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A Coordinated Approach to Growth Control in Northern Virginia

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NOTES

A COORDINATED APPROACH TO GROWTH CONTROL IN NORTHERN VIRGINIA

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INTRODUCTION

Since the 1960s, Northern Virginia has been characterized by varying degrees of sprawl. Sprawl poses significant problems for a number of reasons, including inefficiency, negative environmental impacts, and unattractiveness. These problems can be solved, but only through concerted, coordinated efforts at all levels of government and across land-use and transportation policies.

Sprawl is characterized by low-density, leapfrog development that radiates outward from a dense urban core.¹ The growth of road networks accompanies sprawl because suburb residents typically drive to many of their destinations across the metropolitan area.² But which comes first, the growth or the roads? Are more roads built in order to accommodate growth as the population simultaneously grows and spreads outward, therefore replicating the same low-density pattern that characterizes previously “outer” suburbs?³ Or are roads constructed based on growth *projections*, providing access to previously less-accessible lands?⁴ Whatever the answers to these questions, sprawl and road-network growth proceed hand-in-hand.

Sprawl presents high public and private costs. From a public perspective, sprawl burdens infrastructure, creates environmental problems, and strains center cities.⁵ It is inefficient, as it costs more than compact development in terms of natural resource consumption, economic costs, and even personal costs.⁶ Sprawl causes an estimated \$72 billion per year in lost productivity, and often leads to social costs such as environmental damage, a decreased urban tax base, and road rage.⁷ The fragmented land-use decisions that

1. See Robert W. Burchell & Naveed A. Shad, *The Evolution of the Sprawl Debate in the United States*, 5 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 137, 137 (1999).

2. See Ed Bolen et al., *Smart Growth: A Review of Programs State by State*, 8 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 145, 146 (2002).

3. See Burchell & Shad, *supra* note 1, at 137-40 (attributing sprawl to zoning laws, which reflect Americans' “prairie psychology”).

4. See Robert H. Freilich & S. Mark White, *Growth Management and the Environment in the 1990s*, 24 LOY. L.A. L. REV. 915, 918-19 (1991).

5. See Georgette Chapman Poindexter, *Land Hungry*, 21 J.L. & POL. 293, 294 (2005).

6. See Burchell & Shad, *supra* note 1, at 143.

7. See Edward T. Canuel, *Supporting Smart Growth Legislation and Audits: An Analysis of U.S. and Canadian Land Planning Theories and Tools*, 13 MICH. ST. J. INT'L L. 309, 311-12

characterize sprawl also often have the side effect of stripping power from everyone who lives outside of a specific boundary, regardless of the impact that the given locality's land-use decisions might have on such "outsiders."⁸

No less important are the high private costs that accompany sprawl, which can increase based on a development's type, location, and density.⁹ Low-density development, because it necessarily entails the purchase of more land and often brings with it the need for more travel, is associated with higher personal costs¹⁰ and a lower quality of life.¹¹ Businesses also suffer higher costs in the form of productivity losses.¹² In response to these high public and private costs, local governments have attempted to influence growth patterns through traditional growth-control tools, including regulatory and market-based techniques.¹³

Sprawl has afflicted Northern Virginia since the twenty-year period that began in 1960, during which Fairfax County's population doubled.¹⁴ Although the rate of population growth in this and other suburbs eventually slowed, it remained at high levels for much of the latter half of the twentieth century.¹⁵ This high, sustained rate of growth created the Northern Virginia that exists today, which is characterized by far-flung enclaves of residential homes situated on large lots that are surrounded by strip malls and

(2005).

8. See Poindexter, *supra* note 5, at 310. Absent a regional approach, such fractured zoning laws have the further effect of hindering growth-control efforts.

9. See Burchell & Shad, *supra* note 1, at 142.

10. See *id.*

11. See Canuel, *supra* note 7, at 312. This "lower quality of life" argument presents a paradox. Although many people find sprawl to be ugly and indicate that they would prefer high-density development, these same people aspire to live in single-family homes and are willing to live amongst sprawl in order to do so. See Burchell & Shad, *supra* note 1, at 150.

12. See Canuel, *supra* note 7, at 312.

13. See *infra* Part I.B.

14. DAVID B. ELLINGTON, LESTER A. HOEL & JOHN S. MILLER, VA. TRANSP. RESEARCH COUNCIL, A TALE OF THREE REGIONS: INFLUENCE OF HIGHWAY INVESTMENTS ON POPULATION AND TRAFFIC GROWTH IN VIRGINIA, at vii (2005), available at <http://vtrc.virginia.gov/PubDetails.aspx?pubno=05-R23>.

15. METRO. WASH. COUNCIL OF GOV'TS, GROWTH TRENDS TO 2030: COOPERATIVE FORECASTING IN THE WASHINGTON REGION 10 (2005), available at http://www.mwco.org/store/item.asp?PUBLICATION_ID=241 [hereinafter MWCOG, GROWTH TRENDS].

busy highways.¹⁶ Pockets of high-density development lie scattered throughout the region, particularly in inner suburbs such as Tysons Corner, Arlington, Alexandria, Reston, McLean, and Falls Church; however, most of these areas are purely commercial centers.¹⁷ The rule for much of the region is low-density residential activity, supported by similarly low-density commercial activity.¹⁸

During the next twenty years, this pattern of low-density growth is projected to continue, as the region becomes more congested with people, households, and jobs.¹⁹ By 2030, the farthest-flung counties in what is considered the Washington, D.C., metropolitan area of Northern Virginia²⁰ are expected to generate the type of urban sprawl now seen in counties such as Fairfax and Arlington.²¹ However, the urban core of Washington, D.C., and its immediately surrounding areas, including Arlington and Alexandria, are expected to hold steady as the region's jobs centers, thus continuing—and possibly worsening—the status quo of cross-region commutes.²²

16. See Larry Van Dyne, *As Far as the Eye Can See*, WASHINGTONIAN, Feb. 1, 2000, <http://www.washingtonian.com/articles/people/6640.html>.

17. For example, the population of Tysons Corner during a given business day is estimated to exceed 100,000 people, but the area contains only 5700 homes. John J. Delaney, *Addressing the Workforce Housing Crisis in Maryland and Throughout the Nation: Future Housing Supply and Demand Analysis for the Greater Washington Area*, 33 U. BALT. L. REV. 153, 176 (2004).

18. See Van Dyne, *supra* note 16.

19. See MWCOG, GROWTH TRENDS, *supra* note 15, at 1.

20. For purposes of this Note, “far-flung” counties include Loudoun, Fauquier, Stafford, Spotsylvania, and Prince William. The sizeable portion of the D.C. metropolitan area that lies in Maryland is not considered in this Note, which instead proposes a solution for the Northern Virginia suburbs that complies with the demands of Virginia law. Although Virginia and Maryland have proven their ability to institute cross-state solutions through ventures such as the Washington Metropolitan Area Transit Authority (WMATA), this Note’s solutions to sprawl require discrete considerations of state law that render an inter-state collaborative approach difficult, at best. Indeed, an inter-state approach may threaten the ultimate success of this Note’s proposals. Maryland’s extensive legislative scheme of growth control would further complicate a collaborative effort. See Canuel, *supra* note 7, at 341-44. Nonetheless, communication between the two states is imperative, and can occur in regional fora such as the Metropolitan Washington Council of Governments (MWCOG). See *infra* notes 142-44 and accompanying text.

21. See MWCOG, GROWTH TRENDS, *supra* note 15, at 10.

22. See METRO. WASH. COUNCIL OF GOV'TS, NAT'L CAPITAL REGION TRANSP. PLANNING BD., WHAT'S IN THE PLAN FOR 2030?, at 17 (2006), available at http://www.mwcog.org/store/item.asp?PUBLICATION_ID=281.

Such outward expansion will require an attendant growth in the region's transportation network. This growth will primarily take the form of new road construction and improvements, including high-occupancy toll (HOT) lanes,²³ but it will also include new transit options such as Metro's Silver Line, which will eventually connect Loudoun County with downtown D.C. via Dulles International Airport.²⁴

Because sprawl and transportation networks grow hand-in-hand, neither should be considered without reference to the other: land-use and transportation policies are inherently linked. Governments and organizations across the Washington metropolitan region have recognized this crucial linkage. Their approach, however, is incomplete and unworkable, as no organization or government body currently possesses the power to enact proposals on a regional scale. Individual jurisdictions make land-use decisions, transportation policymaking suffers from a glut of organizations, and no body exists that can both coordinate policies and implement solutions.

In 2007, the Commonwealth of Virginia attempted to solidify this linkage between land use and transportation when Governor Tim Kaine signed Chapter 896.²⁵ This law simultaneously established new growth-control techniques and empowered the regional Northern Virginia Transportation Authority (NVTA) to impose and collect taxes. However, the Virginia Supreme Court thwarted such efforts in *Marshall v. Northern Virginia Transportation Authority* when it declared that the law's grant of taxation power to NVTA

23. HOT lanes are specialized toll lanes that keep traffic flowing at a constant, high speed by employing a variable tolling method that charges more per mile when demand is highest. See Virginia HOT Lanes, FAQs, <http://virginiahotlanes.com/faqs/> (last visited Feb. 18, 2011). These lanes are constructed within an existing roadway, and all commuters with a tolling transponder in their vehicles may use the HOT lanes. See *id.* Such lanes are currently under construction on I-495 between Springfield and the Dulles Toll Road. See Virginia Megaprojects, I-495 HOT Lanes, <http://www.vamegaprojects.com/about-megaprojects/i495-hot-lanes/#overview> (last visited Feb. 18, 2011). In addition, the Virginia Department of Transportation (VDOT) is planning the construction of HOT lanes on I-395 from the Pentagon to Spotsylvania County. See Virginia Megaprojects, I-95/395 HOT Lanes, <http://www.vamegaprojects.com/about-megaprojects/i95395-hot-lanes/> (last visited Feb. 18, 2011).

