

# Economic Development and Public Transit: Making the Most of the Washington Growth Management Act

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## I. INTRODUCTION: THE NEED FOR GROWTH MANAGEMENT IN THE UNITED STATES

Rapid and unplanned urban growth in the urbanizing and rural fringe areas of the United States has led to numerous problems for state, local, and regional governments.<sup>1</sup> In particular, six crises are readily identifiable, each of which threatens to undermine quality of life and local competitive economic advantage. These crises include the following:

- (1) deterioration of central cities, first-ring suburbs, and closer-in neighborhoods, resulting in depopulation and abandonment of housing and the employment base;<sup>2</sup>

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1. "Growth or development control is one of the most significant and controversial subjects in the political, legal and academic area today." JAMES A. KUSHNER, *SUBDIVISION LAW AND GROWTH MANAGEMENT* § 1.01 (1991) (citing GRACE DAWSON, *NO LITTLE PLANS* (1977)). See also M. GLEESON & ROBERT H. FREILICH, *URBAN GROWTH MANAGEMENT SYSTEMS* (1975); *MANAGEMENT AND CONTROL OF GROWTH* (R. Scott ed., 1975); James F. Blumstein, *A Prolegomon to Growth Management and Exclusionary Zoning Issues*, 43:2 *LAW & CONTEMP. PROBS.* 5 (1979); Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 *YALE L.J.* 385 (1977).

2. See ROBERT FREILICH & ERIC O. STUHLER, *THE LAND USE AWAKENING, ZONING LAW IN THE 70'S* 32-33 (1981). See also Robert H. Freilich et al., *The New Federalism—American Urban Policy in the 80's: Trends and Directions in Urban, State and Local*

- (2) spiraling suburban sprawl, creating massive infrastructure as well as energy costs;<sup>3</sup>
- (3) loss of prime agricultural lands;<sup>4</sup>
- (4) environmental crises and threats to open space, air and water quality, environmentally sensitive lands, and natural resources;<sup>5</sup>
- (5) transportation congestion and resultant loss of quality of life;<sup>6</sup> and
- (6) inflating cost of housing and its effect on affordable housing.<sup>7</sup>

These problems do not lend themselves to facile solutions or quick fixes; they must be addressed through the development and application of comprehensive state and regional growth management plans.<sup>8</sup> This Article explores the history and development of growth management and delineates how growth management planning for the Washington Puget Sound region can be effectively implemented to provide a comprehensive system for attaining environmental and transit objectives.

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*Government Law*, 15 URB. LAW. 159 (1983); James A. Kushner, *The Reagan Urban Policy Centrifugal Force in the Empire*, 2 UCLA J. ENVTL. L. & POL'Y 206 (1982).

3. See FREILICH & STUHLER, *supra* note 2, at 32; Julie Biggs, *No Drip, No Flush, No Growth: How Cities Can Control Growth Beyond Their Boundaries By Refusing to Extend Utility Services*, 22 URB. LAW. 285 (1990); Carol R. Stone, *The Prevention of Urban Sprawl Through Utility Extension Controls*, 14 URB. LAW. 357 (1982); Gilbert P. Verbit, *The Urban Transportation Problem*, 124 U. PA. L. REV. 368 (1975). See also ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, URBAN AND RURAL AMERICA: POLICIES FOR FUTURE GROWTH 100-101 (Apr. 1968).

4. See Robert H. Freilich & Linda K. Davis, *Saving the Land: The Utilization of Modern Techniques of Growth Management to Preserve Rural and Agricultural America*, 13 URB. LAW. 27 (1981); Julian C. Jurgensmeyer, *Farmland Preservation: A Vital Agricultural Law Issue For the 1980's*, 21 WASHBURN L.J. 443 (1982); Farmland Policy Protection Act, 7 U.S.C.A. § 4201 *et seq.* (West 1988 & Supp. 1993).

5. See MICHAEL A. MANTELL ET AL., *CREATING SUCCESSFUL COMMUNITIES: A GUIDEBOOK TO GROWTH MANAGEMENT STRATEGIES* (1990).

6. See Robert H. Freilich & Terry D. Morgan, *Municipal Strategies for Imposing Valid Development Exactions: Responding to Nollan*, 10 ZONING & PLAN. L. REP. 169 (1987); Robert H. Freilich & S. Mark White, *Transportation Congestion and Growth Management: Comprehensive Approaches to Resolving America's Major Quality of Life Crisis*, 24 LOY. L.A. L. REV. 915 (1991).

7. See Robert H. Freilich & Martin L. Leitner, Bureau of Urban and Regional Planning Research, University of Illinois, *Comprehensive Growth Management and Planning Framework*, COUNTY GROWTH MANAGEMENT REGULATION 13-14 (Clyde W. Forrest ed., 1979); Richard A. Newman & Phil T. Feola, *Housing Incentives, A National Perspective*, 21 URB. LAW. 307 (1989).

8. Individual growth management techniques, without a plan, are ineffective. "There exists little evidence in America that growth has been well managed despite long use of management techniques." KUSHNER, *supra* note 1, at § 2.02.

## II. GROWTH MANAGEMENT BACKGROUND: FROM RAMAPO TO THE TIERS

Growth management systems involve the control of one or more familiar components of land use planning: the rate, location, type, density, amount, and quality of development.<sup>9</sup> Unlike traditional subdivision regulations, growth management adds and emphasizes a third dimension—timing.<sup>10</sup>

The timing and sequencing of development were first approved in the landmark decision<sup>11</sup> of *Golden v. Planning Board of Ramapo*,<sup>12</sup> where the New York high court upheld

9. See, e.g., *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926) (regulating land use by geographical zones); *Pardee Constr. Co. v. Camarillo*, 690 P.2d 701 (Cal. 1984) (regulating amount of growth); *Associated Homebuilders, Inc. v. Livermore*, 557 P.2d 473 (Cal. 1976) (regulating rate and density of growth); *Sturges v. Chilmark*, 402 N.E.2d 1346 (Mass. 1980) (controlling rate of development). See also Richard T. LeGates, *The Emergence of Flexible Growth Management Systems in the Bay Area*, 24 *LOY. L.A. L. REV.* 1035, 1036 (1991).

10. DAVID L. CALLIES & ROBERT H. FREILICH, *CASES AND MATERIALS ON LAND USE* 834 (West 1988 & Supp. 1991). Henry Fagin explained the two-part role of timing and sequencing in urban growth as the tempo or rate of urban development and the sequencing or encouragement of growth around existing settlements before allowing intensive use on more remote land. Henry Fagin, *Regulating the Timing of Urban Development*, 20 *LAW & CONTEMP. PROBS.* 298, 299 (1955). The National Commission on Urban Problems (Douglas Commission) recognized the limits of traditional zoning techniques in 1968 when it stated that:

At the metropolitan scale, the present techniques of development guidance have not effectively controlled the timing and location of development. . . . The attempt to use large-lot zoning for example, to control timing has all too often resulted in scattered development on large lots[.]. . . the very effect sought to be avoided. New types of controls are needed if the basic Metropolitan scale problems are to be resolved. . . . The prevention of urban sprawl should therefore qualify as a valid public purpose justifying the use of valid zoning and timing regulations. . . . The Commission recommends that . . . local governments establish holding zones in order to postpone urban development in areas that are inappropriate. . . .

NATIONAL COMMISSION ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY* 245 (1968). See also Robert H. Freilich, *Development Timing, Moratoria and Controlled Growth*, 1974 *INST. ON PLAN. ZONING & EMINENT DOMAIN* 147, 148-149 n.3 (citing the NATIONAL COMMISSION ON URBAN PROBLEMS, *ALTERNATIVES TO URBAN SPRAWL* Research Report No. 15, at 45 (1968)).

