

Staff Paper

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Targeting Specific Outcomes with
Non-Marginal Institutional Change

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Abstract:

Communities across the country are struggling to accommodate population growth and economic development while limiting negative impacts of associated land development patterns.. At federal, state and local levels, policies and programs are being implemented in an attempt to mitigate the negative impacts of growth. Many of these programs are united under the concept of *Smart Growth*. There are numerous resources available that explain and describe applications of tens, if not hundreds, of smart growth tools (for example: see ICMA, 2003). The purpose of this paper is to highlight a few growth management programs that have incorporated tools characterized by fairly significant institutional changes. Of particular interest are the economic incentives and disincentives created by the institutional change. First, sprawl and growth management are defined. Next, the role of federal policy in growth patterns is reviewed briefly. Third, specific examples of growth management policy tools are provided. Finally, several policy issues critical to the achievement of growth management are discussed. Because this paper was initially presented as a general resource for public policy educators, the background material references include an internet site where available.

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Growth Management Tools and Programs Targeting Specific Outcomes with Non-Marginal Institutional Change

Patricia E. Norris¹

Introduction

Communities across the country are struggling to accommodate population growth and economic development while limiting negative impacts of associated land development patterns.. At federal, state and local levels, policies and programs are being implemented in an attempt to mitigate the negative impacts of growth. Many of these programs are united under the concept of *Smart Growth*. There are numerous resources available that explain and describe applications of tens, if not hundreds, of smart growth tools (for example: see ICMA, 2003). The purpose of this paper is to highlight a few growth management programs that have incorporated tools characterized by fairly significant institutional changes. Of particular interest are the economic incentives and disincentives created by the institutional change. First, sprawl and growth management are defined. Next, the role of federal policy in growth patterns is reviewed briefly. Third, specific examples of growth management policy tools are provided. Finally, several policy issues critical to the achievement of growth management are discussed. Because this paper was initially presented as a general resource for public policy educators, the background material references include an internet site where available.

Sprawl and Growth Management

Over the last decade, growth management and its implementation have received considerable attention because of concerns about observed growth patterns, specifically sprawl development. There is no single, accepted definition of sprawl. For their research on measuring sprawl and its impact, Ewing, Pendall and Chen (2002) characterized sprawl as "the process in

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which the spread of development across the landscape far outpaces population growth." In addition, they described the landscape created by sprawl development as one with:

- a population that is widely dispersed in low-density development;
- rigidly separated homes, shops and workplaces;
- a network of roads marked by huge blocks and poor access;
- a lack of well-defined, thriving downtowns or town centers (Ewing, Pendall and Chen, 2002)

In response to the increasing prevalence of such landscapes in metropolitan areas, state and local governments are focusing on growth management. As with sprawl, there is no single definition of growth management. In their report on Growth Management and Housing Affordability, Nelson et al. (2002) defined growth management as the deliberate and integrated use of the planning, regulatory, and fiscal authority of state and local governments to influence the pattern of growth and development in order to meet projected needs. Growth management is distinguished from growth control by its accommodation of projected development in a manner that achieves broad public goals, while growth controls limit or ration development. Growth management is distinguished by several basic goals:

- Preservation of public goods such as air, water and significant landscapes.
- Minimization of negative externalities and maximization of positive land use impacts.
- Minimization of fiscal costs of development.
- Maximization of social equity related to job accessibility, housing, services and leisure.
- Elevation of quality of life (Nelson et al., 2002).

While responsibility for land use policy generally is vested in local governments, many argue that state-level guidance and oversight of growth management programs is essential. In addition, state and local governments have asked the federal government to turn its attention to the impact of federal actions on growth patterns.

Federal Programs and Growth

A national land use policy act was introduced in Congress each year between 1968 and 1975. The intent was to establish a federal program of financial support for state land use planning, which would also incorporate certain planning standards and criteria for eligibility to receive the federal funds (Meeks). Although one bill was passed by the Senate in 1974, it did not reach a vote in the House (Hite). As a result, any federal influences on land use are generally indirect, but they may have considerable impact on growth patterns. The most notable examples are federal transportation and housing policies. The impacts of these policies have been described repeatedly (for example: Boarnet and Haughwout, 2000; Daniels, 1999; Zinn, 2002). Briefly, development of the national interstate highway system in the 1960s has been credited with facilitating access to areas beyond city centers and rural towns -- reducing the costs and inconvenience of locating homes and businesses far beyond population centers. Federal income tax deductions for home mortgage interest and property taxes have also been credited with spurring the increase in single-family homes, especially more expensive homes on large lots purchased by higher income families facing larger tax bills.

