Administrative Actions for the Interagency Partnership for Sustainable Communities

Policy Recommendations prepared by

Smart Growth America
Better Choices For Our Communities

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- **Top Smart Location Criteria**
- **Full List of Smart Location Criteria**
“[W]e’re also going to take a hard look at how Washington helps or hinders our cities and metro areas -- from infrastructure to transportation; from housing to energy; from sustainable development to education. And we’re going to make sure federal policies aren’t hostile to good ideas or best practices on the local levels. We’re going to put an end to throwing money at what doesn’t work – and we’re going to start investing in what does work and make sure that we’re encouraging that.

...And that’s why we’ve created a new interagency partnership on sustainable communities, led by Shaun Donovan, as well as Ray LaHood and Lisa Jackson. And by working together, their agencies can make sure that when it comes to development – housing, transportation, energy efficiency – these things aren’t mutually exclusive; they go hand in hand.”

- President Barack Obama, July 13, 2009

When the Obama Administration announced the Interagency Partnership for Sustainable Communities, it redefined the landscape for federal policy to reflect the challenges and solutions of the 21st century, rather than the silos and conflicts of the past. This partnership links the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of Transportation (DOT) and the U.S. Environmental Protection Agency (EPA) in unprecedented coordination of federal programs.

Secretaries Shaun Donovan and Ray LaHood and Administrator Lisa Jackson have wasted no time affirming their commitment to the partnership and sending the message that this initiative will have teeth. During the joint Sustainable Communities tour, EPA announced the selection of four communities that will receive Smart Growth Implementation Program technical assistance grants, which will be coordinated for the first time with HUD and DOT on housing and transportation issues. Senator Dodd’s proposed legislation, the Livable Communities Act (S. 1619), would advance the joint priorities of the agencies through Comprehensive Planning Grant and Challenge Grant programs and a new Office of Sustainable Housing and Communities.

These new initiatives are important steps for the nascent partnership, but the agencies cannot overlook the opportunities for advancing sustainability in existing federal programs, especially in cases where the Secretary or Administrator has discretionary authority. This is the rationale behind for Smart Growth America’s Administrative Recommendations.

2 On June 16, 2009, in testimony before the Senate Banking Committee, Secretaries Shaun Donovan (HUD) and Ray LaHood (DOT) and EPA Administrator Lisa Jackson announced a formal inter-agency partnership that would support a set of six shared principles and improve coordination in housing, transportation and environmental investments. HUD and DOT have previously announced an agreement at a March 2009 House Appropriations Committee hearing to harmonize housing and transportation programs, but the inclusion of EPA formalized the initiative and provided a course of action and guiding principles. Senator Dodd concurrently introduced legislation (The Livable Communities Act, S. 1619) that would support the Partnership through a central Office of Sustainable Housing and Communities within HUD and two grant programs for better integration of housing, transportation and environmental policy at the regional and local levels.
In the wake of the announcement of the Partnership, many organizations compiled resources and policy recommendations that would help identify priorities for the three agencies and support future initiatives. Smart Growth America aims to complement the work that groups like Reconnecting America, the Surface Transportation Policy Partnership and Project for Public Spaces have done by honing in on specific agency practices.

The scope of our work is focused on administrative actions that can be executed in the short-term to advance sustainability within the framework of existing federal programs. Our recommendations are presented by agency, with a set of overarching location-efficiency criteria that essentially puts the six Livability Principles into practice as conditions for all funding decisions.

We conducted interviews with national policy experts and local implementers of federal funding programs to identify barriers to smart growth and opportunities for improvement. Common themes emerged from these conversations:

- **Greater Flexibility:**

  On-the-ground administrators of federal programs need greater flexibility and creativity in the ways federal dollars are spent. Local partners often encountered barriers to using funds in a way that would have achieved the goals of the program simply because of rigid regulatory language or outdated guidance. Examples of our recommendations to expand flexibility include:

  o **EPA:** Use the flexibility inherent in the statute to allow EPA Assessment grants to be used for area-wide planning activities, and create a pilot program that would provide grants to conduct planning, economic analysis, and market studies to inform an area-wide approach to brownfields redevelopment.

  o **HUD:** Promote and support small population jurisdictions (50,000 and below) to form regional consortia to submit collaborative Consolidated Plans: Working together, localities can designate the best locations for recipients even outside their own immediate borders within a regional context, eliminating duplication of some services while increasing access to the most diverse combination of opportunities for clients.

  o **DOT:** Begin work of rulemaking for inter-agency self-certification program, similar to that used by FTA with local transit providers, which would allow local entities to certify small street projects.

- **Improved Technical Assistance**

  The agencies need to ensure that regional, state and local practices are consistent with the new federal focus on livable communities. The federal government can support integrated planning initiatives by improving technical assistance, providing trainings on sustainability best practices and explaining how the new Partnership will affect existing programs. Recommendations for enhanced technical assistance include:

  o **HUD:** Use existing HUD Resources to provide training and technical assistance on smart growth best practices to Housing Authority Managers through a) additional support for the Public Housing Environmental and Conservation Clearinghouse, b) preparing
PowerPoint training similar to HUD’s Leadership Development Program and/or c) sponsoring conferences on smart growth best practices targeted at housing authority managers

- **EPA:** Develop the tools, data and analytical capability to achieve accurate tracking of transportation system GHG performance. Provide guidance, planning support and technical assistance to help states and localities set and meet GHG reduction targets via improved accessibility, increased travel choices and enhanced system efficiency.

- **DOT:** Appoint a Task Force on National Transportation Objectives to develop a vision statement and performance metrics for the surface transportation program, while concurrently beginning data collection on a series of transportation-related measures included in this memo.

**Enforcement and Transparency**

HUD, DOT and EPA should recognize their ability to achieve sustainability goals through existing authority. Even in the case of mandatory funding programs such as EPA’s State Revolving Funds or DOT’s transit formula grants, the agencies can influence the outcome through guidance to states and grant recipients on how the funds are used. Additionally, the agencies should strengthen enforcement and oversight measures. Our research identified key areas where agency authority can be exerted or strengthened:

- **EPA:** Develop and enforce clearer antidegradation policy requirements to ensure that states are protecting existing water quality using existing agency authority to review state antidegradation plans.

- **DOT:** Require additional reporting from State DOTs and MPOs on transportation funding decisions and outcomes with the stated objective of achieving transparency of and convenient public access to information about the use of federal surface transportation funding.

- **HUD:** Implement additional Consolidated Plan reporting criteria on a pilot basis, focusing on analysis of sustainability elements appropriate to local conditions within entitlement jurisdictions.

**Improved Coordination**

The Partnership should follow through on the agencies’ commitment to work together by coordinating processes for distributing funds where appropriate. Each agency should also streamline application processes and improve guidance for applying for federal funds.

- Create a HUD/EPA Grants and Process Working Group to see how the application and reporting processes for HUD and EPA brownfields funding could be coordinated and streamlined. Consider bringing representatives from USDA, EDA, and other agencies that administer brownfields funding into this working group as well.

- The Office of Sustainable Communities should convene an inter-agency team including EPA, DOT and third-party experts in the field to create additional Consolidated Plan reporting data criteria, focusing on analysis of sustainability elements appropriate to local conditions within entitlement jurisdictions, and implement initially on a pilot basis, to evaluate the impacts to programs if those criteria were adopted.
Smart Growth America’s goal for this project was to identify immediate steps the agencies can take towards the vision that President Obama outlined. We are confident that leaders Donovan, LaHood and Jackson will make this a meaningful and sustained initiative, and we are prepared to support the Partnership for Sustainable Communities as they move forward.

**Partnership for Sustainable Communities Livability Principles:**

1. Provide more transportation choices.
2. Promote equitable, affordable housing.
3. Enhance economic competitiveness.
4. Support existing communities.
5. Coordinate and leverage federal policies and investment.
Sustainability Criteria to Guide Federal Investments

Recommendation

Develop sustainability criteria to be applied across the discretionary grant programs of HUD, EPA, and DOT, score each application for funding based on a scorecard incorporating these criteria, and use performance on the scorecard in making funding decisions.

Status quo:

The agencies that comprise the Sustainable Communities Partnership have adopted six Livability Principles intended to guide their decision-making processes. These principles are too general, however, to serve as criteria for particular grant applications. As such, the adoption of these principles by the agencies is unlikely to lead to significant policy changes at the local and regional level. It is our understanding that the agencies are already beginning to collaborate informally on cross-agency review of grant applications, for example for the TIGER grants. Creating a formal process would strengthen this collaboration.

Proposed change:

Building on the cooperation that has already been developed since the announcement of the Sustainable Communities Partnership in June, HUD, DOT, and EPA can take a lead in breaking down the silos between agencies by coordinating distribution of discretionary grant funding across agencies. As evidenced by the level of interest in and quality of projects submitted for the TIGER grant program, discretionary funding can effectively be used to spur innovative and sustainable projects at the state, regional, and local level.

HUD, EPA, and DOT should establish a cross-agency task force to guide the coordination of discretionary funding. First, the task force should create an inventory of all discretionary funding available to the agencies, i.e. any funding to which the agencies can attach criteria without legislative action. Within this inventory, the task force should identify those programs that could assist the agency in fulfilling the Livability Principles. In other words, not all discretionary funding within these three agencies will necessarily be appropriate for pooling as described here. Second, once the programs to be pooled have been identified, the task force should develop one or more sets of grant criteria to apply to these grant programs based on the Partnership’s Livability Principles. Third, the task force should develop

3 Partnership for Sustainable Communities Livability Principles:

- Provide more transportation choices.
- Promote equitable, affordable housing.
- Enhance economic competitiveness.
- Support existing communities.
- Coordinate and leverage federal policies and investment.
- Value communities and neighborhoods.
a joint scorecard incorporating these criteria. The scorecard, which would be filled out by each applicant for the relevant federal funds, would enable easier comparisons between applicants and increase the transparency of the process.

It may be necessary to create multiple scorecards for different categories of applicants, e.g. local, regional, state, or non-government. These results of the scorecard(s) might also have to apply differently to different funding sources. For example, performance on the scorecard could account for a certain percentage of each applicant’s score, or it could result in a set number of extra points for an applicant, depending on the process for scoring applications under each program.

Background:

In introducing his Livable Communities Act (S. 1619), Senate Banking Committee Chairman Chris Dodd (D-CT) stated, “Before today, federal policy has often treated transportation, housing and environmental protection as separate issues. But that system of stove-piping simply isn’t working.”4 This sentiment was echoed in an August 2009 White House guidance memo5 to the agencies on developing effective place-based policies for the FY 2011 budget and supporting efforts to “replace traditional activity silos” by “bringing together agencies, White House Offices, stakeholder groups, and communities to integrate human and capital resources, to identify effective place-based policies, and to consider the place impact of each investment.” Applying a single set of sustainability criteria across the discretionary grant programs of all three agencies would be a significant step toward breaking down the silos.

This approach was pioneered in Massachusetts under Governor Mitt Romney with the Commonwealth Capital Fund, which pooled discretionary funding from multiple state agencies and tied funding decisions to local government performance with respect to the state’s sustainable development goals. Local performance was judged using a scorecard that was completed by all municipalities seeking funding. Each community’s score accounted for 30% of the possible application points for any Commonwealth Capital program. The remaining 70% related to the individual purpose of the program in question. Communities were also awarded bonus points for successfully implementing prior year commitments. Although some of the details of the program and the exact list of discretionary funds pooled have changed, the program continues to operate under current Governor Deval Patrick.6

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4 Dodd, Christopher J. Opening statement before the United States Senate Committee on Banking, Housing & Urban Affairs. June 16, 2009.
6 More information about the Commonwealth Capital Fund, including the current (FY10) application and scorecard, is available at http://www.mass.gov/?pageID=gov3subtopic&L=5&L0=Home&L1=Key+Priorities&L2=Job+Creation+%26+Economic+Growth&L3=Clean+Energy+%26+Smart+Growth-Smart+Energy&L4=Commonwealth+Capital&sid=Agov3
Environmental Protection Agency

“It’s difficult to make a pitch for “sustainable communities” to people who live in a place that needs schools...that needs health care...where jobs are few and far between...and where crime is a fact of life. But in fact, all of those things are connected to environmentalism.

...It’s my mission at EPA to broaden this conversation – so that we can build these thriving, sustainable communities in the places where they are needed the most. We need every voice calling for cleaner land, air, and water. We need every voice to ensure that children’s health is protected, and that the green and clean energy jobs are being created in every community. [We] need every voice to join in the fierce urgency of confronting climate change. And we need to keep working to expand opportunity and equality as part of this movement.”

- EPA Administrator Lisa P. Jackson, October 16, 2009

The announcement of the Interagency Partnership for Sustainable Communities between HUD, DOT and EPA heralded new opportunities for coordinated investment of federal dollars to achieve transportation, housing and environmental goals while promoting equitable, sustainable development and addressing the unique challenges facing urban, suburban and rural communities across the country.

Administrator Jackson recognizes the multiple benefits that communities can reap by applying smart growth strategies to achieve mobility, air quality, environmental, economic and energy goals. She has also acknowledged the prolonged absence of federal leadership on environmental issues at regional and local scales.

This is an opportunity for EPA to reevaluate its role in shaping the growth and health of the nation. The agency should improve the implementation of existing programs, embrace new and innovative approaches to smart growth and translate them to the national scale. States and regions have been responsible for creative interpretations of legislative mandates (Region 5’s Supplemental Guidance on using Section 319 funds), progressive stormwater permitting programs (West Virginia’s credit model for MS4 permits), and coordinated discretionary funding (Massachusetts’ Commonwealth Capital Score Program). EPA can and should take the lead as a high-profile, large scale agent of change that can adapt to contemporary challenges by thinking strategically about where to direct investment for the best measurable outcomes.

As we solicited feedback from national, state and local partners on common barriers they encountered using federal programs, several key themes emerged.

- On-the-ground implementers demand flexibility in the application of program funds and clarification on how smart growth strategies can be used to meet program goals and achieve the intent of federal legislation. Specific recommendations include expanding

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8 Ibid.
eligible activities for brownfields funds and encouraging the use of land use strategies to meet air quality goals.

- As implied by the formation of the partnership, better **coordination** of federal funds and initiatives would go a long way towards improved efficiency and effectiveness of federal programs. This includes streamlined application processes, elimination of duplicative requirements and better communication among the offices and agencies. We propose specific recommendations for coordinating the application and reporting for EPA and HUD brownfields programs.

- EPA should develop **consistent and clear priorities** for all programs that comply with the Partnership’s principles. Federal funds should be directed to existing communities and prioritized for maintenance and repair of existing infrastructure, as well as the preservation of pristine land by reusing developed land. The agency should reward the accomplishment of these goals with increased competitiveness for any federal dollars. Specific recommendations include prioritizing Clean Water State Revolving Loan Fund investments for repair and maintenance and ensuring the location efficiency of brownfield investments.

- EPA and other federal agencies should elevate the state of the art with **enhanced technical assistance** and provide the best tools available to states for meeting air and water quality goals. The agency should expand the notion of “tools” in this regard to recognize smart growth and land use planning as cost effective solutions to environmental problems. Specific recommendations include providing tools and training on tracking transportation system greenhouse gas performance.

- Reaffirm EPA’s authority to regulate water and air quality regulations through **improved enforcement**. Specific recommendations include enforcing the Clean Water Act antidegradation policy requirements to ensure that states are protecting existing water quality (and associated quality of life) as a part of sustainable development, and implementing the 2003 guidance for 309 Reviewers and NEPA Compliance Coordinators.