11. See DOUGLAS W. KMIEC, *ZONING AND PLANNING DESKBOOK* § 5.05[2] (1989) ("One of the more important cases upholding a plan for stayed development is *Golden v. Planning Board of the Town of Ramapo*."). *Ramapo* was ranked the "most significant" land use regulation case in the fifty years since *Euclid* by Dozier and Hagman in 4 *ENV'TL COMMENT* 4 (1978) after a comprehensive national survey of land use academics and practitioners.

12. 285 N.E.2d 291 (N.Y. 1972), *appeal dismissed*, 409 U.S. 1003 (1972). The Ramapo Plan was developed and argued through the courts by Robert Freilich. For a complete description of the Ramapo Plan and litigation, see Robert H. Freilich & David T. Greis, *Timing and Sequencing Development: Controlling Growth*, in *FUTURE*

the timing and sequential control of residential subdivision activity for periods of up to eighteen years. This was the first instance of a state high court and the United States Supreme Court upholding the uncompensated restriction of development by means of timed and sequential phasing under the Due Process Clause; in essence, establishing that the principle of "reasonable use" is reasonable use over a reasonable period of time as measured by the life of the comprehensive plan.<sup>13</sup> The principles and techniques upheld in *Ramapo* were the linking of timing and sequencing of development with capital improvements;<sup>14</sup> tying the purchase of development easements to reduced tax assessments;<sup>15</sup> and integrating the development plan, the capital improvement budget, and the zoning ordinance.<sup>16</sup>

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LAND USE, ENERGY, ENVIRONMENT AND LEGAL CONSTRAINTS 59-106 (Robert Burchell & David Listokin eds., 1975).

13. While the *Ramapo* growth management plan was abandoned by the Town in 1983 after a political changeover in the Town governing board, *Ramapo* remained important as the first case to establish that police power regulation may afford a reasonable use over a reasonable period of time measured by the life of the comprehensive plan. A noted treatise on zoning and land use controls makes the following observation regarding the significance of *Ramapo*:

The *Ramapo* decision shifted the balance of power from the developer to public land use agencies. The developer no longer has an absolute right to proceed with development, irrespective of whether public facilities can reasonably accommodate the development. Instead, the developer can be made to wait a reasonable period to allow public facilities to catch up or be forced to expend funds to ripen the land for development. At the same time, the *Ramapo* case has expanded the judicial review of just what incidental public costs affiliated with development may be shifted to the developer. . . . The *Ramapo* decision and rationale also permanently altered the courts' perception of the land use regulatory process, and paved the way for subsequent decisions that have favored public regulation over the developer or landowner's immediate right to develop property (irrespective of the harm such development might inflict upon the public good).

PATRICK J. ROHAN, ZONING AND LAND USE CONTROLS § 4.05 (1992).

14. Sequencing is "the phasing of development permission consistent with the availability of services, facilities and other infrastructure necessary to accommodate development. . . ." KUSHNER, *supra* note 1, at § 2.12 (citing Robert H. Freilich & S. Mark White, *Commentary—Effective Transportation Congestion Management*, 43 LAND USE L. & ZONING DIG. 3 (June 1991)). See also DAVID BROWER ET AL., URBAN GROWTH MANAGEMENT THROUGH DEVELOPMENT TIMING (1976); Stone, *supra* note 3, at 357.

15. See generally Robert H. Freilich & John W. Ragsdale, *Timing and Sequential Controls: The Essential Bases for Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Region*, 58 MINN. L. REV. 1009 (1974); Freilich & Greis, *supra* note 12, at 59-106.

16. See KUSHNER, *supra* note 1, at § 2.12 ("The Plan should be implemented by a capital facilities budget . . . linked to a reasonable growth projection in light of feasible financing capacity [that] will validate the community's other techniques geared toward

The purposes stated in the Ramapo zoning ordinance summarize the goals of growth management: (1) to economize on the cost of municipal facilities and services by carefully phasing residential development with efficient provision of public improvements; (2) to establish and maintain municipal control over the eventual character of development; (3) to establish and maintain a desirable degree of balance among the various uses of land; and (4) to establish and maintain essential quality of community services and facilities.<sup>17</sup>

The techniques upheld in *Ramapo* have subsequently been used to expand the role of planning, managing, and channeling growth in both suburban areas on the developmental fringe and throughout regional and metropolitan areas.<sup>18</sup> One of the first metropolitan areas to incorporate growth management techniques into its planning process was Minneapolis-St. Paul. Its regional comprehensive plan, the Metropolitan Development Framework, divided the region into five tiers: Area I, the central city and downtown business area; Area II, existing urban and suburban developed areas; Area III, the area of active urbanization; Area IV, lands reserved for rural and agricultural uses; and Area V, free-standing cities and villages.<sup>19</sup> The timing and sequencing techniques upheld in *Ramapo* played a major role in Area III; development in this area was tied to a fifteen- to twenty-year capital improvements program, which separated the existing urban areas from the rural areas. Timing and sequencing of facilities mitigated the confiscatory impact of the regulations on the rural landowners, who had no

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development restrictions.") (citing Freilich & Davis, *supra* note 4); Freilich & Ragsdale, *supra* note 15, at 1054; *Dateline Builders, Inc. v. Santa Rosa*, 194 Cal. Rptr. 258 (Cal. Ct. App. 1983) (denying sewer extensions inconsistent with plan).

17. Freilich & Greis, *supra* note 12, at 63-66.

18. See CALLIES & FREILICH, *supra* note 10, at 837 (expanding on use of the *Ramapo* concept to the regional growth systems of San Diego (corridors), Baltimore County (centers), Minneapolis-St. Paul Metropolitan Council (tiers), to other cities and counties across the United States (Lexington-Fayette County, Reno/Washoe County, Sarasota County, Fla., and a host of others), to the urban growth containment policies in major state statutory systems (Florida, Hawaii, New Jersey, Oregon, and Washington among others)). For a discussion of regional and metropolitan systems, see Jonathan M. Davidson, *Plan Based Land Development and Infrastructure Controls: New Directions For Growth Management*, 2 J. LAND USE & ENVTL. L. REV. 151 (1986); for state systems, see Donald W. O'Connell, *New Directions in State Legislation*, 1986 INST. ON PLAN. ZONING & EMINENT DOMAIN § 6.1.34 (1986).

19. See Freilich & Ragsdale, *supra* note 15, at 1017.

basis for expectations of urban use of their property.<sup>20</sup>

A number of states and regions, through statutory enactments, have recently begun to implement *Ramapo* growth boundary and adequate public facility (concurrency) growth management planning.<sup>21</sup> In most of these locations, growth management measures are employed for two principle reasons: "(1) to prevent development and associated demands on public services from outstripping available resources, and (2) to slow down, if not stop, adverse changes in community character and 'quality of life' which are perceived to result from rapid urban or suburban development."<sup>22</sup> Growth coordination techniques, however, have greater potential than simply slowing the pace of development.<sup>23</sup> Used correctly, tools such as transportation congestion management,<sup>24</sup> timing and sequencing controls that

20. For a detailed analysis of the Metropolitan Plan, see Freilich & Ragsdale, *supra* note 15.

The role of takings in the pursuit of land use regulations should not be underestimated, but with careful planning takings can be avoided. While there are those who believe that the Supreme Court's recent opinion in *Lucas v. South Carolina Coastal Council*, 112 S. Ct. 2886 (1992), will have a deleterious effect on growth management, the Authors of this article believe that growth management techniques are actually more viable than ever. See Robert H. Freilich & Elizabeth A. Garvin, *Takings After Lucas: Growth Management, Planning and Regulatory Implementation Will Work Better Than Before*, in *AFTER LUCAS: LAND USE REGULATION AND THE TAKING OF PROPERTY WITHOUT COMPENSATION* 53 (David L. Callies ed., 1993).

