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## Reforming Growth Management in the 21st Century: The Metropolitan Imperative

Douglas R. Porter

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# REFORMING GROWTH MANAGEMENT IN THE 21ST CENTURY: THE METROPOLITAN IMPERATIVE\*

*Douglas R. Porter*

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The aims of growth management in the twenty-first century must come to terms with the immense significance of metropolitan development patterns in the United States. Metropolitan areas are home to eighty percent of Americans and the major sources of wealth and civilization in the nation. Yet they are growing with little guidance from principles of smart growth, sustainable development, or other strategic direction of the development process. As a result, patterns of development continue to shift investments outward to new territories while the structure of existing urbanized areas is ill-maintained. The challenge of growth management in the decades ahead will be to redirect the energies of metropolitan development to create truly sustainable communities. This only can be

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\* This Article is a revised and updated version of an Article previously published by the same author as *Reinventing Growth Management in the 21<sup>st</sup> Century*, 23 WM. MARY ENVTL. L. & POL'Y REV. 705-38 (1999). Mr. Douglas R. Porter is the President of The Growth Management Institute in Chevy Chase, Maryland. He received his M.S. in Urban and Regional Planning from the University of Illinois in 1960.

accomplished with more effective regional governance that recognizes the critical importance — to the nation, the States, and the nation's citizens — of strategic management of metropolitan development.

This Article proposes that the principal task of future growth management programs (whether defined as “smart growth,” “sustainable development,” or other terms) will be to redirect the flow of value creation to maintain and enhance existing investments in urban and suburban communities. To accomplish this, development policies of individual jurisdictions must be made accountable to broader interests at metropolitan, State, and even federal scales. States should assist in improving the policy context for redirecting investments. But regional organizations, many experiencing renewed vitality, offer the most effective channel for reforming metropolitan development patterns.

### I. A CULTURE OF LAND CONSUMPTION

America's land resources have been viewed from the arrival of the first European settlers as an economic opportunity awaiting exploitation. To early colonists, land seemed inexhaustibly abundant. Immigrating settlers fanned across the territories, taming the wilderness, clearing land for farms, building towns, extending roads and canals, and moving west. Frederick Jackson Turner cogently summed up the westward drive: “Up to our own day [1893] American history has been in a large degree the history of the colonization of the Great West. The existence of an area of free land, its continuous recession, and the advance of American settlement westward, explain American development.”<sup>1</sup> Along the way, frontier hunters and trappers, traders, and farmers established rugged individualism as an icon of American social norms. In later centuries, growing numbers of urban dwellers reformulated that individualism, preferring single-family houses on large lots, creating myriads of local governments, and readily adopting automobiles to achieve ubiquitous mobility. In his treatise on the growth of American cities, Kenneth Jackson opines:

[n]o amount of urban gentrification or rural revival can obscure the fact that suburbanization has been the outstanding residential characteristic of American life. The process may slow in the next half-century as rising energy costs encourage higher population densities and less sprawl and as “urban” problems of crime and obsolescence become typical in the

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1. FREDERICK JACKSON TURNER, *THE FRONTIER IN AMERICAN HISTORY* 1 (1976).

inevitably aging suburbs. But the national cultural preference for privacy, for the detached home on it[s] own plot, will not easily be eroded.<sup>2</sup>

Within this frame of reference, land ownership is viewed virtually as a birthright; renters are widely considered unfortunates unable to claim property rights. The dominance of such attitudes helps to explain Americans' readiness to leave crowded cities for a place in the country, or at least in a subdivision with homes not too near to their neighbors.<sup>3</sup> People moving out (and often up) seem to prefer sizable lots, deep building setbacks, and sweeping road-scapes. Half-acre lots are common in suburban communities; rural areas offer even larger homesites.

One result of large-lot development is that metropolitan areas are spreading farther and faster than ever before.<sup>4</sup> A recent analysis of metropolitan growth trends found that most metropolitan areas in the United States are adding urbanized land at a much faster rate than they are adding population. Between 1982 and 1997, the amount of urbanized land increased by forty-seven percent while the nation's population grew by seventeen percent.<sup>5</sup> Phoenix, Arizona and its surrounding suburban jurisdictions, although growing more dense over the fifteen-year period,<sup>6</sup> are developing land at about an acre an hour.<sup>7</sup> Between 1970 and 1990,

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2. KENNETH G. JACKSON, *CRABGRASS FRONTIER* 304 (1985).

3. According to the U.S. Census, the percentage of Americans living in central cities has remained virtually constant (at about 31%) since 1930. The proportion of suburbanites grew from one-third of metropolitan populations in 1960 to 60% in 1990. U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 18-20 (102d ed. 1981) (providing growth statistics through 1980) [hereinafter 1980 CENSUS INFORMATION]; U.S. BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES* 31-43 (118th ed. 1998) (providing growth statistics from 1980 through 1990) [hereinafter 1990 CENSUS INFORMATION].

4. See OPENLANDS PROJECT, *LOSING GROUND: LAND CONSUMPTION IN THE CHICAGO REGION, 1900-1998*, at 8 (1998). Openlands Project (1998) finding that between 1990 and 1996, the population of the Chicago urbanized area increased by 9% during that period while the development land area grew by 40%. Northeastern Illinois Regional Council (finding that Chicago's land area increased only slightly faster than its population growth, chiefly because homeownership is growing as a proportion of all housing). *Solimar Research Group* demonstrating that western metropolitan areas are developing more intensively than metropolitan areas in other parts of the nation.

5. WILLIAM FULTON, ET AL., *WHO SPRAWLS MOST: HOW GROWTH PATTERNS DIFFER ACROSS THE U.S.* (Brookings Inst. Ctr. on Urb. and Metro. Policy 2001).

6. *Id.* at 15.

7. Gersh, Jeff, *Subdivide and Conquer: Concrete, Condos, and the Second Conquest of the American West*, *THE AMICUS J.*, Fall 1996, at 15.

Cleveland's urbanized area expanded by thirty-three percent while the regional population fell by eleven percent during those two decades.<sup>8</sup>

Nationally, urban and other uses converted nearly 16 million acres of forests, cropland and other open spaces from 1992 to 1997, an annual rate more than twice the 1.4 million acres per year that were lost in the previous decade.<sup>9</sup> In the southeast region of Boston, more land has been developed in the last forty years than in the preceding 330 years stretching back to the Pilgrims' landing in 1620 — a rate of land consumption two and one-half times the rate of population increase.<sup>10</sup> Accompanying spreading residential development in suburbia are land-consuming mega-centers of commercial and industrial activity — shopping malls, big-box retailers, and office parks — that demand large sites.<sup>11</sup>

## II. SHIFTING INVESTMENTS IN DEVELOPMENT

These trends in metropolitan form can be viewed as patterns of public and private investments that favor outward expansion rather than inward intensification and renewal. Historically, communities developed by supplying proximity and access to activities, resources, and important institutions (religious, governmental, and commercial), thus adding value to residence and workplace. That value increased as communities intensified and expanded their physical form. The great migrations to cities during the industrial revolution occurred as manufacturers concentrated employment in central locations. Towns became cities and cities grew into clusters of urban places, metropolitan regions of great economic and social value to the nation.