24. Dulles Metrorail Project Overview, <http://www.dullesmetro.com/about/> (last visited Feb. 18, 2011).

25. H.B. 3202, 2007 Gen. Assem., Reg. Sess. (Va. 2007) (enacted as Act of Apr. 11, 2007, ch. 896, 2007 Va. Acts 2437) [hereinafter Chapter 896].

was unconstitutional.²⁶ Despite this setback, *Marshall* left untouched certain provisions of Chapter 896 that encouraged higher density land uses, preserving the foundation for the combination of transportation policies with high-density land use.²⁷ But because regional bodies lack the power to do anything more than make suggestions, and because *Marshall* invalidated NVTAs' taxation power, no mechanism currently exists by which transportation policies can be combined with high-density land-use elements.

This Note proposes a method by which local governments in Northern Virginia and the Virginia General Assembly can tackle sprawl by coordinating transportation and high-density land-use policies. Part I makes the case for the coordination of land-use and transportation policies by contrasting traditional growth-control tools with more recent approaches. Part II describes the current state of affairs in Northern Virginia with regard to land-use decision making and transportation policy. Finally, Part III proposes methods by which the Northern Virginia region can coordinate transportation and land-use policies in a way that will tackle sprawl.

I. THE CASE FOR COORDINATING LAND-USE AND TRANSPORTATION POLICIES

A. *Sprawl: A Growth Problem That Must Be Managed*

"Sprawl" eludes a simple definition, and therefore has been framed in many different ways.²⁸ Of the countless definitions

26. 657 S.E.2d 71 (Va. 2008).

27. *See id.* at 428, 436.

28. *See, e.g.,* Burchell & Shad, *supra* note 1, at 137 ("Sprawl is the spread-out, skipped-over development that characterizes the non-central city metropolitan areas and non-metropolitan areas of the United States. Sprawl is one- or two-story, single-family residential development on lots ranging in size from one-third of one acre to one acre ... accompanied by strip commercial centers and industrial parks, also two stories or less in height and using a similar amount of land."); *see also* Eric M. Braun, *Smart Growth in North Carolina: Something Old or Something New?*, 35 WAKE FOREST L. REV. 707, 708 (2000) ("[Sprawl is] haphazardly planned, low-density residential development interspersed with strip commercial and retail development linked by a vast street and highway system that overemphasizes automobile use and de-emphasizes mass transit."); Poindexter, *supra* note 5, at 298 ("[S]prawl is a description of urban growth pattern characterized by lower density (less intensive) and more fragmented (less contagious) development.").

applied to this term, many contain similar elements. One of the most important of these elements is “leapfrogging,” the idea that sprawl involves a process of perpetual development progressing farther away from an urban core.²⁹ Leapfrogging results in development with a lower density than both the rest of the region and the nation.³⁰ Sprawl is also characterized by segregation of land uses,³¹ which is accomplished by local zoning ordinances that define which uses are permitted on certain parcels of land.³²

Sprawl has been attributed to a diverse array of factors.³³ The chief culprit among these is the zoning power, which most states delegated to local governments in the 1920s.³⁴ After states conferred this power, local governments began to compete with each other in a quest to differentiate themselves. This competition led to the exclusion of certain uses and, finally, to leapfrogging, as users who were excluded from one locality simply chose a more permissive locality that competed for their “business” through less restrictive zoning.³⁵

Sprawl also occurs when local governments enact zoning laws that favor residential, single-family uses over most other cate-

29. See Burchell & Shad, *supra* note 1, at 141.

30. See *id.*

31. See *id.*

32. Officials typically accomplish this segregation by categorizing land into broad types of use, such as “residential,” “commercial,” and “industrial,” with various subcategories of other restrictions such as height and density applied to each parcel. See Richard Briffault, *Smart Growth and American Land Use Law*, 21 ST. LOUIS U. PUB. L. REV. 253, 258-59 (2002) [hereinafter Briffault, *Smart Growth*]. Such zoning is referred to as “Euclidian” because the Supreme Court permitted its use by the town of Euclid, Ohio. See *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). The Euclidian approach includes the creation of a rational, comprehensive zoning plan that is gradually implemented. However, because development does not always proceed rationally, and because no comprehensive zoning plan can adequately predict future needs, local governments have developed tools to add flexibility to the zoning process. These tools include zoning amendments, variances, special use permits, floating zones, planned use developments, and more. See DANIEL P. SELMI ET AL., *LAND USE REGULATION: CASES AND MATERIALS* 48-49 (2008); see also *infra* Part I.B.

33. Underlying all of these factors is the obvious, but often unstated, assumption that growth will occur. Such growth can be in population, in per capita consumption of land, or in a simultaneous occurrence of both. See Poindexter, *supra* note 5, at 296.

34. The Standard State Zoning Enabling Act granted states this power. See Standard State Zoning Enabling Act § 1 (U.S. Dep’t of Commerce 1926); see also Briffault, *Smart Growth*, *supra* note 32, at 255-56.

35. See Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2031 (2000).

gories.³⁶ The sprawl that exists today, which includes not only low-density, single-family residences but also low-density commercial and even industrial uses, grew naturally from this initial favoring of the single-family home: as residential uses took root, demand grew for supporting uses such as shopping centers, restaurants, entertainment, and industrial parks.³⁷ Today's sprawl, therefore, is not only an outgrowth of government zoning policies, but also a response to citizens' desires for low-density, single-family uses and the other uses required to support such development.³⁸

Both leapfrogging and the favoring of single-family uses flowed from the devolution of zoning power to local governments. However, federal government policies have also contributed to sprawl. Congress jumpstarted an exponential growth in highway development when it passed the Federal-Aid Highway Act of 1956, authorizing federal funding for the construction of the Interstate Highway System.³⁹ Federal support of highways continues to encourage sprawl today,⁴⁰ as does Americans' increasing use of the automobile.⁴¹

36. See Briffault, *Smart Growth*, *supra* note 32, at 259.

37. See Burchell & Shad, *supra* note 1, at 138.

38. See *id.* The observation that sprawl results from consumer preferences for low-density, single-family uses begs the question of why American consumers tend to prefer such uses. One commentator has attributed such preferences to Americans' "prairie psychology," as well as to the economic value of land. *Id.* at 139 (quoting JOHN DELAFONS, *LAND USE CONTROLS IN THE UNITED STATES* 4 (1962)).

39. See *id.* at 140. The federal government also contributed to sprawl by making available "federally insured low-cost mortgages." *Id.* This policy, working in tandem with the Federal-Aid Highway Act of 1956, Pub. L. No. 84-627, 70 Stat. 374 (codified as amended at 23 U.S.C. §§ 101-166 (2006)), meant not only that more people were able to *afford* homes on low-density sites, they were also able to *access* them.

40. See Thomas Benton Bare III, *Recharacterizing the Debate: A Critique of Environmental Democracy and an Alternative Approach to the Urban Sprawl Dilemma*, 21 VA. ENVTL. L.J. 455, 461-62 (2003) ("Not only does TEA-21 [the Transportation Equity Act for the 21st century] fail to provide incentives to shift transportation dollars away from sprawling urban development, but it aggravates the problem by providing the most funding to the worst sprawlers.... In short, the approach taken by TEA-21 and other similar funding mechanisms does nothing but support individual dependence on the automobile by increasing funding for highway travel, while failing to encourage mass transit or compact development.").

41. Estimates suggest Americans' use of the automobile is growing twice as fast as the American population itself. Burchell & Shad, *supra* note 1, at 138; see also Oliver A. Pollard III, *Smart Growth and Sustainable Transportation: Can We Get There From Here?*, 29 *FORDHAM URB. L.J.* 1529, 1532-33 (2002).

One commentator argues that land use and transportation are *together* responsible for sprawl, suggesting that “land use regulations impose automobile-dependent development upon Americans.”⁴² This Note agrees and therefore argues that, whether zoning powers, transportation policy, or any other factor is ultimately responsible for sprawl, both state and local governments must address land-use and transportation policy in tandem.

B. Traditional Growth-Control Tools

Local governments traditionally have attempted to control growth either by regulating land use or by harnessing market forces to fund infrastructure. Some governments have also taken approaches that employ both of these techniques simultaneously.⁴³

Examples of regulatory, land-use-based techniques include building permits and population caps,⁴⁴ as well as zoning, subdivision approval, special use permits, planned use developments, and ordinances requiring construction of adequate public facilities.⁴⁵ For the purposes of this Note, the complex operational differences between these various mechanisms are not important; what matters is that each technique involves the *local* government’s use of its zoning and police powers to control where and how development proceeds. Fashioning a solution to sprawl requires appreciation of the fact that local governments control land-use decisions through such mechanisms.

Local governments may not exercise these traditional growth control powers with impunity, although their decisions are often met with a great deal of judicial deference for two principal reasons. First, the Due Process Clause of the U.S. Constitution⁴⁶ requires only that the exercise of state police powers be rationally related to a legitimate public purpose.⁴⁷ Second, separation of powers doctrine

42. See Michael Lewyn, *How Government Regulation Forces Americans into Their Cars: A Case Study*, 16 WIDENER L.J. 839, 839 (2007).