21. See, e.g., FLA. STAT. ANN. §§ 186.001-.911 (planning), 187.101-201 (state plan) (1992); HAW. REV. STAT. §§ 205-1 to 205-37 (1992); ME. REV. STAT. ANN. tit. 12 §§ 683-685D (planning), tit. 38 §§ 481-490 (site development) (1992); N.J. STAT. ANN. §§ 52:18A-196 to -199 (1992); OR. REV. STAT. §§ 197.005-.860 (1991) (comprehensive land use planning coordination); VT. STAT. ANN. tit. 10 §§ 6001-6108 (1992); WASH. REV. CODE ch. 36.07A (1991). See also JOHN M. DEGROVE, *LAND USE AND POLITICS* (1984); Daniel J. Curtin and Ann R. Danforth, *Looking Beyond the City Lights, Regional Approaches to the Growth Crisis*, 22 *URB. LAW.* 701 (1990); John M. DeGrove, *Regions that Flex Their Muscles as Partners in State Growth Management Systems*, 1992 *LAND USE INSTITUTE: PLANNING, REGULATION, LITIGATION, EMINENT DOMAIN AND COMPENSATION* 581 (ALI-ABA 1990); John M. DeGrove, *Growth Management and Governance*, in *UNDERSTANDING GROWTH MANAGEMENT: CRITICAL ISSUES AND A RESEARCH AGENDA* (1989); KUSHNER, *supra* note 1, §§ 2.15, 2.10 (agricultural preservation); Dwight Merriam & Thomas P. Cody, *State and Regional Regulatory Activity*, 1990 *LAND USE INSTITUTE: PLANNING, REGULATION, LITIGATION, EMINENT DOMAIN AND COMPENSATION* 695 (ALI-ABA 1990); Terry D. Morgan & John W. Shonkwiler, *Urban Development and Statewide Planning: Challenge of the 1980's*, 61 *OR. L. REV.* 351 (1982).

22. Katherine E. Stone & Philip A. Seymour, *Regulating the Timing of Development: Takings Clause and Substantive Due Process Challenges to Growth Control Regulations*, 24 *LOY. L.A. L. REV.* 1205, 1207 (1991).

23. For a survey of techniques available and their potential use, see Gary A. Pivo, *Taking Stock of Growth Management in the U.S.*, *LANDLINES* 1 (Newsletter of the Lincoln Inst. of Land Policy, Sept. 1992).

24. See, e.g., Freilich & White, *supra* note 6.

require development approval be concurrent with adequate public facilities, development exactions that place the cost of newly required infrastructure development on new development,<sup>25</sup> environmentally-sensitive land regulations, tiers, corridors, centers,<sup>26</sup> and urban growth boundaries can be used to focus growth potential and future economic development.<sup>27</sup> Growth management techniques can be used to provide incentives for growth in central cities, maintain and strengthen first-ring suburbs, and organize development on the urban fringe.<sup>28</sup>

### III. THE WASHINGTON STATE GROWTH MANAGEMENT ACT

As in the rest of the country, rapid growth in the central Puget Sound region threatens to destroy the quality of life in the region and, with it, the jobs and industrial base needed to sustain future growth. The Washington State Legislature has responded by providing a planning framework for harnessing this growth and simultaneously encouraging the potential for economic development. The legislative responses will have a profound impact on how the central Puget Sound region is planned and developed. The 1990 Growth Management Act (GMA)<sup>29</sup> requires local governments to adopt comprehensive plans and implementing regulations, while the 1991 Growth Strategies legislation<sup>30</sup> establishes a cooperative framework for planning between cities and counties. More recent legislation

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25. See, e.g., ROGER FELDMAN ET AL., *FINANCING INFRASTRUCTURE: TOOLS FOR THE FUTURE* (1988).

26. See Linda Bozung & Deborah J. Alessi, *Recent Developments in Environmental Preservation and the Rights of Property Owners*, 20 URB. LAW. 969 (1988).

27. For an in-depth discussion of these techniques and their effect on communities, see MICHAEL MANTELL ET AL., *CREATING SUCCESSFUL COMMUNITIES: A GUIDEBOOK TO GROWTH MANAGEMENT STRATEGIES* (1990).

28. See, e.g., *Dateline Builders, Inc. v. Santa Rosa*, 194 Cal. Rptr. 258 (Cal. Ct. App. 1983) (upholding city decision refusing to extend sewage connections to a development in an agricultural area beyond the city boundaries that represented "leapfrog" development inconsistent with the regional general welfare goal of the city and county plans to further the regional objective of promoting infill and preventing sprawl); *Del Mar v. San Diego*, 183 Cal. Rptr. 898 (Cal. Ct. App. 1982) (upholding San Diego's plan to develop a new planned community within a planned urbanizing area in order to prevent urban sprawl and develop a corridor growth concept). See also Thomas C. O'Keefe, Note, *Time Controls on Land Use: Prophylactic Law For Planners*, 57 CORNELL L. REV. 827 (1972).

29. 1990 Wash. Laws 1972, 1st Ex. Sess., ch. 17 (amended by 1991 Wash. Laws 2903, 1st Sp. Sess., ch. 32 and 1992 Wash. Laws 1050, ch. 227) (codified at WASH. REV. CODE ch. 36.70A (1992), WASH. REV. CODE ch. 47.80 (1992), and WASH. REV. CODE ch. 82.02 (1992)).

30. 1991 Wash. Laws 2903, 1st Sp. Sess., ch. 32.

ties the planning framework to the region's transportation network, authorizing new sources of revenue for high-capacity transit and complementary land use controls to ensure that transit becomes workable.<sup>31</sup> This legislation led to the region's proposed Rapid Transit Plan.<sup>32</sup> The federal government, in the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA),<sup>33</sup> has provided \$151 billion over a six-year period for transportation facilities and awards priority in the distribution of federal monies to jurisdictions with integrated transportation and land use policies.<sup>34</sup>

At the heart of the GMA is the establishment of goals, objectives, and policies for growth and development. How will these goals, objectives, and policies be derived? Several overriding values have driven public policy in the central Puget Sound region for many years, predating the 1990 Growth Management legislation and other recent regional planning efforts.<sup>35</sup> First, is the continuing need to create economic development opportunities. To accomplish this, public policy and capital investments must continue to encourage job creation. Public policies and investments in the central Puget Sound region should also anticipate a second major public value—protecting the region's quality of life. Quality of life, although difficult to define, can be summarized by examining the values that attract new residents to the region and retain existing residents. These values include conserving the region's abundant environmental and natural resources, maintaining open space vistas and scenic attractions, retaining productive agricultural lands, preserving livable neighborhoods, and providing affordable housing. If the region loses these attributes, it loses its competitive advantage over other regions to attract new business and residents.

The dual goals of protecting the region's quality of life and maintaining its attractiveness as a place to economically grow, invest, and work are interdependent. Meeting these goals is a critical task of public policy. These goals can be achieved, how-

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31. Washington State High-Capacity Transportation Program, WASH. REV. CODE ch. 81.104 (1993).

32. JOINT REGIONAL POLICY COMMITTEE, REGIONAL TRANSIT SYSTEM DRAFT PLAN (Oct. 1992).

33. 23 U.S.C.A. § 104 (West 1990 & Supp. 1993).

