Reinventing Growth Management for the 21st Century

Douglas R. Porter
Public management of community development in the twentieth century has generally furthered America's historical drive for settling the nation's vast landscapes. Most growing communities adopt public policies and regulations intended to support rather than dissuade land development. Especially in the peripheries of expanding metropolitan areas, public actions to manage development usually aim to extend public infrastructure systems to serve developing areas and structure regulatory regimes that promote real estate investments in outlying "greenfield" areas rather than in already urbanized areas. Only after substantial development generates traffic congestion, overcrowded schools, and other problems do local public officials begin to question the value of development.

These practices create winners and losers in community development. They enrich owners of property in the path of development and generate sizable profits for developers and builders, while devaluing existing development in older areas. They foster land consumption that endangers environmental qualities essential to sustaining life. As growth brings problems, community development policies tend to focus on promoting high-value development (shopping centers, business parks, upscale residences) that screen out whole classes of people and activities. The bottom line in most metropolitan regions is that public and private

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1 A greenfield is an undeveloped piece of land that may be devoted to agricultural or recreational use.


investments are flowing outward to developing areas, leaving the structure of existing urban settlements ill-maintained. 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 can assist in improving the policy context for redirecting investments, but regional organizations, many experiencing a new vitality, offer the most effective channel for re-forming metropolitan development patterns.

I. THE PROBLEM OF SPRAWL

A. A Culture of Land Consumption

Since the arrival of the first European settlers, America’s land resources have been viewed as an economic opportunity awaiting exploitation. To early colonists, land probably seemed inexhaustibly abundant, inhabited only by natives who, unaware of private ownership concepts, could be steadily driven away. Immigrating settlers fanned across the territories, taming the wilderness, clearing land for farms, building towns, extending roads and canals, and moving west. As so famously written by Frederick Jackson Turner, “[U]p 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.” Along the way, frontier hunters and trappers, traders, and farmers established rugged individualism as an icon of American social norms. In our century, as rural residents and immigrants swarmed to the cities, urban dwellers reformulated individualism, preferring single-family houses on large lots, creating myriads of local governments, and adopting automobiles to achieve instant mobility. In his treatise on the growth of American cities, Kenneth Jackson opined:

5 FREDERICK JACKSON TURNER, THE FRONTIER IN AMERICAN HISTORY 1 (1967).
6 See id. at 30.
No 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 of the inevitably aging suburbs. But the national cultural preference for privacy, for the detached home on its own plot, will not easily be eroded.  

Within this frame of reference, land ownership seems virtually a birthright of Americans. 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 their neighbors. Not too many years ago, a 4,000 square-foot lot provided an adequate homesite. Judging by the landscapes of suburbs throughout America, both the seasoned urban planner and the casual observer can see that people moving out (and often up) seem to prefer sizable lots, deep building setbacks, and sweeping roadscapes. Half-acre lots are common in suburban communities, and rural areas offer two-acre to five-acre lots to assuage the urges of land-hungry homeseekers. For example, Charles County, Maryland, one of the rapidly growing outer jurisdictions in the Washington, D.C. region, is projected to develop over seventy square miles of land by 2020 for an expected population increase of only 86,000. The projection is based on current rates of land consumption—an average lot size of .56 acres within designated growth areas and 3.4 acres outside those areas.

One result of large-lot development is that metropolitan areas are

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7 KENNETH G. JACKSON, CRABGRASS FRONTIER 304 (1985).
10 See id.
spreading farther and faster than ever before. In the forty-five years from 1950 to 1995, for example, the population of the Chicago area grew by 48% while the urbanized land area jumped by 165%.\textsuperscript{11} For the most recent period, between 1990 and 1996, the population of the Chicago urbanized area increased by 9% while the developed land area grew by 40\%.\textsuperscript{12} The Los Angeles metropolitan area population rose 45\% from 1970 to 1990 but the amount of developed land escalated by 300\%.\textsuperscript{13} Surveys in the San Francisco, California and Washington, D.C. regions reveal that developing areas already encompass enough land to support twenty years of project growth, but fringe-area development continues unabated.\textsuperscript{14} In the region southeast 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 2½ times the rate of population increase.\textsuperscript{15}

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 and lure more development farther away from central cities.\textsuperscript{16}

B. \textit{Shifting Patterns of Value Creation}

These trends in metropolitan form might 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

\textsuperscript{13} See id.
\textsuperscript{16} See Christopher B. Leinberger, The Metropolis 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.” \textit{Id.}
to residence and workplace.\textsuperscript{17} That value increased as communities intensified and expanded their physical form.\textsuperscript{18} The great migrations to cities during the industrial revolution, as manufacturers concentrated employment in central locations, tremendously enlarged towns into cities and cities into clusters of urban places—metropolitan regions of great economic and social value.\textsuperscript{19}

During the twentieth century, those forces of concentration were loosened with the advent of automobiles, allowing much freer and lengthier movements among activities.\textsuperscript{20} Cities and metropolitan areas are now expanding in all directions, developing multiple nodes of activities and a complex network of local economic and social relationships. In that process, the creation of value in developing metropolitan areas has shifted from one central place to many clusters of activities in separate governmental jurisdictions, all competing for primacy.\textsuperscript{21} Tied to the movement of value creation by public and private investments in suburban locations has come a devaluation and disinvestment of the urban core.\textsuperscript{22} 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.\textsuperscript{23} Significantly, median income in

\begin{itemize}
  \item \textsuperscript{17} See Downs, supra note 4, at 379.
  \item \textsuperscript{18} See id.
  \item \textsuperscript{19} See ROBERT E. DICKINSON, CITY REGION AND REGIONALISM 206-07 (1947). Dickinson describes the evolution of United States cities into metropolitan regions by writing:
    
    The great commercial centers of the nineteenth century have become “million” cities, seats of commerce, industry, finance and culture. Within the span of fifty years we find each of these great cities attaining metropolitan proportions . . . [as] economic capitals for their wide tributary areas, for which they are also the leaders in economy and culture, interests and aspirations.
    
