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REGIONAL PLANNING AND LOCAL AUTONOMY IN WASHINGTON ZONING LAW

INTRODUCTION

Municipal zoning authorities¹ are uniquely familiar with the needs and aspirations of their communities, and for this reason, land use problems should normally be resolved at the municipal level. Nevertheless, local land use decisions should not be based on exclusively local criteria; no municipality should be allowed to ignore the impact which its land use decisions might have on adjoining municipalities,² an entire region, or even the state itself.

Since existing Washington law does not require a local zoning authority to consider the extra-municipal effects of its land use decisions, the legitimate concerns of any one municipality may be ignored by a neighboring municipality, the economic self-interest and legal responsibility of which ends at its jurisdictional border.³ This problem will become more acute as the rapid growth of the state's population⁴ puts pressure on zoning authorities to accommodate a growing number of diverse industrial, commercial, and residential land uses in increasingly complex patterns.

Many land use decisions have substantial effects on the economies of neighboring municipalities and the quality of their residents' living

1. Throughout this Comment, "zoning authority" refers to the legislative body of a local governmental unit, *i.e.*, a city council or a board of county commissioners, as opposed to a zoning body which has advisory functions like a planning commission, or recognized administrative or quasi-judicial functions, like a board of adjustment.

2. The term "municipalities" shall in this Comment refer to cities and counties. See WASH. REV. CODE § 35.63.010 (1965) and amendments. The reader should keep in mind that the Optional Municipal Code, WASH. REV. CODE § 35A.63 (1967), applies only to cities.

3. Washington has 39 counties and 266 incorporated cities at this date.

4. The following table presents the projected population trends for Washington State:

Year	Population	Percentage Increase
1970	3,386,613	—
1975	3,714,617	9.7
1980	4,086,385	10.0
1985	4,488,945	9.9

WASHINGTON STATE CENSUS BOARD, POPULATION FORECASTS—STATE OF WASHINGTON—1965-1985, Table 6:1 (1966).

conditions. For example, the decision to permit construction of a high-rise apartment building near a municipal border will affect traffic patterns in neighboring municipalities, forcing them to absorb the burden of increased traffic.⁵ Rezoning to permit a factory or refinery may obviously have substantial extra-municipal effects, not the least of which are air and water pollution. A restriction of the density of dwelling units may upset a neighboring municipality's plans for an employment center; the prohibition of gas stations may work at odds with state highway plans. In short, total municipal autonomy in land use control is obviously contrary to economic and social realities. Of those land use decisions which have serious extra-municipal effects, some will have regional impact,⁶ while others may have state-wide implications.⁷

Local freedom in land use control may also have serious social consequences, such as the systematic exclusion of large numbers of people from certain areas on the basis of economic class or race.⁸ Minimum lot requirements, minimum house size requirements, and the wholesale exclusion of apartment buildings and industry often operate to increase property values in selected areas and to keep out the poor and the black.⁹ These restrictions also stimulate urban sprawl by

5. In *Bishop v. Houghton*, 69 Wn. 2d 786, 420 P.2d 368 (1966), discussed at notes 138-47 and accompanying text, *infra*, prospective tenants of the contemplated high-rise buildings would have had access to their residences only through adjoining municipalities. Even though these municipalities would bear the burden of providing such access, they did not participate in the zoning in the first instance nor in the requested rezoning later. Although residents in these municipalities were allowed to argue their case before the Houghton Planning Commission and City Council, the question of their standing to object was not clearly answered on appeal.

6. A land use decision which would permit construction of certain large-scale facilities, such as heavy manufacturing plants, may have regional implications.

7. For example, the control of air and water pollution and the establishment of patterns of population density throughout the state are more than a municipal concern.

8. Washington should not, for example, allow restrictive zoning to perpetuate de facto economic and racial segregation in the cities and to contribute to industrial sprawl.

9. What restrictions like minimum house size requirements, overly large lot area regulations and complete limitation of dwellings to single family units really do is bring about community-wide economic segregation.

Vickers v. Township Comm'n, 37 N.J. 232, 266, 181 A.2d 129, 147 (1962) (dissent), *cert. denied*, 371 U.S. 233 (1963).

Babcock notes that restrictive zoning aimed at the exclusion of small lots and apartment buildings is contrary to the philosophy which led to our nation's phenomenal growth:

If the Homestead Act had permitted settlement of the West only upon the consent of the existing residents, the Indians might have been happier, but this would be a much different country today.

R. BABCOCK, *THE ZONING GAME* 149 (1966).

For a recent discussion, see Williams & Wacks, *Segregation of Residential Areas along Economic Lines: Lionshead Lake Revisited*, 1969 WIS. L. REV. 827.

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forcing expanding industries to "hop" from the city center out to the countryside, bypassing the restrictively zoned residential areas.¹⁰

While it is clear that Washington is in great need of effective land use planning and control at the regional and state levels, the power to zone is presently exercised at the municipal level; extra-municipal planning is implemented, if at all, only by the grace of local zoning authorities.¹¹ Therefore, before discussing current extra-municipal planning in the state of Washington, the topic of Part II, it may be helpful to outline the legal structure of zoning in Washington to indicate the extent of this local freedom in planning and zoning.

I. LOCAL AUTHORITY TO ZONE

Comprehensive zoning is a constitutionally valid exercise of the police power¹² of a state or political subdivision thereof.¹³ In Washington, municipal authority to zone is derived either from a direct grant of police power by the state constitution¹⁴ or from one of three basic zoning statutes.¹⁵

A. Constitutional Authority

In Washington, first class charter cities may zone independently of any statutory grant of zoning authority under a constitutional grant of police powers, when acting pursuant to a valid charter provision.¹⁶

10. Bowe, *Regional Planning versus Decentralized Land-Use Controls—Zoning for the Megopolis*, 18 DEP. L. REV. 144 (1968).

11. For an outline of the various extramunicipal planning agencies see notes 70-95 and accompanying text, *infra*.

12. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) established the constitutionality of comprehensive zoning as a valid exercise of the police power, provided there is a substantial relationship between the zoning ordinance and the public health, safety, morals or general welfare. See also *Jones v. Town of Woodway*, 70 Wn. 2d 977, 425 P.2d 904 (1967); *McNaughton v. Boeing*, 68 Wn. 2d 659, 414 P.2d 778 (1966); *State ex rel. Miller v. Cain*, 40 Wn. 2d 216, 242 P.2d 505 (1952).

13. See *King County v. Lunn*, 32 Wn. 2d 116, 200 P.2d 981 (1948).

14. WASH. CONST. art. XI, § 11.

15. WASH. REV. CODE ch. 35.63 (1965) (cities and counties); WASH. REV. CODE ch. 35A.63 (1967) (Code cities); and WASH. REV. CODE ch. 36.70 (1963) (counties).

16. *Nelson v. Seattle*, 64 Wn. 2d 862, 395 P.2d 82 (1964), discussed in notes 22-26 and accompanying text *infra*. WASH. REV. CODE ch. 35.22 (1965) deals generally with first class cities.

The Washington legislature has classified cities by population, first class cities having a population of at least 20,000 inhabitants; cities of the second class have 10,000-20,000, third class, 1,500-10,000, and fourth class (towns) 300-1,500. WASH. REV. CODE ch. 35.01 (1965). A city with more than 10,000 inhabitants may frame and adopt its own

The constitutional right of qualified municipalities to frame a charter may not be extinguished by the state legislature;¹⁷ however, the legislature may control the content of the charter, which must be "consistent with and subject to the constitution and laws of this state."¹⁸

First class charter cities have legislative powers as broad as those of the state except insofar as they contravene the constitution, statutes or city charter.¹⁹ These powers are not derived from the charter provisions of the constitution, but from article XI, section 11, which contains a general grant of police powers to municipalities.²⁰ However, "[e]ven the broad powers of first class cities cannot contravene a state legislative enactment. In short, a Washington statute always supercedes a conflicting ordinance."²¹

charter. WASH. CONST. art. XI, § 10, and amend. 40 (1964); the applicable enabling legislation is WASH. REV. CODE §§ 35.21.600 (1965) and 35.21.610 (1965). The constitutional police power grant is contained in WASH. CONST. art. XI, § 11.

The validity of a 1910 Seattle Charter amendment providing for zoning under a comprehensive plan to be drawn up by a municipal planning commission was upheld in *Bussell v. Gill*, 58 Wash. 468, 107 P. 1080 (1910); however, this attack on the charter was not grounded on any alleged exclusion from the police power grant of WASH. CONST. art. XI, § 11.

17. Trautman, *Legislative Control of Municipal Corporations in Washington*, 38 WASH. L. REV. 743, 767 (1963), [hereinafter cited as Trautman], and cases cited therein.

18. WASH. CONST. art. XI, § 11; see *Seattle v. Carson*, 6 Wash. 250, 33 P. 428 (1893).

19. *Nelson v. Seattle*, 64 Wn. 2d 862, 395 P.2d 82 (1964); *Lenci v. Seattle*, 63 Wn. 2d 664, 388 P.2d 926 (1964); *Winkenwerder v. Yakima*, 52 Wn. 2d 617, 328 P.2d 873 (1958). The rule has been referred to as the "Dillon rule." See 1 J. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS 448-51 (5th ed. 1911).

WASH. REV. CODE § 35.22.570 (1965) states that all charter cities shall have all the powers conferred on them by state law, and also "such powers as are usually exercised by municipal corporations of like character and degree." In addition, chapter 35.22 is to be construed liberally. WASH. REV. CODE § 35.22.900 (1965).