34. *Id.*

35. See, e.g., PUGET SOUND COUNCIL OF GOVERNMENTS, VISION 2020: GROWTH AND TRANSPORTATION STRATEGY FOR THE PUGET SOUND REGION (1990) [hereinafter VISION 2020].

ever, only if economic health continues to make the region a profitable place to invest and work.

As the region struggles to find new strategies for job creation while protecting its quality of life, it has several choices. First, it can accept the status quo, allowing decentralization into outlying areas and obsolescence in the inner cities and first-ring suburbs. While sprawl could possibly accommodate the greatest amount of population growth, it imposes significant costs of decentralization. The continuation of low-density sprawl development in outlying areas will require increased costs for highway expansion, creating further traffic congestion and degradation of air quality. Further, the fiscal, environmental, and social impacts of sprawl<sup>36</sup> diminish the quality of life factors that are needed to sustain continued economic growth, enhance existing neighborhoods, and preserve the environment.

The second alternative is a more compact urban form served by public transit, including rail. New growth and development could be channelled to existing developed or developing areas through a transportation corridor and center system that can easily be served by high capacity transportation networks such as the I-405 and I-5 freeway corridors and compatible infill areas.<sup>37</sup> Attracting new development to the I-405 and I-5 corridors will result in an efficient urban form that avoids the needless consumption of open space, environmentally sensitive lands, and agricultural lands that would result from the alternative of urban sprawl.<sup>38</sup>

This alternative has been successful elsewhere. A recent economic study performed by Rutgers University concluded that New Jersey's interim land use plan, which channels development into designated transit corridors and centers, would create better and higher-paying job opportunities, save the state \$740 million in road costs, encourage the use of mass transit, reduce water and sewer infrastructure costs by \$440 million, and result in substantially lower housing costs over

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36. See Jay Miller, *Assessing Residential Land Price Inflation*, in HOUSING SUPPLY AND AFFORDABILITY 97, 101 (F. Schnidman & J. Silverman eds., 1983).

37. Infill is the development of new housing or other buildings on vacant sites in predominantly developed areas.

38. See REPORT OF THE NATIONAL COUNCIL ON PUBLIC WORKS IMPROVEMENTS (1987); JOINT ECONOMIC COMMITTEE OF THE UNITED STATES CONGRESS, SUMMARY REPORT OF THE NATIONAL INFRASTRUCTURE STUDY, HARD CHOICES (1984).

the next twenty years.<sup>39</sup> Like the New Jersey plan, Vision 2020, which was prepared by the Puget Sound Regional Council of Governments,<sup>40</sup> provides a useful framework for developing and enhancing the region's urban form. This second alternative, however, can only occur if economic development at corridors and centers makes the transit plan viable, protects existing neighborhoods, and preserves the environment, open space, and agricultural lands through the reduction of sprawl.

An efficient mode of transportation must be found to serve this new urban form.<sup>41</sup> The transportation network must be able to convey large numbers of people without consuming an inordinate amount of space. The transportation system must be able to attract additional investment opportunities to key centers along the major corridors without threatening established neighborhoods. Finally, the system must be capable of conveying people from home to work in a time-efficient and inexpensive manner. The alternative is congestion and attendant delays. In 1990, for example, congestion-induced delays on major arterials in the region caused about forty-five million annual person-hours of delay, and peak-hour speeds on freeways have declined by fifty percent since 1970.<sup>42</sup>

Transit can be an end in itself—a system provided to move people efficiently from one place to another. In some very large cities, such as New York City, the fixed rail transit system (subways) is extensive simply to accommodate the compelling need for large numbers of people to go from home to work and back in the absence of reasonable alternatives. Parking in Manhattan, where many of the jobs are located, is scarce and very expensive. Traffic, often consisting largely of taxicabs and buses, is nightmarish. Even very short travel distances can be negotiated only at considerable expenditures of time. Longer travel distances, such as home to work trips from

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39. CENTER FOR URBAN POLICY RESEARCH, RUTGERS UNIVERSITY, IMPACT ASSESSMENT OF THE NEW JERSEY INTERIM STATE DEVELOPMENT AND REDEVELOPMENT PLAN, REPORT 2: RESEARCH FINDINGS xiv-xviii (1992).

40. VISION 2020, *supra* note 35.

41. The relationship between traffic congestion and economic growth is well documented. See F. STUART CHAPIN, JR. & EDWARD J. KAISER, URBAN LAND USE PLANNING 545-57 (3d ed. 1979). Indeed, the failure to reduce traffic congestion has resulted in voter backlash in California. MADELYN GLICKFELD & NED LEVINE, REGIONAL GROWTH . . . LOCAL REACTION: THE ENACTMENT AND EFFECTS OF LOCAL GROWTH CONTROL MEASURES IN CALIFORNIA (Lincoln Inst. of Land Policy 1992).

42. REGIONAL TRANSIT PROJECT, DRAFT ENVIRONMENTAL IMPACT STATEMENT, REGIONAL TRANSIT SYSTEM PLAN 1-4, 1-5 (Oct. 1992).

outside Manhattan, can take truly excessive amounts of time, as well as cause significant stress. Thus, fixed transit works in New York City in part because the alternatives are inadequate and unacceptable. In addition, the historical development pattern in New York City is one of very high densities, contributing to the efficacy of mass transit. Finally, operating expenses can be covered by fares because the level of ridership is high and because fares can be raised periodically without fear of competition.

While in unique settings like New York City transit can be an end in itself, the situation changes dramatically in more recently developed and smaller metropolitan areas like the Puget Sound region, Atlanta, Dallas, San Diego, San Francisco, and Portland. The pre-existing development pattern in these metropolitan areas is neither based on, nor especially conducive to, supporting a fixed rail transit system. Unlike the New York City system, the cost of construction is measured in current dollars. Operating expenses tend to be high and ridership levels have consistently been over-estimated. Moreover, the alternatives, notably automobile travel, are acceptable. Parking is generally available at job locations at reasonable costs and travel distances and times are bearable. Mass transit under these circumstances cannot be an end in itself but must serve some further goal.

In the Puget Sound region, then, the question that must be presented and answered directly is as follows: Why should the central Puget Sound region elect to expend \$9.5 billion on a fixed rail transit system and complementary mass transportation improvements?<sup>43</sup> An obvious subsidiary question is: Can the money be better spent in another way?

While the question is short and pointed, the response is, of necessity, more complex. The direct and immediate response, however, is this: The Central Puget Sound region will not be able to sustain its continued economic development, preserve its natural resources and unique environmental features, protect and conserve its existing neighborhoods, and limit the unwise and inefficient consumption of finite developable land without the \$9.5 billion package of transit and transportation improvements.

The transportation system must coordinate with and fur-

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43. DRAFT ENVIRONMENTAL IMPACT STATEMENT REGIONAL TRANSIT SYSTEM PLAN (Oct. 1992).

ther the regional values of environmental protection, preservation of natural resources, and neighborhood stability while complementing the tools and techniques of the growth management legislation.<sup>44</sup> This Article will demonstrate how an effective transportation system can be implemented through amendments to the regional transit plan, legislation, and coordination among cities, counties, and the region.

The state and region have taken the first step toward unifying the interrelated concepts of land use and development policies and coordinated transportation and urban mobility investments by developing and adopting the Vision 2020 regional land use plan and the Draft Regional Transit System Plan (DRTSP).<sup>45</sup> The Vision 2020 plan emphasizes protection of regional open space while concentrating new employment within regional centers.<sup>46</sup> To implement these goals, while providing the mobility needed to sustain regional economic growth, the DRTSP proposes a regional rail rapid transit line coupled with improvements to and enhancements of existing bus service.<sup>47</sup> Implementation of the capital investments proposed in the DRTSP is estimated to cost \$11.5 billion.<sup>48</sup>

Of all of the alternatives identified by Metro during the preparation of the DRTSP, only a regional rail system satisfied all of the public policies considered. However, the DRTSP can be integrated with the comprehensive planning framework of the GMA only if effective tools for regional economic development are designed and implemented.