    \textit{Id.}
  \item \textsuperscript{20} See EDGAR M. HOOVER & RAYMOND VERNON, ANATOMY OF A METROPOLIS 254-55 (1959). As early as 1959 commentators noted the advent of an “outer ring” of the New York metropolitan area that would grow by virtue of the extension of high-speed highways. See id. They warned that, “[f]reed 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 Region and many of the enterprises on which they live will devour space at a faster rate than ever before.” \textit{Id.}
  \item \textsuperscript{21} See ANTHONY DOWNS, NEW VISIONS FOR METROPOLITAN AMERICA 20-22 (1994).
  \item \textsuperscript{22} See Downs, supra note 4, at 384-87.
  \item \textsuperscript{23} See WILLIAM LUCY, THE ERA OF DECLINING SUBURBS: STRATEGIC PLANNING FOR
\end{itemize}
twenty percent of the suburban jurisdictions declined faster than in their central cities,24 indicating economic distress among older suburbs as well. Anthony Downs asserted recently that we have a de facto “nationwide policy of providing low-income housing by devaluing central city neighborhoods . . .”25

Geographer John R. Borchert described the incredible extent of urban disinvestment:

By the end of the 1920s boom the country had [built enough housing] to replace all of the stock that had been built before 1830.

. . . By the 1970s Americans were in a position to abandon the equivalent of all housing built before 1880 . . . and by the turn of the next century we could be abandoning most housing built before the rise of the automobile epoch in the 1920s.26

In industrial areas, he said: “railroad-era structures lie as accumulations of architectural solid waste . . . . In this process, the nation is not simply replacing an inventory of buildings . . . it is also replacing the major part of the fabric three generations have taken for granted as the bedrock geographic pattern of American settlement.”27

The massive shift of growth from central to suburban and even rural places reflects deep-seated American norms of independence and mobility, but at the same time it raises the risk of environmental damage both on and off building sites.28 Although these values represent sensible choices for many individual households, they come at a collective price—the many kinds of costs externalized in the development marketplace. Conversion of open lands to urban uses inevitably risks adverse effects on

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) (concluding that the migration of high-income families will continue; and the income disparities between the suburbs and the urban core will increase).

25 Downs, supra note 3.
26 Borchert, supra note 24, at 233.
27 Id. at 235.
28 See Kasarda, supra note 23, at 309.
essential environmental qualities, from stream pollution caused by runoff from impervious surfaces to loss of wildlife species by destruction or disruption of habitats.\textsuperscript{29} Under these conditions, even heroic efforts by developers to retain basic environmental qualities within development sites raise the risk factor both on and off building sites. Development in greenfield 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.\textsuperscript{30} More insidious, perhaps, are the impacts on daily living, from the time taken from other activities for lengthy commutes to work and school to the social isolation of suburbanites and inner-city populations.\textsuperscript{31} These impacts all represent costs often undervalued or even ignored.

Over several decades we have gradually recognized the reality of these hidden costs and the resulting losses 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.”\textsuperscript{32} Almost a quarter-century later, another examination of urban development issues

\textsuperscript{29} See Rutherford H. Platt, Introduction and Overview to THE ECOLOGICAL CITY 11 (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 t]he 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 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.


\textsuperscript{31} See TIMOTHY BEATLEY & KRISTY MANNING, THE ECOLOGY OF PLACE 10 (1997).

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." A 1995 report by the Bank of America and other groups concluded that these burdens pose economic costs as well: "[b]usinesses suffer from higher costs, a loss in worker productivity, and underutilized investments in older communities." County officials in Maryland's Charles County, which is growing fast and liking it, recently discovered that property values in previously developed areas were sinking, apparently due to the amount of competing development permitted by the county and the insufficient attention to shoring up locational assets of older development. South of the Potomac River, suburban Prince William County, Virginia, also reports concerns over falling property values in older neighborhoods, again due to competition from newer development.

The Bank of America report concluded that "[w]e 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." To change current patterns of metropolitan development, however, will 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.

C. Public Development Policies: Part of the Problem

Local governments in the path of metropolitan expansion, who frequently support low-density development in greenfield areas, seem to be swayed by the presumed promise of economic and tax-base growth and

35 See Memorandum from Thomas Flynn and Charles Lamb to the Charles County Government (July 12, 1998) (on file with author).
36 See Richard Lawson, Address at the Lambda Alpha Meeting (January 29, 1999) (transcript on file with author).
37 FULTON, supra note 34, at 1.
urged on by property owners and business interests anxious to capitalize on development opportunities. Local officials are quick to welcome development by permissive zoning. Originally formulated to protect existing activities from disturbance by other types of uses, zoning quickly became a planner's tool for laying out future patterns of development. In shaping comprehensive plan and zoning policies, local officials typically target the primary market in rural locations—homeowners attracted by opportunities to purchase large lots at low prices—and map out huge areas for low-density development. If alarmed about the potential impacts of development on available infrastructure and existing neighborhoods, local governments often reduce allowable densities to levels supportable by private wells, septic tanks, and roads, thus spreading out development and impacting more land. In Maryland, for example, more than half of the development capacity allowed by local plans in 1996 was outside current or planned sewer service areas.

