

# ISSUES IN BRIEF

ON BEHALF OF GREATER PHOENIX LEADERSHIP

## Growth Management and Open Space Protection in Arizona: Current Tools and Progress

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*Prepared by*  
*Rick Heffernon*  
*and Rob Melnick,*  
*Morrison Institute*  
*for Public Policy,*  
*ASU*

### *Purpose and Introduction*

Four major, statewide “tools” to help manage growth and preserve open space have been put to work in Arizona over the past five years. These include the Arizona Preserve Initiative and the closely-related Proposition 303, as well as the Growing Smarter Act and its “addendum,” Growing Smarter Plus. All four tools are based in large part on a concept known as “smart growth,” which is generally considered to be a set of growth management measures that attempt to strike a balance among issues of economics, environment, and quality of life. Taken together, these four growth management tools make significant changes in the way that a) city and county governments plan and regulate their lands, b) citizens play a role in land use issues, c) state trust lands are managed, and d) open space may be acquired and preserved. Many of these changes will have long-term effects for the state.

This paper provides a brief overview of each of the four growth management/open space tools, a preliminary accounting of major activities each one has stimulated, and a perspective on what can be expected for the future as expressed by a selection of growth planners and other leaders of growth management in Arizona.

### *Chronology and Key Provisions of Growth Management/Open Space Tools<sup>1</sup>*

#### **1996: ARIZONA PRESERVE INITIATIVE (API)**

The Arizona Preserve Initiative was passed by the state legislature in spring of 1996 and subsequently amended and expanded each year from 1997 to 1999. Its main goal is to encourage the preservation of state lands near urban areas as open space for future generations. Major provisions of API include:

#### **Open Space Preservation**

- The land commissioner is authorized to reclassify, lease, and sell urban-area trust lands for conservation purposes, with the input of an appointed Conservation Advisory Committee.
- A “land conservation fund” is established to help fund the purchase or lease of lands for conservation purposes, with the provision that state funds must be matched by other sources; these monies do not revert to the state general fund.
- Arizona State Parks Board is given responsibility for administering the land conservation fund with input from an appointed Conservation Acquisition Board. The Parks Board may award grants for three purposes: 1) the purchase or lease of trust lands reclassified under API for conservation purposes, 2) the purchase of development rights of trust lands throughout the state, and 3) the implementation of conservation practices on private, state, or federal lands used for grazing or agriculture by private landowners or lessees.

<sup>1</sup> For purposes of brevity, not all provisions are presented.



## 1998: GROWING SMARTER ACT

The Growing Smarter Act has two main objectives: first, to strengthen municipal and county planning by requiring that new general plans (cities and towns) and comprehensive plans (counties) be readopted regularly and that all subsequent zoning actions conform with the plans; second, to change how state trust lands are planned and managed by emphasizing the preservation of open space. Major provisions of Growing Smarter include:

### Municipal and County Planning

- Municipalities and counties must readopt or reformulate their general/comprehensive plans every 10 years, with a 2/3 vote of an appropriate governing body required for passage. The first plans are due by Dec. 31, 2001 (later extended to Dec. 31, 2002 for cities under 75,000 population).
- Municipalities and counties must conform to their plans for all zoning and rezoning actions.
- Municipalities and counties must have effective, early, and continuous public participation in the process leading to adoption of general/comprehensive plans or major amendments.
- Most municipalities and counties must add four new elements in their general and comprehensive plans – open space, growth areas, environmental planning, and cost of development – with the exception of small, slow growing communities<sup>2</sup> and counties under 200,000 population.
- Municipalities and counties must coordinate their general/comprehensive plans with the state Land Department’s conceptual use plans.

### State Trust Land Planning

- The land commissioner must create conceptual land use plans every 10 years for trust lands near urban areas.
- The land commissioner must create five-year disposition plans for all trust lands.
- An Urban Land Planning Oversight Committee is established to provide guidance and recommendations regarding land use and disposition plans.

### Open Space Preservation

- Purchase of development rights of trust lands throughout the state is permitted using API funds.
- Unspent monies in the land conservation fund are exempt from reverting to the general fund.

## Commission

- A 15-member Growing Smarter Commission is established to recommend changes to rules governing municipal/county planning and state trust lands.

## 1998: PROPOSITION 303

“Prop” 303, a ballot referendum, was conceived as part of the Growing Smarter Act of 1998. It was proposed in opposition to another growth management initiative (Citizen’s Growth Management Initiative) that ultimately did not make the November 1998 ballot. Major provisions of Proposition 303 include:

### Open Space Preservation

- \$20 million dollars of state funds are appropriated to the API’s land conservation fund each year for 11 years starting FY 2001, to be used as matching funds under API.

