



Growth management: A renewed agenda for states

By Gordon Meeks, Jr.

Growth management and comprehensive planning acts offer natural resource managers new opportunities to achieve conservation goals.

NATURAL resource managers have long been active in formulating and administering government policies for environmental conservation. Federal law in this area has been explored exhaustively in other papers. In recent years, state and local governments have become more aggressive in regulating activities in the woods, fields, and water bodies for preservation of these natural resource values. Typically, states regulate activities through such authorities as forest practice, wetlands preservation, and groundwater management acts. Local governments traditionally have used their police powers, such as zoning, to regulate land use. Now, a new approach being formulated by some states and regional authorities may involve a much more extensive and comprehensive means of managing resources than hitherto exercised by the states. Growth management and comprehensive planning acts are being enacted that may change not only the nature of land use but

also the decision-making processes that affect our social and economic geography.

Two "waves"

States are beginning to reassert their hegemony in land use policy, and this time the "quiet revolution" (3) promises to have a more sustained impact on the landscape. John DeGrove (4) described state land use policies as two separate "waves" of activist legislating, of which we are now into the second. Frank Popper (8), on the other hand, argues that the states never did slow down on their first foray into land use regulation; they just simply refocused on generic land use issues as opposed to comprehensive statewide land management. In any event, growth management and comprehensive land use regulation by the states is back in the forefront of environmental politics and policymaking.

Nine states (Florida, Georgia, Hawaii, Maine, New Jersey, Rhode Island, Oregon, Vermont, and Washington) have been identified as having statewide growth manage-

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ment or comprehensive planning programs. Hawaii has authority for direct state regulation of local land use activities and is, therefore, often lumped among the growth management states. In reality, it is questionable whether that state actually manages growth in the same vein the others do.

Another seven states (California, Maryland, New York, Pennsylvania, Virginia, Washington, and West Virginia) have gubernatorial growth strategies commissions or have held conferences focusing on land use issues with the objective of developing growth management legislation. In its 1990 session, Washington's legislature passed a growth management bill for the Puget Sound region. Activists also succeeded in obtaining enough signatures to place on the November ballot an initiative that would have expanded land use controls and made them mandatory statewide, but the initiative failed. Washington also has a growth strategies commission, appointed by the governor in 1989, which continues to deliberate proposals for new legislation it expects to submit to the legislature in 1991.

Several states have adopted growth management programs that are administered only in metropolitan regions (San Francisco, California, and the Twin Cities of Minnesota) or in critical natural areas (California, Florida, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, and Virginia). For example, New York has the Adirondack Park and New Jersey the Pine-lands Reserve.

The "first wave" of state land use regulations was stimulated primarily by local environmental politics and a desire to preserve agricultural land. The second wave of state land use assertiveness seems to reflect as much concern over highway congestion, affordable housing, and infrastructure finance as environmental protection and resource conservation. Local and state politicians are more aware that economic development, environmental protection, and infrastructure finance must be coordinated. States and local jurisdictions are finding that the benefits of growth are negated when public services are inadequate and the environment is degraded. In fact, economic development is increasingly dependent on such quality-of-life issues as an attractive environment, affordable housing, reliable public services, and good transportation networks.

The New Jersey legislature, for example, adopted the state Land Use Planning Act in 1985 when transportation planners projected a \$20 billion revenue shortfall for infrastructure needs (highways, bridges, transit, schools, water supplies, etc.). In calling for a growth strategies commission for Washington State in 1989, Speaker Joe King said

Seattle's segment of Interstate 5 might as well be a "parking lot." He was no doubt referring to the fact that Puget Sound highways comprise the sixth most congested traffic corridor in the country.

It has long been recognized that the condition of a community's infrastructure affects the rate of new business investment. But shortages of affordable housing (related to transportation access and local land use policies) also are being cited as constraints to business expansion. In New Jersey, the state supreme court retained jurisdiction over local planning decisions after overturning the Mount Laurel Township zoning code because of its limitations on low-income housing. The court implied that it would continue exercising authority over land use until the legislature adopted a uniform, statewide housing policy addressing growth. These factors, among others, inspired passage of the land use planning act in 1985.

