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State Growth Management: The Intergovernmental Experiment

Douglas R. Porter*

I. Introduction: The Trend Toward Statewide Coordination of Local Land Use Decisions

Ever since the 1920s when states began authorizing local governments to adopt comprehensive plans and zoning regulations, local governments, and many other interests, have fervently supported community control of growth and development. However, within the past quarter-century, many states have begun to exert more direct guidance over the locations and qualities of development. In particular, nine states in the past twenty years have enacted statutes that called for comprehensive statewide planning for growth management.

Three states, Oregon, Florida, and Rhode Island, have administered comprehensive, statewide growth management programs for at least two decades. Other states, including Vermont, Maine, New Jersey, Georgia, Washington, and Maryland, have less experience in implementing their more recent laws. Together, however, they illustrate a spectrum of approaches to state leadership and intergovernmental coordination in managing urban development.[1]

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Mr. Porter was the keynote speaker at a conference on Land Use Law Reform at Pace University School of Law in White Plains, New York in April of 1993. This piece is the result of reducing his speech into written text and providing additional references.

1. The growth management and state planning statutes are as follows: FLA. STAT.

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Although the statutes vary in detail, they commonly require or encourage local governments, and frequently regional and state agencies, to prepare plans that conform to state goals and policies. In essence, the nine states have fundamentally reconfigured their approaches for dealing with urban development issues to emphasize intergovernmental responsibilities and actions.[2]

It is safe to say that in none of these states were local governments eager to share responsibilities for guiding community development with regional or state agencies. In fact, local governments usually were among the most vociferous opponents of the statutes. They viewed state acts as setting up regional "supergovernments" and state bureaucracies that would direct decision making on development and that would quickly lead to the ruination of their communities. They also resisted yet another state mandate that would require increased local expenditures and yield no discernible benefits for their communities.

State officials and growth management supporters in all nine states understood that they had to retain a significant role for local governments in growth management. The legislation reflects that concern, often expressing the principle of continuing local control over day-to-day decisions. The state statutes also assert that states have legitimate interests that justify some oversight of local actions.

ANN. §§ 186.001-.911, 187.101-.201, 189.401-.427, 190.001-.049 (West 1987 & Supp. 1993); GA. CODE ANN. §§ 36-70-1 to 36-70-5 (Michie 1991 & Supp. 1993); MD. ANN. CODE art. 66-b §§ 1.00-12.01 (1988 & Supp. 1992); MD. CODE ANN. STATE FIN. & PROC. §§ 5-401 to 5-402, 5-701 to 5-710 (1988 & Supp. 1993); ME. REV. STAT. ANN. tit. 30-A, ch. 187, §§ 4301-4359 (West Supp. 1992); N.J. STAT. ANN §§ 52:18A-196 to 52:18A-199; OR. REV. STAT. §§ 197.005-.650 (1991); R.I. GEN. LAWS §§ 45-22.2-1 to 45-22.2-14 (1991 & Supp. 1992); VT. STAT. ANN. tit. 10, §§ 6001-6092 (1984 & Supp. 1992); WASH. REV. CODE ANN. §§ 36.70.010-36.70.980, 36.70A.045-36.70A.902 (West 1991 & Supp. 1993).

2. Prior to Oregon's path-breaking act in 1973, several states adopted some form of growth management legislation that was either less comprehensive in its concerns, or less inclusive of the governmental structure than the legislation enacted since 1973. Beginning in 1955, California enacted a series of individual requirements for local governments to plan and to include defined elements in their plans. Hawaii's legislation in 1961, for example, put the state firmly in control of major aspects of development, leaving its county governments with a relatively limited role. Vermont's Act 250 in 1970 created state and district environmental commissions that dealt with proposals for large-scale developments, but were not well-connected to regional or local planning processes. For more information about these precursors of comprehensive state acts, see JOHN M. DEGROVE, LAND, GROWTH, AND POLITICS (1984).

The ways in which states have realigned their relationships with local governments in growth management are many and varied. This description and analysis intends to elucidate the intergovernmental frameworks suggested by the statutes and to annotate administrative experience in carrying out those statutes. Two primary aspects of state growth management statutes and experience are discussed: (1) the intergovernmental planning responsibilities established by the statutes, and (2) the urban development issues addressed by the statutes and pursued through their subsequent administration.

II. State Growth Management Acts Establish an Intergovernmental Planning Process

A. *The Components of Statewide Plans*

The realm of statewide planning for growth management, as defined by the statutes of the nine states, promotes planning at state, regional, and local levels of government and encourages consistency and coordination between plans. Six components of new intergovernmental planning responsibilities may be discerned in the statutes: (1) state plans; (2) state agency planning and coordination; (3) statutory requirements for local planning; (4) provisions for regional coordination; (5) processes for achieving consistency between local and agency plans and state goals; and (6) appeals or conflict resolution procedures.

The states enter the land use planning business directly, by adopting their own plans, generally in the form of a statement of land use goals that focus on the state's interests in the subject. Statutes provide for the coordination of the integrated workings of state agencies whose programs and policies impact on land use. This enables the state to act in conformance with its plan. The statutes establish more rigorous requirements for local land use planning, often defining what a land use plan is and including elements that local plans must contain, such as housing, capital infrastructure, economic development and the preservation of natural resources. In addition, the states establish discrete planning regions and provide for the adoption of land use plans for those regions. An administrative mechanism is statutorily created to insure some level of consistency among the state, regional and local plans, and their application. Mechanisms, such

as an appellate tribunal, are developed to resolve conflicts between these plans and their administration.