## 2000: GROWING SMARTER PLUS ACT

Growing Smarter Plus made several revisions and additions to the original Growing Smarter Act based on recommendations of the Growing Smarter Commission and others. Major provisions of Growing Smarter Plus include:

### Municipal and County Planning

- Municipalities and counties must adopt a citizen review process for rezoning actions.
- Municipalities (not exempt from Growing Smarter’s four new growth elements), and counties over 125,000 population, must add a water resources element to their plans.
- Municipalities and counties are authorized to set infrastructure service boundaries and to limit service outside those boundaries.
- Municipalities and counties may not designate private lands as open space without written consent of the landowner.
- Municipal and county governments in counties under 400,000 population are encouraged to develop coordinated regional plans.
- All municipal general plans must be ratified by voters, except in small, slow-growing communities.
- Municipalities may not annex lands until they have a plan to provide infrastructure and services within 10 years.
- Counties are authorized to adopt ordinances regulating land divisions of five or fewer lots of 10

<sup>2</sup> *Small, slow growing communities defined as under 2,500 population or between 2,500 and 10,000 and growing at less than 2 percent per year over a 10-year period.*

acres or smaller, but must approve or deny lot split requests within 30 days.

- In unincorporated county areas, sellers of five or fewer parcels of unsubdivided land must furnish buyers with a written disclosure affidavit regarding aspects of the property, such as legal access, flood plain status, and utility service.
- Counties with a formal capital improvements plan are permitted to assess development fees that bear “reasonable relationship” to costs imposed on the county.

### Open Space Preservation

- A Development Rights Requirement (DRR) Fund is established – but not funded – to grant monies for purchase, lease, or transfer of development rights of private lands.
- Several provisions regarding mechanisms to set aside, exchange, or donate trust lands were intended to become effective only if approved by voters as Proposition 100 in the November 2000 election. Since Proposition 100 was defeated, these provisions never became law.

## Major Activities

ARIZONA PRESERVE INITIATIVE (1996) AND PROPOSITION 303 (1998)	
PROVISION	MAJOR ACTIVITIES AS OF MAY 2001 <sup>3</sup>
<p><b>OPEN SPACE PRESERVATION</b></p> <p>State trust lands near urban areas may be reclassified and sold or leased for conservation purposes.</p>	<ul style="list-style-type: none"> <li>• 24 petitions filed for reclassification of 88,574 acres for purchase; none filed for lease.</li> <li>• 11 petitions totally or partially reclassified.</li> <li>• 3 parcels totalling 731 acres sold for \$11.5 million.</li> </ul>
<p>Up to \$20 million appropriated by the state for 11 years (\$220 million total) as matching funds to purchase or lease state lands for conservation purposes under API.</p>	<ul style="list-style-type: none"> <li>• \$7.7 million in grants awarded thus far in FY 2001 to 4 applicants for land totaling over 2,000 acres.</li> <li>• 2nd grant award cycle in progress.</li> </ul>
<p>API funds may be awarded for purchasing development rights of trust lands throughout the state.</p>	<ul style="list-style-type: none"> <li>• No grants yet applied for or awarded.</li> </ul>
<p>Up to 10% of state-appropriated conservation funds for API may be awarded to landowners or agricultural and grazing lessees proposing to implement conservation practices.</p>	<ul style="list-style-type: none"> <li>• No money yet awarded.</li> <li>• Grant criteria established, with livestock reduction named top priority for funding during first year of the program.</li> </ul>
GROWING SMARTER ACT (1998) AND GROWING SMARTER PLUS ACT (2000)	
PROVISION	MAJOR ACTIVITIES AS OF MAY 2001 <sup>3</sup>
<p><b>MUNICIPAL/COUNTY PLANNING</b></p> <p>Municipal and county general/comprehensive plans must be adopted or reformulated every 10 years; approved by 2/3 of the governing body; and ratified by voters.</p>	<ul style="list-style-type: none"> <li>• 3 cities (Pinetop-Lakeside, Surprise, and Peoria) have ratified new plans with voters.</li> <li>• 6 cities anticipate plan ratification elections in late 2001.</li> <li>• 38 cities have elections planned in 2002.</li> </ul>
<p>Municipalities and counties must have effective, early, and continuous public participation in the process leading to adoption of general/ comprehensive plans or major amendments.</p>	<ul style="list-style-type: none"> <li>• Several counties (including Maricopa and Yuma) have created formalized processes for citizen input.</li> <li>• Several cities (including Peoria, Surprise, Mesa, Tucson, and Pinetop-Lakeside) have employed strategies such as public hearings, newsletters, press releases, town halls, questionnaires, advertising, meetings with community groups, community workshops, Q&amp;A sessions, and formal presentations.</li> <li>• League of Arizona Cities and Towns offers a public participation template for municipalities.</li> </ul>

