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# Growth Management Approaches

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**The Draft Preliminary**
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# GROWTH MANAGEMENT APPROACHES REPORT FOR THE NEW JERSEY STATE DEVELOPMENT AND REDEVELOPMENT PLAN

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TABLE OF CONTENTS

FORWARD

The State Planning Act (the "Act") envisions a growth management program for the State of New Jersey. The planning process outlined by the Act represents a unique attempt to integrate and coordinate planning activities at the state, regional, county and municipal levels in an effort to achieve consensus on the State Development and Redevelopment Plan (the "Plan"), which is to be the cornerstone for the growth management program. The State Planning Commission (the "SPC") was established by law as the entity responsible for developing and adopting the Plan.

The SPC determined that the first step in the planning process would be the adoption of goals and objectives for the Plan. The goals and objectives were presented in the report •Trends and Hard Choices: Setting Objectives For New Jersey's Future," and were adopted by acceptance of that report. The next step in the process is the consideration of possible strategies designed to implement the goals and objectives within the context of an overall approach to growth management.

The purpose of this report is to assist the SPC in carrying out this next step for the establishment of the State's growth management program. The report is divided into two main parts. The first is a brief introduction to growth management which is simply intended to put the SPC's current efforts into historical and national perspective. The second part presents four theoretical approaches to growth management, together with

examples of other growth management systems which utilize each approach.

## I. INTRODUCTION TO GROWTH MANAGEMENT

Prom its first formation, the United States was regarded as a place of golden opportunities and seemingly limitless land; from all parts of the world people came to settle. The American dream was born. But as Frederick Jackson Turner wrote, the frontier, which became the embodiment of this dream, was already disappearing in the nineteenth century. The land was not limitless, a reality only recently acknowledged. At one time each individual's proportionate share of the nation's land was greater than 100 acres per person; it has now decreased to less than 10 acres per person. Each person's share will decrease as development of the land continues.

During the 1970's and early 1980's, the nation witnessed the problems associated with unrestrained growth multiply almost geometrically. The United States faced six major crises: 1) the deterioration of central cities and closer-in neighborhoods with the resultant depopulation and abandonment of housing; 2) the environmental crisis and threats to natural resources; 3) the energy crisis; 4) fiscal insolvency of state and local governments; 5) the loss of prime agricultural land; and 6) the spiraling cost of housing.

Most of the national growth in America since World War II has taken place in the urban-rural fringes of major metropolitan areas. At the same time that moderate- to middle-income white families developed the economic capacity to seek single-family suburban homes, the cities suffered increased migration of poor nonwhite families from our rural areas. Cities became

less desirable places to live because of deterioration, abandonment, high crime, and racially impacted housing and school systems. The federal government accelerated this process through its various housing, taxation, and highway policies. Incentives for the construction of low density, detached single-family housing were provided by federally insured mortgage money and the many tax advantages of home ownership. The interstate highway system further provides access to suburban areas where land is cheaper for industrial and commercial uses and taxes are lower. The net effect of these centrifugal and centripetal forces was to leave the central city with even more severe housing, educational, and environmental problems while depleting and degrading the important natural land resources in the path of suburban development.

The great movement of people and industry to suburban and ex-urban areas has led to wasteful and inefficient urban sprawl and leapfrog development. Concomitantly, most suburban communities have been unable to provide adequate public facilities to service new development. Developers continue to look for inexpensive land located outside of areas with adequate sewage, roads, police stations, recreation facilities, and other services, thus shifting the burden of capital investment to the public sector. As a result, property tax rates soar in order to meet the increased need for public facilities. This transfer of the true cost of development from the developer and consumer to the public sector has led to land speculation, destruction of environmental resources, and an increase in the

cost of public services at the same time that the quality of those services diminishes.[9]

Much of the failure to prevent or adequately deal with these problems can be attributed to two causes. First, urban growth problems have historically been left to local governments to resolve, notwithstanding the fact that such growth issues often have regional or statewide implications. Consequently, comprehensive approaches to urban problems have been rare. Second, local governments have often assumed that the due process clauses of the state and federal constitutions restrict their ability to adequately govern the decisions of private landowners. Many people in the United States still hold a deep-seated belief that the prerogatives of land ownership are absolute. Of course, under American law, all property is held subject to the police power, which allows the state to regulate where necessary to preserve the public health, safety and welfare of the community. The police power is not closely circumscribed, but is capable of expansion to meet conditions of modern life. Although a flexible view of the police power was clearly enunciated in the important early zoning cases, those who framed the precursors of today's land development regulations believed the police power to be unequal to the task of regulating the orderly development of land.[10]

However, in the early 1970's, governments obtained a powerful new tool for harnessing the demands for unrestrained development: growth management. The term growth or development management encompasses the conscious public decision to

restrain, accommodate or induce development in any geographic setting — center city, suburb, depressed region, impacted region ~ and at any governmental level — state, regional or local. Growth management systems provide a means for governments to establish comprehensive goals and objectives designed to address the problems of growth which can be implemented by an integrated system of administrative, financial and regulatory programs tailored to achieve those specific goals and objectives.

The legal foundation for governments to take an active role in the timing and sequence of development rests with the landmark 1972 decision of the New York Court of Appeals in the case of Golden v. Planning Board of Town of Ramapo, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S. 138 (1972), appeal dismissed 409 U.S. 1003 (1972). Ramapo was the first municipality to implement a comprehensive local growth control plan in 1966. After being upheld by both the New York courts and the United States Supreme Court, the plan is now a model for other jurisdictions. The town required residential development to proceed in accordance with the timing, sequencing and provision of adequate public facilities as established by a long-term comprehensive plan and capital improvement program. The due process requirement of a "reasonable return within a reasonable period of time* was net by the Ramapo plan because restraints on development of land were measured by the 18-year period established in the capital improvement program and the comprehensive plan. The Ramapo plan provided that all areas of the

municipality would be improved within the plan period and interim development controls were enlisted to aid in its implementation. Subsequent to Ramapo, a variety of growth management techniques have been accepted by the courts.

Every government that zones land, makes public capital investments, acquires land for public purposes, taxes land for service, or in any other way attempts to influence private development is operating a growth management system since its actions and decisions influence development. However, many governments take actions and make decisions concerning development that are isolated, ad hoc, problem-oriented, and independent of each other, so that the results achieved are not comprehensive or efficient and do not necessarily address the overriding concerns in the community. [12]

The use of comprehensive growth management systems are a recognition that planning and implementation must both be holistic if critical problems facing government are to be solved. Both the problems and their solution must be viewed as a whole; thus, systems must be regional in scope, although their implementation must be accomplished at both the state and local government level. Although individual geographical areas may need to be separated out for specialized treatment, they must still be viewed in terms of their interrelationships with other areas and with the planning area as a whole. Further, the problems themselves are interrelated and must be treated as such.[13]

In the growth management cases, the courts recognized the fundamental constitutional principle that development of the urban fringe may be controlled by linking development with the planned extension of capital improvements, the lifetime of the comprehensive plan being the 'reasonable time" required. The purpose of the plan is to assimilate population growth into the developing areas while allowing nondeveloping areas to use traditional zoning techniques to limit growth. In the Vickers case in New Jersey, Justice Hall in dissent to a decision authorizing total exclusion of mobile homes from a township, and foreshadowing his Mount Laurel I decision, stated that if a community was meeting its fair share of population assimilation in growth areas, then it can use timing and sequencing or growth management techniques in other areas. The point was eloquently driven home by Chief Justice Wilentz in Mount Laurel II;

> The lessons of history are clear, even if rarely learned. One of those lessons is that unplanned growth has a prices natural resources are destroyed, open spaces are despoiled, agricultural land is rendered forever unproductive, and people settle without regard to the enormous cost of the public facilities needed to support them. Cities decay; established infrastructures deteriorate for lack of funds; and taxpayers shudder under a financial burden of public expenditures resulting in part from uncontrolled migration to anywhere anyone wants to settle, roads leading to places they should never be —• a pattern of total neglect of sensible conservation of resources, funds, prior public investment, and just plain common sense. These costs in New Jersey, the most highly urbanized state in the nation, are staggering, and our knowledge of our limited ability to support them has become acute. More than money is involved, for natural and

> man-made physical resources are irreversibly damaged. Statewide comprehensive planning is no longer simply desirable, it is a necessity recognized by both the federal and state governments.
>
> The Constitution of the State of New Jersey does not require bad planning. It does not require suburban spread. It does not require rural municipalities to encourage large scale housing developments. It does not require wasteful extension of roads and needless construction of sewer and water facilities for the out-migration of people from the cities and the suburbs. There is nothing in our Constitution that says that we cannot satisfy our constitutional obligation to provide lower income housing and, at the same time, plan the future of the state intelligently.

The early growth management cases such as Ramapo recognize that what might be considered to be a reasonable use in rural areas differs from those uses considered reasonable in urban areas. This allows some techniques that would be considered exclusionary in urbanizing areas to satisfy due process requirements and preserve rural-agricultural areas. It is natural that this concept be extended to operate on a larger regional and statewide level. [18]

One effective way to deal with statewide needs while controlling sprawl is through the functional planning area concept. This concept is based upon the delineation of functional areas within the State for identification of goals, objectives, and implementation of growth management strategies. The functional planning area concept recognizes that different areas of the state present different problems relating to growth and development. Nevertheless, while individual geographical or

functional areas may need to be separated for specialized treatment, they must still be viewed in terms of their interrelationships with other areas and with the state as a whole.