One result of these tendencies is that many developing areas are highly over-zoned for the amount of foreseeable development. Experience in Maryland, again, shows that zoning by the state's local jurisdictions as of 1996 allows five times as much development as required for projected growth to 2020. Throughout the Washington, D.C. region, according to a survey by the Washington Post, local governments have approved development of 310,000 new housing units, enough for almost one million new residents.

Many communities are extending conventional public planning and regulatory capabilities by adopting growth management techniques that provide greater control over development. The most common techniques

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39 See, e.g., William I. Goodman & Eric C. Freund, Principles and Practice of Urban Planning 403 (1968) (commenting that "zoning is probably the single most commonly used legal device available for implementing the land-use plan of a community").
40 See id. at 403-22.
42 See id.
43 See id.
generally are premised on accommodating projected growth. Urban growth boundaries, one well-known measure, typically designate a growth area with capacity for decades of development. Adequate public facilities provisions allow development if supporting infrastructure systems are available or planned. Imposition of impact fees as an infrastructure-financing device virtually guarantees the right to develop and invest in facilities for which the fees are paid.

Of course, not all communities seek to accommodate future growth; 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. Zoning is also used by some communities to slow growth or provide constraints over perceived undesirable types of development. 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.

Nevertheless, most localities on the edge of metropolitan development continue to welcome growth, supporting the outward flow of public and private investments. Older communities either protect their

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45 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).
47 See PORTER, supra note 45, at 122-23.
49 See PORTER, supra note 45, at 78.
50 See id. at 78-99.
51 See id.
52 See, e.g., John Landis, Do Growth Controls Work?, 58 J. AM. PLAN. ASS'N 489, 498 (1992) (discussing findings from a comparative evaluation of California cities with and without growth controls and speculating that the reason housing prices in municipalities with growth controls did not rise is that there were "spillover" opportunities in nearby municipalities).
desirability by building a regulatory wall against unwanted development or watch helplessly as disinvestment drains their vitality.

Public policies generally encourage the low-density spread of metropolitan areas, this phenomenon is not accidental but results at least in part from public policies that are hard to change because they benefit a majority of urban households.

II. REGIONS RESHAPING THE USE OF LAND

A. Redirecting the Flow of Value

Refocusing the forces of metropolitan development will be a difficult task given the primacy of public and private development practices that dictate continued greenfields conversions. There are hopeful counterrtrends, 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. 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. Many of these residents are moving into warehouses, office buildings, and other once-commercial structures that are being

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53 This author feels that state funding programs for basic community infrastructure also tend to promote greenfields 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; state water and sewer system financing programs are concerned mostly with adding capacity.


rehabilitated and adapted for residential use.\textsuperscript{57} Inner-city residents are benefiting from new sources of funding for housing as well. Lending institutions have stepped up financing for low- and moderate-income housing in inner cities, prompted by requirements of the Community Reinvestment Act\textsuperscript{58} and the availability of tax credits for low-income housing and historic preservation.\textsuperscript{59} Fannie Mae has initiated the American Communities Fund to provide equity funding for housing and associated development in inner-city neighborhoods and, through other funding mechanisms, assists in financing low- and moderate-income housing developments.\textsuperscript{60}

Meanwhile, many suburban jurisdictions are evolving into higher-density, mixed-use communities. Suburban town centers are being revitalized by public and private investments.\textsuperscript{61} 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.”\textsuperscript{62} In addition, designers of “neo-traditional” or “new urbanism” development patterns have succeeded in generating higher-density residential developments in some suburban communities, although such housing still represents only a fraction of annual housing production.\textsuperscript{63}

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


\textsuperscript{60} See \textit{Fannie Mae, The American Communities Fund} 1 (1998) (on file with author).

\textsuperscript{61} See, e.g., Philip Langdon, \textit{In Search of a Center}, GOVERNING, June, 1998, at 24 (providing an example of one Chicago suburb that has successfully maintained a thriving town center); Terry Lassar, \textit{Shopping Centers Can be Good Neighbors}, PLANNING, Oct., 1995, at 14 (providing an example of how large shopping districts have benefited suburban communities).


\textsuperscript{63} Lloyd W. Bookout, \textit{Building Community in America's Suburbs}, in ULI ON THE FUTURE: CREATING MORE LIVABLE METROPOLITAN AREAS 6 (Urban Land Inst. ed., 1997). According to Bookout, “[t]he question of whether new urbanism is a cure for the physical and social problems plaguing the suburbs is still hotly debated.” \textit{Id.}
eleven slowed the loss of population in the 1980s. 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 10% in the 1970s to 1% in the 1980s.

Still, these signals of change fall well short of a major turnaround in metropolitan value flows, a conclusion supported by the 1998 report by the Sierra Club that charges that urban sprawl "is the fastest growing threat to the environment." Carl Pope, Executive Director of the Club, has been quoted as commenting that "we need a sea change in the way cities think about growth . . . , a move away from outdated and destructive planning and management policies established 50 years ago."