During the twentieth century, cities and metropolitan areas began expanding in all directions with the advent of automobiles that allowed

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8. *Alternatives to Sprawl*, LINCOLN INSTITUTE OF LAND POLICY, 1995, at 5.

9. *Natural Resources Inventory*, NATURAL RESOURCES CONSERVATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE (Wash., D.C. 1997).

10. SOUTHEASTERN MASS VISION 2020 PROJECT, *Southeastern Massachusetts Vision 2020: An Agenda for the Future*, Jan. 1999, at 2.

11. Christopher B. Leinberger, *The Metropolitan Observed*, URB. LAND, Oct. 1998, at 32. Leinberger points out that "the 1990s are witnessing the emergence of fifth-generation metropolitan cores [large suburban business centers] 40 to 60 miles from downtown in certain fast-growing areas such as Dallas, Houston, and Atlanta." *Id.*

much freer and lengthier movements among activities.<sup>12</sup> The creation of value in developing metropolitan areas shifted from one central place to many clusters of activities in separate governmental jurisdictions, all competing for primacy. Tied to the shift of value creation in suburban locations is a devaluation and a disinvestment in core urban places. A recent study found that between 1960 and 1990, median family income in central cities in the twenty-four most populous urbanized areas declined by fifteen percent relative to their suburbs.<sup>13</sup> Significantly, twenty percent of the suburban jurisdictions declined faster than their central cities, indicating economic distress among older suburbs as well.

The massive shift of growth from central to suburban and even rural places reflects deep-seated American norms of independence and mobility, but also is driven by desires for protective and nurturing living environments with good schools, low crime rates, and natural beauty. These values represent sensible choices for many individual households but they come at a collective price of externalized costs. Conversion of open lands to urban uses inevitably risks adverse effects on essential environmental qualities, from stream pollution caused by run-off from impervious surfaces to loss of wildlife species by destruction or disruption of habitats.<sup>14</sup> Under these conditions, even heroic efforts by developers to

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12. EDGAR M. HOOVER & RAYMOND VERNON, *ANATOMY OF A METROPOLIS* 254-55 (1959). The authors note the advent of an "outer ring" of the New York metropolitan area that they anticipated would grow by virtue of the extension of high-speed highways:

Freed from the need to be close to the centers of the old cities — unbound from spatial restraints by the wider use of the automobile and the truck — the people of the [r]egion and many of the enterprises on which they live will devour space at a faster rate than ever before.

*Id.*

13. WILLIAM LUCY, *THE ERA OF DECLINING SUBURBS: STRATEGIC PLANNING FOR METROPOLITAN RENEWAL* 3 (1998) (unpublished manuscript on file with author); see also John D. Kasarda et al., *Central-City and Suburban Migration Patterns: Is a Turnaround on the Horizon*, 8 *HOUSING POL'Y DEBATE* 307, 343 (1997) (observing that "the large net flows of higher-income households from the central cities to the suburbs continued through 1996, it seems likely that income disparities will widen further in the years ahead.").

14. Rutherford H. Platt, *Introduction and Overview*, in *THE ECOLOGICAL CITY* (Rutherford H. Platt et al. eds., 1994) Platt summarized the views of many writers:

Urbanization, in the traditional view, destroys natural phenomena and processes, demanding inputs . . . drawn from elsewhere to replace and augment local resources. The inadequate and impaired "carrying capacity" of the urbanized region is offset by the plundering of nonurban hinterlands . . . [and] the ecological impacts of urbanization are experienced far beyond the urban fringe. They extend to surrounding agricultural lands, to distant rivers and their watersheds, to lands

retain basic environmental qualities within development sites raise the risk of environmental damage both on and off building sites. Development in green field areas also requires costly extensions of basic community infrastructure systems such as roads and schools, while existing systems in urbanized areas go begging for maintenance and reinvestment. More insidious, perhaps, are the impacts on daily living, from the time taken for lengthy commutes to work and school to the social isolation of suburbanites and inner-city populations.<sup>15</sup>

Since the mid-1900s, we have gradually recognized the reality of these hidden costs and the resulting declines in the value-creating propensities of community-building. In the 1970s, for example, a task force on land use and urban growth reminded Americans that "urban deterioration, environmental degradation, suburban sprawl, racial and economic segregation, and lack of community — the all-too-familiar problems of metropolitan areas . . . — are not inevitable."<sup>16</sup> Almost a quarter-century later, another examination of urban development issues concluded that, although more and more Americans live, work, and play in suburban settings, "the suburban expansion imposes real — if often camouflaged — burdens on the texture, continuity, and depth of social life, as well as on the diversity, beauty, and health of the surrounding landscape."<sup>17</sup> A 1995 report by the Bank of America and other groups concluded that these burdens pose economic costs as well: "Businesses suffer from higher costs, a loss in worker productivity, and underutilized investments in older communities."<sup>18</sup>

The Bank of America report concluded that "we can no longer afford the luxury of sprawl. Our demographics are shifting in dramatic ways. Our economy is restructuring. Our environment is under increasing stress. We cannot shape [our] future successfully unless we move beyond sprawl."<sup>19</sup> To change the current patterns of metropolitan development, however, will

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that provide timber, crops, grazing, water, and recreation, to sources of minerals, to the oceans where wastes are dumped, and to the atmosphere, which is increasingly altered by greenhouse gases and chlorofluorocarbons (CFCs) that emanate from urban sources.

15. TIMOTHY BEATLEY & KRISTY MANNING, *THE ECOLOGY OF PLACE* 10(1997) (noting the high economic and social costs of sprawling forms of development).

16. *THE USE OF LAND: A CITIZEN'S POLICY GUIDE TO URBAN GROWTH* 3 (William K. Reilly ed., 1973).

17. HENRY L. DIAMOND & PATRICK F. NOONAN, *LAND USE IN AMERICA* 1 (1996).

18. WILLIAM FULTON, *BEYOND SPRAWL: NEW PATTERNS OF GROWTH TO FIT THE NEW CALIFORNIA* 1 (1995).

19. *Id.*

require fundamental shifts in value creation — redirection of public and private investments in community development. Flows outward to suburban and rural areas must be slowed and balanced by reinvestments in existing urban areas and enhancement of existing settlements.

