THE STATE ROLE IN URBAN LAND REDEVELOPMENT

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EXECUTIVE SUMMARY

Vacant and abandoned properties present both a significant problem, and an opportunity, for many central cities.

These properties impose economic and social costs on localities and neighborhoods by reducing property values, creating blight, and becoming targets for vandalism and criminal activity. Yet they also hold out tremendous opportunities for the development of new housing, businesses, and public amenities in cities.

But not only cities bear the responsibility of addressing vacant and abandoned land and structures. State governments play an important role also, because local improvement of the redevelopment process often depends on state-level legislative reform that is not always forthcoming. Hence this paper, which summarizes an extensive survey of state legislative and program initiatives, and identifies a significant number of powers states can exploit to energize local redevelopment efforts. In short, the review finds that:

- **State legislative reforms can contribute directly to the redevelopment of vacant or abandoned properties.** Adjustments to states' tax lien enforcement systems can reduce the amount of time it takes a city to foreclose on delinquent and/or abandoned properties. Changes to the rules that govern eminent domain and condemnation can ease cities' acquisition of property for constructive reuse. And state action to enable land banking can aid localities in the acquisition and redevelopment of vacant and abandoned properties. Two additional state approaches can help cities prevent deterioration. By taxing land at a higher rate than improvements, split-rate taxation laws encourage the development of vacant parcels. And reforming state building codes—often written to guide new construction—can help ease the burdens associated with rehabilitating existing structures and thus facilitate renovation.

- **Broader state programs can promote local redevelopment more generally.** Adopted by 48 states, brownfield voluntary cleanup programs are perhaps the most widespread of these approaches. While these programs vary in their overall effectiveness, they can be a successful tool for encouraging the redevelopment of contaminated sites. Efforts to develop brownfields and other urban properties are further advanced through the passage of smart growth initiatives. These programs can have various components, such as public infrastructure incentives and various financing tools, designed to promote infill development and curb suburban sprawl. State enterprise zone programs can also provide incentives for land development, as exemplified by New Jersey's award-winning program. Several states have in recent years also passed other unique programs, such as Michigan's Urban Homestanding on Vacant Land Act, to promote revitalization in downtowns and neighborhoods.

- **Finally, many states have moved to boost local redevelopment efforts with traditional financial mechanisms.** State-authorized development authorities, for example, play a key role in local urban renewal programs, and typically can levy and collect taxes, issue bonds, and receive public and private grants to promote economic development activities. Tax increment financing, meanwhile, is increasingly being used to generate needed funds for the redevelopment of particular districts, whether those identified in a renewal plan, or others targeted by the local government. Forty-eight states and the District of Columbia permit TIFs, which allow a portion of tax revenues generated by new development to be invested (directly, or through a bond issue) back into the designated TIF district. Business improvement districts (BIDs) also play a frequent role. Created by state legislatures to remedy public policy challenges not addressed by local governments, BIDs can require property owners or businesses in particular areas to pay special taxes that are used to fund various district improvements. Over 1,000 BIDs throughout the U.S. now finance activities ranging from physical improvements to social services.

In the end, more states need to attend to local land redevelopment. As it stands, few states employ even half the policies and programs identified here, nor have the relevant strategies been implemented across states in a consistent manner, or with equal degrees of success. In view of that, the impressive efforts of Maryland and New Jersey, the two states with the most comprehensive agendas for vacant and abandoned property reuse, form the basis (along with other initiatives identified by this review) of the model state agenda with which the paper closes.

Certainly the cause of urban land development will be enhanced if all states become aware of, and adapt to their best use, the legislative reforms and approaches that have been pioneered by the most proactive states.

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THE STATE ROLE IN URBAN LAND REDEVELOPMENT

I. INTRODUCTION

> Vacant and abandoned property is a symptom of central city decline that has now become a problem in its own right.
>
> —John Accordino and Gary T. Johnson

> The reuse of vacant land and abandoned structures can represent an opportunity for the economic growth and recovery of a diverse range of urban areas.
>
> —Michael A. Pagano and Ann O'M. Bowman

Vacant land represents both a significant problem and an attractive opportunity for many central cities. Vacant land and abandoned structures impose both economic and social costs on cities and the neighborhoods or districts in which they are located. On the economic side, such properties lower neighboring property values and tax revenues even as they create pressure to raise taxes to maintain service levels. Likewise, vacant land and abandoned structures impose significant social costs on communities as images of blight, as targets for vandalism and criminal activity, and as unsafe and unhealthy structures.

At the same time, though, vacant land holds out an opportunity for central cities when it is seen as a competitive asset in the implementation of economic development strategies (Pagano and Bowman 2000). Vacant land development can generate new economic activity, increase tax revenue, improve transportation and physical amenities, and increase safety. And it can help cities resolve their brownfield problems as well as reinforce "smart growth" practices by accommodating growth and development within existing urban areas.

Despite the need to better understand the problems and opportunities associated with vacant and abandoned properties, few efforts have attempted to comprehensively quantify their extent. In 1997, Accordino and Johnson (2000) surveyed cities' perceptions of their vacant land and abandoned structures problem and found that they were viewed as a serious concern in the Northeast, South, and Midwest, but not in the West.[1] A year later, Pagano and Bowman (2000) undertook the first effort in 30 years to quantify vacant land in U.S. cities. This survey found that, on average, 15 percent of a city's land remains vacant. But while both surveys help to provide a better understanding of the issue and city responses to it, neither was comprehensive. To understand the

[1] Accordino and Johnson's 1997 survey also found that city officials deemed aggressive building code enforcement the most effective technique to address vacant and abandoned land and structures, followed by the use of tax foreclosure (used by 60 percent of the surveyed cities). Survey respondents ranked tax foreclosure lower in effectiveness owing to difficulties posed by state regulations. Ranked third in effectiveness was eminent domain (employed by 42 percent of the cities). Cosmetic improvements were rated of similar utility to eminent domain, and included "lawn mowing, exterior façade painting, and in some cities, placing curtains in front windows and installing porch lights." Cities typically charged the expense of the improvements as a lien against the recipient property.

full scope of the problems—and opportunities—associated with vacant land and abandoned structures, we need systematic and ongoing data collection.[2]

What we do know about the amount of vacant urban land and abandoned structures in many cities, meanwhile, clearly indicates that the current set of tools being applied at the local level remains deficient. And yet, addressing the issue of vacant and abandoned land and structures is not only the responsibility of localities. State governments play an important role as well. In many cases, the ability to overcome the problems associated with vacant properties and convert them to productive use requires legislative powers that are found only at the state level. These include, for example, the use of eminent domain powers, the implementation of financing tools such as tax increment financing, state-level sign-off of brownfield remediation plans, and the creation of land banks.

Fortunately, several states have successfully undertaken legislative reforms to support urban vacant land redevelopment. Accordingly, this paper reviews these state-level policies and highlights the approaches of two of the most proactive states—Maryland and New Jersey. The review then provides a model state agenda for urban land reform that, if pursued, would provide cities the resources they need to turn problem properties into tax-generating assets.

It is hoped that this agenda, made up of the legislative reforms and approaches that have been pioneered by the most proactive states, will promote urban land development across the nation by helping all states become aware of the best practices available.

[2] The lack of an official definition or survey of vacant and abandoned land and properties complicates efforts to understand the extent of the problem. Pagano and Bowman observe that the vacant land label is given to "many different types of unutilized or underutilized parcels—perimeter agricultural or uncultivated land; recently razed land; derelict land; land with abandoned buildings and structures; brownfields; greenfields" (p. 2). Vacant land within cities may even include small or irregular greenfield parcels remaining from earlier development, or parcels of land on which it is difficult to build, such as those on steep grades or flood plains. No uniform standard exists for how long a property must remain unoccupied to be considered abandoned. A 1998 survey of cities finds a range from 60 days to 120 days or longer. The U.S. General Accounting Office applies the term to "a building or lot that has been vacant for two years or more" (Accordino and Johnson, 2000).

II. STATE-ENABLED APPROACHES TO THE PROBLEM OF VACANT LAND AND ABANDONED STRUCTURES

State governments can and do support cities' efforts to redevelop vacant land and abandoned properties. To examine how, this section surveys state legislative approaches and programs that directly or indirectly facilitate the redevelopment of vacant and abandoned structures. These strategies are grouped into three broad categories: property-specific approaches, redevelopment programs, and redevelopment financing tools. Table 1 provides an inventory of the various approaches undertaken by the 50 states.

A. Property-Specific Approaches

Five strategies, to start with, contribute directly to the redevelopment of vacant or abandoned properties. Three of these tools focus on the acquisition and disposal of property. These include: (1) tax lien foreclosures; (2) eminent domain powers and condemnation or acquisition of blighted properties; and (3) land banks and community land trusts. Two other approaches seek to prevent the problem: (4) split-rate taxation; and (5) building rehabilitation codes.

1. Tax Lien Foreclosures

The Causes of Tax Delinquency

A key first area of state support of redevelopment involves a state's framework for the enforcement of property tax collection. Properties that become tax delinquent reduce public revenues and contribute to neighborhood deterioration. Alexander (2000b) observes that the failure to pay property taxes typically results from one of three causes: (1) property owners' inability to pay their annual tax during depressed economic conditions; (2) public protest over property tax rates that are perceived to be too high; and (3) owners' efforts to maximize the income they receive from their property by neglecting tax payments. The third cause is more typical of property owners who are investors and plan to eventually abandon their property, and more common in major urban areas experiencing suburban flight (Alexander 2000b). As Keating and Sjoquist (2001, p. 5) note, tax delinquency can be viewed as an "early warning system to municipalities that there are market problems with particular properties...[it is] a reliable but unintentional signal to governments of emerging problems."

State Variations in Tax Lien Enforcement

The tax lien foreclosure process allows cities to return tax delinquent vacant land and abandoned structures to productive use. Their ability to do so is greatly influenced at the state level by the particular property tax collection enforcement system that has been legally authorized. These systems vary from state to state because, historically, states retain great autonomy to determine their individual methods of property tax collection and enforcement. Alexander notes:

> [N]o two states have the same procedures, many states have more than one possible procedure which can be utilized, and a significant number of states with strong home-rule provisions permit cities and counties to adopt their own independent provisions. Many of these existing procedures fail to meet constitutional minimum standards, and many more are likely to fail as clarity emerges in coming years (2000b, p. 28).

State laws set the parameters for how local governments deal with their tax delinquent properties, either helping or hindering the process. Massachusetts, for example, has no specific deadlines for notifying owners or responding to foreclosure, and the foreclosure process can take years. Florida, Georgia, Maryland, Michigan, and Texas, by contrast, have all adopted legislative reforms in recent years that improve cities' ability to expedite foreclosure on properties and convert them back into productive use. Michigan's 1999 legislation shortens the foreclosure process from what could take five years to one and one-half years, and creates insurable property titles through judicial action (explained below) (Fannie Mae Foundation 2001).

Alexander (2000a) groups state approaches into three categories, focusing on events that trigger a legal requirement to give notice of foreclosure on a property. Central to the foreclosure process is the right of redemption; that is, the right of the tax delinquent property owner to pay off the taxes to retain or reclaim the property. The three categories of enforcement procedure are: (1) "one event, such as a public sale or transfer of the property to the government, with no redemption,…(2) one event, but it is followed by a redemption period,…(3) two separate events…in which the initial event is the sale of the property, and the second event is the termination of the right of redemption" (pp. 28–29). The third category presents the most problems to governments as they seek to meet constitutional due-process requirements established in the 1983 Supreme Court case, *Mennonite Board of Missions v. Adams*.[3]

States can also be divided into three categories according to whether they (1) allow lien enforcement and property sale without a judicial process; (2) require judicial involvement at the sale or termination of the redemption period; or (3) permit enforcement of property tax liens through a judicial or nonjudicial process. In 2000, nine states fell into the third category, and the remaining states were evenly split between the first two categories (Alexander 2000a).

According to Alexander, a judicial tax enforcement proceeding—a proceeding that relies on the court system—is superior for several reasons. Such a proceeding provides a permanent public record and provides an opportunity for a hearing, an opportunity currently unavailable under most

[3] In *Mennonite Board of Missions v. Adams*, an Elkhart County, IN lender challenged the adequacy of notice during a routine tax foreclosure, during which a notice of pending sale had been published once a week for three weeks in accordance with state law before the property was sold. The U.S. Supreme Court, which had previously deferred to state autonomy on property tax collection, ruled that the Fourteenth Amendment guarantee of due process required the government to provide notice to the mortgagee of a pending foreclosure sale. Alexander writes, "the court concluded that a party holding a 'legally protected property interest' whose name and address are 'reasonably ascertainable' based upon 'reasonably diligent efforts' is entitled to notice 'reasonably calculated' to inform it of the proceeding" (2000a, p. 27). This ruling rendered questionable most property tax lien and sale procedures throughout the country.

tax lien enforcement systems. Further, the judicial order of sale and issuance of a final tax deed establishes the foundation for subsequent title insurance and property transfer. In other words, the process produces a marketable property title that a title insurance company would be willing to insure. In this way, the proceeding resolves one of the major roadblocks to transferring and financing properties that cities seek to redevelop.