20. Wash. Const. art. XI, § 10 (the charter or "home rule" provision), has been construed as not self-executing. See, e.g., *In re Cloherty*, 2 Wash. 137, 27 P. 1064 (1891); *Reeves v. Anderson*, 13 Wash. 17, 42 P. 725 (1895). In *Patton v. City of Bellingham*, 179 Wash. 566, 38 P.2d 364 (1934), the court stated that "whatever authority the city has in respect of its police power, it has by virtue of Art. XI, sec. 11, of our constitution, independent of any statutory grant." *Id.* at 570, 38 P.2d at 365. See also *Detamore v. Hindly*, 83 Wash. 322, 145 P. 462 (1915). For discussion of the cases see Trautman, *supra* note 17; Morris, *Toward Effective Municipal Zoning*, 35 WASH. L. REV. 534 (1960) [hereinafter cited as Morris].

On home rule generally in Washington, see Trautman, *supra* note 17; Wash. Legislative Council, Subcommittee on Cities, Towns and Counties, Home Rule for Washington Cities, Sept. 1957; E. Campbell, Municipal Home Rule, August 6, 1958 (Research Memo No. 53, Bureau of Governmental Research and Services); BUREAU OF GOVERNMENTAL RESEARCH AND SERVICES, MUNICIPAL GOVERNMENT IN THE STATE OF WASHINGTON 14-17 (Report No. 149, 1962).

21. Trautman, *supra* note 17, at 178, indicates that the only exceptions to the general rule of supercession are where the statute violates a restriction imposed on the legislature by the state constitution, and where there is room for concurrent jurisdiction.

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Nelson v. City of Seattle,²² however, rejected the argument that the zoning enabling statutes²³ superceded Seattle's zoning powers under the general police power grant of the Constitution.²⁴ The city, contrary to the provisions of that statute, had filed a comprehensive plan with the city comptroller rather than with the county auditor, and had approved the plan "in principle" but not by formal enactment of an ordinance. The court, noting that general laws will not be construed as taking away powers from first class cities by implication²⁵ and that there had been no express legislative intent to preempt,²⁶ held that the challenge to Seattle's power to zone was ill-founded.

If a particular statute gives no express indication that the legislature intended it to have preemptive effect, the courts must infer the legislative intent from the purpose of the statute and the circumstances in which it was designed to operate. *Lenci v. Seattle*, 63 Wn. 2d 664, 388 P.2d 926 (1964).

22. 64 Wn. 2d 862, 395 P.2d 82 (1964) [hereinafter cited as *Nelson*].

23. WASH. REV. CODE § 35.63.100 (1965), the section with which the city had allegedly failed to comply, provided:

A copy of the ordinance or resolution adopting or embodying [the comprehensive] plan . . . shall be filed with the county auditor

This section has since been amended to allow the original of the comprehensive plan of a city to be filed with the city clerk, and a true copy to be filed with the county auditor. WASH. REV. CODE § 35.63.100 (1967). See *Shelton v. Bellevue*, 73 Wn. 2d 28, 435 P.2d 949 (1968) [hereinafter cited as *Shelton*].

24. WASH. CONST. art. XI, § 11. See *Morris*, *supra* note 20, at 549-50. Before WASH. REV. CODE ch. 35.63 was enacted in 1935, municipal zoning regulations had been upheld for fire prevention and health protection, which were clearly within the ambit of the police powers granted local governments under WASH. CONST. art. XI, § 11. *Nolan v. Blackwell*, 123 Wash. 504, 212 P. 1048 (1923); *Shepard v. Seattle*, 59 Wash. 363, 109 P. 1067 (1910); *Olympia v. Mann*, 1 Wash. 389, 25 P. 337 (1890). See *Morris*, *supra* note 20.

25. *Nelson*, 64 Wn. 2d at 867, 395 P.2d at 84-5 (1964). *State ex rel. Ennis v. Superior Court*, 153 Wash. 139, 149, 279 P. 601, 604 (1929) explains the special status of first class cities:

It is evident from the constitution of this state and legislative enactments that, in Washington, cities of the first class are vested with very extensive powers, and that under Rem. Comp. Stat. § 8982, *supra*, the statutes of this state concerning the same must be liberally construed by the courts for the purpose of carrying out the manifest intent of the legislature to establish cities of the first class as self governing bodies

WASH. REV. CODE § 35.22.900 (1965) sets forth the same rule that powers granted to first class cities should be liberally construed:

Liberal construction. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter, but the same shall be liberally construed for the purpose of carrying out the objects for which this chapter is intended.

Correlative to this statutory rule is the rule that statutes taking away powers from first class cities must be narrowly construed. Thus, a state statute will not be construed as taking away the existing power of a first class city by implication. See *Ayers v. Tacoma*, 6 Wn. 2d 545, 108 P.2d 348 (1940). See also *Brennan v. Seattle*, 151 Wash. 665, 276 P. 886 (1929).

26. *Nelson*, 64 Wn. 2d at 867-68, 395 P.2d at 85. WASH. REV. CODE § 35.63.020 (1965) provides that "If any council or board desires to avail itself of the powers conferred by this chapter it shall create a city or county planning commission"

A question not resolved by *Nelson* is the status of zoning schemes of municipalities other than first class charter cities which purport to exercise zoning powers under the constitutional grant and not under a statutory grant.²⁷ An argument might be made that article XI, section 11 does not distinguish between classes of cities and that *Nelson*

27. It would seem that the same policy considerations which led the court to allow a relatively larger degree of independence to first class cities will likewise apply to those municipalities which are not first class cities but which are chartered or have chosen to operate under the Optional Municipal Code. It should be noted that this Comment does not attack the freedom of municipalities to choose the *method* by which they plan and zone; rather, it is addressed to the absence of meaningful state and regional controls over the *substance* of local land use control measures.

A home rule charter was adopted by King County on November 5, 1968, effective May 1, 1969, under the 21st amendment of the WASHINGTON CONSTITUTION. This charter established zoning procedures which are much different than those authorized by statute. See notes 32-38, and 52-62 and accompanying text, *infra*. The County Council "shall adopt by ordinance comprehensive plans" for development. KING COUNTY, WASH., CHARTER § 220.20. A Department of Planning will prepare and present to the County Council comprehensive plans for adoption by ordinance with or without amendments. The Department will also serve in an advisory capacity to various county agencies, coordinate planning of the county with other governmental agencies, initially consider all zoning applications, and consider and make recommendations to the County Council on applications for rezoning or original zoning. *Id.* § 920.20.70. A public hearing must be held on proposed ordinances. *Id.* § 230.10. The county council may adopt by ordinance the rules of procedure governing the conduct of its hearings, at which a verbatim public record must be kept. *Id.* § 220.40. Intergovernmental cooperation is authorized. *Id.* § 120. Copies of public records must be furnished for a reasonable fee. *Id.* § 830.

Cities other than cities of the first class which, under the 40th Amendment, adopt a city charter, also would arguably have authority to zone under a charter provision instead of an authorizing statute. Cf. BUREAU OF GOVERNMENTAL RESEARCH AND SERVICES, MUNICIPAL AND REGIONAL PLANNING IN WASHINGTON STATE 2 (Report No. 170, 1969) [hereinafter cited as BGRS REPORT].

Those non-first class cities which choose to zone under the Optional Municipal Code, discussed at notes 39 to 51 and accompanying text *infra*, will have the benefit of a rule of liberal construction. WASH. REV. CODE § 35A.63.130 (1967) provides that where there are powers under charter provisions which are inconsistent with the Code, Code powers may nevertheless be exercised by the city. WASH. REV. CODE § 35A.63.160 (1967) provides that the Code is

intended to implement and preserve to code cities all powers authorized by Article XI, section 11 of the Constitution . . . and the provision of this title shall not limit any code city from exercising its constitutionally granted power to plan for and to make and enforce within its limits all such local police, sanitary, and other regulations in the manner that its charter or ordinance may provide.

Amendment 23 of the WASHINGTON CONSTITUTION authorized the legislature to provide for the formation of a combined city and county municipal corporation when, if formed, its population would be at least 300,000. Enabling legislation has not yet been passed, and would probably face strong opposition if introduced. The reasons for this conclusion include the existing political inertia to change governmental boundaries, the problems of developing an equitable tax structure, and lack of assurance that all areas which would best be served by the one government would be included within its boundaries. See BUREAU OF GOVERNMENTAL RESEARCH AND SERVICES, MUNICIPAL GOVERNMENT IN THE STATE OF WASHINGTON 281 (Rep. No. 149, 1962).

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could therefore apply to all municipalities.²⁸ It is probable, however, that the court will hold that those municipalities which have no charter "possess only those powers expressly enumerated by statute, those necessarily or fairly implied in or incident to the powers expressly granted and those essential to the declared objects and purposes of the corporation."²⁹ Statutes describe the general powers of second, third and fourth class cities and of counties.³⁰ These statutes are strictly construed against the municipality,³¹ and they do not grant the power to zone. Therefore, all municipalities, other than those with authority to zone under valid Home Rule Charters, must zone pursuant to one of the three Washington statutes which authorize zoning.

