



## ABSTRACT

STATE GROWTH MANAGEMENT: PROSPECTS FOR CONSENSUS ORIENTED  
LAND USE PLANNING AND CONFLICT RESOLUTION

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Over the past decade, recommendations for state intervention into land use decision-making have received considerable attention as a key step in combatting the problems of urban sprawl, environmental degradation, the decay of central cities, local fiscal imbalances, and limited housing choice. Between 1970 and 1976, state governments adopted a variety of land use programs and focused on establishing state growth management systems to address these issues. In spite of considerable effort, however, land use problems have proven stubbornly resistant to governmental reforms and questions concerning the most effective approach for increasing the efficiency and equity of land use decision-making still remain very much unresolved.

Most previous analyses of state growth management systems have focused on the distribution of planning and regulatory authority between state and local government as the key issue in increasing the efficiency and equity of land use decision-making. Essentially advocates of this view contend that land use problems are primarily the result of the inability or unwillingness of local government to consider statewide or regional interests in their decision-making processes. Thus, the central element in any effective growth management system is viewed as state authority to override local land use decisions. This view presumes that the reassertion of state authority will increase efficiency and equity in four ways:

(1) state override of local decisions regarding sensitive environmental areas should serve to protect "public goods" such as water supply and quality;

(2) state-mandated criteria for reviewing large-scale developments should distribute the costs of these projects more equally by forcing localities to consider negative externalities and spillovers;



(3) mandatory local planning and consistency requirements should increase certainty in the decision-making process and prevent arbitrary local decisions resulting in windfalls and wipeouts; and finally

(4) those who advocate this view argue that judicial review is adequate to resolve any disputes that emerge between state and local government, between environmentalists and developers, or between competing interests.

In contrast, other analysts contend that permit delays and intergovernmental hostility caused by the reassertion of state land use authority is at least as likely to exacerbate as alleviate land use problems. In this context, an increasing number of planners have begun to advocate consensus-oriented planning styles and informal negotiation as an approach to state growth management. Advocates of this view argue that reasserting state authority is not as important to effective state growth management as bringing the key actors in the land use decision-making process to a clearer understanding of the cost and benefits associated with land use decisions. The consensus-oriented approach assumes that the state government does not always have sufficient understanding of the value, technical or other issues involved in a decision to justify sole reliance on state override as the primary mechanism for increasing efficiency and equity in land use decision-making. The consensus approach also assumes that conflicts over land use decisions are inevitable, and because of the value choices, technical issues, and multiplicity of interests involved, courts may not always be the most appropriate setting to work out these conflicts. Rather, the consensus-oriented approach assumes that there is a need to create settings in which all the key stakeholders (i.e., those affected by spillovers, externalities, the loss of public goods) or their spokesmen can come together and work out efficient and equitable trade-offs to resolve land use disputes.

These two approaches to state land use reform are exemplified by the Florida and Massachusetts growth management systems. Florida has focused primarily on the reassertion of state authority over local land use decision-making. Massachusetts has emphasized a consensus-oriented intergovernmental planning and conflict resolution process. Both the Massachusetts and Florida growth management systems appear to have achieved significant accomplishments and have suffered major setbacks. Although the causes underlying each program's mixed record are varied and complex, it appears that one significant factor in both cases may be each system's failure to find an adequate balance between establishing the parameters of

state land use authority and utilizing consensus-oriented approaches to enhance state power over growth management decisions.

The Massachusetts and Florida cases suggest that state growth management systems should be viewed as consisting of two components: a formal and an informal subsystem. While attention to both is necessary, the cases suggest that a consensus-oriented state planning process may have more potential for increasing the efficiency and equity of land use decision-making than reasserting state authority over local land use decisions. That is, the central issue in the reform of land use management is not so much who has the final authority to make land use decisions, but how these decisions are to be made.