Tax lien enforcement systems also vary in the length of the redemption period and the amount of interest and penalties that are levied on tax delinquent properties. In recent years, higher penalties and interest rates, with the former averaging 10 percent and the latter 16 percent to 18 percent annually, have been imposed as a means of encouraging property owners to pay their tax payments promptly. However, penalties and fines can increase the rate of property abandonment. Alexander (2000b) advocates speeding up the foreclosure process, in part to limit fine accruals.

Reforming the Tax Lien Enforcement System

Alexander (2000a) advocates reforming the tax lien enforcement system both to ensure its constitutionality and to reduce the number of tax delinquent properties. Ensuring the constitutionality of the process will particularly aid cities seeking to relieve financial pressures by selling and securing in bulk large numbers of tax delinquent properties. Alexander's prescription for reform seeks to address a number problems in existing foreclosure processes, including the excessive length of the process (which can sometimes take seven years); the multiplicity of entities often involved; and the due process problems exposed by the *Mennonite* ruling.

His prescription advises that there should be a single enforcement proceeding that is as short as possible. He suggests that the length of time (i.e., one or two years) from the initial tax delinquency to loss of all property rights (the redemption period) should be shifted from post-sale to pre-sale of the property. The entire proceedings should also be kept within the control of a single entity, and a title examination should reveal the parties affected by the sale. Finally, Alexander suggests that parties should be notified by certified mail, and public notice should be mailed to and posted on the property.

As noted above, Michigan recently overhauled its property tax foreclosure process. In 1999, the state passed Public Act 123, referred to as the Certification of Abandoned Property for Accelerated Foreclosure Act, which streamlines the tax reversion system "from a process which could last as many as seven years to a two-year foreclosure process, with title transferring to the county treasurer of the State of Michigan, depending on the option chosen by each county" (Kildee 2001, p. 2). Foreclosures on abandoned property can now occur in as little as one year. Already, the City of Flint is developing a revised governmental system and land disposition plan to address the estimated 12 percent of its housing stock that is abandoned (Kildee 2001).

2. Eminent Domain Powers and Condemnation or Acquisition of Blighted Properties

Eminent Domain Power

Eminent domain—in which the owner of the condemned property is provided "just compensation" for its taking—is a police power for the public good. With that power, government takes private property through condemnation proceedings. Throughout the proceedings, the property owner has the right of due process.

Every state has a statute, or statutes, establishing how the eminent domain power may be exercised at the local level. State procedures vary widely, however. In some states, the government is required to negotiate with the property owner before instituting eminent domain proceedings. In other states, the government may institute proceedings without prior notice.[4]

Traditionally, eminent domain has been used to facilitate transportation and the provision of water and other utilities; however, it has also been used to establish public parks, preserve places of historic interest, and promote beautification. Municipalities—often through their economic development or redevelopment entities—can also employ eminent domain to "retake" blighted property for urban revitalization.

Eminent domain has been critical to municipalities' revitalization efforts, but these efforts have also generated some of its most vehement criticism (for more on the criticism of eminent domain, see Appendix A). Property owners protest the taking of their land for many reasons. Some of them complain about insufficient compensation. Others protest that condemned parcels may not actually be blighted, or that a taking was not for economic development but simply a transfer of property rights between private landholders for the sole purpose of benefiting the new landholder.

In reviewing recent eminent domain court cases, Jennings (2002) concludes that it remains unclear whether the cases reflect new resistance to the process or simply the need for legal clarification. He cautions that all sides must keep in mind that a public purpose must be demonstrated. "Turning over the authority," he writes, "for condemnation to a private developer with an economic interest that results from condemnation may cause … the eminent domain authority and process (to be) questioned." Consequently, he continues, "governmental bodies must be careful to establish the generic public benefit in addition to individual benefit [of condemnation]." Finally, Jennings writes, takings must always require process and compensation no matter how small and uncontroversial they are (Jennings 2002, pp. 236–237).

It should be noted that the use of eminent domain in property condemnation remains a widely practiced and viable means of land acquisition for a number of public-use purposes (see Appendix B for specific examples). In addition, many courts are leery of infringing on the powers of

4 The power of eminent domain is not limited to states, cities, and political bodies. In many states, public utilities and even pipeline companies have the power to expropriate private property.

the legislature to regulate eminent domain and will abstain from judgments that may curtail or redefine the use of this power. Local governments' ability to use eminent domain effectively to acquire vacant and abandoned land for redevelopment purposes, however, may require reform of often complex and cumbersome state laws.

Blight

Determining that a property is blighted is a fundamental criterion that a condemnor must establish prior to targeting land for acquisition or a "taking" through eminent domain. Some courts have determined that even the potential for blight is valid ground for an eminent domain taking, although this is by no means common practice.

In 45 states, only one condition of blight is required to take property through eminent domain. Five states—Colorado, Kansas, South Carolina, Nebraska, and Utah—require more than one criterion to consider a property blighted. These criteria for blight include such factors as deteriorated or deteriorating structures; predominance of defective or inadequate street layout; unsanitary or unsafe conditions; unusual topography; environmental contamination of buildings or property (Colorado: *C. R. S. A. § 31-25-103*); age; dilapidation; obsolescence; deterioration; illegal use of individual structures; excessive vacancies; and deleterious land use or layout (South Carolina: *SC ST § 31-10-2*). Nebraska also requires that unemployment in the designated area be at least 120 percent of the state or national average and the average age of the residential or commercial units in the area be at least 40 years (*Neb. Rev.St. § 58-209.01*).

Increasingly, cities suffering from large-scale blight are actively addressing the problem through eminent domain and tax lien foreclosures. Three cities' efforts are profiled below.

> ***Chicago.*** The Chicago Abandoned Property Program (CAPP), administered through the Department of Housing, provides a means for developers to acquire and restore abandoned buildings. Alternatively, developers can demolish buildings and reuse the land. CAPP focuses on one- to four-unit brick buildings, which are unoccupied, dangerous or hazardous, have two years of unpaid real estate tax and water bills, and whose owner(s) fail to appear in court.
>
> ***Philadelphia.*** The Neighborhood Transformation Initiative (NTI), a program begun by Mayor John F. Street, is a five-year, $295 million plan to revive distressed communities in the city. When completed, the effort will have demolished 14,000 vacant buildings, rehabilitated 4,500 distressed homes, and constructed 2,000 new housing units. The city will assist community development corporations in acquiring vacant properties and potentially provide development financing as well. The bill funding the initiative was passed by the city council and signed into law by Mayor Street on March 13, 2002.
>
> ***Baltimore*****.** In January 2002, Mayor Martin O'Malley launched an anti-blight initiative targeting as many as 5,000 vacant properties for acquisition through foreclosure or

condemnation. Entire city blocks may be cleared and offered to private companies for residential and commercial redevelopment or redesigned as open space. Although the city will assume title to the properties rather than purchase them, costs are expected to reach $5 million, with the potential for millions more spent to demolish structures over the course of the program. City officials believe private-sector help will be necessary to fully fund the initiative (Siegel and Epstein 2002).

3. Land Banks and Community Land Trusts

Land Banks

Local governments generally establish land bank authorities to address urban blight and promote redevelopment. Such authorities acquire tax delinquent properties with the goal of returning them to productive use. Typically, the authorities are nonprofit entities empowered by state (or local) governments to waive or forgive back taxes owed on a property. They have the power to acquire and manage land, often in anticipation of a future use, and to sell or give it to nonprofit or for-profit groups.

Land banks provide a flexible and manageable mechanism for infill development. The banks' assemblage of small, individual parcels into larger blocks under common ownership can enhance the development potential of these parcels, which otherwise would be too small to warrant investment by most developers.

This strategy is not without drawbacks, however. Piece-by-piece acquisition can be time-consuming and potentially expensive if a property owner refuses to sell or holds out for more money. Land prices on parcels may escalate should word get out about the plans. In addition, parcels may be occupied by derelict or damaged buildings that require either extensive and costly remodeling or demolition.

Indeed, the Municipal Research and Services Center (1997, unnumbered web page) recently identified several potential policy issues arising from land banks:

- Land assembly can be very expensive, particularly if unanticipated expenses arise associated with environmental clean up, title encumbrances, and similar expenses.

- Land banks can require considerable capital investment in the early stages of the program, before property is resold. If state or federal seed money or loan money is unavailable, it may require strong citizen support for a bond approval or a unique situation (such as Cleveland's tax delinquency holdings).

- Although the land is under local government ownership, it is removed from the tax rolls. (Of course, it may not be producing tax revenue anyway if the property is in default.) Property

maintenance will also be needed until the property is resold. A community may be able to generate revenue to offset these costs by leasing the property for some interim use.

- Land banks may not be popular with the real estate industry, particularly those who may profit from land speculation.

In addition to these challenges, it may be difficult to carry out land assembly and banking on a significant scale without some use of eminent domain powers. Particularly if eminent domain is used (but also at other times), it will be important to demonstrate a valid public purpose and to proceed with acquisitions based on an adopted plan.

To be sure, cities with foresight can circumvent some of the pitfalls of land assemblage through land banking by acquiring and improving small parcels of vacant land in an organized manner, which creates large clusters for development if and when the need arises. Partnering with counties to acquire targeted land blocks also benefits cities hoping to spur local development. Tools to accomplish this goal include acquisition through tax defaults, donations, or barter with other agencies.

Once a package of lots is assembled for development, a municipality can offer the land to a developer for purchase, or transfer it to a development corporation for action in the long-term. By involving the private sector, cities can reduce the perceived threat of public land banks to private developers, who often see local governments as competing land speculators in urban markets.

Atlanta and Cleveland, for example, show how state involvement can smooth the process. Both cities had their state legislatures pass land bank laws in the early 1990s that enabled the cities' land banks to take the lead in acquiring and disposing of tax delinquent properties. In Cleveland, the city partnered with other county and local agencies to acquire property. A majority of delinquent, foreclosed properties not sold at auction are acquired by Cleveland's land bank, with an average of 900 lots per year transferred to the city. Cleveland pays foreclosure costs from the city's share of real estate excise tax fees. Property taxes on the parcels are forgiven. Unbuildable property is sold to adjacent landowners, and the city holds onto other parcels to sell for future development.

Community Land Trusts

Community land trusts (CLTs) can be an important tool for eliminating blight while protecting low-income individuals from displacement that accompanies gentrification.

> In addition to providing affordable housing, CLTs may make land available for community gardens, playgrounds, economic development activities, or open space, and may provide land and facilities for a variety of community services (Institute for Community Economics, 2002, unnumbered web page).

Community land trusts are nonprofit corporations that acquire property through direct purchase, partnerships with government-based land banks, donation, and other means. The money

with which they purchase properties can come from community development funds such as Community Development Block Grant (CDBG) and HOME funds, or private donations and gifts (Gura 2001).

The classic model, as evolved by the Institute for Community Economics, includes eight distinctive features:

- **Dual Ownership**: A nonprofit corporation (the CLT) acquires multiple parcels of land throughout a targeted geographic area with the intent of retaining ownership of these parcels in perpetuity. Buildings already on the land, or later constructed, are sold to individual homeowners; cooperative housing corporations; nonprofit developers of rental housing; or to some other nonprofit, governmental, or for-profit agency.

- **Leased Land**: The CLT provides for the exclusive use of its land by the owners of the building(s) located on it. The land is conveyed to building owners by the use of long-term ground leases.

- **Perpetual Affordability**: The CLT retains an option to repurchase any structures that are located on its land if the owners decide to sell. The resale price is set by a formula that is contained in the ground lease. The formula is designed to give present low-income homeowners a fair return on their investment, but also to provide future buyers fair access to housing at an affordable price. The CLT is committed to preserving affordability of housing in perpetuity.

- **Perpetual Responsibility**: The CLT, as owner of the land, has a continuing interest in and responsibility for the buildings and the owners. If the owners create hazards, default on their mortgage, or otherwise significantly endanger the property, the ground lease gives the CLT the ability to step in and secure the property's value.

- **Community Control**: The CLT is a community-based organization, drawing members from its own leaseholders and other local residents. The board is formed by election and is accountable to its membership.

- **Tripartite Governance**: A "classic" CLT board contains three equal parts: one- third leaseholders; one-third representatives from the surrounding community who are not leaseholders; and one-third public interest representatives, such as public officials, local funders, nonprofit housing or social service providers, or other individuals charged to speak for the public interest.