B. Statutory Authority

1. The Planning Commissions Act

Any municipality—city, town or county—may zone under R.C.W. ch. 35.63,³² which provides for the creation of a planning commission by those city councils or boards of county commissioners³³ which choose

28. See, e.g., *State ex rel. Weiks v. Tumwater*, 66 Wn. 2d 33, 400 P.2d 789 (1965), where the court chose to hold Tumwater's ordinance invalid on the ground of vagueness rather than on the trial court's determination that Tumwater's power to zone had been preempted by WASH. REV. CODE ch. 35.63 (1965). And in *Lauterbach v. Centralia*, 49 Wn. 2d 550, 304 P.2d 656 (1956), the court, ruling that the city could not amend its zoning ordinance without the recommendation or concurrence of its planning commission (as provided in WASH. REV. CODE § 35.63.120 (1965)), observed that the city had chosen to operate under the statute and "did not purport to exercise its police power, regardless of the statute." 49 Wn. 2d at 555, 304 P.2d at 659 (1956).

29. Trautman, *supra* note 17, at 773. See *State ex rel. Winsor v. Ballard*, 10 Wash. 4, 7, 38 P. 761, 762 (1894).

Cases applying or approving of this rule include *Lauterbach v. Centralia*, 49 Wn. 2d 550, 554, 304 P.2d 656, 659 (1956) (dictum, second class cities); *State ex rel. Cornell v. Smith*, 149 Wash. 173, 178, 270 P. 306, 308, *aff'd on rehearing*, 155 Wash. 422, 284 P. 796 (1930) (third class cities); *Othello v. Harder*, 46 Wn. 2d 747, 284 P.2d 1099 (1955) (towns).

30. WASH. REV. CODE chs. 35.23 (1965) (second class cities), 35.24 (1965) (third class cities), and 35.27 (1965) (fourth class cities, i.e., towns); and WASH. REV. CODE §§ 36.01.010 (1963) and 36.32.120 (1963) (counties).

31. *State ex rel. Hill v. Bridges*, 87 Wash. 260, 151 P. 490 (1915); *Pacific First Federal Sav. & Loan Ass'n v. Pierce County*, 27 Wn. 2d 347, 178 P.2d 351 (1947).

For a pre-Nelson discussion of the legal powers of Washington cities and towns see BUREAU OF GOVERNMENTAL RESEARCH AND SERVICES, MUNICIPAL GOVERNMENT IN THE STATE OF WASHINGTON 6-34 (Report No. 149, 1962); Trautman, *supra* note 17.

32. WASH. REV. CODE ch. 35.63 (1965), based on ch. 44 [1935] WASH. SESS. LAWS 115 [hereinafter cited as the Planning Commissions Act].

33. WASH. REV. CODE § 35.63.080 (1965) authorizes the exercise of zoning power by those municipalities operating under the planning enabling act. WASH. REV. CODE § 36.70.930 (1963) provides that WASH. REV. CODE ch. 36.70 is an alternative to WASH. REV. CODE ch. 35.63 for counties.

to exercise the powers outlined in the statute. The planning commission operates as a research and fact-finding agency, preparing reports and recommendations on land use subjects, including proposed comprehensive plans of zoning regulations and amendments thereto.³⁴ The council or board, by ordinance or resolution, may "affirm, modify, or disaffirm" any decision of the planning commission³⁵ and may regulate the municipality's physical development.³⁶ Regulations are to be enacted pursuant to a comprehensive plan, the general purposes of which are specified in the statute.³⁷ The tenor of the statute is permissive,³⁸ and there is a lack of specificity regarding the form and content of the comprehensive plan and its precise relationship to the zoning regulations enacted by a municipality.

2. *The Optional Municipal Code*

The recently enacted Optional Municipal Code³⁹ outlines the powers

34. WASH. REV. CODE §§ 35.63.060 (1965), 35.63.120 (1965).

35. WASH. REV. CODE §§ 35.63.100 (1967), and 35.63.120 (1965).

36. WASH. REV. CODE § 35.63.100 as amended by ch. 144, § 8 [1967] WASH. LAWS 1ST EX. SESS. 2289, clarified the location for filing of the zoning maps and plats referred to by a zoning ordinance amendment. Certified copies of the maps and plats are to be filed with the county auditor when the amendment was adopted by county resolution, and with the city clerk when adopted by city resolution or city ordinance. There must be strict compliance with these filing requirements. The 1967 amendment also allowed cities to adopt comprehensive plans by resolution.

37. A full arsenal of regulatory land use power is outlined in the statute. WASH. REV. CODE § 35.63.080 (1965) provides that a city council or board of county commissioners may regulate and restrict the location and the use of building, structures and land for residence, trade, industrial and other purposes; the height, number of stories, size, construction and design of buildings and other structures; the size of yards, courts, and other open spaces on the lot or tract; the density of population; the setback of buildings along highways, parks or public water frontages; and the subdivision and development of land.

38. WASH. REV. CODE § 35.63.110 (1965) further provides that the council or board may divide the municipality or any portion thereof into districts . . . establish . . . official maps . . . and . . . regulate and restrict the erection, construction, reconstruction, alteration, repair or use of building structures on land.

39. WASH. REV. CODE § 35.63.090 (1965) states that the comprehensive plan shall be concerned with

the physical and other generally advantageous development of the municipality and shall be designed, among other things, to encourage the most appropriate use of land . . . lessen traffic congestion . . . secure safety from fire . . . provide adequate light and air . . . prevent overcrowding . . . promote a coordinated development of the unbuild areas . . . encourage the formulation of . . . community units . . . conserve and restore natural beauty . . . facilitate the adequate provision of transportation, water, sewerage and other public uses and requirements.

38. *Shelton v. Bellevue*, 73 Wn. 2d 28, 435 P.2d 949 (1968). See note 26 and accompanying text, *supra*.

39. WASH. REV. CODE ch. 35A.63 (1967) [hereinafter cited as the Planning Enabling Act]. Under this chapter a city or town may abandon its statutory classification and elect to become a noncharter "Code city." Cities over 10,000 in population may become a "charter Code city." WASH. REV. CODE § 35A.01.035 (1969).

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of cities electing to become "Code" cities.⁴⁰ The planning and zoning powers outlined in the statute are broader than those described in the Planning Commissions Act.⁴¹ On the other hand, every Code city "shall" order the preparation of a comprehensive plan by its planning agency,⁴² and both mandatory and optional elements of the comprehensive plan are specified.⁴³ Because the statutory grant of authority refers to the enactment of the zoning ordinance after the comprehensive plan has been approved and provides that the comprehensive plan "shall" serve as a basic source of reference for future legislative activity,⁴⁴ there is good reason to believe that the plan must be separate and distinct from zoning regulations.⁴⁵

The planning agency may be "any person, body or organization designated by the legislative body to perform a planning function"⁴⁶ It is to be created by ordinance, and the local legislature may "provide for its membership, organization, and expenses"⁴⁷ The agency is to have advisory and "such other powers and duties as shall be provided by the ordinance."⁴⁸

After approving the comprehensive plan,⁴⁹ the Code city's legislative

40. Planning and zoning authority is granted in WASH. REV. CODE § 35A.63.100 (1967).

41. WASH. REV. CODE ch. 35.63 (1965).

42. WASH. REV. CODE § 35A.63.060 (1967).

43. WASH. REV. CODE § 35A.63.061 (1967) (required elements):

The comprehensive plan . . . shall include a recommended plan, scheme, or design for each of the following elements:

(1) A land-use element that designates the proposed general distribution, general location, and extent of the uses of land. . . .

(2) A circulation element consisting of the general location, alignment, and extent of existing and proposed major thoroughfares, major transportation routes, and major terminal facilities. . . .

WASH. REV. CODE § 35A.63.062 (1967) lists these optional elements: conservation; open space, park, and recreational facilities; transportation; public use; public utilities; redevelopment or renewal; urban design; and "[o]ther elements . . ." deemed important by the local zoning authority or "essential or desirable" in coordinating public services and programs.

44. WASH. REV. CODE § 35A.63.080 (1967): . . . [The] parts and modifications [of the comprehensive plan] shall serve as a basic source of reference for future legislative and administrative action

45. An exception may exist as to those Code cities which elect to operate under a valid charter provision, since WASH. REV. CODE §§ 35A.63.130 (1967) and 35A.63.160 (1967) provide Code cities with a savings clause and a rule of liberal construction, and since *Nelson v. City of Seattle*, 64 Wn. 2d 862, 395 P.2d 82 (1964) held that a first class charter city could zone apart from any statutory authority. See notes 22-26 and accompanying text, *supra*.

46. WASH. REV. CODE § 35A.63.010 (1967).

47. WASH. REV. CODE § 35A.63.020 (1967).

48. *Id.*

49. See note 43 *supra*.

body may give it effect "by ordinance or other action."⁵⁰ Appropriate zones may thus be established by ordinance, but no zoning ordinance or amendment thereto may be enacted prior to a public hearing before the planning agency or board of adjustment or "such other body as the legislative body shall designate."⁵¹

3. *The Planning Enabling Act*

Counties may zone under R.C.W. 36.70,⁵² which contains more specific guidelines for planning and zoning than either of the two statutes discussed above. Under this statute, the county planning agency *shall* prepare a comprehensive plan,⁵³ and before any changes or additions to the plan are made by the board of county commissioners, they must first submit the proposals to the planning agency for a report and recommendation.⁵⁴ In recognition of the large areas to be planned and zoned by counties, the legislature has provided for interim zoning whereby the county may adopt a zoning map without following the time-consuming procedures required for the final zoning maps.⁵⁵

Zones may be established by ordinance;⁵⁶ however, the planning commission must hold at least one public hearing prior to recommending an ordinance or amendment⁵⁷ to the county board, and the recommendation must be accompanied by findings of fact and reasons for the action.⁵⁸ The board, upon receipt of the proposal, must call a public meeting, at which the board may adopt or reject the official control or amendment.⁵⁹ If the board decides to change the proposal it must first hold a public hearing, adopt findings of fact, and state

50. WASH. REV. CODE § 35A.63.100 (1967).

51. *Id.*

52. WASH. REV. CODE ch. 36.70 (1963) (based on ch. 201 [1959] WASH. SESS. LAWS 891). The statute also authorizes creation of regional planning bodies. See notes 71-74 and accompanying text, *infra*.