43. See ELLINGTON, HOEL & MILLER, *supra* note 14, at v.

44. See Burchell & Shad, *supra* note 1, at 145.

45. See Freilich & White, *supra* note 4, at 935-41.

46. U.S. CONST. amend. XIV, § 1.

47. See SELMI ET AL., *supra* note 32, at 56. The Supreme Court has recognized a substantive component in the Due Process Clause of the Fourteenth Amendment. Courts

requires courts to respect legislative prerogatives, including local government zoning decisions.⁴⁸ However, when a local government deviates from its initial zoning decisions by using its regulatory powers, courts review the deviation with a higher degree of scrutiny.⁴⁹

In contrast to growth-control techniques that concentrate exclusively on the regulation of land use, combination growth-control tools use aspects of *both* regulatory and market-driven techniques to allocate the burden between local governments and developers. Examples of such techniques include proffers and impact fees.⁵⁰ Both techniques require developers to shoulder the burden of infrastructure costs, often as a condition for permit approval by the local government.⁵¹

Despite the use of these traditional growth-control tools by local governments, sprawl has continued its march. This trend has led to new, region-wide approaches and to so-called “smart growth” techniques.

C. Moving Past Traditional Growth-Control Tools: Smart Growth and Regionalism

The use of smart growth techniques and regionalism stems from the failure of traditional growth-control techniques to control sprawl adequately on a regional level. As discussed, sprawl results from a confluence of factors, including traditional zoning policies, citizens’ desires, and transportation policies.⁵² But because multiple local governments across any given region participate in the creation of the zoning and transportation policies that give rise to sprawl, this problem must be coordinated on a regional level using nontradi-

examining the validity of state actions do so under the rubric of “substantive due process.” ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES § 7.1 (3d ed. 2006).

48. See SELMI ET AL., *supra* note 32, at 56.

49. See *id.* at 49.

50. See ELLINGTON, HOEL & MILLER, *supra* note 14, at v.

51. *Id.* at xvii.

52. See *supra* Part I.A.

tional tools.⁵³ This regional planning process has been termed “smart growth.”⁵⁴

A regional approach recognizes the realities of life in a metropolitan area, which is itself regional: people do not typically confine themselves to one locality within a metropolitan area.⁵⁵ Furthermore, a regional approach to sprawl recognizes the fact that the competitiveness of a given metropolis is measured on a regional level, meaning that some amount of regional coordination is needed even if land-use decisions are made on a local level.⁵⁶ These local decisions impact the entire region’s competitiveness, even though local governments are not obligated to consider this broader impact when making land-use choices.⁵⁷ Absent regional coordination of such policies, regional competitiveness can suffer from localities’ discordant decisions.

1. Smart Growth Models Offer Potential Growth-Control Solutions

By way of contrast with traditional growth-control tools, which typically are aimed at ensuring the rationality of planning,⁵⁸ smart growth aspires to increase economic progress, protect the environment, and improve residents’ quality of life by focusing development around preexisting infrastructure to create compact, accessible, and pedestrian-oriented urban areas.⁵⁹ Examples of techniques that can achieve smart growth goals include mixed-use developments,⁶⁰ infill

53. See Burchell & Shad, *supra* note 1, at 146.

54. See generally Canuel, *supra* note 7 (examining the origins, techniques, and challenges of “smart growth”). For an argument about why conservation and open-space policies are a better way to tackle sprawl than growth controls or regionalism, see Nicole Stelle Garnett, *Trouble Preserving Paradise?*, 87 CORNELL L. REV. 158, 183-84 (2001). Smart growth has also been criticized for distorting the market by driving up land prices, and for being an autocratic power-grab that frequently runs afoul of the Constitution by violating the Takings Clause. See Canuel, *supra* note 7, at 323-24.

55. See Briffault, *Smart Growth*, *supra* note 32, at 266.

56. *Id.*

57. *Id.*

58. See *id.* at 259.

59. See Canuel, *supra* note 7, at 314.

60. Mixed-use developments consist of a parcel that contains zonings that local governments traditionally would segregate, such as residential and commercial. See SELMI ET AL., *supra* note 32, at 66.

development,⁶¹ growth boundaries,⁶² transit-oriented development,⁶³ and reuse of brownfield sites.⁶⁴ Although the goals and techniques of smart growth contrast with the goals and techniques of traditional Euclidian zoning,⁶⁵ governments can employ smart growth techniques within the preexisting Euclidian framework by requiring, for example, minimum population densities, maximum building heights, and narrower streets with slower speeds.⁶⁶

Various smart growth attempts have emerged in several states, including Georgia, Maryland, Minnesota, Oregon, and Washington. Each state has approached smart growth differently: Washington, for example, takes a bottom-up approach that accomplishes the state's growth management goals at the local level,⁶⁷ whereas Oregon employs a top-down method that centralizes power in the state government⁶⁸ and empowers the Oregon Department of Transportation to make quasi-judicial decisions about land use while working with local governments.⁶⁹ Similar to Oregon's treatment of its Department of Transportation, Georgia empowers an entity called the Georgia Regional Transportation Authority to make land-use decisions in the Atlanta area, going so far as to give

61. Infill development uses vacant sites close to preexisting infrastructure that might not otherwise be used due to zoning restrictions. See Bolen et al., *supra* note 2, at 148.

62. Growth boundaries draw a circle around an urban area, outside of which the government refuses to subsidize infrastructure construction. See SELMI ET AL., *supra* note 32, at 561.

63. Transit-oriented development focuses on parcels of land within walking distance of transit, such as buses and trains. See JULIAN CONRAD JUERGENSMEYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW § 9.12 (2d ed. 2007).

64. Brownfield sites are previously overlooked, lightly contaminated sites that are suitable for development. See SELMI ET AL., *supra* note 32, at 684-86.

65. Smart growth focuses on *integration* of uses whereas Euclidian zoning focuses on *separation* of uses. For an explanation of Euclidian zoning, see *supra* note 32.

66. See Canuel, *supra* note 7, at 322-23.

67. See Eric S. Laschever, *An Overview of Washington's Growth Management Act*, 7 PAC. RIM L. & POL'Y J. 657, 662 (1998).

68. See Bolen et al., *supra* note 2, at 206-08. Adding to the novelty of Oregon's approach is the fact that Portland has formed a regional government called Metro. See Keith Aoki, *All the King's Horses and All the King's Men: Hurdles to Putting the Fragmented Metropolis Back Together Again? Statewide Land Use Planning, Portland Metro, and Oregon's Measure 37*, 21 J.L. & POL. 397, 425-26 (2005).

69. See Timothy V. Ramis & Andrew H. Stamp, *Integrating Procedural Aspects of Transportation and Growth Management in Oregon: A Critical Look at the Oregon Department of Transportation's Role as a Growth Management Agency*, 77 OR. L. REV. 845, 845-47 (1998); see also Laschever, *supra* note 67, at 659.

it veto power over developments in areas that are overly congested or lack adequate transportation capacity.⁷⁰ Maryland, in an innovative approach that uses incentives instead of regulations, restricts state growth-related spending to areas within designated boundaries.⁷¹ Meanwhile, Minneapolis and St. Paul have instituted a Regional Council that sets the direction for the region's transportation and land-use policies.⁷² These smart growth techniques illustrate the diverse methods that are available to regions facing the need to control growth.

2. Regionalism Is a Necessary Component for a Successful Growth-Control Plan

Smart growth, by itself, is not an imperative element of growth-control efforts; however, some form of a regional approach is required for several reasons. First, and most importantly, the metropolitan area is a unit. Due to the movement that occurs back and forth between localities within a region, markets and resources are based on regions, not localities.⁷³ A growth-control effort that recognizes this reality is therefore more likely to be successful.

Second, regionalism addresses problems that localism cannot tackle. Local government action creates externalities that impact the entire region, and those effects require a regional solution.⁷⁴ One commentator has explained this need in terms of the "tyranny of the favored quarter."⁷⁵ This phenomenon results in one quarter of the population of a given region receiving the majority of the region's investments and job growth, but avoiding its share of the region's

70. See Cashin, *supra* note 35, at 2038; see also Arthur C. Nelson, *New Kid in Town: The Georgia Regional Transportation Authority and Its Role in Managing Growth in Metropolitan Georgia*, 35 WAKE FOREST L. REV. 625, 634-35 (2000).

71. See Bolen et al., *supra* note 2, at 172-73; Canuel, *supra* note 7, at 342. *But see* Rebecca Lewis, Gerrit-Jan Knaap & Jungyul Sohn, *Managing Growth with Priority Funding Areas: A Good Idea Whose Time Has Yet To Come*, 75 J. AM. PLAN. ASS'N 457 (2009) (arguing that this initiative has been a failure, as growth outside of the so-called Priority Funding Areas has increased at the same rate as it did prior to the institution of the policy).

72. See Cashin, *supra* note 35, at 2035.

73. See Richard Briffault, *Localism and Regionalism*, 48 BUFF. L. REV. 1, 3-4 (2000) [hereinafter Briffault, *Localism*]; see also *supra* notes 55-57 and accompanying text.

74. See Briffault, *Localism*, *supra* note 73, at 12, 18.

75. Cashin, *supra* note 35, at 1987-91.

social burdens, such as the need for low income housing.⁷⁶ In a self-perpetuating cycle, the “favored” areas continue to improve, while the less favored ones spiral downward.⁷⁷ Coordination of growth control on a regional level instead of a local level mitigates some of these externalities because a regional approach can better coordinate the provision of the region’s most critical needs—a power that local governments lack.