PROVISION	MAJOR ACTIVITIES AS OF MAY 2001 <sup>3</sup>
<p><b>MUNICIPAL/COUNTY PLANNING</b> <i>(continued)</i></p> <p>Larger municipalities and counties must add five new growth-related elements to their plans.</p>	<ul style="list-style-type: none"> <li>• 34 cities exempted for low population or slow-growth reasons.</li> <li>• Nonexempt municipalities and counties widely expected to include growth-related elements in their general or comprehensive plans.</li> <li>• Some planning assistance available from state Department of Commerce, League of Arizona Cities and Towns, and Maricopa Association of Governments.</li> </ul>
<p>Municipalities and counties are required to coordinate their plans with Land Department conceptual use plans.</p>	<ul style="list-style-type: none"> <li>• Several cities have already begun coordinating with Land Department; some disagreements have arisen over land uses.</li> <li>• Surprise will incorporate conceptual plans by means of a major amendment.</li> </ul>
<p>Municipalities and counties given authority to set infrastructure service boundaries.</p>	<ul style="list-style-type: none"> <li>• No examples from new city plans under Growing Smarter, but Flagstaff has employed infrastructure service boundaries for two decades.</li> <li>• Yuma County is proposing infrastructure service boundaries in 1 of its 4 planning areas.</li> </ul>
<p>Municipal and county governments in all but the largest counties are encouraged to develop coordinated regional plans.</p>	<ul style="list-style-type: none"> <li>• Cities of Yuma, Somerton, San Luis, and Wellton have coordinated with Yuma County on land use aspects of the county plan.</li> <li>• Pinetop-Lakeside coordinated with Navajo County on the city's new general plan.</li> </ul>
<p>Municipalities may not annex lands until they have a plan to provide infrastructure and services within 10 years.</p>	<ul style="list-style-type: none"> <li>• Several cities report they are working on annexation policies – e.g., Peoria has adopted an annexation policy to deal primarily with master-planned communities.</li> </ul>
<p>Counties allowed to assess impact fees on developers for costs of public services.</p>	<ul style="list-style-type: none"> <li>• Yuma County recently studied specific costs of infrastructure, in anticipation of proposing impact fees. Other counties expected to follow.</li> </ul>
<p><b>STATE TRUST LAND PLANNING</b></p> <p>Land Department required to create 10-year conceptual land use plans for trust lands near urban areas, and 5-year disposition plans for all trust lands.</p>	<ul style="list-style-type: none"> <li>• Conceptual planning efforts have focused on Pima and Maricopa Counties; over 150,000 acres completed.</li> <li>• A final draft of the 5-year disposition plan expected by late May 2001.</li> </ul>
<p><b>OPEN SPACE PRESERVATION</b></p> <p>Land Department authorized to sell development rights on state trust land throughout the state.</p>	<ul style="list-style-type: none"> <li>• No development rights sold.</li> </ul>
<p>Development Rights Retirement (DRR) Fund created to grant monies for the purchase, lease, or transfer of development rights from private lands.</p>	<ul style="list-style-type: none"> <li>• DRR not funded.</li> </ul>
<p><b>OTHER MAJOR PROVISIONS</b></p> <p>A 15-member Growing Smarter Commission created to recommend rule changes for municipal/county planning and management of state trust lands.</p>	<ul style="list-style-type: none"> <li>• Growing Smarter Commission recommendations formed basis of the Growing Smarter Plus Act of 2000.</li> </ul>

<sup>3</sup> Wherever possible, quantitative information for the entire state is reported. In cases where no statewide quantitative data are available, examples or qualitative information are reported.

## Progress and Issues

The following information is based on the collective views of growth planners and other leaders of growth management in Arizona.<sup>4</sup>

**Q: What major progress have we made to date as a result of Growing Smarter and API?**

**A: It's too early to tell, but Arizona has taken some first steps:**

- **Promising laws and programs have been put in place.** These may, however, require years to get "right." Other states have gone through several cycles of adjustment in this process.
- **Significant results will take time.** First, new general and comprehensive plans must be adopted and passed over the next two years. Then these plans need time to effect long-term change – probably 5-10 years.

**Q: What are some early indications of progress?**

**A: Several optimistic trends are appearing:**

- **Strong voter approval of new plans.** New plans that have already been submitted to a ratification process have been passed by a wide margin.
- **Anticipated compliance.** Most municipalities and counties appear to be making a good faith effort to fulfill Growing Smarter's mandates and "spirit."
- **Better planning.** Many local governments appear to be making a serious effort to do more thoughtful, in-depth planning.
- **Increased public participation.** Local governments have been engaging citizens in their planning process in new and more successful ways.
- **API land sales underway.** Trust land reclassifications and grants for matching funds were slow to get started, but now appear to be ramping up. As much as \$440 million of open space lands could be preserved over the next decade.