53. WASH. REV. CODE § 36.70.320 (1963).

54. WASH. REV. CODE § 36.70.430 (1963).

55. WASH. REV. CODE § 36.70.790 (1963). The function of an interim zoning map is to preserve the land-use status quo pending enactment of a final zoning map. By preventing the vesting of uses through the interim device while the comprehensive plan and final zoning ordinance are still inchoate, the county is able to keep its land area unspoiled. See *Smith v. Skagit County*, 75 Wash. Dec. 2d 729, 453 P.2d 832 (1969).

56. WASH. REV. CODE §§ 36.70.570, -.750, -.760 (1963).

57. WASH. REV. CODE § 36.70.580 (1963).

58. WASH. REV. CODE § 36.70.600 (1963).

59. WASH. REV. CODE § 36.70.620 (1963).

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reasons for its conclusions prior to the adoption of the changes.⁶⁰ The board itself may initiate consideration of an ordinance to establish or amend an official control if the board first refers the proposal to the planning agency⁶¹ for a report.⁶²

4. *The Substantial Compliance Doctrine*

*Shelton v. City of Bellevue*⁶³ established a rule which suggests the standard by which the courts will enforce compliance with the provisions of the three basic zoning statutes. The defendant, as a third class city, had established a planning commission and had purported to begin acting under R.C.W. ch. 35.63.⁶⁴ Plaintiff obtained a ruling from the trial court that since the city had not strictly followed the provisions of the statute in adopting its comprehensive plan, the zoning ordinance regulating the use of the plaintiff's land was void.⁶⁵ The court concluded that a municipal zoning authority must comply with the procedural requirements imposed by the statute under which it chooses to act, but went on to distinguish between two standards for adequate compliance. When a municipality is performing a regulatory function, such as passing an amendment to the zoning ordinance which will alter the classification of or restrictions upon land, strict compliance with the applicable statutory procedural requirements is mandatory.⁶⁶ But when the municipality is exercising a non-regulatory function, such as the adoption and filing of a comprehensive plan, only substantial compliance with statutory procedures is required.⁶⁷ Accord-

60. WASH. REV. CODE § 36.70.630 (1963).

61. WASH. REV. CODE § 36.70.020 (13) (1963).

62. WASH. REV. CODE § 36.70.640 (1963).

63. 73 Wn. 2d 28, 435 P.2d 949 (1968).

64. WASH. REV. CODE ch. 35.63 (1965); discussed at notes 32-38 and accompanying text, *supra*.

65. Plaintiff had petitioned the city for a reclassification of the zone to allow him to construct a service station. Following hearings, his petition was denied; plaintiff then sued for an injunction on the ground that the ordinance was void.

66. See *State v. Thomasson*, 61 Wn. 2d 425, 378 P.2d 441 (1963) (zoning ordinance not effective until map referred to in ordinance filed with county auditor as required by WASH. REV. CODE § 35.63.100 (1965)); *State ex rel. Kuphal v. Bremerton*, 59 Wn. 2d 825, 371 P.2d 37 (1962) (zoning amendment not effective until zoning maps certified and filed in accordance with terms of original ordinance).

67. The city council had amended its comprehensive plan by resolution instead of by ordinance, but later reenacted the plan by ordinance pursuant to WASH. REV. CODE § 35.63.100 (1965); the ordinance changing plaintiff's land's classification was not timely filed pursuant to WASH. REV. CODE § 35.63.100 (1965); and maps were not published pursuant to WASH. REV. CODE § 35.24.220 (1965).

Thus, under the distinction set forth in *Shelton*, there need be only substantial com-

ingly, the zoning ordinance which was challenged in this case was upheld. It appears that the substantial compliance doctrine applies to all three of the basic zoning statutes.⁶⁸

II. THE CONTROL OF ZONING PAROCHIALISM

While the discussion above indicates that the legal framework for land use control gives virtual autonomy to municipalities to determine the substantive content of zoning ordinances, a number of Washington statutes provide for regional and state planning.⁶⁹ Federal statutes provide some muscle to these laws by making federal grants contingent on cooperation with regional and state authorities. Part II will analyze the relationship between state and federal statutes, and discuss the possibility of judicial control of zoning parochialism.

pliance with the requirements that there be at least one public hearing on the plan in the planning commission, that notice of time and place be published once in the newspaper of general circulation, and that the plan be filed with the county auditor or city clerk.

The Washington legislature has ensured that if a city decides to become a Code city under the Optimal Municipal Code, and to zone and plan pursuant to WASH. REV. CODE ch. 35A.63, it need not fear that a zoning ordinance will be voided because of a procedural defect in the development of a comprehensive plan. WASH. REV. CODE § 35A.63.080 (1967) provides:

Provided Further, That no procedural irregularity or informality in the consideration, hearing, and development of the comprehensive plan or a part thereof, or any of its elements, shall affect the validity of any zoning ordinance or amendment thereto enacted by the code city after the approval of the comprehensive plan.

68. WASH. REV. CODE ch. 35.63 (1965), discussed at notes 32-38 and accompanying text, *supra*; WASH. REV. CODE ch. 35A.63 (1967), discussed at notes 39-51 and accompanying text, *supra*; WASH. REV. CODE ch. 36.70 (1963), discussed at notes 52-62 and accompanying text, *supra*. Attention should be given to the different treatment which is afforded to the comprehensive plan under these statutes; it will be remembered that in the latter two statutes the provisions relating to comprehensive plans seem to require a fairly detailed document.

Shelton also held that a comprehensive zoning ordinance satisfies the statutory requirement that "all regulations shall be worked out as parts of a comprehensive plan," even though no separate plan has been drawn up. This rule seems inapplicable to WASH. REV. CODE chs. 36.70 and 35A.63. In the latter statutes, the comprehensive plan is to serve as a "basic source of reference" for future zoning activity. Moreover, by specifying that circulation and land-use elements are mandatory parts of the comprehensive plan, the legislature seems to have intended that a plan *separate* from the zoning regulations themselves be prepared. *But see* note 45 and accompanying text, *supra*.

69. For a summary of Washington zoning law, written for use by local zoning authorities, and including a summary of regional legal controls, see BGRS Report, *supra* note 27.

For a survey of law in other jurisdictions, see Comment, *The Regional Approach to Planning*, 50 IOWA L. REV. 582 (1965).

For a general introduction to the problem of state control of local zoning, see Becker, *Municipal Boundaries and Zoning: Controlling Regional Land Development*, 1966 WASH. U.L.Q. 1; Beckman & Ingraham, *The States and Urban Areas*, 30 LAW & CONTEMP. PROB. 76 (1965); and Grove, *Metropolitan Planning*, 21 MIAMI L. REV. 60 (1967).

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A. State Legislation

Intermunicipal cooperation in land use planning is authorized by Washington's zoning statutes,⁷⁰ and regional planning is a proper public purpose for the expenditure of municipal funds.⁷¹ Municipalities may participate in regional planning through a regional planning commission which can be created by the formal consent of all members.⁷² A regional planning commission may accept state and federal grants, conduct studies, make reports, and "carry on a planning program" for the region,⁷³ but it may not promulgate official controls such as zoning ordinances.⁷⁴ Where there is no regional planning commission, municipal planning commissions may still cooperate with each other, the various public agencies of the state, or the federal government.⁷⁵

Alternatively, municipalities may establish and organize a regional "conference" under Wash. Rev. Code ch. 36.64.⁷⁶ The authority of such a conference is considerably greater than that of a regional planning commission. A conference may study regional problems of mutual interest, including problems relating to land use, and may formulate recommendations for review and action by member municipalities.⁷⁷ Regional conferences are authorized to finance regional studies by contract with federal, state or municipal governments or by grants from the state or federal governments.⁷⁸

The Interlocal Cooperation Act of 1967 (ICA)⁷⁹ provides that⁸⁰

Any power or powers, privileges or authority exercised or capable of exercise by a public agency⁸¹ of this state may be exercised . . . jointly with any other public agency of this state having the

70. WASH. REV. CODE chs. 35.63 (1965), 35A.63 (1967) and 36.70 (1963).

71. WASH. REV. CODE § 36.70.015 (1963).

72. WASH. REV. CODE §§ 36.70.060 (1963); 35A.63.040 (1969); 35.63.070 (1965).

73. WASH. REV. CODE § 36.70.060 (1963).

74. *Id.* See WASH. REV. CODE § 36.70.020 (11) (1963) (defining "official controls"), and WASH. REV. CODE § 36.70.560 (1963) (giving examples of official controls).

75. WASH. REV. CODE §§ 35A.63.030 (1969); 35A.63.050 (1967); 35.63.060 (1965).

76. WASH. REV. CODE ch. 36.64 (1965).

77. WASH. REV. CODE § 36.64.080 (1965).

78. WASH. REV. CODE § 36.64.100 (1965).

79. WASH. REV. CODE ch. 39.34 (1967).

80. WASH. REV. CODE § 39.34.030 (1967).

81. Defined by WASH. REV. CODE § 39.34.020 (1969) to include

. . . any city, town, county, public utility district, port district, fire protection district, school district or metropolitan municipal corporation of this state; any agency of the state government or of the United States; and any political subdivision of another state.