Despite the necessity of a regional approach to growth control and the potential benefits that come with it,⁷⁸ its implementation can be threatened by the entrenchment and self-interest that accompany local approaches to governing,⁷⁹ as well as by citizens’ desires for local autonomy.⁸⁰ In order to address these potential pitfalls, attempts to institute regionalism must aim not at supplanting local governments, but at using localism to bolster regionalism.⁸¹ In other words, governance structures or cooperative agreements should be used to better distribute regional benefits and burdens, but without jettisoning localities.⁸² This balance can be accomplished by allowing local governments to retain their niche, while giving regional bodies authority over those areas in which a comprehensive approach is most needed. For example, local governments could be given control over land-use, housing, and economic development decisions, whereas regional bodies could handle the development of regional norms and guidelines.⁸³ The goal, however, should not be the formation of new governments, but rather regional cooperation through tax-base sharing.⁸⁴ It is only through such sharing of powers, and not through a body with merely theoretical or advisory powers, that an actual regional effort can develop. And land use is

76. Only state courts have addressed the issue of “fair share” with regard to housing. In 1975, the Supreme Court of New Jersey held that housing is a fundamental right, and that local governments therefore must take on their fair share of the regional housing need. *S. Burlington County NAACP v. Twp. of Mount Laurel*, 336 A.2d 713, 732-33 (N.J. 1975), *appeal dismissed and cert. denied*, 423 U.S. 808 (1975).

77. See Cashin, *supra* note 35, at 2011-12.

78. See Briffault, *Localism*, *supra* note 73, at 24.

79. See *id.* at 27.

80. See Cashin, *supra* note 35, at 2027.

81. See *id.*

82. See *id.*

83. See Briffault, *Localism*, *supra* note 73, at 20.

84. See MYRON ORFIELD, *AMERICAN METROPOLITICS: THE NEW SUBURBAN REALITY* 105-08 (2002).

not the only area in which a regional effort is imperative: transportation policy, too, must be coordinated on a regional level.

D. Transportation Policy as a Growth-Control Method, and Its Use in Conjunction with Land-Use Policy

At its core, transportation policy⁸⁵ is a regional proposition; its goal is to facilitate the movement of citizens not just within a local government's jurisdiction, but throughout an entire region and beyond. This fact alone argues for regional cooperation, if only in the transportation realm. As already demonstrated, however, land-use decisions must also be made with an eye toward regional considerations.⁸⁶ Because both land-use and transportation decisions must be made on a regional level, they must also be coordinated with each other, as the manner in which land is used has the power to affect transportation policies, and vice versa.⁸⁷

A coordinated approach to growth control is necessary because transportation policy alone is imperfect as a growth control tool: it cannot accomplish the same growth-control ends that land-use policy can. Transportation policy functions as a one-way ratchet: although it can stimulate new development, thereby fostering sprawl,⁸⁸ it fails to redistribute growth in the same precise manner that land-use policies can.⁸⁹ Put another way, transportation policy

85. In this Note, the term "transportation policy" refers to government decisions that underlie the use of every mode of *local* or *regional* transportation, including automobiles, transit (such as buses, commuter trains, light rail, subways, streetcars, and ferries), bicycling, and walking. Not included in this definition are long-range transportation options such as airplanes or ships. Even though this definition includes many different modes, the realities of life in the United States mean that "transportation policy" mostly refers to automobile usage, which reflects Americans' automobile dependence. See Burchell & Shad, *supra* note 1, at 148-49. Such dependence is not likely to change, even with progressive transportation and land-use policies. In Portland, Oregon, which is widely regarded as having progressive land-use policies, widespread implementation of transit-oriented development (TOD) has not had a noticeable effect on vehicle miles traveled. See *id.* This suggests that, even if development occurs in areas that are conducive to alternative forms of transportation, automobiles will still predominate. See *id.*

86. See *supra* Part I.C.

87. See Briffault, *Smart Growth*, *supra* note 32, at 265.

88. See Freilich & White, *supra* note 4, at 918-19.

89. See ELLINGTON, HOEL & MILLER, *supra* note 14, at xviii.

can lead growth *outward*, through the construction of more roads, but cannot lead growth *inward* or *upward*.

A study of transportation policy in three areas of Virginia highlighted the inability of transportation policy to control growth in a precise manner. In each of the three areas—Fairfax County, Hampton Roads, and Fredericksburg—transportation policy failed to shape growth as intended.⁹⁰ Indeed, Fairfax County's reduction in highway investments failed to affect growth at all.⁹¹ The study's authors concluded that, once market demand exists, transportation policy merely facilitates such demand.⁹² This conclusion solidifies the idea of transportation policy as a one-way ratchet: it can lead growth outward, but once such outward growth has occurred, it loses its ability to influence growth in any other fashion.

Even though transportation policy alone cannot control growth, its interplay with land-use policy renders it an imperative part of every growth-control effort. Transportation and land-use policies are interwoven to such a degree that disregarding one or the other would doom any growth-control effort. But both policies must also be approached on a regional level—even though the current national pattern is that regional cooperation is common for transportation policies, but rare for land-use policies.⁹³ Professors Freilich and White neatly summed up this conundrum when they wrote:

Roads do not generally stop at municipal borders; therefore, transportation is widely viewed as a regional problem. Effective solutions to the traffic congestion quandary, however, have not emerged from federal or state governments. Despite the rising interest in regional and statewide controls in many regions, little has been done to change the fundamental fact that the regulation of land use resides primarily at the local level.⁹⁴

90. *See id.*

91. *See id.* at 19.

92. *See id.* at xix.

93. *See* Cashin, *supra* note 35, at 2030. Cooperation with regard to transportation policies reflects what Professor Briffault has deemed “things-regionalism,” which refers to regional cooperation on infrastructure or systems, rather than on public concerns. Briffault, *Localism*, *supra* note 73, at 5.

94. Freilich & White, *supra* note 4, at 922.

In other words, many regions fail both to approach land-use and transportation policies together, and to consider them in a regional context. A survey of the state of affairs in Northern Virginia reveals that the professors' observation largely applies to the region.

II. THE STATE OF AFFAIRS IN NORTHERN VIRGINIA

The region of Northern Virginia consists of fourteen cities, counties, and towns in the Washington, D.C., metropolitan area.⁹⁵ Each local government makes land-use decisions independently within a framework that the Commonwealth establishes. No regional government exists, although Metropolitan Washington Council of Governments (MWCOCG) serves as a forum for the coordination of many types of regional policies.⁹⁶ In addition, several quasi-governmental bodies study and coordinate transportation policy within the region.⁹⁷ These organizations are distinct from the region's transportation service providers.⁹⁸

The Northern Virginia region has been attempting to manage the effects of sprawl for decades, and will continue this battle over the next twenty years as sprawl worsens. The region's population is expected to grow at an average rate of 69,000 people per year through

95. According to NVTA, "Northern Virginia consists of the counties of Arlington, Fairfax, Loudoun, and Prince William; the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park; and the towns of Dumfries, Herndon, Leesburg, Purcellville, and Vienna." N. VA. TRANSP. AUTH., TRANSACTION 2030 SUMMARY REPORT 2, available at <http://www.thenovaauthority.org/transaction2030/ReportsandMaps/2030-Sum-Report-01162006b.pdf> [hereinafter TRANSACTION 2030].

96. N. VA. TRANSP. COMM'N, HOW PUBLIC TRANSPORTATION IS ORGANIZED IN NORTHERN VIRGINIA 32-55 (2008), available at http://www.thinkoutsidethecar.org/research/completed_research.asp [hereinafter NVTC, HOW PUBLIC TRANSPORTATION IS ORGANIZED].

97. The most important Commonwealth body is VDOT, which includes the Northern Virginia District of VDOT, the Commonwealth Transportation Board (CTB), and the Virginia Department of Rail and Public Transportation (VDRPT). *Id.* The metropolitan D.C.-area bodies that have the most impact are MWCOCG (which includes the Transportation Planning Board of the National Capital Region (TPB)), the Washington Metropolitan Area Transit Authority (WMATA), and the Metropolitan Washington Airports Authority (MWAA). *See id.* The primary Northern Virginia-region bodies include NVTA, NVTC, the Northern Virginia Regional Commission (NVRC), and the Potomac and Rappahannock Transportation Commission (PRTC). *See id.*

98. Examples of organizations that merely provide transportation services include Virginia Railway Express (a joint partnership between NVTC and PRTC), Virginia Regional Transit, Alexandria's DASH, Arlington Transit, City of Fairfax's CUE, City of Falls Church's GEORGE, Fairfax Connector, Loudoun County Transit, REX, TAGS, and PikeRide. *See id.*

2030.⁹⁹ Whereas closer, suburban counties such as Fairfax County experienced rapid growth during the period from 1970 to 2000, growth during the 2000-2030 period is expected to occur in more distant counties such as Loudoun, Stafford, and Prince William.¹⁰⁰ The rate of growth in employment in these counties is also expected to increase more rapidly than in other counties.¹⁰¹ Moreover, although the vast majority of jobs in 2030 are expected to be located in so-called “regional activity clusters,” only about 50 percent of households are expected to be similarly located.¹⁰² This disparity suggests that residents will continue driving to jobs that are located far from their homes.

The region stands at a crossroads, and the Commonwealth has recognized this. VTrans2035, a long-range transportation planning report prepared by the Office of Intermodal Planning and Investment, recognizes that Virginia faces two options over the coming decades. The first scenario envisions “past patterns continu[ing] without change,” which will result in even more “dispersed, sprawling, low-density development across a great deal of its land area, with major corridors overwhelmed by transportation demand generated from scattered residential, commercial, and industrial development.”¹⁰³ However, in the second scenario, the Commonwealth will “organize its growth around relatively compact activity centers, each with a balanced and healthy mix of development, connected by free-flowing rail, transit, and highway corridors providing access and mobility.”¹⁰⁴

Achievement of the latter scenario is unlikely to occur within Virginia’s current framework of transportation and land-use decision making. In order to realize the mixed-use, compact development centers that this scenario envisions, some fundamental changes must occur. As the following survey of land-use and transportation decision making shows, the near certainty of increased sprawl is not the only obstacle to growth control in Northern

99. MWCOC, GROWTH TRENDS, *supra* note 15, at 5.

100. *See id.* at 10.