A framework for a growth management system that allows for major problems to be addressed on a statewide basis aids local governments in planning for future growth and in understanding the interrelationships between, and implications of, varying growth policies, goals and implementation techniques. A breakdown into functional and geographic areas allows the planning entity to describe goals and objectives in terms of such areas, to evaluate market forces and growth trends selectively for each area, and to consider implementation techniques that are specific for each area. Thus, goals that would be competing or conflicting when applied uniformly can be harmonized when viewed selectively by subarea. For example, preservation of agricultural land in selected areas of the State can be compatible with increasing housing opportunities in other areas. Further, the implementation techniques which may be associated with these goals can also be harmonized and validated within the functional planning area framework.



The same problems associated with growth which have led to the establishment of growth management systems in other states make growth management a useful tool for New Jersey as well. As the most densely-populated state in America, New Jersey can be seen as a microcosm of the entire nation and the opportunities and problems brought by long-term sustained growth and development. The State Development and Redevelopment Plan

envisioned by the State Planning Act is without question intended to be the constitution foe growth management in Hew Jersey. Moreover, utilization of the functional planning area concept specifically is mandated in that the Act requires the Plan to "identify areas for growth, limited growth, agriculture, open space conservation and other appropriate designations that the commission may deem necessary ..."

The four growth management approaches discussed in the next section all use the functional planning area concept to a greater or lesser degree. They are presented in the order in which the approach conforms to the principles of the functional planning area concept, beginning with the approach which conforms most highly and ending with the approach which least embodies the principles of the concept. Not coincidentally, the order of presentation also reflects the degree of state control of the growth management program. Although all of the approaches can be modified — and. indeed, some modification of the approach ultimately selected is likely — the first approach in its "pure" form allows for the greatest degree of state control, whereas the fourth approach allows for the greatest degree of municipal control.

## II. ALTERNATIVE GROWTH MANAGEMENT APPROACHES

### A. "Tier" System

A principal tenet of the "tier* system involves the geographic and functional division of the planning area into subareas ("tiers"). The tiers should be descriptive of the existing data and structure of the area and be capable of functioning as planning and plan implementation units. The tier delineation allows the goals and appropriate techniques employed in a development management system to vary with the geographic or functional subunits of the planning jurisdiction. . Such flexibility is essential to the future success of such systems because it provides for articulation of different and even contrasting strategies for different areas of the community, with corresponding legal techniques and implementing mechanisms, without jeopardizing the overall comprehensiveness of the system or any of its individual components. Equally important, the tiers permit the courts to adopt the same

> analytical framework for their review of the legal validity of the system and its component parts.[20]

In this instance, the fundamental premise of the tier delineations is that the State can be divided into geographical subunits based upon functional distinctions within the growth management system. This is quite different from a division of a city into neighborhoods or community planning areas which have no basis in the growth management strategy individually since their boundaries respond to data collection units, streets, topography and other criteria rather than to the

area's function within the planning area. The functional delineations of the tier system, however, do relate strongly to the goals and objectives to be achieved through the growth management system.

Any growth management system for New Jersey must recognize the concepts of "growth" areas and "limited growth" areas mandated by both the State Planning Act and case law. The proposed tier system divides the State into "growth" and •limited growth" categories and adds the tiers as subdivisions of those general categories. The tiers proposed within the growth category are "Urbanized" and "Planned Urbanizing." The 'tiers proposed within the limited growth category are "Rural/ Future Urbanizing," "Agriculture* and "Conservation/Open Space." Definitions of the tiers are set forth below. Each of the tiers have specific geographical boundaries and would be capable of being mapped.

The Urbanized tier consists of those areas which are served by public sanitary sewers and which have population densities of 1,000 persons per square mile or more. Recognizing that this definition includes areas for which different growth management strategies may be desired, the tier may be further subdivided into two subareas: those which have suffered population losses in the decades prior to 1980, and those which have increased in population.

The Planned Urbanizing area represents the "new" growth area. It, too, may be subdivided into two subareas. One subarea consists of those lands which are presently served

by public sanitary sewers, but which are distinguished from the Urbanized area by having population densities of less than 1,000 persons per square mile. The second subarea consists of those lands which the SPC wants to target for growth, regardless of whether they are presently sewered. The targeted areas will be defined after the SPC has selected a development scenario for this purpose, but might possibly consist of transportation corridors, development "nodes," activity centers, urban villages, concentric compact development or trend sprawl.

The Rural/Future Urbanizing area is defined by what it is not. It is not part of the Urbanized or Planned Urbanizing tiers, and thus not part of the Growth category. Within the Limited Growth category, Rural/Future Urbanizing is what is left after the Agriculture and Conservation/Open Space tiers (defined below) are taken out. The Rural/Future Urbanizing tier contains lands that are presently unsewered (although plans for sewer extensions may have been approved) and which have population densities of less than 1,000 persons per square mile. Portions of the area may be transferred to the Planned Urbanizing tier in the future in accordance with criteria expressed in rules governing transition to Growth Areas which should be developed in subsequent years through the State planning process in cooperation with the counties and municipalities. Other portions of the area will always remain rural in nature.

The Agriculture tier is intended to provide a means of identifying those lands which should be preserved for

agricultural production. It is contemplated that the definition of the tier will be provided by the SPC, and not merely consist of those lands considered to be devoted to agricultural or horticultural uses for purpose of the Farmland designed to define the [23] Assessment Act of 1964. Any system Agriculture tier should also provide standards for transferring lands from that tier to the Rural/Future Urbanizing tier under appropriate circumstances.

The Conservation/Open Space tier consists of lands containing natural resources which must be preserved or which are otherwise environmentally-sensitive. This tier should include not only those environmentally-sensitive areas of the State which have been exempted from the Plan, i.e., the Pinelands, Hackensack Meadowlands and the Coastal Zone, but also those additional areas containing environmental constraints as determined by the SPC.

The tier system is perhaps the growth management approach which has been utilized most frequently. Two states (Hawaii and Oregon) and a number of regional and local governments have implemented a tier system to one extent or another. The following is a brief description of the tier systems established in the two states and two of the more well-known local applications.

1. Hawaii. Hawaii has perhaps the longest history of direct state involvement in growth management. In 1961, two years after Hawaii became a state, the state legislature [24] adopted the Hawaii State Land Use law as a way to exercise

exclusive state control over the use of some lands and joint state and local control over the use of other lands. In 1978, the legislature enacted the Hawaii State Plan establishing statewide development goals, objectives and policies that guide the actions and decisions of all state and local agencies. These two programs constitute the core of a statewide system for managing land development.

The Hawaii State Land Use Law "consists largely of local zoning writ large.* The primary factor behind the passage of the Land Use Law was the need to preserve agricultural land on the islands in the face of increasingly intense pressures to develop land for other uses. The Land Use Law directs that all land in Hawaii be classified into one of four districts (tiers) (urban, agricultural, rural and conservation), each of which is subject to different procedures and standards for managing land uses.[28]

The 'urban* district consists of lands currently in urban use or needed to accommodate foreseeable urban growth. The counties (of which Hawaii has only four) exercise exclusive authority over lands in the "urban* district. The[29] zoning "conservation* district consists of park lands, watersheds, floodplains, wildlife reserves, historic sites, mountains and other sensitive lands held in private and public hands. The Board of the State Department of Land and Natural Resources exercises exclusive permitting authority over the use of land in the 'conservation* district. The "agricultural* district consists of lands used for agriculture and related purposes.

The "rural" district consists of lands in small farms and rural subdivisions which could not appropriately be classified into any of the other districts. The State and the counties both exercise authority over land uses in the "agricultural* and "rural" districts; the counties retain basic zoning authority but the State identifies lists of uses permitted in the districts, maintains guidelines for local issuance of special permits, and retains the power to deny special permits.

Responsibility for drawing and amending the district boundaries and classifying and reclassifying lands into these districts rests in the Land Use Commission. The Land Use Commission consists of nine members: seven appointed by the Governor, subject to confirmation by the Senate, plus the directors of the Department of Planning and Economic Development and the Department of Land and Natural Resources. After the original mapping of the State into these districts in the mid-1960s, the work of the Land Use Commission has consisted almost entirely of approving or denying petitions for the reclassification of land, also known as "boundary changes."

Boundary changes involving 15 acres or less outside of conservation districts may be accomplished by the without consideration by the State. For boundary 38 counties changes involving more than 15 acres or land in conservation districts, the Land Use Commission, after a public hearing and an opportunity for the appropriate county planning commission

to comment, may change the district boundaries at any time in response to a petition from the landowner or lessee, any county or the Commission itself. The two primary[39] of state agency, constraints on the discretion of the Land Use Commission in deciding boundary changes are the strict quasi-judicial procedures that the state courts have required the Commission to follow and the requirement in the Hawaii State Plan that the land use decisions of all state agencies must conform to the Hawaii State Plan.

The Hawaii State Plan was adopted as law by the state legislature in 1978 and amended by the legislature in 1984. Adopting the State Plan as part of the statutory code transformed it from a non-binding policy document into a set of preeminent legal requirements. The three primary components of the Hawaii State Plan are: (1) explicit statements of goals, objectives and policies covering the state's economy, physical environment, and physical, social and economic well-being; (2) a system for implementing the State Plan and coordinating state and local planning efforts; and (3) a set of priority guidelines for state and local planning efforts.

The State Plan also establishes the State Plan Policy Council to ensure that the goals, policies, objectives and priority guidelines of the State Plan were reflected in all state and county plans and programs, to reconcile conflicts between the agencies and the plans called for by the State Plan and to promulgate rules for amendments to the goals, objectives, policies and priority guidelines in the State Plan.