[same] power or powers, privileges or authority, and jointly with any public authority of any other state or of the United States

....

If the subject of agreement is land use planning or zoning, the agreement must be submitted to the State Planning and Community Affairs Agency for comment before implementation. However,⁸²

Such comments shall not be binding upon the parties to the proposed agreement but may be used by the parties to determine the advisability of adopting, rejecting or amending the proposed agreement.

The legislature intended that the ICA supplement authority granted by any other law, so it does not preempt or supercede any existing powers or authority.⁸³

The Washington Office of Program Planning and Fiscal Management performs some of the functions formerly performed by the State Planning and Community Affairs Agency, including the preparation of a state comprehensive plan which is to serve as a guide for "private activities and public programs at all levels of government."⁸⁴ The Office also aids municipalities and regional planning agencies for interstate planning.⁸⁵ The Office coordinates all aspects of state program planning including "intergovernmental coordination and cooperation."⁸⁶

The State Planning and Community Affairs Agency continues to coordinate state programs on community affairs for land use and land use planning relative to federal grant and loan programs⁸⁷ and ensure that public works are "consistent with local, regional and state comprehensive plans and policies."⁸⁸ All local comprehensive plans or

82. WASH. REV. CODE § 39.34.120 (1967).

83. WASH. REV. CODE § 39.34.100 (1967). In other words, the statute is intended to operate only as an alternative to provision for joint municipal and regional cooperation in the other statutes discussed in Part IIA of this Comment.

84. WASH. REV. CODE § 43.63A.070(2) (1967).

85. WASH. REV. CODE § 43.63A.070(5) (1967).

86. WASH. REV. CODE § 43.41.110 (1969). See WASH. REV. CODE ch. 43.63A (1967). There are ambiguities in this section of the amendment relating to the transfer of powers from the State Planning and Community Affairs Agency (SPCAA) to the Office of Program Planning and Fiscal Management (OPPFM). The OPPFM is to coordinate intergovernmental cooperation, yet apparently is not the agency which reviews local amendments to comprehensive plans. Questions such as these are to be resolved by certification to the agencies by the governor. WASH. REV. CODE § 43.41.960 (1969).

87. WASH. REV. CODE § 43.63A.080(1) (1967).

88. WASH. REV. CODE § 43.63A.080(1)(a) (1967).

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amendments thereto,⁸⁹ proposed subdivisions⁹⁰ under consideration by any municipal corporation or governmental conference, and intergovernmental contracts under the ICA which relate to specified subjects⁹¹ "must" be filed with the Agency for review and recommendation prior to adoption, but failure to file does not invalidate any such proposal. The legal "must" turns out to be a moral "should."⁹²

In qualified areas⁹³ of Washington, municipalities may join together to act as a metropolitan municipal corporation, which may perform any or all of the functions of sewage disposal, water supply, public transportation, garbage disposal, development of parks and parkways, and metropolitan planning.⁹⁴ In those metropolitan municipal corpor-

89. WASH. REV. CODE § 43.63A.110 (1967), provides that:

Failure of any county, city, or other municipal corporation to comply with the provisions of this section, shall not invalidate any comprehensive plan or any amendments thereto, otherwise enacted according to law.

90. WASH. REV. CODE § 58.17.270 (1969).

91. WASH. REV. CODE § 39.34.120 (1967).

92. If the state were to have prior notice of such a proposal which had not been sent to the SPCAA, it is conceivable that the courts might enjoin its adoption by the municipality until it was sent to the state agency. Practically speaking, however, this is no solution to the problem under consideration, since (a) it would be nearly impossible to learn of all such measures soon enough, (b) state approval is not required, and (c) failure to notify the state agency would not invalidate the proposal.

93. The statute provides that:

Any area of the state containing two or more cities, at least one of which is a city of the first class, may organize as a metropolitan municipal corporation for the performance of certain functions, as provided in this chapter.

WASH. REV. CODE § 35.58.030 (1965).

94. WASH. REV. CODE § 35.58.050 (1965).

Where planning is authorized, the corporation could have the power:

(1) To prepare a recorded comprehensive land-use and capital facilities plan for the metropolitan area.

(2) To review proposed zoning ordinances and resolutions or comprehensive plans of component cities and counties and make recommendations thereon. Such proposed zoning ordinances and resolutions or comprehensive plans . . . may not be adopted until reviewed and returned by the metropolitan council . . . together with [the metropolitan planning staff's] findings and recommendations. . . .

(3) To provide planning services for component cities and counties upon request and upon payment therefor by the cities or counties receiving such service.

WASH. REV. CODE § 35.58.310 (1965).

At the January 13, 1958, election, the first metropolitan municipal corporation was created under this statute, the South Snohomish County Metropolitan Municipal Corporation, and included Everett, Edmonds, Mountlake Terrace, Woodway, Mukilteo, and Lynnwood. BUREAU OF GOVERNMENTAL RESEARCH AND SERVICES, MUNICIPAL GOVERNMENT IN THE STATE OF WASHINGTON 275 (Report No. 149, 1962). Its sole function was planning: "The purpose of forming this Metro was to prevent the southern portion of Snohomish County . . . from being included within the proposed boundaries of the Seattle Metro."

Seattle's Metro, formed September 9, 1958, has within its boundaries at this date approximately 898,000 persons. It encompasses the following cities: Bellevue, Bothell, Kirkland, Lake Forest Park, Medina, Mercer Island City, Redmond, Renton, and Seattle;

ations which are authorized to plan, all proposed zoning ordinances and amendments to comprehensive plans of member governments must be reviewed prior to adoption by the metropolitan council and planning staff.⁹⁵ However, the corporation is of limited utility in the solution of intermunicipal land use conflicts since it has no power to institute and administer land use controls.

In conclusion, the statutory scheme for inter-municipal land use planning can be effective only with the voluntary cooperation of local governments. As for important problems of land use affecting large areas, the legislature tends to take them into consideration piecemeal.⁹⁶ At most such legislation⁹⁷ will introduce a regional or state perspective to the solutions of the particular problems involved. But such controls are often created after the fact, a product more of startled reaction than thoughtful anticipation. Finally, the evils sought to be regulated are ensnarled with myriad land use problems over which municipalities currently exercise virtually autonomous power.⁹⁸

and the following towns: Beaux Arts, Clyde Hill, Hunts Point, Mercer Island Town, and Yarrow Point. It is empowered to perform sewage and drainage control functions, but in fact has to date left drainage problems to member governments.

95. WASH. REV. CODE § 35.58.310 (1965).

96. For example, Ch. 62, [1970] WASH. LAWS 1ST EX. SESS., effective July 1, 1970, creates a single state agency to aid in the management of state air and water pollution. The Department of Ecology is

. . . to undertake, in an integrated manner, the various water regulation, management, planning and development programs now authorized to be performed by the department of water resources and the water pollution control commission, the air regulation and management program now performed by the state air pollution control board, the solid waste regulation and management program authorized to be performed by state government . . . and such other environmental, management protection and development programs as may be authorized by the legislature.

Id. at § 2. The legislature recognized it to be the public policy of the state

. . . that it is a fundamental and inalienable right of the people of the state of Washington to live in a healthful and pleasant environment and to benefit from the proper development and use of its natural resources. The legislature further recognizes that as the population of our state grows, the need to provide for our increasing industrial, agricultural, residential, social, recreational, economic and other needs will place an increasing responsibility on all segments of our society to plan, coordinate, restore and regulate the utilization of our natural resources in a manner that will protect and conserve our clean air, our pure and abundant waters, and the natural beauty of the state.

Id. at § 1.

97. See e.g., Senate Bill No. 6, 41st Leg., 1st Ex. Sess. (1970), and House Bill No. 58, 41st Leg., 1st Ex. Sess. (1970), on state regulation of the management of seacoast land; Engrossed House Bill No. 15, 41st Leg., 1st Ex. Sess. (1970), and Senate Bill No. 139, 41st Leg., 1st Ex. Sess. (1970), on the regulation of surface mining; and Senate Bill No. 214, 41st Leg., 1st Ex. Sess. (1970), on the dispersion of industries.

98. Patterns of residential zoning can be taken into account, but cannot be established by a regional air pollution control agency. Placement of new industry may be affected,

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B. Federal Legislation

Under the Model Cities Act of 1966,⁹⁹ applications by local governments for many types of federal grants¹⁰⁰ must be reviewed by a qualifying, state-authorized "areawide agency"¹⁰¹ and must be submitted to the proper federal agency together with the comments and recommendations of the areawide agency.¹⁰² The comments and recommendations of the areawide agency and a statement by the applicant that such comments and recommendations have been considered¹⁰³

shall . . . be reviewed by the (federal) agency . . . for the sole purpose of assisting it in determining whether the application is in accordance with the provisions of Federal law which govern the making of the loans or grants.

In addition, the Secretary of the Department of Housing and Urban Development is authorized to make grants to state and local public

but cannot be zoned. Regulation of automotive pollution cannot be taken into account properly until a state or regional agency exists which can study and designate the location and inter-relation of not only public and private transportation systems, but business and residential areas as well.

99. 42 U.S.C. 3331-3339 (1966). These sections were intended to provide through greater coordination of federal programs, and through supplementary grants for certain federally assisted developed projects, additional encouragement and assistance to states and localities for making comprehensive areawide planning and programming effective. . . .

42 U.S.C. § 3331(b) (1966) (a 1968 Amendment changed "metropolitan" to "areawide").

100. Applications for such federal loans or grants may concern open space land projects or the planning or construction of hospitals, airports, libraries, water supply and distribution facilities, sewer facilities and waste treatment works, highways, transportation facilities, law enforcement facilities, and water development and land conservation projects within any metropolitan area. . . .