State rationales

John Epling, executive director of the New Jersey Office of State Planning, recently explained the state's land policy rationale before a congressional hearing on growth and land management policy. This rationale is an apt summary of the thinking that went into many of the state growth management statutes. Epling (5) testified that:

"The...public wants a balance in its quality of life. It wants well-paying jobs, affordable new homes, and convenient shopping areas as well as accessible open spaces and recreational areas, safe and dynamic cities, clean and potable water, and free-flowing highways. As public officials, however, we often tend to pursue each of these important and worthwhile features in disjointed, uncoordinated ways. We need, at every level of government, a coordinated and integrated set of strategies that manages growth in ways that lead to...the achievement of many valued goals, not to maximize the achievement of any one goal at the expense of all the others."

Most of this new policymaking in the planning arena has been undertaken in coastal and Sunbelt states, where rapid economic growth occurred during the 1980s. In 1988, Vermont revised its much-heralded Land Use and Development Law. Florida similarly revitalized its Environmental Land and Water Management Act with the State Growth Management Act of 1985. Also in 1988 Maine acted to "promote orderly economic growth and natural resource conservation," and Rhode Island enacted a similar measure the same year. Georgia—some might think an unlikely place to find political support for a state role in land plan-

ning—adopted the state comprehensive planning act in 1989 by 143-13 in the House and 56-0 in the Senate.

As national politics during the 1980s encouraged deregulation and a reduced federal role in local land use and environmental quality issues, the states and local governments themselves were becoming more aggressive in placing conditions on growth. Likewise, cuts in federal aid for state and local infrastructure left states with less money to pay for new roads, sewers, schools, health facilities, and so on. The tax revolt exacerbated loss of federal funds, so local governments began requiring developers to pay as they went. Impact fees became a popular mechanism for local authorities to pay for public services. But imposition of impact fees generated its own political controversies and contributed to the furtherance of growth management.

Communities in at least 39 states now charge developer fees (6). But impact fees and system development charges (as they are sometimes called) stir up controversy because the local governments that impose them spend the revenue on services unrelated to the new growth. Consequently, states establish restrictions on impact fees to ensure that they are devoted to improvements necessitated by the developments from which they are exacted. States also have required comprehensive planning in exchange for authority to collect these fees. In fact, business interests have supported certain state growth management and planning requirements as a means to control the use of impact fees. Instead of mandating that local governments undertake comprehensive planning, Vermont's Act 200 withholds authority to impose impact fees from jurisdictions that don't undertake comprehensive planning. Texas law (SB 336, 1987) also requires planning as a condition for impact fee authority, but it is not written into a comprehensive growth management act as in Vermont and other states.

Elements of growth management

Texas is not unlike a lot of states in that it has adopted certain elements of growth management policies but not the whole package. As the accompanying table indicates, comprehensive state growth management consists of a number of elements that have been combined into omnibus bills in their respective legislatures. Oregon's Land Conservation and Development Act (SB 100, 1973) has been used as a model by many of the other states, as has the American Law Institute's 1977 model code.

As in Texas, many states have certain elements of growth management, but only a

few have combined many of these elements into a comprehensive law. The states that have adopted comprehensive growth management acts tend to incorporate the following provisions into those acts:

- Requirements or strong incentives for comprehensive local land use and infrastructure planning.
- Formal procedures for intergovernmental coordination.
- Regional/state review and approval of local plans.
- State financial assistance for planning.
- Consistency requirements with zoning and/or state plans.
- State agency consistency with local plans.
- Public participation requirements.
- Negotiation or mediation procedures.
- Explicit goals to which all plans must conform.

► Urban growth boundaries.

Other elements that have been incorporated by some legislatures include:

- Impact fee authority.
- Real estate transfer taxes/fees.
- Critical-area designations.
- Developments of state or regional significance.
- Authorization of development agreements.