### III. PUBLIC POLICIES SUPPORT SPRAWL

Local governments in the path of metropolitan expansion generally approve of low-density development in green field areas. Their actions are swayed by the presumed promise of economic and tax-base growth, urged on by property owners and business interests anxious to capitalize on development opportunities. Local officials are quick to welcome development by permissive zoning and comprehensive plans shaped to target the primary market in rural locations — the homeowners attracted by opportunities to purchase large lots at low prices.

One result of these tendencies is that many developing areas are highly overzoned for the amount of foreseeable development. Experience in Maryland shows that zoning by the State's local jurisdictions as of 1996 allows five times as much development as required for projected growth for the next twenty-five years.<sup>20</sup> That range of opportunities for development provides little guidance for what, where, and when growth will occur.

Partly in response to the inadequacy of zoning to discipline the development process, many communities are extending conventional planning and regulatory capabilities by adopting growth management techniques that provide greater control over development. Still, the most common techniques generally are premised on accommodating projected growth.<sup>21</sup> Urban growth boundaries, one well-known measure, typically designate one or more growth areas with capacities for decades of development.<sup>22</sup> Adequate public facility provisions allow development if supporting infrastructure systems are available or planned.<sup>23</sup> Imposition of

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20. MD. ECON. GROWTH, RESOURCE PROTECTION, AND PLAN, COMMISSION ANN. REP. 19 (1996) (on file with author).

21. This premise is intrinsic in accepted definitions of growth management, in which growth management is viewed as "a dynamic process in which governments anticipate and seek to accommodate community development in ways that balance competing land use goals and coordinate local with regional interests." DOUGLAS R. PORTER, *MANAGING GROWTH IN AMERICAN COMMUNITIES* 10 (1997).

22. *Id.* at 67. See generally V. GAIL EASELY, *Staying Inside the Lines*, in *PLANNING ADVISORY SERVICE REPORT NO. 440* (Am. Planning Ass'n ed., 1992).

23. PORTER, *supra* note 21, at 122-23.



impact fees as an infrastructure financing device virtually guarantees rights to development and investments in facilities for which the fees are paid.<sup>24</sup>

Not all communities seek to accommodate future growth, of course; indeed, early legal growth management programs adopted by small, rapidly-growing communities such as Ramapo, New York, and Petaluma, California, aimed to limit annual rates of growth. Growth limits continue to be imposed by some suburban communities in certain states such as California and Colorado.<sup>25</sup> Other communities react to issues raised by development — needs for new infrastructure, for example — by reducing allowable densities, thereby limiting the amount of growth that can be accommodated. Across metropolitan areas consisting of dozens or even hundreds of local jurisdictions, however, such practices push development to other locales more tolerant of development, often those least capable of supporting growth.<sup>26</sup> Nevertheless, most localities on the edge of metropolitan development continue to welcome growth, supporting the outward flow of public and private investments.

State funding programs for basic community infrastructure also tend to promote green field development by emphasizing funding of new facilities rather than rehabilitation or replacement of older systems. State transportation departments are eager to expand highway systems; State school construction programs typically give priority to new schools in developing areas; and State water and sewer system financing programs are concerned mostly with adding capacity.

Public policies, therefore, generally encourage the low-density spread of metropolitan areas. Years ago, Anthony Downs commented that this pattern of development “is neither accidental nor caused by the operation of free markets. Rather, it results at least in part from public policies that are hard to change because they benefit a majority of urban households.”<sup>27</sup>

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24. Timothy Beatley, *Ethical Issues in the Use of Impact Fees to Finance Community Growth*, in DEVELOPMENT IMPACT FEES 339, 347 (Arthur C. Nelson ed., 1988). (discussing the “quid-pro-quo trading” implicit in community requirements for impact fee payments as a condition of development approval).

25. PORTER, *supra* note 21, at 78.

26. John Landis, *Do Growth Controls Work?*, 58 J. AM. PLANNING ASS'N 489, 498 (1992) (discussing findings from a comparative evaluation of California cities with and without growth controls).

27. KATHERINE L. BRADBURY ET AL., URBAN DECLINE AND THE FUTURE OF AMERICAN CITIES 177 (1982).

## IV. REDIRECTING THE FLOW OF VALUE

Changing the flow of value-creation in developing metropolitan areas will be a difficult task, given the primacy of public and private development practices that dictates continued green field conversions. There are hopeful countertrends, however. The tremendous revival of central-city downtowns in the real estate boom of the 1980s, although dampened in the early 1990s, appears to be back on track with the help of massive public investments in new, centrally-located sports and arts facilities.<sup>28</sup> Now the re-energized downtown markets are adding housing. According to a 1998 Brookings Institution survey, of twenty-one major cities surveyed, all but one (Atlanta) expected growth in the number of downtown residents over the next ten years.<sup>29</sup> Many of these residents are moving into warehouses, office buildings, and other, once-commercial, structures that are being converted for residential use.<sup>30</sup> Inner-city residents are benefiting from new sources of funding for housing. Lending institutions have stepped up financing for low- and moderate-income housing in inner cities, prompted by the requirements of the Community Reinvestment Act<sup>31</sup> and the availability of tax credits for low-income housing and historic preservation.<sup>32</sup>

Meanwhile, many suburban jurisdictions are evolving into higher-density, mixed-use communities. Suburban town centers are being revitalized by public and private investments.<sup>33</sup> Real estate economist Christopher Leinberger observes that many older business centers such as Buckhead in Atlanta and Bethesda in the Washington, D.C. region "are becoming some of the most urban, mixed-use metropolitan cores in the country."<sup>34</sup> In addition, designers of "neo-traditional" or "new urbanism" development patterns have succeeded in generating higher-density

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28. Dean Schwanke, *Real Estate Markets in Perspective*, in ULI ON THE FUTURE: REINVENTING REAL ESTATE 2 (Urb. Land Inst. ed., 1995); Michael S. Rubin, *Revitalization Through Entertainment-Enhanced Development*, in ULI ON THE FUTURE: REINVENTING REAL ESTATE 26 (Urb. Land Inst. ed., 1995).

29. BROOKINGS INSTITUTION CENTER ON URBAN AND METROPOLITAN POLICY AND FANNIE MAE FOUNDATION, SURVEY OF DOWNTOWN HOUSING TRENDS (1998) (on file with author).

30. See generally, e.g., Lawrence O. Houstoun, Jr., *Urban Awakening*, URB. LAND, Oct., 1998, at 35 (discussing urban renewal trends in Manhattan, Denver, and Philadelphia).

31. COMMUNITY REINVESTMENT ACT OF 1977, 12 U.S.C. § 2901-2907 (1994).

32. See, e.g., Tax Reform Act of 1986 § 252, 26 U.S.C. § 42 (1994 & Supp. IV 1998) (providing a tax credit for owners of structures that provide housing for low-income individuals).