42 U.S.C. § 3334(a) (1968).

101. Such review may be by:
any areawide agency which is designated to perform metropolitan or regional planning for the area within which the assistance is to be used and which is, to the greatest practicable extent, composed of or responsible to the elected officials of a unit of areawide government or of the units of general local government within whose jurisdiction such agency is authorized to engage in such planning. . . .

42 U.S.C. § 3334(a)(1) (1968).

"Areawide agency" means an official State or metropolitan, regional, or district agency empowered under State or local laws or under an interstate compact or agreement to perform comprehensive planning in an area; an organization of the type referred to in section 461(g) of Title 40; or such other agency or instrumentality as may be designated by the Governor . . . to perform such planning.

42 U.S.C. § 3338(7) (1968).

102. 42 U.S.C. § 3334(b)(1) (1968).

103. 42 U.S.C. § 3334(b)(1) (1968).

agencies which are carrying out "areawide development projects."¹⁰⁴ Such projects must cover an area wherein¹⁰⁵

(1) areawide comprehensive planning and programing provide an adequate basis for evaluating (A) the location, financing and scheduling of individual public facility projects . . . whether or not federally assisted; and (B) other proposed land development or uses, which . . . have public areawide or interjurisdictional significance; . . .

(2) "adequate" areawide planning and programming arrangements exist; and (3) projects under comprehensive areawide planning¹⁰⁶ and development are in fact underway.¹⁰⁷

Under a 1968 authorization,¹⁰⁸ the Secretary may make "planning grants" to state and local governments and their state, local, regional and metropolitan planning agencies.¹⁰⁹ He may also make grants to metropolitan, district and regional organizations of public officials to¹¹⁰

engage in such other activities . . . as the Secretary finds necessary or desirable . . . including, but not limited to, land use, transportation, housing, economic development, natural resources development, community facilities, and the general improvement of living environments.

C. Relationship Between State and Federal Programs

The existing Washington statutes authorizing the voluntary organization of regional planning agencies, plus the incentives to regional planning brought by federal grants, will help to promote a regional point of view in land use decisions, but a review of one such

104. "Areawide development project" is defined in 42 U.S.C. § 3338(2) (1968) to mean those projects assisted under the Housing and Urban Development Act 33 U.S.C. § 466(j) (Supp. IV 1964); Title II of the Library Services and Construction Act 20 U.S.C. § 355 (1964); Public Health Act 42 U.S.C. § 606 (1964); Federal Water Pollution Control Act 33 U.S.C. § 466 (Supp. IV 1964); the Federal Airport Act 23 U.S.C. § 120(a) (Supp. IV 1964); the Urban Mass Transportation Act 49 U.S.C. § 1602 (Supp. IV 1964); Title VII of the Housing Act of 1961, 42 U.S.C. § 1500 (1964); the Land and Water Conservation Fund Act of 1965, Pub. L. No. 88-578 § 5(e), 78 Stat. 901; or the Public Works and Economic Development Act of 1965, 42 U.S.C. § 3131(a)(1) (Supp. IV (1964)).

105. 42 U.S.C. § 3335(b) (1968).

106. 42 U.S.C. § 3338(5) (1968).

107. 42 U.S.C. § 3335(b) (1968).

108. 40 U.S.C. § 461 (1968).

109. 40 U.S.C. § 461(a) (1968).

110. 40 U.S.C. § 461(g) (1968).

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regional organization, the Puget Sound Governmental Conference, indicates that much more in the way of state legislation is needed.

In 1957, four counties¹¹¹ ratified operation of a regional agency under then-existing legislation.¹¹² That same year, the enabling act was amended to permit cities and towns to participate in regional planning agencies,¹¹³ and as of May, 1968, four major Puget Sound cities¹¹⁴ and ten smaller municipalities¹¹⁵ had become members of the Conference. In 1965, the members authorized operation under R.C.W. § 36.64.080.¹¹⁶

The Conference staff conducts research into various aspects of land use development for the region,¹¹⁷ and the members have an opportunity to participate in long-range regional planning.¹¹⁸ By 1967, the Conference had adopted an open space plan, a street and highway plan, a regional transit plan, and the Seattle-King County metropolitan area public transportation plan, all as elements of a regional comprehensive plan.¹¹⁹ Other projects of the Conference have included the drawing of maps, compilation of bibliographies, making of population and land use studies, and the writing of reports on regional goals, building codes, zoning ordinances, subdivision ordinances and wrecking yards.¹²⁰

The Conference has been designated by HUD, pursuant to the Model Cities Act, to review and comment on applications from local

111. King, Kitsap, Pierce and Snohomish. A. Williams, *Taking Stock: A Report to the Puget Sound Region on Our First Ten Years and a Look at the Future* 4, May, 1968 [hereinafter cited as Williams].

112. Ch. 44, § 11 [1935] Laws of Washington 121 (now WASH. REV. CODE § 35.63.070 (1965)).

113. Ch. 130, § 1 [1957] Laws of Washington 481.

114. Bremerton, Everett, Seattle and Tacoma. Williams, *supra* note 111, at 4. See also note 124 *infra*.

115. Auburn, Des Moines, Hunts Point, Kent, Medina, Milton, Mountlake Terrace, Puyallup, Renton and Sumner. Williams, *supra* note 111, at 4-5.

116. See discussion at notes 76 to 78 and accompanying text, *supra*.

117. See, e.g., Darbyshire, *A Survey of Subdivision Ordinances in the Central Puget Sound Region, March, 1967*, and Seldomridge, *A Survey of Zoning Ordinances in the Central Puget Sound Region, May, 1967*.

118. The conference serves as an advisory and cooperative body to promote and encourage . . . regional cooperation among city, county, metropolitan, regional, state and private groups in . . . dealing with regional development problems that are of concern to all areas and all people of the region.

Project Open Space—Summary Report 2, June, 1966.

119. Williams, *supra* note 111, at 17.

120. *Id.* at 18-19.

governments in the region for federal grants.¹²¹ The impact of federal grants on planning agencies became apparent in 1967, after a denial by HUD of a Puget Sound Governmental Conference application for a grant.¹²² To receive the grant, the Conference was required to, and subsequently did, reorganize and expand its functions to include regional transportation planning, formerly the function of the Washington State Highway Commission.¹²³

Although the controls on federal grants and the interchange of opinion and pooling of knowledge of the members of the Conference may often be persuasive in getting local governments in the Conference to take note of regional considerations in their land use decisions, each municipality is nevertheless legally free to make its own zoning or rezoning decisions, even if those decisions conflict with the long range regional plans prepared by the Conference.¹²⁴

In conclusion, what is lacking in Washington's control of municipal land use development and planning, as in most other states,¹²⁵ is the sting of legal compulsion.¹²⁶

As developed thus far in this country, . . . [m]ost acts simply provide that the regional planning commission is to prepare a plan. As to what happens thereafter, there is a resounding silence.

While the success of the Puget Sound Governmental Conference may surpass Haar's general pessimism, current legislation is inadequate, since even the most successful regional planning agency cannot prevent zoning practices of local governments which are harmful when viewed from a regional or state-wide perspective unless (a) the subject of

121. As of 1968. Williams, *supra* note 111, at 36. See 42 U.S.C. §§ 3331-3339 (1968).

122. The Conference had by 1967 received a total of \$338,530 in federal grants for planning and research. Williams, *supra* note 111, at 21.

123. *Id.* at 36.

124. The threatened withdrawal of Tacoma from the Puget Sound Governmental Conference is one indication of the tenuous nature of the relationship between the Conference and the various member municipalities. See Seattle Post-Intelligencer, Dec. 12, 1969, at B, col. 1 and Seattle Post-Intelligencer, Dec. 17, 1969, at 3, col. 1. Tacoma Mayor Rasmussen complained that the Conference "has grown in size and power until now it is telling us all what we can do and what we can't." Seattle Post Intelligencer, Dec. 12, 1969, at B, col. 2. Pierce County officials have also voiced dissatisfaction with the Conference. *Id.* at B, col. 1; The Seattle Times, Dec. 18, 1969, at D 7, col. 2.

125. See Comment, *The Regional Approach to Planning*, 50 IOWA L. REV. 582 (1965).

126. Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515, 521 (1957).

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the practice is the object of a federal grant, *and* (b) the municipality decides not to forego the grant.

D. Judicial Controls

The scope of the general welfare invoked to enforce policy on the use of private land should be coextensive with the responsibility for providing the public services which benefit private land and whose efficiency is affected by the use of private land [I]n a metropolitan area the words "comprehensive plan" are meaningless if not self-contradictory when applied to each of one hundred suburbs.¹²⁷

One way to introduce controls on zoning parochialism would be for the courts to require that each municipality give adequate consideration to the general welfare of residents and non-residents alike. The delegation of police power to local governments by the Washington constitution¹²⁸ and legislature¹²⁹ should be construed to carry with it an implied requirement that municipalities consider the general welfare of all citizens who would be affected by the proposed action. Even in the landmark case of *Village of Euclid v. Ambler Realty Co.*,¹³⁰ the United States Supreme Court recognized "the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way."¹³¹

Decisions to this effect have been handed down in other jurisdictions.

127. R. BABCOCK, *THE ZONING GAME* 147-48 (1966).

128. WASH. CONST. art. XI, § 11; see notes 16-31 and accompanying text *supra*.

129. See notes 32-62 and accompanying text, *supra*.

130. 272 U.S. 365 (1926).