101. *See id.* at 11.

102. *Id.* at 14-15.

103. OFFICE OF INTERMODAL PLANNING AND INVESTMENT, VTRANS2035 REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY, at ii (2009) [hereinafter VTRANS2035 REPORT].

104. *Id.*

Virginia; in addition, the patchwork of local governments and quasi-governmental organizations that play a role in shaping transportation policies must somehow be shepherded into concerted action.

A. Land-Use Decision Making Suffers from a Lack of Cooperation

Fragmented decision making compromises the viability of growth control in Northern Virginia. Pursuant to power granted by the Code of Virginia, land-use decisions are made not on a regional level, but by the individual local governments within a given region, including counties and municipalities.¹⁰⁵ These local governments enjoy exclusive control over a wide range of policies that shape how development proceeds in their respective jurisdictions.

More specifically, counties and municipalities harbor the authority to enact zoning ordinances that classify land uses and structure sizes.¹⁰⁶ High-growth localities are further empowered to extract proffers of cash for the off-site road improvements needed to accommodate new development,¹⁰⁷ and to assess road impact fees¹⁰⁸ as a condition for allowing new development.¹⁰⁹

This high degree of local control works against the General Assembly's stated purpose in granting local governments these powers, which is to "encourage localities to improve the public health, safety, convenience and welfare of its citizens," and to ensure that infrastructure—including transportation—be well planned and economical.¹¹⁰ Instead, sprawl inconveniences citizens, who suffer from poorly planned and uneconomical infrastructure. The failure to control these negative effects of sprawl is due in part to fragmented decision making.¹¹¹

A lack of cooperation, both between local governments and Virginia Department of Transportation (VDOT) and among local

105. VA. CODE ANN. § 15.2-2280 (2010).

106. *Id.*

107. *Id.* § 15.2-2298.

108. Impact fees in general are "charges levied by local governments on new developments in order to pay a proportionate share of the capital costs of providing public infrastructure to those developments." JUERGENSMEYER & ROBERTS, *supra* note 63, § 9.9B.

109. VA. CODE ANN. § 15.2-2319.

110. *Id.* § 15.2-2200.

111. Fragmented decision making also infects the realm of transportation policy. *See infra* Part II.B.

governments, solidifies this fragmentation: each locality plans only for itself and is rarely compelled to coordinate with VDOT. For example, every locality is required to create a local planning commission, the duties of which include “promot[ing] the orderly development of the locality and its environs” by “serv[ing] primarily in an advisory capacity to the governing bodies,”¹¹² as well as preparing a comprehensive plan.¹¹³ Comprehensive plans are intended to “guid[e] and accomplish[] a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants.”¹¹⁴ In other words, comprehensive plans must chart a course for future development, but only within a given locality’s jurisdiction.

Because localities are not required to cooperate in creating their respective comprehensive plans, each locality pays attention to only its own needs. For example, Arlington County’s General Land Use Plan (GLUP), which represents a component of the county’s comprehensive plan, focuses only on “the development of Arlington County” and “the future development of the County.”¹¹⁵ The GLUP does mention cooperation in the context of regional demographic forecasting that takes place within MWCOG, but such forecasting merely predicts the county’s share of future regional growth. It does not require the county to cooperate with other localities in making growth decisions as they relate to land-use components such as density and the location of residential and commercial uses. Similarly, Fairfax County notes that its comprehensive plan contains a “general *countywide* policy on land use” that focuses on “ensur[ing] that *Fairfax County’s* excellent quality of life will continue.”¹¹⁶ Where the plan does recognize the need for cooperation—it notes that the county’s “planning efforts should be cognizant of the role that the County plays in regional growth and develop-

112. VA. CODE ANN. § 15.2-2210.

113. *Id.* § 15.2-2223.

114. *Id.*

115. ARLINGTON COUNTY, GENERAL LAND USE PLAN (2010), available at <http://www.arlingtonva.us/departments/cphd/planning/docs/CPHDPlanningDocsGLUP.aspx>.

116. Fairfax County, Virginia, Comprehensive Plan: Frequently Asked Questions, <http://www.fairfaxcounty.gov/dpz/comprehensiveplan/planfaq.htm> (last visited Feb. 18, 2011) (emphases added).

ment”¹¹⁷—its vagueness ensures that no concrete action will be taken.

Arlington County’s and Fairfax County’s comprehensive plans demonstrate that localities eschew cooperation in their land-use planning. This myopia leads to well-planned localities but an incoherent region, “almost as if there weren’t planning at all.”¹¹⁸ The lack of mandated cooperation between localities in the realm of comprehensive plans represents a lost opportunity to add regional land-use coherence by forcing communication between localities.

Adding to the problem is the fact that VDOT does not cooperate with localities when the localities create their comprehensive plans. Indeed, the department reviews such plans only under certain circumstances.¹¹⁹ For example, if a locality amends its comprehensive plan or zoning ordinances, VDOT must review only those changes that will “substantially affect transportation on state controlled highways.”¹²⁰ VDOT is not required to assist with the actual planning.

A cooperation failure also exists in areas other than comprehensive planning. For instance, the Virginia General Assembly permits cooperative action between localities vis-à-vis land-use powers in two ways, neither of which seems to be utilized. First, planning commissions may cooperate with each other “so as to coordinate planning and development among the localities.”¹²¹ Second, municipalities and counties may create “joint local planning commissions.”¹²² Such cooperative action among planning commissions, municipalities, and counties are at the election of the various localities; cooperation is neither encouraged nor discouraged, but merely permitted. In other words, the General Assembly has established mechanisms of cooperation, but the current extent of sprawl indicates that these cooperative mechanisms are either not used or

117. FAIRFAX COUNTY, COMPREHENSIVE PLAN: LAND USE 5 (2008), *available at* <http://www.fairfaxcounty.gov/dpz/comprehensiveplan/policyplan/landuse.pdf>.

118. See Posting of David Alpert to Greater Greater Washington, <http://greatergreaterwashington.org/post/7157/tpbs-aspiration-means-hot-lanes-more-pollution/> (Sept. 15, 2010, 11:06 EST).

119. VA. CODE ANN. § 15.2-2222.1(A).

120. *Id.*

121. *Id.* § 15.2-2211. This provision also gives planning commissions the option of cooperating with the legislative or administrative bodies of other localities. *Id.*

122. *Id.* § 15.2-2219.

are ineffective. The inward-facing attitudes that can be seen in comprehensive plans may provide a clue as to why such cooperative mechanisms in the land-use arena are underutilized.

Localities may also cooperate in realms other than planning and land-use actions. Power, for example, may be shared between political subdivisions, so long as each entity possesses similar powers.¹²³ Localities are also empowered to enter into agreements for the provision of services or facilities.¹²⁴ More generally, two or more political subdivisions may form and maintain an association so as to promote a close relationship between the bodies through “investigation, discussion and cooperative effort.”¹²⁵ As with permissive cooperative actions regarding land use, these cooperative actions seem to be permitted merely as methods by which local government bodies can *choose* to associate; again, the extent of sprawl shows the ineffectiveness of such provisions. As a whole, the reality of land-use decision making in Northern Virginia is not the cooperative process that the General Assembly intended. Instead, the decision-making process has led to sprawl and poor planning.

B. A Number of Stakeholders Create Transportation Policy

In contrast to the cooperation failure that defines land-use decision making, transportation policy faces the logistical problem of managing an excessive number of organizations, most of which lack a mandate to implement recommendations. Transportation policy decisions on a regional level come from a patchwork of state, regional, and local bodies. Understanding the key players in Northern Virginia transportation policymaking therefore requires the mastery of an alphabet soup of acronyms.

1. State Policymakers

At the top of the transportation policy structure sits the Commonwealth Transportation Board (CTB), a division of VDOT that builds, maintains, and improves the state highway system.¹²⁶

123. *Id.* § 15.2-1300.

124. *Id.* § 15.2-1301.

125. *Id.* § 15.2-1303.

126. *Id.* § 33.1-12.

Its other duties include reviewing VDOT policies, coordinating and cooperating with local governments, and creating Six Year Improvement Plans.¹²⁷ The Virginia Secretary of Transportation chairs the CTB,¹²⁸ and its commissioner is the chief executive officer of VDOT, who wields the power to build, maintain, improve, and preserve Virginia's highways.¹²⁹ CTB receives assistance from the Office of Intermodal Planning and Investment, which "advises ... [CTB] on multimodal and intermodal issues,"¹³⁰ primarily through the creation of long-range multimodal transportation plans such as VTrans2025 and VTrans2035.¹³¹

2. Metropolitan D.C. Organizations

Adding to this confusing patchwork are organizations that focus on the metropolitan D.C. region. The two most important of these organizations are the National Capital Region Transportation Planning Board (TPB) and MWCOG.

The TPB is a Metropolitan Planning Organization (MPO), the establishment of which Congress required in certain urban areas.¹³² Created in 1965 by state and local governments throughout the region, the TPB associated itself with MWCOG in 1966, and although the TPB remains an independent body, it continues to receive support from MWCOG's transportation staff.¹³³ Virginia law grants MPOs such as the TPB the power to issue contracts for studies and to develop and approve transportation plans and improvements to roads, to the extent allowed under federal law.¹³⁴

127. *Id.*

128. *Id.* § 33.1-1.