The initial implementation actions will do much to determine the substance and the scope of the sustainable communities partnership. Early and tangible progress is essential to maintain the momentum of the Partnership, and it is in this context that we present the following action items for your consideration.
GENERAL RECOMMENDATIONS

1) EPA should create a bicycle commuter benefits program for agency employees.

Status quo:

In August of 2009 the Government Accountability Office (GAO) issued a decision\(^9\) giving each federal agency the authority to extend their transportation fringe benefits programs to cover bicycle commuters. Agencies may use appropriated funds for commuting subsidies to reimburse employees who regularly commute to work by bicycle. According to the GAO statement, this decision permits agencies to develop a bike-commuter reimbursement plan if they choose, but they are not required to do so. EPA has not yet implemented this benefit.

Proposed change:

EPA should establish a bicycle commuter reimbursement program for the agency’s employees to encourage equal support for bicycle commuting, provide alternatives to driving and measure up to the principles of the Partnership, as well as the provisions of President Obama’s Executive Order 13514\(^10\).

Background:

Bicycle commuting reimbursement was added to the list of qualified transportation fringe benefits covered in Section132 (f) of the Internal Revenue Service Code. The Bicycle Commuter Act passed in the Renewable Energy Tax Credit legislation in 2008. This legislation allows qualified bicycle commuting reimbursement for expenses incurred by employees commuting by bicycle.

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\(^10\) President Obama’s Executive Order 13514 established a strategy for reducing greenhouse gas emissions through Federal agency operations, which includes using alternative fuel vehicles. Bicycles are defined as an alternative fuel vehicle in Sec. 19(c). Moreover, Section 11 of the order requires the General Services Administration to review current policies and practices associated with the use of public transportation and alternative fuel vehicles by Federal personnel and recommend improvements to satisfy the goals of the order. Executive Order 13514 – Federal Leadership in Environmental, Energy, and Economic Performance. Federal Register Volume 74, Number 194. October 8, 2009.
WATER

Infrastructure Investments

1) Direct states to prioritize maintenance and repair of existing wastewater treatment facilities and infrastructure through a broader interpretation of the “first use” requirement in the Clean Water Act (CWA) or when approving state Clean Water State Revolving Fund ranking criteria.

Status quo:

In its implementation of the Clean Water State Revolving Fund (CWSRF) legislation, the EPA interpreted the broad requirement that CWSRF funds “first be used to assure maintenance of progress ... toward compliance with enforceable deadlines, goals and requirements of [the Act]”11 to require only that certain publicly owned treatment works (POTWs) in existence at the time of the 1987 CWA amendments meet secondary treatment standards. Consequently, once all states brought these existing systems into compliance with the secondary treatment standards in the 1990s, this provision of the Act was effectively ignored.12

The absence of regulations or guidance for continued monitoring of existing facilities for the entirety of their maintenance and repair needs allows states to spend federal dollars on new wastewater treatment systems before ensuring their current systems are in a state of good repair, which increases their maintenance backlog.

Proposed change:

EPA should reexamine its prior interpretation of this “first use” requirement and reinterpret the language more broadly (and consistent with the plain meaning) to incorporate the range of compliance issues that currently exist under the Act. The “first use” requirement, if implemented as written, could be used as a powerful tool to direct limited funds to the repair and replacement of existing infrastructure (wastewater treatment facilities, conveyance systems, etc).

EPA should also require state CWSRF project prioritization criteria to include state of good repair requirements for existing infrastructure and explore the ability to ensure that states properly maintain existing systems within the agency’s existing statutory bounds. This could be done by adding additional requirements to the Grant Agreement, as permitted under Section 602(b) of the CWA. For example, EPA could consider extending the applicability of Section 211(a), which directs funding to existing systems or communities.13

Background:

11 Section 601[b][5] of the Clean Water Act (CWA)
13 Under the regulations, at CFR §35.3140, EPA invoked §602(b) to create a new requirement for environmental review for projects that are not “directly” funded by capitalization grants.
The EPA interpreted the SRF “first use” provision in the CWA to require that SRF funds must first be used to ensure that existing wastewater treatment facilities in the National Municipal Policy universe met secondary treatment standards.\(^\text{14}\)

States that met this “first use” requirement may no longer be in compliance with the broader mandate of the CWA that funds be used to ensure that treatment works (as such term is broadly defined in Section 212(2)(A) of the CWA) are moving towards compliance with the Act, and this regulation does not take into account the treatment works built after this time that did not appear on the National Municipal Policy universe list.

2) **EPA should consider whether states include location efficiency criteria and address lifecycle costs of investments when approving state Clean Water SRF ranking criteria in order to promote investment in planned growth areas and protect open space.**

*Status quo:*

The Clean Water SRF provides annual grants to states for wastewater treatment and infrastructure. As implemented, states are required to establish a priority list for eligible projects, however, EPA plays a limited role in determining how projects are selected and prioritized. Moreover, once on the priority list, states need not fund projects in their order of priority. As a result, CWSRF funds often support new construction that encourages sprawl and places additional financial strain on existing systems.

*Proposed change:*

EPA should use its oversight over the CWSRF funding criteria developed at the state level to ensure that future state criteria prioritize needed maintenance and repair of existing systems and infrastructure investments in planned growth areas (prioritizing redevelopment sites and infill sites first and then sites adjacent to existing development) that are fiscally sustainable. EPA could direct funding toward existing infrastructure by reviving the “first use” requirement and adding requirements to the Grant Agreement, as discussed above. EPA might also be able to exercise its right under Section 216 of the CWA to remove specific projects from the priority list that “will not result in compliance with the enforceable requirements of the [CWA]”\(^\text{15}\) (for example, extending trunk lines for sprawl development may result in an increase in non-point discharges that violate an enforceable requirement of the CWA).

EPA should also compile current models for state criteria that prioritize investments based on location into a valuable resource for all state SRF programs. The recently announced pilot project to work with a select group of states on revising SRF criteria is an opportunity for collecting and disseminating best practices.

*Background:*

\(^{14}\) First Use Enforceable Requirements - CWA Title VI, Section 602(b)(5)

\(^{15}\) 40 CFR Part 35, Subpart E (Regulations for the state priority system and project priority list)
Several state programs have provided incentives for directing investments to smart locations (already developed areas, areas set aside for new growth as part of a long-term comprehensive plan, and/or locations that are targeted for infill and redevelopment). These strategies can include adjustments to the project priority weighting systems, voluntary state set-asides, and strategic use of subsidies.

State programs should also evaluate the life cycle cost of the investments and proposed fee structures and should prioritize those projects that are self-sustaining. Fees to end-users should be structured to more accurately reflect the true cost of construction, maintenance and operations, as well as to encourage conservation. In this way, end-users of existing system will not end up subsidizing new projects that spur sprawl development.

*Model:* Massachusetts’ Commonwealth Capitol Fund Scorecard Program used integrated state goals for housing, transportation, environmental protection, water infrastructure and other areas as a location efficiency screen for all federal discretionary spending in the state.\(^{16}\)

The New Jersey priority system includes a number of incentives for smart growth. It is heavily weighted toward repair and replacement of existing systems over new construction or expansion of capacity, and it awards extra points for such things as the existence of watershed-based implementation plans, regional storm-water management plans and sustainability plans (including plans for reduction in water use and green design). New Jersey also offers a more favorable financing package to projects that satisfy certain smart growth criteria, including projects located in urban centers, transfer of development rights (TDR) receiving areas and designated “transit villages.”\(^{17}\)

The U.S. Green Building Council’s Leadership in Energy and Environmental Design for Neighborhood Development (LEED-ND) provides a useful set of criteria that could be used for determining the location of infrastructure investments.\(^{18}\)

3) **Invest in existing communities by completing the Clean Water and Drinking Water SRF Sustainability Policy and tie future funding to this policy.**

*Status quo:*

President Obama’s FY 2010 Budget\(^ {19}\) directed EPA to develop a sustainability policy for Clean Water and Drinking Water State Revolving Loan Funds to encourage

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16 See our recommendation for smart location criteria and how to use the Massachusetts’ scorecard as a model
19 “[I]n conjunction with the dramatic increase in Federal funding for local water infrastructure needs, the Administration will pursue program reforms that will put resources for these on-going needs on a firmer foundation. EPA will work with State and local partners to develop a sustainability policy including management and pricing for future infrastructure funded through SRFs to encourage conservation and to provide adequate long-term funding for future capital needs.” Office of Management and Budget. *A New Era of Responsibility: Renewing America’s Promise.* February 26, 2009. Available at: http://www.gpoaccess.gov/usbudget/fy10/pdf/budget/environmental.pdf.
conservation efforts and provide for the management and pricing of future infrastructure.

Proposed Change:

EPA should use this mandate as a way to direct infrastructure investments to existing communities by emphasizing fix-it-first practices. Future funding through the Clean Water SRF program should be based on the implementation of the sustainability policy.

Through this policy, EPA can align federal funding for local infrastructure needs with the goals expressed by the Sustainable Communities Partnership.

Background:

The Sustainability Policy working group, comprised of EPA and state and local experts, released draft initial sustainability policy ideas in June related to Utility System Sustainability, SRF Fund Sustainability and Outreach Education. There are significant opportunities for EPA to encourage sustainable behavior and provide assistance on integrating new technologies and practices as part of this sustainability policy.

4) Use the renewed green reserve set aside in the Clean Water and Drinking Water SRF to promote the use of these funds for green infrastructure.

Status quo:

The Green Project Reserve authorized by the American Recovery and Reinvestment Act (ARRA) required states to spend a portion of their SRF capitalization grant money on projects that met criteria defined by EPA.

Problems surfaced under ARRA that impacted the quality of projects funded through the green reserve, the transparency of the application process for use of funds and the communication between states and municipalities. Specifically, the absence of sufficient guidance on both the project ranking criteria and selection, as well as the requirements for applicants, created confusion about eligible uses for the green reserve funds. EPA should address these issues in continuing this policy in FY 2010.

EPA has already considered encouraging states to expand, and/or enhance voluntary, subsidy-related set-asides or to create a new set aside in SRF programs

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22 "State and Tribal Assistance Grants: For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants...Provided, That for fiscal year 2010, to the extent there are sufficient eligible project applications, not less than 20 percent of the funds be made available under this title to each State for Clean Water State Revolving Fund capitalization grants and not less than 20 percent of the funds made available under this title to each State for Drinking Water State Revolving Fund capitalization grants shall be used by the State to address green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities". Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010, Conference Report (to accompany H. R. 2996). Page 89.
under the draft SRF Sustainability Policy. The ARRA set aside is a good starting point for a permanent policy, with stronger criteria and guidance needed for eligible projects.\textsuperscript{23}

\textit{Proposed change:}

EPA should require states to do more outreach and education to municipalities to fully take advantage of the green reserves and to clarify project eligibility. As part of revised guidance, EPA should explicitly define “green infrastructure” activities and clarify the difference between green stormwater infrastructure and traditional structural approaches to stormwater management. At the same time, EPA should expand the list of eligible projects to ensure the full use of reserve funds for green uses. In particular, EPA should define “environmentally innovative activities” to broadly include smart growth activities. For example, funding for design assistance related to smart growth development, such as green streets, a redevelopment project or even changing zoning to accommodate a proposed development project should be considered to meet EPA’s guidance criteria for “planning and design activities that are reasonably expected to result in capital projects”\textsuperscript{24}

EPA must ensure that states are transparent in soliciting applications and developing ranking systems. EPA should also encourage states to prioritize green infrastructure retrofits in existing communities. Newly developed areas will need to meet higher stormwater mitigation requirements, leading to greater opportunities to improve water quality and reduce the impact of stormwater runoff on urban wastewater systems in urbanized areas.

\textit{Background:}

The American Recovery and Reinvestment Act (ARRA) required 20\% of water project money to be set aside to fund “green infrastructure, water and energy efficiency and other environmentally innovative activities”, referred to as the Green Project Reserve.\textsuperscript{25} This set-aside is continued in the FY 2010 Interior and Environment Appropriations legislation.

\textit{Model:} In Illinois, EPA is working with Center for Neighborhood Technology and other partners to identify strategies for guiding green infrastructure adoption in urban areas in Illinois after Governor Quinn signed the Green Infrastructure for Clean Water Act into law.\textsuperscript{26} The resources developed for this initiative could be used in a guidance document or letter to assist other states in identifying opportunities for green infrastructure implementation.

\textsuperscript{25} Ibid.
\textsuperscript{26} See CNT’s work at http://www.cnt.org/natural-resources/. Also, EPA’s Green Infrastructure Page (“Managing Wet Weather with Green Infrastructure”) details benefits, policies and case studies: http://cfpub.epa.gov/npdes/home.cfm?program_id=298
5) Set aside some portion of the SRF budget increases to be used as a bonus fund. Use this fund to reward state programs that protect public health with stringent requirements for septic system construction and ongoing maintenance.

Status quo:

CWSRF dollars are often used to replace septic systems with centralized wastewater treatment, which often leads to extended sewer lines inadvertently facilitating low-density development.

Proposed change:

EPA should provide bonus SRF funding to states with septic system programs that have strong standards to protect public health—measures that ensure the septic systems are properly constructed and maintained through the creation of a management entity with the power to monitor, repair and collect fees, or some other mechanism for ensuring long-term sustainability, such as requiring the provision of ongoing maintenance funds or performance bonds by the entity constructing the septic system.

EPA could address the problem of failing septic systems under the Decentralized Program to educate communities on the proper design, construction, operation and maintenance of advanced decentralized systems and on different approaches to address failing septic systems and prioritize these projects when cost-effective. EPA could also provide guidance to communities on obtaining the regulatory authority necessary to create management entities for decentralized systems.

Background:

The EPA report, "Decentralized Water Treatment Systems: A Program Strategy" details EPA’s increased involvement in this field and could be updated and reissued with new guidance. EPA’s Handbook for Managing Onsite and Clustered (Decentralized) Wastewater Treatment Systems also provides a step-by-step process for developing a management strategy for the long-term sustainability of decentralized septic systems.

Model: New Jersey CWSRF program includes the creation of Septic Management Districts (“SMDs”) for the rehabilitation of onsite-septic systems in its Smart Growth Financing Package. An SMD that qualifies for the financing package will receive 0% financing for ¾ of the project costs (the typical project receives 0% financing for half of the project cost). In order to qualify, the SMD must have the authority to assure ongoing operation and maintenance of the systems.

6) Work with the General Services Administration (GSA) to provide technical guidance on incorporating low impact development (LID) measures for managing stormwater on federal construction projects.

Status quo:

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Conventional stormwater management practices for new developments and redevelopment projects, such as extended detention ponds, have proven to be inadequate in protecting water quality.\textsuperscript{28} Low impact development measures (also called green infrastructure) can be significantly more cost effective than conventional stormwater management practices.\textsuperscript{29}

\textit{Proposed change:}

EPA should work with GSA to provide guidance on incorporating low impact development practices for a variety of federal construction project types.

\textit{Background:}

Section 438 of the Energy Independence and Security Act (EISA) requires federal agencies to develop and redevelop federal facilities in a manner that reduces stormwater runoff and pollutant loadings through site planning, design, construction, and maintenance strategies. This policy is also referenced in President Obama’s Executive Order 13514\textsuperscript{30} on leadership in environment, energy and economic performance. EPA should work with GSA to provide guidance on the implementation of this Executive Order to ensure that green infrastructure is utilized by federal agencies during their development and redevelopment projects.