- **Expansionist Acquisition**: Although many CLTs may begin with a single project, they are not focused on only one land holding. They are committed to focusing on expanding their holdings and preserving the affordability of the housing upon it.

- **Flexible Development**: The CLT is a flexible tool that provides for many different types of development and encompasses a variety of land uses, as well as a diversity of building tenures and types (Gura 2001, p. 78).

On at least two occasions, community land trusts have obtained the power of eminent domain to condemn and acquire land. The most famous example is the Dudley Street neighborhood Initiative (DSNI) in Boston. The initiative created an Urban Redevelopment Corporation, Dudley Neighbors, Incorporated, under Massachusetts law with the approval of the Boston Redevelopment Authority.

Urban redevelopment corporation status allowed DSNI to accept the power of eminent domain to assemble parcels of land (vacant, privately owned, and city-owned parcels) that are then leased to private and nonprofit developers for building affordable housing consistent with the community's master plan.

Structured as a community land trust,

> DSNI leases land initially to developers during construction, and subsequently to individual homeowners, cooperative housing corporations and other forms of limited partnerships. Through its 99-year ground lease, DSNI can require that its properties be used for purposes set forth by the community. It can also establish parameters on the price that homes sell for and can be resold for (DSNI, 2002, unnumbered web page).

The other CLT that attained eminent domain power did so in conjunction with the CAPP program in Chicago. Under this program, the Humboldt Park Empowerment Partnership, a coalition of 80 organizations addressing such issues as job training, youth mentoring, and affordable housing, received eminent domain authority over 159 parcels of land (Blackwell 2001).

4. *Split-Rate Taxation*

Split-rate or two-rate property taxation is a little used, but promising, way to encourage urban redevelopment. As its name implies, split-rate property taxation divides taxation into two parts: one for land, and another for improvements on the property. Taxes are also reduced on buildings to encourage improvements and renovations. Taxes are increased, meanwhile, on land as a means of discouraging land speculation. Pennsylvania—the state with the most active use of split-rate taxation—recently passed enabling legislation to extend split-tax authorization not only to its first and second class cities, but also to boroughs and school districts. As of 1999, the program was in use in more than 15 Pennsylvania cities (Schwartz 1999). Many other states are looking into this strategy for urban vacant land development (Hartzok 1997).

According to the Victoria Transport Policy Institute (2002, unnumbered web page), split-rate property taxation is desirable because:

- Landowners who develop high-value land are not penalized so heavily for doing so. Tenants (residential and commercial) in turn may find space more affordable.

- The taxing jurisdiction recaptures value created by infrastructure investment from those who benefit the most, such as landowners whose land appreciates.

- The assessment creates a stronger economic incentive to develop vacant lots and underused buildings. This reduces development pressure on outlying agricultural and resource conservation lands.

- Shifting taxes from buildings and to land tends to be progressive. Although property ownership does not correlate directly with income, there is a greater link between the ownership of high-value land and wealth than between the ownership of housing and wealth.

Schwartz (1999, unnumbered web page) argues that a split-rate system lessens the tendency for vacant and underused land while simultaneously promoting smart growth:

> In a traditional development scenario, land near public infrastructure installations, like subway stations or major road intersections, often remains vacant or underused because landowners are demanding higher prices than prospective users will currently pay. This drives potential users to seek cheaper sites farther from the infrastructure. Once this cheaper land has been partially developed and inhabited, its occupants apply political pressure to extend new infrastructure onto the land. The duplication of infrastructure at this new site inflates land values there, beginning the cycle again.

There is no set rate differential for the two parts of the split-rate tax system. The rates, for example, differ considerably among Pennsylvania cities. Pittsburgh taxed improvements on property at one-sixth the tax on the property itself, while in Harrisburg, the land tax is three times that of the improvements on the land. The highest spread between the land and building tax is found in the small town of Aliquippa, which taxes land at 16 times the rate of buildings. Pittsburgh eventually repealed its split-rate tax "after a controversial property tax reassessment process and an approaching mayoral election made it politically untenable" (Catts 2002, unnumbered web page). However, the city may return to the two-tier system. If it does, it will employ lower assessment values and a lower ratio of land-to-building values. Harrisburg's split rate, meanwhile, has encouraged high-rise construction, and for more than 90 percent of the city's property owners, the two-tier tax results in a lower tax than would have been paid under a single-tax system (Hartzok 1997).

Hartzok cites two studies that support the utility of the split-rate tax. The first is a *Fortune Magazine* study of Pennsylvania's first four cities to go to the two-rate system. This article concluded that it promoted economic regeneration of compact cities. The second is a 1997 study by University of Maryland economists Oates and Schwab that compared Pittsburgh trends in annual building-permit values with those in 14 other eastern cities in the decade before and after Pittsburgh

expanded its split-tax program. They found a 70 percent increase in building-permit activity in Pittsburgh (during the time it was experiencing deindustrialization in its steel industry), while the 15 cities combined experienced a 14 percent decrease in the value of permits. Plassman and Tideman (2000), in a study spanning more than 25 years, and of more than 200 local authorities with and without the tax shift, found that a 1 percent shift in property taxes away from buildings and onto land increased construction by 16 percent.

5. Building Code Reform

The enforcement of traditional building codes has proven a major barrier to the renovation and reuse of vacant buildings. Complex and frequently outdated traditional codes were often written for new construction and are not appropriate for rehabilitation. States and localities have begun to rewrite their building codes to overcome the barriers they create for reinvestment in existing buildings. The U.S. Department of Housing and Urban Development (HUD) (2001a) recently profiled these state and local movements and created a handbook for revising codes. The department also published the *Nationally Applicable Recommended Rehabilitation Provisions* (NARRP) in 1997, which were adapted from New Jersey's innovative rehabilitation subcode. The NARRP is intended to serve as a model rehabilitation code and rests on two principles—predictability and proportionality:

> HUD's model provides predictability because rehabilitation requirements for a particular project are clear from the beginning. NARRP [also] ensures that code requirements are proportional to the extent of work, making rehabilitation more affordable. NARRP borrows four concepts from New Jersey's rehabilitation subcode:

- Six categories of work: repair, renovation, alteration, reconstruction, addition, and change of occupancy
- Work area: the portion of the building affected by repair or alteration
- Supplemental requirements: additional requirements, such as installing fire sprinklers, triggered by extensive work areas
- Four hazard scales: provide predictability by clearly relating specific requirements to specific increased hazards in the existing buildings (U.S. HUD, 2002)

Research in five cities on the effectiveness of New Jersey's subcode shows that rehabilitation spending increased significantly in the five cities after the code was implemented. Further, the subcode has been estimated to reduce the cost of redeveloping old buildings under the old code by 10 percent to 40 percent (Smart Growth America 2002a). Other states that have adopted rehabilitation codes include Maine, Maryland, Michigan, New York, and Rhode Island. California and Connecticut are considering legislation. At the city level, Wilmington, Delaware, adopted its own rehabilitation code (Smart Growth America 2002a).

B. Redevelopment Programs

Property-specific approaches are not the only way states can address the vacant- or deteriorated-property challenge. More general redevelopment initiatives can also play a role. This section, for that reason, describes several less site-specific state programs that can promote redevelopment. These include voluntary cleanup programs for brownfields, smart growth initiatives, enterprise zones, and several other innovative activities.

1. Brownfield Voluntary Cleanup Programs

The ability to redevelop abandoned and vacant properties can be hampered by environmental considerations, especially prior contamination from commercial or industrial uses, called "brownfields." The resulting barrier for reuse emerged as a major issue after the 1980 passage of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund law.

Knowledge or suspicion of contamination frequently bars sites—and even contiguous parcels—from redevelopment. This de facto disqualification has historically resulted from owner liability under CERCLA, whether or not owners were the actual pollutors, and the potentially high costs (which are not always fully calculable at the outset) to clean up sites for reuse. The resulting environmental "redlining" or "brownlining" of areas can significantly dim the economic prospects of entire populations residing near a brownfield site, as well as hurt a municipality's tax base (Leigh 1994).

In response, states have begun to address barriers to brownfield reuse through the design of their own programs, known as voluntary cleanup programs, or VCPs, thereby "demonstrating that there are many different ways to reach the common goal of site cleanup and reuse" (Northeast-Midwest Institute 2002, p. 2). Key elements of state programs include variable cleanup standards, engineering and institutional controls, and liability relief from third-party actions and from public actions. Forty-eight states (the exceptions are North Dakota and South Dakota) have adopted a voluntary brownfield cleanup program. The programs "vary in terms of comprehensiveness, incentives, level of state liability relief granted, and overall effectiveness. They regulate differently and emphasize different types of reuse, whether industrial, commercial, housing, or open space. Some states are well positioned to take advantage of federal initiatives, while others are not" (Northeast-Midwest Institute 2002, p. 2). In addition, 14 states have signed memorandums of understanding (MOAs) with the U.S. Environmental Protection Agency (EPA). These provide assurances to brownfield redevelopers that by meeting the state's remediation requirements they will avoid subsequent federal liability or EPA enforcement action.

Pennsylvania's Land Recycling Program, for example, has been an important vehicle for redeveloping the state's brownfields and promoting more efficient urban land markets. The Land Recycling Program is the state's version of a brownfield voluntary cleanup program defined in a three-bill legislative package. The program modified state standards for cleanup and simplified the

brownfield review process. It includes an industrial sites reuse program that offers grants to communities, nonprofit organizations, and economic development organizations. The program also offers low interest loans to businesses for the cost of environmental studies and cleanup programs (Pennsylvania Land Recycling Program). The program removes a major barrier to brownfield redevelopment by providing liability relief to owners and developers of former industrial sites, and to financiers, lenders, fiduciaries, and economic development agencies who use one of three designated cleanup options (Scott 1997).

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act. This law is seen as a major step forward in overcoming the barriers to brownfield redevelopment that federal regulations created for cities and states. Federal money can now be spent for cleanup as well as site assessment (previously only the latter was allowed). The law allows funding for the previously excluded category of leaking underground storage tanks (LUSTS). It further provides liability relief for the following parties that demonstrate due diligence: minimally polluting small businesses, contiguous property owners, prospective purchasers, and innocent landowners (Wright and Powers 2002). Overall, the law increases the value of state voluntary cleanup programs because it exempts from further federal enforcement those property owners who voluntarily enter qualified programs.

2. Smart Growth Infill Strategies

One of the guiding principals of smart growth is to "strengthen and direct development towards existing communities," according to the EPA and the Smart Growth Network (Smart Growth Network 2002). Designed to discourage sprawl and encourage reinvestment in inner cities and established communities, smart growth has taken hold as a major policy focus. Consequently, smart growth legislation has grown exponentially in the past five years. According to the American Planning Association (2002, p. 7), "eight states issued legislative task force reports on smart growth between 1999 and 2001, compared to 10 reports between 1990 and 1998." With such activity has come significant legislation that addresses infill development and has significant potential to reduce the incidence of central city vacant land and abandoned structures.

Due to its newness, much smart growth legislation remains elementary, directed toward activities such as creating advisory committees and panels, or simply hortatory. Although these programs are noteworthy, I focus here on programs that have been implemented and are potentially adaptable to other regions and states for addressing urban vacant land.

One of the oldest and most recognized programs hails from Oregon. Enacted in 1973, the ORS 197, otherwise known as the Oregon Land Use Planning Act, requires cities and counties to develop and adopt comprehensive plans, and establish urban growth boundaries (UGBs) within which development activity is to be concentrated. The state would provide urban infrastructure as an incentive to develop land within the UGB. In December 1997, Oregon adopted legislation promoting compact, mixed-use, pedestrian-friendly development. State investments supporting

urban redevelopment initiatives would become available to those cities and counties supporting these initiatives (Oregon Department of Land Conservation and Development, 2001).

Since 1992, New Jersey has emerged as a leader in smart growth infill projects. Of particular note is the New Jersey State Development and Redevelopment Plan, which packages revitalization elements focused on comprehensive planning; public infrastructure investments; economic development; urban revitalization; housing; historic, cultural and scenic resources and open land; brownfields; and design (New Jersey State Planning Commission, 2001). Section III provides more detail on both New Jersey's smart growth strategy and Maryland's award-winning Smart Growth and Neighborhood Conservation Program.

Arizona is also trying to promote infill development through its Growing Smarter legislation, first adopted in 1998 and updated to Growing Smarter Plus in 2000. Both versions promote infill development by identifying infill locations and special incentives, such as expediting zoning and processing, waiving municipal fees, and providing relief from development standards (Arizona Department of Commerce, 2003). By the end of 2001, Arizona counties and cities with populations over 75,000 were required to have a valid and comprehensive plan in place, while municipalities with populations between 2,500 and 74,999 had until the end of 2002 to comply. Communities that do not comply may lose state funding for certain types of projects.