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FOREWORD

The purpose of this discussion is to explore the lessons I learned from first-hand involvement in the design and implementation of a state growth management system in Massachusetts. It focuses upon various explanations of the major causes of existing inefficiencies and inequities in land use decision-making. The first, what might be called the conventional explanation of these inefficiencies and inequities, is that the distribution of authority for land use planning and regulation has resulted in fragmentation which encourages public and private decision-makers to ignore the statewide and regional impacts of their actions. A second explanation is that past state and local planning and decision-making assumptions have contributed to land use inefficiencies and inequities by failing to promote the early involvement of competing interests in the decision-making process, by focusing on technical rather than political solutions to land use conflicts, and by relying on the adversary, win/lose dynamics of formal administrative and judicial proceedings as the primary mechanisms for resolving land use disputes. Both explanations have significant ramifications for the design and implementation of new state growth management systems.

I have attempted to explore these ramifications by focusing on my own experiences as an active participant in the development and implementation of the state growth management system for Massachusetts.

My participation in Massachusetts' "growth policy process" began in September of 1974. For almost two years, I worked on a part-time basis, with other MIT students and faculty, providing staff support for the land use subcommittee responsible for drafting state planning legislation for the Massachusetts legislature. Eventually the subcommittee's work resulted in the passage of the Massachusetts Growth Policy Development Act (Chapter 807 of the Massachusetts Acts of 1975). Six months after the enactment of this statute, in June of 1976, I assumed the position of research director for the Legislature's Special Commission on the Effects of Growth. This Commission was responsible for monitoring the implementation of the Growth Policy Act. Between 1976 and 1978, I worked with the Commission members, other legislators, citizens, local officials and the Massachusetts Office of State Planning to translate local priorities and recommendations into a set of state growth policies and to develop specific legislative and administrative actions to implement these policies.

During my work with the Commission, I became increasingly convinced that three interrelated issues were of crucial importance in increasing the effectiveness of state growth management systems:

- (1) building state and local planning capacity (capacity building);
- (2) increasing the use of informal negotiations to supplement adversary land use decision-making procedures (conflict resolution);
- and (3) increasing the effectiveness of public participation in building political constituencies to support state growth management

decisions (constituency building). In addition, I felt that my experience with the Commission had provided a set of interesting lessons and insights that might be useful to others in the state growth management field. Consequently, I decided to use this dissertation as an opportunity to reflect upon and analyze what I have learned.

The study consists of five basic parts. The introductory chapter traces the history of the state land use/planning movement and discusses the major assumptions which have guided state intervention into land use decision-making. The second chapter consists of a detailed case study of the design and implementation of the Massachusetts Growth Policy Process. Specifically, the Massachusetts case explores the development of my own assumptions about the key issues in increasing the effectiveness of state growth management systems. The third chapter investigates the passage and implementation of the three major statutes that constitute Florida's growth management system, and examines the applicability of the assumptions developed in Massachusetts in the context of the Florida case. The fourth chapter analyzes the manner in which the Massachusetts and Florida cases influenced my thinking about capacity building, conflict resolution and constituency building, as key elements of a consensus-oriented approach to state growth management. It outlines the major instances from each case that helped to enhance and refine my assumptions about these issues. The final chapter discusses the relative impact of the consensus-oriented and adversary

approaches to state growth management on increasing the efficiency and equity of land use decision-making.

The method of analysis presents two major problems. The first problem relates to the common methodological assumption that one or two cases cannot provide evidence to support meaningful generalizations about complex phenomena such as the effectiveness of state growth management systems. On the other hand, it may be argued that case studies can be useful in explaining such complex phenomena, particularly when the boundaries between the phenomena and the context of other environmental and socio-economic forces are not clearly evident (Yin 1981). I contend that this is exactly the situation that we face in attempting to analyze the impacts of state growth management systems on land use decision-making. It is often difficult to determine whether the results are a function of activities carried out as a part of the new system, or whether they are the result of some other combination of socio-economic and political forces. I recognize that two case studies cannot provide empirical evidence to support broadly generalizable conclusions about improving state growth management. However, the two cases can provide insights into the interrelationships between adversary and consensus-oriented approaches to land use conflicts.