\textit{Model:} The Department of the Navy established a Low Impact Development Policy for Storm Water Management to meet goals for eliminating stormwater volume and sediment or nutrient loading from construction projects. This policy mandates the incorporation of LID practices into all projects with a storm water management element, effective immediately.

\textbf{Water Quality Regulations}

7) \textbf{Ensure that at minimum infill, high density and redevelopment projects are not disadvantaged by the forthcoming revised federal (performance based or volume based) stormwater standards, and instead provide incentives for these types of projects within the new standards.}\textsuperscript{31}

\textit{Status quo:}

Under the National Pollution Discharge Elimination System (NPDES) permit program (Section 402), dischargers of stormwater are required to create stormwater management plans for new development and redevelopment. Without federal stormwater standards that differentiate between the impacts of different types of development, high density, redevelopment, and infill projects can


\textsuperscript{29} U.S. EPA. \textit{Reducing Stormwater Costs through LID Strategies and Practices} (EPA 841-F-07-006, December 2007)


\textsuperscript{31} Agency Information Collection Activities; Proposed Collection; Comment Request; Stormwater Management Including Discharges From Newly Developed and Redeveloped Sites; EPA ICR No. 2366.01, OMB Control No. 2040–NEW. Federal Register Vol. 74, No. 209. Friday, October 30, 2009.
sometimes be at a comparative disadvantage, discouraging projects with inherently better performance. A few states have adopted innovative approaches to stormwater control by crediting land use strategies with a demonstrated water quality benefit in the general permit, but inconsistency in the permit content and stormwater standards persists across states and municipalities.

**Proposed change:**

The new federal stormwater standards should recognize the superior environmental performance of specific development types through a differential set of standards for previously developed sites, by providing credits or offsets for previously developed and smart growth sites (high density, brownfield redevelopment, etc), or providing financial or other support for smart growth sites if the same standards must be met. EPA should continue outreach and education to states during this rulemaking process to ensure that the adoption of the new standards is effective.

By providing incentives for infill development through the stormwater permitting process, EPA recognizes the environmental benefit of smart growth and curbs further loss of natural stormwater catchment areas to greenfield development.

EPA should also refine guidance on the “maximum extent practicable” (MEP) standard, a requirement set forth in the CWA that allows the Administrator to determine appropriate techniques and strategies for reducing pollutant discharges.\(^2\) This would be a good vehicle for establishing a differential for redevelopment of existing properties, versus new development.

**Background:**

EPA has already developed draft guidance for maintaining the predevelopment hydrology of new federal facilities under the agency’s interpretation of Section 438 of the Energy Independence and Security Act (EISA).\(^3\) The agency could develop implementation and tracking tools to ensure federal compliance with the intent of this Section and provide for a more flexible standard for infill projects to incentivize redevelopment. The same approach can be applied to all stormwater management programs.

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\(^2\) CWA §402(p)(3)(B)(iii): “Municipal Discharge – Permits for discharges from municipal storm sewers...shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.”

\(^3\) Energy Independence and Security Act of 2007 (U.S. EPA 2009) requires “any development or redevelopment project involving a Federal facility with a footprint that exceeds 5,000 square feet shall use site planning, design, construction, and maintenance strategies for the property to maintain or restore to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to the temperature, rate, volume, and duration of flow”. EPA, in February 2009, circulated draft guidance to federal agencies, interpreting this statutory requirement (U.S. EPA 2009). According to EPA, “maintaining or restoring...the predevelopment hydrology” can be met by managing rainfall on-site to “prevent the off-site discharge of the precipitation from all rainfall events less than or equal to the 95th percentile rainfall event. This objective shall be accomplished by the use of practices that infiltrate, evaporate, transpire and/or harvest and reuse rainwater”. (Waterkeeper Alliance. All Stormwater is Local. June 2009. Pg. 21-22).
Numeric limitations have often been resisted by municipal separate storm sewer system (MS4s) and NPDES permitting agencies, and EPA has traditionally favored compliance with water quality standards via narrative effluent limits.

*Model:* The West Virginia permit gives credits for redevelopment, brownfield development, high density, vertical density, mixed use and transit-oriented development (all development forms that have inherently lower stormwater impacts). Projects meeting these criteria would receive additive reductions to the base stormwater standard.34

8) **The EPA Office of Water should issue guidance specifying that 319 nonpoint source pollution management program funds can be used for eligible activities in urban areas covered under NPDES permits, per the Region 5 interpretation of the program**35.

*Status quo:*

Section 319 of the CWA charges EPA with developing criteria for a national program to address nonpoint sources of water pollution and requires each state to create and implement a nonpoint source management program and provides grants that can be used for specific nonpoint source control projects. Under the current interpretation of the CWA in most EPA Regions, urban areas are often limited in their use of Section 319 funds because they are already regulated by a municipal stormwater NPDES permit program. The theory is that these grants are not to be used to meet the requirements of the NPDES program. However, this interpretation effectively restricts urban areas from accessing this funding.

*Proposed change:*

EPA Region 5 has interpreted the program to allow Section 319 funds to be used in urban areas for nonpoint source projects if the project is not strictly necessary to meet baseline requirements of the NPDES Permit, even where the project is included by reference in the NPDES Permit. Region 5’s approach is based upon the recognition that many aspects of a watershed plan are not necessarily enforceable requirements under the NPDES permit merely because the watershed plan, or aspects of it, are incorporated into the permit by reference. Thus, if a project addresses storm water before it reaches the stormwater sewer system and it is not an enforceable requirement necessary for the implementation of the NPDES permit, it may be eligible for Section 319 funds.

This has freed up the use of Section 319 funds for projects that were previously considered ineligible for their application. Eligible projects would capture stormwater at the source and reduce the burden on municipal storm sewer systems. This policy would also favor green infrastructure implementation as a best

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34 General WV/NPDES Water Pollution Control Permit No. WV0116025 for Small Municipal Storm Sewer Systems (MS4s), State of West Virginia Department of Environmental Protection, June 2009. http://www.wvdep.org/Docs/17444_SW_WV%20MS4%20permit%202009.pdf

management practice to intercept and infiltrate runoff from urban areas and would focus Section 319 funds on retrofit projects.

Feedback on Region 5’s interpretation of Section 319 regulations has been positive because it allows for flexible and creative use of stormwater management funds. EPA would meet a need if national guidance were revised to reflect this new framework for managing nonpoint source pollution.

In addition to the above, EPA should recognize smart growth site design as a best management practice, which would allow a community to apply for funds under Section 319 to receive design assistance on certain projects. The agency should also encourage communities to use Section 319 funds to develop a municipal smart growth plan, redevelopment program or zoning change. These actions would provide for increased flexibility for urban areas currently covered under NPDES programs to leverage federal investment in municipal water quality programs.

9) Develop and enforce clearer antidegradation policy requirements to ensure that states are protecting existing water quality.

Status quo:

States are required to have antidegradation policies and implementation procedures in place to maintain existing water quality. State enforcement of antidegradation implementation measures and required federal oversight of state policies and procedures are notoriously inconsistent and threaten existing water quality.

In applying the antidegradation policy appropriately, states should be examining alternatives to potentially degrading discharges and activities (even if the waterbody is impaired for another pollutant). In most states, the antidegradation procedures consist mostly of exemptions, and if permits have any reference to an antidegradation analysis, it usually is little more than a simple statement that the permitted activity will not degrade waters.

EPA’s approach to the protection of relatively pristine areas through antidegradation policies is in contrast to its more proactive approach to MS4 oversight. The net result is an uneven regulatory playing field, which could make development of greenfields easier and cheaper than the revitalization of existing communities.

Proposed change:

EPA should exercise its authority to improve state antidegradation policies by reviewing state plans for consistency with federal regulations, ensuring implementation and imposing stronger criteria for the granting of exemptions from antidegradation requirements. Strong antidegradation policies would protect pristine areas that are vital to water quality and quantity from sprawl development.

Furthermore, smart growth strategies, such as preserving ecologically sensitive land or reusing existing parcels in a compact, low impact and cost-effective manner, go hand in hand with antidegradation requirements. Thoughtful development patterns will be encouraged if states are required to thoroughly examine alternatives to, and socioeconomic impacts of, degrading greenfield areas.
Requiring communities and states to more fully consider downstream impacts of development patterns on water quality will result in improved communication between neighboring communities in a watershed and greater emphasis on critical issues that have generally been ignored, such as impacts on treatment costs (including comparative life-cycle cost analysis), impacts on water-dependent livelihoods, and other quality of life factors. By making the implementation of the antidegradation policy more robust, development patterns and road infrastructure planning can be adjusted to avoid or minimize impacts, enhance livability and thoughtfully respect downstream community needs as well.

**Background:**

EPA has the authority to establish state antidegradation standards if a state fails to meet the minimum federal requirements and does not make suggested improvements to the plan in a timely fashion. The EPA Water Quality Standards Handbook also explicitly outlines certain activities that would trigger an antidegradation policy analysis. This handbook affirms that nonpoint source activities are not exempt from antidegradation policy provisions, but unfortunately many states adopt nonpoint source exemptions in their state policies. Clarifying and reinforcing antidegradation guidelines would strengthen protection for waterbodies in pristine areas.

EPA has been in litigation over state antidegradation policies and procedures only a handful of times. Relevant case law includes: Ohio Valley Environmental Coalition, Et Al v. Horinko and Kentucky Waterways Alliance, Et Al v. Johnson. There have been, however, many more examples of legal action brought against EPA regarding inadequate antidegradation analysis associated with specific permits.

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36 CWA Section 303: Water Quality Standards and Implementation Plans
AIR

1) Update statewide and metropolitan planning rules for federal approval of regional transportation plans (RTPs) to encourage implementation of smart growth land use patterns and establish a pathway for crediting air quality benefits from smart growth.

**Status quo:**

Current practice in the development of regional transportation plans (RTPs) encourages the use of “most likely to occur” land use patterns. This policy is meant to ensure that metropolitan planning organizations (MPOs) don’t game the system by using optimistic land use scenarios that have little chance of occurring. The downside, however, is that this essentially requires MPOs to predict a future land use pattern that is low density, separated uses, and auto dependent. Having “predicted” that land use, the MPO then must provide the transportation facilities to accommodate this scenario. The result is a self-fulfilling prophecy; the infrastructure for sprawl is provided, the infrastructure for smart growth is neglected and the development market responds to these investments.

**Proposed change:**

The EPA cannot allow the state and regional air quality planning process to be gamed by MPOs using unrealistic land use scenarios that lead to underestimates of future emissions. Nor should it act as a roadblock for regions legitimately seeking a land use future that is different than the one they’ve had. If states and regions aim to get credit for smart growth land use patterns, they need to certify that the land use policies will be implemented as expected. According to the 1999 Guidance (“Granting Air Quality Credit for Land Use Measures: Policy Options”40), the form that this assurance should take is not clear under the existing guidance.

Since land use projections affect the State Implementation Plan (SIP) baseline, this recommendation must be considered in conjunction with the aforementioned policy change. EPA must issue clear and consistent guidelines that demonstrate how to credit land use measures in the baseline quantification, how to account for the different types of control measure categories that land use policies might fall under, and how to guarantee that the new baseline policy provides for sufficient enforceability and documentation requirements to ensure that regions do not take credit for a land use measure in their regional forecasting that is not implemented.

**Background:**

SACOG worked with EPA Region 9 to allow the use of the Sacramento Blueprint preferred growth pattern in the region’s most recent RTP.41 SACOG first had to demonstrate to EPA that they 1) had high quality data and models so the predicted

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41 SACOG Preferred Blueprint Scenario and Metropolitan Transportation Plan for 2035. See: http://www.sacregionblueprint.org/sacregionblueprint/home.cfm
benefits would be credible, and 2) that they would be transparent about documenting why the Blueprint was feasible and could be implemented.

2) Develop the tools, data and analytical capability to achieve accurate tracking of transportation system greenhouse gas (GHG) performance. Provide guidance, planning support and technical assistance to help states and localities to set and meet GHG reduction targets via improved accessibility, increased travel choices and enhanced system efficiency.

Status quo:

EPA has the authority to regulate greenhouse gas emissions as a pollutant and has already issued a final rule for mandatory reporting of GHG from large stationary emissions sources\(^{42}\), as well as proposed a national efficiency standard for automobiles to control GHG emissions from mobile sources\(^{43}\). However, EPA has not yet developed modeling tools to ensure consistent monitoring of national transportation GHG emissions by state, regional and local air quality agencies, nor has it provided ways to evaluate development projects on their GHG impacts.

Proposed change:

EPA should develop modeling tools to ensure consistent monitoring of national transportation GHG emissions by state, regional and local air quality agencies, and investigate ways to evaluate individual development projects on their GHG impacts. As the nation and individual states and localities seek to understand and take actions to reduce their GHG inventories, transportation emissions will figure prominently. All levels of government will need to be able to track emissions accurately, project the impacts of proposed policies and projects, and use methodologies that can be compared, added together, or understood in a different context.

Background:

EPA’s guidance on taking credit for land use changes within the SIP\(^{44}\), and Comparing Methodologies To Assess Air Quality Impacts of Brownfields and Infill Development\(^{45}\) each inform this work. The reports, Growing Cooler\(^{46}\) and Moving Cooler\(^{47}\) from the Urban Land Institute, also offer useful information. Finally, the Sacramento Council of Governments has been working with Region 9 to agree on the quantification and crediting approach that is most appropriate for their smart growth plans.


\(^{44}\) See Air Recommendation #1, above.

\(^{45}\) U.S. EPA. Methodologies to Assess Transportation and Air Quality Impacts of Brownfields and Infill Development. EPA 231-R-01-001. June 7, 2001


3) Adopt 2003 guidance on evaluating land use impacts of federal actions. The
guidance was prepared for 309 Reviewers and NEPA Compliance Coordinators
with recommendations for developing alternatives in the EA/EIS and using 309
comment letters to improve NEPA documents.

Status quo:
In 2003/2004, a primer was created for the Office of Federal Activities to improve
EPA reviews under Section 309 of the Clean Air Act and the National Environmental
Protection Act (NEPA). The primer provided guidance on assessing the land use
impacts and resulting environmental impacts of federal infrastructure/development
projects. This guidance was never issued, although the document would have been a
valuable resource for compliance coordinators and reviewers and accurately
evaluated the effects of dispersed development on natural resources.

Proposed change:
While EPA cannot require particular mitigation strategies, the agency can and is
obligated to ensure that NEPA analyses provide an accurate assessment of the
environmental impacts of major federal actions. Current NEPA analyses are
frequently found wanting in their evaluation of federal actions’ secondary and
cumulative impacts on land use.

Additionally, with a clear articulation of the land use impacts of the proposed
federal action, 309 reviewers and NEPA coordinators can use their participation and
their 309 comment letters to improve NEPA documents by recommending
mitigation measures and rating the projects.

EPA might also consider developing a programmatic EIS for low impact activities
such as those outlined in the guidance document as preferred alternative scenarios,
and encourage federal offices to consider the entire scope of their operations in
reporting environmental impacts.

Background:
EPA developed the guidance document, “Analysis of Environmental Impacts of Land
Use Change from Federal Infrastructure Projects: Primer for 309 Reviewers and

In October 2000 the Forest Conservation Council and Friends of the Earth filed suit
against the U.S. Small Business Administration (SBA) on the grounds that the SBA
violated NEPA requirements by failing to consider the impacts of its lending
practices. According to the lawsuit, projects financed through SBA loans contributed
to dispersed development and loss of natural space in the Washington, DC
metropolitan areas. The lawsuit sought to require the SBA to perform site specific
and programmatic environmental assessments of its loan decisions to ensure that
the agency would adequately fulfill federal environmental review requirements48.
This case study illustrates the value of improved guidance for NEPA assessments
and the importance of early involvement on the part of reviewers.