Maine also recently passed legislation on infill development under the smart growth umbrella. Chapter 776 limits state investments to growth areas as designated within adopted comprehensive plans. In addition, the state makes available incentive resources for local governments whose comprehensive plans conform with state policies for smart growth. Specifically, the Municipal Investment Trust Fund supports local governments with comprehensive downtown revitalization efforts. Other states that have enacted infill-focused legislation include Connecticut, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin (Nelson 1999).

Such are the smart growth legislative initiatives that have begun to influence the redevelopment of urban vacant land. Such smart growth programs are often combined with state financing tools to further promote infill development. The financing tools used by states to promote redevelopment are discussed in the following section.

3. Enterprise Zones

Separate from, and preceding, the 1994 federal Empowerment Zone/Enterprise Community legislation of the Clinton administration, states have created enterprise zones to concentrate redevelopment efforts in areas of distress, decay, and blight. These enterprise zones, borrowed from experiments in Hong Kong and Singapore (Wolf 1990), were first introduced in this country in the early 1980s. By 2000, nearly 40 states had implemented some form of enterprise zone legislation. Although the zones typically offer job credits, sales tax exemption, property tax reductions or abatements, and other financing mechanisms, the programs vary widely in design and geographic targeting, and not all focus on vacant property reclamation. In their case study of six

states with enterprise zone programs (California, Florida, New Jersey, New York, Pennsylvania, and Virginia) Greenbaum and Heinz (2000) observe that the zones do not necessarily target the most blighted areas, particularly when they require that areas show development potential. In fact, enterprise zone programs appear to place more emphasis on jobs and hiring local residents than on capital investments by businesses as a way to raise property values and reduce vacancies. New Jersey enterprise zone incentives, for example, had no effect on property values in a 1996 study by Boarnet and Bogart. Likewise, Greenbaum and Heinz found only a small impact in moderately distressed cities, and no impact in cities with severe blight. Nevertheless, New Jersey's program has won national awards. I discuss it in the case study section of this paper.

4. Other Innovative Programs

Voluntary brownfield cleanup, smart growth, and enterprise zones are widely recognized strategies of land redevelopment. Less familiar, but also promising, are several new, innovative programs that directly address the problem of urban vacant land and abandoned structures.

The first is Michigan's Urban Homesteading on Vacant Land Act (Act 129 of 1999). This act, intended to bring abandoned and vacant properties back into the tax register more quickly, allows the sale of tax delinquent properties for $1. Local governments may operate or contract with nonprofit organizations to administer the program. Act 131 (1999) also allows for state housing development authorities to develop loan or grant programs to facilitate the homesteading process. Minnesota, through its Urban and Rural Homesteading Program, and Portland, OR, have similar homesteading programs.

A second new program was implemented by a city but enabled by a state-level tool. Richmond, VA, established the Neighborhoods in Bloom program in 1999 to address severe problems of vacant land and tax delinquency in six city neighborhoods. The program strengthens the link between code enforcement and nuisance abatement programs and the city of Richmond's housing rehabilitation and development programs and resources (ICMA 2002). For financing, the program draws on the state-level Virginia Derelict Structures Fund, begun in 1997 (Code of Virginia, sections 36-152 to 36-156). Through this fund, the state makes grants to local governments for acquiring, demolishing, removing, rehabilitating, or repairing derelict structures (ICMA 2002, p. 23, footnote 30). Priority is given to projects that include areas or structures that have a planned reuse, are part of drug-blight removal plans, or are in officially designated redevelopment or conservation districts, historic districts, or enterprise and empowerment zones. In this fashion, state financial resources seamlessly support city redevelopment.

State legislators have moved in another innovative direction by requiring state governments to consider downtown centers for the location of state government facilities. This legislation parallels that of federal Executive Order no. 12072, which, seeking to "strengthen our nation's cities," requires federal agencies to first consider central business district locations when locating offices (Fitzgerald and Leigh, 2002). Pennsylvania enacted such legislation in the Downtown Location Law (HB969)

(Zausner 1998). Maine's smart growth legislation also urges that state offices and schools be located within designated growth areas (Morandi 2001).

C. Redevelopment Financing Tools

Traditional financial mechanisms for alleviating blight and slums also implicitly aid efforts to promote infill development and vacant land reuse. Some of the most widely used financing tools are urban renewal development authorities, tax increment financing, and business improvement districts (BIDs).

1. Development Authorities

In the late 1970s, following the end of federal funding for urban renewal programs, a majority of states passed some type of legislation supporting urban renewal programs (Table 1). The intent of most state urban renewal programs is to "eliminate and redevelop substandard, decadent, or blighted open areas for industrial, commercial, business, residential, recreational, educational, hospital or other purposes" (Massachusetts Department of Housing and Community Development, 2003, p. 1). Renewal programs are varied and often include establishing redevelopment agencies or authorities, creating redevelopment plans, and developing strategies to implement those plans. These strategies can include but are not limited to: rehabilitation codes; assembly and disposal of land, including use of eminent domain; relocating businesses and residents; demolishing and rehabilitating substandard structures; revitalization initiatives; bond issuance; borrowing and investing money; and the receipt of grants, loans, and gifts.

Development authorities are key implementation vehicles for urban renewal programs. They can be considered "quasi-municipal corporations" that are authorized by state legislation to improve a specific area's development (Municipal Research and Services Center 2002). The focus is not necessarily on inner cities or downtowns, and, in fact, many development authorities have a larger (countywide or multicounty) focus. Development authorities typically are able to levy and collect taxes, issue bonds, and receive public and private grants to promote improved economic development and living standards.

Downtown development authorities are typically focused on defined areas of cities in particular need of concentrated redevelopment efforts. In Georgia, for example, downtown development authorities are created by a municipality that defines the areas of focus within the city; appoints initial directors of the authority; prepares and approves a resolution that documents the need for the authority; and files specific documentation requirements with the appropriate state entities. Approved activities of the downtown development authorities include the purchase, ownership and disposal of property; the use of eminent domain powers to acquire property under certain circumstances; the financing of projects by loans, grants, leases, and revenue bonds; the receipt of government grants, loans and other financial assistance; the preparation of, or contracting for redevelopment plans; and action as an actual redevelopment agency under state law (Georgia Municipal Association 2002).

2. Tax Increment Financing

Tax increment financing (TIF) is often used to generate the funds for redevelopment, under an urban renewal plan or for another area deemed worthy of revitalization by a local government. Forty-eight states and the District of Columbia offer tax increment financing (Table 1). Such financing allows a portion of the tax revenues generated by new development to either be directly reinvested into the special district or be leveraged with bonds.

Although poor planning has led to some failures, successful TIF programs can be found throughout the country. One of the best documented programs, for example, has been Chicago's, with its more than $2 billion in revenue for reinvestment and the creation of more than 28,000 jobs (LISC 2001). Minneapolis's Neighborhood Revitalization Program (NRP) also exemplifies the successful use of TIF. In response to concerns about growing crime and blight, in 1990, the Minnesota state legislature and the Minneapolis city council dedicated $20 million annually for 20 years to fund housing and economic development in the city's 81 neighborhoods. The program is unique in that it is funded through TIF revenues generated from profitable downtown development projects. As of 2000, $176.2 million had been allocated to more than 1,400 projects and programs (Minneapolis Neighborhood Revitalization Program 2000).

Tax increment financing is not without its detractors, however. Critics contend that localities are not always discerning in designating TIF projects, arguing that TIF funds are too often used for projects that would have been developed without public subsidy. Used prudently, however, TIF can be a useful tool for local governments to finance redevelopment without using existing revenues or proposing new taxes.

3. Business Improvement Districts

Business improvement districts (BIDs) are city subdivisions that subject all property owners or businesses in a delineated district to additional tax assessments, which are used to fund various district improvements. Developed from the concept of "special purpose districts," BIDs were created by state legislatures to remedy particular public policy challenges that were either being ignored or were beyond the ability of existing government entities to ameliorate. BIDs are typically territorial subdivisions of a city, which use revenue through additional assessments on property owners or businesses to pay for services supplemental to those provided by city government (Seliga 2001). Revenues generated from BIDs most typically provide physical improvements, traditional municipal services, social services, and business services (Briffault 1999).

The laws governing BID formation vary considerably from state to state, but the creation of a BID generally involves formal actions by both the city government and the private sector. The rules may even vary considerably within one state. Several states, including California, Pennsylvania, and Texas, offer more than one means of creating BIDs and BID-like bodies. Generally, statutes authorizing BIDs contain specific language detailing fund collection procedures, services to be

provided, the composition of the governing board, and methods to facilitate government involvement.[5]

Briffault (1999) counted more than 1,000 BIDs in the United States in 1999, including more than 40 in New York City, 54 in Wisconsin, 35 in New Jersey, 16 in San Diego, and one or more in cities as diverse as Anchorage, Baltimore, Buffalo, Dallas, Denver, Houston, Los Angeles, Memphis, Philadelphia, St. Louis, Seattle, and Washington, DC. The number of BIDs has likely grown since 1999. Although the two most prominent BIDs—New York City's Times Square and Philadelphia's Center City District—are located in the midtown and downtown area of these cities, many BIDs have been established along small commercial strips in large metropolitan areas, and in suburbs and even small towns (Briffault 1999).

Business improvement districts are not an entirely new concept, however. Finance tools such special assessments and special purpose districts have long provided means to manage and fund public-sector activities outside the purview of most municipal governments.[6] Business improvement districts combine aspects of both the special assessment finance tool and the special purpose district, but extend these older mechanisms beyond their traditional uses. A key difference of BIDs is that the funding is used primarily to finance municipal services in older, established areas rather than to fund infrastructure for newly built, growing districts.

BIDs' may offer a broader utility as well. As Mitchell (2001, p. 121) notes, "Although most BIDs do not engage in traditional economic development activities, there are several that do, leading to the consideration that BIDs are another alternative organizational mechanism to encourage economic growth within communities (joining tax increment financing districts, enterprise zones, and other such programs)."

D. Summary

In short, a useful toolbox of state policies and programs exists to encourage the redevelopment of vacant land in urban areas. Many states have the ability to enact change through existing legislation; however, legislatures have rarely mandated it. At the same time, a major critique in the literature has been that although many policies and programs are in place to support the redevelopment of vacant and abandoned urban tracts, localities have often failed to take advantage of them. Further research is needed to determine if this results primarily from the design of state

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[5] Emerging from legal structures and concepts that date back more than a century, the specific form of the BID is a relatively recent phenomenon. Most BIDs were created after 1980, with the majority after 1990, although the first modern BID in the United States was apparently the 1975 downtown development district of New Orleans (Briffault 1999).

[6] Colorado has a true alphabet soup of assessment types. The acronyms SID, LID, GID, PID, and BID each refer to types of districts Colorado counties and municipalities can use to finance many kinds of public infrastructure. Special improvement districts (SIDs) and general improvement districts (GIDs) are organized by a municipality under two sets of state codes, while local improvement districts (LIDs) and public improvement districts (PIDs) are organized by a county using two others. In Colorado, BIDs are hybrid entities organized by a municipality under still another state directive (Wisor and Crawford 2001).

policies and programs, from limitations on local governments' capacity to implement them, or from other factors.

III. STATE CASE STUDIES

To see more of how states can promote the reuse of vacant land and abandoned structures, the noteworthy initiatives of Maryland and New Jersey bear more detailed examination. Maryland merits special attention because it remains the national forerunner in developing and implementing a comprehensive agenda for vacant and abandoned property reuse. New Jersey, too, has consistently been at the forefront in developing tools and programs to address the problems of vacant land and abandoned structures.

A. Maryland

Table 1 shows that only Maryland provides all of the tools and programs for promoting the reuse of vacant land and abandoned structures surveyed in this report. What is interesting, however, is that although urban vacant land redevelopment in Maryland has been addressed under a plethora of legislation and programs, none single it out as the primary focus of action.

Many Maryland redevelopment initiatives fall under the auspices of the state's smart growth initiatives, the foundations for which were laid by 1992 legislation, the Maryland Economic Growth, Resource Protection, and Planning Act. This act required county and local governments to establish priorities through their comprehensive plans. The principles outlined to guide these priorities include: "Development is concentrated in suitable areas; sensitive areas are protected; in rural areas, growth is directed to existing population centers and resource areas are protected; stewardship of the Chesapeake Bay and the land is a universal ethic; conservation of resources, including a reduction in resource consumption, is practiced" (Maryland Office of Planning 1992, unnumbered web page).