33. See, e.g., Phillip Langdon, *In Search of a Center*, GOVERNING, June 1998, at 24; Terry Lassar, *Shopping Centers Can be Good Neighbors*, PLANNING, Oct. 1995, at 14.

34. Christopher Leinberger, *The Beginning of the End of Sprawl*, URB. LAND, Jan. 2000, at 33.

residential developments in some suburban communities, although such housing represents only a fraction of annual housing production.

These trends undoubtedly have assisted in reviving central cities and edging up densities in older suburban communities. Of eighteen cities that had lost population during the 1970s, six gained population and eleven slowed the loss of population in the 1980s.<sup>35</sup> Nationwide, central city populations were up 6.4% from 1980 to 1990 compared to only a .9% gain in the previous decade. The previously hard-hit northern cities cut their population losses from almost ten percent in the 1970s to one percent in the decade of the 1980s.<sup>36</sup> Still, the strong forces pushing a large proportion of metropolitan development outward continue to dominate growth trends. More needs to be done to achieve a sustainable balance of city and suburban development in metropolitan areas.

## V. SETTING NEW DIRECTIONS

One of the greatest obstacles to rethinking and redirecting metropolitan development and investment patterns is the great number of local governments, including special taxing districts, that now control much of the development process in every urban region. These individual public entities, established to act independently in determining and achieving their self-defined objectives, are fundamentally disinterested in envisioning, much less carrying out, regionwide strategies for metropolitan development. In the spirit of rugged individualism, they tend to be competitive and wary of collaborative actions.

### A. *A Regional Revival?*

Although local public officials harbor grave suspicions of the motives and capabilities of regional planning organizations, they may represent the best hope for managing metropolitan growth. Region-based planning and regulation gained support during the 1930s as growth spilled over city boundaries and new suburban jurisdictions proliferated. To provide a measure of coordination and cooperation between local units of government, many states established regional organizations. Local governments voluntarily formed regional councils, and federal legislation in the 1960s mandated formulation of regional transportation planning organizations in large metropolitan areas. Business groups sponsored

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35. 1980 CENSUS INFORMATION, *supra* note 3, at 18-20; 1990 CENSUS INFORMATION, *supra* note 3, at 31-43.

36. 1980 CENSUS INFORMATION, *supra* note 3, at 18-20; 1990 CENSUS INFORMATION, *supra* note 3, at 31-43.

regional problem-solving organizations such as the Alleghany Conference in Pittsburgh and the Bay Area Council in San Francisco to promote economic development across local jurisdictional boundaries. Metropolitan service districts have been established in many regions to manage transit systems, airport authorities, sewer systems, and other regionwide public facilities.<sup>37</sup> Adding to the mix are organizations such as the New York Regional Planning Association, a nonprofit group focusing on development strategies for a tri-state region, and the Metropolitan Council in Minneapolis-St. Paul, established cooperatively with the State to provide planning and delegated system management for the Twin Cities region.

With a few exceptions, however, few regional organizations have been very effective in steering metropolitan development. Many lack statutory authority to define metropolitan strategies and adopt regulatory powers for their implementation. Local governmental members of the most common type of regional group, councils or associations of government, guard their local independence by hobbling regional capabilities to persuade, guide, establish standards, and seek intergovernmental cooperation. In most metropolitan areas, regional agencies exist primarily to provide a forum for exchanging information and agreeing on cooperative endeavors — not unworthy functions but far short of strategic thinking about metropolitan development. Dodge, in his book *Regional Excellence*, observes that “we still consider regional governance on an ad hoc basis. We seldom think about future visions for governing our regions. Equally rarely do we design and implement collaborative strategies for achieving them.”<sup>38</sup>

### B. State Growth Management Initiatives

Recognizing the limitations of local governments and existing regional institutions to deal with development issues, several states, beginning in the early 1970s, have stepped in to assert state interests in guiding development.<sup>39</sup> Most are coastal states afflicted by sudden surges of growth that prompted citizens to call for better planning and more control over development. In particular, eleven states [alphabetically: Delaware, Florida, Georgia, Maine, Maryland, New Jersey, Oregon, Rhode Island, Tennessee, Vermont, and Washington] have adopted rather comprehensive

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37. WILLIAM R. DODGE, *REGIONAL EXCELLENCE* 295 (1996). Dodge comments, “[o]f the more than 33,000 single-service authorities, approximately 10[%] have a regional mandate for providing [various services].” *Id.*

38. *Id.* at 37.

39. *Id.*

growth management acts that require local governments, as well as State and regional agencies, to plan and regulate development in ways that achieve State goals.<sup>40</sup>

Goal statements in all of the programs, except Georgia's, explicitly call for concentrating growth and reducing sprawl. The first two goals in Washington's Act, for example, are:

"(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner."

"(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development."<sup>41</sup>

These aims are reinforced by language in some states' goal statements — those in Maryland, Oregon, Washington, and New Jersey, for example — that directs State-spending priorities to support compact growth and rural conservation.<sup>42</sup>

State growth management programs have achieved some worthwhile accomplishments. They have stimulated more and better local planning and a greater awareness of development issues among public officials. They have improved coordination among local, regional, and State programs that affect development. They have provided a significant policy

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40. The relevant State statutes are as follows: DEL. CODE ANN. tit. 29 [sections on "Land Use Planning Act," enacted 1996, and possible subsequent act "Delaware Conservation, Development and Redevelopment Plan" perhaps enacted 1997 or 98, amending §§ 9101 and 9102 and adding 9211A-9219A of tit. 29, amend tit. 22 with new § 101B, 341-351, and amending tit. 9 §§ 2656, 4956, 6956]; FLA. STAT. ANN. §§ 186.001-.911, 187.101-.201, 189.401-.427, 190.001-.0493 (West 1987 & Supp. 1993); GA. CODE ANN. §§ 36-70-1 to 36-70-5 (Michie 1991 & Supp. 1993); MD. ANN. CODE art. 66-b § 1.00-12.02 (1988 & Supp. 1998); MD. CODE ANN. State Fin. & Proc. §§ 5-401 to 5-402, 5-701 to 5-710 (1988 & Supp. 1998); 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); TENN. CODE ANN. 1998 ["growth policy act" amendments to tit. 4-7, 13, 49, 67, 68]; VT. STAT. ANN. tit 10, § 6001-6092 (1984 & Supp. 1992); WASH. REV. CODE ANN. §§ 36.70.010-36.701.980, 36.70A.045-36.70A.902 (West 1991 & Supp. 1993).