The housing issue

The affordable-housing goal is common to all growth management statutes except Hawaii's, and it is an issue that cuts several ways in the growth management debate. The prominence of the housing issue as a function of land use policy became apparent when the New Jersey Supreme Court ruled that Mount Laurel Township's growth man-

agement program was exclusionary. Courts now have generally found that growth management is acceptable so long as it does not discriminate systematically.

Christine Minnehan (7), principal consultant to California Senate President Pro Tem David Roberti, said that "the factors which reduce the stock of affordable housing are complex, numerous, and interconnected... but public desire for growth management must be carefully interwoven with the need for affordable housing. Neither should be achieved at the expense of the other."

Other housing advocates, such as Robert Burchell, of the Center for Urban Policy Research at Rutgers, have insisted on integrating housing into government comprehensive plans. Burchell, in a paper presented at a conference on growth management and affordable housing on Florida in 1989, said that achieving "affordable housing is not just

State growth management and comprehensive land use planning acts

Code/Bill	Florida CH 186,187, 163,380	Georgia HB 215	Hawaii Act 187 Act 205	Maine PL 1987 CH 766	New Jersey L 1905 C 398	Oregon SB 100	Rhode Island Title 45 CH221	Vermont Act 200 (250)(72)	Washington SHB 2929
Year adopted	72,84,85	89	61,63	88	85	73	88	88	90
Statewide	X	X	X	X	X	X	X	X	
Regional	CZM				Pinelands	Portland			Puget Sound
Mandatory	X	X	X	X	X	X	X		X
Planning incentives				X				X	X
Formal coordination	X	X		X	X			X	X
State review	X	X	State admin.	X	X	X	X	X	
Regional review	X	X		X				X	
Conditioned state funding	X	X		X		X	X	X	X
Transfer tax authority								X	X
Impact fee authority				X				X	X
Internal plan consistency	X			X		X	X	X	X
State agency (district) consistency	X			X	X	X	X	X	X
Urban growth boundaries (areas)	Implicit		X	X	X	X		X	X
Developments of state significance	X	X		X				X	
Critical (conservation) areas	X								
Infrastructure (CIPs)	X			X	X	X	X	X	X
Public participation	X	X		X	X	X		X	X
Mediation negotiation	X	X			X			X	X
Development agreements authorized	X								X
GOALS									
Affordable housing	X	X		X	X	X	X	X	X
Economic development	X	X		X	X	X	X	X	X
Agricultural (forestry) preservation	X		X	X	X	X	X	X	X
Water quality	X	X		X	X	X	X	X	X
Multimodal transportation	X	X			X	X	X	X	X
Historic (archeological) preservation	X	X		X	X	X	X	X	X
Energy conservation	State plan					X		X	
Natural resource (soil, wetlands wildlife, etc.)	X	X		X	X	X	X	X	X
Natural hazards avoidance	X				X	X	X	X	
Air quality	State plan					X	X	X	X
Parks, recreation, and green space	X	X		X	X	X	X	X	X

Source: National Conference of State Legislatures, 1990.
Note: Pennsylvania has a select committee on land use.

willy-nilly efforts to reduce the cost of housing. It is a definition of who is to be served, ...need, and the necessary public and private actions to answer this need."

By explicit reference, affordable housing is one of many "goals" specified by some of the recent growth management and comprehensive planning acts. To some extent the rationale for state growth management policies has been to preempt more restrictive local "growth control" ordinances deemed to conflict with state fair housing or affordable housing policy.

The nature of land use

As in the housing issue, the impetus to make growth management policies into Christmas trees of strategic planning comes from the nature of land use. Because land is ubiquitous, regulation of land by government carries with it immense power to affect other social ends, from conservation of natural resources to redistribution of wealth. Many disparate constituencies get drawn into the deliberations and negotiate for their share of the policy "spoils" of growth management acts.

Agricultural land preservation was a primary objective of early state land use policies. Constituents of agricultural land preservation have continued to lobby state governments for support in other related areas, such as soil conservation and beginning-farmer loan programs. Similarly, interest groups concerned about loss of wetlands and forest practices have seen the potential for strategic planning processes to accommodate their goals.