Since 1997, under the leadership of Governor Parris Glendening, an impressive array of urban redevelopment legislation emerged from the Maryland General Assembly. These smart growth initiatives have supplemented the 1992 state planning act and include priority funding areas, brownfield redevelopment, Live Near Your Work, and employment tax credits. Subsequent smart growth legislation in 2000 and 2001, and applicable to the reuse of vacant land and abandoned structures, are the Community Legacy Program, the creation of the governor's Office of Smart Growth, the Smart Codes Initiative, the Building Rehabilitation Code, and Models and Guidelines on Smart Neighborhoods and Infill Development.[7] Together these initiatives offer an encyclopedia of state-based redevelopment strategies.

Smart Codes. In response to Governor Glendening's concern that it was easy to develop in greenfields but difficult in cities, the General Assembly drafted legislation that addressed the disincentives present in both zoning and building codes for redeveloping brownfields. The General

[7] The variety of topics addressed in urban vacant land redevelopment requires multiple agency participation. The state agencies in Maryland that support the legislative initiatives for urban vacant land redevelopment include the departments of planning, housing and community development, environment, and business and economic development.

Assembly passed this "smart codes" legislation in 2000. By June 1, 2001, rehabilitation codes and infill models and guidelines had been prepared to serve as guides for local governments.

Rehabilitation codes are streamlined building codes related strictly to renovations. Under the revised codes, an entire building no longer must be brought into full compliance with current (new construction) codes, greatly reducing costs. Unlike in New Jersey, building codes in Maryland are decentralized and each jurisdiction determines its own codes. To encourage local adoption of rehabilitation codes, Maryland employs an incentives-based approach, using the "carrot" of priority access to funding provided by state programs, such as the state's rural legacy, neighborhood conservation, mortgage, and transportation enhancement programs, as well as other Maryland Department of Transportation initiatives. Local governments that adopt the rehabilitation codes receive first consideration for funding.

Because of the program's recent implementation and decentralized implementation, no statewide data exist to indicate the achievements of the program. At present, the rehabilitation codes program is still being marketed to government officials, developers, architects, and property owners through a rehabilitation codes handbook and free training program. Approximately 1,500 persons will be trained by the end of 2003. The program also maintains telephone and e-mail hotlines for questions about the new codes. An expressed concern of the state is the difficulty overcoming the status quo. Rehabilitation organizations and building code officials are content with the system they know well (Hopkins 2002).

The ***infill models and guidelines program,*** a second component of the smart codes program, is also voluntary.[8] The infill models and guidelines program promotes compact development and redevelopment in urban areas. Unlike the setbacks and zoning standards for suburban development, the infill program permits nonconventional development, including a variety of setbacks, building heights and lot sizes, greater densities, mixed-use zoning, nonconforming building footprints and designs, and limited parking opportunities. The program is currently providing grants to local governments to prepare for the adoption of these codes. Approximately 20 grant applications had been received by mid-May 2002 (Goucher 2002).

Priority Funding Areas. In general, Maryland employs funding for infrastructure investments as an important carrot for enticing local governments to participate in Smart Growth. From standard infrastructure installations such as water, sewer, and roads, to alternative transportation infrastructure, such as sidewalks and transit, sought-after state investments flow first to priority funding areas (PFAs). Designated by the state in conjunction with local governments, PFAs seek to concentrate new development into existing developed areas. Intended to preserve green space, PFAs are identified as municipalities, areas within the Baltimore and Washington beltways, and enterprise zones, industrial areas, neighborhood revitalization districts, and heritage locales. In short, PFAs are those in which urban development has already largely occurred, and

[8] Another set of guidelines under the smart codes program, the Smart Neighborhoods Development Model, addresses greenfield development.

thus help to promote the reuse of vacant land and abandoned structures (Maryland Office of Planning 2001a).

Brownfield Redevelopment Programs. Smart growth programs generally strive to reduce the advantages of greenfield over brownfield redevelopment. The General Assembly initiated state programs promoting brownfield redevelopment in 1997, including the Brownfield Voluntary Cleanup Program (BVCP) and the Brownfield Revitalization Incentives (BRIP). The BVCP program, administered through the Department of the Environment, requires both a Phase I and Phase II environmental impact assessment and signoff for the entire property, rather than just a portion of the site. The BVCP has received more than 108 applications to the program since 1997, for an annual application rate of more than 20 sites per year. As of 2002, 72 applications were approved and 29 were under review. Fifty-three site cleanups are either completed or nearing completion. In total, 1,829 acres have been redeveloped.

To stimulate development efforts, the BRIP has been expanded from a simple property tax abatement to include funding for assessments and remediation. Initially, the program was slow to catch on, with only 24 jurisdictions and five counties participating in its first three years. As a result, the state augmented the program during the 2000 legislative session, granting assistance to any developing party short of those who acted with criminal intent. The BRIP also improved access to funding by consolidating funding sources and allowing larger sums to be made available (Henry 2002).

The results have been solid. Between 1997 and 2000, only one project was funded under the BRIP program (other brownfields were redeveloped during that period, but they used a variety of other state programs). With the changes in the 2000 legislation, four new jurisdictions joined the program the following year, and another two are in the process of joining. In addition, 20 projects have applied for assessment assistance. This has allowed for series of new projects to use BRIP grants or low interest loans for assessments or remediation. The 11 projects completed in 2001 redeveloped more than 2.8 million square feet, for a capital investment of $260 million. The rapid increase in participation indicates an unmet demand. Interest in redeveloping urban vacant land through this process has increased dramatically (Metz 2002).

Enterprise Zones. Maryland legislation has supported enterprise zones (EZs) since 1982. Enterprise zones focus either on creating employment or on community redevelopment. From an economic development perspective, EZ's traditional role has been to create jobs in blighted areas through the use of property tax credits. A secondary result has been the redevelopment of vacant and abandoned land and structures. Although there no statewide data are available on the effectiveness of EZs in promoting redevelopment, the program has been successful in creating new jobs and stirring redevelopment in blighted areas.

Recent EZ-related legislation emphasizes community redevelopment through "focus areas" (FAs). The designation of FAs follows criteria more stringent than those used for EZs. That is, Fas target regions of greater distress than does the EZ program. FAs, as such, have been better able to

directly target vacant property for community redevelopment, rather than concentrating only on employment. To this end, FAs offer more beneficial tax credits and other incentives than those of the EZ program. Designation of FAs begins with local identification of highly distressed areas, which are then approved by the state.

Arts and Entertainment District. Another new infill-promotion program introduced by the state in the 2001 assembly is the arts and entertainment district. This program seeks to increase retail and tourism in struggling districts by providing a 10-year tax credit to developers who renovate commercial buildings in which artists can live and work. Designation of these districts begins with an application to Maryland's Secretary of Business and Economic Development. Arts and entertainment districts must be located wholly within a PFA. Benefits attached to the districts include income tax breaks for artists who live and work in the district, 10-year property tax abatements for developers, and exemption from admission and amusement taxes for retail and entertainment proprietors (Posey-Moss 2002).

Split-Tax Rate. Maryland does not employ the split-rate tax system, although a provision in the state constitution permits it. However, a de facto split-rate tax exists, given that tax abatements are provided for improvements to the land but never to the land itself. In this way, developers seeking property tax credits have the benefit of a split-rate system. A limitation, however, is that only properties that are eligible and that seek property tax abatement can benefit from the rates (Wade 2002).

Land Banks. Land banks, although an option in Maryland, have not been widely used.

Business Development. The Neighborhood Business Development Program and Neighborhood Partnership Program encourage business development through financing and tax credits in designated revitalization areas. These incentives help direct investment into areas plagued by vacant and abandoned land and structures. Assistance can also be obtained through the Main Street Maryland and Historic Preservation state programs. These use Main Street principles, historic preservation grants, revolving loan funds, and tax credits to encourage rehabilitation of historic structures.

Community Legacy Areas. Housing and community development often promote redevelopment. The Community Legacy Program offers flexible financing in addition to other state resources. With the development of a comprehensive revitalization strategy, local governments can request funds to support loans, loan guarantees, and grant programs to redevelop the designated community legacy area. Combined with reduced property taxes, tax-increment financing, property donation, and other innovative financing, local governments can stimulate reinvestment in these areas. The program does not include state condemnation authority, however.

With more than 14,000 homes in Baltimore City considered unfit for habitation, and another 20,000 or more vacant (Cohen 2002), housing plays an important role in redevelopment initiatives. However, while the state's initiatives may be helpful, the city itself lacks the funding to effectively

implement such programs. The city did get "quick take" legislation passed in the General Assembly (see below), but only $3 million in FY 2002 was available for demolition of abandoned and dilapidated houses, or only enough to demolish 300 homes. In contrast, Philadelphia is using $300 million in bond funds through its Housing Authority to clear large expanses of blight. Baltimore did receive a $10 million grant in Community Legacy funds. Supporting the Community Legacy program are additional state programs, such as financial assistance, mortgages, and loans to provide affordable housing in designated areas. The Live Near Your Work program, for example, supports transportation-related improvements near rail stations (Maryland Office of Planning 2001a).

Community Parks and Playgrounds. Supported by state funding, the Community Parks and Playgrounds initiative funds urban parks and green space in Maryland's cities. Grants are available to local jurisdictions to purchase and renovate properties for community parks and playgrounds. Although they do not specifically address urban vacant land, the development implications of such a program support reclamation.

Historic Tax Credits. Maryland developed its Historic Tax Credit program to provide incentives for renovating older properties. The credits are available statewide to anyone rehabilitating an eligible home or building, but most of the credits are used by urban commercial redevelopment projects. As the program has evolved, the credits have increased from 10 percent to 25 percent of renovation costs. Critics now argue that the program is too generous, particularly since the state made the credit refundable last year; when credit exceeds the tax owed, the state must pay the difference in cash to the property owner (Epstein and Calvert 2002).

Quick Take for Baltimore. To help Baltimore cope with its many tax delinquent properties, Maryland enacted legislation in 1999 that authorizes that city's lawyers to file "quick take" requests for abandoned properties. These requests are filed in the housing court rather than the backlogged circuit court. To expedite foreclosure, the city places money in a fund to compensate an owner who comes forward after the property is foreclosed. The amount of compensation is based on an appraisal of the property prior to foreclosure (Fannie Mae Foundation 2001).

B. New Jersey

That New Jersey has consistently been at the forefront in developing tools and programs to address vacant land and abandoned structures is not surprising. No state has a higher population density, a higher rate of immigration, or is expected to reach build-out sooner (Burchell 2002).

Smart Growth. The New Jersey State Planning Commission (2001) considers just 12.5 percent of the state's metropolitan areas undeveloped and unprotected. For that reason, the New Jersey State Development and Redevelopment Plan (the state's smart growth plan) allocates state and local resources either to protect undeveloped and unprotected land as open space or to redevelop vacant lots within urban areas. To that end, the state adopted planning goals and created the New Jersey Redevelopment Authority. Among other powers, this authority has the ability to offer financing to redevelopment projects at low and no interest rates. Overall, Smart Growth under the

New Jersey plan could save New Jersey taxpayers as much as $2.3 billion on roadway construction and water and sewer upgrades over the next 20 years (New Jersey Future 2001).

Building Rehabilitation Subcode. With more than half of the housing stock in New Jersey built before 1959, the state has a very high share of older, vacant, and underused buildings (New Jersey Department of Community Affairs, 2003). To promote reinvestment in urban abandoned and vacant properties, therefore, New Jersey enacted a building rehabilitation subcode in 1997. The subcode was designed to focus code regulations on the areas under renovation only, and as such to relieve homeowners of the heavy costs of bringing an entire property up to code. And apparently the reform has worked. At least in part as a result, New Jersey saw a 60 percent increase in rehabilitation work in 1998, and a 62 percent increase in 1999, compared with a 1.6 percent increase in 1997 (National Governors' Association 2001). The high levels of rehabilitation have continued since 1998. In short, New Jersey's program had successfully applied "building code requirements to the rehabilitation of existing buildings in a rational manner, protecting the safety of building occupants without imposing needless requirements or unnecessary, additional costs" (New Jersey Department of Community Affairs, 2003). The program was nationally recognized by the Innovations in American Government Award (1999) sponsored by the Ford Foundation, the John F. Kennedy School of Government at Harvard University, and the Council for Excellence in Government.

Site Remediation Program. The Department of Environmental Protection's Site Remediation Program is committed to helping remediate the state's 8000-plus brownfields and return them to productive use. Through the Voluntary Cleanup Program, any party may enter into a Memorandum of Agreement (MOA) with DEP to establish a schedule for site assessment and cleanup. In addition, municipalities may apply for up to $2 million per year in grants and loans for investigation and remediation activities from the Hazardous Discharge Site Remediation Fund, which is financed in partnership with the state's Economic Development Authority (EDA). Private parties may qualifity for up to $1 million in loans through the program. The state legislature created the $75 million fund in 1993 by dedicating an unused portion of a state Hazardous Waste Bond issue and a portion of the Economic Recovery Fund.