The Policy Council consists of 18 voting members: the four county planning directors, nine members of the public and five of 13 state agency members, depending on the issue before the Policy Council. The Department of Planning and Economic Development serves as the staff of the Policy Council. The Policy Council does not serve as an independent decisionmaking body. Rather/ it submits comments and recommendations to the legislature regarding amendments to the State Plan and conflicts between agency actions and the State Plan; final decision in these matters rest with the legislature.

The Hawaii State Plan requires the preparation of functional plans by state agencies in at least 12 functional areas: agriculture, conservation lands, education, energy, higher education, health, historic preservation, housing, recreation, tourism, transportation and water resources development. Each functional plan is to contain the objectives to be achieved in that field of activity, with policies to be followed addressing major programs and the



location of major facilities. A functional plan is not effective as a statement of state policy or as a binding guide to agency actions unless it is adopted by a concurrent resolution of the legislature. Ten functional plans were adopted by the legislature in 1984. A functional plan must conform to the goals, objectives, policies and priority guidelines of the State Plan, and must take into consideration the county general plans. The formulation, administration and implementation of programs by state agencies must conform to the

overall theme, goals, objectives, and policies of the State Plan and with adopted functional plans.[48]

The State Plan requires county general plans to indicate desired population and physical development patterns for each county, in addition to other elements which a county chooses to include in its plan, and to further define the provisions of the State Plan.[49] The county general plans must also conform to the goals, objectives, policies and priority guidelines of the State Plan and must "take into consideration statewide objectives, policies and programs stipulated in state functional plans."

Hawaii's statewide growth management system therefore consists of two components. First, the Hawaii Land Use Law establishes a system for the classification of land into four basic categories and for the regulation of land uses in those four districts by the state, the counties, or both, depending on the district. Second, the Hawaii State Plan establishes a tier system for the implementation of statewide goals, objectives, policies and strategies which guide state agency actions and the planning efforts of the counties. A major aspect of the Hawaii program, from the perspective of ensuring statewide coordination of development policy is the latitude provided to local plans and regulations with regard to compliance with the State Plan. Countering this, however, is the strong level of state control over zoning decisions affecting the agricultural and conservation districts, which are the lands of greatest statewide concern.

2. Oregon. The State of Oregon also has one of the most comprehensive programs for land use planning and development regulation in the nation. The core of the program is 19 Statewide Planning Goals which set the standards for land use planning throughout the state and guide local and state decisions affecting the development of land. In general, these goals aim to:

(1) conserve farm land, forest land, coastal resources and other important natural resources;

(2) encourage efficient development;

(3) coordinate the planning activities of local governments and state and federal agencies;

(4) enhance the state's economy; and

(5) reduce the public costs that result from poorly planned development.

Three state agencies play central roles in Oregon's statewide planning program. The Land Conservation and Development Commission (LCDC) is a seven-member commission appointed by the Governor, subject to confirmation by the State Senate; it is the policymaking body that adopts the Statewide Planning Goals and sets the other standards for the statewide planning program. The Department of Land Conservation and Development (DLCD) is the staff that administers the statewide planning program and provides professional support to the LCDC. The Land Use Board of Appeals (LUBA) is an independent, three-member tribunal that essentially functions as a state court which rules on land use matters. For example,

an appeal of a zone change by a county would go first to the LUBA, then to the Court of Appeals and then to the Oregon Supreme Court.

The present system for statewide planning originated with the adoption of Senate Bill 100 by the 1973 Oregon Legislature.[54] With this legislation, the state required all of Oregon's cities and counties to adopt comprehensive plans and land use regulations in compliance with the Statewide Planning Goals.[55] If a local government's plan and regulations were not in compliance in their entirety before the statutory deadline of July 1, 1984, then the Department of Land Conservation and Development could complete the plan and regulations itself. The legislation establishes a review process in which each city and county is required to submit its comprehensive plan and associated land use regulations to the LCDC for an "acknowledgment of compliance" with the Statewide Planning Goals. It is through this process that "tiers" are established in Oregon. In order to comply with the Statewide Planning Goals, local comprehensive plans must in essence establish tiers for urban growth areas, rural areas, agricultural lands, forest lands, open spaces, scenic and historic areas, and natural resources.[58]

The legislation also requires all plans, programs, rules or regulations of state agencies affecting land use to comply with the Statewide Planning Goals and with acknowledged local comprehensive plans. The legislation directs the LCDC to coordinate the planning efforts of state

agencies to ensure their compliance with the Statewide Planning Goals and their compatibility with city and county comprehensive plans. it establishes a review process in which each state agency must submit its rules and programs to the LCDC for a certification of compliance with the Statewide Planning Goals and the acknowledged plans and land use regulations of affected local governments.

The legislation also provides for the designation by the legislature of "areas of critical state

62

concern" in which state land use regulations will control. No such designation has occurred to this date.

By July 1982, plans had been acknowledged from 147 of the state's 279 cities and counties. Acknowledgment of plans from all local jurisdictions was expected by the summer of 1985. There are several incentives for a local government to obtain an acknowledgment. First, an acknowledgment is required by state law. Second, cities and counties whose plans have not been acknowledged must review all land use decisions not only against their own local policies and ordinances, but also against all applicable Statewide Planning Goals; after acknowledgment, local governments need only to consider their own standards because the Statewide Planning Goals are considered built into the approved local plans. In addition, the LCDC can use any of three measures to ensure that local governments comply with the requirements of the legislation: administrative enforcement orders,[65] judicial orders from LUBA[66] and revenue withholding.[67]

Two mechanisms ensure that a local plan does not go out of compliance with the Statewide Planning Goals after the plan is acknowledged by the LCDC. In the "plan amendment process,* proposals to amend an acknowledged plan or land use ordinance Bust be submitted for review and comment by the Department of Land Conservation and Development (DLCD), which can appeal to the Land Use Board of Appeals (LUBA) the adoption of an amendment which does not comply with the Statewide Planning Goals. In the "periodic review process,"[68] each local government every two to five years, at the direction of the LCOC, *must* review its acknowledged plan and land use regulations and must either submit findings that the plan and ordinances remain in compliance with the Statewide Planning goals or submit the amendments necessary to restore the plan and land use regulations to compliance.[69]

Oregon's statewide planning program has proven relatively successful. It has earned support and has consistently withstood movements in the state legislature and in statewide referenda calling for its repeal. *3»* Metropolitan Approaches.

a. Minneapolis-St.Paul. The tier system has also been implemented at the regional and local levels. The principles and techniques upheld in Ramapo stimulated an expanded view of the planning, management and channeling of growth not only in small suburban towns on the developing fringe but as a major element in structuring an entire metropolitan region. The idea of linking specific growth

management techniques to particular geographical and functional areas with common problems and goals was incorporated in the Metropolitan Development Framework of Minneapolis-St.Paul. The comprehensive plan divided the region into five tiers. Area I was the central city and downtown business area; Area II included existing urban and suburban developed areas; Area III was the area of active urbanization (similar to the area where Ramapo's timing and sequencing controls were applied); Area IV consisted of rural and agricultural areas; and Area V was made up of freestanding cities and villages. Densities in Area IV were as low as one unit per forty acres in order to maintain reasonable agricultural use. The timing and sequencing controls played a significant role in Area III. The development of this area of active urbanization was regulated by a 15-20 year capital improvement program separating the existing urban areas (I and II) from rural open space areas (IV). The landowner in the rural area does not suffer a confiscatory impact because there is no basis for suggesting that his land has a reasonable urban use of which he is being deprived since development in Tier III is timed and sequenced over the life of the plan and Tier IV has no urban facilities projected during the plan period.

b. San Diego. On the municipal level, techniques selected to manage growth on the urbanizing fringe will often stimulate growth in the central city and vacant areas in the urban service area. A prime example of this phenomenon is found in the San Diego experience. In its

Progress Guide and General Plan, San Diego in 1979 adopted a tier approach to its growth management program. The plan incorporated three major areas exclusive of environmentally-sensitive zones for which separate objectives and techniques are utilized: Urbanized Area (UA), Planned Urbanizing Area (PUA) and Future Urbanizing Area (FUA). The growth management system was designed to redistribute growth with a specific objective to transfer a greater proportion of new growth to the Urbanized Area.

The FUA is zoned agricultural and is primarily vacant land which is part of the urban reserve. Tax relief is provided to landowners in the FUA by preferential tax assessment under the Williamson Act. The PUA and the UA together provide adequate land for development according to projected population growth. In the PUA, additional public investment is necessary to complete development and to allow growth of communities already served by capital facilities. Land is to be opened for urbanization in a stated, contiguous manner through orderly extension of public facilities. Developers are required to bear the prime responsibility for financing the infrastructure through facilities benefit assessments, an innovative financing mechanism which has attributes of both special assessments and development impact fees.

Objectives for the UA included strengthening the viability of the central areas through renewal, redevelopment and new construction; attracting more

intensive and varied land uses including office, administrative, residential and entertainment; and conserving the socioeconomic character of older neighborhoods.

Prior to 1979, the estimated proportion of growth was 90% in the PUA and 10% in the UA. A goal was established to change the percentages to 60% in the PUA and 40% in the UA in order to more efficiently utilize existing public facilities and services. These goals were surpassed according to a June 24, 1983 Planning Department Information Report (No. 83-289):

| 1979-1983 Population Growth | | | 1979-1983 Housing Units Added | | |
|---|---|---|---|---|---|
| 46,233 | UA | (60%) | 15,921 | UA | (62%) |
| 28,216 | PUA | (36%) | 9,958 | PUA | (38%) |
| 2,951 | FUA | ( 4%) | | | |
| Total 77,400 | | | Total 25,879 | | |

The major factor contributing to the dramatic reversal in the location of growth was the fiscal incentive favoring the UA. Building in older areas where public services were available reduced housing costs in comparison to new growth areas where development was required to finance needed capital infrastructure.