B. *State Plans or Goal Statements*

All nine state growth management acts provide for preparation of statewide plans to express state interests in growth and development. Some expressions of statewide land use goals are lengthier than others. This occurs because the legislation often subdivides the five basic state interests into various components. For example, to the goal of economic development may be added the promotion of tourism or urban reinvestment. The housing element may concentrate on affordable housing for workers, the elderly, or low and moderate-income citizens. Infrastructure development may emphasize transportation planning, utilities, or sewer system provisions. Natural resource protection may be divided into various components, such as clean air, water quality, coastal, stream and estuary protection, open space and recreation, wetlands preservation, historic preservation and energy conservation. Agricultural land preservation may include forest lands or fisheries.

In every state, except New Jersey and Rhode Island, the plans are expressed as statements of goals and policies to guide planning activities throughout the state. Oregon enacted legislation in 1973, containing fourteen goal statements, which were expanded to nineteen by the addition of five coastal management goals. The goals are set forth in some detail and include both mandatory and suggested implementation policies. Two goals refer to citizen involvement and the planning process to be followed by local governments, regional, state, and federal agencies, and special districts. Six address environmental concerns and six address developmental issues.[3]

In 1972, Florida passed an act which required formulation of a comprehensive statewide plan. However, it was ineffective

3. As an example, the agricultural lands goal that calls for preserving and maintaining agricultural lands cites criteria for determining the appropriateness of converting such lands and guidelines for separating urban from agricultural uses. Pursuant to Sections 197.225 of the Oregon Revised Statutes, the Oregon Land Conservation and Development Commission prepared and adopted an administrative rule defining the goals. *See* LAND CONSERVATION AND DEV. COMM'N, OREGON'S STATEWIDE PLANNING GOALS (1985).

and in 1984 new legislation was passed which mandated preparation of a draft plan by December 1, 1984.[4] The plan that the legislature rewrote and adopted in 1985 is an extensive statement of goals and policies covering twenty-five topic areas.[5] Maryland's statute incorporates seven "visions" as the prime policies to be implemented by local plans.[6] These state goal and policy statements define state interests that must be addressed by plans and regulations of local governments, regional agencies, and state agencies.

The various growth management statutes include, in their goal statements, these statewide interests:

(1) economic development;
(2) housing;
(3) infrastructure development;
(4) natural resource protection; and
(5) agricultural land preservation.

C. *Growth and Conservation District Designations*

Several states have attempted to go beyond policy statements to geographic determinations of urban growth policies, closer in concept to local comprehensive plans. By designating land in the state for development as urban density, agricultural development, or open space or conservation areas, they establish a statewide framework for the accomplishment of all of the general goals listed above. State and federal infrastructure investments can then be targeted to areas designated for growth and development and land acquisition funds can be focused on those areas designated for open space or conservation. Statewide mapping of this type attempts to direct the forces of development so that the infrastructure can support economic and housing growth and so that valuable agricultural lands and natural resources can be spared the impact of urbanization.

Hawaii's 1961 plan designated urban, agricultural, and conservation areas (a rural area was later added) that placed the

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4. Charles L. Siemon, *Growth Management in Florida: An Overview and Brief Critique*, *in* STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT 35, 40 (Douglas R. Porter ed., 1992).

5. *Id.* at 41.

6. MD. ANN. CODE art. 66B, § 3.06(B) (1988 & Supp. 1992).

state in the role of directly controlling the location of urban development.[7] Vermont's Act 250, adopted in 1970, required adoption of a state plan in three phases over one year. The first phase contained quite general policies and a map of land capabilities for certain uses such as agriculture. The second depicted land capabilities in more detail, but the third phase, which began in some people's eyes to look like state zoning, was emphatically rejected and the provision of the act pertaining to plan preparation was repealed.[8] New York attempted to craft a geographically-defined state plan in the mid-1970s but encountered a highly resistant legislature that killed the plan and dismantled the state planning office that proposed it.[9]

Of the nine comprehensive acts, only those in New Jersey and Rhode Island have incorporated maps depicting geographic locations for applications of policies. Rhode Island's Comprehensive Planning and Land Use Regulation Act of 1988 establishes eleven rather general goals "to provide overall direction and consistency for state and municipal agencies in the comprehensive planning process."[10] The plan includes a computer-generated land capability map identifying four categories of land use intensity, from high-intensity development potential to positive conservation potential. The map is to be used by cities and towns in determining allocations of land for development and conservation.[11]

The New Jersey Legislature adopted the State Planning

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7. DeGrove provides a description of Hawaii's program. DEGROVE, *supra* note 2, at 9.

8. Jeffrey F. Squires, *Growth Management Redux: Vermont's Act 250 and Act 200, in* STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT 11, 14 (Douglas R. Porter ed., 1992).

9. The author took a small part in preparing some basic factual studies leading up to the New York plan, followed the creation of the slickly-published plan, and remembers well the abrupt comeuppance dealt the plan and its planners.