In 2002, The New Jersey Department of Environmental Protection announced a new Office of Brownfield Reuse (OBR), considered "a vital component of Governor McGreevey's Smart Growth efforts to stem the tide of sprawl and channel new development into cities and towns" (New Jersey Department of Environmental Protection 2003, unnumbered web page). The first major effort of the OBR is the Brownfield Development Area (BDA) Initiative. This program works with selected municipalities and neighborhoods that have multiple brownfield sites to coordinate planning and remediation efforts, and is principally focused on property reuse and community revitalization. Under the program, all brownfield sites within a designated BDA community will be assigned to an OBR manager, who will work with other state offices—such as the EDA and the Office of Smart Growth—to direct targeted technical and financial assistance to the sites. The Initiative is currently in a pilot phase, with the first round of applications due in the summer of 2003.

Urban Enterprise Zone Program. New Jersey began its Urban Enterprise Zone (UEZ) program in 1984. This program offers incentives to increase economic activity on vacant land and structures, using methods such as corporate business tax deductions for hiring zone residents or previously unemployed persons; sales tax exemptions on tangible personal property (except motor vehicles) and services (except telecommunications) for use at the zone location; and unemployment insurance rebates. Businesses located within the zone are allowed to charge only half the sales tax rate, which is an attractive incentive to customers.

Any New Jersey city that has suffered economic problems and that meets certain other criteria may request that up to 30 percent of its land area be designated a UEZ by the Urban Enterprise Zone Authority. By 2001, there were 27 UEZs in the state. With the creation of more than 58,000 new jobs, more than 6,500 businesses, and $12.5 billion in private investment, New Jersey's UEZ program is considered one of the most successful programs in the nation. Notably, the National Association of State Development Agencies ranked the program first in the nation in 1997 (LISC 2001).

Split-Rate Tax. A split-rate tax system has been introduced in various forms during the past three legislative years, but has yet to receive approval.

New Jersey, in short, boasts a strong set of state laws and programs supporting the reuse of vacant land and abandoned structures. Overall, state government's greatest deficit in the campaign for greater vacant property reuse is the lack of state-level staff to actively implement its current set of programs and laws (White 2002).

IV. Model State Agenda for Vacant Land and Abandoned Property Reform

Clearly, an impressive—if scattered—array of programs and policies now exists at the state level to tackle the national problem of urban vacant land redevelopment. So in this concluding section, I propose a model state agenda for vacant land and abandoned property reform drawing upon the preceding survey of current legislation, tools, and programs.

To begin with, all states need better information. Quite simply, no state or region will successfully address the problem of vacant land and abandoned structures unless it can quantify and monitor it. Currently, no state keeps a consistent and updated inventory of vacant land and abandoned properties. Consequently, the model agenda begins by recommending state support of a vacant land and abandoned property inventory. Such an inventory would entail statewide uniform and regular data input in a geographic information system. Although there will be many issues to resolve in establishing such a system—such as how to officially define what is vacant or abandoned, and linking the inventory to existing land use and property data collection—it remains vital that states have current, accessible, and transparent information on vacant and abandoned land and structures.

At the same time, the broad redevelopment programs and the general redevelopment and financing tools reviewed in this report represent a set of useful tools to promote the reuse of vacant land and abandoned properties. The two youngest of these tools most directly affect redevelopment. Brownfield voluntary cleanup programs specifically remove barriers to the reuse of contaminated properties while infill-directed, smart growth legislation curbs on a regional basis further greenfield development and channels development toward underused urban parcels. As Table 1 shows, nearly every state has some form of brownfield voluntary cleanup program, but only 19 states boast smart growth legislation with a specific infill focus.

Development authorities and tax-increment financing, along with the bonding capability, are important financial strategies for supporting the redevelopment of vacant land and abandoned structures. In practice, however, none of these tools has been exclusively used for depressed urban areas. Because these tools leverage limited resources, the ideal state agenda for vacant property reuse would concentrate their use on depressed urban areas and limit their use in stronger urban areas and greenfields. Enterprise zones, in this regard, are specifically targeted on depressed urban areas, but do not necessarily target the most blighted areas. Further, they tend to emphasize job creation over capital improvements. Enterprise zone programs should, therefore, be supplemented by focus area programs, which would target funds to areas with the most significant blight and large-scale incidence of vacant land and abandoned structures, and provide greater financial incentives to developers to work in these areas.

Of the four property-specific tools reviewed, meanwhile, two are used by all states and two are used by less than a handful. All states have some form of tax lien foreclosure process as well as authorized eminent domain. However, the current form of these systems in almost all states remains a key impediment to cities' effective and quick resolution of their problems of abandoned and tax delinquent property. The model state agenda, therefore, calls for a reformed judicial tax lien

foreclosure system. Among the features of such a system would be a single enforcement proceeding that takes as little time as possible; a shift from post-sale to pre-sale in the length of time from initial tax delinquency to loss of all property rights; a single entity that controls the entire proceedings; mandatory title examination; and notice to all property interests. Such a system would maximize municipalities' ability to resolve their vacant land and abandoned structures problems in a manner that will not be subject to legal contest. Once municipalities address their large backlog, the ongoing use of this reformed judicial tax lien foreclosure system would ensure that the problem of vacant and abandoned properties never reaches the scale that currently plagues many large cities. At the same time, with a reformed system in place, city-level land banks can be created to facilitate the assembly and resale of vacant parcels.

As noted, all states have eminent domain powers. A handful of states have stricter standards for declaring blight. It remains to be seen whether public criticism of perceived misuse of eminent domain will affect cities' ability to use this tool. For the model state agenda, however, state encouragement of the judicious use of eminent domain by community land trusts remains a promising approach for redeveloping the most blighted of urban neighborhoods.

Finally, the two property-specific tools that see the least use have great promise for promoting the reuse of vacant land and abandoned properties. Split-rate taxation encourages reinvestment in structures and discourages the speculative and unproductive holding of vacant land. Likewise, rehabilitation codes significantly increase the feasibility of rehabilitating old, abandoned structures.

In summary, then, a model state agenda for vacant land and property reform contains the following elements:

- Vacant land and abandoned property inventory
- Brownfield voluntary cleanup program
- In-fill directed smart growth initiatives
- Targeted use of development authorities, TIF, and BIDs
- Enterprise zones focused on blight and vacant properties
- Reformed judicial tax lien foreclosure system
- Authorization for local land banks
- Eminent domain use by community land trusts
- Split-rate taxation
- Rehabilitation codes

In this fashion, I have identified the key vehicles that states should use to promote the reuse of their inventory of vacant land and abandoned structures. Beyond adopting new legislation and initiating new programs, it also will be necessary for states to educate municipalities and developers, and other appropriate members of the public and private sectors, to the availability of these tools. One discovery of our research, in this regard, has been the underuse of existing programs. Although many of the tools have been in place for years (often for other uses), they have not yet

been embraced as opportunities to promote the redevelopment of vacant and abandoned properties. We have also found that in the two states that have nearly all of the recommended tools, New Jersey and Maryland, their successful use has been contingent on educating the public and private sectors to their availability. As it happens, while New Jersey and Maryland have virtually the same policies and programs for promoting the reuse of vacant land and abandoned structures (and New Jersey was even first to put most in place), New Jersey's success in stimulating renewal has lagged in large part from the lack of staff to implement them. For example, according to Tom White, assistant director of the Regional Plan Association, Maryland has approximately 135 staff in its state planning office while New Jersey has fewer than 30 (White 2002). This sharp contrast underscores the need for states to retain the necessary staff to develop the critical training programs, workshops, information leaflets, and technical assistance.

In the end, state governments have a strong stake in facilitating the reuse of their cities' vacant land, and they have motivated partners in local governments, as well as in the real estate, financial, and property-owning communities of their cities. In these pages I have profiled several states that have successfully implemented legislative reforms that support urban vacant land redevelopment. The national level of urban vacant land redevelopment will be enhanced if all states become aware of, and adapt to their best use, the legislative reforms and approaches that have been pioneered by the most responsive states.

Table 1. State Tools and Programs to Promote Urban Vacant Land and Abandoned Property Reuse

		Property-Specific Tools				Redevelopment Programs				Redevelopment Finance Tools		
		Tax Lien Foreclosure	Eminent Domain	Promoting Split Rate Tax Legislation	Rehabilitation Codes	Enterprise Zone	Brownfield Voluntary Cleanup Programs	Infill Smart Growth Legislation	Urban Renewal	Development Authority	Tax Increment Financing	Business Improvement District
Northeast	***New England***											
	Connecticut	✓	✓			✓	✓	✓	✓	✓	✓	✓
	Maine	✓	✓			✓	✓	✓	✓	✓	✓	✓
	Massachusetts	✓	✓				✓		✓	✓	✓	✓
	New Hampshire	✓	✓				✓			✓	✓	✓
	Rhode Island	✓	✓			✓	✓	✓			✓	
	Vermont	✓	✓			✓	✓	✓	✓		✓	✓
	Middle Atlantic											
	New Jersey	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
	New York	✓	✓	✓		✓	✓		✓		✓	✓
	Pennsylvania	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Midwest	***East North Central***											
	Illinois	✓	✓			✓	✓		✓	✓	✓	✓
	Indiana	✓	✓			✓	✓		✓	✓	✓	✓
	Michigan	✓	✓			✓	✓	✓	✓	✓	✓	
	Ohio	✓	✓			✓	✓		✓	✓	✓	✓
	Wisconsin	✓	✓			✓	✓	✓	✓	✓	✓	✓
	West North Central											
	Iowa	✓	✓				✓		✓	✓	✓	✓
	Kansas	✓	✓			✓	✓		✓	✓	✓	✓
	Minnesota	✓	✓			✓	✓		✓	✓	✓	✓
	Missouri	✓	✓			✓	✓		✓	✓	✓	✓
	Nebraska	✓	✓			✓	✓		✓	✓	✓	✓
	North Dakota	✓	✓						✓		✓	
	South Dakota	✓	✓			✓			✓	✓	✓	

Table 1 (cont.) State Tools and Programs to Promote Urban Vacant Land and Abandoned Property Reuse

		Property Specific Tools				Redevelopment Programs				Redevelopment and Financing Tools		
		Tax Lien Foreclosure	Eminent Domain	Promoting Split Rate Tax Legislation	Rehabilitation Codes	Enterprise Zone	Brownfield Voluntary Cleanup Programs	Smart Growth Legislation	Urban Renewal	Development Authority	Tax Increment Financing	Business Improvement District
South	***East South Central***											
	Alabama	✓	✓			✓	✓		✓	✓	✓	✓
	Kentucky	✓	✓			✓	✓		✓	✓	✓	✓
	Mississippi	✓	✓			✓	✓		✓	✓	✓	✓
	Tennessee	✓	✓			✓	✓	✓	✓		✓	✓
	South Atlantic											
	Delaware	✓	✓			✓	✓	✓		✓		✓
	Florida	✓	✓			✓	✓	✓	✓	✓	✓	✓
	Georgia	✓	✓			✓	✓		✓	✓	✓	✓
	Maryland	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	North Carolina	✓	✓			✓	✓					✓
	South Carolina	✓	✓			✓	✓	✓		✓	✓	✓
	Virginia	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
	West Virginia	✓	✓			✓	✓		✓	✓	✓	
	West South Central											
	Arkansas	✓	✓			✓	✓		✓	✓	✓	✓
	Louisiana	✓	✓			✓	✓		✓	✓	✓	✓
	Oklahoma	✓	✓			✓	✓		✓	✓	✓	✓
	Texas	✓	✓			✓	✓	✓	✓	✓	✓	✓

Table 1 (cont.) State Tools and Programs to Promote Urban Vacant Land and Abandoned Property Reuse

		Property-Specific Tools				Redevelopment Programs				Redevelopment and Financing Tools		
		Tax Lien Foreclosure	Eminent Domain[.]	Promoting Split Rate Tax Legislation	Rehabilitation Codes	Enterprise Zone	Brownfield Voluntary Cleanup Programs	Smart Growth Legislation	Urban Renewal	Development Authority	Tax Increment Financing	Business Improvement District
West	***Mountain***											
	Arizona	✓	✓			✓	✓	✓	✓	✓	✓	✓
	Colorado	✓	✓[.]			✓	✓	✓	✓	✓	✓	✓
	Idaho	✓	✓				✓		✓	✓	✓	✓
	Montana	✓	✓				✓		✓	✓	✓	✓
	Nevada	✓	✓			✓	✓		✓	✓	✓	✓
	New Mexico	✓	✓			✓	✓		✓	✓	✓	
	Utah	✓	✓[.]			✓	✓	✓	✓	✓	✓	✓
	Wyoming	✓	✓				✓		✓	✓	✓	
	Pacific											
	Alaska	✓	✓				✓		✓	✓	✓	✓
	California	✓	✓			✓	✓		✓	✓	✓	✓
	Hawaii	✓	✓			✓	✓		✓	✓	✓	
	Oregon	✓	✓			✓	✓		✓	✓	✓	✓
	Washington	✓	✓				✓	✓	✓	✓	✓	✓

Note: Legislation was reviewed as of 2002. Legislative websites were reviewed using the following criteria: (1) urban renewal or revitalization program, (2) tax increment financing or district (3) enterprise zone, (4) industrial, downtown, or redevelopment authority. Search terms used to determine smart growth initiatives included: smart growth and infill, redevelopment, revitalization, vacant land, and abandoned property. Only those programs that explicitly stated infill, redevelopment, or vacant/abandoned land, were included.