The second problem with my research strategy relates to the issues of objectivity and bias in the analysis of a case in which the researcher was an active participant. This is a legitimate concern. On the other hand, I feel that leaving the analysis of

public policy decisions only to analysts who were not involved in the decision-making process may result in the loss of a great deal of information gained by first-hand experience which is critical to developing more informed judgements about the major issues affecting policy formulation and implementation. Consequently, I hope that, by explicitly stating from the outset that I was an active participant in the Massachusetts case, and by continuously looking for alternative explanations of my interpretation of the Massachusetts and Florida experiences, I have given the reader enough information to make his or her own assessment of the issues that I raise.

Thus, I view my personal involvement in the Massachusetts case study as an opportunity. The facts and interpretations which are presented concerning the Massachusetts case are drawn from detailed and "inside" knowledge of the growth policy process. The entire dissertation is designed as an attempt to reflect upon the lessons I have learned. Specifically, it is designed to examine my perceptions of the importance of constituency building, capacity building and informal conflict resolution in explaining the results of state land use planning programs and informing future actions in the state growth management field. The evidence from the two cases can neither prove nor disprove my assumptions. I only hope that by presenting and analyzing these issues in detail, this dissertation will help planners and public officials to think more creatively about state involvement in increasing the efficiency and equity of land use decision-making.



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CHAPTER ONE. INTRODUCTION: IMPROVING LAND USE DECISIONS --  
A QUESTION OF POWER OR APPROACH?

Stripped of all planning jargon, zoning administration is exposed as a process under which multitudes of isolated social and political units engage in highly emotional altercations over the use of land, most of which are settled by crude tribal adaptations of medieval trial by fire, and a few of which are concluded by confused ad hoc injunctions of bewildered courts.<sup>1</sup>

I. Changing Perspectives on the "Land Use Problem"

Historically, land use planning and regulation has been a cornerstone of local governmental power in the American federal system. Although the states and the federal government have continuously enacted legislation, appropriated funds, levied taxes, and made programmatic decisions which significantly affect growth and development patterns,<sup>2</sup> the power to regulate the use of land has been in the hands of local governments for the past half-century. This distribution of authority emerged during the 1920's when burgeoning twentieth century cities developed rudimentary ordinances to control building height and to separate conflicting land uses.<sup>3</sup> In 1922, the U.S. Department of Commerce formalized the concept of local land use regulation through publication of the Standard State Zoning Enabling Act (SZEAE).<sup>4</sup> This model statute encouraged states to adopt legislation delegating land use regulatory authority to municipalities. In 1928, the landmark U.S. Supreme Court decision, Euclid v. Ambler,<sup>5</sup> recognized zoning as a legitimate exercise of the state "police power",<sup>6</sup> and confirmed the constitutionality of the delegation of this power to localities. By 1932, over forty states had adopted enabling statutes based on the SZEAE, and eventually every

state in the nation delegated responsibility for land use control to local government.<sup>7</sup>

Initial zoning ordinances, the SZEA, and the Euclid v. Ambler decision were based on two implicit assumptions: "(1) land use decisions are highly localized in their effects which are primarily on adjoining properties, and (2) the calculation of social costs and benefits (in land use decision-making) is appropriately applied only to interests of individual local governments."<sup>8</sup> These assumptions resulted largely from the fact that early land use controls were designed in response to the problems of congestion, safety and aesthetics in turn of the century American cities. Thus, the primary objectives of the first zoning ordinances were to control nuisances, protect property values and preserve neighborhood character by separating incompatible land uses. It was believed that these functions could be carried out most effectively by local governments intimately familiar with the development pattern of their communities. As Reiner states:

...In most comprehensive zoning of the 1920's (and certainly in Euclid) there was no greater public interest to consider than that of the locality....Communities could therefore pursue their insular objectives of preserving the status quo and protecting property values without negatively influencing the surrounding environment - socially, economically or otherwise.