B. Who Leads the Way?

One of the most significant obstacles to rethinking and redirecting metropolitan development and investment patterns is the plenitude of local governments, including special taxing districts, which now control much of the development process in every region. Established to act independently in determining and achieving their self-defined objectives, these individual public entities fundamentally are 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, and are often beholden to landed interests that stand to profit from their community's

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64 See CENSUS INFORMATION, supra note 8, at 18-20; 1990 CENSUS INFORMATION, supra note 8, at 31-43.
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66 See CENSUS INFORMATION, supra note 8, at 18-20; 1990 CENSUS INFORMATION, supra note 8, at 31-43.
67 Sierra Club, supra note 12.
69 See Downs, supra note 4, at 380-81.
70 See Douglas R. Porter, Introduction to STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT 2-3 (Douglas R. Porter ed., 1992). "In all but a few metropolitan areas, the agendas of regional agencies became and remain dominated by parochial local concerns rather than by interest in strategic planning for regional development." Id. at 31.
1. Regions to the Rescue?

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 as early as the 1930s as urban growth spilled over city boundaries and new suburban jurisdictions proliferated. To provide a measure of coordination and cooperation between local units of government, federally-mandated Metropolitan Planning Organizations ("MPOs") have been created, many states have established regional organizations, and local governments have voluntarily formed regional councils. Business groups sponsored regional problem-solving organizations such as the Allegheny 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. Then there are the special cases such as the New York Regional Planning Association, a nonprofit group focusing on development strategies for a three-state region and the Metropolitan Council in Minneapolis-St. Paul.

71 See id.
72 See DOUGLAS R. PORTER, MANAGING GROWTH IN AMERICA'S COMMUNITIES 223 (1997).
73 See generally Allan Wallis, Inventing Regionalism: A Two-Phase Approach, 83 NAT'L CIVIC REV. 447 (1994) (arguing that a third wave of regionalism is sweeping the country and attempting to create a framework for the success of this third wave); Allan Wallis, Inventing Regionalism: The First Two Waves, 83 NAT'L CIVIC REV. 159 (1994) (discussing the evolution of regional agencies over time and highlighting two distinct waves of regionalism). See, e.g., Bruce D. McDowell, Reinventing Surface Transportation: New Intergovernmental Challenges, INTERGOVERNMENTAL PERSP., Winter 1992, at 7-8, 18 (discussing metropolitan planning organizations ("MPOs"), regional transportation planning agencies, in the context of recent federal transportation legislation); FRANK SO ET AL., PRACTICE OF STATE AND REGIONAL PLANNING 133-144 (1986) (describing various types of regional planning agencies).
74 See PORTER, supra note 72, at 223.
75 See WILLIAM R. DODGE, REGIONAL EXCELLENCE 295 (1996). "Of the more than 33,000 single-service authorities, approximately 10 percent have a regional mandate for providing [various services]." Id.
76 See generally Regional Planning Association, Building the Region We Want: Toward a
established cooperatively with the state to provide planning and delegated system management for the Twin Cities region.  

Over the years, 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, seek to 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. While these are not unworthy functions, they fall 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.”

2. State Initiatives

Several states have recognized the limitations of local governments and existing regional institutions to deal with development issues, and beginning in the early 1970s, stepped in to assert state interests in guiding development. This has occurred mostly in coastal states afflicted by sudden surges of growth that prompted citizens to call for better planning and more control over development. Eleven states have adopted comprehensive 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.

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*New Regional Plan and Action Agenda for the Tri-State Region, 3 The Region Tomorrow* 1 (1992).


78 See Porter, supra note 72, at 228-29.

79 See id.

80 See id. at 219-20.

81 See id. at 228.

82 Dodge, supra note 75, at 37.

83 These eleven states are: Delaware, Florida, Georgia, Maine, Maryland, New Jersey,
Goal statements in all of the programs except Georgia's explicitly call for concentrating growth and reducing sprawl. For example, the first two goals in Washington's act are: (1) "Urban growth: Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner;" and (2) "Reduce sprawl: Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development." Some states, like New Jersey, establish these aims in their goal statements and direct state spending priorities to support compact growth and rural conservation.

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 also improved coordination among local, regional, and state programs that affect development. Finally, they have provided a significant policy context for local decisions about development, thereby screening out the worst development practices.

Despite some successes in state growth management initiatives,


See New Jersey State Planning Commission, The New Jersey State Development and Redevelopment Plan: Reexamination Report and Preliminary Plan 120-180, 335 (1992). The plan, adopted 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 distressed areas, 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. at 29-35. Maryland, Oregon and Washington have also taken such initiatives.

See Porter, supra note 72, at 259.

See id.

however, 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. As evidenced by
analysis of Oregon's and Florida's programs, sprawling development
remains rampant, public facility investments continue to promote
greenfield 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.

One of Oregon's planning goals, for example, calls for
"[e]ncouragement of development within urban areas before conversion of
urbanizable areas."

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 . . . ." The study also found that significant
urbanization was occurring outside city limits.

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." The report recommended refocusing Florida's growth
management efforts to stem further sprawl and promote infill and
redevelopment, and followed the previous adoption of an "anti-sprawl"
rule to guide local planning. Although the rule appears to have
constrained unplanned sprawl in rural areas, there are few signs that it has
produced more compact development within urbanizing areas.