**Q: What obstacles have slowed API progress regarding grants and land sales?**

**A: Three situations have contributed to API's slow start:**

- **Competition from Proposition 100, et al.** Prop 100 would have set aside large tracts of trust

lands as open space at no cost to local governments. A similar proposal may soon surface. The effect of these proposals may have been to suppress public interest in purchasing trust lands that might be contained in the set-asides.

- **Complexity of API procedures.** The processes for reclassifying trust lands and qualifying grant recipients are complex; they are further complicated by the overlapping involvement of two state agencies and two advisory boards. Consequently, the cycle for awarding grants and completing sales under API has been lengthy.

- **Land appraisals are relatively high.** Trust land appraisals are based on their development potential, which is often higher than their current value. Therefore, smaller players, such as non-profits, can find it difficult to raise sufficient funds for a conservation purchase.

**Q: What difficulties are planners and local governments encountering in complying with Growing Smarter?**

**A: Several issues are troubling municipalities and counties:**

- **High costs.** Even for relatively small cities, the price for developing a new general plan can exceed \$200,000, while a public relations effort for ratification can run \$70,000. Elections add to the price tag.
- **Little financial support for implementation.** With meager funding for technical assistance or review of plans, much of Growing Smarter is essentially an unfunded mandate. Small, cash-strapped communities are hardest hit.
- **Too-short deadlines.** Election debate over Proposition 202 (Citizen's Growth Management Initiative) caused many local governments to take a cautious stance about committing their limited funding and staff to create plans that might not comply with new state laws. Also, the specter of Prop 202 caused a "land rush" for rezoning that further tied up planning staff. Now, with a ratification requirement recently added to other mandates, little time remains for some cities to finish their planning process.

<sup>4</sup> Not a scientific sample. Information was derived from formal interviews with city and county planners, planning consultants, developers, land-use attorneys, members of the Growing Smarter Commission, members of the Growing Smarter Oversight Council, and representatives of the governor's office, state Land Department, state agencies, state associations, and conservation groups.



Morrison Institute  
for Public Policy

School of Public  
Affairs, College of  
Public Programs,  
Arizona State  
University

PO Box 874405  
Tempe, Arizona  
85287-4405

Phone 480.965.4525

Fax 480.965.9219

asu.edu/copp/morrison

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- **Lack of guidance for local governments.** Aspects of the law (e.g., growth elements and definition of major amendments) have been intentionally left vague to allow local flexibility, but some planners say they need greater specificity in order to avoid future liability.
- **Weak regional coordination.** Some aspects of the law would be better served by stronger regional oversight – for example, determining firm water supply for the water resources element.
- **Weak county tools.** Counties still feel that they have little authority over small lot splits in wildcat subdivisions, and that disclosure requirements for wildcat developers do not have adequate enforcement.

## EXPECTATIONS FOR THE FUTURE

**Q: What actions can we expect to see in the future regarding growth management and open space preservation?**

**A: In the area of growth management:**

- **Continued evaluation and refinement.** The governor appointed an Oversight Council in early 2001 to monitor the progress and issues related to Growing Smarter. Possibilities for evaluation include establishing performance measures and developing a review process for general plans. Possibilities for refinement of the law include reworking some growth elements, and establishing more guidance on fulfilling plan mandates.
- **Extension or expansion of deadlines.** Some counties and larger municipalities do not expect to be able to fully meet the Dec. 31, 2001 deadline for adopting and ratifying new plans. This deadline, therefore, will likely be extended – either explicitly by the legislature or tacitly through lack of enforcement.
- **More tools for counties.** Future laws or ballot initiatives will likely seek to shore up weaknesses in the ability of counties to regulate small subdivisions and finance infrastructure improvements.
- **More funding for technical assistance and implementation.** Many small communities are burdened by the cost of staff and planning to comply with Growing Smarter mandates. Greater assistance could be forthcoming.
- **A streamlined approval process for conforming developments.** In the Portland, Oregon, model for growth management, developers who conformed with growth plans were able to follow an expedited approval process. This option is lacking in Arizona, but may be addressed in the future.

**A: In the area of open space preservation:**

- **Set-asides of trust lands at no cost.** Prop 100 failed, in part, because many voters felt it did not protect enough lands for conservation purposes. In response, developers, conservationists, and other interested parties are currently trying to hammer out an agreement on state lands to be conserved that would lead to a ballot initiative for 2002 or 2004.
- **Increased API grants and sales.** With the issue of trust land set-asides resolved, local governments and others will be able to focus on preserving the remaining trust lands that have conservation value. At that point, the process of reclassifying lands and awarding grants should be running more smoothly.