These assumptions and local dominance over land use planning and regulation remained relatively intact between 1930 and the early 1960's. The post World War II development boom, however, resulted in new problems which brought exclusive local control of land use decision-making into question. Suburban sprawl, decaying central cities,

racial conflicts, intercommunity competition for tax rates, inadequate infrastructure to meet growing transportation, sewer, and water needs all put increasing pressure on the land use management system. In response, land use regulations grew in both frequency of use and complexity. Between 1925 and 1968, the number of communities which had adopted zoning and subdivision controls increased from approximately 400 to over 10,000.<sup>10</sup> In addition, the type and number of zoning districts grew dramatically and new techniques such as special permits, floating zones, conditional or contract zoning, performance standards, planned unit development, and transfer of development rights increased local abilities to directly influence growth.<sup>11</sup> During this period, the objectives of land use control also shifted from simply protecting property values and separating incompatible uses to increasing the property tax base, reducing local service costs and preserving community character and homogeneity (i.e. fiscal and exclusionary zoning).

By the mid-sixties, local land use regulations were increasingly viewed as much a part of the nation's growth problems as a solution. In 1968, the National Commission on Urban Problems (the Douglas Commission) reported:

Critics today are attacking land use regulations, particularly zoning, both for what they are doing and for what they fail to do. There are charges that regulations act to reinforce racial and economic segregation, raise the cost of housing, and stifle innovative design. And there are charges that regulations are failing to protect established neighborhoods, to prevent sprawl on the outskirts of cities and decay within them. Finally, there are charges that the administration of regulations is too often riddled with favoritism and corruption.<sup>12</sup>

By far and away, however, the most prevalent criticism was that local governments had used land use controls to promote parochial self-interest and had consistently failed to take important regional, statewide and national interests into account in their decision-making process. As Babcock stated, "...one difficulty of the Planning Theory of zoning is that it assumes that the debate over land development is only between the landowner and the municipality. Both these parties do have a legitimate stake. The error in the present posture of the law is that many zoning disputes ignore other valid interests such as those of the region....It is about time that the legitimate interests of all parties - landowner, neighbor, municipality, and region - be redefined."<sup>13</sup> This criticism continues to be the central issue in the debate over land use controls today.

The constitutional rationale for requiring localities to take regional considerations into account has been succinctly summarized by Thomas Pelham as follows:

Arguably, local land use decisions made without regard for broader state and regional interests are unconstitutional. Regulation of land use is an exercise of the state police power which is vested in the state legislature. The police power may be exercised by the state legislature only for the public health, safety, morals or general welfare, the latter having reference to the welfare of all state residents and not just a segment of them. The legislature may delegate the police power, including the power to regulate land use, to local legislatures. Each local legislature must also exercise the police power in a manner consistent with the welfare of all state residents, and not just the interests of local residents.<sup>14</sup>

In addition to the constitutional rationale, numerous economic, social and environmental arguments have been raised to support the

inclusion of statewide and regional interests in land use decision-making. These arguments, usually, have emphasized the interrelated concepts of efficiency and equity, and have focused on the distribution of costs and benefits of land use decisions. In short, increasing equity and efficiency in land use decision-making has become the primary justification for recommendations to expand state and regional authority in the land use management system. From an economic standpoint, efficiency, generally, is defined as the allocation of resources so as to create the largest possible net benefit to society.<sup>15</sup> That is, an efficient decision is one that minimizes costs and maximizes benefits. On the other hand, equity traditionally is defined as the redistribution of income so as to achieve a more equal distribution.<sup>16</sup>

In terms of land use decisions, efforts to increase efficiency have focused on four issues: (1) internalizing externalities, (2) producing and protecting public goods, (3) siting regionally necessary but locally unwanted facilities, and (4) "windfalls and wipeouts" created by public investment, land use planning and regulation.