As the central Puget Sound region continues to grow, providing opportunities for regional economic development and public transit will not be easy. Land ownership in existing, developed areas is often fragmented and "checkerboarded" with vacant, substandard lots. Some areas have experienced hazardous waste spills and other environmental risks. Neighborhood resistance to increased densities in the urban core requires a sensitive approach to site design compatibility and fit. And the State Environmental Protection Act (SEPA) permitting process, with its lengthy and unpredictable procedures,

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44. See, e.g., Freilich & White, *supra* note 6.

45. JOINT REGIONAL POLICY COMMITTEE, DRAFT REGIONAL TRANSIT SYSTEM PLAN (Oct. 1992) [hereinafter DRTSP].

46. See VISION 2020, *supra* note 35.

47. DRTSP, *supra* note 45, at 11.

48. DRAFT ENVIRONMENTAL IMPACT STATEMENT SUMMARY: REGIONAL TRANSIT SYSTEM PLAN 6 (Regional Transit Project Oct. 1992).

can stifle many development proposals.<sup>49</sup> In addition, the concurrency provisions in the GMA could have the unintended effect of inducing sprawl by foreclosing development in developed areas, which often have higher levels of congestion than outlying areas. These obstacles understandably drive many businesses to the urban fringe and stall public efforts to develop and redevelop areas in the urban core.

Clearly, a regulatory approach is needed that instills confidence and trust in the business community to reinvest in the urban core. Knotty permitting processes must be unravelled, and adequate land must be assembled to permit a feasible and profitable scale of development. Uncertainties associated with environmental liability and the SEPA permitting process must be cleared away. Finally, concurrency waivers and exemptions, together with other incentives, must be available to avoid prolonged delays in development approval and to facilitate financing and construction. Although the status quo will not attract new development to the urban core, if the business community believes that it can develop in closer-in areas and that government understands its needs, the problems of urban sprawl and premature development can be avoided.

A regulatory system that provides these benefits can be achieved through the use of the tools available for regional growth management and economic development. Some of the most important tools are concurrency management, land assembly, and the SEPA permitting process. The remainder of this Article explores how these tools can help build a mechanism for economic growth while protecting existing neighborhoods, promoting regional environmental values, and promoting viable transit and transportation solutions.

#### IV. RECOMMENDED SOLUTIONS

##### A. *Corridors, Centers, and Infill Areas*

The most beneficial approach to solving regional problems relies primarily on a set of targeted incentives designed to encourage and foster development in selected locations, rather than on a heavy-handed set of regulatory tools. To ensure that the development resulting from these incentives is consistent with regional values, the incentives should target development in two key geographic locations: corridors and centers of eco-

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49. See WASH. REV. CODE ch. 43.21C (1992).

conomic development, and infill development areas.<sup>50</sup>

Either separately established or designated within tiers, transportation corridors can serve as unifying frameworks for the construction and utilization of transportation facilities, financing mechanisms, and regulatory techniques.<sup>51</sup> A transportation corridor is defined as a specific geographic area including (1) the maximum right-of-way required to meet population and employment growth,<sup>52</sup> and (2) adjacent areas impacted by and reasonably necessary to accomplish the corridor plan. The transportation corridor reflects a far broader concept than a mere highway system. The corridor is a legislatively defined or mapped area whose central focus is a proposed or existing transportation facility. Each corridor is a nexus for an area's major commercial, office, and industrial needs and a site for higher density residential development. Transportation corridors can serve as an organizing framework for financial and growth management tools in several ways:

- (1) By acting as the focus for coordinated transportation improvements within major travel corridors and enhancing system efficiency;
- (2) By promoting development of multi-modal transporta-

50. See James A. Kushner, *Urban Transportation Planning*, 4 URB. L. & POL'Y 161, 173 (1981).

51. See Robert H. Freilich & Stephen Chinn, *Transportation Corridors: Shaping and Financing Urbanization Through Integration of Eminent Domain, Zoning and Growth Management Techniques*, 55 UMKC L. REV. 153, 170-171 (1987); see also *Montgomery County v. Woodward & Lothrop, Inc.*, 376 A.2d 483, 488 (Md. 1977), cert. denied sub nom. *Funger v. Montgomery County*, 434 U.S. 1067 (1978).

52. The maximum anticipated right-of-way may be obtained by the use of advance acquisition through eminent domain. David L. Callies & Christopher J. Duerksen, *Value Recapture as a Source of Funds to Finance Public Projects*, 8 URB. L. ANN. 73, 81-82 (1974). These authors state the following:

The fuel crisis, increased federal funding, and center city development and redevelopment suggest an increased need for the construction and operation of fixed-guideway rapid transit systems in urban areas. As a result, privately-owned land near transit stations and stops will probably increase in value due to the enhanced commercial, industrial and residential development potential created by superior access and the concurrent generation of intense local activity.

*Id.* at 74. For an excellent analysis of the relationship between rapid transit facilities, land use, and land value, see S. LANGFELD, *THE BALANCED AND ORDERLY DEVELOPMENT OF THE SITE IN CLOSE PROXIMITY TO A METROPOLITAN STATION AS A CONTRIBUTION TO A MORE HEALTHY AND ECONOMICALLY VIABLE URBAN ENVIRONMENT IN THE WASHINGTON METROPOLITAN AREA* 2-10, 18-30 (1971). See also Department of Transp. v. *Fortune Fed. Sav. & Loan Ass'n.*, 532 So. 2d 1267, 1270 (Fla. 1988) (upholding cost savings as legitimate public purpose in excess condemnation).

- tion systems that integrate highways, air, mass transit, and other transportation modes;
- (3) By promoting a comprehensive transportation planning process that coordinates state, regional, and local transportation plans;
  - (4) By assisting in the construction of infrastructure, including state, county, and local streets and highways through fees generated by new development;
  - (5) By reducing the costs for acquisition of right-of-way and for construction of new and expanded transportation facilities;
  - (6) By acting as a focus for joint public-private development to enhance the state's economic and development activity;
  - (7) By siting higher density residential development;
  - (8) By protecting fragile environmental and natural resources; and
  - (9) By assisting in the maintenance of clear distinctions between urban and non-urban areas to provide effective growth management in accordance with the goals and objectives of the comprehensive plan.<sup>53</sup>

The strategy of encouraging growth in corridors and infill areas is designed to manage the use, location, design, and timing of development so as to realize its full potential. At the same time, the attributes of the corridor that attracted growth in the first place must also be protected. Development guidelines and incentives will channel growth into designated development corridors and will concentrate growth into centers along these corridors. Corridor centers are intended to capture at least a portion of development that would have otherwise occurred in outlying areas.<sup>54</sup>

Areas along the heavily-travelled I-405 and I-5 routes should be designated as corridors and centers. Incentives should also be available for development in non-transit infill areas. These infill areas will accommodate mixed land uses and pedestrian amenities, while providing new opportunities for development and investment.

The corridors and centers approach, which is consistent with Vision 2020, has been used successfully in other regions. In New Jersey, for example, the statewide Development and

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53. Freilich & Chinn, *supra* note 51, at 170-71.