48 Hoover, Kent. “After lawsuit, SBA to look at loans’ impact on sprawl”. Washington Business Journal. April 11,
4) Get EPA Regional offices to participate earlier in the transportation planning process by participating in the development of and commenting on specific proposals included in regional transportation plans (RTP) or transportation improvement plans (TIP).

Status quo:
RTPs and TIPs usually involve a fair amount of public and agency input, and there are examples of EPA regional offices successfully aiding the development of plans. However, this early participation is the exception rather than the rule. Instead, EPA usually does not become involved until many of the alternatives have been eliminated.

Proposed change:
EPA’s up-front investment in project planning can ensure that critical resource issues are identified and analyzed, and thus may reduce environmental impacts and delays at the later stages of project review. In Region 3, the State of Pennsylvania used transportation funds to pay for an EPA staff person to be involved early in the development of state transportation plans. EPA could work with DOT under the Partnership to establish this funding arrangement across all the EPA Regions. This arrangement would likely both improve the plans, reduce environmental impacts and help to reduce project delivery times.

Background:
In Region 9, EPA provided start-up funds for Transportation and Land Use Coalition, whose goal was to “enhance public discussion about transportation choices and promote changes in the RTP”. This initiative led to the creation of the Transportation for Livable Communities grant program.

In a Region 5 EIS scoping process with Wisconsin DOT, EPA worked with staff to analyze the potential induced land use changes during the EIS process.

50 Ibid.
BROWNFIELDS

1) **Raise the number of points awarded to grant applicants that meet Infrastructure Reuse/Sustainable Reuse criteria, and make location efficiency a prerequisite for receiving those points for site-specific applications.**

*Status quo:*

The EPA brownfields statute establishes a system for ranking grant applications using criteria that include “the extent to which a grant would facilitate the use or reuse of existing infrastructure”.\(^{51}\) The statute does not mandate how much weight this criterion should receive in individual brownfields RFPs.

Individual RFPs for EPA brownfields grant programs wrap the statutory requirement into a larger category: Environmental Benefits from Infrastructure Reuse/Sustainable Reuse.

- The most recent Grant Proposal Guidelines for Assessment grants awarded 5 points for Environmental Benefits from Infrastructure Reuse/Sustainable Reuse\(^{52}\) (out of a total of 100 points).
- The most recent Grant Proposal Guidelines for Cleanup grants awarded 10 points for Environmental Benefits from Infrastructure Reuse/Sustainable Reuse.
- The most recent Grant Proposal Guidelines for RLF grants awarded 5 points for Environmental Benefits from Infrastructure Reuse/Sustainable Reuse.

In each RFP, applicants are referred to the Brownfields FAQ for more information about this points category. Under Q81\(^{53}\), the FY 2010 FAQ provides several definitions of Sustainable Reuse (including green site remediation, construction/demolition recycling, and diesel emission reduction), but does not further define Infrastructure Reuse.

*Proposed change:*

Our recommendation is threefold:

- To increase the total number of points (out of 100) under all applicable EPA Brownfields grant programs awarded for Environmental Benefits from Infrastructure Reuse/Sustainable Reuse to no less than 15.

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\(^{51}\) See Sec. 211(b)(K)(5)(C)(iv) of the Small Business Liability Relief and Brownfields Revitalization Act.

\(^{52}\) Specific language: “Describe any anticipated environmental benefits, beyond the assessment and remediation of contaminants, associated with the **sustainable redevelopment** of sites assessed under this grant, including the use of existing infrastructure, such as utilities and public transit, green buildings, energy efficiency, water management, green remediation, construction and demolition materials recycling, diesel emissions reductions, and renewable energy on brownfields. [Refer to the Brownfields FAQ at http://www.epa.gov/brownfields/proposal_guides/FY10_FAQs_v1.pdf for a description of these and other EPA initiatives.]” The referenced FAQ provides several definitions of sustainable redevelopment, but does not further define “Infrastructure Reuse.”

To amend the Brownfields FAQ to explicitly define Infrastructure Reuse in terms of location efficiency, as follows:\(^54\):

Q82. – How should grant applicants define and quantify “Infrastructure Reuse” for the purpose of earning points under the category of Environmental Benefits from Infrastructure Reuse/Sustainable Reuse in brownfields grant applications?

A82. – In order to qualify an individual site to receive points under the Infrastructure Reuse requirement, an applicant must provide evidence of two or more\(^55\) of the following:

- There are existing bus stops within one-quarter mile or rail or ferry stops within a one-half mile radius of the site.
- The site has 75 percent of its perimeter bordering existing development or roads and is currently served by existing roads and water/sewer infrastructure\(^56\).
- The site is located within 1/4 mile of at least 4 community facilities, defined as: supermarket, public school, library, licensed child care center, park space, bank, medical or dental office, post office, convenience store, laundry/dry cleaner, pharmacy, place of worship, community or civic center.
- EPA should make meeting the location efficiency requirements outlined above a threshold requirement for receiving any points under the Sustainable Development/Infrastructure Reuse category for site-specific applications (e.g., EPA Site-Specific Assessment grants and Cleanup grants). If additional sustainability criteria are met, that applicant should receive a higher number of points.

Given the complexities of quantifying location efficiency/infrastructure reuse for community-wide or non-site specific applications (e.g. Community-Wide Assessment grants and RLF grants), applicants should be asked to address how they will prioritize sites that demonstrate Infrastructure Reuse using the measures outlined above as guidelines, but should not be required to provide quantifiable site-specific evidence in order to receive points under the category of Environmental Benefits from Infrastructure Reuse/Sustainable Reuse for these grant programs.

Under the Partnership for Sustainable Communities, the Administration has made a commitment to location efficiency principles.\(^57\) Requiring that location efficiency be a consideration in evaluating EPA Brownfields grant applications supports this

\(^{54}\) This addition would follow Q81 (which ends on page 40 of the Brownfields FAQ), which defines Sustainable Reuse.

\(^{55}\) EPA should consider requiring that sites in rural areas or distressed urban areas meet just one of these criteria in order to qualify for Infrastructure Reuse points, given that they face greater barriers to realizing these measures of location efficiency.

\(^{56}\) This should be defined in a way that accounts for the possibility that brownfields sites may border vacant or abandoned properties and infrastructure that requires rehabilitation.

\(^{57}\) For instance, through President Obama’s Executive Order which requires federal agencies to set GHG-reduction targets and improve efficiency, in part by locating government buildings in sustainable locations. (See http://www.whitehouse.gov/assets/documents/2009fedleader_eo_rel.pdf).
commitment and helps ensure that EPA funding is directed to sites that are located efficiently, where the benefits of their redevelopment will be most strongly felt.

2) **Make a broader range of smart growth activities eligible for EPA Brownfields Training, Research, and Technical Assistance funds.**

*Status quo:*

Brownfields Training, Research, and Technical Assistance funds can be used for specialized training, research, or technical assistance that communicate specialized knowledge about brownfields related subject matter, but a whole list of smart growth uses is explicitly excluded from eligibility for this funding as follows\(^{58}\):

Funding under this announcement is not available for projects related to exploring, testing and implementing smart growth policies and applications that EPA funds under CFDA No. 66.611, Environmental Policy and Innovation Grants. An example of such projects is the RFP for EPA-OPEI-07-03, "Educational Campaign on Policy Barriers to Redevelopment of Vacant Properties".\(^{59}\)

Further examples of smart growth policies and applications that are not eligible under this announcement include: piloting of innovative infill development demonstration programs, policies, tools, or techniques to determine transferability to multiple sites in the neighborhood, community, municipality, county, region, or state; site design, community involvement and redevelopment planning activities associated with post cleanup activities on single or multiple infill parcels; studies of the regulatory and market barriers to infill redevelopment; training and technical assistance to communities to evaluate and revise local and state development regulations, e.g., zoning and building codes; development of screening or evaluation tools or programs that assess post cleanup redevelopment designs for consistency with smart growth principles; development of screening or evaluation tools or programs that assess opportunities for infill development within one or multiple neighborhood(s); and neighborhood or community planning efforts associated with general redevelopment of an area (as distinguished from community involvement and community planning for inventories, assessments, remediation or site preparation limited to brownfields properties).

These prohibitions are in place because EPA has currently chosen to interpret Congress’ provision of a separate program funding stream for brownfields versus smart growth (through Environmental Policy and Innovation Grants\(^{60}\)) as a dictate that STAG funding and EPM funding can have no overlapping areas of use. Thus, the brownfields funding for research, training and technical assistance is designated as site specific, allowing area-wide work to be funded through this separate program only.

*Proposed change:*

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\(^{58}\) Language excerpted from Brownfields Training, Research, and Technical Assistance Grants Request for Applications (RFA) - Questions and Answers  
[http://www.epa.gov/oswer/docs/grants/epa-oswer-obl-08-02-faq.pdf](http://www.epa.gov/oswer/docs/grants/epa-oswer-obl-08-02-faq.pdf)  
\(^{59}\) See [http://www.epa.gov/dced/grants/opei0703.htm](http://www.epa.gov/dced/grants/opei0703.htm)  
EPA should use the flexibility that already exists in the law to reinterpret the relevant passage of the Brownfields statute and the internal funding division in order to allow for non-site specific uses of Brownfields Training, Research, and Technical Assistance funding, including the smart growth uses explicitly excluded above.

Brownfields assessment, cleanup, and redevelopment have better outcomes for human health and the environment when they are coupled with area-wide planning activities that account for the needs and assets of the surrounding community. While dedicating a separate funding stream to these uses is important, excluding them from eligibility in the broader pool of funding prevents important projects from being undertaken. Allowing more flexibility in the application of Brownfields Training, Research, and Technical Assistance funds will create better outcomes for human health and the environment, and support the principles of the Partnership for Sustainable Communities.

3) Create a pilot grant program that accepts combined applications for brownfields Assessment, Cleanup, and Planning.

Status quo:

Under the current EPA Brownfields program, eligible entities must apply separately for Assessment grants, Cleanup grants, and Revolving Loan Fund grants, each of which is only competed once a year. Likewise, while EPA allows applicants to apply for either community-wide or site-specific Assessment grants, they can only apply for site-specific Cleanup grants. In addition, they can only apply for a Cleanup grant once the assessment has been completed.

This current system for awarding brownfield grants can cause major time delays in cleanup, making it difficult for recipients to respond to the market in a timely fashion and compete with greenfield sites which are often cheaper, quicker, and easier to develop. It also disproportionately disadvantages sites with narrow profit margins, which are more likely to be in low- and moderate-income neighborhoods, and therefore makes it more difficult for EPA funds to be applied to sites that need them most, as required by statute.

61 “The Administrator may provide, or fund eligible entities or nonprofit organizations to provide training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.” (See Sec. 211(b)(k)(6)(A) of the Small Business Liability Relief and Brownfields Revitalization Act, http://epa.gov/brownfields/laws/hr2869.htm).

62 Not dictated by statute.


64 Dictated by statute. See Sec. 211 (b)(k)(3)(A)(ii) of the Small Business Liability Relief and Brownfields Revitalization Act.

65 Not dictated by statute, but written into the Cleanup grant RFP. “Cleanup grant applicants must have a Phase I and an ASTM E1903-97 Phase II site assessment report or equivalent site investigation report complete prior to proposal submission”. (See page 4 of the FY 2010 Guidelines for Brownfields Cleanup Grants, http://www.epa.gov/oswer/docs/grants/epa-oswer-orcr-09-05.pdf).

66 Sec. 211 (b)(k)(3)(C)(ii) of the Small Business Liability Relief and Brownfields Revitalization Act.
Proposed change:

While a change to law would be the best way to create a combined grant program for assessment, cleanup, and planning (because, for instance, it would allow for alignment of various program-specific administrative requirements), EPA could construct a pilot program that would streamline the grant application process by coordinating application deadlines and creating a single application form for cleanup assessment and planning funding.

Creating a coordinated system to apply for assessment and cleanup funding for brownfields will promote better planning and help applicants navigate development timelines with increased agility. A pilot program will also help create a model that can be presented to Congress to show the efficacy of combined brownfields grantmaking, helping to pave the way for legislative reform.

4) Create a HUD/EPA Grants and Process Working Group to see how the application and reporting processes for HUD and EPA brownfields funding could be coordinated and streamlined.\textsuperscript{67} Consider bringing representatives from USDA, EDA, and other agencies that administer brownfields funding into this working group as well.

Status quo:

It is extremely difficult right now for localities to blend HUD and EPA money, but often necessary to do so since the agencies fund different stages of brownfields assessment, cleanup, and redevelopment. There are different timelines, applications, rules, and reporting requirements that make navigating these programs in conjunction with one another burdensome.

Proposed change:

Streamlining HUD/EPA brownfields funding sources would be an ideal project for the Partnership for Sustainable Communities, and result in better outcomes in the areas of affordable housing, social justice, community involvement, and human health and the environment.

Background:

HUD has already taken initial steps towards revising its brownfields policy to more closely align with EPA practice/policy through revisions to its Multifamily Accelerated Processing (MAP) Guide\textsuperscript{68}. This working group could help build on that initial success.

\textsuperscript{67} For example, both HUD and EPA grant programs are subject to Davis-Bacon Act requirements, but there are currently inconsistencies in the way the agencies apply the law. In order to make combining HUD and EPA funding streams easier, the agencies should clarify that HUD guidelines and waivers used to implement Davis-Bacon for a project also apply to and satisfy EPA Davis-Bacon requirements for that project.

\textsuperscript{68} See http://www.hud.gov/offices/hsg/mfh/map/mapguide/chap09revisions.pdf.
5) Use the flexibility inherent in the statute\textsuperscript{69} to allow EPA Assessment grants to be used for area-wide planning activities, and create a pilot program that would provide grants to conduct planning, economic analysis, and market studies to inform an area-wide approach to brownfields redevelopment\textsuperscript{70}.

Status quo:

Area-wide approaches to brownfields reclamation take into account the benefits of redeveloping multiple brownfields sites in an integrated fashion in order to achieve benefits for entire communities in the areas of sustainability, economic vitality, and neighborhood revitalization. National experts and policy organizations are examining various area-wide models and a few states and localities are working towards area-wide programs. However, in spite of apparent flexibility in the statute\textsuperscript{71}, EPA currently does not allow brownfields Assessment grants to be directed towards area-wide planning activities, and many communities seeking to replicate area-wide programs implemented in states such as New York and Colorado lack the technical knowledge and resources to do so comprehensively and successfully.

Proposed change:

Given EPA’s recent movement towards supporting area-wide brownfields activities\textsuperscript{72}, the agency should start by examining the extent to which brownfields Assessment funding can be directed towards area-wide planning activities under the current statute. EPA should then set aside funding through the brownfields Assessment and/or Training, Research, and Technical Assistance programs for a separate pilot program to provide grants for planning, economic analysis, and market studies to inform area-wide visioning. Under this pilot, communities could be serviced by a Brownfields Response Team that could be comprised of a nonprofit Pilot Coordinator or EPA dedicated staff person, key contacts from other federal agencies, contractors/consultants, and/or a peer-exchange mentor. Funding could be used to assist localities in the design and implementation of an area-wide brownfields redevelopment vision and action plan, effectively engage community assets, foster community involvement, and integrate sustainability. To qualify for funding, grantees would be required to demonstrate that they would invoke interagency federal, state, and local government cooperation, and that their plan would include an area-wide analysis of the relationship between brownfields site redevelopment and transportation, housing, and jobs access as prioritized by the local community.