10. The original goals are cited in the Comprehensive Planning and Land Use Regulation Act, R.I. GEN. LAWS § 45-22.2-3(C) (1991 & Supp. 1992). However, "Land Use 2010: State Land Use Policies and Plan" expands upon those goals with explanatory discussions and adds a statement of policies in seven categories including housing. R.I. DEP'T OF ADMIN., DIV. OF PLANNING, REP. 64, LAND USE 2010: STATE LAND USE POLICIES AND PLAN (1989).

11. Expanded goals, policies, and the land capability map are included in a separate report. R.I. DEP'T OF ADMIN., DIV. OF PLANNING, REP. 64, LAND USE 2010: STATE LAND USE POLICIES AND PLAN (1989).

Act[12] in 1985 which provided a short list of general goals, but also required preparation of a state plan that would "identify areas for growth, agriculture, open space conservation, and other appropriate designations."[13] The resulting State Development and Redevelopment Plan, adopted in 1992 after lengthy and controversial negotiations, is unique among state growth management programs. It expands the general goals into dozens of more definitive policies and blends state and local plans into a statewide map depicting growth centers and preservation areas. Applications of policies to geographic areas will be further detailed through continuing discussions and formal delineations of growth centers between local governments and state agencies.[14]

The extent of urbanization and existing planning in New Jersey possibly explains the appropriateness of this approach; whether other states will begin to control the location of certain types of development is uncertain. For example, although Oregon requires local governments to define urban, agricultural, and forest areas around urban centers, it has not taken any action in twenty years to consolidate those mapped areas into anything resembling a statewide plan.

D. *State Agency Planning and Coordination*

Many local government officials would like to see state agencies spend more time planning and coordinating their own programs than prodding local governments to plan. State agencies are notoriously independent and reluctant to act cooperatively with each other or with local governments. John DeGrove, the dean of state growth managers, comments that "[t]he notion that state agencies will actually move in the direction of coordinated behavior to further a clear and well-understood set of state goals and policies is no less than revolutionary."[15] However, most state growth management statutes promise to do just that.

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12. New Jersey State Planning Act, N.J. STAT. ANN. §§ 52:18A-196 to -199 (1992).
13. N.J. STAT. ANN. § 52:18A-199(a) (1992).
14. A detailed discussion of the procedures for delineating growth centers was prepared by the New Jersey Office of State Planning. NEW JERSEY OFFICE OF STATE PLANNING, DOC. NO. 99, THE CENTERS DESIGNATION PROCESS (Feb. 1993).
15. DEGROVE, *supra* note 2, at 288.

Vermont's Act 200 is typical of such a statute: "State agencies that have programs or take actions affecting land use . . . shall engage in a continuing planning process to assure those programs are consistent with [state] goals . . . and compatible with regional and approved municipal plans."[16] Vermont is one of the few states that has actually implemented an effective response to this mandate. After two years of discussion, Vermont's agencies drafted an agreement for inter-agency cooperation and coordination. Currently, plans have been adopted for seventeen agencies and departments.[17]

Oregon has also been effective at plan development. Oregon's law empowers the Land Conservation and Development Commission to coordinate state agency planning with local plans and state goals. DeGrove reported in 1984 that the Commission was making some progress, but observed that it had to move cautiously to avoid the appearance of becoming a super agency.[18] In the mid-1980s, the Commission stepped up efforts to secure inter-agency coordinating agreements by revising rules to incorporate periodic reviews and conflict resolution procedures. By 1990, according to a recent evaluation, plans of twenty agencies had been certified as consistent with both local plans and state goals.[19] The report notes, however, "[t]here has not been a concurrent emphasis on coordinating among state agencies or addressing interagency conflicts."[20]

In general, however, state agencies have been slow to respond to directives to prepare functional plans and coordinate them with other agencies and with state goals. Florida has established a process for accomplishing that, but the effort falls well short of being comprehensive. In New Jersey, because the state plan relies on state agencies to implement many of its provisions, the Office of State Planning has worked hard to establish interagency ties, with some initial success. How its program and those of other states will fare over future administrative cycles remains to be seen. Thus, local governments have yet to notice

16. VT. STAT. ANN. tit. 3, § 4020(a) (1984 & Supp. 1992).

17. Squires, *supra* note 8, at 31.

18. DEGROVE, *supra* note 2, at 284.

19. DEBORAH A. HOWE, OREGON DEP'T OF LAND CONSERVATION AND DEV., REVIEW OF GROWTH MANAGEMENT STRATEGIES USED IN OTHER STATES 22 (1991).

20. *Id.*

much benefit from this aspect of state growth management. As the programs mature, and the first flurry of securing local compliance with state requirements dies down, more focus on state agency coordination may emerge.

E. *Requirements for Local Planning*

The most visible and significant accomplishment of state growth management acts to date is their prodding of local governments to plan and implement plans in a responsible manner. The state growth management statutes no longer simply enable local governments to plan and regulate future development. They now mandate or provide incentives for local governments to plan according to defined standards of purpose and content and to implement plans through consistent regulatory programs.