129. *Id.* § 33.1-13.

130. Office of Intermodal Planning and Investment, About Us, http://www.vtrans.org/about_us.asp (last visited Feb. 18, 2011).

131. See Office of Intermodal Planning and Investment, Multimodal Transportation Plan, VTrans2035, http://www.vtrans.org/multimodal_transportation_plan_vtrans2035.asp (last visited Feb. 18, 2011).

132. See METRO. WASH. COUNCIL OF GOV'TS, A CITIZENS GUIDE TO TRANSPORTATION DECISION MAKING IN THE METROPOLITAN WASHINGTON REGION 15 (2008), available at http://www.mwcog.org/store/item.asp?PUBLICATION_ID=82 [hereinafter MWCOG, CITIZENS GUIDE]; see also NVTTC, HOW PUBLIC TRANSPORTATION IS ORGANIZED, *supra* note 96, at 39.

133. See MWCOG, CITIZENS GUIDE, *supra* note 132, at 15.

134. VA. CODE ANN. § 33.1-23.03:01.

To accomplish these objectives, the TPB coordinates transportation policy throughout the region in three main ways. First, it ensures that transportation decision making complies with federal law.¹³⁵ Second, it provides a regional policy framework and a forum in which regional governments can coordinate transportation policy.¹³⁶ The TPB Vision, a document that lists eight goals and strategies, guides this policy framework in several ways, including encouraging greater concentrations of development within the urban core and near transit through the creation of “an interconnected transportation system.”¹³⁷ The Vision also lists as a goal the achievement of “better inter-jurisdictional coordination of transportation and land use planning,” but mostly encourages the utilization of noncoercive means such as the creation of model zoning and land-use guidelines.¹³⁸ Third, the TPB coordinates transportation policy throughout the region by providing technical resources for decision making.¹³⁹

The TPB’s inability to require action hampers its capacity to influence transportation policy in a concrete manner. As with land-use policy, individual jurisdictions exert control over their own spheres; this control is sufficient to weaken the benefits that the TPB brings.¹⁴⁰ As David Alpert, founder of the influential Greater Greater Washington blog, has explained, local control over transportation policy is “the Achilles heel of the TPB: because individual jurisdictions have so much control over their own elements, each jurisdiction essentially gets what they want for themselves, almost as if there weren’t planning at all. Meanwhile, the overall region and environment suffers.”¹⁴¹

MWCOG also has a major impact on the region’s transportation policy. Although MWCOG works closely with the TPB, it also creates comprehensive regional plans and serves as a policy forum for the entire metropolitan D.C. area on issues such as transporta-

135. See MWCOG, *CITIZENS GUIDE*, *supra* note 132, at 16.

136. See *id.* at 17.

137. METRO. WASH. COUNCIL OF GOV’TS, *THE TPB VISION 1* (1998), available at http://www.mwco.org/store/item.asp?PUBLICATION_ID=93 [hereinafter MWCOG, TPB VISION].

138. *Id.* at 4.

139. See MWCOG, *CITIZENS GUIDE*, *supra* note 132, at 18.

140. See Alpert, *supra* note 118.

141. *Id.*

tion and air quality.¹⁴² MWCOCG straddles the line between transportation and land-use policies, as it also provides land-use forecasting for the region¹⁴³ and has created a regional clearinghouse dedicated to promoting the coordination of land-use and transportation planning called the Transportation/Land-Use Connections Program.¹⁴⁴ MWCOCG, however, focuses on the entire metropolitan D.C. region, not just Northern Virginia and, similar to the TPB, serves as a forum with merely precatory powers. It therefore lacks the authority to implement the policies it espouses.

3. Local Governments

Local governments further complicate transportation policy by adding to the patchwork of organizations. These bodies have implementation powers,¹⁴⁵ but in many instances fail to cooperate effectively. Although Virginia law establishes methods for cooperation between local governments, these primarily allow for cooperation with regard to only the operation and maintenance of roads, not policy. One provision in the Code of Virginia, for example, allows localities to enter into agreements regarding their roads, but only for their construction, operation, and tolling.¹⁴⁶ Localities are also permitted to establish local transportation districts, but only for industrial and commercial purposes, not for the purpose of coordinating policy.¹⁴⁷ In short, among the organizations that comprise the patchwork, local governments alone possess implementation power, but they cannot effectively cooperate across their borders on matters of policy.

142. See MWCOCG, HOW PUBLIC TRANSPORTATION IS ORGANIZED, *supra* note 96, at 38.

143. See generally MWCOCG, GROWTH TRENDS, *supra* note 15.

144. Transportation/Land-UseConnectionsProgram, <http://www.mwcog.org/transportation/activities/tlc/default.asp> (last visited Feb. 18, 2011).

145. Local governments have control over roads, but not necessarily over the policy behind them. The state automatically gives control over secondary roads to municipalities whose population exceeds 3500 people. VA. CODE ANN. § 33.1-224 (2010). Localities, however, can request that the state take its streets into the secondary system for maintenance purposes. *Id.* § 33.1-70.3.

146. *Id.* § 33.1-228.1.

147. *Id.* § 33.1-410.

4. *Additional Policymakers*

In addition to state, metropolitan-area, and local bodies, two additional bodies exist that impact regional transportation policy in Northern Virginia: the NVTC and the NVTA. Together, these two organizations coordinate transit and transportation planning within the Northern Virginia region, but lack the power of implementation.

NVTC primarily coordinates transit policy.¹⁴⁸ This organization takes chief responsibility for managing and collecting the gasoline tax from which the Metro transit system receives its funding, for co-owning Virginia Railway Express,¹⁴⁹ and for appointing Virginia's representatives on Metro's board.¹⁵⁰ NVTC also serves as a forum for coordination between the regional Metro system and the local transit systems.¹⁵¹ Each year, it allocates approximately \$200 million in federal, state, and regional funds to its member jurisdictions,¹⁵² which include ten agencies that provide transit services and seven state and regional agencies that provide transit planning.¹⁵³ NVTC's work, which it completes without a staff and with little funding,¹⁵⁴ allows providers of transit in Northern Virginia to deliver high levels of service in a cooperative atmosphere.¹⁵⁵

In contrast to NVTC's focus on transit, NVTA concentrates on broad transportation planning, although it also lacks the power to implement its recommendations. Its primary responsibilities include creating Northern Virginia's unconstrained multimodal transpor-

148. See N. VA. TRANSP. COMM'N, NVTC HANDBOOK 2 (2010), available at <http://www.thinkoutsidethecar.org/nvtc/handbook.asp> [hereinafter NVTC HANDBOOK].

149. The Potomac and Rappahannock Transportation Commission (PRTC) is the other owner. See NVTC, HOW PUBLIC TRANSPORTATION IS ORGANIZED, *supra* note 96, at 16.

150. See *id.* at 15.

151. Examples of these include Arlington Transit, Falls Church GEORGE, Alexandria DASH, and City of Fairfax CUE. Such local systems are distinguishable from systems that are designed to serve the region, such as WMATA and VRE. See *id.* at 16.

152. NVTC HANDBOOK, *supra* note 148, at 3.

153. NVTC, HOW PUBLIC TRANSPORTATION IS ORGANIZED, *supra* note 96, at 13. These agencies were responsible for 142 million transit trips in the metropolitan D.C. area in fiscal year 2008. NVTC HANDBOOK, *supra* note 148, at 22.

154. See NVTC, HOW PUBLIC TRANSPORTATION IS ORGANIZED, *supra* note 96, at 25. Most of the seventeen member jurisdictions contribute to funding. See *id.* at 13. Those members that contribute the most funding are given the most control. See *id.* at 17.

155. See *id.* at 30.

tation plan,¹⁵⁶ defining funding priorities, and implementing projects;¹⁵⁷ NVTA also allocates federal funds¹⁵⁸ and carries out policies and programs.¹⁵⁹ NVTA's funding comes from its members, proportionate to the population of each.¹⁶⁰

One of NVTA's most important functions lies in its creation of a Regional Transportation Plan for Northern Virginia, as required by organization bylaws.¹⁶¹ The plan is comprised of two components: the Six-Year Program and the Long Range Transportation Plan.¹⁶² Whereas the Six-Year Program consists of short-term improvements of regional significance, the Long Range Transportation Plan is aimed at reducing delays and increasing regional interconnectivity, and therefore must be based on regional consensus and include regional policies and priorities.¹⁶³ Aiding in the creation of both of these components is the Planning Coordination Advisory Committee, which is charged with giving "special consideration to regional transportation, land use and growth issues."¹⁶⁴ Through the process of creating the Regional Transportation Plan, therefore, NVTA must consider the overlap between transportation, land-use, and growth policies.

Despite the patchwork of organizations that contribute to regional transportation policy, concerns such as cooperation and coordination of land-use and transportation policies are not entirely overlooked. NVTA's Long Range Transportation Plan, *TransAction 2030*, recognizes the overlap between growth, transportation, and land-use policies. The plan stresses the need to anticipate both transporta-

156. "Unconstrained" refers to a type of transportation plan that includes projects that may be necessary but that do not yet have guaranteed funding. By contrast, "constrained" plans can include only projects whose funding has already been secured. MWCOG, *CITIZENS GUIDE*, *supra* note 132, at 23. "Multimodal" means that the transportation plan includes all types of transportation, such as rail and road.