Negative externalities contribute to inefficiency in land use decisions because they allow land owners and communities to transfer the costs of a decision to others who do not share in the benefits of that decision. For example, negative externalities may take the form of air and water pollution, traffic congestion, or increased flooding risks. In addition, negative externalities include unrecoverable infrastructure or service costs resulting from the fact

that communities abutting large developments outside their boundaries may have to make expenditures for new infrastructure while receiving no additional tax revenue from the development. The argument is that the system of exclusive local land use control is inefficient because it allows communities to gain significant benefits while transferring the costs to neighboring municipalities. Under the local land use control system, there is little incentive for communities to consider the external effects (negative externalities or spillovers) of their actions. Therefore, in order to increase efficiency, land use reform advocates have argued that it is necessary to consider statewide or regional interests in local decisions or to shift land use authority to a level of government (i.e. the state or region) that is able to ensure the internalization of externalities.

The second efficiency argument is that local land use decision-making has resulted in the failure to produce and protect important public goods. Public goods include clean air and water, the aesthetic and passive recreational opportunities provided by open space, etc. Private markets are viewed as inefficient in producing such amenities because public goods cannot be divided into discrete units and sold to the highest bidder. In fact, there is no way to prevent consumption of public goods by consumers who are unwilling to pay for their use. This situation is inefficient because it often results in resource exploitation which increases the costs and reduces the benefits of these goods to society in general.

Local land use decision-making has also been viewed as



inefficient because it has resulted in the exclusion of regionally necessary but locally undesirable facilities. Classic examples are solid and hazardous waste facilities, power plants, low and moderate income housing, prisons, mental health facilities, etc. These facilities may impose specific costs on a single community but provide significant benefits to all citizens of the state or region. Local land use decision-making is inefficient in siting such facilities for two reasons. First, the exclusion of these facilities results in increased costs and decreased benefits for the region or society in general (i.e. increased solid waste disposal costs, inadequate housing, etc.). Second, the failure to compensate communities for the social costs of accepting such facilities may lead to an inaccurate assessment of the costs and benefits of a siting decision. In order to correct these inefficiencies, reform advocates have argued that it is necessary to consider regional interests in the measurement of facility benefits, and that the social costs of such facilities should be shared on a regional or statewide basis.

The fourth efficiency issue in land use decision-making has been described by Donald Hagman as the creation of "windfalls and wipeouts" by the existing system of planning, public investment and land use regulation.<sup>17</sup> Briefly, the concept of windfall and wipeout relates to the situation in which private property owners either receive substantial gains or suffer significant losses in property value as a direct result of governmental action. Such governmental action may include rezonings, development permissions, and public investment decisions. A windfall is defined as the increase in property value

resulting primarily from a governmental decision rather than any "effort made, intelligence exercised, risk borne, or capital invested" by the land owner.<sup>18</sup> In contrast, a wipeout is a significant loss in property value created directly by governmental action. The argument is that it is an inefficient allocation of resources to allow private land owners to reap substantial benefits from primarily public actions. Further, it is argued that a more efficient distribution of costs and benefits would result if increases in property values caused by governmental action were to accrue to the public sector which created the value, rather than to land owners who did nothing to warrant the gain. The corollary of this conclusion is that property owners should be compensated for substantial losses resulting from governmental planning, investment or regulatory decisions. These considerations closely parallel the issues raised by negative externalities, but differ in that they relate specifically to the distribution of costs and benefits between the public and private sectors.