B. Capital Facilities - Driven System

The second growth management approach utilizes the provision of adequate public facilities as the line of demarcation between the "Growth* and "Limited Growth" areas of the Plan. Conceptually, the approach as proposed is quite simple: the Growth area consists of those areas which are presently served or are planned to be served by adequate public facilities of three types necessary for urban development -- sanitary sewers, water and roads. In addition, overlay zones for agricultural lands and conservation/open space lands would be suggested in order to conform to the statutory mandate.

Development of this approach requires the resolution of three issues: determining what constitutes "adequacy" of the facilities; determining when facilities are sufficiently "planned" to enable areas served by such facilities to be included in the Growth area; and determining the means of establishing the agricultural lands and conservation/open space lands.

For descriptive purposes — although certainly not for purposes of actual implementation -- the last issue is the easiest. Suffice it to state that the same type of performance standard-based analysis which would be used to establish the Agriculture and Conservation/Open Space tiers for the first management approach could be used to establish the overlay zones for this approach.

The second issue could be resolved by use of capital improvements programs (CZPs). Adequate public facilities could

be deemed to be "planned" for purposes of establishing Growth areas if the facilities are in existence or are scheduled to be constructed within five years in accordance with a lawfully adopted CIP of the appropriate governmental entity* and provided further that if the facility is programmed by a local government, the facility has been approved by the appropriate state agency. Thus, each year, another layer of Growth areas would be added as facilities are planned.

Perhaps the most critical determination would involve the definition of "adequacy" for the public facilities. It is proposed that performance standards be established by the SPC in cooperation with counties and municipalities to determine appropriate levels of service for each of the three facilities. Thereafter, as each municipality or county submits programmed facilities for approval by the appropriate State agency, the performance standards could be applied to determine adequacy. Approval of facilities not satisfying the performance standards would be permitted only where necessary to protect the public health and safety. In such event, the area would remain in the Limited Growth category.

There are no statewide examples of this growth management approach. The Minneapolis-St. Paul development framework for the region sets the tier line for growth by analyzing the capital improvement programs of its constituent regional agencies. However, systems based upon adequate public facilities requirements or CIPs are somewhat common. One of the

seminal works in the literature of growth management. Urban Growth Management Systems,[72] describes several such systems.

The obvious — and perhaps the best — example is Ramapo. As indicated previously* the thrust of Ramapo's growth management system was to require residential development to proceed in accordance with the timing, sequencing and provision of adequate public facilities as established in the town's comprehensive plan and capital improvement program. The comprehensive plan and interim development controls were established in 1966. The capital improvements program was set up in 1968. The point system, the linchpin of the growth management program, was established in October, 1969.

Ramapo's point system works as follows. The town determined that all residential subdivisions of two or more lots * would be subject to special permit approval by the Town Board. The 18-year capital improvements plan (in three 6-year periods) scheduled all sewage, drainage, recreation and park facilities, and improved roads through staging and sequencing in town areas. Development points were assigned based on the readiness of the site for development. Readiness was determined by capital improvements categories and fire stations. The developer received a special permit vesting a present right to develop at such time as the site had sufficient points for development. Developers could advance the date of development by installing and furnishing improvements to earn the site the required points. Developers were encouraged to retain open space by dedicating development easements and obtaining reduced assessed valuation.

All land restricted by ordinance was entitled to assessed valuation reductions to accord to restricted market value. Variances were available for public low-income housing and other special public uses that conformed to the comprehensive plan.

The Montgomery County, Maryland growth management program is also described in Urban Growth Management Systems. Montgomery County is located in the metropolitan Washington D.C. area. The 1964 General Plan for Montgomery and Prince George's counties recognized the desirability of controlling the timing and location of development. Development was guided into areas served or scheduled to be served by public facilities. Moderate-income housing was to be provided. State legislation required a 10-year water and sewage plan in 1966, and Montgomery County initiated capital improvements programming in 1970. A sanitary * sewer moratorium was established by the Maryland Health Department in certain watersheds in Montgomery County in 1970, and the ban was extended to all areas of Montgomery County in 1972.

In June, 1973, the Planning Board adopted an adequate public facilities ordinance, which compelled builders to prove that there were proper police and fire facilities, roads, water and sewer systems, and other amenities before being granted subdivision or site plan approval. Unlike Ramapo, Montgomery County provided definitions of adequate facilities without using a point system. The overall growth management system relies on annual growth policy and plans. It was supported by two fundamental processes —- capital programming coordinated through the County Executive's office and project development review by

the Planning Board. In 1986, the county approved an impact fee financing system for the major road corridors based on the buildout of the planning areas CIP programs. The General Plan for the county and the subarea plans underpin the county's strongest growth controls: the ten-year water and sewer plan and the adequate public facilities ordinance.

The water and sewer service plan establishes service areas, conforming to the wedge and corridor development concepts contained in the General Plan. Urban development was expected to take place in the transportation development corridors, where public sewer and water service would be available. In 1973, the county banned all further permits for connections to existing sewer lines pending establishment of a priority system for utilization of existing capacity. The 6-year capital improvements program for the county schedules county road, sewer, water, school, park and other public facilities needed to create the infrastructure required in the General Plan, master plans, and 10-year water and sewer plan. The adequate public facilities ordinance adopted in 1973 was intended to prevent scattered development by requiring that all public facilities needed to support a proposed subdivision be in place or scheduled for construction under the capital improvement program or a state highway construction program before approval of preliminary subdivision plans.

C. Areas of Critical State Concern/Developments of Regional Impact System[1]

As proposed, the first two approaches exhibit a high degree of State control. The third approach, as proposed, provides a lessening of State control as compared to those approaches, although it still represents an increased role for the State as compared to the current system of land development which relies almost exclusively upon local implementation of the Municipal Land Use Law.

This approach is largely derived from two concepts proposed in the American Law Institute's Model Land Development Code. . The concepts are the "area of critical state concern" and the "development of regional impact." The first concept contemplates an overlay for the designated areas as established by the State. The second concept provides for regional or state agency review of development proposals of certain types or which exceed specified thresholds. Thus, the first concept is concerned with specified geographic areas, whereas the focus of the second concept is on the specific development.

Application of these concepts is best demonstrated by reference to the criteria set forth in the Model Land Development Code and the official reporter's commentary for each. The criteria for areas of critical state concern set forth in Section 7-201 of the Code and their application are stated as follows:

Code

(3) An Area of Critical State Concern may be designated only for

(a) an area significantly affected *by, or* having a significant effect upon, an existing or proposed major public facility or other area of major public investment;

(b) an area containing or having a sig nificant impact upon historical, natural or environmental resources of regional or state wide importance;

(c) a proposed site of a new community designated in a State Land Development Plan, together with a reasonable amount of surrounding land; or

(d) any land within the jurisdiction of a local government that, at any time more than [3 years] after the effective date of this Code, has no development ordinance in effect.

(4) A "major public facility" means any publicly-owned facility of regional significance but does not include

(a) any public facility operated by a local government, or an agency created by it, primarily for the benefit of the residents of that local government;

(b) any street or highway except an interchange between a limited access highway and a frontage access street or highway;

(c) any airport that is not to be used for instrument landings; or

(d) any educational institution serving primarily the residents of a local community.

Commentary

The following are illustrations of areas to which the designation "Area of Critical State Concern" might be applied:

Illustration (a): A site has been selected for a major airport to serve the needs of a metropolitan area. It is important that provision be made on land near the airport for motels and airport-oriented development needed to serve persons using the airport, but it is also important that the land at critical locations in relation to the major runways must not be developed with high density housing which would be subjected to

noise and safety hazards. The state designates the proposed airport site as an Area of Critical State Concern, and also designates a reasonable amount of land surrounding the site, extending for some distance along the major approach paths and for a lesser distance in other directions. The criteria accompanying the designation specify in some detail the nature of the land uses to be permitted.

Illustration (b): The water quality of a major river which supplies the water for a large number of citizens in the state is being adversely affected by acid pollution caused by a number of scattered small strip mines in a rural portion of the state. In order to protect the water quality of the river, it is essential to require the installation of settling basins or other treatment facilities in connection with all strip mines located within the watershed. The state designates the appropriate area as an Area of Critical State Concern and establishes criteria for the area requiring that the local regulations must contain adequate requirements for the installation of treatment facilities in connection with all strip mine development. No other aspect of development in the area is believed to have a significant effect on the state interest, so the local land use regulations are unaffected except in regard to this single factor.

Illustration (c): The site of a Civil War battle is located near a highway on which future commercial development is anticipated. The state wishes to encourage commercial developers to adopt architectural designs compatible with the historic structures in the battlefield area and to discourage developers from commercially exploiting the site in a manner that would detract from the dignity of the battlefield area. The state designates the highway approaches to the battlefield as a Area of Critical State Concern and establishes regulations concerning the design and layout of commercial development.

Developments of regional impact are defined in Section 7-301 of the Model Code. The definition and part of the reporter's commentary follow.

Code

(1) The State Land Planning Agency shall by rule define categories of Development of Regional Impact that, because of the nature or magnitude of the development or the nature or magnitude of its effect on the surrounding environment, are likely in the judgment of

the Agency to present issues of state or regional significance.

(2) In adopting rules under this Section the State Land Planning Agency shall include in its consideration:

(a) the extent to which the development would create or alleviate environmental prob lems such as air or water pollution or noise;

(b) the amount of pedestrian or vehicu lar traffic likely to be generated;

(c) the number of persons likely to be residents, employees, or otherwise present;

(d) the size of the site to be occupied;

(e) the likelihood that additional or subsidiary development will be generated; and

(f) the unique, qualities of particular areas of the state.