41. WASH. REV. CODE ANN. § 36.70A.020 (West 1998).

42. New Jersey State Planning Commission, THE NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN: REEXAMINATION REPORT AND PRELIMINARY PLAN (1992) adopted the plan, by the New Jersey Planning Commission in 1992, contains an entire section on public investment priorities, including a policy to "provide infrastructure and related services more efficiently by restoring systems in distress area, maintaining existing infrastructure investments, creating more compact settlement patterns in appropriate locations in suburban and rural areas, and timing and sequencing the maintenance of capital facilities service levels with development throughout the State." *Id.* The proposed updating of the plan clarifies the previous policy and adds weight to investing in areas with State-endorsed plans.

context for local decisions about development, thereby screening out the worst development practices.<sup>43</sup>

Still, after more than twenty-five years of State activity in managing growth, the limitations of State-administered programs in achieving real changes in development patterns have become apparent, particularly in growing metropolitan areas. Sprawling development remains rampant, public facility investments continue to promote green field development, local zoning decisions still favor low-density and large-scale forms of development, and private financing and public approvals for fringe-area development are obtained more easily than for infill development or redevelopment.

Oregon's planning goal fourteen, for example, calls for "encouragement of development within urban areas before conversion of urbanizable areas."<sup>44</sup> An evaluation of Oregon's program conducted in 1991, however, concluded that "Oregon's fast-growing urban areas are seeing their livability slip and are not building the communities they envisioned . . . [and] residential development is consuming more land than their plans call for . . . ."<sup>45</sup> The study also found that significant urbanization was occurring outside city limits.<sup>46</sup>

Similar concerns have arisen regarding Florida's growth management program. A governor's task force reported in 1989 that "most of Florida's future growth will be accommodated through sprawling, low-density development on raw land, with jobs and housing moving away from existing urban centers, unless decisive action is taken . . . to reverse this trend."<sup>47</sup> The report recommended refocusing Florida's growth management efforts to stem further sprawl and promote infill and redevelopment, and was followed by adoption of an "anti-sprawl" rule to guide local planning. Nevertheless, although the rule appears to have constrained planned sprawl in rural areas, there are few signs that it has produced more compact development within urbanizing areas.

Many supporters, as well as detractors, of Florida's State growth management process recognize that local plans produced according to State law are little more than paper shells that avoid hard policy choices

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43. See, e.g., Douglas R. Porter, *The States: Growing Smarter?*, in ULI ON THE FUTURE: SMART GROWTH 28, 33-34 (Urb. Land Inst. ed., 1998) (discussing review of developments of regional impact (DRIs) in Florida, Vermont, Delaware, and Georgia).

44. DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, OREGON'S STATEWIDE PLANNING GOALS AND GUIDELINES 21 (1995).

45. OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, SUMMARY REPORT, URBAN GROWTH MANAGEMENT STUDY 5 (1991).

46. *Id.* at 37.

47. THE GOVERNOR'S TASK FORCE ON URBAN GROWTH PATTERNS, FINAL REPORT 3 (1989).

and leave much to day-to-day politics.<sup>48</sup> In addition, State agency staffs reviewing local plans tend to resort to checklists rather than rigorous analysis of the import of stated policies and follow-up regulatory requirements. A recent study of the Florida plan review process found that State-approved comprehensive plans of eighteen coastal communities explicitly addressed only half of the sixty State goals and policies relating to coastal storm hazard elements.<sup>49</sup> Less than half of the plans proposed land use and development controls to achieve goals and policies. The study concluded that political pressures and administrative capabilities substantially affected the plan review and approval process. Compliance of local plans to Florida's State goals would seem to be a sometime thing or, in the words of the report's authors, "highly variable."<sup>50</sup>

A greater concern is the realization that all the plans, all the regulations, and all the checkpoints up and down Florida's planning ladder are largely failing to create the kinds of communities many people wish to live in. Although more and better planning may be preventing the great development blunders of the past and prodding public officials to think more carefully about development and environmental conservation, the form of development "on the ground" still rankles: traffic congestion is up, school overcrowding continues, far-flung developments consume open space, and unsightly strip malls seem to outnumber consumers. Local governments and regional agencies appeared fixated on planning by the book but loosening the reins on regulation, and on nitpicking individual projects rather than building workable urban communities. Even new initiatives launched during the 1990s have yet to greatly affect Florida's development process.

Reasons for this state of affairs boil down to one point: states cannot do the job alone. State agencies have a tough time coaxing local governments to do the right thing. Realistically, given market forces and the push/pull

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48. Charles L. Siemon, *Growth Management in Florida: Overview and a Brief Critique*, in STATE AND REGIONAL INITIATIVES FOR GROWTH MANAGEMENT 38, 48 (Douglas R. Porter ed., 1992) (referring to "cookbook approaches" and the "trick of shifting policy decisions to the land development regulations").

49. Robert E. Doyle & Richard A. Smith, *Local Government Compliance with State Planning Mandates: The Effects of State Implementation in Florida*, 64 J. AM. PLANNING ASS'N 457, 462 (1998).

50. *Id.* at 466. Furthermore, a report of Florida's Environmental Land Management Study Committee, comments that the "current state comprehensive plan [(the statement of goals and policies)] does not provide sufficient guidance to assist local governments in the development of local plans . . . [It] does not address physical growth and development issues in a focused and integrated fashion." Florida's Environmental Land Management Study Committee, *Building Successful Communities* 19 (1992).

of State and local politics, State planning agencies can prod local officials only so far to conform planning policies and regulations to State goals. All the States involved in growth management have encountered some local officials whose outright hostility, foot-dragging, and even incompetence has required endless negotiations to obtain even partially satisfactory responses. And when local officials make decisions on proposed development projects, too often they slide past the grand goal statements in their plans to promote carrying on as usual in the development process.<sup>51</sup> Perhaps states need help, and perhaps that help could come from regional organizations already in place, focused on and knowledgeable about local issues, and experienced in fostering collaboration and cooperation among local governments.

## VI. HOPES FOR REGIONAL STRATEGIES

Regional agencies generally face an uphill fight to craft and implement strategies for metropolitan development. Local governments, jealously guarding their individual perogatives, are unwilling to allow regional leadership to function effectively. State attitudes toward regional agencies have not helped much. In fact, most State growth management programs have focused very little attention on metropolitan development issues. Oregon's much-praised legislation and State goals never mention roles for urban regions and regional planning organizations (although, special provisions have since been made for Portland's Metro and State agencies to promote regional planning). Florida's top-to-bottom integration of State-regional-local planning was undercut by later constraints on regional powers to influence local decisions. Georgia's ambitious legislation that established major roles for regional agencies has been waylaid by conflicts over whether to designate existing agencies or establish new ones. The Washington, New Jersey, and Tennessee laws give counties primary responsibility for coordinating plans of cities and towns within their boundaries but assign no role to existing or potential multi-county regional

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51. See RAYMOND J. BURBY & PETER J. MAY, *MAKING GOVERNMENTS PLAN: STATE EXPERIMENTS IN MANAGING LAND USE* 144 (1997) (concluding that "the effects of [S]tate mandates are modest at best" because many local officials remain uncommitted to achieving State goals, so that the best of comprehensive plans do not necessarily lead to better growth management).



agencies, including Washington's well-regarded Puget Sound Council of Governments.<sup>52</sup> Maryland's "smart growth" acts emphasize State-local cooperation, bypassing existing regional organizations altogether.