Reasons for this state of affairs boil down to one point: states
cannot do the job alone. Realistically, given market forces and the

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91 See id. at 37.
93 For a good history of the rule, see Robert A. Catlin, Land Use Planning, Environmental Protection and Growth Management: The Florida Experience 62 (1997).
94 See id. at 178.
and-pull of state-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 have required endless negotiations to obtain even partially satisfactory responses. Local governments that respond more positively to state mandates, however, frequently adopt plans that incorporate all the required elements but avoid the hard choices in policy determinations. Furthermore, state agency staffs reviewing local plans usually lack time to analyze the rationales underlying planning policies and the linkages between policies and follow-up regulations that ultimately determine development patterns. In those circumstances, not surprisingly, staff members resort to checklists and selective enforcement, as illuminated in a recent study of Florida's experience. The study evaluated state reviews of coastal storm hazard elements in selected local comprehensive plans, assessing local compliance with sixty different state mandates on this subject. Although coastal storm hazards might be thought to be of concern to hurricane-prone Florida communities, the study found that only about half of the state land use and development goals and policies were explicitly addressed in state-approved plans of eighteen coastal communities. Plans gave most attention to evacuation and protection of beach and dune systems, but less than half the plans addressed subjects related to land use and development controls. The study determined that political pressures and administrative capabilities substantially affected the plan review and approval process. Early criticisms of the cumbersome and overly detailed reviews, for example, pushed reviewers in the Department of Community Affairs to “shorten deficiency reports and expedite [approvals].” Departmental emphasis on certain factors such as

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95 See id. at 221.
96 See id.
99 See id. at 458.
100 See id. at 461.
101 See id.
102 See id. at 457, 466.
103 Id. at 462.
evacuation plans generated a high rate of plan revisions while other factors were almost ignored and left unchanged. The makeup of review teams and administrative strategies employed by the Department's successive Secretaries also led to variations in enforcement. Florida's experience suggests that compliance of local plans to state goals would seem to be an illusory goal or, in the words of the report's authors, "highly variable."

Early responses by Maryland's local governments to the state's recent "Smart Growth" legislation demonstrate the longevity of state-local tensions on growth management issues. One of the key acts in the package enacted in 1997 (implemented in October 1998) calls for supporting the concentration of development and conservation of rural lands by targeting state funding for growth-related facilities to designated "priority funding area[s]." Existing municipalities and various types of publicly designated economic development automatically qualify as priority funding areas. But counties may designate other areas intended for development, using density and other criteria, which would qualify those areas for state investments. Several urbanized and urbanizing counties already designate development areas that would qualify as priority funding areas; however, other counties have indicated an

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104 See id. at 463.
105 See id. at 464.
106 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).
108 Id. § 5-7B-04(a).
109 See § 5-76-02.
110 See § 5-7B-03.
111 Montgomery and Anne Arundel counties, for example, designated substantial agricultural preservation areas in their comprehensive plans two decades ago and have adopted other policies to promote compact development within specific sections of the counties. See generally ANNE ARUNDEL COUNTY, GENERAL DEVELOPMENT PLAN pts. I & II (1997); MONTGOMERY COUNTY, GENERAL PLAN REFINEMENT GOALS AND OBJECTIVES (1993); MONTGOMERY COUNTY, FUNCTIONAL MASTER PLAN FOR THE PRESERVATION OF
unwillingness to focus development and/or conserve rural areas.\textsuperscript{112}

Undoubtedly, state agencies have difficulty in coaxing local governments to do the right thing.\textsuperscript{113} The process is complicated by longstanding intergovernmental tensions and rivalries, differences in political and administrative outlooks and experience, and the logistical problem of having an overwhelming number of community experiences to track and understand.\textsuperscript{114} 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.

III. METROPOLITAN REGIONS AS GROWTH MANAGEMENT LABORATORIES

A. Hopes for Regional Strategies

As mentioned in the previous section, regional agencies generally face an uphill fight to craft and implement strategies for metropolitan development. Local governments jealously guarding their individual prerogatives 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,\textsuperscript{115} although special provisions have since been made for Portland's Metro, the growth management organization for the metropolitan area.\textsuperscript{116} Georgia's ambitious efforts to

\textit{AGRICULTURE AND RURAL OPEN SPACE IN MONTGOMERY COUNTY} (1980).

\textsuperscript{112} See, e.g., Telephone Interview with John Anderson, Staff Member, Maryland Office of Planning (Oct. 15, 1998) (discussing the results of a referendum in Calvert County in which voters turned down proposals to expand sewer and water services in planned development areas). For further discussion and an evaluation of the Maryland Smart Growth program, see DOUGLAS R. PORTER, MAKING SMART GROWTH SMARTER (forthcoming 1999).

\textsuperscript{113} See RAYMOND J. BURBY & PETER J. MAY, MAKING GOVERNMENTS PLAN: STATE EXPERIMENTS IN MANAGING LAND USE 144 (1997) (concluding that “the effects of state 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).

\textsuperscript{114} See id.

\textsuperscript{115} The State of Oregon adopted through administrative rule, with the cooperation of the Metro regional organization in Portland, special provisions for transportation, see OR. ADMIN. R. § 660-012-0060 (1998), and housing, see id. § 660-07-030, -035.

\textsuperscript{116} See id. § 660-012-0060. The Metro organization was established in 1979 as a
establish major roles for regional agencies have 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 agencies, including Washington's well-regarded Puget Sound Council of Governments. 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." One source of that momentum has come from environmental and civic groups of many stripes that are pressing for greater control over the spread of metropolitan growth into rural areas. The concepts of smart growth and sustainable development, both inviting greater regional coordination, have become central themes for such advocacy groups. Both concepts require trade-offs and

reconstitution of the previous Metropolitan Service District that provided selected regional services. It is the only regional organization in the United States with an elected board. In 1990 Oregon voters approved an amendment of the state constitution to allow Metro a home rule charter, which was duly approved in 1991.