The Oregon model, also used by Florida, Rhode Island, Washington, and Maryland, requires local governments to prepare or revise comprehensive plans to conform to state goals and requirements for plan elements. Washington requires counties over a certain population threshold and the cities within them to plan. However, counties not meeting the threshold may volunteer to plan. In Vermont, Georgia, New Jersey, and Maine planning by local governments is voluntary, although incentives are provided to encourage planning. Vermont's and Georgia's statutes also provide that local governments must meet the act's planning requirements if they decide to engage in land use planning.

Typically, the statutes spell out the required or recommended elements of local comprehensive plans. Rhode Island's statute provides that the local comprehensive plans "be a statement (in text, maps, illustrations or other media of communication) that is designed to provide a basis for rational decision-making regarding the long-term physical development of the municipality."[21] It should include a statement of goals and policies consistent with the state guide plan and elements for land use, housing, economic development, natural and cultural resources, services and facilities, open space and recreation, and circulation. Rhode Island also mandates preparation of an im-

21. R.I. GEN. LAWS § 45-22.2-6 (1991 & Supp. 1992).

plementation program, including a capital improvement program and other public actions necessary to carry out the plan.[22]

Securing the cooperation of local governments in meeting these requirements has been difficult and time-consuming. Some local governments have refused to plan at all, some have refused to plan according to state guidelines, and some have refused to plan according to state officials' interpretation of state goals and objectives; others have gone to court and to the electorate to assert their rights. Oregon's program was administered for twelve years before all cities and counties had completed state-approved plans. Florida's approval process is continuing some eight years after the statute was enacted. In Maine, local governments have been given considerable leniency in meeting plan submittal schedules due to a lack of state funds to assist in planning.

The resulting comprehensive plans have also come under criticism. Charles Siemon comments that the shortage of funding and brief time frames allotted to local planning in Florida have "led to the use of 'cookbook' approaches and other short cuts that are antithetical to rational, comprehensive planning."[23] He adds that in the rush to comply with statutory deadlines many policy decisions were simply postponed to the regulatory phase.[24] Undoubtedly this problem also has appeared in other states.

Have the state requirements resulted in more planning by local governments? Certainly. More public officials have been introduced to planning concepts and more have been pressed to use them in their regulatory programs and other decisionmaking on urban development issues. The state requirements can be and have been used as leverage by citizens and interest groups to curb planning abuses, either through appeals procedures or in the courts. Have the requirements produced better plans? Possibly, although the results are not clear in most states. State requirements clearly have set new standards for planning content and procedures. Whether the requirements stimulate a better quality of development — the bottom line — is discussed in the

22. R.I. GEN. LAWS § 45-22.2-6(I) (1991 & Supp. 1992).

23. Siemon, *supra* note 4, at 48.

24. *Id.*

final section.

F. *The Regional Role in Planning*

Several states have defined a regional role in growth management systems. In Florida, Vermont, and Georgia, regional agencies are required to plan and to coordinate local plans. In those states regional agencies also review developments of regional impact which link them more directly with the development process.[25] In addition, Maine's regional councils are required to comment on plans of local governments within their areas.[26] New Jersey's statute requires counties to coordinate local plans and participate in negotiating the compatibility of local and state plans.[27] Although Washington's statute does not specify county coordination of local plans, it does require counties to delineate urban growth areas,[28] natural resource lands and critical areas,[29] and open space corridors[30] in consultation with cities.

Oregon's legislation requires regional planning by the Metropolitan Service District in Portland. The Land Conservation and Development Department has worked with the District to establish special standards and procedures for coordinating metropolitan development in accordance with state goals.[31] Nevertheless, a recent evaluation finds that "Oregon lacks a framework for systematically introducing the regional perspective in multi-jurisdictional regions outside of the Portland area."[32] The report continues, "Even in Portland there is no provision for routine regional review of plan amendments."[33]

The effectiveness of regional agencies in reviewing plans is

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25. Vermont's regional councils were given approval powers over local plans under Act 200, later codified in the Growth Management Act. VT. STAT. ANN. tit. 24, § 4350 (1988). However, subsequent legislation postponed these powers to 1996. 1989 Vt. Laws No. 101 § 4. Vermont's district environmental commissions retain their authority to review and approve large-scale developments.

26. *See* ME. REV. STAT. ANN. tit. 30-A, ch. 119, sub.ch. 1, *especially*, § 2342.

27. N.J. STAT. ANN. § 52:18A-202 (1985).

28. WASH. REV. CODE § 36.70A.60 (West 1991 & Supp. 1993).

29. WASH. REV. CODE § 36.70A.170 (West 1991 & Supp. 1993).

30. WASH. REV. CODE § 36.70A.360 (West 1991 & Supp. 1993).

31. Interview with John Kelly, Program Manager for the Land Conservation and Development Commission, March 8, 1993.

32. HOWE, *supra* note 19, at 35.

33. *Id.*

mixed. In Vermont, at the insistence of local governments, a regional council's authority to review local plans for conformance to state goals was postponed. According to a recent evaluation of the activities of the regional councils in Florida, many were ineffective and others were too aggressive in pursuing their mandates, resulting in a recommendation that their authority to review developments of regional impact be sharply curtailed.[34] The New Jersey growth management program has been given credit for energizing county planning and establishing counties as legitimate players in the growth management process.[35] Georgia's and Washington's experience is too recent to evaluate.