Nevertheless, a resurgence of interest in regional roles for guiding metropolitan development appears to be gaining momentum. Dodge remarks that "we have begun to understand and accept the rising importance of regional governance, its emergence as a necessity from a tradition of being only a nicety."<sup>53</sup> One source of that momentum comes from environmental and civic groups of many stripes who are pressing for greater control over the spread of metropolitan growth into rural areas.<sup>54</sup> The concepts of "smart growth" and sustainable development, both inviting greater regional coordination, have become central themes for such advocacy groups.<sup>55</sup> Both concepts require trade-offs and balancing among development, environmental, social, and economic goals that can only be accomplished at the regional level, thus highlighting needs for effective regional growth management. Many of these groups joined with other organizations to promote significant changes in federal transportation acts that require greater attention to regional land use issues and opportunities for multi-modal transportation.<sup>56</sup>

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52. Washington's laws require certain counties and the cities within them to prepare and implement comprehensive plans WASH. REV. CODE ANN. §§ 36.070A, .040, .70A, 11 (West 1998). Only one provision mentions needs for coordination between counties. *Id.* § 36.70A.100. New Jersey's law requires the State planning commission to "negotiate plan cross-acceptance with each county planning board, which shall solicit and receive any findings, recommendations and objections concerning the plan for local planning bodies." N.J. STAT. ANN. § 52.18A-202 (West 1998). The law provides for the distribution of a preliminary State plan to metropolitan planning organizations but makes no other provision for specifically incorporating regional planning concerns in the State plan. In fact, the act excludes the Hackensack Meadowlands and Pine Barrens regional agencies, both powerful entities exerting control over large areas of the State, from the requirements of the act.

53. DODGE, *supra* note 37, at 37.

54. See, e.g., E.J. Dionne, Jr., *Allergic to Sprawl*, POST, July 17, 1998, at A21 (describing anti-sprawl campaigns in Arizona, Colorado, Maryland, and Michigan).

55. "Smart growth" has been defined as "restoring community and vitality to center cities and older suburbs. New smart growth is more town-centered, is transit and pedestrian oriented, and has a greater mix of housing, commercial and retail uses. It also preserves open space and many other environmental amenities." INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, WHY SMART GROWTH: A PRIMER 1 (1998) (on file with author). "Sustainable development" has more over-arching goals for meshing economic, social, and environmental goals: "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs." THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT, SUSTAINABLE DEVELOPMENTS 1 (1994) (on file with author).

56. Intermodal Surface Transportation Efficiency Act of 1991, and the subsequent reauthorization, The Transportation Equity Act of 1998.

Some states have created powerful regional agencies capable of exerting great influence on regional growth patterns, including Portland's State-chartered Metro council working within Oregon's State growth management program,<sup>57</sup> the Twin Cities metropolitan council established by State legislation and whose managing board is appointed by the governor,<sup>58</sup> the Cape Cod commission in Massachusetts,<sup>59</sup> and the New Jersey Pinelands commission.<sup>60</sup> The standard voluntary regional councils formed in many metropolitan areas can be influential. The San Diego Association of Governments (SANDAG), for example, has established credibility among local governments for its studies and database on regional trends. It also acts as the multi-modal transportation planning agency and has carried out major environmental, housing, and other planning efforts of great value to local businesses, residents, and governments. In 1988, local governments agreed to give SANDAG powers to administer a regional growth management program.<sup>61</sup>

Examples of recent regional actions illustrate the range of approaches being implemented throughout the nation:

- (1) the New York Regional Plan Association's successful participation in multi-state efforts to fund the purchase of major open space preserves in the northwestern sector of the metropolitan region,<sup>62</sup> which followed on the heels of the publication of the association's

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57. OR. REV. STAT. §§ 199.420.3, 268.015 (1998). The Portland Metro organization enjoys special status under the Oregon State growth management program, through which Metro manages the required urban growth boundary and implements transportation and housing rules written to apply primarily to the Portland metropolitan area. *Id.*

58. Both the 1967 act establishing the Metropolitan Council, 1967 Minn. Laws ch. 896 § 1, and the current revisions of the statute, MINN. STAT. § 473.123 (1998), which combined the Council with regional transit and waste control agencies, provide for the governor to appoint council board members.

59. See MASS. GEN. LAWS ANN. ch. 40B, § 4 (West 1994 & West Supp. 1998).

60. See N.J. REV. STAT. § 13:18A (1998).

61. The growth management initiative known as Proposition C was approved by voters in November 1988; subsequently a task force recommended in October 1989, giving SANDAG management responsibilities for the program; the joint powers agreement implementing that recommendation was ratified by the 19 local governments by February 1990, and the regional planning goals were ratified by the local governments in 1992. Peter M. Detwiler, *Is Cooperation Enough? A Review of San Diego's Latest Growth Management Program*, in STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT: POLICY ISSUES AND PRACTICAL CONCERNS 57 (Douglas R. Porter ed., Urb. Land Inst., 1992).

62. Robert D. Yaro, *Implementing RPA's Third Regional Plan for the New York Metropolitan Region*, ENVTL. & URB. ISSUES 9 (1997).

- third regional plan advocating five major “campaigns” to shape the region’s future;<sup>63</sup>
- (2) the emergence of a coalition of older suburbs in Ohio dedicated to fighting urban sprawl and steering greater State investments to existing cities and suburbs;
  - (3) a movement in southeast Massachusetts to establish a voluntary regional strategic development program through a system of interlocking, interlocal agreements;<sup>64</sup>
  - (4) a federal/State/local program in Southeastern Florida to stimulate infill and redevelopment within the existing urbanized corridor to relieve pressures on further development that would adversely affect restoration of the Everglades;<sup>65</sup>
  - (5) the Greenbelt Alliance’s efforts in the San Francisco region to promote local growth boundaries and establish a de facto regional urban growth boundary to guide future growth and reinvestment in existing urban areas;<sup>66</sup>
  - (6) the establishment of a forum of local elected leaders in the Boise, Idaho region that meets regularly to discuss and seek resolution to regional issues, and its involvement in fashioning regional solutions to future infrastructure needs;<sup>67</sup>
  - (7) adoption by the Denver regional council of governments of a metropolitan vision and plan in 1997 that laid out a long-range growth strategy, including an urban growth boundary. Local governments have voluntarily collaborated with the council to establish and manage a designated growth area;<sup>68</sup>
  - (8) programs of the bi-State development authority in the St. Louis metropolitan area that promote economic development, plan and operate transportation facilities, and pursue regional development

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63. *See generally* ROBERT YARO & TONY HISS, *REGION AT RISK: THE THIRD REGIONAL PLAN FOR THE NEW YORK-NEW JERSEY-CONNECTICUT METROPOLITAN AREA* (1996).