As the various interests have pushed to include their special concerns into growth management programs, others are drawn into the discussions, fearing they might get left out. Momentum is built to encompass the various issues related to land use, and ultimately a comprehensive bill emerges.

Growth management policies

Consequently, goal statements in the statutes usually include economic development, farm and forest (open space) land preservation, natural resource conservation, affordable housing, coordinated infrastructure and transportation development, air and water quality, historic and special areas preservation, natural hazards mitigation, recreation resource enhancement, and energy conservation. State growth management policies have evolved in a way that takes them beyond simple efforts to balance environmental protection and economic development. According to DeGrove, "These state initiatives are not really comprehensive planning; they're



strategic planning" (4). The issues being raised are no longer just questions related to local land use and urban sprawl but are much broader and fundamental for these states. "The fact that state officials are committing themselves to these policies is very significant," according to DeGrove (4).

Therefore, as designers of growth management policies incorporate disparate goals into the planning policy, additional political support, or at least neutrality, is achieved. But not always. The tradition of local hegemony has worked to stall growth management and coordinated planning in many states where it has been proposed.

Senator Marian Bergeson, chairman of California's Senate Committee on Local Government, told me in 1989 that programs like Florida's or Oregon's will not work in California: "There's too much diversity and complexity. Growth management is becoming a bipartisan issue. The main opposition, however, is from local government where their sovereignty is threatened." For growth management to succeed in California, according to Senator Bergeson, "We have to decentralize and encourage the participation of local governments with state and regional authorities."

Autonomy of local land use authority has been the crucial issue in most debates over state growth management programs. The question of whether they are "top-down" or "bottom-up" decision-making processes has been central in several legislatures. The top-down versus bottom-up debate refers to the process by which local comprehensive plans are approved or disapproved by the state

planning offices charged with administering the acts. As the accompanying table shows, seven states review local plans before they are approved and go into effect. Some states establish a state plan to which local plans must conform. This is generally characterized as the top-down approach. Other states provide incentives for local governments to independently develop their own plans, which then are brought into conformance with regional or state plans through negotiation—the so-called bottom-up approach. In the end, however, whether it is a top-down or a bottom-up approach makes little difference, other than politically, because the goal of all these programs is to establish statewide comprehensive plans that are coordinated and integrated across governmental jurisdictions horizontally and vertically—an ambitious undertaking.

The negotiation process, such as New Jersey's "cross-acceptance" or mediation in Georgia and Washington, becomes critical to success or failure of the programs. Coordination and integration of the planning procedures and their final products are not unlike the coordinated resource management process (3). But comprehensive growth management plan negotiations are more complicated and on a larger scale while addressing natural resource questions frequently on the whole ecosystem level.

For example, the Chesapeake Bay Commission has made growth management and comprehensive land use planning a priority in the Chesapeake Bay region. The former chairman of that commission is now chairing the Virginia Commission on Population,

Growth, and Development. Delegate W. Tayloe Murphy, Jr. acknowledged to me in 1989 that local hegemony is the key issue in growth policies, while pointing to the crucial challenge of proper management of natural resources. "Virginia is a very strong 'Dillon Rule' state," Murphy said, referring to a court case affirming that counties cannot do anything without explicit authority from the state. "We ceded land use power to local authorities a long time ago," Murphy said. "It's really hard to change attitudes. Our political tradition and legal code are based on the Anglo-American tradition of private property rights and local hegemony. But we've grown so fast and the world has changed so much that if people are going to live and prosper together in harmony, some of these old attitudes are going to need changing."

John Epling (5) characterized New Jersey's state planning system as a cooperative endeavor between state and local government: "The process in New Jersey is uniquely different because it is a consensus-building process—the act calls for coordination and integration at every level. There are those in New Jersey who would say that ours is a top-down approach. Quite the contrary is true—it's fundamentally a bottoms-up process." Even though the state developed a state plan first, according to Epling, "it provides the agenda for negotiations."