G. *Enforcing Consistency — the Intergovernmental Challenge*

One measure of the success of state growth management programs is their effectiveness in achieving consistency of local, regional, and state agency plans with state goals. All nine states have set up some type of review process to encourage consistency between levels of government, compatibility between plans of adjoining jurisdictions, and consistency among plans and implementing programs and regulations within jurisdictions. These procedures provide the ultimate test of intergovernmental relationships in growth management.

State agencies in all states, except Vermont, review local plans for consistency with state goals. Vermont reviews only the housing element for consistency with affordable housing policies. Oregon, Florida, Georgia, Rhode Island, and Maine retain ultimate authority to approve local plans. Washington and Maryland review and comment on plans.[36] New Jersey negotiates agreements with local governments on plan consistency, but

34. Douglas R. Porter & Robert Watson, *Rethinking Florida's Growth Management System*, URBAN LAND 21-25 (Feb. 1993).

35. HOWE, *supra* note 19, at 7.

36. Maryland's 1992 law does not expressly call for local governments to submit plans for review and comment by the state agency. Instead, local governments are required to submit a schedule showing when they expect to achieve conformance with state requirements, which include the inclusion of state "vision" goals in local plans. The state agency is required to submit an annual report assessing the progress of state and local governments in achieving the goals and recommending appropriate actions to overcome any problems identified. MD. CODE ANN., STATE FIN. & PROC. § 5-708 (1989 and Supp. 1993). Clearly, in order to prepare the report, it is necessary for the agency to review local plans.

does not mandate consistency. In Florida and Georgia, regional agencies also review and approve local plans for consistency with regional plans and state goals. In Vermont and Rhode Island, state agency plans must be made compatible with approved local plans.

State differences in review approaches have led to characterizing some states as "bottom up" and others as "top down." In "bottom up" states, which by most accounts include Vermont, Georgia, Rhode Island, Maine, and Washington, state or regional reviewing agencies have relatively little leverage to determine the substance of local plans. In "top down" states, including Florida, New Jersey, and Oregon, state planning agencies have exerted a considerable amount of leadership in determining the appropriate content of local plans.

Florida's Department of Community Affairs and Oregon's Land Conservation and Development Commission, the administering agencies for the state growth management programs, have ultimate approval authority over local plans. Both agencies have been quite aggressive in interpreting applications of state goals to local plans. For example, they have turned back plans which permitted densities deemed too low to satisfy the goal of compact development. New Jersey's Office of State Planning operates principally by negotiating agreements with local governments to secure their compliance with state goals and policies. Despite this lighthanded approach, the Office potentially retains a considerable amount of influence over local actions.[37]

Maryland's status in the review process is ambivalent. The state planning office can only comment on local plan compliance with state goals. However, state agencies cannot provide state funding, except under "extraordinary circumstances," for any projects that are not consistent with state goals or local plans.[38] This mandate to withhold funds provides a major pressure point to ensure that local plans are consistent with state goals.

This use of sanctions, written into Maryland's law, is echoed in other state statutes, all of which may deny eligibility for vari-

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37. For example, it has the authority to designate growth centers that are depicted on local plans.

38. MD. CODE ANN., STATE FIN. & PROC. CODE ANN. § 5-7A-02(c)(2) (1988 & Supp. 1992).

ous state grants to local governments whose plans are not brought into conformance with state goals. Florida, for example, may suspend recreation and state revenue-sharing grants, as well as federally-funded community development grants. Some states allow communities to impose impact fees only if they have achieved compliance. Both Florida and Rhode Island provide for state preparation of comprehensive plans if local governments fail to prepare them. In Maine, recalcitrant municipalities may find their zoning ordinances invalidated. Thus far, penalties for failure to comply with state mandates have been used very sparingly. Generally, states have been more interested in negotiating agreements with local governments than issuing sanctions that can cause political difficulties.

H. *Appeals and Conflict Resolution*

State planning review processes frequently have created animosities between state and local officials that can be overcome only through appeals and conflict resolution processes. State legislatures foresaw this and enacted statutes which provide procedures to negotiate agreements or appeal to higher authorities, all of which have proved to be beneficial for the participants as well as attorneys. The earlier acts tended to establish administrative procedures which included litigation, whereas the later statutes emphasized conflict resolution techniques.

The 1973 statute in Oregon provided for the creation of a Land Use Board of Appeals consisting of three judges, presiding over land use cases exclusively. Its decisions may be appealed to state courts.[39] Rhode Island has a similar process.[40] Florida has an elaborate system that allows regional bodies to mediate local conflicts, provides hearing officers at the state agency level, and establishes final authority in the governor and cabinet sitting as an appeals board.[41]

The 1988 act in Georgia, by contrast, emphasized dispute resolution, directing the state's Department of Community Af-

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39. OR. REV. STAT. § 197.805 (1991).

40. Douglas R. Porter, *Issues in State and Regional Growth Management*, *in* STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT 157, 190 (Douglas R. Porter ed., 1992).