64. *SOUTHEASTERN MASS VISION 2020 Project*, *supra* note 10.

65. *See generally* GOVERNOR’S COMMISSION FOR A SUSTAINABLE SOUTH FLORIDA INITIAL REPORT (1995) (recommending the program for the first time); SOUTH FLORIDA REGIONAL PLANNING COUNCIL AND THE TREASURE COAST REGIONAL PLANNING COUNCIL, *BUILDING ON SUCCESS: A REPORT FROM EASTWARD HO!* (1998) (discussing the current program which has come to be known as “Eastward Ho!”).

66. *See generally* GREENBELT ALLIANCE, *BOUND FOR SUCCESS: A CITIZEN’S GUIDE TO USING URBAN GROWTH BOUNDARIES* (1997).

67. *See generally* DOUGLAS R. PORTER, *SUMMARY REPORT, OF TREASURE VALLEY INFRASTRUCTURE VISION AND STRATEGY* (1990) (unpublished report, on file with author).

68. *See generally* DENVER REGIONAL COUNCIL OF GOVERNMENTS, *METRO VISION 2020 EXECUTIVE SUMMARY* (1997).

projects such as industrial parks and water supply and sewage disposal facilities.<sup>69</sup>

Such activity at the regional level signals a renewed interest in guiding large-scale patterns of development in major metropolitan areas.

#### VII. SHIFTING GEARS: TOWARD METROPOLITAN GROWTH MANAGEMENT

To recapitulate the argument presented in this Article advocating more effective regional management of metropolitan growth patterns:

- (1) current flows of public and private investments favor land-consuming development on the periphery of metropolitan areas generate economic, social, and environmental costs that are wasteful and unsustainable;
- (2) the overwhelming emphasis on "green field" development is aided and abetted by local governmental growth policies and regulations, which have not been substantially influenced by regional and State efforts to guide local decisions about development;
- (3) redirecting the flow of public and private investments to achieve greater parity with reinvestments in existing urbanized areas requires adoption of effective intergovernmental strategies and actions;
- (4) although State growth management programs provide a useful policy context for guiding metropolitan development and regional organizations, many of which are gaining in vitality and credibility, the programs are ideally placed to forge workable, collaborative intergovernmental relationships to alter future patterns of investment and growth.

The re-energized activities of regional organizations throughout the nation demonstrate that, in the right circumstances, regional organizations can be effective in formulating and administering metropolitan growth strategies in cooperation with local governments. Regional organizations affect metropolitan growth processes by providing credible information and evaluations of metropolitan growth issues, defining regional needs and

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69. The Bi-State Development Authority was formed in 1949 by a Missouri-Illinois compact ratified by the U.S. Congress. Telephone interview with Katherine Klenom, Director of Management and Budget, Bi-State Development Authority (Dec. 8, 1997).

development strategies, establishing a central mechanism for coordination of local development plans and decisions, and strengthening that coordination through management of key regional services.

A State policy context supporting metropolitan growth management can add authority to regional efforts. Whether acting under State authority or as ad hoc, voluntary coordinating organizations, however, regional organizations, provide a valuable venue for guidance of metropolitan development that is considerably closer to on-the-ground decision making on development issues than State agencies.

Clearly, however, the quid pro quo of greater regional involvement in metropolitan development is the creation of collaborative intergovernmental decision making processes rather than top-down authority. Clearly, also, regional actions must be viewed as adding real value to metropolitan development rather than imposing costly changes in the development process.

To be effective in this role, regional organizations must be outfitted out with workable tools for influencing metropolitan growth. Although individually tailored to each region's needs and governmental context, these mechanisms should focus on building regional capabilities for redirecting the flow of public and private investments. Three key capabilities are the determination of metropolitan development strategies, the employment of specific implementation mechanisms to influence patterns of development, and the establishment of local accountability for decisions affecting regional development.

#### *A. Collaboratively Define Metropolitan Development Strategies and Objectives*

Regional organizations should influence public and private investment decisions by formulating and proclaiming goals and targets for reshaping metropolitan development. To be effective, regional policy statements must rise above the piecing together of local plans and go beyond the grand and bland visions so popular today. Like SANDAG's adopted regional objectives and the New York third regional plan's five "campaigns," regional strategies should focus on affecting key regional components of development — for example, widening choices and better integrating of transportation and land use patterns, building on existing assets by creating incentives for infill and redevelopment, and identifying major components of green infrastructure systems for conservation and enhancement. Strategy statements should create a compelling case for changes in traditional development processes and define new directions for public and private decisions on development. To add force to such

strategies, measurable short-term and long-term objectives, like those set forth in Portland's housing and transportation rules, should be defined to provide road maps for achieving strategies.

As always, these statements will gain strength and credibility through determination by collaborative processes involving local governments and other interests. Their significance can be amplified by positive State support in the form of State investment policies, programs, and incentives for achieving regional goals for metropolitan development.

#### *B. Employ Specific Implementation Programs and Measures Calculated to Change Patterns of Development*

Setting goals and targets is good, but participating in achieving them is better. Regional organizations can increase their influence over the development process by selectively initiating programs to shape metropolitan development that reinforce and coordinate local measures in key areas such as transportation, economic development, open space conservation, housing, and infill development. These might include, for example, designations of growth areas and conservation areas to be reflected in local plans and zoning; formulation of funding mechanisms for major regional systems and facilities, including green infrastructure; programs to link green field development with retrofitting of development in existing urban areas; and benchmarking processes by which to track progress toward regional goals. Identification and selection of these measures should demonstrate the value added to local efforts by regional actions.

#### *C. Establish Accountability for State, Regional, and Local Decision Making*

For regional strategies and policies to be taken seriously, some process for assuring compliance should be established, such as leadership, use of sanctions and incentives, service delivery responsibilities, and guidance on State and local investments affecting patterns of development. Regional organizations can exercise creative leadership and persuasive consensus building among local governments and other constituencies to influence metropolitan development. Few regional organizations possess regulatory powers and even those that do prefer to pursue collaborative relationships among stakeholders to achieve regional objectives. A compelling case for regional cooperation will demonstrate the value added by pursuing regional strategies. New York's regional plan association, which has no governmental authority, influences public and private decision makers by

exerting leadership in identifying key metropolitan development needs and making a compelling case for meeting those needs.