54. ROBERT H. FREILICH ET AL., 2 THE DRAFT NEW JERSEY PRELIMINARY STATE DEVELOPMENT AND REDEVELOPMENT PLAN: STRATEGIES, POLICIES AND STANDARDS 95 (Jan. 1988).

Redevelopment Plan relies on a "tiered" growth management system in which growth is directed away from outlying and environmentally constrained areas and toward designated urban centers.<sup>55</sup> The final New Jersey Development and Redevelopment Plan identifies two development and three non-development tiers or areas and establishes a planning framework for those areas.<sup>56</sup>

### B. Concurrency Management Including Averaging and Waivers

Concurrency management is an adjunct to capital improvement programming.<sup>57</sup> Concurrency requires that all necessary public facilities be available and adequate at the time of development.<sup>58</sup> Concurrency is specifically enabled by statute in some states,<sup>59</sup> but it is only mandated in two: Florida<sup>60</sup> and Washington.<sup>61</sup> Nevertheless, growth management concurrency requirements linking development approval to the adequacy of infrastructure have been sustained in most jurisdictions under existing zoning and planning statutes.<sup>62</sup>

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55. NEW JERSEY STATE PLANNING COMM'N, THE PRELIMINARY STATE DEVELOPMENT AND REDEVELOPMENT PLAN FOR THE STATE OF NEW JERSEY, COMMUNITIES OF PLACE: A LEGACY FOR THE NEXT GENERATION (Nov. 1988).

56. Peter A. Buchsbaum, *The New Jersey Experience*, in STATE AND REGIONAL COMPREHENSIVE PLANNING: IMPLEMENTING NEW METHODS FOR GROWTH MANAGEMENT (Peter A. Buchsbaum & Larry J. Smith eds., 1993).

57. See Jonathan M. Davidson, *Concurrency, Cost Allocation, and Comprehensiveness in Adequate Public Facilities Regulations*, 14 ZONING & PLAN. L. REP. 121 (1991). According to one recent study, concurrency management is one of the most effective forms of growth management. GARY PIVO ET AL., GROWTH MANAGEMENT PLANNING & RESEARCH CLEARINGHOUSE LOCAL GOVERNMENT PLANNING TOOLS (Aug. 1992).

58. Freilich & White, *supra* note 6, at 941. See also Freilich & White, *supra* note 14, at 3.

59. See, e.g., MD. ANN. CODE art. 66B, § 10.01 (Supp. 1978); N.H. REV. STAT. ANN. §§ 674:21, 674:22 (1986). New Hampshire requires that local governments adopt a capital improvements program as a condition precedent to the adoption of timing and sequencing controls.

60. In Florida, public facilities must be "available when the impacts of development occur." FLA. ADMIN. CODE § 9J-5.003(19) (1992). See FLA. STAT. § 163.3177(10)(h), 163.3202(2)(g) (1990).

61. In Washington, transportation facilities must be available within six years of development. WASH. REV. CODE § 36.70A.070(6)(e) (1991). See WASH. REV. CODE §§ 36.70A.020(12), .070 (1991) (state planning goal to ensure "that those public facilities and services necessary to support development shall be adequate to save the development at the time the development is available for occupancy").

62. See, e.g., Pardee Const. Co. v. Camarillo, 690 P.2d 701 (Cal. 1984); P.W. Investors, Inc. v. Westminster, 655 P.2d 1365 (Colo. 1982); Begin v. Inhabitants of Sabattos, 409 A.2d 1269 (Me. 1979); District Land Corp. v. Washington Suburban

The primary features of a concurrency management system are adequacy and availability. Adequacy requires that before development is approved, it must conform to level of service (LOS) standards established by local regulation. LOS is a measurement of congestion, typically based on capacity per unit of demand (e.g., 100 gallons of water per capita, where gallons is the measure of capacity and population measures demand). Where infrastructure does not conform to the capacity standards set forth in the local regulation, the project must be denied or deferred until conformance is achieved.

Availability requires development to be timed and sequenced in a manner consistent with the capacity of the facilities. Infrastructure capacity is not static; instead, it is constantly expanded through capital improvements programs (CIPs) and by reduction through demand management systems. If capacity is not immediately available for development, the applicable CIP should indicate when improvements will expand the capacity sufficiently for development to proceed.

The key to an effective concurrency management system is the adoption of a LOS standard for each regulated facility. The adopted LOS will govern the amount of growth and development in the area and the amount of public investment needed to achieve the standard. As a means of measuring performance, a LOS standard should take into account both the capacity of a public facility and the demand currently and potentially placed on the facility from existing development, approved development, and projected future growth. By comparing the demand to the capacity of a public facility, the local governing body can determine how much of the capacity of a given facility may be allocated to development within a designated area following project approval.

Concurrency requirements may be implemented through an Adequate Public Facility Ordinance (APFO). These ordinances rely on both the police powers of a city to regulate the timing and sequencing of development and the city's fiscal powers to provide public facilities and services.<sup>63</sup> Several states have adopted explicit enabling legislation authorizing local

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Sanitary Comm'n, 292 A.2d 695 (Md. 1972); *Beck v. Raymond*, 394 A.2d 847 (N.H. 1978); *Golden v. Planning Board of Ramapo*, 285 N.E.2d 291 (N.Y. 1972); *Philippi v. Sublimity*, 662 P.2d 325 (Or. 1983).

63. See MONTGOMERY COUNTY PLANNING DEP'T, MARYLAND NAT'L CAPITAL PARK & PLANNING COMM'N, PLANNING, STAGING AND REGULATING: FIFTH ANNUAL GROWTH POLICY REPORT 1-2 (1979).

governments to adopt APFOs.<sup>64</sup> An APFO implements concurrency by creating procedures, standards, and enforcement mechanisms to ensure that construction does not proceed where the impact of new development would cause a reduction in adopted LOS standards.

The concurrency requirement of the Washington GMA requires that local governments designate LOS standards, or acceptable levels of congestion, for roadway and transit facilities.<sup>65</sup> These LOS standards, unless properly designed, may be counterproductive. Because close-in areas already experience significant traffic congestion, they may have difficulty meeting the LOS standards, thus causing a shift in development to outlying areas. The result is precisely the opposite of what is needed to achieve regional growth management and economic development objectives. Trip lengths and vehicle miles traveled would increase, congestion would be introduced to areas currently in agricultural or other low-intensity uses, and, ironically, congestion would increase in the urban core as automobiles travel from outlying areas on regional freeways. Most important, the concurrency requirement could stall further development in the I-5 and I-405 corridors unless a systematic approach to linking economic development and growth management is devised.

These pitfalls can be avoided by applying two techniques to concurrency management. The concurrency concept can be modified to encourage development in the urban core by *averaging* transportation LOS and *waiving* concurrency requirements in locations where development is desirable and consistent with other goals and objectives contained in regional and local plans.

LOS averaging is the first recommended modification of the concurrency management system. Regional service levels and regional improvements can be identified and used to establish a regional transportation *carrying capacity*. This capacity can then be allocated to centers and infill areas, allowing significantly increased development in these areas. Affected agencies or local governments will then be required to debit capacity allocated to corridors and centers from the total regional carrying capacity, thereby diminishing the allocation

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64. See e.g., FLA. STAT. ANN. § 163.3202(2)(g) (West 1990); MD. ANN. CODE art. 66B, § 10.01 (1988); N.H. REV. STAT. ANN. §§ 674:21-:22 (1986 & Supp. 1990).

65. WASH. REV. CODE § 36.70A.070(6) (1991).

available for outlying areas. This system ensures that (1) capacity in regional centers is accorded a high priority for utilization by the business community and (2) capacity in the outlying areas is assigned a low priority by the public sector, thereby ensuring that the goals and objectives of promoting development in the regional centers are enhanced and protected from competition from the outlying areas.