Washington's laws require certain counties and the cities within them to prepare and implement comprehensive plans. See WASH. REV. CODE ANN. § 36.70A.040, 36.70A.110 (West 1998). Only one provision mentions needs for coordination between counties. See id. at § 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." NJ. STAT. ANN. § 52:18A-202 (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, see id. § 52:18A-206, both powerful entities exerting control over large areas of the state, from the requirements of the act.

See PORTER, supra note 112.


"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
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.

Some states have created powerful regional agencies capable of exerting great influence on regional growth patterns. Examples of such agencies include Portland's state-chartered Metro council working within Oregon's state growth management program,¹²² the Twin Cities Metropolitan Council established by state legislation and whose managing board is appointed by the Governor,¹²³ the Cape Cod Commission in Massachusetts,¹²⁴ and the New Jersey Pinelands Commission.¹²⁵

The two best known are the Portland Metro agency and the Twin Cities Metropolitan Council. Both possess broad powers and influence and both recently adopted long-range regional plans that establish significant policy direction for metropolitan development.¹²⁶ The Portland Metro agency, with an elected board, wields significant control over metropolitan development.¹²⁷ After some years of turmoil and controversy, the Metropolitan Council in Minnesota seems to be back on 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).

¹²² See 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. See id.

¹²³ 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.


¹²⁶ See generally PORTLAND METRO, METRO 2040 GROWTH CONCEPT (1994); METROPOLITAN COUNCIL (TWIN CITIES METROPOLITAN AREA), REGIONAL BLUEPRINT (1996).

¹²⁷ For a recent overview of Portland Metro's powers and activities, see generally Alan Artibise et al., Cascadia: An Emerging Regional Model, in CITIES IN OUR FUTURE 149 (Robert Geddes ed., 1997).
track, although it has not been particularly successful in limiting sprawl either within the growth boundary or into rural areas.\textsuperscript{128}

The San Diego Association of Governments (SANDAG) is one of the most influential of the “standard” regional councils or associations of local governments. It has established credibility among local governments for various studies and its database on regional trends, acts as the multi-modal transportation planning agency, and carries out major environmental, housing, and other planning endeavors of great value to local businesses and residents.\textsuperscript{129} In 1988, local governments agreed to give SANDAG powers to administer a regional growth management program.\textsuperscript{130} SANDAG established regional goals to guide development decisions, which were confirmed through interlocal agreements.\textsuperscript{131} Local adherence to the goals is voluntary but SANDAG monitors and periodically reports on ways in which local actions conform or do not conform to the goals.\textsuperscript{132} At last report, the system was working admirably well, with only one major nonconforming local development decision to date.\textsuperscript{133}

Some examples of recent regional actions illustrate the range of approaches being implemented:

- The New York Regional Planning Association participated in successful multi-state efforts to fund the purchase of major open space preserves in the northwestern sector of the New York City metropolitan region.\textsuperscript{134} These purchases followed on the heels of

\textsuperscript{128} Some of the Council’s travails are recounted by Keefe, supra note 77, at 81.
\textsuperscript{130} Voters approved the growth management initiative known as Proposition C in November 1988. See id. at 57-72. In October 1989 a task force recommended giving SANDAG management responsibilities for the program. See id. 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. See id.
\textsuperscript{131} See id. at 78.
\textsuperscript{132} See id.
\textsuperscript{133} See Telephone interview with Kenneth Sulzer, Executive Director, SANDAG (April 9, 1997) [hereinafter Sulzer Interview].
the publication of the Association's third regional plan advocating five major campaigns to shape the region's future.135

- There is a movement in Southeast Massachusetts to establish a voluntary regional strategic development program through a system of interlocking, interlocal agreements.136
- A federal/state/local program was created 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.137
- The Greenbelt Alliance has undertaken 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.138
- A forum of local elected leaders has been established in the Boise, Idaho region that meets regularly to discuss, and seek resolution to, regional issues, and to fashion regional solutions to future infrastructure needs.139
- The Denver Regional Council of Governments adopted a metropolitan vision and plan in 1997 that laid out a long-range growth strategy. The strategy calls for voluntary collaboration of governmental units within the region to develop within a designated growth area.140
- The Bi-State Development Authority in the St. Louis metropolitan area created programs to promote economic development, plan and operate transportation facilities, and pursue regional development projects such as industrial parks and water supply and sewage

137 See generally Governor's Commission for a Sustainable South Florida, Initial Report (1995). This program has come to be known as “Eastward Ho!” For a discussion of the current program see South Florida Regional Planning Council and the Treasure Coast Regional Planning Council, Building on Success: A Report from Eastward Ho! (1998).
Such activity at the regional level signals a renewed interest in guiding large-scale patterns of development in major metropolitan areas.

B. A Proposal for Metropolitan Growth Management

To restate the pressing need for effective regional management of metropolitan growth patterns for several reasons,

- current flows of public and private investments favor land-consuming development on the periphery of metropolitan areas; this type of development generates economic, social, and environmental costs that are wasteful and unsustainable;
- the overwhelming emphasis on greenfield development is aided by local governmental growth policies and regulations, which have not been substantially influenced by regional and state efforts to guide local decisions about development;
- 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; and
- although state growth management programs provide a useful policy context for guiding metropolitan development, regional organizations, many of which are gaining in vitality and credibility, are ideally suited to forge workable, collaborative intergovernmental relationships to alter future patterns of investment and growth.