Although most regional organizations will lack powers to require compliance with adopted regional strategies and objectives, they can routinely monitor or periodically audit State and local development decisions and report on the extent of compliance and the implications of noncompliance. SANDAG's voluntary process allows local governments to self-certify conformance with regional strategies but SANDAG tracks and reports on local development decisions affecting the region. The effect of regional "notice" of noncompliance can have a powerful influence with elected officials.

Like several State growth management programs, regional organizations could provide incentives and/or sanctions to encourage compliance. Professor William Lucy has proposed the creation of a "Sustainable Region Incentive Fund" to encourage reinvestment and enhancement of neighborhood quality. Local governments and State agencies could be rewarded for progress toward measurable goals that promote, for example, resource conservation, efficient transportation, and lower facility costs.<sup>70</sup> Maryland's "smart growth" program withholds State funding for facilities outside designated growth areas. Acting in concert with a host of regional and State agencies and interest groups, the New York regional plan association leveraged the threat of funding a multi-billion dollar water treatment plant for New York City into a massive program to maintain water quality in the up-state reservoir system by restricting growth in the watershed.<sup>71</sup>

One of the strongest ways regional organizations can affect public and private investment in development is by managing the provision of significant regional services. Many regional agencies have been given responsibilities for administering one or more regionwide facility systems, such as transit service or sewage collection and treatment. The Twin Cities metropolitan council, for example, operates both transit and wastewater treatment systems for the region. SANDAG administers multi-modal transportation planning and budgeting for jurisdictions in San Diego County. These functions provide the agencies with significant leverage to influence the form of metropolitan growth.

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70. William Lucy, *The Era of Declining Suburbs 20* (1998) (unpublished manuscript, on file with author).

71. Andrew C. Revkin, *Billion-Dollar Plan to Clean the City's Water at Its Source*, N.Y. TIMES, Aug. 31, 1997, at A25. For more background on the conditions, issues, and potential solutions, see Jayne E. Daly, *The Protection of New York City's Drinking Water*, 1995 PACE L. REV. 63 (Commemorative Ed.).

Lacking direct management responsibilities, regional organizations still can guide investment decisions through planning processes that provide important information for decision making. Many regional organizations formulate functional plans for major regional infrastructure systems. To the extent that such plans help to implement regional strategies and objectives, they can provide powerful guidance for metropolitan growth patterns.

Thus, regional organizations can draw on a number of tools for guiding metropolitan growth. But, perhaps they could gain strength from being given special status, as suggested below.

#### VIII. METROPOLITAN REGIONS AS "CRITICAL AREAS"

The Model Development Code published by the American Law Institute in 1975 proposed an innovative concept: designating "areas of critical state concern."<sup>72</sup> Such designations were intended to offer a means of protecting and preserving significant natural environments threatened by development or other activities, such as farming and logging. Protection was provided by subjecting land use and development in those areas to special planning and regulatory requirements, usually imposed and enforced by a State or regional agency. The critical areas concept was embodied in Coastal Zone Management Act in 1972<sup>73</sup> and adopted by a number of states and regional organizations. The Chesapeake Bay watershed, for example, was designated by Maryland as a critical area in which special restrictions on development were appropriate.<sup>74</sup>

A variation on this concept is the Habitat Conservation Plan (HCP) permitted under an amendment to the Endangered Species Act.<sup>75</sup> If approved by the U.S. Fish and Wildlife Service, an HCP can lead to the issuance of a section 10 "incidental take" permit for endangered species.<sup>76</sup> HCPs, developed jointly by developers, local officials, environmentalists, and other stakeholders in the process, identify habitat areas to be conserved and areas where development can occur. Development may be allowed in some small parts of habitat areas in exchange for conservation of other habitat areas and creation of a management program to enhance

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72. MODEL LAND DEV. CODE § 7-201 (1975).

73. COASTAL ZONE MANAGEMENT ACT OF 1972, 16 U.S.C. § 1455b(b)(2) (1994 & Supp. IV 1998).

74. MD. CODE ANN., NAT. RES. II § 8-801 (1990 & Supp. 1999).

75. Endangered Species Act of 1973 § 4(a)(3)(A), 16 U.S.C. § 1533(a)(3)(A) (1994 & Supp. IV 1998).

76. *Id.* § 10(a)(1)(B).



the propagation and survival of the species. They lend predictability to the planning and development process.<sup>77</sup>

Another example is provided by federal and/or State designations of areas with distinctive, but threatened environmental features, such as Lake Tahoe and the New Jersey Pine Barrens. The acts establishing these areas authorize formation of a management agency with powers to plan and manage protection of the threatened resource, allowing overrides of local regulations if necessary.<sup>78</sup> By comparison with typical metropolitan planning organizations, these types of agencies have been remarkably effective in achieving their conservation objectives.<sup>79</sup>

All three approaches share the characteristic of putting in place special public policy and regulatory requirements for special areas. Given that over eighty percent of Americans live and work in metropolitan areas, it seems appropriate to identify these urban regions as special areas whose long-term growth and development warrant special attention. Their designation as critical areas could come from the State (similar in intent to actions by Oregon and Minnesota for Portland and the Twin Cities metropolitan areas, respectively),<sup>80</sup> or through a joint powers, or intergovernmental compact approach as employed in San Diego. The action would designate or establish an organization with responsibilities for planning and managing metropolitan development in close collaboration with local governments and other constituents. Procedures for formulation and local affirmation of regional strategies, programs, and management mechanisms could be spelled out in the agreements.

## IX. CONCLUSION

This Article argues that management of our growing urban areas in the twenty-first century must recognize the overwhelming importance of strategic metropolitan development in the life of the nation. To date, regional management of growth and development has proved the weakest link in the chain of governmental influences over the development process. Until we strengthen that link, metropolitan growth patterns are doomed to

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77. See TIMOTHY BEATLEY, *HABITAT CONSERVATION PLANNING* (1994) (discussing the pros and cons of HCPs).

78. Tahoe Regional Planning Compact, 23 U.S.C. § 134 (1994 & Supp. IV 1998); State Pinelands Protection Act, N.J. STAT. ANN. § 13:18A (West 1998).

79. See, e.g., Charles R. Goldman, *Lake Tahoe: A Microcosm for the Study of the Impact of Urbanization on Fragile Ecosystems*, in *THE ECOLOGICAL CITY* 92, 93-105 (Rutherford H. Platt et al. eds., 1994). See also RICHARD F. BABCOCK & CHARLES L. SIEMON, *THE ZONING GAME REVISITED* 135 (1985) (discussing the role of zoning in environmental protection).

80. Exec. Order No. 94-54 State of Florida, Office of the Governor (1994).

drift unguided by widely-held prescriptions for improved forms and functions of development. The great challenge for growth management in the years, decades, and generations ahead is to reformulate our governance of the development process to better balance and integrate metropolitan growth. Designating metropolitan regions as “critical areas” could represent a new beginning.

