remain the purview of the municipal governing bodies ... and that hasn't been changed.

One of the judges who heard the lawsuit challenging Shinn's administrative order echoed this warning in a separate concurring opinion, writing: "if we are to have state planning rather than local planning, let the Legislature say so and let the political process proceed in due course. The Legislature, however, has never imposed state planning except in certain defined areas...."<sup>52</sup>

Such warnings created a quandary for Whitman as she approached the end of her first term. On the one hand, she supported most of the plan's general goals, such as protecting environmentally sensitive areas and revitalizing cities. The public, moreover, seemed to support many of the plan's goals. A 1993 Star Ledger/Eagleton Institute poll, example, found that 64 percent favored maintaining strict anti-pollution laws even if this might discourage the growth of jobs and industry.<sup>53</sup> On the other hand, most new economic activity in New Jersey was occurring, contrary to the plan, in suburban and suburbanizing locales. Vigorous plan implementation, therefore, would run counter to Governor Whitman's policies of facilitating growth and deferring to private investors on where it should go.

Like her predecessors, therefore, Whitman was trying to find a middle course, supportive of the concept of state planning but remote from the debates about plan implementation. For three reasons, however, this course was becoming increasingly difficult. First, since the plan was in place, state agencies were being challenged to act on its recommendations. Second, the State Planning Commission had to update the plan and, in doing so, reexamine implementation issues. Third, in early 1997 the state's Supreme Court -- which in 1994 had rejected the state's school funding plan -- ordered Whitman to develop a new plan to equalize school spending per child statewide,<sup>54</sup> a challenge that spilled over into land use policy because property taxes provide substantial support for many schools, particularly in suburban areas. (In FY 1995, for example, localities provided 61 percent of all school funding; the state provided about 37 percent; and the federal government provided 2 percent.)<sup>55</sup>

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<sup>52</sup> New Jersey Builders Association v. New Jersey DEP, N.J. Super. Lexis 486

<sup>53</sup> Goldshore and Wolf (1993).

<sup>54</sup> Abbott et. al. v. Burke 141 Supreme Court of New Jersey, 149 N.J. 145; 693 A.2d 417; 1997 N.J. LEXIS 141. For the 1994 decision see Supreme Court of New Jersey, 136 N.J. 444; 643 A.2d 575; 1994 N.J. LEXIS 624.

<sup>55</sup> Figures from the New Jersey Department of Education

In deciding how to address these issues, Whitman, who was running for reelection in 1997, had to face some difficult choices about whether -- and if so how -- to amend and use the state plan. State planning was a not a significant issue in that race which Whitman narrowly won.

Somewhat surprisingly, Whitman used her second-term inaugural address to ardently embrace the state's land use plan. Specifically, she said:

Every part of New Jersey suffers when we plan haphazardly. Sprawl eats up our open space. It creates traffic jams that boggle the mind and pollute the air. Sprawl can make one feel downright claustrophobic about our future. Fortunately, New Jersey has a strategy to deal with these problems. It's called the State Plan -- a blueprint for redeveloping cities, relieving congestion and containing sprawl. These are goals we all want for New Jersey.<sup>56</sup>

Whitman's speech -- which also called for significantly increased state spending on transportation, open space, and urban revitalization -- was a marked departure from her first term when she was best known for securing massive tax cuts. The change in Whitman's priorities reflected several factors, according to Mark Magyar, a long-time journalist and one-time Whitman aide, who now heads the state's non-partisan Center for the Analysis of Public Issues. First, she now felt able to return to the policies and priorities she had backed before seizing the tax-cutting mantle in her 1991 gubernatorial campaign. (At that time, she was trailing in the polls and the state was mired in a particularly deep recession.) Second, environmental issues, particularly open space preservation, appeared to be popular with the state's voters, particularly as New Jersey's economic situation improved in the mid-1990s. Finally, Whitman, who greatly enjoyed the outdoors, was personally excited by policies that preserved open space.<sup>57</sup>

The governor's embrace of the plan, however, was not universally popular. After Whitman's speech, for example, Assembly Majority Leader Paul DiGaetano (who like Whitman is a Republican) warned that legislature would oppose any efforts to impose the state plan on localities.<sup>58</sup> Similarly, officials with the state's influential League of Municipalities and its powerful builders association vowed to fight any efforts to impose the plan's requirements on localities. Whitman, however, had no such intent. Reiterating her first-term stance against mandatory local compliance with the plan, she stated in April 1998

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<sup>56</sup> Whitman (1998a). Whitman also endorsed legislation allowing towns to control the pace of development and called on an already appointed property tax commission to recommend ways that towns could avoid the chase for development projects that would provide more in revenues than they demanded in services.