\textsuperscript{69} Sec. 211(b)(k)(2)(A)(i) states that a brownfield site characterization and assessment grant program may be used to “provide grants to inventory, characterize, assess, and conduct planning related to brownfields sites”. (Emphasis added).

\textsuperscript{70} See the National Brownfields Nonprofit Network Initiative’s related Strawman Proposal. (www.nprr.net/policy/StrawSummaries-dist.doc).

\textsuperscript{71} See also Sec. 211 (b)(k)(4)(A)(i)(f), which permits either community-wide or site-specific Assessment grants to be awarded.

\textsuperscript{72} For instance, EPA Assistant Administrator Mathy Stanislaus’ statement before the Sustainable Community Development Group’s Capitol Hill Summit on October 15,2009, which indicated EPA’s interest in directing Assessment funds to planning activities.
At its heart, an area-wide approach to brownfields reclamation is the creation and implementation of a strategic policy plan for an entire area that coordinates and targets resources to address such issues as employment/jobs, public amenities, infrastructure improvements, and open space preservation, that both encourages current residents to remain and also attracts new residents. By formally linking community based planning and prioritization with smart growth principles and resources, this initiative addresses the unique neighborhood circumstance of clustered brownfield sites, dilapidated infrastructure, inadequate access to waterfronts and parks, and cumulative environmental exposures in a manner that integrates smart growth, environmental justice, sustainable design and ecosystems management components.

**Background:**

New York's Brownfield Opportunity Area (BOA)\(^{73}\) program and Colorado’s Historic Byways Revitalization Initiative are both good examples of state-level efforts to foster an area-wide approach to brownfields redevelopment. NY's BOA program addresses entire neighborhoods and clusters of brownfields within those neighborhoods, including the conditions fueling abandonment and deterioration, by providing grants to create and implement viable neighborhood plans focused around the cleanup and redevelopment of brownfield projects that will result in new community anchors. Colorado’s Historic Byways Revitalization Initiative\(^{74}\) works with multiple communities in a regional context that must plan and act together for the mutual benefit of all. Often, the regional link between communities is a common transportation route, hence the “corridor” approach.

6) **Specifically list ‘preparing brownfields land for urban agriculture’ as a use of Brownfields Job Training Grants.**

**Status quo:**

Brownfields Job Training Grants provide funding to governmental entities and nonprofit organizations to recruit, train, and place local unemployed and under-employed, predominantly low-income and minority residents. Right now, one of the uses of brownfields training grants is "training participants in planning and conducting ecological restoration of abandoned and devalued land, including general botanical classes or introductory horticultural classes related to land restoration or indigenous species revegetation, landscaping, soil science, and preparing brownfields sites for water or storm management systems."\(^{75}\)

**Proposed change:**

Add ‘preparing sites for food production’, including the construction of raised beds to prevent food from becoming contaminated, to the language above. This change

\(^{73}\) See [http://www.nyswaterfronts.org/grantopps_BOA.asp](http://www.nyswaterfronts.org/grantopps_BOA.asp)

\(^{74}\) See [http://www.coloradobrownfieldsfoundation.org/HistoricByways.html](http://www.coloradobrownfieldsfoundation.org/HistoricByways.html)

can be incorporated into Section 1, Subsection I. B. of EPA’s FY10 Guidelines for Brownfields Job Training Grants.\textsuperscript{76}

Background:

Urban agriculture is a growing practice, which EPA already promotes. As a larger number of communities engage in urban farming, the demand for practitioners that are trained in techniques specific to preparing contaminated land for food production is also growing. Preparing brownfields sites for food production through cleanup and remediation techniques including raised beds has direct benefits for human health, helping to ensure that neighborhood residents can safely engage in growing food on formerly contaminated sites.

Department of Transportation

“Creating livable communities will result in improved quality of life for all Americans and create a more efficient and more accessible transportation network that serves the needs of individual communities. Fostering the concept of livability in transportation projects and programs will help America’s neighborhoods become safer, healthier and more vibrant.”

- DOT Secretary Ray LaHood, June 16, 2009

U.S. DOT’s unprecedented partnership with HUD and EPA and its livability agenda present an exciting opportunity to transform our transportation system and to support more sustainable communities. For too long, federal transportation policy has been viewed narrowly as an end unto itself, rather than as a conduit to promote economic development, protect the environment, and create vibrant places for Americans to live, work, and play.

While some of the most transformative changes in surface transportation law require a new reauthorization, U.S. DOT has the power to effect significant changes in the short term to support sustainable communities. Some of that work has already started, with the agency’s innovative and outcomes-focused TIGER program and its work with HUD on connecting transportation investments to affordable homes for Americans.

Smart Growth America’s recommendations for U.S. DOT, which can be acted on without legislative action, are focused in several key areas, including:

1) Creating street standards that foster economic development, safe travel, cost effective systems, and transportation choices for all Americans. While the original surface transportation programs were designed to create a large interstate system, a new paradigm is needed to help support street connections within and between communities, as well as more local and network-based street solutions to address issues of congestion, accessibility, and mobility.

- Issue guidance that Level of Service (LOS) is not a minimum criterion for federal cost participation in road or street projects, and that roadway LOS should not be used unless it is part of a multimodal system that evaluates levels of service for all modes of travel.

- FHWA should re-issue complete streets guidance to state DOTs and MPOs and start data collection and project evaluation to prepare for a federal complete streets policy requirement.

- Request Congressional funding for a new Local Network Block Grant demonstration program, which would help provide funding for communities to improve the connectivity and livability of local street networks.

- Begin work on rulemaking for an inter-agency self-certification program, similar to that used by FTA with local transit providers, which would allow local entities to certify small street projects.
2) Increasing accountability, integration, and transparency in the transportation system, which will help ensure transportation funding and projects are used to further the goals of the Sustainable Communities partnership.

- Require additional reporting from State DOTs and MPOs on transportation funding decisions and outcomes with the stated objective of achieving transparency of and convenient public access to information about the use of federal surface transportation funding and transportation-related trends.

- Appoint a Task Force on National Transportation Objectives to develop a vision statement and performance metrics for the surface transportation program, while concurrently beginning data collection on a series of transportation-related measures included in this memo.

- Issue recommendations to states and MPOs on critical elements of integrated ‘Blueprint’-style transportation plans, including on performance outcomes, and provide competitive funding for at least five Blueprint planning pilot programs at the metropolitan and statewide level.

3) Provide support to livability initiatives within U.S. DOT and to other federal agencies.

- Ensure that a bicycle commuter program is in place at U.S. DOT and urge GAO to issue stronger guidance for implementing similar programs at all federal agencies.
Recommendations

1) FHWA should issue guidance to division offices and state DOTs clarifying that LOS is not a minimum criterion for federal cost participation in road or street projects.

Status Quo:

In neighborhoods and communities across the U.S. local citizens are frequently told they must accept wider streets and larger, faster highways because the FHWA will not approve funding for any project that in 20 years will have a level of service (LOS) below C, or D, or E. (The version of “federal policy” cited varies from place to place and from project to project.) Whether or not this is actual FHWA policy, such an approach makes little sense in an urbanizing America.

Proposed Change:

FHWA should issue guidance to division offices and state DOTs clarifying that while LOS is a useful technique for studying traffic distribution across a transportation network and for assessing the need for improved public transit, it is not a minimum criterion for federal cost participation in road or street projects.

The guidance document should address the following principles:

- The simplified versions of LOS used in many statewide and metropolitan planning processes (e.g., simple peak hour V/C estimates) are too inaccurate and unreliable to serve as criteria for prioritizing transportation investment projects and should be phased out.

- Roadway LOS should not be used in planning and design processes unless it is part of a multimodal LOS system that evaluates service levels for all modes of travel. Pursuant to provisions of the federal transportation planning statutes and regulations in effect since 1991, transportation improvement programs and long-range transportation plans must reflect balancing of mobility and access across transportation modes.

- Roadway LOS – however calculated – is not a minimum criterion to be used in project planning and design.

Background:

Highway capacity, congestion measurement and LOS have been the subject of extensive research and analysis by TRB committees and NCHRP panels over the past several decades. The current version of the Highway Capacity Manual provides the basis for an evolving and highly technical analytical system for measuring highway LOS based on estimated current or forecast future traffic levels. But this entire approach to business, however appropriate it might have seemed in the 1960s or 1970s, is no longer as relevant to the realities of modern transportation planning as it once might have been.

77 See http://hcmsguide.com/
Over the past three decades, as some states have implemented growth management systems, the practical value of LOS measurement as a basis for planning decisions has been cast in a new light. The State of Florida, for example, has modified its minimum standards for roadway LOS in city and county comprehensive plans. The early comprehensive plans submitted to the State in the late 1980s employed LOS systems that threatened to make the traffic congestion problem much worse by sending development out to rural areas in search of roadway capacity. Now the State’s requirements\(^{78}\) allow for special conditions that prevail in portions of the state, including:

- Roadways parallel to exclusive transit facilities;
- Facilities inside transportation concurrency management areas; and,
- Constrained and backlogged roadways.

Similarly, the State of Washington growth management system allows cities and counties to set LOS criteria for roads and streets without statewide minimums. Consequently, cities such as Seattle and Kirkland set LOS standards at forecast actual levels to reduce the potential impact of overly restrictive LOS prescriptions. They measure and forecast LOS and use the results to work on issues such as balancing parallel arterial corridors and setting priorities for major transit corridors, but they do not regard LOS as the best way to make decisions about specific projects.\(^{79}\) Many of the state’s important regional corridors are exempt from the system.

As we saw in 2006 - 2008, if fuel prices increase at a certain rate or to certain levels, vehicle miles of travel (VMT) in the US will decline. Given the likelihood of continued upward pressure on fuel prices and other underlying trends that call into question the validity of traditional approaches to forecasting traffic, significant potential exists that expensive highway projects that negatively impact the surrounding urban landscape will ultimately fail to fill with traffic as forecast. This routinely happens with toll-funded corridors across the country, which should serve as an indication of the importance of price in influencing mode share and other personal travel behavior characteristics.

2) **FHWA should re-issue bicycle-pedestrian accommodation guidance to state DOTs and MPOs to reflect a Complete Streets approach, and should start data collection and project evaluation to prepare for a federal complete streets policy requirement.**

*Status Quo:*

While federal legislation has strongly recommended inclusion of needs of non-motorized travelers in federal projects, with specific Guidance issued in 2000 (see below), many state DOTs have not responded. Many DOTs have a policy not to include sidewalks unless they are paid for by someone else; a policy often replicated at the local level. For example, in early November of this year an official of Harris

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\(^{78}\) See [https://www.frlrules.org/Gateway/View_notice.asp?id=1338035](https://www.frlrules.org/Gateway/View_notice.asp?id=1338035)

\(^{79}\) See [http://www.wsdot.wa.gov/planning/LandUse/concurrency_state-ownedsystem](http://www.wsdot.wa.gov/planning/LandUse/concurrency_state-ownedsystem)
County, Texas told the *Houston Chronicle*, "It’s an expense that doesn’t have to do with transportation," said Mark Seegers, a spokesman for Harris County Commissioner Sylvia Garcia. "The county does not do sidewalks; it’s not what gets cars from point A to point B." Other infrastructure, such as crosswalks, pedestrian signal heads, bus shelters, and bike lanes, are also often not considered, and pedestrians are over-represented in traffic fatality statistics.

Yet today one-fourth of all personal vehicle trips are less than one mile in length – a trip type that once was made primarily by walking or bicycling. In fact, in the U.S. only about one out of five short person trips (less than one mile) are made by walking (see NHTS citation above). Most of the rest are made in motor vehicles. In addition, a safe walking environment is essential to effective public transportation service.

*Proposed Change:*

The legislative basis for action on creating multi-modal transportation corridors, or Complete Streets, was clearly established in 1991 by ISTEA and this has been reaffirmed and expanded in subsequent updates of the surface transportation program authorization, particularly in TEA-21. Given that additional Congressional guidance is expected within the next year or two, FHWA should take a three-step approach.

- **Guidance to Division Offices, State DOTs and MPOs.**

  FHWA should re-issue the 2000 “Design Guidance: Accommodating Bicycle and Pedestrian Travel: A Recommended Approach” and make these changes:
  
  - Incorporate more definitive language on the need to accommodate all modes
  - Add reference to public transportation users and vehicles, older people, and people with disabilities.
  - Elevate the already good recommended policy language, and
  - Make reference to the growing adoption of Complete Streets policies at the local level.

  FHWA, in cooperation with FTA, should also provide resources and technical assistance to state DOTs and MPOs to assist them in adopting and implementing policies, including: workshops and trainings, best practices, model policies, and a step by step guide to policy development.

- **Rulemaking**

  Within a year, FHWA should initiate a rulemaking process parallel with Congressional deliberations by publishing a Notice of Proposed Rulemaking and launching a national dialogue on Complete Streets policy provisions and evaluation criteria. The Notice should state an intent to ensure that all street and highway projects that involve new routes or substantial reconstruction of existing facilities must accommodate the needs of all users, including pedestrians, cyclists, minorities, older adults, and those with disabilities, as well as current and future requirements of public transit routes. Initiating this rulemaking in 2010 would accelerate

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implementation of a new Congressional mandate by many months and at the same
time would provide information and perspective to the legislative committees
working on surface transportation legislation.

- **Data Collection and Project Evaluation Criteria**
  FHWA should start collecting data needed to assess how well federal funds are
  supporting multi-modal complete streets projects (see Recommendation #1) as well
  as better information on travel by non-motorized modes. FHWA should also launch
  a project to create an evaluation system to determine the extent to which federally
  funded projects make safe accommodations for all modes. This could begin with
  questions for current grantees on how their project improves accommodation for all
  users or a checklist on the inclusion of Complete Streets-type street improvements
  (such as sidewalks, bike lanes, crosswalks, countdown signals, curb bulb-outs, etc)
  for current grantees. This could begin to build a new base of information while
  encouraging a multi-modal approach.

**Background:**

The National Complete Streets Coalition uses this definition: “Complete streets
policies direct transportation professionals to ensure that all road projects are
designed and operated to enable safe access for all users. Pedestrians, bicyclists,
motorists and transit riders of all ages and abilities must be able to safely move
along and across a complete street.” More than 100 jurisdictions across the United
States have adopted some form of Complete Streets policy. Although legislation has
been introduced in Congress to mandate complete streets (The Complete Streets Act
of 2009—S. 584 / H.R. 1443), it is likely that passage of such a requirement will
await adoption of the overall surface transportation bill, more than a year away. In
the meantime, FHWA could begin setting the stage for what seems at this point to be
an inevitable evolution in federal, state and local policy and practice. It is important
to note that what is needed from U.S. DOT is not a focus on design specifics; the
issue at this point is primarily one of institutionalizing a multi-modal approach.

3) **Local Networks Block Grants: FHWA should take a leadership role in defining how
the federal government will be involved in improving community livability by
investing in local street networks.**

**Status quo:**

Federal highway aid cannot be used today to support or enhance local streets and
road networks, despite the importance of these local streets in achieving national
goals of reducing traffic congestion, accidents, and trip lengths. Solutions to
congestion and other transportation problems are typically focused on arterial
management and widening. However, in some cases the best way to improve
arterial traffic is to invest in local street solutions, enabling them to help handle
traffic more efficiently that would otherwise clog arterials. This type of approach is
typically cheaper, more effective, and has ancillary benefits like reducing trip
lengths for cars and pedestrians.