41. FLA. STAT. ANN. § 163.3167(3), (2) & (9) (West 1987 & Supp. 1993).

fairs to establish a mediation or other conflict resolution process for resolving state, regional, and local differences over plans.[42] The 1990 Washington statute created three hearing boards to resolve disputes over urban growth boundaries and other matters.[43]

The appeals procedures have been heavily used. Oregon communities constantly challenge state decisions rejecting local plans for noncompliance with state goals.[44] Landowners and developers who feel aggrieved by local decisions also avail themselves of the procedures.[45] The 1000 Friends of Oregon, an organization that monitors local, state, and private actions often participates directly in the implementation of the statute.[46] Florida's appeals process has also been the forum for many objections to state decisions on plan reviews, not the least of which are citizen complaints about specific aspects of local plans.[47] The appeals processes are credited with providing a pressure release valve for complaints, as well as for helping to establish more specific interpretations of state goals.

III. State Growth Management Policies to Shape Urban Development

A. *Introduction*

The state growth management acts are premised on the need to guide urban development more effectively than local governments can through individual action. Legislative findings introducing the statutes refer to needs for greater cooperation and coordination between governments, more efficient land development patterns, less costly infrastructure systems, and more effective protection of natural resources and environmental qualities. Statements of goals commonly include strictures to prevent urban sprawl, protect rural and natural areas from un-

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42. GA. CODE ANN. § 50-8-7.1(d) (1990).

43. WASH. REV. CODE § 36.70A.250 (West 1991 & Supp. 1993).

44. Douglas R. Porter, *Issues in State and Regional Growth Management*, *in* STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT 157, 190 (Douglas R. Porter ed., 1992).

45. *Id.*

46. *Id.*

47. Porter & Watson, *supra* note 34, at 24.

desirable development, and develop efficient systems of public facilities and services to support anticipated growth and economic development.

In many cases, the statutes have promoted these goals by directing local governments and regional agencies to adopt specific growth management mechanisms. The most common of which include some form of urban/rural demarcation to induce more compact development patterns and protect rural areas, requirements for programming and financing infrastructure to support development, and special provisions for dealing with large-scale development and critical areas.

B. *Urban/Rural Demarcation*

Since 1973, Oregon has required that all cities define urban growth boundaries to contain urban development, and natural resource areas to promote agriculture and forestry; subsequently, several other states have required or promoted similar provisions. New Jersey calls for urban development within compact centers designated on local and state plans. Maine requires municipalities to identify and designate growth areas and rural areas.[48] Washington requires counties to designate urban growth areas, and counties and cities to designate natural resource lands and critical areas.[49]

Other state statutes include goals that, while less specific, suggest the demarcation of urban from rural lands. Maryland provides that local plans and regulations must implement goals to concentrate development in suitable areas and protect sensitive lands.[50] Florida's goals contain a number of statements that discourage the proliferation of urban sprawl. The policy of the Department of Community Affairs, insisting that local plans promote compact patterns of development, is based on these statements and enforced through a rule. The Department has encouraged local governments to consider adoption of mechanisms such as urban growth boundaries and urban service limits.[51]

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48. ME. REV. STAT. ANN. tit. 30-A, § 4326(3)(A) (West Supp. 1992).
49. WASH. REV. CODE ANN. § 36.70A.110 (West 1991 & Supp. 1993).
50. MD. ANN. CODE art. 66B, § 3.06(B) (1988 & Supp. 1992).
51. The Florida Department of Community Affairs published a "Technical Memo"

Securing local compliance with these requirements has been difficult. Market forces and citizen attitudes still favor low-density development, with single-family detached homes and reliance on automobiles remaining prime objectives of many Americans. Translated through the political process to local plans and regulations, these attitudes appear rather intractable. Oregon's experience is telling. Although all municipalities adopted urban growth boundaries as required by the state statute, a considerable amount of development still takes place outside them. A recent evaluation of Oregon's experience found that more development takes place outside some small town boundaries than within them. Widespread development on "exception" lands (deemed not usable for agriculture or forestry) and waivers by local governments have undermined the state's policy. Only in the Portland metropolitan area was most development taking place within the boundary.[52]

In both Oregon and Florida, development within urban growth boundaries has tended to be of lower density than appropriate to achieve compact growth. Plans and regulations may permit higher densities but developers often chose to dodge opposition from local residents by proposing lower-density development.[53] Only in Portland, which has adopted special rules to promote higher-density housing, including minimum density provisions, have densities increased.[54] State goals and inducements to encourage compact development and preserve rural areas have been only partially successful in the face of countervailing market and political forces.

that included various articles citing aspects of the Florida statute that supported compact development, described the legal basis for its position, defined a number of indicators of sprawl found in local plans, and suggested a variety of techniques for avoiding sprawl. FLORIDA DEP'T OF COMMUNITY AFFAIRS, TECHNICAL MEMO, Fall 1989, at 1-12.

52. *See* OREGON DEP'T OF LAND CONSERVATION AND DEV., URBAN GROWTH MANAGEMENT STUDY: SUMMARY REPORT (1991).

53. *See* Arthur C. Nelson, *Blazing New Planning Trails in Oregon*, URBAN LAND, Aug. 1990, at 32, 34; Porter, *supra* note 43, at 197.