Recent changes in federal law have addressed, to some extent, the growth impacts of federal transportation expenditures. Starting with the Intermodal Surface Transportation Efficiency Act (ISTEA) in 1991, states have been able to apply federal highway funds to mass transit programs and bicycle and pedestrian projects. ISTEA also involved Metropolitan Planning Organizations in decisions about how and where federal transportation dollars would be used (Zinn, 2002). The 1998 Transportation Equity Act for the 21st Century (TEA-21) introduced the Transportation and Community and Systems Preservation pilot program, a comprehensive initiative of research and grants to investigate the relationships between transportation and community and system preservation and private sector-based initiatives.

The proposed 2003 Safe, Accountable, Flexible and Efficient Transportation Equity Act (SAFETEA) reflects ongoing concerns about homeland security, but it still provides that transportation-related land use planning and transportation-related growth management activities within the metropolitan and statewide planning processes are eligible for grant funds (U.S. Department of Transportation). It also provides for authorization of the Transportation,

Community and System Preservation Program through which states, local governments, and metropolitan planning organizations are eligible for discretionary grants for strategies that:

- improve the efficiency of the transportation system;
- reduce environmental impacts of transportation;
- reduce the need for costly future public infrastructure investments;
- ensure efficient access to jobs, services, and centers of trade; and
- examine private sector development patterns and investments that support these goals.

Private sector interests have linked housing and transportation concerns through an innovative home mortgage program currently being piloted by Fannie Mae in four test areas around the country – Chicago, Seattle, San Francisco Bay area and Los Angeles County. The Location Efficient Mortgage (LEM) encourages home purchases in location efficient communities by incorporating buyers' expected savings in transportation-related expenses into mortgage qualification calculations. Location efficient communities are neighborhoods where residents can walk from their homes to stores, schools, recreation and public transportation. These residents have less need to drive and, as a result, save on transportation costs (ILE, 2002). The LEM program was developed as a result of research conducted by a group of non-profit organizations (the Center for Neighborhood Technology, the Natural Resources Defense Council and the Surface Transportation Policy Project) that came together to form the Institute for Location Efficiency (ILE). The research was funded by the U.S. Department of Energy, the Federal Transit Administration, the U.S. Environmental Protection Agency, and several private foundations. ILE worked with Fannie Mae to define the LEM mortgage, and Fannie Mae agreed to purchase the loans originated under the LEM program in the test markets.

Institutional Change and Incentives for Growth Management in States and Localities

Recently, states have begun to consolidate growth management activities under the umbrella of Smart Growth, a label first used officially by Maryland's former Governor Parris Glendening in 1997 to describe his growth management initiatives. Since then, growth management advocates, as well as other state and local governments, have adopted the language

of smart growth for their efforts. Smart Growth America, a coalition of advocacy groups interested in growth management, has defined smart growth according to its outcomes. They define as smart growth that which:

- enhances and assures neighborhood livability
- does not depend upon transportation by automobile for travel from home to jobs or other destinations
- focuses on the needs of existing communities first
- enables all residents to be beneficiaries of prosperity
- costs less to support and requires fewer tax dollars
- protects open space.

A number of significant institutional changes and ground-breaking programs have arisen from state and local governments intent upon managing growth. Three particular areas in which non-marginal changes have been effected to address growth issues include programs for downtown revitalization, programs that attempt to focus growth, and programs for open space protection. For each of these areas, a few examples of specific changes and the associated growth management programs are described below.

1. Downtown revitalization

Especially in those areas where the deterioration of urban cores is feeding the rapid conversion of open space into homes and businesses, downtown revitalization has become an important part of growth management. The revitalization efforts often include rehabilitation of old buildings, including homes, economic development efforts to retain downtown business activity, and beautification projects in blighted areas.