According to DeGrove, a former director of Florida's Department of Community Affairs, "The first wave of growth management acts [1970s] was definitely more adversarial. New Jersey's cross-acceptance requirement is a negotiation process involving the state and counties. It's almost a mandated consensus building process" (4). DeGrove, who is now a professor at Florida Atlantic University, and has written extensively on state growth management policy, said, "You have to get all the players together in order to gain political acceptance for a successful growth management program. Negotiation is required intrinsically for these programs to succeed" (4).

Explicit language in the New Jersey act calls for coordination and integration at every level. In 1989 Epling said that, after all, "it's the lack of policy coordination and integration that's the culprit—the source of many of our problems. The process used to develop the plan is as important as the plan itself." He elaborated to me: "The only way you can manage growth is to build consensus. The objective is not to produce a plan to 'limit' growth, or to overly 'promote' growth, for that matter, but to produce a plan that's rational and reasonable under a variety of circumstances. It should be a 'management' plan to 'accommodate' various levels

of growth with a balance among economic, fiscal, environmental, and other goals or concerns."

In Georgia, as well, the process of developing the growth strategies program was as important as the product. John Sibley, executive director of Governor Joe Frank Harris' Growth Strategies Commission, said to me in 1989, "We consciously decided to use a facilitated process to build consensus." Sibley emphasized that no preconceived idea or specific proposal was placed on the table prior to initiating the commission's work. The Institute for Community and Area Development at the University of Georgia was contracted to facilitate what turned out to be 11 full commission meetings, 27 task force meetings, and 19 public hearings around the state. "We had an open-door approach to participation. Consensus was built around the agenda first, then leading to consensus-building on ideas for solutions. The various constituencies were brought into the process and the policy was created from ground up."

The process was never dominated by a team of experts, according to Sibley. "If a professional planner had said to the members that 'what you need is more planning,' he might have been written off as too liberal, and that would have been the end of it. But we succeeded by addressing the basics and getting underneath the labels. I knew that if we involved the people being affected in developing the solutions themselves, that we'd come up with good policy." In fact, dispute resolution language is built into the statute for implementing the planning programs. "We call our process the bottom-up process. The state can't regulate its way through this; it can only provide the framework for strategic planning," according to Sibley.

The politics of growth management have changed dramatically in recent years. In California, the most populous and fastest growing state during the 1980s, voters had been passing growth control measures nearly 70 percent of the time when such initiatives appeared on local ballots. DeGrove said that economic changes during the 1970s and 1980s have "changed the political context within which growth management actors played the game.... The catchword became balance, balancing the equally legitimate needs of economic development and environmental protection" (4). The multiple goals listed in all the state programs both establish ambitious planning agendas and necessitate constant negotiation processes to achieve a balance among those goals.

According to some officials, the need for some kind of growth management is becoming critical. Virginia Delegate Murphy said to me, "We have to look at growth in terms of carrying capacity. How can the state and

its cities and counties grow in balance with its resource capabilities? Our traffic jams probably aren't as bad as California's, but we're approaching that degree. We're sitting on a time bomb." Interjurisdictional conflicts over highway alignments, waste disposal sites, water allocation, and housing are escalating in Virginia and nationwide, according to Murphy. Minnehan referred to California's "communities carrying capacity being stretched to their limits" (7). DeGrove commented that "the need for improved infrastructure, especially to alleviate traffic problems, has driven the recent growth management initiatives. The old notion of growth 'control' is a lost cause" (4).

The challenge

The tone of many officials involved in developing these new planning programs may sound like political frustration in trying to cope with conflicting demands. But to hear state officials refer to carrying capacity is a dramatic change from previous years, when the land use debate was on an ideological level that failed to recognize economic problems imposed by lack of planning. Planning now seems to have won new legitimacy. Few studies of the effectiveness of growth management have been completed (two are in progress at Harvard and the University of California, Berkeley). Therefore, what the comprehensive plans will result in remains to be seen, but resource managers, in any event, will have broader forums in which to ply their trades. This new trend no doubt presents many opportunities, but the challenges are only beginning to reveal themselves.

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