54. *See* PAUL KETCHAM & SCOT SIEGEL, 1000 FRIENDS OF OREGON, MANAGING GROWTH TO PROMOTE AFFORDABLE HOUSING: REVISITING OREGON'S GOAL 10 (1991).

C. *Infrastructure Planning and Financing*

Another purpose of most state growth management acts is to better manage infrastructure needs and costs, which in many areas appear to be totally out of control. State statutes refer to the inefficiencies of extending public facilities to serve sprawling development, the advantages of promoting better use of existing facilities, and the need to provide adequate capacities of facilities concomitant with development. The New Jersey state plan expresses the policy in this way: "The essential element of Statewide Policies for Infrastructure Investment is to provide infrastructure and related services more efficiently by restoring systems in distressed areas, maintaining existing infrastructure investments, creating more compact settlement patterns . . ., and timing and sequencing the maintenance of capital facilities service levels with development throughout the state."[55]

At least three approaches to achieving these goals have been incorporated in state acts: encouraging more attention to capital facilities programs; requiring "concurrency" of facility capacities with development; and linking infrastructure funding sources to completion of plans that conform to state goals.

Most state statutes have prompted local governments to strengthen the connection between comprehensive plans and implementing regulations and programs, including capital improvement programs. Such provisions not only promote consistency between plans and subsequent actions but also emphasize the necessity of formulating realistic implementation efforts. Rhode Island's statute, for example, incorporates an implementation program in the requirements for local comprehensive plans, including the definition and scheduling of "expansion or replacement of public facilities and the anticipated costs and revenue sources proposed to meet those costs. . . ."[56] Similar requirements are found in all other state acts except Georgia's and Maryland's, although the latter statute requires that funding to achieve state goals be addressed.[57]

Perhaps the best known state requirement that connects

55. New Jersey State Planning Comm'n, Communities of Place: The N.J. State Development and Redevelopment Plan 35 (1992).

56. R.I. Gen. Laws. § 45-22.2-6(I) (1991 & Supp. 1992).

57. Md. Code Ann. art. 66B, § 3.06(B)(7) (1988 & Supp. 1992).

public facilities to development plans is the "concurrency" provision of Florida's statute, later followed by Washington. Although many local governments have enacted provisions requiring that development approvals be contingent on the availability of facilities required by the developments, Florida was the first to raise the requirement to the state level. Florida's act provides that no local government shall issue a development permit unless adequate public facilities are available to serve it.[58] Unfortunately, Florida did so at a time when state highways were demonstrably lacking in capacity and when the state was unprepared to fund improvements to make up for their deficiencies. The slow pace of providing supportive infrastructure has caused major controversy over the concurrency requirement and has led to highly imaginative calculations of levels of service by local planners to avoid development moratoriums. One unintended consequence has been the tendency of concurrency requirements to favor development in rural areas where road capacities are available.[59]

Facility funding is another source of leverage used by some states to secure compliance with state goals. Maryland requires that projects receiving state funds be consistent with approved plans and state goals. Other states also threaten to withhold various types of state funding if local plans do not comply with state goals. New Jersey's plan, for example, suggests that state funding of capital projects be dependent, to some degree, on adherence of local governments to state goals.[60] Thus far, however, it does not appear that any states have actually withdrawn funding for this reason.

In contrast, several states permit local governments that secure approval for local plans to levy impact fees. In addition, Washington allows local governments to levy an excise tax on real estate transfers to assist in funding capital improvements.[61]

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58. FLA. STAT. ANN. § 163.3202(2)(g) (West 1987 & Supp. 1993).

59. *See* Siemon, *supra* note 4, at 50.

60. "The State Plan also will be important when the State of New Jersey makes infrastructure investment decisions. The State Plan will serve as a guide to when and where available State funds should be expended to achieve the Goals of the State Planning Act." N.J. STATE PLANNING COMM'N, *supra* note 55, at 6.

61. WASH. REV. CODE § 82.45.070 (West 1991 & Supp. 1993).

D. *Special Development and Area Concerns*

As noted earlier, several state statutes pay special attention to large-scale developments. Vermont's Act 250 focuses directly on such projects.[62] Florida dealt with the issue years ago by setting up special review procedures for developments with regional impacts.[63] Building on the Atlanta Regional Commission's past experience with reviewing developments with regional impact, Georgia's statute gives that responsibility to all regions.[64] Washington's act provides for recognition of large-scale resort developments in delineations of growth areas.[65] These states are concerned with addressing the regional and statewide impacts that major projects may engender.

Similar attention is given to critical natural areas such as wetlands, aquifer recharge areas, wildlife habitats, and flood plains. Washington requires an immediate delineation of critical areas to be followed by recognition of such areas within local comprehensive plans.[66] Maryland's act singles out "sensitive" and critical areas for attention in state and local plans.[67]

IV. Conclusion

Nine states have instituted programs for managing future development by establishing new relationships among state and local governments and, in some cases, regional agencies. Only two states, Oregon and Florida, have gained a substantial amount of experience; others are still working through, or have just completed, initial requirements for achieving consistency between local plans and state goals and policies. They have yet to address state agency planning, local regulatory actions, and amendment processes.