With an enormous stock of residential and commercial buildings in need of rehabilitation, many cities have attempted to generate interest among developers and homeowners in working on rehabilitation projects. However, state building codes regulating construction standards have been designed largely to address new construction and have been tagged as a barrier to the rehabilitation of older buildings. New Jersey was the first state to address this concern. With its

new Rehabilitation Subcode, adopted in 1997, New Jersey no longer bases construction requirements for existing buildings on the same standards used for new construction (Connolly, n.d.). As a result, the costs and administrative obstacles associated with rehabilitating older buildings have been greatly reduced. Under the New Jersey Rehabilitation Subcode, buildings are not automatically required to meet modern-day standards, but are instead judged on their meeting the requirements to provide a safe building. The effectiveness of the change in the building code is evidenced, in part, by the 60 percent increase in rehabilitation work in the state's five largest cities during the first year of the code's implementation (Arigoni 2001).² The rehabilitation subcode developed by New Jersey was the basis for the development by the U.S. Department of Housing and Urban development (HUD) of a national version of the rehabilitation subcode. The final HUD subcode is referred to as the Nationally Applicable Recommended Rehabilitation Provisions (NARRP) (National Association of Home Builders Research Center 1999).

2. Focused growth and development

State and local governments across the country are implementing programs designed to focus growth and development in areas specifically identified for growth – to reduce the type and amount of development that leads to sprawl. There are many good examples of innovative and effective programs of this type.

For example, as part of its Smart Growth agenda, Maryland adopted one of the first programs that limits expenditure of state funds to areas locally targeted for growth. This program requires counties and incorporated cities and towns to identify growth boundaries. Then, state funds for schools, roads, and sewer and water development are invested only within the boundaries, or "Priority Funding Areas". Private developers must pay for these services for projects they locate outside of the boundaries. In addition, state office buildings, economic development funds, housing loans and industrial development financing are targeted within the growth areas (Daniels). Maine has followed suite, with state law that limits state growth-related

² In 1999, New Jersey's rehab code was awarded the Innovations in American Government Award from the Ford Foundation and the John F. Kennedy School of Government at Harvard University.

capital investments to designated growth areas contained in a local government's comprehensive plan, or to areas served by an existing public sewer system that can provide service to a new project (Zinn, 2003).

A second example of focused growth and development is represented by efforts to encourage public school renovation and construction in existing neighborhoods and slow the trend of building new school buildings on large sites in remote locations. New schools built on distant sites have been described as growth magnets, drawing residents out of older neighborhoods and into new subdivisions built, in part, to capitalize on their proximity to the school (Passmore, 2002). One of the reasons for this trend is that most formulas for state contributions to school construction projects specify a percentage rule – if the cost of renovating an existing school exceeds a specified percentage (usually 50% or higher) of the cost of building a new school, a school district must build a new school if it wants to receive financial assistance from the state. The authors of the report "Why Johnny Can't Walk to School" pointed out that such arbitrary percentages prevent full cost analyses by state and local governments, especially when costs such as water and sewer line extensions, transportation and road work, and demolishing or renovating old school buildings taken out of service are not included (Beaumont and Bianca, 2002). In 1998 (and reaffirmed in 2002), Pennsylvania rescinded its "60% rule". Maryland has abandoned its percentage-based rule, and instead the majority of state school funds now go to existing schools. Schools in Massachusetts receive financial incentives to maintain and renovate existing schools, rather than build new ones, and school districts with a good record of maintaining existing schools get bonus points when they apply for financial assistance from the state (Beaumont and Bianca, 2002).

3. Open space protection

The protection of open space, green space, and agricultural land are central goals of many growth management efforts. Open space protection programs may also be part of efforts to protect critical ecologically-sensitive areas, like wetlands or habitat. State and local governments, with federal support in some cases, are adapting many policy tools to protect, either permanently or for some specified period of time, open space and agricultural land. In addition, non-profit land

trusts are working toward open space protection goals, sometimes in cooperation with a governmental entity.

New Jersey is a state that jumped into open space preservation with both feet. Although the state has actively pursued open space protection since 1961, efforts were ramped up in 1998, when voters approved an amendment to the state constitution to create a stable funding source for open space preservation, farmland preservation and historic preservation. Voters approved a constitutional amendment allocating \$98 million annually from state sales tax revenues and authorizing bonds to raise an additional \$1 billion. These funds are managed by the Garden State Preservation Trust. Each year, approximately 115 million goes to the state's Green Acres Program. This program uses its funds to purchase, outright, properties that will be added to the state's public wilderness, parks, or other open space areas. The state spends approximately one-half of that amount with its direct purchase program. About 40% goes to towns and counties, which they use to purchase land that meets their goals, as well as those of the state, and the remaining 10% is provided to private land trusts to use for fee-simple purchases of open space (New Jersey Department of Environmental Protection).