157. See NVTC, *HOW PUBLIC TRANSPORTATION IS ORGANIZED*, *supra* note 96, at 15.

158. NVTC *HANDBOOK*, *supra* note 148, at 8.

159. See VA. CODE ANN. § 15.2-4830 (2010).

160. N. VA. TRANSP. AUTH., *BYLAWS OF NORTHERN VIRGINIA TRANSPORTATION AUTHORITY* 11-12 (2008), available at <http://www.thenovaauthority.org/mission.html> [hereinafter NVTC *BYLAWS*]. NVTA's membership consists of Arlington, Fairfax, Loudoun, and Prince William Counties, as well as the cities of Alexandria, Falls Church, Manassas, and Manassas Park. *Id.* at 1.

161. *Id.* at 10.

162. *Id.* The current Long Range Transportation Plan is called "TransAction 2030." *Id.*

163. *Id.*

164. *Id.* at 9.

tion and land-use needs due to the impending explosion of growth expected to occur by 2030.¹⁶⁵ In addition, it recognizes that the successes of both of these policies depend on each other and that a regional solution will be necessary. The plan urges multimodal choices, “compatibility with local plans,” “land use support,” and “cost sharing.”¹⁶⁶ Most of the plan’s solutions, however, are merely advisory and fail to provide concrete, implementable solutions that have a real chance of curbing sprawl. Accordingly, this plan, like the patchwork of organizations involved in creating transportation policy in Northern Virginia, fails to create *implementable* coordination and cooperation efforts. Although such topics are acknowledged and studied, no body exists that can implement them.

C. Virginia’s Attempts To Combine Land-Use and Transportation Policies

Virginia has demonstrated its desire to coordinate land-use and transportation policies in at least three instances. First, the Code of Virginia declares that one of its intentions in granting planning, subdivision, and zoning powers to local governments is “to plan for the future development of communities *to the end that transportation systems be carefully planned.*”¹⁶⁷ Virginia acknowledges, therefore, the linkage between land-use decisions and transportation policies, and grants land-use powers to localities with the intent that local governments use them in conjunction with transportation planning.

More to the point, however, the Commonwealth has indicated its desire to coordinate land-use and transportation policies in VTrans2025 and VTrans2035.¹⁶⁸ VTrans2025, for example, “recommended ... [s]trengthened planning processes, especially integration of transportation and land use.”¹⁶⁹ VTrans2035 continues this trend, going so far as to designate such coordination as one of its seven goals.¹⁷⁰ The latter plan also proposes the establishment of an

165. See TRANSACTION 2030, *supra* note 95, at 2.

166. *Id.* at 5.

167. VA. CODE ANN. § 15.2-2200 (2010) (emphasis added).

168. See *supra* notes 123-25 and accompanying text.

169. VTRANS2035 REPORT, *supra* note 103, at i.

170. See *id.* at ii.

Integrated Transportation/Land Use Grant program that would connect land use and transportation on the local level by granting additional transportation funding to localities that encourage compact development.¹⁷¹ Such a program would also incentivize use of compact development on the regional level by providing similar transportation funding incentives.¹⁷²

Finally, Virginia also indicated its desire that land-use and transportation policies be coordinated by enacting Chapter 896,¹⁷³ which ostensibly flowed from recommendations made in VTrans2025.¹⁷⁴ This legislation established procedures through which local governments could implement smart growth policies, for example, by creating urban development areas and implementing New Urbanism principles.¹⁷⁵ It also mandated that NVTa record transportation and land-use measures,¹⁷⁶ and granted that body the power to tax in order to fund regional transportation policies.¹⁷⁷

Although the state government has demonstrated a desire to coordinate transportation and land-use policies, such coordination has been slow to take root due to a lack of concrete conduits for implementation. As discussed in Part II.B, an enormous number of bodies are involved with coordinating and implementing regional transportation policies. This high number of actors in the transportation realm can provide the benefit of more resources devoted to problem solving, but may also create problems with mission overlap and duplication of efforts. At the same time, the land-use side has fewer bodies devoted to coordinating policy, and none that actually

171. *See id.* at v.

172. *See id.*

173. *See supra* note 25 and accompanying text.

174. VTrans2035 recognizes that, as a result of VTrans2025's recommendation to integrate transportation and land use, "local governments were authorized to impose road impact fees and required to designate urban development areas as well as regional transportation and land use performance measures." VTRANS2035 REPORT, *supra* note 103, at i. These provisions are similar to those contained in Chapter 896. *See* Ann K. Crenshaw, *Be Alert to the Legal and Practical Considerations of Annexation and the Impact of the 2007 Transportation Act on Land Use Matters*, in LAND USE LAW: CURRENT ISSUES IN SUBDIVISION ANNEXATION AND ZONING 55, 59-60 (National Business Institute, CLE Series No. 40484, 2007).

175. *See* Crenshaw, *supra* note 174, at 55, 60.

176. *See* House Bill 3202, <http://www.hb3202.vi.virginia.gov/> (last visited Feb. 18, 2011).

177. *See* Patrick M. McSweeney & Wesley G. Russell, Jr., *Marshall v. Northern Virginia Transportation Authority: The Supreme Court of Virginia Rules That Taxes Can Be Imposed by Elected Bodies Only*, 43 U. RICH. L. REV. 51, 51 (2008).

implement such policies; implementation is left solely to local governments.¹⁷⁸ The result is a well coordinated and highly functional regional system of transportation *provision*,¹⁷⁹ coupled with a land-use system that lacks both intergovernmental cooperation and coordination with transportation policy.¹⁸⁰ Because of the extent to which land-use and transportation policies impact each other, this lack of coordination represents a lost opportunity to control sprawl by linking policy choices made in both realms.

Coordination has also been slow to occur because of the Supreme Court of Virginia's gutting of legislative efforts to coordinate land-use and transportation policies. In *Marshall v. Northern Virginia Transportation Authority*, the court struck down portions of Chapter 896, the legislation by which the General Assembly attempted to encourage a coordinated approach to land-use and transportation policies.¹⁸¹ In particular, the court refused to allow NVTVA to levy taxes permitted under Chapter 896.¹⁸² The court held that the taxation power that Chapter 896 granted to NVTVA, which would have allowed NVTVA to fund regional projects, unconstitutionally delegated the General Assembly's legislative power to an unelected body.¹⁸³ Such delegation was unconstitutional, reasoned the court, because a regional body such as NVTVA lacks the political accountability that constrains a legislative body.¹⁸⁴ This ruling did not strike portions of Chapter 896 that specifically addressed the coordination of land-use and transportation policies,¹⁸⁵ but it did dictate the shape of future growth-control efforts by removing from the table certain potentially effective solutions. Post-*Marshall*, if growth control is to be spearheaded by any unelected body—for example, a cooperative effort between NVTVA and representatives appointed by each locality—such a body cannot raise revenue through taxation and therefore must depend on other entities for

178. See *supra* Part II.A.

179. See NVTC, HOW PUBLIC TRANSPORTATION IS ORGANIZED, *supra* note 96, at 3.

180. Although MWCOC has begun a pilot project that links land-use and transportation policies, its precatory nature means that its recommendations can be ignored. See Transportation/Land-Use Connections Program, *supra* note 144.

181. See *supra* notes 173-77 and accompanying text.

182. See *Marshall v. N. Va. Transp. Auth.*, 657 S.E.2d 71, 79-80 (Va. 2008).

183. See *id.* at 80; see also McSweeney & Russell, *supra* note 177, at 58-59.

184. See McSweeney & Russell, *supra* note 177, at 58-59.

185. See *supra* notes 173-75 and accompanying text.

funding. In short, *Marshall* made clear that any smart growth solution will need to be funded by the elected bodies that establish it,¹⁸⁶ imposed by an elected regional body,¹⁸⁷ or instituted by the state itself.¹⁸⁸

III. TOWARD BETTER COORDINATION: WORKING AROUND *MARSHALL* AND CHANGING THE STATUS QUO IN NORTHERN VIRGINIA

The stage is set in Northern Virginia for the establishment of an effective, regional effort to curb sprawl through the implementation of a smart growth strategy and the coordination of land-use and transportation policies. Both the expertise and framework exist, so the next step must involve coordination among the various moving parts and conferral of authority upon a body that has real powers of implementation.

In particular, the TPB is headed in the right direction with its Vision policy statement.¹⁸⁹ In this statement, the TPB aims for a coordination of transportation and land-use policies by focusing on the utilization of existing infrastructure in both the regional core *and* regional activity centers, which shows that it has realistic goals, and by encouraging transit and transit-oriented developments.¹⁹⁰ MWCOG is also showing progress with its Transportation/Land-Use Connections Program, which offers technical planning assistance to member jurisdictions with the goal of improving transportation and land-use coordination.¹⁹¹ However, both of these bodies lack powers of taxation and compulsion, which will be necessary components of any successful effort to rein in sprawl.¹⁹² Because the Commonwealth alone possesses both of these powers, it must take the lead.

Virginia's government has shown interest in implementing smart growth and in coordinating land-use and transportation policies. In VTrans2025 and VTrans2035, the Office of Intermodal Planning

186. See, e.g., *supra* note 67 and accompanying text.

187. See, e.g., *supra* note 72 and accompanying text.

188. See, e.g., *supra* notes 68-69 and accompanying text.

189. See MWCOG, TPB VISION, *supra* note 137.

190. *Id.* at 1.