131. *Id.* at 390.

The Second Circuit recently held that a municipality has standing to object to an allegedly unreasonable zoning ordinance of an adjacent municipality. *River Vale v. Orangetown*, 403 F.2d 684 (2d Cir. 1968); noted in 83 HARV. L. REV. 679 (1970). *River Vale*, New Jersey, brought suit against Orangetown, New York, for injunction, declaratory relief, and damages, alleging that Orangetown's rezone of some wooded land adjacent to *River Vale* from "one acre residential" to "office park" deprived it of due process of law under the Fourteenth Amendment. *River Vale* argued that the measure would depress property values and thus reduce tax revenues, and at the same time increase municipal expenditures by increasing the volume of highway traffic.

Earlier cases were distinguished as having held only that, as a mere agency of the state, a municipality cannot assert federal constitutional rights against the state by which it was created. It may be, therefore, that the court would deny relief where both plaintiff and defendant are municipal corporations of the same state.

In *Duffcon Concrete Products v. Borough of Cresskill*,¹³² the New Jersey court upheld an exclusion of all heavy industry from a municipality noting that¹³³

What may be the most appropriate use of any particular property depends not only on all the conditions . . . prevailing within the municipality . . . but also on the nature of the entire region in which the municipality is located and the use to which the land in that region has been or may be put most advantageously.

In *Borough of Cresskill v. Borough of Dumont*,¹³⁴ the same court invalidated an ordinance which rezoned property bounded by four neighboring boroughs from residential to business. The ground for the decision was that a spot zone had been created, but the court noted in dictum:¹³⁵

At the very least Dumont owes a duty to hear any residents and taxpayers of adjoining municipalities who may be adversely affected by proposed zoning changes

Although these cases may seem to reflect a judicial approval of the type of exclusionary zoning criticised above,¹³⁶ at least the criteria employed by the court were not parochial; factors which lead a court to uphold restrictions in one case may result in disapproval of other restrictions in another case.¹³⁷

While there is no Washington case that holds that a municipality must consider the extra-territorial effects of its decisions, such a rule is possible in light of *Bishop v. Town of Houghton*.¹³⁸ The town of

132. 1 N.J. 509, 64 A.2d 347 (1949).

133. *Id.* 64 A.2d at 349-50. *Accord*, *Valley View Village, Inc. v. Proffett*, 221 F.2d 412 (6th Cir. 1955) (zoning of an entire municipal corporation for residential purposes only).

134. 15 N.J. 238, 104 A.2d 441 (1954).

135. *Id.* at 247, 104 A.2d at 445 (1954).

136. See notes 5-11, *supra*.

137. Other cases requiring local governments to consider extra-municipal criteria include *Dowsey v. Kennington*, 257 N.Y. 221, 177 N.E. 427 (1931); *Hannifin Corp. v. Berwyn*, 1 Ill. 2d 28, 115 N.E.2d 315, 319 (1953).

See also *Gordon v. Wheaton*, 12 Ill. 2d 284, 146 N.E.2d 37 (1957); *Schwartz v. Congregation Powolei Zeduka*, 8 Ill. App. 2d 438, 131 N.E.2d 785, 786 (1956) (dictum); *Forbes v. Hubbard*, 348 Ill. 166, 180 N.E. 767, 771 (1932); *Louisville v. Bryan S. McCoy, Inc.*, 286 S.W.2d 546, 548 (Ky. C.A. 1956) (dictum).

138. 69 Wn. 2d 786, 420 P.2d 368 (1966).

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Houghton, operating under R.C.W. ch. 35.63,¹³⁹ adopted a comprehensive plan and passed a zoning ordinance which zoned a sizeable area of land as R-2, thus permitting the construction of high-rise multiple-family residential dwellings. Within three years a state highway was constructed, severing a portion of this area from the rest of Houghton. The sole means of access to this strip of land was thereafter through the streets of the neighboring municipalities—the city of Bellevue and the town of Clyde Hill. When residents of these municipalities, which had restricted the land adjacent to the strip to single family dwellings, discovered that a property owner in the strip was planning to build a high rise apartment, they filed suit to have the ordinance declared arbitrary and unreasonable as applied to the prospective builder's property.

The Washington Supreme Court held for the defendant-appellants, reasoning that the only issue properly before the trial court was the allegation of arbitrary and capricious conduct of the council in its denial of plaintiff's petition, that the record brought before Houghton's planners and councilmen amply demonstrated room for an honest difference of opinion on the question of the necessity for a rezone, that the trial court had improperly considered new evidence, and that therefore the decision of the town of Houghton had to be upheld.¹⁴⁰

One major question went unanswered: Must a municipality give consideration to the welfare of extra-municipal residents? Although appellants did not make much of the issue, the brief of appellant-intervenor assigned error to the trial court's determination that plaintiffs¹⁴¹

sue on behalf of a class of property owners all of whom will suffer material damage in the depreciation of the value of their property and in the loss of the comfortable use and enjoyment of their property

It is difficult to tell whether the error assigned was to the alleged

139. WASH. REV. CODE ch. 35.63 (1965), discussed at notes 32-38 and accompanying text, *supra*.

140. 69 Wn. 2d at 794, 420 P.2d at 373 (1966).

141. Brief for Appellant-Intervenor at 15, *Bishop v. Houghton*, 69 Wn. 2d 786, 420 P.2d 368 (1968).

damage or to the standing of the plaintiffs.¹⁴² But in a footnote appellant-intervenor comments:¹⁴³

It is interesting to note that plaintiffs, who are residents of the Lake Washington Spring Hills area, are not residents of the Town of Houghton. No resident of the Town of Houghton has protested the zoning in question nor has requested a rezoning.

Respondent-plaintiff rebutted the implications of the footnote,¹⁴⁴ and asserted public policy inherent in Washington enabling legislation.¹⁴⁵

The court assumed that the plaintiffs had standing, commenting that¹⁴⁶

when conditions surrounding or in relation to a zoned area have so clearly changed as to emphatically call for revisions in zoning, the appropriate zoning authorities are under a duty to initiate proceedings and consider the necessity of pertinent modifications

Given the circumstances of the litigation, the phrase "surrounding or in relation to a zoned area" must refer to non-residents in an appropriate case.

Another dictum gives rise to a similar inference:¹⁴⁷

(T)he municipality's police power and legislative prerogative extends, in the ordinary case where the need is reasonably debatable, to the determination of whether the public interest "requires a change in zoning laws, and whether or not a change in the character, conditions or surroundings of a locality has taken place which requires or justifies a rearrangement of established zones"

In restricting itself to the question of arbitrariness and capriciousness, the court appears to be agreeing with plaintiffs that the "public interest"

142. Standing has been upheld as to non-residents in zoning cases; see, e.g., *Hamelin v. Zoning Bd.*, 19 Conn. Supp. 445, 117 A.2d 86 (C.P. 1955); *Al Walker, Inc. v. Stanhope*, 23 N.J. 657, 130 A.2d 372 (1957); *Koppel v. Fairway*, 371 P.2d 113 (Kan. 1962). As for the standing of a neighboring municipality to object, see note 131, *supra*.

On the standing problem generally, see Note, *The "Aggrieved Person" Requirement in Zoning*, 8 WM. & MARY L. REV. 294 (1967); Comment, *Standing to Appeal Zoning Determinations: The "Aggrieved Person" Requirement*, 64 MICH. L. REV. 1070 (1966).

143. Brief for Appellant-Intervenor, *supra* note 141, at 6, n.2.

144. Brief of Respondent, *supra* note 141, at 9-12.

145. WASH. REV. CODE §§ 35.63.060 (1965) and 35.63.070 (1965).

146. *Bishop v. Houghton*, 69 Wn. 2d 792, 420 P.2d 372 (1966) (dictum).

147. *Id.* quoting 8 McQUELLIN, MUNICIPAL CORPORATIONS 173 (3d ed. 1965).

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which the municipality must consider includes the effects of local land use decisions on properties owned by non-residents, where justified by a "change in the character, condition or surroundings of [the] locality."

It is also possible that the courts will explicitly recognize the public policy favoring intermunicipal cooperation which is inherent in the wide range of statutory law¹⁴⁸ dealing with inter- and extra-municipal land use problems. The legislature has expressly noted that¹⁴⁹

The growth of urban population and the movement of people into suburban areas has [sic] created problems of sewage and garbage disposal, water supply, transportation, *planning*, parks and parkways which extend beyond the boundaries of cities, counties and special districts. [Emphasis added.]

But the courtroom hardly seems an appropriate place to hammer out regional and state controls on local land use decisions. For one thing, judicial control would be an after-the-fact affair, a judicial review of ordinances already established and relied on by the community. The courts would have to assume that local government would, in light of judicial review, adequately consider regional and state land use goals, a task which local governments are simply incapable of performing. Also, the adversary process and the special rules developed for the adjudication of disputes make the satisfactory resolution of regional and state land use problems an extreme improbability. At best, a reliance on judicial control of parochialism would provide a temporary relief; at worst it could turn the courts into fields for the waging of political and social battles of the first magnitude.¹⁵⁰

Indeed, the court may find itself interjected into the troubling and difficult aspects of metropolitan relations and becoming the center of controversy between the white-collar, upper-middle-class

148. Notes 70-95 and accompanying text, *supra*.

149. WASH. REV. CODE § 35.58.010 (1965).

150. Haar, *Regionalism and Realism in Land-Use Planning*, 105 U. PA. L. REV. 515, 530 (1957). *Contra*, *Al Walker, Inc. v. Borough of Stanhope*, 23 N.J. 657, 666, 130 A.2d 372, 377 (1957):

We are not disturbed by the Borough's spectre that continued logical liberalization of the standing requirement might bring a flood of litigation which would tax our judicial facilities and unduly burden our governmental subdivisions.