(3) Rules adopted under this Section may vary in different areas of the state to respond to differing conditions in these areas.

Commentary

Subsection (2) requires the State Land Planning Agency to adopt rules distinguishing the types of development that would have an impact outside the boundaries of a single local government. The rules defining the line between small and large scale development of a particular type night be based on, among other factors, those listed in subsection (2):

(a) Some types of development may have regional impact merely because of the amount of traffic they generate; e.g., the rules might designate any truck terminal with loading area for 15 or more trucks.

(b) The number of users or occupiers may often be the most workable test of magnitude. Any development which is used by a large num ber of people will have a substantial impact on a large area even though the development itself nay occupy only a smaller area. Thus, for example, the scale of an apartment build ing might be measured by the number of dwel ling units.

(c) Some types of development may attract few people and occupy only small acreage but create a serious potential for air or water pollution. Specific types of indus trial use (e.g. , an oil refinery) night be treated as development of regional impact regardless of size.

(d) Development may also have a substantial regional impact if it occupies a large land area even if it is used only by a few people; the withdrawal of large acreage from other potential use is itself a decision of important state or regional concern. Thus development of any type occupying more than a specific number of acres might be considered to have regional impact.

(e) Some types of development have major impact because of the type and amount of sub sidiary development that they attract, so the Agency might designate, e.g. , any skiing facility containing three or more tows or lifts.

(f) Peculiar characteristics of parti cular parts of a state may make certain types of development of regional significance there but not elsewhere. For example, development over an underground aquifer may require spe cial consideration.

The State Land Planning Agency should have a high degree of flexibility in designing rules to meet the conditions of its particular state. It is recognized that these lines will be hard to draw and require the exercise of a sound judgment. In drafting the rules it is important to keep in mind both the need to protect state interests and the need to avoid forcing small developers to engage in unnecessary red tape. A proce- dure of state review such as outlined in this Code is likely to be successful only if it concentrates on the truly important decisions. If it gets bogged down in a backlog of meaningless paperwork or minor decisions, it may create more harm than good.

The State Land Planning Agency is empowered under subsection (3) to vary the rules for different portions of the State. In a large city the Agency might wish to use a more limited definition of regional impact than would be applicable to the rest of the State, because the impact of many types of development might not go beyond the city boundaries. Thus, for example, the

Agency night exclude all residential or commercial development in cities over 100,000 population except development within one-quarter mile of municipal boundaries.

The areas of critical state concern proposed herein are the Agriculture lands and Conservation/Open Space lands. The designation of these areas would be established in the same manner as discussed for the previous approaches.

Developments of regional impact, as suggested in the ALI definition, would be determined by the SPC based upon the nature, location or intensity of the project. Standards for making the determination would be established by the SPC.

Under this proposal,, the responsibility for determining the distinction between Growth areas and Limited Growth areas would be delegated to the counties. The counties would review their own comprehensive plans and those of the municipalities within the county to determine compliance with the goals and objectives of the Plan.

Two states — Florida and Vermont — have state planning systems similar to the approach proposed here. Florida is one of the fastest-growing states in the nation and one of the pioneers in building regional and statewide perspectives into land use decisions. In 1972, the Florida Legislature enacted the Environmental Land and Water Management Act (Chapter 380), which established state and regional roles in reviewing large-scale development projects and in planning for and regulating land uses in areas of critical state concern. Although the standards in Chapter 380 for

reviewing large-scale developments refer to consistency with an adopted state comprehensive plan, no state plan existed at the time Chapter 380 was adopted.[78]

In 1975, the Legislature enacted the Local Government Comprehensive Planning Act (LGCPA),[79] which also contemplated consistency with a state comprehensive plan that did not then exist.[80] The LGCPA mandated that all local governments prepare a comprehensive plan that includes a number of particular plan elements. Under the LGCPA, local plans were to be reviewed for consistency with the state comprehensive plan by the state's land planning agency.[81] However, the absence of a state plan made this review an empty exercise.

The review of large-scale developments under Chapter 380 did infuse a statewide perspective into land use decisions Nevertheless, the results of this effort were much criticized in a review by the second Environmental Land Management Study Committee (ELMS-2) of the state's array of land use programs. ELMS-2 was particularly critical of the failure to adopt the state plan as a policy framework for local planning; it recommended that the state establish a vertically integrated set of local, regional and state plans. In response, the Legislature in 1984 mandated the Executive Office of the Governor to prepare a State Comprehensive Plan to serve as a policy guide for regional policy plans and local government comprehensive plans.[82]

The Legislature assigned responsibility for the preparation of the State Comprehensive Plan to the Executive

Office of the Governor and not to the state land planning agency; in fact, however, there was a substantial amount of interaction between the Governor's office and the state land planning agency. A draft plan was prepared and submitted to the Legislature, which made substantial revisions and adopted the State Comprehensive Plan as law.

Florida's State Comprehensive Plan represents an extraordinary "top-down" planning structure; increasingly definite policies are imposed on lower levels of government by higher levels of government. The State Comprehensive Plan contains about 300 broad policy statements addressing 25 subjects of statewide significance: education, children, families, the elderly, housing, health, public safety, water resources, coastal and marine resources, natural systems, air quality, energy, hazardous materials, mining, property rights, land use, public facilities, historic resources, transportation, governmental efficiency, the economy, agriculture, tourism, employment and plan implementation. The State Comprehensive Plan is to be implemented through a series of functional plans to be prepared by each state agency and regional policy plans to be prepared by each of the state's 85 regional planning commissions. Both types of plans must be consistent with the State Comprehensive Plan. Local comprehensive plans must be consistent with the regional policy plans.

Unfortunately, it is too early to fully assess the effectiveness of the Florida program because the deadline for

bringing local plans into consistency with the State Comprehensive Plan and regional policy plans has been deferred until 1990. Nevertheless, experience with the 197S LGCPA requirement of the preparation of local comprehensive plans and early reactions to the new State Comprehensive Plan and its consistency requirements indicate that Florida's statewide planning program may be too ambitious and politically unpopular. The new Governor elected in 1986 campaigned on a .platform which claimed that the state was overstepping its proper role and that local government should be given more autonomy.

Moreover/ the early steps of the planning process are not going well. For example, the state rules adopted as minimum criteria for local planning efforts were not received favorably by local authorities who believe that the state is unnecessarily involving itself in matters of purely local concern. The State Comprehensive Plan, with no maps or other definite elements, is widely considered too general to be of much benefit. Local governments are revising their comprehensive plans with more than 11 million dollars in planning assistance funds appropriated by the Legislature. However, the prospect of successfully establishing a vertically integrated planning structure in Florida seems slim given the unwillingness of local officials to accept a planning mandate in which they had no voice in establishing. The tide, however, may be turning in favor of the statewide planning program. In the Florida Keys, a designated "area of critical state concern,"

local officials fought the imposition of state policy mandates for many years, including litigation, yet in 1986 they adopted a plan that conformed to the policies of the State Comprehensive Plan.

In 1969, the Vermont Legislature adopted the Environmental Control law (Act 250)[87] in response to pressure on the state's resources arising from a significant increase in recreational and recreation-related development. Act 250 set out to establish a statewide system of land use planning and regulations aimed primarily at controlling the impacts of larger-scale development. It established a statewide system for the regulation of particular types of development by an Environmental Board and nine District Environmental Commissions; local governments play no active role in this regulatory system. Act 250 also provided for the implementation over time of three plans to provide guidance for land use decisions throughout the state.

The Environmental Board consists of nine members appointed by the Governor, subject to confirmation by the Senate.[88] It basically performs two functions: (1) to act as the overseeing body for the regulatory system established by Act 250, and (2) to formulate the plans serving as guides for land use decisions throughout the state.

The regulatory aspects of Act 250 have evoked little controversy and seem to have worked effectively.[89] Act 250 set up nine District Environmental Commissions,[90] each consisting of three members appointed by the Governor,

basically to grant permits for the sale or construction of any development or subdivision within the particular district. The Act defines 'development" basically to include the construction of improvements for commercial or industrial purposes on tracts of land involving more than ten acres, or more than one acre in municipalities that have not adopted permanent zoning and subdivision laws, and to include the construction of housing projects with ten or more units.[01] The Act defines "subdivision* as a tract or tracts of land that have been

92

partitioned for resale into ten or more lots. These definitions have required about one-third of all development in the State to receive permits from the District Environmental Commissions.[03]

The core of the regulatory permitting procedure is a set of statutory criteria, covering a wide range of potentially detrimental impacts of development, against which all applications are evaluated. Before a District Environmental Commission can issue a permit, it must find that the project:

> (1) will not result in undue water or air pollution;
>
> (2) has sufficient water available for the reasonably foreseeable needs of the subdivision or development;
>
> (3) will not cause an unreasonable burden on an existing water supply if one is to be utilized;
>
> (4) will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
>
> (5) will not cause unreasonable congestion or unsafe conditions with respect to use of the

> highways, waterways, railways, airports and airways, and other means of existing or proposed transportation;
>
> (6) will not cause an unreasonable burden on the ability of a municipality to provide educational services;
>
> (7) will not place an unreasonable burden on the ability of the local governments to provide municipal or governmental services;
>
> (8) will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;
>
> (9) conforms with a duly adopted capability and development plan and land use plan when adopted; and
>
> (10) conforms with any duly adopted local or regional plan or capital program.