The second proposed modification of the LOS requirement is the use of concurrency waivers. Any proposed development within urban centers or infill areas that is within the permissible densities or intensities of development established by the concurrency allocation system is exempt from concurrency review. Concurrency review generally involves a lengthy and expensive traffic impact analysis, which requires developers to forecast trips generated by the project and the distribution of trips over the transportation network. Because the population in the urban core and infill areas can use alternative transportation modes (e.g., public transit), can access pedestrian systems, and can live in mixed-use developments with jobs and housing, its impact on roadways will be far less than for equivalent development elsewhere. Similarly, because much of the infill development would be located within corridors and nodes, the impact on existing residential neighborhoods can be accommodated with minimal disruption. Good site location performance and design standards will ensure compatibility and fit with the community.

Nevertheless, key challenges to the implementation of these modifications to the concurrency requirement will lie in overcoming resistance by neighborhoods in the vicinity of such development proposals. Existing congestion and concerns over the effect of urban-scale development on property values may foster an adversary relationship between developers and neighborhood groups.<sup>66</sup> If neighborhood groups are allowed to participate in the process, however, a partnership can be forged between the developer, the city, and the affected neighborhood residents.<sup>67</sup> A planning process involving neighborhood

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66. See S. Mark White, *Affordable Housing, Proactive and Reactive Planning Strategies*, in APA PLANNING ADVISORY SERVICE REPORT NO. 441 (1992); ADVISORY COMMISSION ON REGULATORY BARRIERS TO AFFORDABLE HOUSING, NOT IN MY BACKYARD: REMOVING REGULATORY BARRIERS TO AFFORDABLE HOUSING (1991).

67. For an innovative example of how these processes and standards can be developed, see William Valletta, *Siting Public Facilities on a Fair Share Basis in New York City*, 25 URB. LAW. 1 (1993). The inability to gain public and neighborhood

groups, businesses, and developer interests should be established as part of the development and implementation of the concurrency system modifications.

The concurrency averaging approach has been used successfully in other jurisdictions. Montgomery County, Maryland, has used a two-tiered review process for many years pursuant to its adequate public facilities ordinance.<sup>68</sup> The county identified broad policy areas based on a "traffic-shed" analysis, in which major roads and secondary transportation facilities were aggregated based on shared use and characteristics.<sup>69</sup> The policy area LOS is adjusted for the availability of transit, reflecting the geographic coverage, route density, service frequency, and accessibility of transit facilities.<sup>70</sup> An average LOS is assigned to the policy area and a threshold carrying capacity is calculated from the average LOS.<sup>71</sup> This carrying capacity limit, known as the "staging ceiling," reflects the maximum amount of population and employment that may occur within the County without exceeding the average LOS.<sup>72</sup> "Local area review," or the review of adjacent intersections and roadways in addition to the population and employment thresholds of the policy area, is applied where (1) a project exceeds a certain threshold size, (2) the project is near a congested intersection, and (3) the policy area is within five percent of the staging ceiling.<sup>73</sup>

### C. Programmatic Environmental Impact Statements

In Washington, a significant obstacle to development in corridors, centers, and infill areas is the preparation of an envi-

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support is recognized in both state and federal statutes that establish new procedures to ensure that location of new development and facilities will not substantially alter the character and nature of the neighborhood. See, e.g., *La Plaza Defense v. Kemp*, 742 F. Supp. 792 (S.D.N.Y. 1990); *Hempstead v. Commissioner of Mental Retardation*, 503 N.Y.S.2d 98 (N.Y. App. Div. 1986).

68. MONTGOMERY COUNTY, MD., CODE ch. 50, § 50-35(k) (1973). Several trial courts have upheld the Montgomery County APFO ordinance. *Schneider v. Montgomery County*, Nos. 39760, 41353, 49956, 51370 (Civ. Ct. Montgomery County, 1991); *Tartan Dev. Corp. v. Montgomery County Planning Bd.*, Nos. 63708, 63718 (Cir. Ct. Montgomery County, 1983).

69. MONTGOMERY COUNTY, MD., FY 90 ANNUAL GROWTH POLICY 5 (July 27, 1989).

70. *Id.* at 5, 25.

71. *Id.* at 5.

72. *Id.* at 3.

73. MONTGOMERY COUNTY PLANNING DEP'T, MARYLAND NAT'L CAPITAL PARK AND PLANNING COMM'N, LOCAL AREA TRANSPORTATION REVIEW GUIDELINES 1-3 (July 14, 1988).

ronmental impact statement (EIS). The EIS approval criteria are vague and their application to a given fact situation is often unpredictable, the process of preparing an EIS is lengthy and expensive, and the EIS review and approval process is also protracted and unpredictable. These burdens can be ameliorated (without sacrificing the EIS requirement) through the use of a non-project or "programmatic" EIS in centers, corridors, and infill areas.

SEPA requires a "detailed statement" of environmental impacts, alternatives, and mitigation measures for any action "significantly affecting the quality of the environment."<sup>74</sup> The issuance of building permits and other development approvals significantly affecting the quality of the environment are subject to SEPA.<sup>75</sup> Even where building permits meet all other requirements of local zoning codes, the permits may be denied solely on the basis of adverse environmental impacts disclosed in the EIS.<sup>76</sup>

This reality, compounded by the very late stage in the development approval process at which a problem may be discovered, drastically increases the risk and expense of land development. For example, the SEPA review process for the Boeing plant expansion in Everett required almost two and one-half years to complete, causing significant costs to the company not only in delay and missed market opportunities, but also in staff time and fifty million dollars in mitigation fees.<sup>77</sup> Clearly, any approach that would ameliorate the burden of the EIS requirement and interpose certainty into the development approval process would be welcomed by the business community and would be a boon to economic development.

The non-project or "programmatic" EIS (PEIS) is one mechanism for resolving this problem. The PEIS mechanism

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74. WASH. REV. CODE § 43.21C.030 (1992).

75. *Washington v. Lake Lawrence Pub. Land Protection Ass'n*, 92 Wash. 2d 656, 664, 601 P.2d 494, 498 (1979), *appeal dismissed*, 449 U.S. 802, *cert. denied*, 449 U.S. 830 (1980).

76. *Polygon Corp. v. Seattle*, 90 Wash. 2d 59, 65, 578 P.2d 1309, 1313 (1978).

77. J.T. Lewis, *The Boeing Perspective on the Business Environment in Puget Sound's Growth-No Growth Challenges* (Feb. 11, 1993) (stating that costs can be substantially reduced by omitting the amount of time spent in preparing environmental impact statements). See also G. Carpinello, *SEQA AND LOCAL LAND USE DECISIONS: The Lesson from Other States*, in GOV'T LAW CENTER ALBANY LAW SCHOOL 44 (1991). The State of California limits municipalities to one year for completing and certifying environmental impact reports. CAL. PUB. RES. CODE § 21151.5 (Deering 1987).

is available and commonly used pursuant to the National Environmental Policy Act (NEPA)<sup>78</sup> and similar state legislation in Washington and California.<sup>79</sup> A PEIS is an umbrella document designed to provide an overall environmental review of a series of individual projects anticipated to occur within a given geographic area and as part of a predetermined plan or program. It eliminates the need for a full-blown EIS on each specific project by evaluating, in an integrated manner, the overall environmental impact of the collection of projects. Thereafter, subsequent EISs for the specific projects need only address the particular impacts not already addressed in the PEIS.<sup>80</sup> In addition, SEPA exempts some projects from the EIS requirements based on policy considerations or previous environmental analyses.<sup>81</sup> The use of the PEIS process will considerably reduce costs.<sup>82</sup>

The PEIS should be used in the central Puget Sound region for centers, corridors, and infill areas and should consider the full range of environmental impacts generated by land development, including, but not limited to, the following: (1) capital improvements programming and financing strategies, (2) existing zoning and comprehensive planning criteria, and (3) population and economic development. The PEIS would designate a range of densities and intensities of development presumed to fall within the scope of the environmental analysis.