The state's Farmland Preservation Program receives approximately \$76 million from the Preservation Trust annually targeted specifically at preserving agricultural land. The program uses those funds to purchase development rights (and will take donation of development rights). Also, in a program that is quite unique, the program uses its funds to buy farmland in fee simple. The farmland is deed restricted, requiring that it remain undeveloped, and then sold at auction. This type of program has provided an opportunity for farmers to purchase protected farmland at prices far below market price (New Jersey Department of Agriculture).

While fee simple purchase and purchase of development rights programs are popular, especially because they avoid property rights conflicts that arise with restrictions on development, they are costly. In an attempt to reconcile open space preservation goals with consideration of property rights concerns, many state and local governments are using development design techniques to reduce the amount of open space used by residential and mixed use developments. Cluster development projects, where building construction is concentrated in one part of a development and a significant amount of land remains as open space, are increasingly common.

Until recently, a primary deterrent to cluster development was the existence of zoning ordinance language that reflected standard subdivision requirements, including larger minimum lot sizes and smaller maximum densities. However, zoning authorities have begun to modify zoning ordinances to allow, and even encourage, cluster development. The Northern Illinois Planning Commission, in partnership with the Chicago Wilderness Nature Reserve, has prepared a conservation design resource manual which provides language and guidelines for updating local ordinances to accommodate cluster developments, particularly those that are based on the principles of conservation design (Arendt, 1996; Northern Illinois Planning Commission, 2003). There are other, similar resource documents (Arendt, 1999; Center for Watershed Protection, 1998; The Countryside Program, 1998).

Ongoing Policy Debates

Advocates of growth management are involved in several important policy debates. In particular, discussions of the appropriate role of state and local governments, as well as the need for regional cooperation in land use policy, continue. In addition, proponents of open space and farmland protection continue to look for tools that can further preservation objectives, while acknowledging both financial constraints and concerns about property rights. Their efforts have spawned a discussion of the relative viability and effectiveness of permanent conservation easements, or the purchase of development rights, versus easements for some period of time less than perpetuity.

A common lament of many local governments is that their abilities to implement innovative growth management techniques are constrained by their states' adherence to Dillon's rule, a strict interpretation of state laws that allows localities to possess only those powers that are specifically delegated to them by state law. Their argument is that greater home rule authority, or local autonomy, would better enable them to address concerns related to land use change. Richardson, Gough and Puentes (2003), following a thorough review of state constitutions, statutes and case law, found no relationship between adherence to Dillon's Rule or home rule and the degree of effort or success in growth management within local and/or state governments. That said, they did provide three important insights that may benefit growth management discussions:

- 1) Dillon's rule and home rule are not mutually exclusive, especially given that various levels of local government may be treated differently by states' constitutions or statutes;
- 2) Strict adherence to home rule, while increasing local autonomy in land use decisions, may promote fragmented and uncoordinated growth management; and
- 3) By insuring that local governments may engage in only those actions clearly authorized by state statute, Dillon's rule may promote consistency and regional cooperation in growth management efforts.

Regional cooperation is critical for effective growth management because regional growth patterns are determined by broad forces well beyond the purview of local governments (Downs, 2000). Downs concludes that when localities pass growth regulations within their own boundaries, the region's future growth is not substantially affected – rather, growth simply leaps into other jurisdictions or into unincorporated areas. Transportation, affordable housing, schools, urban revitalization and open space protection are all growth management issues that cross political boundaries and require regional attention.

In their struggle to garner financial resources for open space protection and public support for those programs, some state and local governments have begun to discuss the role of "term easements" as an alternative to conservation easements that permanently prohibit development on agricultural land. American Farmland Trust has suggested that less-than-permanent arrangements should be referred to as "agreements", rather than easements (American Farmland Trust, n.d.). An important question about term easements or agreements is how the value is to be determined; certainly it is less than the value of a permanent easement. However, many states already implement a de facto term agreement through their differential assessment programs for farmland. Those states that offer use-value assessment to farmers who agree to restrict development for a specific period of time are, in effect, using public funds to retain temporary development rights easements to their land.

Finally, there exists a fundamental challenge for growth management programs, state and local. Where public funds are allocated for growth management, to a large extent there are trade-offs associated with funding various types of programs. For example, funds allocated for downtown revitalization are not available for open space preservation. Clearly, one type of program may well enhance the objectives of another. However, the challenge is achieving the appropriate balance across all types of programs and tools to meet the unique needs of the affected communities. Assuring public understanding of the alternative approaches, their costs and their benefits is key to finding the right balance, and public policy education is key to assuring that public understanding.

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