The record thus far shows that the tensions and strains that mark most intergovernmental relationships are not allayed by state growth management activities. Indeed, by forcing confrontations between conflicting state and local interests, the state

62. VT. STAT. ANN. tit. 10, § 6042 (1970).
63. FLA. STAT. ANN. § 186.511 (West 1986 & Supp. 1992) (repealed 1993).
64. GA. CODE ANN. § 50-8-37 (1990).
65. WASH. REV. CODE § 36.70A.360 (West 1991 & Supp. 1993).
66. WASH. REV. CODE § 36.70A.030 (West 1991 & Supp. 1993).
67. MD. ANN. CODE art. 66B, §§ 3.05(a)(1)(vii)-(viii) (1988 & Supp. 1992).

statutes probably have increased at least the perception of divisiveness and disagreement. The state programs also have attracted charges that they engender stultifying regulations, intractable bureaucracies, and misguided policies.

Those program "costs" should be matched to the real benefits that are being achieved through the programs. Whether one agrees that these benefits are without blemish, the programs have accomplished some important objectives:

1. The states have succeeded in promoting increased attention to state and regional interests in development issues while retaining significant decisionmaking roles for local governments in the development process. In all nine states with growth management statutes, local governments still maintain a considerable amount of autonomy in determining the character of future community development.

2. The state programs have stimulated a greater understanding of the planning process among local officials, prodding municipalities, regional agencies, and state agencies to define development trends, identify future needs, and plan and organize public action to meet those needs.

3. The state programs have structured a framework for coordinating the growth management efforts of all jurisdictions and levels of government and have encouraged negotiated agreements among them regarding development issues.

4. State agencies have been prompted to recognize the programs and plans of other agencies and local governments in their own planning for future projects.

5. The private sector has gained certainty and predictability from the state requirements that set standards for local governmental planning and for implementing programs and regulations that provide procedures for ensuring consistency among jurisdictions.

6. The state programs have stimulated a growing recognition that plans must be linked to workable implementation programs and that public guidance of urban development is a long-term process that should be incorporated in every jurisdiction's administrative structure.

7. Experience in Oregon, Vermont, and Florida indicates that state programs take time to mature and require continuous fine-tuning and re-evaluation to maintain effective and creative

intergovernmental relationships for managing growth and development.

Existing state growth management programs have also raised some questions and issues that should be considered in formulating future programs:

1. In general, state programs have not recognized differences in local governments' planning needs or abilities to respond to state mandates. Although some states such as Washington and Vermont have provided for optional participation by local governments, planning requirements in all programs have not distinguished between community size, growth rate, or other characteristics that might affect the nature of planning. This issue was recognized in the recent evaluation of Florida's program, in which the evaluation committee concluded that Florida should move away from the "one size fits all" type of requirements.

2. State agencies administering growth management statutes have found that statements of state goals and policies require further definition to provide sufficient guidance for determining consistency of state and local plans. The exercise of interpreting broad goals often entails formulation of detailed guidelines and administrative rules to guide preparation of plans and plan reviews. These requirements generally were not foreseen in the original statutes and are just beginning to emerge as significant components of state growth management programs.

3. The long-term nature of state growth management programs demand continuity of administration in a political arena, state government, which traditionally has been highly unsettled. To date, Oregon's and Florida's programs have benefitted from strong constituent support that has maintained staff and budget priorities for growth management programs through several state administrations. Maine's program, severely cut back for budget reasons soon after enactment, illustrates the type of problem that may be faced by other states in the future.

4. Several states, having issued mandates for more planning or specific mechanisms for managing growth, have failed to provide adequate financial assistance to aid local governments in meeting requirements. In general, state funding of additional needs for local planning has been unsatisfactory. Florida's example of requiring concurrency but not providing adequate funding to correct state highway deficiencies, remains a sore point in in-

tergovernmental relations.

5. Evaluations of Oregon and Florida programs suggest that their focus on establishing procedures for planning according to state goals has been largely successful, but that results "on the ground" have fallen short of desired objectives for urban development and protection of open spaces, natural resources, and environmentally-sensitive lands. In the future, state programs may consider the possibility of greater involvement in setting minimum development standards (such as the minimum density provisions adopted in Portland, Oregon) to be incorporated in local plans.

For states that have not yet entered the growth management process, the experiments in these states are the beginning of a process that is essential to meet the challenges of the 21st century. The advantage of a state-wide land planning system is that it provides a means for coordinating what has become an intergovernmental, interagency process of regulating and directing the development and conservation of the land.

The earliest entrants in statewide land use planning have provided the others with a menu of options. They have framed the issues by their experiences. In considering state roles in growth management, each state must assess its unique needs, strengths and weaknesses. Slow growth states need to shepherd the growth they will experience as carefully as, but differently than, states with more pronounced rates of growth. States with county governments have an option to stimulate intermunicipal planning. Regions with aging cities and infrastructure need to allocate capital resources to revitalize these places while planning to create new centers of growth and development that complement the role of central cities, rather than compete with them. It is within the framework of statewide planning that these decisions can be made and workable strategies constructed.

In summary, state growth management is in a revolutionary but also evolutionary stage — revolutionary in establishing new playing fields for managing development; evolutionary in adapting to circumstances and issues that arise during program administration. The programs are suspended not in equilibrium but in a political sea that will push and tug at the forces that both bind and divide public interests in urban development.