**Proposed change:**

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81 See http://www.completestreets.org/ for more information from the Complete Streets Coalition.
A vehicle for improving local connectivity and relieving congestion could be “livable communities block grants”. The goal of the block grant approach is to focus federal funding on improving local networks and places, as opposed to corridors (corridor-centric planning is one of the major contributors to the connectivity problem). Thus, the investments that communities make should be packages of smaller projects such as pedestrian facilities, cul-de-sac connections, improved transit accommodation and connecting missing links in street networks. The creation of a block grant program would solve the basic problem of not being able to fund connectivity improvements off the federal aid system, even if those connectivity investments would effectively solve issues on the federal system. This will require FHWA to shift its administration approach from program-based management to project-based management.

The structure of a livable communities block grant program should comprise:

- Minimum criteria for qualifying communities to receive block grants, which could include the presence of a community comprehensive plan with solid land use, transportation and growth management elements, as well as clear goals for the transportation improvement and expected benefits. For other criteria, FHWA should begin work now on evaluating potential eligibility criteria for grantee certification and should request funds from Congress to design and set in motion a planning and certification process to prepare local governments for block grant eligibility.

- Incentives for these block grants to be made to support already-developed areas, including within urban and town boundaries, and multi-modal solutions.

To prepare for administration of a block grant program and to identify strategies for addressing the key challenges described above, FHWA should request funds from Congress in an upcoming appropriation process for a block grant demonstration program. FHWA should request $200 million for 20 demonstration projects in 20 different cities. Criteria for eligibility and award of grant funds should include:

- The presence of an adopted community comprehensive plan with solid land use, transportation and growth management elements;

- Project location within existing municipal boundaries; and,

- Multimodal project elements.

FHWA should establish a set of proposed transportation objectives to guide project awards and should monitor and report performance of the projects toward achievement of these objectives.

Background:

The federal highway program developed in the 1930s and 1940s, and still largely in effect today, defines the federal role as being limited to interstate and interregional corridors. This federal focus on investing in “big pipes” – freeways and arterials – has meant that most of the local streets built since 1950 have been built by private developers and there has been little money for new collector/connector streets.

The majority of local streets in the U.S. are laid out in a disconnected, curvilinear fashion, which has created poor connectivity that compromises emergency service
access, lengthens trips, and discourages walking and bicycling. Poorly connected local streets are also one of the most important causes of congestion on arterial routes, as traffic is funneled onto state-owned roadways – not just for regional and interstate travel, but for local trips that should be circulating on local street networks. For example, a quarter of household vehicle trips in the U.S. are less than one mile in length; these are trips that could nearly be exclusively made on local streets.

4) **Local Self-Certification:** U.S. DOT should begin work on rulemaking for an inter-agency self-certification program similar to that used by FTA with local transit providers. During the interim, while the rulemaking process runs its course, FHWA should issue a guidance letter on local planning and design flexibility directly to division administrators and their staff.

**Status quo:**

The challenges of creating livable communities, connected neighborhoods and transit-served mixed-use districts, are different than past challenges. Whereas today much of the federal-aid highway program is spent on major arterial projects, in the future there will also be a need for smaller projects designed to make districts and neighborhoods function. This will require a different approach to project administration.\(^{82}\)

**Proposed change:**

FHWA should work with FTA and perhaps FRA to establish a local self-certification program for local governments that allows them to take responsibility for transportation planning and design decisions. Authority for this is clearly already in place and any required rulemaking could be initiated in 2010.

Parallel to initiation of rulemaking, FHWA should issue formal guidance directly to FHWA division offices. This is needed because the agency's staff at the division level is increasingly being identified as part of the problem. Guidance should incorporate many of the elements described in other recommendations above – complete streets, design flexibility, design techniques, and level of service – but should encourage a more progressive and supportive stance by the division offices. FHWA needs to begin a broad policy shift at the division level that mirrors the policy shift in Washington.

This recommendation is closely related to, and anticipates, recommendation #3 above, which proposes a local networks block grant program, but has a broader intent.

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\(^{82}\) For example, a TOD (transit-oriented development) district around a rail station may require a range of relatively small projects to provide access and connectivity between the rail station, the station area development and the surrounding neighborhoods. These small projects might include crosswalks, transit route adjustments and new transit circulators, new street connections, and even new alley systems to remove parked delivery vehicles from key access streets. The traditional process of project identification and FHWA division office oversight of each project element, including especially design review and concurrence will not be workable. Rather, FHWA will need a simpler system whereby local governments – cities, counties, redevelopment agencies, transit agencies, etc. – can be certified to manage grants intended for use on a variety of project elements.
Background:

Today, cities around the country are concerned that state DOTs and FHWA division offices routinely impose their judgment on what should be local funding and design decisions. Issues like street lane widths, provision of on-street parking, installation of mid-block pedestrian crossings, location of bus stops, signal timing and so forth are made by state transportation officials or division office staff under the premise that state routes must be protected for regional through traffic. Or, on local routes, design approval is withheld from needed projects and project elements based on out-dated and inaccurate perceptions of “traffic safety” or congestion management principles.

For example, in a southwestern city, local staff has been overruled in their attempts to install improved pedestrian crossings connecting across a state route to a university campus. The state DOT has taken the position that pedestrian crossings of this street are inherently unsafe and thus should not receive federal funds. An appeal to the FHWA division office resulted in the division staff supporting the state DOT position. Of course, the state position is driven, not by principles of improved safety, but by concerns about liability for potential accidents. This kind of action is repeated daily across the country on literally thousands of project decisions.

5) Require additional reporting from State DOTs and Metropolitan Planning Organizations (MPOs) on transportation funding decisions and outcomes with the stated objective of achieving transparency of and convenient public access to information about the use of federal surface transportation funding.

Status Quo:

The federal transportation program, and the state and local transportation programs it supports, represent a vast amount of information, most of which is inaccessible to those who would like to know how their transportation dollars are being spent and what is being accomplished.

State highway programs assign large sums to broad categories (such as congestion alleviation) with little quantitative information about what outcome is expected and with almost no reporting of actual outcomes (such as how much congestion was reduced). Although U.S.DOT has required states to report bridge conditions for some years, even this critically important information has been difficult to unearth and evaluate.

As problematic as the general obscurity characterizing use of federal transportation funds is the absence of accountability for performance objectives or publicly vetted goals.

Proposed Change:

The model set by Administration management and reporting on the American Recovery and Reinvestment Act (ARRA) (White House memorandum M-09-10) can serve as a baseline for implementing this recommendation. Like current ARRA reporting systems (see Recovery.gov), data should be compiled, organized and made available on the Internet through a plain-English website. Beyond that, a new federal surface transportation performance monitoring and reporting website
should have built-in provisions for data access and analysis. A comprehensive
glossary should be provided and data reporting from all agencies and grantees
should be standardized to support both routine reports and ad hoc investigation.
The following specific measures should be implemented:

- **FHWA Fiscal Management Information System (FMIS).** The FMIS system is, as
  a practical matter, available for use only by a small cadre of insiders at FHWA and state
  DOTs and a few other federal agencies. General public access is neither supported
  nor encouraged. While direct public access to sensitive financial management
  systems is not proposed, the existing system should serve as the foundation for a
  public access web-resident data system that supports both pre-programmed reports
  and ad hoc query. Also, FMIS reporting requirements (or directions for reporting)
  should be updated in order to more accurately account for projects that include
  accommodation for all users, including infrastructure improvements to better
  accommodate for bicyclists, pedestrians, transit, and users of all ages and abilities.

- **FHWA Highway Performance Monitoring System (HPMS).** FHWA's HPMS system
  was established in 1978 and includes data on the extent, condition, performance, use,
  and operating characteristics of the nation's highways. While there are a range of
  issues associated with HPMS, the two most critical problems are the limited
  availability of information about roads and streets under local jurisdiction; and the
  inadequacy of the system for reporting annual vehicle miles of travel. Both of these
  insufficiencies will be of critical importance as a more robust system of performance
  objectives is articulated in a new Surface Transportation Authorization and as the
  country gears up to manage GHG emissions.83

- **FTA Transportation Electronic Award Management (TEAM).** FTA’s TEAM-Web
  application is used to simplify and standardize the federal transit program's grants
  management system. The on-line system is a project and financial management
  application designed to provide increased accessibility of Federal Assistance
  Programs. However, TEAM-Web does not allow or support general public access or
  query. While direct public access to sensitive financial management systems is not
  proposed, the existing system should serve as the foundation for a public access web-
  resident data system that supports both simple pre-programmed reports and ad hoc
  query.84

- **FTA National Transit Database (NTD).** The NTD was established by Congress to be
  the primary source for information and statistics on the nation’s transit systems. In
  addition to data gathering and reporting by FTA, certain recipients or beneficiaries of
  grants from FTA are required by statute to submit data to the NTD. Most of the data
  available on the NTD website is in the form of prepared reports in Microsoft Excel
  spreadsheets or Adobe Portable Document Format (PDF) files. The NTD system
  should serve as the foundation for a public access web-resident data system that
  supports both simple pre-programmed reports and ad hoc query.85

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• Bureau of Transportation Information (BTS). The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 created BTS “to administer data collection, analysis, and reporting and to ensure the most cost-effective use of transportation-monitoring resources.” (BTS is part of the Research and Innovative Technology Administration, or RITA). The BTS website contains an enormous amount of information. However, most of this is in the form of static reports and publications. Access to data for direct query and analysis is limited. U.S. DOT has also made the choice not to compile and report data from the databases described above, so the BTS website does not provide comprehensive access to data from the HPMS or NTD systems, for example. Someone wishing to do research on vehicle miles of travel trends and their implications for energy use or GHG emissions must either rely on reports prepared by others, or must navigate several federal databases, contending with different reporting periods, different data parameters, and the inevitable data conflicts and inconsistencies. As it stands, the BTS data reporting systems and website fall short of achieving the original ISTEA vision of a program that creates “a greater degree of coordination, comparability, and quality standards to transportation data, and facilitates in the closing of important data gaps”.  

Background:

One of the more important aspects of the American Recovery and Reinvestment Act of 2009 (ARRA) has been the unprecedented commitment to transparency and public access to information. The White House’s guidance to federal agencies set the following requirements for implementation of the ARRA appropriations:

• Funds are awarded and distributed in a prompt, fair, and reasonable manner;
• The recipients and uses of all funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and in a timely manner;
• Funds are used for authorized purposes and instances of fraud, waste, error, and abuse are mitigated;
• Projects funded under this Act avoid unnecessary delays and cost overruns; and,
• Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

6) Create a National Task Force on National Transportation Objectives to develop a national vision, national objectives, and performance measures to assess the existing data and data needs to adequately measure results from transportation investments.

Status Quo:

It has been widely observed that the federal surface transportation program, which spends over $60 billion annually, is not guided by measurable policy objectives and

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86 See [http://www.bts.gov/](http://www.bts.gov/)
87 Memorandum for the Heads of Departments and Agencies; M-09-10, February 18, 2009

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is not held accountable through performance monitoring and reporting for the outcomes resulting from this sizable expenditure of public funds.

One of the most significant barriers to an informed discussion about these objectives is the lack of accurate data on these subjects coupled with the lack of any system for routinely measuring and reporting either the ongoing trends or the outcomes of federal expenditures (see Recommendation #5 above). Although passage of a new surface transportation bill may be a year or more away, U.S. DOT could make a significant contribution to an informed debate – in Congress and across the country – by beginning a data assembly effort linked to a facilitated national dialogue about desired outcomes.

**Proposed Change:**

U.S. DOT should appoint a Task Force on National Transportation Objectives made up of Congressional staff, transportation industry professionals, state, regional and local government representatives, and university researchers. In conjunction with formation of the Task Force, U.S. DOT should begin a data assembly and evaluation process designed to provide accurate information about issues that are likely to be the subject of debate in the new Surface Transportation Authorization. The Task Force should report results by December 2010.

The charter for the Task Force on National Transportation Objectives should include the following assignments:

- Develop a concise, compelling Vision Statement for the nation’s Surface Transportation Program to 2050. Hold public hearings in four locations around the US to obtain public comment and advice on the direction for the nation’s surface transportation program.

- Develop for consideration by Congress a list of National Transportation Objectives that are measurable and designed to guide development of a new Surface Transportation Authorization and to provide the basis for an ongoing program of routine, accurate monitoring and reporting of transportation outcomes.

- Develop a list of recommended performance measures to become the framework of an annual *Report on the Condition of the U.S. Transportation System.*

U.S. DOT should begin work on data assembly to support the Task Force in its deliberations. This effort should also serve to highlight existing deficiencies in the data monitoring programs of U.S. DOT as well as needed data that does not exist or is not readily available. Subject matter for this effort should encompass:

- Daily VMT on all public and private roadways, by state and metropolitan region

- Daily personal travel by mode

- Greenhouse gas emissions from surface transportation sources

- Energy consumed by surface transportation, including explicit documentation of reliance on imported petroleum and an evaluation of likely trends in energy costs and implications for both personal travel and freight movement
- Mode share of freight movement in the U.S. by volume and weight, with analysis of distance factors and ongoing trends and an evaluation of key measures needed to improve energy efficiency of freight movement
- Percent of the population exposed to air pollution at levels posing a health risk
- Impact on surface water bodies of surface transportation system runoff, with an evaluation of stormwater management systems in use on state and local transportation facilities and best practices for reducing water pollution in the nation’s waterways
- Assessment of travel safety by all modes, including an impartial analysis of relationships between speed, congestion, accident rates and accident severity
- Condition of the surface transportation systems – all modes – based on reasonable standards for State of Good Repair, along with a trend analysis and an estimate of cost to reach potential minimum thresholds
- Measurement of affordable living (housing + transportation costs) by state and metropolitan region, with analysis of relationships between location of development and household financial well-being
- Measures of accessibility by state and metropolitan region, using methodologies developed by the U.S. Environmental Protection Agency (Five D’s), with an evaluation of the relationships between accessibility, energy consumption, greenhouse gas emissions, travel safety and public health
- Measures of ‘completeness’ of federally funded streets based on accommodation of the needs of all users—pedestrians, bicyclists, transit users and vehicles, and people of all ages and abilities

**Background:**

Several national organizations, including Transportation for America, have proposed that the new Surface Transportation Authorization legislation should establish National Transportation Objectives, supported by routine performance measurement and reporting.

Although it is not possible to predict what objectives might be approved, the list of topics may resemble the objectives proposed by Transportation for America, a broad national coalition of individuals, groups and governments. 88

Transportation for America’s proposed National Transportation Objectives are:

a) Improve economic competitiveness, transportation system efficiency and workforce development opportunities.

b) Improve transportation system conditions and connectivity.

c) Promote energy efficiency and achieve energy security.

d) Ensure environmental protection, restore climate stability and resolve persistent environmental justice issues.

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88 See [http://t4america.org/blueprint/](http://t4america.org/blueprint/)
e) Ensure safety for all transportation users and improve public health outcomes.

f) Provide equal and equitable access to transportation options in urban, suburban and rural communities

7) **U.S. DOT should increase the use of statewide and regional scenario planning processes by state DOTs and MPOs by providing funding for Blueprint Planning, by supporting a technology transfer process to help states and MPOs with the technical requirements inherent in scenario planning and ultimately by making Blueprint Planning a requirement in state and metropolitan planning processes.**

**Status quo:**

Statewide and regional transportation planning in current practice is limited in scope, lacking in meaningful public participation and insufficient in forecasting methods. Traditional traffic modeling and forecasting rely on narrow land use data sets\(^\text{89}\) and often fail to take account of some of the most important and unique community characteristics, such as urban design, walkability or connectivity of the local street network.