The effect of the EIS requirement will vary for centers, corridors, and neighborhood infill areas. An argument might

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78. 42 U.S.C.A. § 4321 *et seq.* (West 1977 & Supp. 1993).

79. WASH. REV. CODE ch. 43.21C (1992); CAL. PUB. RES. CODE § 21000 *et seq.* (1986). See also MICHAEL REMY ET AL., GUIDE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) 200-204 (1992).

80. WASH. ADMIN. CODE § 197-11-443 (1990). Recent case law has bolstered the programmatic EIS process. In *Neville v. Koch*, 575 N.Y.S.2d 463, (N.Y. App. Div. 1991), the Appellate Division reversed a lower court ruling that required a second "hard look" at a specific project despite the fact that the city had prepared a final master EIS. The court held that a city does not have to address every conceivable eventuality in a final second, *de novo* master EIS so long as it sufficiently examined the likely effects of the plan and rezoning in the master EIS. *Id.* at 465.

81. WASH. REV. CODE §§ 43.21C.032 (repealed 1983) (restoration of interim transportation services at Hood Canal Bridge), -.035 (1992) (certain irrigation projects), -.037 (1992)(forestry practices), -.038 (1992)(school closures), and - .070 (1992)(classes of building permits or single-family permits as designated by the Department of Ecology).

82. A study conducted in the Santa Barbara area of California found that the city's preparation and adoption of a Master Environmental Assessment drastically reduced the time of cost and review for individual projects. Since adoption of the MEA, the number of impact statements has been cut in half. Carpinello, *supra* note 77, at 43.

be made that center and corridor development should be entirely exempt from the EIS requirement because neighborhood compatibility and other micro-level concerns will either be absent or can be considered adequately in the PEIS. For neighborhood infill areas, on the other hand, a subsequent EIS may be necessary, but could be sharply limited in its scope and complexity, given the PEIS.

#### D. Land Assembly and Public-Private Partnerships

One common obstacle to urban infill or corridor development is the lack of appropriate sites for development, particularly of a larger scale. Many infill sites have odd shapes and configurations, are too small to accommodate a profitable venture, or are "checkerboarded" among various ownership interests. The public sector can promote infill development by utilizing a variety of redevelopment techniques to assemble land, thereby enabling developers to purchase or lease parcels suitable for development. Of increasing importance in this area are the use of public-private partnerships and privatization.<sup>83</sup>

A public-private partnership, also known as joint development, "is the pairing and cooperation of public and private resources to achieve an end that will benefit both the private developer and the public sector."<sup>84</sup> Brought to the forefront of redevelopment by many years of federal program budget reductions, public-private partnerships are responsible for a growing number of important public and quasi-public developments.<sup>85</sup>

To facilitate joint development projects, public agencies

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83. See Robert H. Freilich & Barbara Nichols, *Public-Private Partnerships in Joint Development: The Legal and Financial Anatomy of Large Scale Urban Development Projects*, 7 MUN. FIN. J. 5 (1986).

84. *Id.* at 6. "Public-private partnerships draw upon the strengths of both partners to optimize financing alternatives, delivery of services and provision of goods. This form of privatization is often used for housing or economic development and can result in reduced capital outlays and financing costs." Jean Mahgu, *Privatization of Local Government Services* 1.2 (in the lecture outlines of the Sixteenth Annual Local Law in Florida, Florida Bar Continuing Legal Education Committee 1993).

85. See, e.g., *Linscott v. Orange County Indus. Dev. Auth.*, 443 So. 2d 97 (Fla. 1983) (regional business headquarters); *Florida v. Miami*, 379 So. 2d 651 (Fla. 1980) (convention centers); *Wald v. Sarasota County Health Facilities Auth.*, 360 So. 2d 763 (Fla. 1978) (private hospitals); *Lartnec Inv. Co. v. Fort Wayne-Allen County Convention & Tourism Auth.*, 603 F. Supp. 1210 (N.D. Ind. 1985) (construction of hotels); *Public Util. Dist. No. 1 v. Taxpayers of Snohomish County*, 78 Wash. 2d 724, 479 P.2d 61 (1971) (power plants).

often use their powers of eminent domain to assemble properties for redevelopment.<sup>86</sup> In Washington, public bodies must ensure that the transfer or lease of infill parcels to private developers serves a public, rather than a private, purpose.<sup>87</sup> Other states have upheld the use of eminent domain to acquire platted lands whose development would be inconsistent with existing zoning plans and development restrictions.<sup>88</sup> Land readjustment<sup>89</sup> can be used to facilitate the voluntary combination of infill parcels, while land banking<sup>90</sup> and lot pooling<sup>91</sup> can be used by the public sector to assemble parcels in advance of development.

The Washington State Legislature has developed several mechanisms to create private investment opportunities in corridors and infill areas. First, the high capacity transit legislation expressly authorizes the use of joint development to facilitate transit-oriented development and to capture increases in value resulting from the extension of transit facilities.<sup>92</sup> Second, the Port Authority can use its eminent domain powers to assemble parcels for industrial development pursuant to state constitutional provisions that grant it broad powers to condemn industrial lands for transfer to private interests.<sup>93</sup> Further public purpose legislation, if necessary, could be adopted.

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86. See Callies & Duerksen, *supra*, note 52.

87. *In re City of Seattle*, 96 Wash. 2d 616, 638 P.2d 549 (1981) (invalidating partnership between city and private developer to construct downtown pedestrian mall for lack of public purpose).

88. See, e.g., *In re Horoshko*, 456 N.Y.S.2d 99 (N.Y. App. Div. 1982).

89. Land readjustment is the collection and resubdivision of lots in premature or antiquated subdivisions to bring the subdivision into conformance with modern subdivision regulations. See Frank Schnidman, *Resolving Platted Lands Problems: The Florida Experience*, 1 LAND ASSEMBLY & DEVELOPMENT 27 (1987).

90. Land banking is the advance public acquisition of land where urban expansion or infill is expected and retention of the land for timely and appropriate use by the public or private sector is necessary. William Stoebuck, *Suburban Land Banking*, 1986 U. ILL. L. REV. 581.

91. Lot pooling is the collection of lots necessary to undertake land readjustment. See Schnidman, *supra* note 89.

92. WASH. REV. CODE § 81.104.080(2) (1992) ("Agencies providing high capacity transportation services, in cooperation with public and private interests, shall promote transit-compatible land uses and development which includes *joint development*." (emphasis added)).

93. *In re Chiyoda Chem. Eng'ring & Constr. Co.*, 35 Wash. App. 785, 670 P.2d 663 (1983).

## V. CONCLUSION

Growth management has evolved tremendously since its inception and now commands the ability to combine many disparate local and regional governmental issues into an overall solution program. Perhaps the greatest strength of a growth management solution is its adaptability. Municipalities, counties, regions, and even states are able to tailor the basic growth management techniques to fit area-wide issues and solve community-based problems. The State of Washington has certainly taken the lead in this area. Most of the background planning information has been collected. Quality-of-life based issues have been addressed. It is now time to turn policy into action, make transit into a planning tool, and create economic development opportunities to benefit the state and region.