<sup>57</sup> Unless otherwise indicated all quotations are from interviews done by the author in October 1998. For a similar, but slightly different analysis, see Goodman (1998).

<sup>58</sup> Zolper (1998).

that "the State Plan is a document that's not designed to hurt anybody, not designed to take anything away, not designed as an artificial roadblock in anybody's way."<sup>59</sup>

In contrast, Whitman continued to encourage state agencies to use the state plan as a guide themselves -- even if the result is some conflict with local plans. The most important test of this policy seems likely to involve the state's Department of Environmental Protection, which as of late 1998 was drafting regulations to ban sewer line extensions into areas where the state plan discouraged intensive new development. DEP was also planning to rely on the state plan in drafting new regulations governing development in coastal areas (about 20 percent of the state), which under a separate state law are subject to particularly stringent state oversight. Additionally, the state's Department of Community Affairs, has convened and is providing staff for an ad hoc committee of senior officials from several state agencies who are meeting to discuss plan implementation.

Whitman administration officials, however, explicitly denied that they intend to use the regulatory process to impose the plan on unwilling localities. In mid-1998, Whitman proposed moving the Office of State Planning from the Treasury Department to DCA. Both the New Jersey Builders Association and the state's League of Municipalities objected on the ground that DCA might use its substantial regulatory powers to force localities to comply with the state plan. In response to such concerns, recalled Bill Dressel, executive director of the League of Municipalities, senior administration officials called to give "every assurance that this move would not in any way be used as a hammer mandating consistency with \*the State Plan."<sup>60</sup>

DCA Deputy Commissioner Steve Sasala, who is overseeing DCA's efforts to coordinate plan implementation by all state agencies, conceded that "there's a fine line" between imposing the plan on localities and seriously using it in agency decision-making. He said, for example, that in his view state agencies could use the plan when they believe unconstrained local actions will create long-term financial demands on state agencies. State Planning Director Herbert Simmens added that this issue is still unresolved and is likely to result in "a fight to the finish," in the legislature and the courts.

## Capital Funding

In addition to incorporating plan concepts into agency regulations, the Whitman administration has tried to link the plan with state capital spending programs. Most notably, in April 1998, Whitman proposed tax increases to fund a \$200 million a year increase in transportation spending and a \$1.8 billion, 10-year program to purchase one million acres of open space.

To fund the transportation initiative Whitman proposed a 5 cent/gallon hike in the state's 14 cent/gallon gas tax, a move that would have raised about \$210 million a year. To fund the open space plan she proposed two new taxes: an additional 2 cent/gallon gas tax

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<sup>59</sup> Tedeschi (1998a). In keeping with this policy, a new preliminary state plan issued in mid-1997 did not call for mandatory local compliance with its recommendations.

<sup>60</sup> Tedeschi (1998b).

hike, which would have raised about \$84 million a year and a new \$3 dollar/day rental-car tax, which would raise \$36 million a year. Whitman also proposed dedicating \$50 million a year from the state's existing real estate transfer tax to open space acquisition.

The transportation portion of initiative was designed to help the state increase its annual spending on transportation projects by about \$200 million a year. The proposed tax, moreover, was designed to forestall a problem in the year 2000 when the annual payments on bonds issued to fund transportation improvements in Whitman's first term would otherwise exceed revenues from the gas tax devoted to transportation.

The open space initiative was designed to preserve one million acres of open space, about half the remaining undeveloped land in the state (whose land mass only totals 5 million acres). This would double the amount of land that the state has preserved since it began buying open space in the early 1960s. Under the plan, about half the land would be farmland where the state would only purchase development rights only. Another 200,000 acres would be open space for recreation; 100,000 acres would be for watershed protection; and 200,000 acres would be for greenways, trails, and corridors.<sup>61</sup> These goals, it bears mention, did not appear in the state plan. State Planning Director Herbert Simmens, however, said that the acquisition of such space is consistent with the plan because it will help prevent sprawling development in rural areas.

Similarly, Whitman claimed that "before we undertake any [transportation] project, we will make sure it jibes with our State Plan."<sup>62</sup> This policy and related efforts to direct state capital funds in furtherance of the plan has, needless to say, generated some controversy. Most notably, in June 1998 State Senator Littell, a longtime plan critic, inserted a provision in the state budget making it illegal for state agencies to withhold money from municipalities for capital projects that are inconsistent with the state plan. Whitman used her line-item veto to strike this item and the legislature did not move to override her decision.