[.] States for which more than one condition must be met to legally declare blight.

REFERENCES

Accordino, John, and Gary T. Johnson. 2000. "Addressing the Vacant Land and Abandoned Property Problem." *Journal of Urban* Affairs 22(3): 301–315.

Alexander, Frank S. 2002a. "Constitutional Questions about Tax Lien Foreclosures." *Government Finance Review* (June): 27–31.

———. 2000b. "Tax Liens, Tax Sales, and Due Process." *Indiana Law Journal* 75: 747–807.

American Planning Association. 2002. *Planning for Smart Growth 2002: State of the States* (www.planning.org/growingsmart/states2002.htm).

———. 1996. *Growing Smart: 1996 State Summaries* (www.planning.org/growingsmart/summaries.htm).

Arizona Department of Commerce. n.d. *Growing Smarter Legislation* (www.azcommerce.com/CommunityPlanning/GSLegis.htm [accessed January 20, 2003]).

Bartsch, Charles, Rachel Deane, and Bridget Dorfman. 2001. *Brownfields State of the States: An End-of-Session Review of Initiatives and Program Impacts in the 50 States* (4th ed.) Northeast-Midwest Institute (www.nemw.org/brown_stateof.pdf).

Berliner, Dana, and Scott Bullock. 2002. "Eminent Domain Abuses Unchecked." *Washington Times*, March 4, p. A16.

Blackwell, Angela Glover. 2001. "Promoting Equitable Development." *Indiana Law Review* 34: 1273–1288.

Boarnet, Marlon G., and William T. Bogart. 1996. "Enterprise Zones and Employment: Evidence from New Jersey." *Journal of Urban Economics* 40: 198–215.

Briffault, Richard. 1999. "A Government for Our Time? Business Improvement Districts and Urban Governance." *Columbia Law Review* (March): 365–468.

Burchell, Robert. 2002. Center for Urban Policy and Research, Rutgers University, personal communication, May 6.

Catts, Timothy. n.d. "Pittsburg, Philadelphia Mull Past and Future of Property Tax Reform," *The Progress Report* (www.progress.org/philly08.htm [accessed 3/10/2002]).

Cohen, James R. 2001. "Abandoned Housing: Exploring Lessons from Baltimore." *Housing Policy Debate.* 12(3): 415–448.

———. 2002. Personal communication, May 10.

Common Ground-USA. n.d. "Some State Already Have Two-Rate Site Value Tax Enabling Legislation" (www.progress.org/cg/feet3.htm [accessed March 18, 2002]).

Cowden, Dick, and Sarah Eilers. 1991. "Will Enterprise Zones Make it to the End Zone?" *Business and Society Review* (78).

DSNI (Dudley Street Neighborhood Initiative). 2002. Homepage (www.dsni.org [accessed March 10, 2002]).

Epstein, Gady A., and Scott Calvert. 2002. "Maryland May Cap Development Tax Credits." *Baltimore Sun,* February 20.

Ewing, Reid. 1997. "Is Los Angeles Style Sprawl Desirable." *Journal of the American Planning Association* (Winter): 107–126.

Fannie Mae Foundation. 2001. "State Policies are Critical to Local Responses on Tax Delinquent Properties." *Housing Facts and Findings* 3 (1): 10.

Fitzgerald, Joan, and Nancey Green Leigh. 2002. “The Reuse of Office and Industrial Property in City and Suburb.” In eds., *Economic Revitalization: Cases and Strategies for City and Suburb.* Thousand Oaks, CA: Sage.

Forsyth, Kristen. 2002. Maryland Office of Smart Growth, personal communication, May 10.

Francois, Matthew, D. 2001. “The Emergence of Smart Growth.” *Environmental Law News* 9 (3) (www.calbar.org/enviro/news/v09n3/smart.htm [accessed January 8, 2001]).

Garodnick, Daniel R. 2000. “What’s the BID Deal? Can the Grand Central Business Improvement District Serve a Special Limited Purpose?” *University of Pennsylvania Law Review* (May): 1733–1765.

Georgia Municipal Association. Downtown Development Authorities (www.gmanet.com/general/default.asp?pagetype=askgma_dda&menuid=AskGMAID [accessed November 14, 2002]).

Goldstein, James, Michael Jensen, and Edward Reiskin. 2001. *Vacant Land Redevelopment: Challenges and Progress.* Urbana, IL: Lincoln Land Institute.

Goucher, Pat. 2002. Maryland Department of Housing and Community Development, personal communication, May 15.

Grant, Peter. 2002. “The Property Report: Plots and Ploys.” *Wall Street Journal*, February 6, p. B14.

Greenbaum, Robert, and John Engberg Heinz. 2000. “An Evaluation of State Enterprise Zone Policies.” *Policy Studies Review.* 17 (2/3): 29–47.

Griffith, Janice C. 2000. “The Preservation of Community Green Space: Is Georgia Ready to Combat Sprawl with Smart Growth?” *Wake Forest Law Review* (Fall): 563–602.

Gura, Jeanne Goldie. 2001. “Preserving Affordable Homeownership Opportunities in Rapidly Escalating Real Estate Markets. *Journal of Affordable Housing and Community Development Law* (Fall): 78–91.

Hartzok, Alanna. 1997. “Pennsylvania’s Success with Split Rate Tax Reform.” *American Journal of Economics and Sociology* 56 (2): 205–215.

Heinz, John Engberg, and Robert Greenbaum. 1997. “State Enterprise Zones and Local Housing Markets.” Paper presented at the Allied Social Science Association Annual Meetings, New Orleans.

Henry, Jim. 2002. Maryland Department of Business and Economic Development, personal communication, May 20.

Hoekman, David. 2000. “Urban Knockout Punch.” *Grand Rapids Business Journal* 18: 3-4.

Hopkins, Johns. 2002. Maryland Department of Housing and Community Development, personal communication, May 8.

ICE (Institute for Community Economics). *The Community Land Trust Model* (www.iceclt.org/clt/cltmodel.html [accessed, March 15, 2002]).

ICMA (International City/County Management Association). "The Revitalization of Vacant Properties" *Document Number* 10000162. *Document Year* 2002; *Project Year* 2001.

Jaconetty, Thomas A. 1999. “Revitalizing Urban Brownfields: A National, State and Local Effort to Reclaim Blighted Properties.” *Assessment Journal* 6 (4): 56–68.

Jaffee, Bruce. 1977. “What Happened to Urban Renewal?” *Business Horizons* 20 (1): 81–91.

Jennings, Marianne M. 2002. “Eminent Domain is Not What it Used to Be” *Real Estate Law Journal* 30 (Winter 2001/2002): 232–239.

Johnson, Craig L. 1999. “Tax Increment Debt Finance: An Analysis of the Mainstreaming of a Fringe Sector. “*Public Budgeting and Finance* 19(1): 47–68.

Kanner, Gideon. 2000. “That Was the Year That Was: Recent Developments In Eminent Domain Law.” American Law Institute: American Bar Association Continuing Legal Education, August 17-19, p. 94.

———. 2001. “Recent Developments in Eminent Domain Law: 2000-2001.” American Law Institute: American Bar Association Continuing Legal Education ALI-ABA Course of Study, August 16-18, pp. 75–76.

Keating, Larry, and David Sjoquist. 2001. “Bottom Fishing: Emerging Policy Regarding Tax Delinquent Properties.” *Housing Facts and Findings* 3 (1).

Kildee, Dan. 2001. “Tax Reversion Implementation and Land Disposition Planning, Genessee County, Michigan.” Unpublished manuscript.

Leigh, Nancey Green. 1994. “Introduction to Environmental Constraints in Brownfield Redevelopment," *Economic Development Quarterly* 8 (4): 325–328.

LISC (Local Initiative Support Corporation) 2001. “National Survey of Urban Economic and Community Development Models” (www.liscnet.org/resources/econdev/best_practices/ent_zone_model.shtml).

Malizia, Emil E. 1999. “Ad Valorem Appraisals and the Reuse of Inner-City Properties.” *Assessment Journal* 6 (1): 18–28.

Marlin, Matthew, and William P. Buzzi. 1990. “Industrial Development Bonds: What remains?” In Richard Bingham, Edward Hill, and Sammis White, eds. *Financing Economic Development* Thousand Oaks, CA: Sage.

Maryland Office of Planning. 1992. *The Economic Growth, Resource Protection, and Planning Act of 1992 (*www.mdp.state.md.us/general/planact.htm [accessed 11/4/02]).

———. 2001a. Smart Growth Initiative (http://www.mdp.state.md.us/smartintro.htm).

———. 2001b. *Model and Guidelines for Infill Development* (http://www.op.state.md.us/id.html).

Massachusetts Department of Housing and Community Development. 2003. *Urban Renewal Program Fact Sheet (www.state.ma.us/dhcd/publications/fact_sheets/default.htm* [accessed 2003]).

McClure, Steve. 1991. *Redevelopment Through Tax Increment Financing*. Illinois Municipal League (www.lib.niu.edu/ipo/im910109.html).

McDonough, Ed. 2002. Maryland Department of Housing and Community Development, personal communication, May 21.

Metz, Jim. 2002. Maryland Office of the Environment, personal communication, May 15.

Minneapolis Neighborhood Revitalization Program. 2000. *A Program of the People, by the People, and for the People: Progress Report 2000.*

Mitchell, Jerry. 2001. “Business Improvement Districts and the “New” Revitalization of Downtown.” *Economic Development Quarterly* 15(2): 115–123.

Morandi, Larry. 2001. “Urban Revitalization and Sprawl.” *Legisbrief* 9 (6) (www.ncsl.org)

Municipal Research and Services Center. 1997. “Infill Development: Strategies for Shaping Livable Neighborhoods.” Report no. 38 (www.mrsc.org/Publications/textfill.aspx#E19E [accessed November 14, 2002]).

———. 2002. “Public Corporations/Public Development Authorities” (www.mrsc.org/Subjects/Econ/ed-pda.aspx [July. Accessed November 14, 2002]).
National Governor’s Association. 2001. *Growth Tool Kit: Use Innovative Approaches to Development Housing Infill and Redevelopment* (www.nga.org/center/divisions/1,1188,C_ISSUE_BRIEF^D_2477,00.html [accessed February 12, 2002]).
Neighborhood Design Center. n.d. “Vacant Land and Abandoned Housing: A Strategy for Baltimore” (www.ndc-md.org/ndc/vacant.pdf).
Nelson, A.C. 1999. “Economic Development and Smart Growth.” *News and Views*. American Planning Association Economic Development Division.
Northeast-Midwest Institute. 2002. “Brownfield Basics: An Issue Primer” (www.nemw.org).
New Jersey Department of Community Affairs. n.d. New Jersey Rehabilitation Code (www.state.nj.us/dca/codes/rehab/rehab.htm# [accessed March 28, 2003]).
New Jersey Department of Environmental Protection. n.d. Site Remediation Program (www.state.nj.us/dep/srp/brownfields [accessed April 1, 2003]).
New Jersey Future. 2001. “Development Style Can Reduce Road Costs.” *NJFuture Facts and Issues.* February 13 (www.njfuture.org/HTMLSrc/FactsAndIssues_20010213.html).
New Jersey State Planning Commission. 2001. “New Jersey State Development and Redevelopment Plan” (http://www.state.nj.us/dca/osg/plan/plan.html).
Oregon Department of Land Conservation and Development. 2001. 1999--2001 Biennial Report to the Seventy-First Legislative Assembly (www.lcd.state.or.us/legislative/TextRpt2001.rtf).
Paetsch, James, and Roger Dahlstrom. 1990. "Tax Increment Financing: What It Is and How It Works." In *Financing Economic Development,* Richard Bingham, Edward Hill, and Sammis White, eds. Thousand Oaks, CA: Sage.
Pagano, Michael A., and Ann O’M.Bowman. 2000. “Vacant Land in Cities: An Urban Resource.” Washington: Brookings Institution.
Patel, Ajesh B. 2000. “Developments in State Constitutional Law.” *Rutgers Law Journal* (Summer): 1600–1608.
Patella, John. 2002. Office of Communications and Policy, New Jersey Department of Community Affairs, personal communication, May 8.
Pennsylvania Land Recycling Program. n.d. *A Clear Road to Development*. Publication No. 2530-BK-DEP2310 (www.dep.state.pa.us/dep/deputate/airwaste/wm/landrecy/facts/ roadsign.pdf [accessed March 28, 2002]).
Plassman, Florenz, and T. Nicolaus Tideman. 1997. “A Markov Chain Monte Carlo Analysis of the Effect of Two-Rate Property Taxes on Construction.” *Journal of Urban Economics* 47 (2): 216–247.
Posey-Moss, Marla. Maryland Department of Business and Economic Development, personal communication, May 17.
Schwartz, Stewart. 1999. “Split-Rate Tax Promotes Smart Growth.” *Getting Smart Newsletter* 2 (4) (www.washingtonregion.net/html/article.html).
Scott, Micheal F. 1997. “Pennsylvania’s Land Recycling Program.” *State Innovations.* Lexington, KY: Council of State Governments.