Appeals from the decisions of the District Environmental Commis-sions go to the Environmental Board.[95]

The planning aspects of Act 250 have been less successful; only the first two plans envisioned by Act 250 have ever been adopted. The first plan called for by Act 250 was adopted the Interim Plan[96] the Interim Plan. The legislature in 1972. It was a relatively non-controversial document[97] which consisted of little more than a statement of general policies and a series of maps showing which areas of the state had particular physical limitations to development, were especially unique or sensitive, or were especially suited to agricultural or forest use.[98]

The second plan called for by Act 250 was the Land Capability and Development Plan, which the Legislature adopted in 1973. This plan took the form of a series of more specific

policies and criteria which were adopted as amendments to Act 250." It clarified the original provisions of the Act, added criteria for development permitting and required the District Environmental Commission to consider the public service impact of development in terms of the ability of local governments to provide essential services.[100] While the Land Capability and Development Plan was significant for the regulatory aspects of Act 250, it offered little in terms of comprehensive state Ian use planning. It did have a back-door effect on land use planning, however, because it enabled municipalities to exercise much greater control over development within their boundaries where local and regional plans were adopted.

The third and final plan envisioned by Act 250 was a State Land Use Plan. This plan has never been adopted by the Legislature, despite the formulation and submission of at least two such plans since 1974. The 1974 proposal set up a system for classifying all lands in the state into a number of different classifications and attached varying maximum levels for the density of development within each classification. It also required all local governments to prepare land use plans consistent with the State Land Use Plan; if the local government failed to do so, then the State could enforce its own plan for that jurisdiction's territory. This proposal and subsequent proposals were never adopted by the Legislature, due in part to the fears of residents and local governments that the proposals were thinly-disguised attempts at statewide zoning and to an increasing interest on the part of local

governments in basic land use planning, which they seldom exercised before the 1970s.[105] Act 250's call for a State Land Use Plan in fact was repealed by the Legislature in 1983.[106]

D. Trend Development System

The fourth growth management approach is simply to allow development to proceed as it has in the past. Under the current system, New Jersey's tradition of home rule allows most development and redevelopment decisions to be made at the municipal level. Counties play a very limited role in influencing such decisions. The state courts and the Council on Affordable Housing play a significant role in ensuring that municipal land use plans, regulations and decisions meet the obligation to accommodate the region's fair share of low and moderate income housing. The State has also played a role by designating areas which are subject to state or regional review pursuant to the Pinelands Protection Act, [108] . the Hackensack Meadowlands Development Act . and the Coastal Area Facilities Review Act. [109] . In essence, the State has established three areas of critical state concern.

The trend approach would provide no identification of growth, limited growth, agriculture or conservation/open space areas. In that respect, the approach would not fully comply with the State Planning Act. . Arguably, the Plan night require the counties and municipalities to identify such areas as part of the cross-acceptance process regarding the preliminary plan, and the areas so identified would then be incorporated into the final plan.

Slight variations on the trend approach could provide a greater degree of control over growth. For example, state legislation could require municipalities to develop performance

standards for the protection of natural resources and the environment. The implementation would remain at the local level pursuant to the State directive.

## III. CONCLUDING OBSERVATIONS

Several concluding observations should be made concerning this report. First, it must be acknowledged that at this stage of the process, the consultants have not undertaken analysis as to the legality or availability under existing New Jersey constitutional, statutory and case law of strategies which might be selected by the SPC to implement the growth management approaches. After a growth management approach and a development scenario are selected, and after consultation with the Attorney General's office, detailed analysis of pertinent strategies selected by the SPC will be undertaken in order to identify those strategies which can be lawfully implemented or legislation required to lawfully implement desired strategies.

It should also be emphasized that the growth management approaches discussed in this report are not the only approaches that could be devised, nor are they mutually exclusive. Infinite variations on each of the approaches are conceivable. Elements of any given approach might be appropriately added to others. For example, the development of regional impact concept, which is a system element of the third management approach, could be easily added to any of the other three approaches. The mission of the SPC is to tailor a growth management approach that best suits the needs of New Jersey.

## ILLUSTRATIVE ALTERNATIVE MANAGEMENT STRUCTURES

The four accompanying maps illustrate key geographic features that could be associated with each of the four alternative management structures under consideration:

Growth Areas Facility-Driven
Growth Areas of Critical
Concern Current New Jersey
Approach

## Growth Areas/Management Structure Alternative I

Management Structure Alternative I subdivides the entire State of New Jersey into Growth Areas and Limited Growth Areas, and further subdivides these major categories as follows:

Growth Areas
Existing Urbanized
Planned Urbanizing

Limited Growth Areas
Rural/Future Urbanizing
Agriculture
Conservation and Open Space

Within the Growth Areas, Existing Urbanized Areas are those that are publicly sewered at present and that have population densities of 1000 or more persons per square mile. The Older Urban Areas are those that have consistently lost population since 1950, or been designated as urban aid municipalities. The Older Suburbs are those that have lost population since 1960 or 1970. Other suburbs are those existing urbanized areas still experiencing growth as of 1980.

Planned Urbanizing Areas include areas of less than 1000 persons per square mile that are presently sewered. These areas are experiencing growth right now. In addition, Planned Urbanizing Areas include areas designated for growth during the next capital program period. For illustrative purposes only, these are shown here as Existing Growth Corridors as defined by George Sternlieb of Rutgers University's Center for Urban Policy in his 1986 publication on New Jersey Growth Corridors, with the addition of the Hudson River Gold Coast. Such areas designated for future growth might equally well take the form of compact growth, nodes, or sprawl, dependent upon the development pattern land form sought.

Within the Limited Growth Areas, Rural and Future Urbanizing include those lands not now served by sewers, but without either identified agricultural value or special environmental constraints or resource value. Agricultural Areas are those identified by each County as Certified Agricultural Development

Areas. Conservation and Open Space Areas are those areas identified as having special environmental constraints or resource value.

In recognition of its recommendations, the boundaries of the area addressed in the Pinelands Plan are indicated.

Facility-Driven Growth (Management Structure Alternative II)

Facility Driven Growth divides the State into Growth and Limited Growth Areas and focuses its emphasis upon the facilities which drive or permit growth:

Highways
Public Sewer Service
Public Water Service
Other Major Public Infrastructure Improvements

Growth Areas under this alternative are identified as those areas with public services generally available.

Areas of Critical State Concern (Management Structure Alternative II

The third Alternative Management Structure, Areas of Critical State Concern, shows the configuration of areas of Existing Critical State Concern including the Pinelands, the Coastal Zone

and the Hackensack Meadowlands. Several possible additional future areas that might be similarly designated are shown, including a Highlands area and a South Jersey Agricultural Area. Certified Agricultural Development Areas, as designated by each County, are shown where these exist outside of other specific areas of critical concern. Of particular significance in illustrating this Management Structure Alternative are the County boundaries indicating of the importance of the County level of government under this Alternative as the level at which conformance is assured of local policies and plans with those of the State.

Current New Jersey Approach (Management Structure Alternative IV)

The fourth Alternative Management Structure is illustrated here as consisting of management of presently identified areas of Critical State Concern: the Pinelands, Coastal Zone and the Hackensack Meadowlands, shown as an overlay to future population densities likely to occur throughout the state if present trends continue.