The funding increase for transportation, moreover, ran into several other problems. Environmentalists opposed the provisions because they strongly disagreed with DOT officials on exactly how to judge whether state highway plans are consistent with the state plan. The Tri-State Transportation Campaign, a coalition of environmental groups, for example, calculated that DOT was spending about 38 percent of available highway funds on capacity expansion projects, many of them in less developed areas where the state plan discourages sprawl development.<sup>63</sup> Environmentalists said they would only support the new transportation funding if it were linked to an explicit, legally binding pledge to use most the available money for maintenance, transit, bikeways and pedestrian amenities.

State DOT officials rejected this proposal, claiming that highway capacity additions in rural areas not only are necessary to alleviate congestion and improve safety but also are

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<sup>61</sup> For more on the open space initiative, see; <http://www.state.nj.us/events/openspace/>; see also, Tedeschi (1998d) and Florio (1998).

<sup>62</sup> Whitman (1998b).

<sup>63</sup> Tri-State Transportation Campaign, (1998).

consistent with other state plan goals, such as encouraging economic development. DOT, moreover, maintained that it can discourage sprawl if it builds only limited-access highways in areas where the state plan tries to limit new growth.<sup>64</sup> (The apparent logic is that, rather than encouraging strip development, limited-access highways would concentrate new development at key interchanges.)

Meanwhile, the transportation plan was not particularly popular with Republican members of the state legislature who feared voter backlash against gas hikes that would have been imposed in 1999, when the legislators were up for reelection. Consequently, Republican legislators refused to support the gas tax hike unless Democratic legislators agreed to support the hike as well. In return for such support, however, Democratic legislators asked Whitman to drop her plans to privatize as many as 900 state jobs and to restore cuts in the state's popular discount prescription drug program for low-income seniors and disabled. When she refused, the Democrats would not support the gas tax hike and Republicans declined to put the gas tax hike before the voters.<sup>65</sup>

The open space initiative also ran into problems in the legislature. Transportation interests opposed using the gas tax for open-space acquisition and some legislators feared voter backlash. Consequently, the Whitman administration and legislature, agreed on an alternative \$1.725 billion plan that called for borrowing \$1 billion over the next decade for open space acquisition, dedicating \$450 million sales tax revenues to open space purchases for ten years (and then using the sales tax revenues to pay back the open space bonds), and using \$230 million in repayments from earlier open space loans, and \$50 million already budgeted for open space acquisition in FY 99. In November 1998 the state's voters overwhelmingly approved the plan.

### **Logistical Hurdles**

Even where agencies are willing and able to help implement the plan, its meaning is not entirely clear. Illustratively, some advocates for affordable housing have expressed concern that more active use of the state plan could allow suburban and rural communities to shirk their Mt. Laurel responsibilities to provide affordable housing.<sup>66</sup>

In addition, implementing the plan via state agency actions may not lead to the concentrated, mixed-use developments that state planners hope to encourage. Simmens, for example, noted that even if the state DOT builds limited access roads in rural areas, the agency has no power to prevent the development of strip malls near key interchanges. Similarly, he observed that banning new sewer lines in areas where the plan wants to discourage sprawl does nothing to prevent developers from building homes served by septic systems in those areas.

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<sup>64</sup> New Jersey State Department of Transportation (1998).

<sup>65</sup> (See Tedeschi, 1998c).

<sup>66</sup> See, for example, Carr (1998) and Myers (1998).

Nor can state agencies control the design of projects built on sites where the plan encourages new development. In mid 1998 Merrill Lynch proposed building a \$400 million, 1.2 million square foot new campus on a suburban site where the state plan encouraged development (because the land was near both a major highway interchange and a regional airport). While state planners were pleased to see the site developed, Simmens said they were disappointed that Merrill Lynch's plan did not call for mixed-use development of the site. At present, however, there are no mechanisms to force developers to build such projects, he noted.

Finally, Patrick O'Keefe, executive director of the state builders' association has asserted that any effort to seriously implement the state plan will fail because the plan ignores economic realities. The recent history of development in New Jersey, he argued, shows that most businesses and homeowners want to locate in the suburbs, not older urban areas. If the state does not allow such development to occur, significant numbers of companies and residents will move to suburban locales in other states.

### **Summary**

In short, efforts to make greater use of the state plan still face important obstacles. If state agencies persist in their currently stated intention to be guided by the plan, and if the state actually purchases one million acres of environmentally sensitive open space over the next ten years, the plan will certainly have exerted major influence -- even if localities remain legally free to ignore it. It remains to be seen, however, whether Governor Whitman will support state agency actions that generate substantial opposition. And even if she does, she still will have to overcome powerful forces opposed to making greater use of the state plan.

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