Seliga, Joseph. 2001. “Democratic Solutions to Urban Problems.” *Hamline Law Review* (Fall): 22–68.

Shapiro, Melinda R. 1999. “Environmental Law Update.” *Indiana Business Magazine* 43(8): 22–26.

Siegel, Eric, and Gady A. Epstein. 2002. "Mayor Seeks Control Over 5,000 Houses." *Baltimore Sun*, January 27, p. 1A.

Smart Growth America. 2002a. “Rehabilitation Codes” (http://www.smartgrowthamerica.org/rehabcodes.html).

Smart Growth America. 2002b. “Getting to Smart Growth: 100 Policies for Implementation” (www.smartgrowth.org/pdf/gettosg.pdf [accessed January 12, 2003]).

Smart Growth Network. 2002. “What Is Smart Growth?” (www.smartgrowth.org/sgn/partpublist.asp?part=16 [accessed March 3, 2002]).

Starkman, Dean. 2001. “More Courts Rule Cities Misapply Eminent Domain.” *Wall Street Journal*, July 23, p. B1.

State Assembly of California. 2001. *Smart Growth Caucus Briefing Book* (www.assembly.ca.gov/sgc/Summary_Efforts).

U.S. Government Accounting Office. March 1990. *Federal-State-Local Relations: Trends of the Past Decade.*

U.S. HUD (Housing and Urban Development), Office of Policy Development and Research. 1997 “Nationally Applicable Recommended Rehabilitation Provisions (NARRP).”

———. 1999. “An Assessment of State Brownfield Initiatives”

———. 2001a. “Smart Codes in Your Community: A Guide to Building Rehabilitation Codes.”

_____. 2001b. “Pennsylvania’s Open Space Management Improves Vacant Land Blight” (www.hud.gov/bpawards/phila2.cfm [accessed December 12, 2001]).

———. 2002. “Smart Codes Spur Reinvestment” (www.huduser.org/periodicals/rrr/rrr_02_2002/0202_2.html [accessed March 25, 2002]).

Utah Code, 1953, Title 17B. Limited Purpose Local Government Entities, Chapter 4. Redevelopment Agencies Act, Part 6. Blight Determination in Redevelopment Project Areas, 17B–4–604 Conditions on board determination of blight —Conditions of Blight Caused by the Developer.

Victoria Transport Policy Institute. 2002. “Smart Growth Policy Reforms: Split-Rate Property Taxes” In *TDM Encyclopedia* (www.vtpi.org/tdm/tdm95.htm [accessed March 14, 2002]).

Vulcan, Mark. 2002. Maryland Department of Business and Economic Development, personal communication, May 21.

Wade, Jerry. 2002. Maryland Department of Business and Economic Development, personal communication, May 21.

Wall Street Journal. 2002. “Mississippi Churning.” January 4, p. A12.

Wells, Barbara. 2001. “Governor’s Smart Growth Initiatives.” Northeast-Midwest Institute (www.nemw.org/Gov_sgi.pdf).

White, Tom. 2002. Regional Plan Association, personal communication. May 24.

Wilder, Margaret G., and Barry M. Rubin. 1996. “Rhetoric Versus Reality.” *Journal of the American Planning Association* 62 (4): 472–492.

Wisor, Dee P., and Kimberley K. Crawford. 2001. “Improvement Districts for Colorado Counties, Cities and Towns.” *Colorado Lawyer* (January): 53–59.

Wolf, Michael Alan. 1990. “Enterprise Zones: A Decade of Diversity.” In *Financing Economic Development*. Richard Bingham, Edward Hill, and Sammis White, eds. Thousand Oaks, CA: Sage.

Wright, Andrew G., and Mary Buckner Powers. 2002. “After Years of Nurturing, Brownfields Begin to Bear Fruit.” *Engineering News-Record* 248 (6): pages not available.

Young, Earni. 2001. “Council OKs $295M Blight Fight.” *Philadelphia Daily News,* March 1, p. A1.

Young, Earni. 2002. “Residents Hope It Will Renew Area; Street Signs Anti-Blight Bill in W. Philadelphia,” *Philadelphia Daily News,* March 14, p. A1.

Zausner, Robert. 1998. “Proposed Measure Could Give Downtowns a Boost.” *Central Penn Business Journal*. May 13.

APPENDIX A

Opposition to the Use of Eminent Domain

A vocal critic of eminent domain is Gideon Kanner, an emeritus professor of law at Loyola University. Kanner writes:

> First, eminent domain proceedings are a judicial implementation of a vital constitutional guarantee (the 'just compensation' clause of the Fifth Amendment) and in that context it is remarkable, to put it with restraint, that some courts act and speak as if the function of that constitutional provision were to protect the government from the people, rather than the other way around. Second, courts are supposed to be impartial and refrain from carrying water for one side or the other in contested litigation. Third, because in the context of passing on the necessity for takings (which encompasses the economic advisability of public projects) the courts take the position that such matters are altogether nonjusticiable, at least absent government fraud, bad faith and abuse of discretion, one would think that a fortiori the cost of public improvements would likewise be a subject left to the unfettered discretion of condemning agencies that design and implement them (Kanner 2000, p. 94).

Recent court rulings have increasingly reconsidered decades of judicial support of eminent domain. Critics would say that "at long last" the courts are taking a harder look at eminent domain use and concluding that the motives for its implementation are not always constitutionally defensible.

Examples of this trend include:

Pennsylvania (2001)

In re: Condemnation of 110 Washington Street, Borough of Conshohocken, Pennsylvania, by Redevelopment Authority of County of Montgomery, for Urban Renewal Purposes, a Pennsylvania appeals court blocked the condemnation of a steel-fabrication plant for a hotel-office developer on the grounds that a local redevelopment authority had improperly delegated its public powers to the developer.

Although much analysis in the case focused on whether the creation of a hotel was a true public purpose allowable under eminent domain, the decision mainly turned on the seemingly close relationship between the developer and the government authority, which the court believed tainted the eminent domain process. The relationship included a contractual arrangement that gave the developer the final say on the amount and timing of the condemnation offer (Kanner 2001).

New York (2001)

A federal judge in Manhattan issued a temporary order blocking Port Chester, NY from condemning a rental property in favor of a grocery-store parking lot under a state law that allows a newspaper ad to serve as notice to owners that their property could be taken (Starkman 2001).

Mississippi (2001)

The Mississippi Supreme Court issued a stay blocking condemnation of a huge tract to make way for a Nissan Motor Company plant, saying that redevelopment authorities may be taking land "substantially in excess of the immediate needs of the public use" (Starkman 2001, p. B1).

New Jersey (2001)

New Jersey's usually liberal supreme court ruled that a state development exceeded its authority when it seized property through eminent domain to provide additional parking for a casino owned by Donald Trump (*Wall Street Journal* 2002).

California (2001)

In *99 Cents Only Stores v. Lancaster Redevelopment Agency*, the court rejected the Lancaster, CA redevelopment agency's claim of eminent domain, and granted summary judgment against it, when evidence showed no blight to be cleared on the parcel. The court decided that the purpose of the attempted action was to accommodate the private expansion plans of another competing retailer (Costco Wholesale Corp.), located in the same shopping center, which was in excellent condition and in no way blighted (Kanner 2001).

The ruling is significant because it directly addresses whether the taking served a "public use," a determination that courts have traditionally left to local governments (Jennings 2002).

Illinois (Ruling Pending)

A similar, pending case will also test whether governments can use their eminent domain powers to take land from one business and give it to another. The case involves the Village of Swansea, IL, about 10 miles east of St. Louis, which wants to condemn about 16 acres of land adjacent to a new light-rail station to make room for a new Home Depot and other retailers. Some of the owners are protesting.

The proceedings promise to be closely watched because Swansea is trying to condemn the property through the Southwestern Illinois Development Authority, an agency at the heart of another test case that is being followed by property rights advocates.

John Kurowski, lawyer for Swansea, says the village is hoping that property owners will agree to sell so condemnation will be unnecessary. He also says that although the area around the light-rail station is not blighted now, "economic decay" is creeping toward Swansea from the East St. Louis area. "The potential for blight is very high," he says (Grant 2002, p. B14).

Of cases like these, the *Wall Street Journal* recently reported that a major reconsideration is underway in American courts:

> "What you're seeing is courts finally setting some limits to the exercise of eminent domain," says David L. Callies, a professor of property and land use law at the University of Hawaii law school. Mr. Callies, who as a lawyer has represented both government agencies and property owners, adds: "They're saying, 'OK, if you've got a redevelopment scheme, we'll probably buy that. But we're not going to buy your virtually turning over the power of eminent domain to the private sector.'"
>
> The recent rulings may amount to just the beginnings of a backlash, but they mean that what was once an unquestioned power is now in doubt—a change that could affect the thousands of takings cases filed around the country each year, particularly those related to redevelopment. In California alone, for instance, cities and redevelopment authorities filed 1,090 eminent-domain cases last year (Starkman 2001, p. B1).

APPENDIX B

Examples of Upheld or Allowable Eminent Domain Use

Despite the recent questioning of eminent domain powers, its use is common. The following are only a few examples of courts' upholding the power, and cities using it, in revitalization efforts.

Pennsylvania (2000)

In a Pennsylvania case, *Weinberg v. Comcast Cablevision of Philadelphia, L.P.*, the court upheld a general state statute with universal condemnation of a landlord's properties for installation of cable, but required compensation (Jennings 2002).

Mississippi (1999)

The issue of private benefit from public condemnation did not preclude judicial approval of eminent domain proceedings in *Winters v. City of Columbus.* The court heard a complaint that the condemnation of land for a drainage project was unconstitutional because the primary benefit flowed to only a small number of landowners. The condemnee challenged the constitutionality of the condemnation because of the predominantly private benefit. However, the court found that such a taking was still constitutional (Jennings 2002).

Minnesota (1998)

In *Matter of M.C.D.A.,* the Minnesota Court of Appeals permitted the condemnation of two parcels owned by a business already located in a local mall to allow the Dayton Hudson Corporation to locate its Target store there. Opponents criticized what they declared was a preference of the economic interests of one commercial landowner over another. Opponents also argued that there was no pretext of "blight" in the condemnation, and that the city merely wanted a mid-price retailer in the area and believed purchasing land in the open market would be too expensive. However, the court held that that the condemnation reflected the "public use" criterion for eminent domain action (Kanner 2000, p. 94).

Minnesota (2001)

The key for the courts in issues of private benefit from eminent domain seems to be the contingency of public use. For example, in *Housing and Redevelopment Authority in and for the City of Richfield v. Walser Auto Sales, Inc*., the court considered the condemnation of several auto-sales lots and replacement with a major corporate headquarters. The court upheld the condemnation and the proposed substitution of another commercial use because the city was able to establish that the current car lots had raised issues of safety and, hence, public welfare.

It was apparent, said the court, that these conditions constituted obsolescence, overcrowding, and faulty arrangement or design that were detrimental to the safety and welfare of the community. These criteria met the relevant statutory definition of blight (Jennings 2002).

Connecticut (2002)

In New London, CT a private organization was given government power to condemn more than a dozen properties to construct an office park and other concomitant development to complement a nearby research facility operated by the Pfizer corporation. The court ruled that the condemnation was within the scope of the law (Berliner and Bullock 2002).

Kansas (2001)

In Merriam, KS a car dealership was condemned to allow a neighboring BMW dealership to expand (Berliner and Bullock 2002).

Florida (2002)

In Riviera Beach, FL the city is moving forward with plans to potentially force the relocation of more than 5,000 residents to make way for a privately owned commercial and industrial development (Berliner and Bullock 2002).