# Management Structure Alternative I Growth Areas


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1987

# Management Structure Alternative n Facility Driven Growth

Growth Areas

Limited Growth Areas Federal

Interstate Highways State Limited

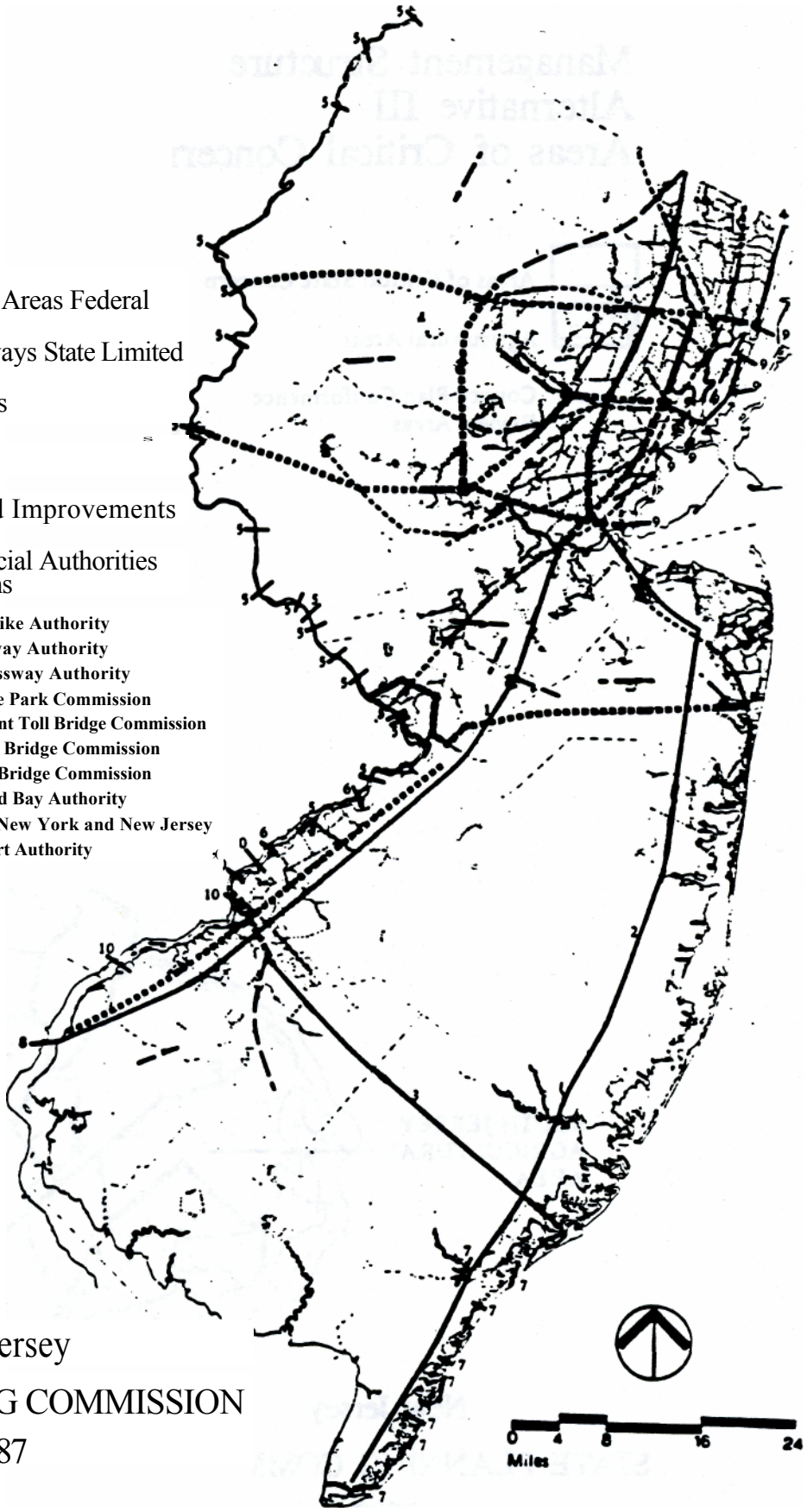
Access Highways

..... Commuter Rail

_ _ _ Programmed Road Improvements

Facilities of Special Authorities and Commissions

1. New Jersey Turnpike Authority
2. New Jersey Highway Authority
3. New Jersey Expressway Authority
4. Palisades Interstate Park Commission
5. Delaware River Joint Toll Bridge Commission
6. Burlington County Bridge Commission
7. Cape May County Bridge Commission
8. Delaware River and Bay Authority
9. Port Authority of New York and New Jersey
10. Delaware River Port Authority

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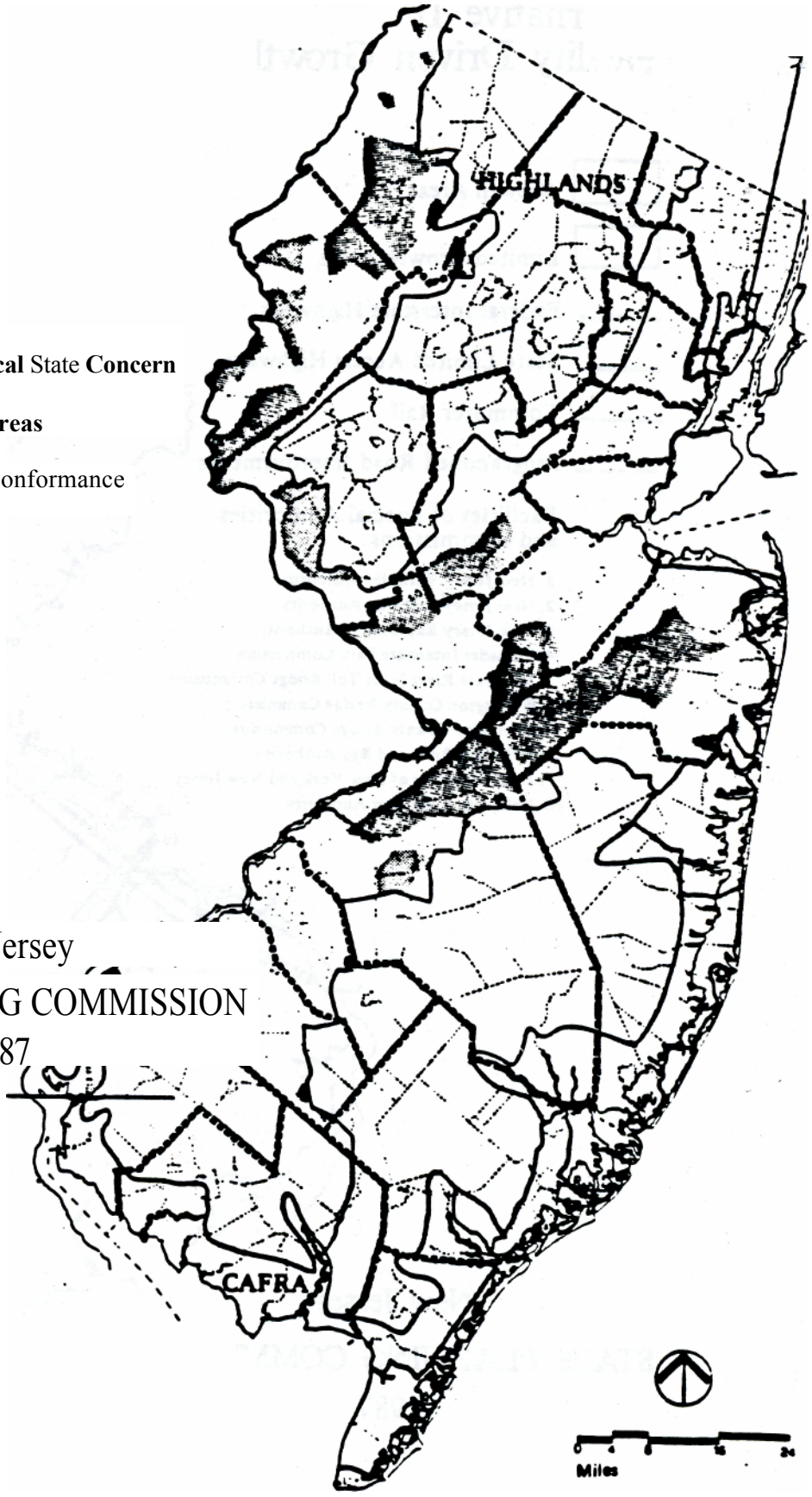
# Management Structure Alternative HI Areas of Critical Concern

**Areas of Critical State Concern**

Agricultural **Areas**

**County Plan Conformance Review Areas**

**SOUTHJERSEY AGRICULTURAL AREA**

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# Management Structure Alternative IV Current New Jersey Approach

**POPULATION DENSITIES 21st CENTURY Population Per Square Mile**

**I _____I 0-50**

**SO-200**

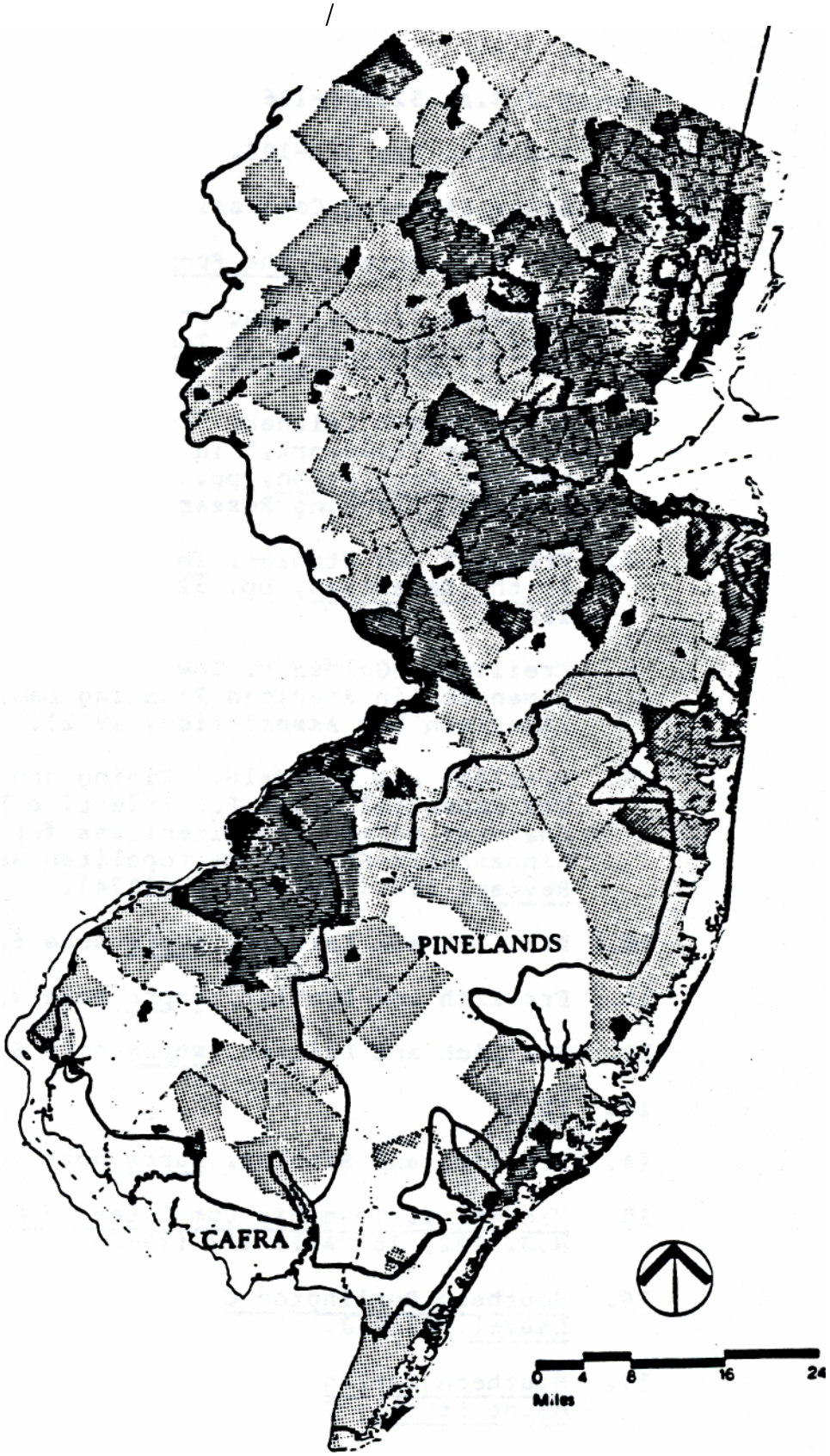
**200 -1,000**

**1,000-5,000**

**5,000-10,000**

**Over 10,0000**

**Areas of Critical State Concern**




New Jersey

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ENDNOTES

1. **N.J.S.A.** 52;18A-196 **et** seq.