It is widely understood that changes in the transportation network, especially road construction, have a major impact on development patterns (dispersion of growth, density, mixed use, etc.). However, state DOTS and MPOs often fail to consider the far-reaching land use impacts of the transportation projects prescribed by the forecasting process. The predictable result is that growth patterns follow highway investments, leading to traffic levels that exceed forecasts, leading in turn to further calls for investment in congested corridors. This pattern of forecasting has played a key role in driving up VMT per capita and public and private transportation costs.

**Proposed Change:**

U.S. DOT should initiate federal support of Statewide and Regional Blueprint Planning processes by issuing guidance to division offices and state DOTs setting forth recommended elements ofBlueprints.

Minimum elements of a federally supported blueprint process should include:

- Blueprints should be tied to specific transportation objectives (see below);
- Blueprint planning processes should entail extensive public involvement; and,
- Blueprint scenarios should explicitly examine both alternative transportation plans and alternative land development scenarios.

The transportation objectives addressed in Blueprints should include:

- Promote energy efficiency and achieve energy security.
- Ensure environmental protection, restore climate stability, and resolve persistent environmental justice issues.

\(^{89}\) Typically, traffic models are based on number of dwelling units and either square footage of commercial space or number of jobs in “traffic analysis zones”.
- Improve economic competitiveness, system efficiency, and workplace development opportunities.
- Ensure safety for all transportation users and improved public health outcomes.
- Improve transportation system conditions and connectivity for all modes.
- Provide equitable access to transportation options in urban, suburban, and rural communities.

U.S. DOT should provide competitive funding for at least five Blueprint pilot projects, including:
- At least three MPOs;
- One or two multi-MPO “regions” where large cities are close enough to each other than their transportation systems directly interact (e.g., MAG and PAG in Arizona);
- At least one statewide pilot by a state DOT.

Outcomes and experience gained from these pilots should then be disseminated widely and used to guide and inform Congressional consideration of Blueprint Planning in the new surface transportation bill. U.S. DOT should support authorization for Blueprint Planning in the bill and should help Congressional committees make provision for Blueprints to serve as competitive criteria for discretionary funding and should support establishment of significant permanent funding for statewide and regional Blueprint Planning.

Background:

For some years now FHWA has advocated and supported “scenario planning” processes that have the potential to resolve some of these aforementioned shortcomings. Recently, the core idea of scenario planning evolved to include the effects of alternative transportation investment programs on land development patterns and to allow adjacent MPOs and regions to examine growth trends cooperatively and at a larger scale. The term used to describe these planning processes is “blueprint planning.”

One of the key ideas in blueprint planning is that it allows agencies and their publics to examine the implications of more than one land development pattern, thereby exposing for public discussion the implications of alternative land use and transportation scenarios in light of public objectives such as energy security,

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90 FHWA’s definition of scenario planning: “Scenario planning provides a framework for developing a shared vision for the future by analyzing various forces (e.g., health, transportation, economic, environmental, land use, etc.) that affect growth. Scenario planning, which can be done at the statewide level or for metropolitan regions, tests various future alternatives that meet state and community needs.” (See http://www.fhwa.dot.gov/planning/scenplan/index.htm for more information.)

91 The State of California has been a leader in developing and supporting a Blueprint Planning Process, defining it as follows: “Through Regional Blueprints, local transportation agencies attempt to balance transportation planning with land use planning, housing needs, resource protection and other planning issues in order to achieve more sustainable regional growth patterns and improve the quality of life for Californians.” (For more information on California’s program, see http://calblueprint.dot.ca.gov/overview.html.)
greenhouse gas emissions, household travel costs, air quality, neighborhood livability and community character.

A well-known example of this process is the Sacramento Blueprint, which was the product of a three-year public involvement effort intended to guide land-use and transportation choices over the next 50 years as the region’s population grows from 2 million to more than 3.8 million people. The Preferred Blueprint Scenario became part of SACOG’s Metropolitan Transportation Plan for 2035, the long-range transportation plan for the six-county region. It will continue to serve as a framework to guide local government in growth and transportation planning through 2050.92

Other broad-based, progressive examples of large-scale scenario planning efforts around the U.S. include Portland 2040, Envision Utah, and San Francisco Bay Area’s Smart Growth Strategy/Regional Livability Footprint Project, among many others.93

While blueprint planning offers the potential to significantly improve transportation planning in the US, with tangible benefits for the efficiency of our transportation investments, the process is not inexpensive. California has spent about $20 million on Regional Blueprints since the program was initiated in 2005. The process requires more extensive public involvement in transportation planning than most MPOs or state DOTs are accustomed to. Thus, the likelihood that blueprint planning would spread to other states and regions without active federal encouragement is limited.

8) U.S. DOT should create a bicycle commuter benefits program for agency employees.

Status quo:

In August of 2009 the Government Accountability Office (GAO) issued a decision94 giving each federal agency the authority to extend their transportation fringe benefits programs to cover bicycle commuters. Agencies may use appropriated funds for commuting subsidies to reimburse employees who regularly commute to work by bicycle. According to the GAO statement, this decision permits agencies to develop a bike-commuter reimbursement plan if they choose, but they are not required to do so. U.S. DOT has not yet implemented this benefit, despite the presence of an active bicycle commuter group at the agency.

Proposed change:

U.S. DOT should establish a bicycle commuter reimbursement program for the agency’s employees to encourage equal support for bicycle commuting, provide alternatives to driving and measure up to the principles of the Partnership, as well

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92 For more information on the Sacramento Blueprint, go to http://www.sacregionblueprint.org/sacregionblueprint/home.cfm.
93 See Keith Bartholomew’s analysis of scenario planning, available at: http://faculty.arch.utah.edu/bartholomew/
as the provisions of President Obama’s Executive Order 13514\textsuperscript{95}. U.S. DOT could demonstrate how to implement this benefit at other agencies through education or information sessions.

Background:

Bicycle commuting reimbursement was added to the list of qualified transportation fringe benefits covered in Section 132 (f) of the Internal Revenue Service Code. The Bicycle Commuter Act passed in the Renewable Energy Tax Credit legislation in 2008.

\textsuperscript{95} President Obama’s Executive Order 13514 established a strategy for reducing greenhouse gas emissions through Federal agency operations, which includes using alternative fuel vehicles. Bicycles are defined as an alternative fuel vehicle in Sec. 19(c). Moreover, Section 11 of the order requires the General Services Administration to review current policies and practices associated with the use of public transportation and alternative fuel vehicles by Federal personnel and recommend improvements to satisfy the goals of the order. Executive Order 13514 – Federal Leadership in Environmental, Energy, and Economic Performance. Federal Register Volume 74, Number 194. October 8, 2009.
Department of Housing and Urban Development

“As a result of our agencies’ work, I am pleased to join with my DOT and EPA colleagues to announce a uniform statement of livability principles. For the first time, these principles provide a uniform set of guidelines for each agency to formulate and implement policies and programs. More importantly, they mean that we will all be working off the same playbook to better serve American families who expect more affordable and sustainable choices in their communities.

For the first time, the Federal government will speak with one voice on housing, environmental and transportation policy... But the real test of our commitment will be in putting the principles into action.”

- HUD Secretary Shaun Donovan, June 16, 2009

HUD’s participation in the Sustainable Communities Partnership demonstrates a broader understanding of HUD’s mission and the elements needed to be successful in that mission. It is an understanding that, in order to be most successful, affordable housing resources must be deployed where they support and enhance access to the other daily needs of low-income families. Affordable housing units located miles away from the nearest grocery store, school or job center do not help to make low-income families’ lives easier, or more affordable. Creating housing programs that ignore the ability of tenants to safely and quickly access transportation routes, especially transit, bicycling and pedestrian-friendly, walkable, routes, add to the household cost burden for families and increase the environmental costs to a community.

In the broadest sense it is an understanding that HUD’s mission is affected by and affects transportation, the environment, energy, economic opportunity—in short it is affected by and affects community. The Sustainable Communities Partnership is an opportunity to take advantage of that connection, to leverage better outcomes for families and communities by leveraging those hitherto unacknowledged connections.

Toward that end, Smart Growth America has worked with a wide range of people and organizations to identify specific steps that HUD can take to make this opportunity a reality. In doing so we had criteria and constraints that influenced us and it is important to remember these as the context within which our recommendations were developed. In putting these recommendations together SGA:

- Wanted to move quickly. We believe that early action on the part of HUD and the other Partners will build momentum and help people to better understand the goals and promise of the Partnership.
- Approached this opportunistically. This is not a top to bottom survey of HUD programs and policies; rather it is a set of opportunities identified by SGA staff and field practitioners.

96 Statement of Secretary Shaun Donovan, U.S. Department of Housing and Urban Development (HUD). Hearing before the Committee on Banking, Housing and Urban Affairs, Unites States Senate. Tuesday, June 16, 2009.
- Avoided duplication. We know other organizations have been working to put together recommendations. We support many of those recommendations and for the most part have sought to avoid covering the same ground.

- Aimed for Administrative changes and specificity. Because of the imperative for early action we developed only actions that could be accomplished Administratively. Similarly, we sought to be as specific as possible in our recommendations so that the proposed action was clear and actionable.

- Vetted our recommendations. We vetted our recommendations with many groups and individual practitioners to verify their utility and get a sense of the reaction they would receive if implemented. These reactions have informed our recommendations, though the ultimate content is the sole responsibility of SGA.

SGA’s recommendations fall into the following categories:

1) Expand eligibility in key HUD programs to promote greater innovation and productivity with state partners and property owners:

- Equalize and promote HUD multi-family Weatherization program at state and local implementing level.

- Amend Green Initiatives/Mark to Market application process to make it easier for private-sector contract holders to access funds

2) Provide greater technical assistance and support across the country to raise the threshold for performance that best helps low-income households:

- Implement additional Consolidated Plan reporting criteria on a pilot basis, focusing on analysis of sustainability elements appropriate to local conditions within entitlement jurisdictions.

- Promote and support small population jurisdictions (50,000 and below) to form regional consortia to submit collaborative Consolidated Plans.

- Use HUD Resources to provide training and technical assistance on smart growth best practices to Housing Authority Managers.

3) Improve the administration of HUD programs to enhance conditions on the ground:

- Increase Municipalities’ and CDC’s access to FHA real estate owned (REO) properties to support targeted revitalization areas.

- Investigate creating a separate insurance pool for residential brownfield redevelopments, to isolate FHA mortgage risk while permitting some cleanup costs to be included in overall financing for an infill project.

- Create a HUD/EPA Grants and Process Working Group to see how the application and reporting processes for HUD and EPA brownfields funding could be coordinated and streamlined. Consider bringing representatives from USDA, EDA, and other agencies that administer brownfields funding into this working group as well.

Individually, each of these measures is designed to improve the functionality of the programs they reference, to enhance the core HUD mission while achieving important additional and related policy goals. Collectively, they represent the embodiment of a new
approach at HUD – one that strengthens and advances the core mission of the agency while embracing the many policy ideas that have been proven to improve the environmental, economic and overall quality of life for low income families and future generations.
Recommendations

1) Equalize and promote HUD multi-family Weatherization program at state and local implementing level.

Status quo:

Title IV, Energy Conservation and Production Act, as amended, authorizes the Department of Energy to administer a Low Income Weatherization Assistance Program. Through an inter-agency partnership, HUD is working directly with DOE to implement weatherization upgrades. Program Notice 09-1 provides 2009 grant guidance for the appropriates, including the eligibility of some multi-family projects for weatherization assistance.

While final rules have not yet been published by DOE, the federal language expresses that state and local implementing agencies should prioritize single-family home implementation over multi-family and eligible mixed-use projects. This imbalance of priority precludes many thousands of households in need of weatherization assistance from participating and contributing toward the quantitative and qualitative goals of the program.

Proposed change:

Under the proposed rules, certain HUD-assisted properties would automatically meet three of the statutory and regulatory requirements applicable to multifamily properties: income eligibility; limitation on rent increases; and no undue or excessive enhancement of value. Covered HUD-assisted properties would include most public housing and Section 8 properties, as identified on a list to be provided by HUD. In addition, under the proposed rules, low income housing tax credit projects identified by HUD would automatically meet the income eligibility requirement.

In order for these rules to take effect and have an impact, two things must happen. First, DOE must publish final rules. Second, states and their subgrantees must be encouraged to take advantage of the new rule. There are a few statutory and regulatory elements that could weigh against effective implementation at the state and subgrantee level. One is the regulatory requirement that states specify the priority that will be given to single-family homes, which are identified as high-energy consuming.

It is not clear that multi-family buildings should be automatically relegated to secondary priority, especially since rehabilitating one multi-family building would seem to help a significantly greater number of families per project, which can have a

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97 The enabling statute is codified at 42 USC 6861 et seq. The regulations are found at 10 CFR 440 et seq.
100 See 42 U.S.C. 6864(b)(2) and 10 CFR 440, Federal Register, Vol. 74 No. 97, pp23804-05, 5/21/09.
significant cumulative effect on energy consumption. As well, many urban and higher-density communities have a greater concentration of HUD-subsidized multi-family buildings programs compared to eligible single-family units. This would seem to result in a bias against investments in high-density, urban neighborhoods, which is contradictory to HUD public policy in other programs, and undermines the principles of sustainability, which recognize the importance of higher-density, urban communities as preferable to land-consuming, suburban models of development. While nothing prevents a state from giving multi-family projects the same or higher priority than single-family homes, this explicit reference to single-family homes as high-energy consuming creates a blanket bias in that direction.

In addition, states have the option of requiring project owners of multifamily buildings to contribute funds to the weatherization program. If states choose to impose such a requirement, building owners may be discouraged from participating.

2) Expand HUD’s Mark to Market/Green Initiatives pilot program eligibility and streamline the project application process to make it easier for private-sector contract holders to access funds.

Status quo:

HUD’s Mark to Market/Green Initiatives pilot program\(^{101}\) has been very effective in putting resources on the ground in projects nationwide. However, the pool of eligible projects remaining is shrinking rapidly, along with the allocated resources for implementing the program.

We note that the Green Retrofit program (funded through ARRA) is equipped with both the resources and a wider eligibility; however, there are barriers in the application process that are a serious hindrance to private sector applicant participation. Examples include applicants with more than one property being prevented from submitting omnibus applications, and slow turnaround time for application review, which discourages property owners from trying to participate in the program. Lessons learned through this stimulus program can help inform amendments to the Green Initiatives application and review process, to ensure maximum participation in future years.

Proposed change:

The M2M/Green Initiative (M2MGI) program should maximize the number of participating properties so that the greatest benefits can be achieved for low-income residents and the property owners of affordable housing.

Expanding participation in the M2MGI could be achieved in several ways:

- HUD could more aggressively promote the program with eligible project owners
- HUD could enhance owner incentives, for example by providing an even larger increase in incentive performance fees, providing additional support for owners to pursue grants and other sources of funding for the required owner contribution, or by providing funding for preparation of the Green Operating and Maintenance Plan.

\(^{101}\) 24 CFR Part 401
- HUD should consider expanding the M2M program itself to increase the number of properties eligible for M2MGI. In the interim, HUD can extend the M2MGI benefits to those projects that have already received restructuring commitments.