The resurgence in activity of regional organizations throughout the nation demonstrates that, in the right circumstances, regional organizations can be effective in formulating and administering metropolitan growth strategies in cooperation with local governments. Regional organizations can affect metropolitan growth processes by providing credible information and evaluations of metropolitan growth issues, defining regional needs and development strategies, establishing a central mechanism for coordination of local development plans and decisions, and strengthening that coordination through management of key regional

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141 The Bi-State Development Authority was formed in 1949 by a Missouri-Illinois compact ratified by the U.S. Congress. See Telephone Interview with Katherine Klenorn, Director of Management and Budget, Bi-State Development Authority (December 8, 1997).
services.

A state policy context supporting metropolitan growth management can add authority to regional efforts, as in Portland, Oregon. Whether acting under state authority or as ad hoc, voluntary coordinating organizations, 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. Moreover, 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 with workable approaches for influencing metropolitan growth. Although individually tailored to each region's needs and governmental context, these approaches should focus on building regional capabilities for redirecting the flow of public and private investments. Three key capabilities are: determination of metropolitan development strategies, employment of specific implementation mechanisms to influence patterns of development, and establishment of local accountability for decisions affecting regional development.

1. **Collaborative Definition of 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—e.g., widening the range of choices and better integrating transportation and land use patterns, building on existing assets by creating incentives for infill and redevelopment, and identifying

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142 See Artibise, supra note 127, at 149.
143 See id.
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 Oregon's housing and transportation rules, created in cooperation with Portland Metro, 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.

2. Employment of Specific Implementation Programs and Measures to Change Patterns of Development

Setting goals and targets is good, but achieving them is better. Regional organizations can increase their influence over the development process by selectively initiating metropolitan development programs 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, designating growth areas and conservation areas to be reflected in local plans and zoning; formulating funding mechanisms for major regional systems and facilities, including green infrastructure; creating programs to link greenfield development with retrofitting development in existing urban areas; and developing benchmarking processes to track progress toward regional goals. Identification and selection of these measures should demonstrate the value regional actions add to local efforts.

3. Establish Accountability for State, Regional, and Local Decision-making in Accordance with Regional Strategies and Objectives

For regional strategies and policies to be taken seriously, a process to ensure compliance should be established. Good leadership, use of sanctions and incentives, service delivery responsibilities, and guidance on state and local investments that affect patterns of development are all necessary components of such a process. 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 to local efforts by pursuing regional strategies. New York's Regional Plan Association, which has no governmental authority,\(^\text{144}\) influences public and private decision-makers by exerting leadership in identifying key metropolitan development needs and making a compelling case for meeting those needs.\(^\text{145}\)

Although most regional organizations lack the 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.\(^\text{146}\)

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.\(^\text{147}\) 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.\(^\text{148}\) Maryland's Smart Growth program withholds state funding for facilities outside designated growth areas.\(^\text{149}\) The New York

\(^\text{144}\) The New York Regional Plan Association is a nonprofit organization organized by business and other interests to conduct research and influence regional development. See Robert D. Yaro & Thomas K Wright, New York: A Region at Risk, in CITIES IN OUR FUTURE 123, 123 (Robert Geddes ed., 1997).

\(^\text{145}\) See id. at 124.

\(^\text{146}\) See Sulzer Interview, supra note 133.


\(^\text{148}\) See id.

\(^\text{149}\) In early 1998 the General Assembly enacted a package of measures under the general title "Smart Growth and Neighborhood Conservation," including the Smart Growth Areas Act, MD. CODE ANN., AGRIC. §§ 2-103.1, 8-610, 5-7B-01-10 (1998). See also Rural Legacy Act, MD. CODE ANN., AGRIC. §§ 5-903, 5-9A-01-09, 13-209 (1998) (emphasizing...
Regional Plan Association, along with a number of regional and state agencies and interest groups, leveraged the possibility of funding a multi-billion dollar water-treatment plant for New York City into a massive program to maintain water quality in the reservoir system by restricting growth in the watershed.  

One of the most effective 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.

Lacking direct management responsibilities, regional organizations can still 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.

Regional organizations can draw on a number of tools for guiding metropolitan growth. Despite this vast array of resources, they could gain strength from being given special status, as suggested below.

C. Metropolitan Regions as Critical Areas

the importance of preserving rural land).


151 See DODGE, supra note 75, at 249-306.

152 See id.

153 See id.

154 See generally DOUGLAS R. PORTER ET AL., SPECIAL DISTRICTS: A USEFUL TECHNIQUE FOR FINANCING INFRASTRUCTURE 1-10 (2d ed. 1992).
The model development code published by the American Law Institute in 1975 proposed an innovative concept: designating "areas of critical state concern." 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. The critical areas concept was embodied in the Coastal Zone Management Act in 1972 and adopted by a number of states and regional organizations. For example, Maryland designated the Chesapeake Bay watershed as a critical area in which special restrictions on development were appropriate.

A variation on this concept is the habitat conservation plan (HCP) permitted under the Endangered Species Act. If approved by the U.S. Fish and Wildlife Service, an HCP can lead to issuance of a Section 10 "incidental take" permit for endangered species. 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 habitats in exchange for conservation of other habitat lands and creation of a management program to enhance the propagation and survival of species. They lend predictability to the planning and development process.