191. See Transportation/Land-Use Connections Program, *supra* note 144.

192. See Cashin, *supra* note 35, at 2041 (citing two approaches to regionalism, "[n]either [of which] ... would have been successful ... had the regional majority lacked a supra-local forum that could impose mandates on recalcitrant or dissenting localities").

and Investment recognized the threats posed by sprawl as well as the need to combat it by coordinating land-use and transportation policies.¹⁹³ Chapter 896 codified several of these recommendations.¹⁹⁴ *Marshall*, however, represented a setback to this progress: the ruling stalled current efforts by preventing NVTAs from imposing taxes to fund regional projects, and it constrained future growth-control efforts by requiring that revenue be raised only by elected bodies.¹⁹⁵

Nonetheless, Virginia must again move past mere calls for regional cooperation and toward a phase of implementation. VTrans2035 recognized the need for regional cooperation, calling for both “continued multi-agency involvement for effective transportation planning” and “a dynamic partnership with regional planning organizations and local jurisdictions that control development patterns.”¹⁹⁶ Recommendations such as these are useful only insofar as they can be implemented.

In short, the Northern Virginia region is at an impasse: at the very least, the will exists throughout the region to have a conversation about the benefits of curbing sprawl through coordination of transportation and land-use policies. Many organizations stand ready to provide space and technical assistance for this discussion. Even the General Assembly has shown signs of support. Yet little exists beyond good will and good ideas. The region must move beyond rhetoric about smart growth and policy coordination and into a phase of concrete action that includes either ceding actual power to one entity, as both Oregon and Georgia have done, or establishing growth boundaries, as Oregon has done.¹⁹⁷ The Commonwealth’s foray into this realm by implementing Chapter 896 was rebuffed in *Marshall*, so the state and region must now regroup.

193. See VTRANS 2035 REPORT, *supra* note 103, at i-ii, v; see also *supra* notes 168-72 and accompanying text.

194. See *supra* notes 25, 173-77 and accompanying text.

195. See *supra* notes 181-84 and accompanying text.

196. VTRANS2035 REPORT, *supra* note 103, at iv.

197. See *supra* notes 68-70 and accompanying text.

A. Higher Density Zoning Mandates Are Needed in Urban Clusters

Countering sprawl necessarily requires higher density development. The question, though, is how best to achieve this end. Mandatory urban growth boundaries such as those in Oregon have had a poor track record, as “a considerable amount of development still takes place outside them;” in fact, “more development takes place outside some small town boundaries than within them.”¹⁹⁸ Urban growth boundaries seem to work on a conceptual level, much like booms placed around an oil spill so as to contain it. The boundaries may fail, however, to contain growth completely because land outside the boundary becomes more attractive than ever, beckoning developers to build precisely the type of “leapfrogging” projects that the boundary was supposed to discourage.¹⁹⁹ Even Maryland’s system, which incentivizes developers to build within urban boundaries, was recently declared a failure.²⁰⁰ One commentator suggests that urban growth boundaries fail because they are not accompanied by necessary policies that encourage dense development within the boundaries, such as zoning reform.²⁰¹

Zoning policy changes are a necessary component of any type of solution to sprawl, even if an urban growth boundary is not instituted. Such changes, which would occur on a statewide level and apply to local governments, would solve problems concerning coordination and lack of a concrete mandate, both of which have handicapped previous efforts to control sprawl.²⁰² The first necessary change in zoning policy would entail the statutory recognition of “clusters” throughout Northern Virginia, similar to the regional activity centers that have been recognized by MWCOG.²⁰³ Throughout the region, these clusters contain 72 percent of the region’s jobs, but only 40 percent of the region’s households.²⁰⁴ The

198. See SELMI ET AL., *supra* note 32, at 568 (quoting Douglas R. Porter, *State Growth Management: The Intergovernmental Experiment*, 13 PACE L. REV. 481, 497 (1993)).

199. See *id.* at 566.

200. See Lewis, Knaap & Sohn, *supra* note 71, at 473.

201. See SELMI ET AL., *supra* note 32, at 568 (citing Ned Farquhar, *Zoning Fallout: The Implications of Urban Growth Area Designations*, ZONING NEWS, Mar. 1999, at 1-4).

202. See *supra* Part II.C.

203. See MWCOG, GROWTH TRENDS, *supra* note 15, at 15.

204. See *id.*

General Assembly must, therefore, enact legislation that mandates higher density, mixed-use zoning in these specific clusters, particularly in Tysons Corner.²⁰⁵ In making the choice regarding which clusters to designate for such high-density, mixed-use zoning, it must also pay attention to the surrounding transportation network, giving areas with current or planned Metro access the highest priority.

B. Localities Must Forge a Consensus Within the New Zoning Framework

Such zoning policy changes would be only the first step in the solution, however, as they would merely establish a common framework of “density principles” to govern localities’ land use. The next crucial step must include the coordination of each locality’s land-use and transportation policy decisions. Coordination of zoning policies among localities is an especially important step, because differing attempts to control growth in neighboring localities can lead to a “hodge-podge of potentially contradictory attempts to control development,”²⁰⁶ and can actually work against growth-control goals.

This coordination should occur within preexisting regional bodies such as MWCOG, NVTA, and NVTC. This framework of regional organizations, which is already devoted to studying transportation and land-use policies²⁰⁷ and to providing space for planning and debate by localities within the region, is a valuable resource that Virginia must harness. Organizations such as MWCOG, TPB, NVTA, and NVTC must continue to conduct studies and provide space for debate. They must also begin to play a new role: that of a clearinghouse. In this capacity, MWCOG and TPB in particular would provide recommendations to a designated statewide body with the power to enact and enforce such recommendations.

205. The General Assembly has already taken some steps in this direction. *See supra* notes 173-77 and accompanying text. However, work remains to be done in encouraging high-density and mixed uses of land.

206. *See Poindexter, supra* note 5, at 315.

207. *See supra* note 97 and accompanying text.

C. VDOT Must Capitalize on Regional Consensus in Coordinating Regional Land Use and Transportation

A statewide body that has the authority to mandate action by localities must carry out the recommendations of MWCOG and TPB because these entities have only recommendatory powers and thus can have only a limited affect on localities' decision making. The natural candidate for filling this role is VDOT. Following the Georgia model,²⁰⁸ VDOT should be empowered to oversee both land-use and transportation policymaking, and to veto any development project that lacks the requisite density or access to preexisting transportation. It would be incumbent upon VDOT to respect the recommendations it receives from the regional bodies. This deference would also be in VDOT's best interest, as the recommendations of such bodies would represent regional agreement, thus rendering VDOT's implementation of such recommendations less difficult.

Coordination by VDOT would have the added advantage of plugging the gap in transportation policy that *Marshall* left: because VDOT is state-funded, it would not need to assess taxes in order to finance its efforts. The General Assembly, of course, would be required to allocate funds to VDOT's new activities, which would be no easy feat. But the total cost of such activities might be lower than it would be if an entirely new entity were created to oversee growth control in Northern Virginia, due to efficiencies that would be gained from using VDOT's existing expertise and operations.

Vesting such power in VDOT would ultimately foster coordination of land use and transportation policies. VDOT would necessarily face the task of reconciling the two policies in the event of a clash, which would ideally provide more coherence between the two priorities than currently exists. At the very least, the agency would possess a bird's eye view of both transportation and land-use policies on a regional level.

The process set forth within this Note would also comply with the restrictions set forth under *Marshall*, which prohibited the funding of growth-control efforts by the imposition of taxes by any unelected body.²⁰⁹ Although no stage of this proposal relies on the implementa-

208. See *supra* note 70 and accompanying text.

209. See *supra* notes 181-84 and accompanying text.

tion of new taxes, it would pass muster even in the event that new taxes were required. Two of the stages—the passage of new zoning laws and coordination by VDOT—require action by the General Assembly, which unquestionably harbors the power to levy new taxes. The remaining stage, consisting of coordination by localities, also complies with *Marshall* because localities would coordinate within preexisting entities that do not impose taxes in order to fund themselves.²¹⁰ Although work would be undertaken by unelected individuals within MWCOG, TPB, NVTA, or NVTC, the unelected entity in question would not be imposing taxes to fund the work. Instead, funding would come from the entity's budget, which the General Assembly would provide. Because *Marshall* only prohibits unelected bodies from *imposing* taxes, such coordination efforts would fall safely within the constitutional boundaries established by the ruling. Each stage of this proposal, therefore, meets the restrictions imposed by *Marshall*.

CONCLUSION

Currently, growth control efforts in Northern Virginia run the risk of failure due to lack of cooperation among localities and lack of coordination across transportation and land-use policies. Even where coordination exists, such as within MWCOG and TPB, the absence of a mandate means that localities are free to proceed in contravention of such consensus.

The three-tier process outlined in this Note approaches these coordination and cooperation problems by recognizing that growth control must be both bottom-up and top-down. First, the state must guide local decision makers to adopt higher density, mixed-use zoning policies. Next, working within this framework, some degree of consensus must emerge from localities. Finally, the General Assembly must grant VDOT the power to utilize this consensus.

210. None of the entities discussed supports itself by imposing taxes. MWCOG's funding comes from a variety of sources, including local governments, federal and state grants, and donations. See Metropolitan Washington Council of Governments, About COG, <http://www.mwcog.org/about/> (last visited Feb. 18, 2011). The TPB's staff is provided by MWCOG, based on the TPB's association with MWCOG. See Metropolitan Washington Council of Governments, The Transportation Planning Board, <http://www.mwcog.org/transportation/tpb/> (last visited Feb. 18, 2011). Funding for both NVTA and NVTC comes from each locality that is a member. See *supra* notes 154, 160 and accompanying text.

This power would include the ability both to enforce and to coordinate with an eye toward regional issues. Ceding final power to VDOT carries the added benefit of easier coordination of land-use and transportation policies.

This process coordinates localities and policies, and grants the power of oversight to VDOT, which would be encouraged to work within the framework of recommendations that MWCOG and TPB present. Although such a process is neither simple nor elegant, it does offer the combination of mandate and coordination within the limitations posed by *Marshall* and the current framework of organizations.

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