3) The Office of Sustainable Communities should convene an inter-agency team including EPA, DOT and third-party experts in the field to create additional Consolidated Plan reporting data criteria, focusing on analysis of sustainability elements appropriate to local conditions within entitlement jurisdictions, and implement initially on a pilot basis, to evaluate the impacts to programs if those criteria were adopted.

Status quo:

HUD’s Consolidated Plan Final Rule\(^{102}\) gives direction to entitlement jurisdictions on the federal housing priorities to be pursued and achieved in spending CDBG, HOME, and HOPWA program resources. Consolidated Plans required by HUD for entitlement jurisdictions are insufficiently influenced by important factors such as access to transportation, job centers, educational opportunities or other important sustainable community factors.

Proposed change:

We propose that HUD add sustainability data requests to Consolidated Plan reports. Collection of this data will allow HUD to compile, analyze and, in the future, add criteria to the Consolidated Plan goals for serving-low income families. This effort could be implemented initially as a pilot. For example, requesting data from a selected set of urban, suburban and agricultural or other rural jurisdictions, for evaluation of the ease and uniformity of data collection, as well as how the criteria would impact local implementation of the program under these additional considerations.

Examples of additional data requests in Consolidated Plan reporting could include:

- Mapping overlays showing recipient programs, local service offices and low-income households served to:
  - Major transportation networks, especially multi-modal nodes and routes,
  - Job centers, education and training programs
  - Public schools and other government agencies/services
  - Grocery stores, farmer’s markets and other food sources
  - Energy-efficient housing units available to low-income families

- Measuring the number of recipients who are able to take advantage of housing units that include energy efficient features, or are located within walking distances of transit, jobs and services.

Ultimately, implementing reporting requirements could help raise awareness on the best locations for programs and services easily accessible for target populations,

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\(^{102}\) See [http://www.hud.gov/offices/cpd/about/conplan/finalrule_bookview.doc](http://www.hud.gov/offices/cpd/about/conplan/finalrule_bookview.doc)
and help HUD to design future Consolidated Plan criteria that better meet affordability and sustainability goals.

Background:

In NSP II, Section IV.A.1.a-b (Rating Factor 1) of the NOFA includes 70 total potential points for inclusion of a local market conditions analysis, including the ways in which the jurisdiction’s application would yield results to positively respond to those conditions. Section IV.A.5 (Rating Factor 5) of the NOFA includes 10 potential points for inclusion of energy efficiency and sustainable development factors, such as transit accessibility, green building standards and re-use of cleared sites. An improved Consolidated Plan would give increased weight to comparable sustainability factors, and would expand the definitions and measurements of a wider variety of sustainable development and energy efficiency best practices.

4) Promote and support small population jurisdictions (50,000 and below) to form regional consortia to submit collaborative Consolidated Plans.

Status quo:

The States Small Cities program, within the Community Development Block Grant program, permits non-entitlement jurisdictions to receive access to federal funds for housing and expanding economic opportunities, targeted principally for persons of low- and moderate-income. Very small jurisdictions often do not have the capacity or expertise to develop consolidated plans, including within a sustainable framework. HUD should encourage states to foster and develop very small jurisdiction coordinated Consolidated Plans.

Proposed change:

Coordinating efforts can add resource efficiencies, allow for regional approaches to housing programs and create opportunities for policy best practices. Working together, localities can designate the best locations for recipients even outside their own immediate borders within a regional context, eliminating the duplication of some services while increasing access to the most diverse combination of opportunities for clients. Examples of these could include:

- Coordinating among jurisdictions to provide services and local agency offices close to regional transportation networks and job centers,

- Allowing one jurisdiction to house a strong literacy-training program at its community college campus, while a parenting skills class is hosted at a local hospital in another, with access provided to low-income residents in both jurisdictions to both programs.

In particular, eligible planning, urban environmental design and policy-planning-management-capacity building activities could benefit from such collaboration.

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Encouraging collaboration among very small jurisdictions could have similar benefits and efficiencies to the joint Metropolitan City/Urban County recipients program\textsuperscript{105}, which allows for coordinated planning, and delivery of services, to support residents in jurisdictions in close proximity. Technical assistance from HUD or state and locally designated entities could be instrumental in promoting regional best practices in planning and coordination.

Using the joint Metropolitan Cities/Urban Counties provisions\textsuperscript{106} as a model, HUD should create an additional section in the States Small Cities program (24 CFR 570) to allow for, and encourage, joint collaboration and planning among very small localities for eligible activities.

5) **Use HUD Resources to provide training and technical assistance on smart growth best practices to Housing Authority Managers.**

*Status quo:*

Housing Authority managers face many decisions on the short- and long-term best needs of low-income families within their portfolios. The degree to which local governments offer support and inclusion in planning exercises, resource allocation and other relevant areas varies widely by jurisdiction.

To the extent Housing Authority Managers access and receive uniform training and technical assistance on innovative programs and new best practices, these trainings do not typically include sustainable communities best practices as they apply to the Housing Authority.

*Proposed change:*

To the maximum extent possible, HUD can promote and educate its managers to consider allocation and planning alternatives that take into consideration the cost savings and other benefits of sustainability practices. These may be implemented through:

- Additional support for the Public Housing Environmental and Conservation Clearinghouse\textsuperscript{107}
- Preparing PowerPoint training that is made available to public housing agencies, similar to HUD’s Leadership Development Program Public Housing Training Programs\textsuperscript{108}
- Sponsor conferences on smart growth best practices with housing authority managers as a significant audience.

\textsuperscript{105} 24 CFR 308.3 and 308; also HUD CPD-08-04, Instructions for Urban County Qualification for Participation in the Community Development Block Grant Program, Section VII.A – Special Considerations.


6) Increase Municipalities and CDC’s access to FHA real estate owned (REO) properties to support targeted revitalization areas.

Status Quo:

As owner of a significant inventory of REO properties\(^{109}\), FHA’s policies require a balancing of its mission-oriented priorities against those to protect the financial interests of the federal government. Currently, these dual objectives appear to be out of balance. Many jurisdictions consider the disposition programs unusable and do not consider FHA an engaged partner in developing solutions to the overwhelming foreclosure crisis devastating the nation’s neighborhoods. Jurisdictions and CDCs often lose out in competitions to acquire properties in targeted revitalization areas. By not engaging in a cooperative approach that prioritizes municipalities and CDCs as community revitalization partners, FHA’s REO properties are often transferred to speculators with little interest in maintaining or improving the property for productive use or investing in the community. The properties sit vacant and in unsafe conditions, pulling down adjacent property values, attracting illegal activity, and requiring substantial municipal resources to police and maintain.

Further, two of the most critical program activities at HUD—REO disposition through FHA and the Neighborhood Stabilization Program through Community Planning and Development (CPD)—do not coordinate in their stabilization efforts.

The federal government, nonprofits, and local jurisdictions have made a substantial commitment to revitalize neighborhoods over the last 30 years; over the last year, many have confirmed that commitment through development of Neighborhood Stabilization Program (NSP) plans and other foreclosure recovery programs. They should have as many avenues to pursue REO properties as possible to enact comprehensive strategies.

Proposed change:

As the principal federal agency charged with improving neighborhood and housing conditions, HUD is in the most important and influential position to work together with local agencies to turn its portfolio of REO properties into assets that actively support housing affordability, neighborhood stabilization, and other community development goals. To do so, FHA/HUD should align the disposition process to support NSP and other foreclosure recovery plans. The FHA inventory is particularly important because of its prevalence in low- and moderate-income neighborhoods. Ensuring the reuse of the properties acts in concert with existing revitalization plans will leverage the planning, capacity building, and redevelopment efforts set forth by municipalities.

Currently there are five programs by which FHA may dispose of REO properties: the Lottery program, the Competitive Sales process, the Bulk Sales program, the Dollar Home program, and the Asset Control Area (ACA) program. We believe that the best opportunity to streamline the disposition process for coordination with stabilization

\(^{109}\) The National Community Stabilization Trust has estimated that HUD/FHA properties make up approximately 14 percent of the REO market nationwide.
activities is through the Lottery and Competitive Sales programs. Amending these programs would provide the jurisdictions and CDCs responsible for implementing successful neighborhood stabilization activities with the most competitive opportunity for property acquisition, ahead opportunistic investors.

We recommend a few changes to make these programs better leverage the federal and local resources, and support NSP and other revitalization work:

- Allow a “first look” for properties within priority areas to municipalities and HUD-approved CDCs\(^{110}\), including: NSP target areas, FHA revitalization areas, other approved HUD-designated communities (e.g. Enterprise Zones, Choice Neighborhoods), areas in support of EPA programs (e.g. Brownfields pilots), and areas within a half-mile of a planned or existing fixed guideway transit stops with a level of service to be determined by the Secretary of Transportation.

- The Competitive Sales program, run by FHA, only deals with properties within designated markets called “revitalization areas.” These are distinct from the target areas designated by participating jurisdictions in their NSP plans, a program run by CPD. We believe that NSP target neighborhoods should qualify to be a part of the Competitive Sales program. Further, properties in neighborhoods prioritized to support EPA or DOT goals (as stated in the first bullet) should qualify for the program.

- To participate in the Lottery program, nonprofits must acquire an NAID number (Name/Address Identifier.) There is currently a backlog and the numbers are difficult to get. The process to register with an NAID should be streamlined so that more nonprofit entities are able to enter the program.

- The purchase discount available through the Lottery program currently is either 10 percent or 30 percent, depending on whether or not a property is insurable. Because many vacant properties are uninsurable, we believe FHA should allow for the 30 percent from the start. This would streamline the acquisition process and save time and money during potentially prolonged negotiations.

- To help municipalities and CDCs plan their revitalization efforts, HUD’s web site should allow them to see all parcels being maintained by M&M (management and marketing) contractors, and where the properties are in the HUD process.

7) **Investigate creating a separate insurance pool for residential brownfield redevelopments, to isolate FHA mortgage risk while permitting some cleanup costs to be included in overall financing for an infill project.**

**Status quo:**

HUD generally requires remediation of contamination prior to providing its FHA “Firm Commitment” for financing. Pursuant to the Multifamily Accelerated

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\(^{110}\) The National Community Stabilization Trust had developed a “First Look” program that “gives buyers the opportunity to inspect and acquire foreclosed and vacant properties before they are listed for sale through traditional means. The First Look program results in an adjusted purchase price that reflects savings passed on to the buyers from avoided expenses associated with prolonged holding periods.”— http://www.stabilizationtrust.com/faq.html#q2. The timeframe for the first look that we recommend would be longer than what is identified as part of this program.
Processing (MAP) Guide, HUD does permit certain limited removal of contaminants after the firm commitment but before HUD’s initial endorsement, called “Risk-Based Corrective Action” or RBCA. Unfortunately, private sector partners have difficulty securing the necessary financing for a speculative remediation on a site that does not have HUD commitment for redevelopment. This barrier prevents many developers and lenders from moving forward on otherwise sound development proposals that brownfields programs are designed to promote.

Proposed change:

Because insuring a loan for development on a brownfields site is often more risky, FHA should explore creating a separate insurance pool, with higher fees to compensate for the additional risk, to help promote the redevelopment of contaminated sites. HUD has financed studies\textsuperscript{111} in the past that have promoted the efficacy of environmental insurance as tool for stimulating increased brownfields redevelopment.

FHA should use these studies to guide an analysis of the opportunities around creating an FHA insurance program that can address the financing and remediation needs of the private sector, separate from the FHA mortgage program, to maximize the participation and effectiveness of brownfields remediation.

Background:

The HUD guideline document, Multifamily Application Process Guidelines, outlines policies and procedures that HUD staff and lenders must follow to meet environmental responsibilities in Chapter 9 (“Environmental Review”) \textsuperscript{112}. The Office of Multifamily Programs is currently working on a new release for the entire MAP Guide that will incorporate revisions to this and other chapters and reflect current policies and procedures.

8) Create a HUD/EPA Grants and Process Working Group to see how the application and reporting processes for HUD and EPA brownfields funding could be coordinated and streamlined.\textsuperscript{113} Consider bringing representatives from USDA, EDA, and other agencies that administer brownfields funding into this working group as well.

Status quo:

It is extremely difficult right now for localities to blend HUD and EPA money, but often necessary to do so since the agencies fund different stages of brownfields assessment, cleanup, and redevelopment. There are different timelines, applications, rules, and reporting requirements that make navigating these programs in conjunction with one another burdensome. This has many negative consequences.


\textsuperscript{112} Available at http://www.hud.gov/offices/hsg/mfh/map/mapguide/mapguide.cfm

\textsuperscript{113} For example, both HUD and EPA grant programs are subject to Davis-Bacon Act requirements, but there are currently inconsistencies in the way the agencies apply the law. In order to make combining HUD and EPA funding streams easier, the agencies should clarify that HUD guidelines and waivers used to implement Davis-Bacon for a project also apply to and satisfy EPA Davis-Bacon requirements for that project.
For instance, as a result of the inability to seamlessly use EPA brownfields funds in
coordination with HUD funds, CDBG dollars must be directed towards site
assessment and cleanup, resulting in fewer or more costly affordable housing units
being built.

Proposed change:

As much as the statutory limitations allow, HUD and EPA should coordinate grant
deadlines, criteria, review processes, grant lengths, and other relevant aspects of the
differing grant programs. Streamlining HUD/EPA brownfields funding sources
would be an ideal project for the Partnership for Sustainable Communities, and
result in better outcomes in the areas of affordable housing, social justice,
community involvement, and human health and the environment.

Background:

HUD has already taken initial steps towards revising its brownfields policy to more
closely align with EPA practice/policy, through revisions to its Multifamily
Accelerated Processing (MAP) Guide\textsuperscript{114}. This working group could help build on that
initial success.

9) HUD should create a bicycle commuter benefits program for agency employees.

Status quo:

In August of 2009 the Government Accountability Office (GAO) issued a decision\textsuperscript{115}
giving each federal agency the authority to extend their transportation fringe
benefits programs to cover bicycle commuters. Agencies may use appropriated
funds for commuting subsidies to reimburse employees who regularly commute to
work by bicycle. According to the GAO statement, this decision permits agencies to
develop a bike-commuter reimbursement plan if they choose, but they are not
required to do so. HUD has not yet implemented this benefit.

Proposed change:

HUD should establish a bicycle commuter reimbursement program for the agency’s
employees to encourage equal support for bicycle commuting, provide alternatives
to driving and adhere to the principles of the Partnership, as well as the provisions
of President Obama’s Executive Order 13514\textsuperscript{116}.

Background:

\textsuperscript{114} See http://www.hud.gov/offices/hsg/mfh/map/mapguide/chap09revisions.pdf.
\textsuperscript{115} United States Government Accountability Office. Decision: "National Indian Gaming Commission – Reimbursing
Bicyclists as Part of the Agency’s Transportation Fringe Benefit Program". File B-318325. August 12, 2009.
\textsuperscript{116} President Obama’s Executive Order 13514 established a strategy for reducing greenhouse gas emissions
through Federal agency operations, which includes using alternative fuel vehicles. Bicycles are defined as an
alternative fuel vehicle in Sec. 19(c). Moreover, Section 11 of the order requires the General Services
Administration to review current policies and practices associated with the use of public transportation and
alternative fuel vehicles by Federal personnel and recommend improvements to satisfy the goals of the order.
Register Volume 74, Number 194. October 8, 2009.
Bicycle commuting reimbursement was added to the list of qualified transportation fringe benefits covered in Section 132 (f) of the Internal Revenue Service Code. The Bicycle Commuter Act passed in the Renewable Energy Tax Credit legislation in 2008.