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

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155 MODEL LAND DEV. CODE § 7-201 (1975).
156 See id.
160 See id. § 10(a)(1)(B).
161 See generally Timothy Beatley, Preserving Biodiversity through the Use of Habitat Conservation Plans, in COLLABORATIVE PLANNING FOR WETLANDS AND WILDLIFE 35 (Douglas R. Porter & David A. Salvesen eds., 1995).
162 See id.
163 For a thorough discussion of the pros and cons of HCPs, see generally Beatley, supra note 161.
local regulations if necessary.164 By comparison with typical metropolitan planning organizations, these types of agencies have been remarkably effective in achieving their conservation objectives.165

All three approaches share the characteristic of providing special public policy and regulatory considerations for special areas. Given that over eighty percent of Americans live and work in metropolitan areas,166 it seems appropriate to identify them 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), 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.

D. A Case in Point: South Florida's Eastward Ho! Program

In 1994, Florida's Governor Lawton Chiles created the Governor's Commission for a Sustainable South Florida and charged it with ensuring that a healthy Everglades ecosystem can coexist with the rapidly growing urban areas on the east and west coasts,167 home to forty percent of the state's population in 1995.168 The Commission quickly concluded that Everglades restoration could only succeed if future urban development was contained as much as possible within the urbanized and urbanizing

166 See 1990 CENSUS INFORMATION, supra note 8, at 31-43.
167 See Lori Rozsa, A Quest for Peace in Earth Battle, MIAMI HERALD (Apr. 29, 1994), at 1B.
168 See THE SOUTH FLORIDA REGIONAL PLANNING COUNCIL, EASTWARD HO!: REVITALIZING SOUTHEAST FLORIDA'S URBAN CORE I (1996).
area along the coasts. Thus the Eastward Ho! Program was born. Its broad purpose is to limit further sprawling development along the eastern coastal corridor by seeking ways to accommodate growth through infill, redevelopment, and more intensive development.

The program, however, has no existing institutional "home"—no organization concerned with development along the entire length of the corridor. Although Florida adopted an elaborate state growth management program in 1985, the numerous cities and counties along the corridor were focused on their individual concerns about growth. Three county transportation planning organizations worked with two state transportation districts to respond to regional highway and transit needs. Two regional planning councils attempted to coordinate local decisions on growth and development. The challenge was to create a constituency and an organizational framework to work out development strategies and implementation programs for the metropolitan region.

To this end, the state Department of Community Affairs has been leading efforts to form a partnership among state and regional agencies, local governments, and a variety of interest groups. The Department, aided by the MacArthur Foundation, the U.S. Environmental Protection Agency, the continued work of the Governor's Commission, and other organizations, has pursued studies and program initiatives to support corridor revitalization. The partnership, while still evolving, has defined needs and approaches for thinking systematically about future development along the corridor.

IV. CONCLUSION: IMPLICATIONS FOR ENVIRONMENTAL LAW IN THE TWENTY-FIRST CENTURY

Environmental law as we now know it on the eve of the new millennium has focused on "command and control" regulatory approaches to protection and conservation of essential environmental qualities.

169 See id.
170 See id.
171 See FLA. STAT. ANN. §§ 186.001-.911, 187.101-.201, 189.401-.427, 190.001-.049 (West 1999).
172 See SOUTH FLORIDA REGIONAL PLANNING COUNCIL, supra note 168, at 1.
173 See id.
174 See id.
175 See id.
176 See id.
177 See Lindell L. Marsh & Peter L. Lallas, Focused, Special-Area Conservation Planning:
These approaches were understandable given the uphill fight to change long-standing attitudes and behaviors concerning land use. It is increasingly apparent, however, that rigid requirements and rigorous restraints are not universally applicable, that we cannot continue to separate, conceptually and in practice, natural conservation from urban conservation. If we are to create sustainable forms of metropolitan development, we must adopt holistic approaches to ecosystem management that account for human as well as natural systems, working together rather than in opposition. Saving and restoring natural qualities means saving and restoring urban resources.

Ian McHarg pointed out in 1969 the problem of integrating urban and natural resources in metropolitan regions:

> Optimally, one would wish for two systems within the metropolitan region—one the pattern of natural processes preserved in open space, the other the pattern of urban development. If these were interfused, one could satisfy the provision of open space for the population. The present method of growth continuously preempts the edge, causing the open space to recede from the population center.178

To achieve that aim, however, will require a more collaborative forum, legally as well as institutionally, than now exists. This forum would recognize and facilitate tradeoffs among goals, allow a meshing of multi-party interests, and support learning and adaptive management over time. Environmental law now consists of many modular structures forced into an ill-fitting framework—a house built by a committee of blind carpenters. We need to take a fresh look at unifying the framework with its components.

We have made some starts on these needs. Precepts of sustainability and smart growth now gaining public credence provide a nurturing climate for changing behavior. The still-emerging concept of "green infrastructure" emphasizes the systemic importance of integrating natural and human components of urban development. Institutionally, the

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widening use of habitat conservation plans, mitigation banks, and open-
space acquisition programs indicates a greater willingness on the part of
regulatory agencies to recognize ways to satisfy competing needs and
objectives.

In the twenty-first century, then, environmental law and policy
should address the difficult responsibility of moving past constrictive
regulatory boundaries to deal with large, complex systems in which
collaborative understandings and agreements will be the order of the day.