2. N.J.S.A. 52: 18A-198.

3. State Planning Commission Resolution No. 87-008.

4. See F.J. Turner, The Frontier in American History (1920).

5. Johnson, "Identifying Prime Food and Fiber Lands," Land Use; Tough Choices in Today's World, p. 105 (Spec. Pub. No. 22, Soil Conservation Service).

6. Freilich and Leitner, "Comprehensive Growth Management and Planning Framework," in Forrest, ed.. County Growth Man agement Regulation, pp. 13-14 (Bureau of Urban and Regional Planning Research, University of Illinois, 1979).

7. Freilich and Stuhler, The Land Use Awakening; Zoning Law in the Seventies, pp. 32-33 (American Bar Association, 1981).

8. Freilich, "Golden v. Town of Ramapo Establishing a New Dimension in American Planning Law," 4 Urban Lawyer ix (American Bar Association, 1972).

9. Freilich and Ragsdale, "Timing and Sequential Controls — The Essential Basis For Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St.Paul Metropolitan Region," 58 Minnesota Law Review, 1009, 1013-1014 (1974).

10. Freilich and Leitner, supra note 6, at 13.

11. Freilich and Stuhler, supra note 7, at 33-34.

12. Freilich and Leitner, supra note 6, 26 13.

13. Ibid.

14. Freilich and Stuhler, supra note 7, at 35.

15. Vickers v. Township Committee of Gloucester Township, 37 N.J. 232, 181 A.2d 129 (1962).

16. Southern Burlington County N.A.A.C.P• v. Township of Mount Laurel, 67 N.J. 151, 336 A.2d 713 (1975).

17. Southern Burlington Township N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158, 456 A.Zd 390, 429-431 (1983).

18. Preilich and Stuhler, supra note 7, at 35.

19. Freilich and Leitner, supra note 6, at 14-15.

**20. Ibid., at 23-24.**

21. Ibid., 24

22. The Mount Laurel cases, Southern Burlington Township N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151, 336 . A.2d 713 (1975) (Mount Laurel I) and 92 N.J. 158, 456 A.2d 390 (1983) (Mount Laurel II) require some municipalities to accommodate their fair share of their region's low and moderate-income housing needs. Mount Laurel II looked to the State Development Guide Plan as the primary means of determining the locus of the fair share obligation. See discussion in 456 A.2d at 422-435. In Hills Development Co. y. Township of Bernards, 103 N.J. 1, 510 A.2d 621 (1986), a recent case upholding the constitutionality of the Fair Housing Act, N.J.S.A. 52:270-301 et se£., the New Jersey Supreme Court held that the State Development and Redevelopment Plan, when completed, will primarily determine the locus of the fair share obligation. 510 A.2d at 638 n.6, 640.

23. N.J.S.A. 54:4-23.1 et seq.

24. Haw.Rev.Stat. ch. 205 (1985).

25. Haw.Rev.Stat. ch. 226 (1984).

26. D. Callies, Regulating Paradise: Land Use Controls in Hawaii, p. 7 (1984).

**27. Ibid., at 6.**

28. Haw.Rev.Stat. S 205-2 (1985).

29. Ibid.

30. Ibid.

31. Haw.Rev.Stat. S 205-5(a) (1985).

32. Haw.Rev.Stat. S 205-2 (1985).

33. Ibid.

**34. Haw.Rev.Stat. SS 205-4.5, 205-5(c) (1985).**

35. Haw.Rev.Stat. S 205-6 (1985).

36. Ibid.

37. Haw.Rev.stat. *S* 205-1 (1985).

38. Haw.Rev.stat. § 205-3.l(c) (1985).

39. Haw.Rev.stat. *SS* 205-3.1, 205-4 (1985).

**40. Haw.Rev.stat. *SS* 226-54, 226-56 (1985).**

41. Haw.Rev.stat. *$* 226-53(b) (1985).

**42. Haw.Rev.stat. *SS* 226-54, 226-56 (1985).**

**43. Haw.Rev.stat. *SS* 226-52(a)(3), 226-57 (1985).**

44. Haw.Rev.stat. S 226-57(b) (1985).

45. Haw.Rev.stat. $ 226-59(a) (1985).

46. Callies, supra note 26, at 16.

47. Haw.Rev.stat. *S* 226-57(a) (1985).

48. Haw.Rev.stat. S 226-62(a) (1985).

49. Haw.Rev.stat. *S* 226-61(a) (1985).

50. Haw.Rev.stat. SS 226-52(a)(4), 226-61(a) (1985).

51. Ore.Rev.Stat. SS 197.030-197.060 (1985).

52. Ore.Rev.Stat. SS 197.075-197.095 (1985).

53. Ore.Rev.Stat. SS 197.805-197.855 (1985).

54. 1973 Ore. Laws 80, codified as amended at Ore.Rev.Stat. ch. 197 (19851.

55. Ore.Rev.Stat. S 197.175(2) (1985).

56. 1983 Ore. Laws 827, S 12(3).

57. Ore.Rev.Stat. SS 197.251-197.254 (1985).

58. Ore.Rev.Stat. S 197.175; see also Morgan and Shonkwiler, •State Land Use Planning in Oregon,* 11 Urban Lawyer 1, 9-14 (American Bar Association 1979).

59. Ore.Rev.Stat. SS 197-180(1), 197.250 (1985).

60. Ore.Rev.Stat. S 197.040(2)(e) (1985).

61. Ore.Rev.Stat. S 197.180 (1985).

62. Ore.Rev.Stat. 5 197.405 (1985).

63. J. DeGrove, Land Growth & Politics, p. 265 (1984).

64. Lecture by Jim Rose, Executive Director, DLCD, April 15, 1985.

65. Ore.Rev.Stat. 5 197.320 (1985).

66. Ore.Rev.Stat. SS 197.820-197.830 (1985).

67. 1983 Ore. Laws ch. 827 $ 12(2)(b).

68. Ore.Rev.Stat. *SS* 197.610-197.625 (1985).

69. Ore.Rev.Stat. SS 197.640-197.647 (1985).

70. For a detailed analysis of the Metropolitan Plan, see Freilich and Ragsdale, supra note 9.

71. San Diego Progress Guide and General Plan, Guidelines For Future Development (Freilich & Leitner, legal consultants) (adopted February 26, 1979).

72. N.J.S.A. 52:18A-200(d).

73. Gleeson, et al.. Urban Growth Management Systems, (American Society of Planning Officials, Planning Advisory Service Reports 309, 310).

74. American Law Institute, A Model Land Development Code (1976).

75. Ibid., at 261.

76. Ibid., at 271-272.

77. 1972 Fla. Laws 317, codified as amended at Fla. Stat. ch. 380 (1985).

78. See Fla. Stat. *S* 380.065(2)(b) (1985).

79. 1975 Fla. Laws 257, codified as amended at Fla. Stat. SS 163.3161-163.3211 (1985).

80. Fla.Stat. S 163.3177(4)(a) (1985).

81. Fla.Stat. S 163.3184(3)(b)-(4) (1985).

82. 1984 Fla. Laws 257 SS 5, 7.

83. 1985 Fla. Laws 57, codified as amended at Fla. Stat. ch. 187 (1985).

84. **Fla.Stat. SS 186.021, 186.022 (1985).**

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88. **Vt.Stat.Ann. tit. 10, S 6021 (1984).**

89. **See DeGrove, supra note 63, at 74.**

90. **Vt.Stat.Ann. tit. 10, S 6026 (1984).**

91. Vt.Stat.Ann. tit. 10, S 6001(3) (1984).

92. **Vt.Stat.Ann. tit. 10, S 6001(19) (1984).**

93. **See DeGrove, supra note 63, at 92.**

94. **Vt.Stat.Ann. tit. 10, S 6086(a) (1984).**

95. **Vt.Stat.Ann. tit. 10, S 6089 (1984).**

96. 1969 Vt. Acts 250, S 18.

97. **See DeGrove, supra note 63, at 84.**

98. See R. Healy and J. Rosenburg, Land Use and the States, p. 59 (2d ed. 1979).

99. Vt.Stat.Ann. tit. 10, S 6042 history (1984).

100. **See DeGrove, supra note 63, at 85.**

101. See Healy and Rosenburg, supra note 98, at 59.

102. **1969 Vt. Acts 250, S 20.**

103. **Ibid.**

104. **See DeGrove, supra note 63, at 86.**

105. **Ibid., at 91.**

106. **1983 Vt. Acts 114, S 5.**

107. **N.J.S.A. 13;18A-1 et seq.**

108. **N.J.S.A. 13:17-1 et seq.**

109. **P.L. 1973, ch. 185.**

110. N.J.S.A. 52:18A-200(d).