This is weighty authority coming from the court most often cited for the proposition that a municipality must consider the extramunicipal effects in its zoning decisions. *See* notes 132-137 and accompanying text, *supra*.

suburb and the increasing minority group, lower-income people of the central city.

III. AN ALTERNATIVE

If the performance of an activity, or the failure to perform it, can be damaging to people in other jurisdictions, then the function is unsuited to local control¹⁵¹

What is needed in Washington is a statutory scheme that establishes a permanent state institution with legal power to solve the critical land use problems of the state. The solution of these problems should not be left up to the voluntary agreement of the member municipalities of regional planning bodies. Statutes should provide for the delineation of areas in the state which have unifying regional characteristics and give a state agency the task of coordinating local, regional and state plans, the power to nullify those municipal land use decisions which work to the detriment of the region or state, and, where necessary, the power to substitute land use decisions of its own.

Article 7 of the draft Model Land Development Code would establish a permanent Department of State and Regional Planning to consider and solve extra-municipal land use problems. The Department, members of which would be appointed by the Governor, would study all matters relevant to state, regional and local land development, intervene in judicial or administrative proceedings when Code or significant state issues are involved, and specify types of developments which may not be commenced by any governmental agency without four weeks' prior notice.¹⁵² It would review all land development plans and reports, all proposed ordinances and all proposed land developments of certain types to see if they were consistent with state and regional plans. If the Department objected to any proposal and the municipality nevertheless intended to proceed as planned, the latter would first be required to submit written statements to the Department, explaining the reasons for its action. Applications of local governments

151. L. GULICK, *THE METROPOLITAN PROBLEM AND AMERICAN IDEAS* 43 (1962).

152. MODEL LAND DEVELOPMENT CODE § 7-205(1) (Tent. Draft No. 1, 1968) [hereinafter cited as MLDC].

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for federal or other grants would first go to the Department for comment.¹⁵³

Regional development plans¹⁵⁴ would be prepared by the Department for those regions "which because of physical, economic, social and governmental characteristics should be planned as a region"¹⁵⁵ and would establish regional objectives, policies and standards with regard to such matters as population density, the timing of certain types of land development, transportation, utility and recreational facilities, commercial and industrial activities, conservation of land resources, water and air pollution control, and the equalization of costs and revenues for local governments.¹⁵⁶ Proposed regional development plans would first be submitted to regional advisory committees¹⁵⁷ and local governments, and would require approval by the Governor and both Houses of the state legislature. With the Governor's approval, the Department could adopt rules establishing standards to which local zoning ordinances must conform. If, after a hearing, an Adjudicatory Board¹⁵⁸ of the Department determined that a local government was not complying with these standards, the Department could directly regulate municipal land development.¹⁵⁹

Where the Department is directly regulating development or pre-existing uses or structures, it could adopt any regulation which a local government could impose by ordinance, which regulation would then supercede inconsistent local ordinances.¹⁶⁰ Rules of the Department could be adopted only after giving notice and an opportunity for all "interested persons" to make written representations.¹⁶¹

Minor extra-municipal problems might be resolved under the Code by a Department rule requiring certain land use proposals to be considered jointly by more than one municipality and specifying the condi-

153. *Id.* § 7-206.

154. The section reserved for State Development plans of the MLDC § 7-301, has not yet been drafted.

155. MLDC § 7-302(1), *supra* note 152.

156. *Id.* § 7-302(3).

157. Membership is to include the executive officers of local governments or their designates, representatives of special districts, and gubernatorial appointees. *Id.* § 7-103(2)(a).

158. Created within the Department according to MLDC § 7-102; the five members of the Board are to be appointed by the Governor.

159. MLDC § 7-304(2)(b), *supra* note 152.

160. *Id.* § 7-501.

161. *Id.* § 7-502.

tions under which the joint proceeding would be held.¹⁶² Consider, for example, a decision to zone or to rezone an area to allow or disallow the construction of high-rise apartment buildings.¹⁶³ The number of units allowable per building, access to and from the area, zone classifications of neighboring municipalities, and the distance between the zone and the municipal border might all be factors employed to determine the applicability of the rule in a given case.

Under section 7-301 of the MLDC, the state in its own development plans may desire to withdraw from local regulation some matters which are not properly the objects of land use decision-making at any level.¹⁶⁴ For example, there is little doubt that a major purpose of zoning regulation in many communities is to protect certain low density residential areas against the intrusion of apartment developments, mobile homes, minority races and high density single family dwellings.¹⁶⁵ Where this isolationist policy is pursued with excessive zeal, the municipality merely protects its own residents at the expense of other residents of the state who must remain in overcrowded and deteriorating neighborhoods.¹⁶⁶ The state may decide to alleviate such a situation by imposing limits, for example, on the extent to which municipalities may exercise their zoning powers to maintain an inflexible pattern of single-family residences. Similar steps could be taken to prevent the absolute exclusion of businesses in what is ordinarily a wide suburban swath around the city, since it is possible to allow certain kinds of commercial and industrial uses to operate in residential areas if they are effectively controlled and their objectionable features are eliminated.¹⁶⁷

162. Joint consideration should take place at the time of proposed reclassification in order to prevent unnecessary hardship to a landowner who might otherwise have spent considerable amounts of time and money clearing his property for the proposed use.

163. See discussion of *Bishop* at notes 138-47 and accompanying text, *supra*.

164. MLDC § 7-301, *supra* note 152. Though the provision is not yet drafted, it should allow for such a decision.

165. See generally R. BABCOCK, *THE ZONING GAME* 3 (1966); Freund, *Some Inadequately Discussed Problems of the Law of City Planning and Zoning*, 24 *ILL. L. REV.* 135, 146 (1929). See also notes 6-10 and accompanying text, *supra*.

166. Perhaps the most penetrating analysis of the manner in which zoning has been used to preserve a residential area for citizens of a certain social and economic class and how these zoning efforts conflict with a basic American belief in equal opportunity and equal treatment appears in Williams, *Planning Law and Democratic Living*, 20 *LAW & CONTEMP. PROB.* 317 (1955). See also *Vickers v. Gloucester*, 37 *N.J.* 232, 181 *A.2d* 129 (1962).

167. R. BABCOCK, *THE ZONING GAME* 126-33 (1966).

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The arguments favoring a state-centered agency over a proliferation of regional agencies are persuasive.¹⁶⁸ There is no present governmental power in Washington the territory of which coincides with socio-economic reality and which is politically responsible and capable of effectively dealing with regional land use problems.¹⁶⁹ Present law provides for voluntary cooperation among municipalities, but does not provide the legal compulsion necessary to guarantee effective regional decisions.¹⁷⁰ A state agency would be more flexible and have a broader viewpoint than regional agencies, and the state could change regional boundaries if required. Such an agency would be able to deal more effectively with the other state agencies concerned with land use, make studies of a more comprehensive nature, and give more effective technical assistance to local planning and zoning.¹⁷¹ State assistance in planning, establishment of local zoning and planning agencies, and drafting of model ordinances would also be more effective. The state, under Article 7 of the MLDC, would be able to deal with problems beyond the resources of either regional or local planners. Finally, the state is uniquely capable of coordinating the land use policies in municipalities, regions and the state. This coordination could turn out to be more of a blessing to local governments than at first blush may be apparent since a unified land use program under state supervision may prevent much of the upset to local land use planning that might otherwise come with an unforeseen conflict between state and local goals.

CONCLUSION

It is important to keep in mind the general value of local control over most substantive zoning decisions. However, some state and regional control over substance should exist in order to ensure that the welfare of the general population of the state is adequately considered. Municipalities have not given adequate consideration to the inter-municipal, regional, and state-wide implications of their land use

168. These arguments are set out more fully in the MLDC Comments on Article 7, *supra* note 152.

169. See discussion of metropolitan municipal corporations at notes 93-95 and accompanying text, *supra*.

170. See discussion of the Puget Sound Governmental Conference, notes 111-124 and accompanying text, *supra*.

171. See MLDC Comments to Article 7, MLDC at 189-90, *supra* note 152.

decisions, and regional planning agencies presently lack the power to require compliance with their plans. Washington courts may well rule that local governments must consider the general welfare of all persons affected by their land use decisions. Yet problems of regional and state magnitude require the detailed and continuous administration that only a permanent state agency can supply.

Accordingly, several features of Article 7 of the MLDC should be adopted in Washington. A state planning agency should have final authority on matters of state or regional impact; in extreme cases the agency should have the power to alter local zoning ordinances. Regional agencies should be created by the state to plan regionally and to advise local governments and the state agency on problems of regional scope. The inclusion of a particular municipality within any given region should be determined by the state agency, not the municipality. Politically sensitive decisions of the state agency, such as the establishment of regional boundaries or adoption of rules pertaining to direct intervention into local land use regulation, should be made subject to approval by the governor or state legislature.

Washington State is on the verge of a period of dramatic growth. Unlike some of its sister states, however, it has the opportunity to learn from the mistakes of others. If the need for more effective regional and state planning was acute in the last decade, it will be overwhelming in the next. An ounce of legislative prevention is worth a pound of cure; if the Washington legislature hesitates too long, the time for prevention will pass, and the lawmakers will have to turn to whatever after-the-fact remedies they can devise.

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