The interrelationship of the efficiency and equity issues is illustrated by the fact that the windfall and wipeout question is often discussed as an equity rather than an efficiency issue. For example, Hagman states:

"Windfalls for wipeouts" is only a catchy title for an ageless conundrum of equity - should the owners of real estate be able to keep increases in values caused by society rather than by themselves? And, on the other hand, should society be able to impose losses on the owners of real estate without paying damages? Sadly, windfalls for wipeouts is not about the equalized redistribution of wealth from rich to poor. (It)...involves transfer

payments among property owners....I believe that a planning system which does not address the windfall and wipeout problem is perceived as basically inequitable and no planning system so perceived can survive.<sup>19</sup>

While I have categorized windfalls and wipeouts as an efficiency issue relating primarily to the calculation of the marginal costs and benefits of a decision, Hagman views them as equity issues involving the redistribution of income through transfer payments among property owners. In this sense, Hagman illustrates the manner in which equity issues are primarily used as a constraint on efficiency for evaluating land use decisions in the context of their redistributive impacts.

From the perspective of redistributive or equity issues, local land use decision-making has also been considered inadequate for two reasons. First, exclusionary zoning ordinances and excessive regulations have limited individual opportunity by raising the cost of housing and limiting access of minority and low income groups to suburban housing markets. Second, fragmented and inconsistent local land use controls have resulted in development patterns in which some communities have borne a disproportionate share of regional growth, while other communities, in the same region, have accepted virtually no new growth. Both exclusionary zoning and wide variations in intra-regional growth rates may be viewed as inequitable because they tend to increase rather than decrease the disparity in the overall societal distribution of income (i.e. these trends generally benefit the rich and close opportunities to the poor). Consequently, regional or state review of local land use

decisions has been recommended to ensure that local decisions do not unduly discriminate against any group or place a disproportionate share of the costs of growth on particular communities within a region.

Although there is no precise definition of efficiency or equity as related to land use, the general argument is that land use decision-making is neither efficient nor equitable as long as localities can pass the costs of pollution and environmental degradation, or necessary services, on to others and as long as localities can continue to exclude housing and necessary facilities which would provide significant regional benefits to all of society.

In summary, the traditional definition of efficient land use decision-making focuses on internalization of externalities, protection of public goods, consideration of issues of greater than local concern, and mitigation of windfalls and wipeouts. The traditional definition of equity, as related to land use decision-making, involves the impacts of regulatory and public investment decisions on the relative distribution of wealth among classes in society. Inequitable decisions are those that increase the income differential between strata.

Each of these definitions, however, ignores an important consideration. For example, another factor contributing to the inefficiency of the existing system of land use control is the cost incurred from long procedural delay. That is, the existing system of land use decision-making may be viewed as inefficient because it

encourages procedural delays, primarily through adversary administrative and judicial appeals of local decision. These delays result in inordinately high decision-making costs both in terms of actual administrative and court expenses, and in terms of foregone opportunities. Consequently, the costs of decision-making must be included in defining the efficiency of land use decisions.

In the context of equity, the land use analysts' traditional definition overlooks the fact that the existing system of land use control excludes various social and economic groups from the decision-making process through over-reliance on elite advisory boards, technical planning and dependence upon strict procedural appeal standards such as standing to sue, etc. From this perspective, increasing the equity of land use decision-making depends as much on increasing the opportunity of traditionally disenfranchised groups to participate in the decision-making process, as upon attempting to measure and redress difficult to determine distributional consequences of land use decisions.

Therefore, increasing efficiency in land use decision-making not only entails internalizing externalities, protecting public goods, considering issues of greater than local concern, and mitigating windfalls and wipeouts, but also involves attempting to minimize decision-making costs. In addition, increasing equity in land use decision-making entails not only ensuring that decisions do not increase differentials in the distribution of wealth, but also involves expanding the opportunity for all parties with a stake in

decision to participate in the decision-making process.\*

For the past three decades, the constitutional argument, cited by Pelham, and the traditional efficiency and equity arguments have dominated planning and legal land use literature. These arguments have provided the primary rationale for recommendations to increase state and regional authority over local land use decision-making. Prior to the mid-sixties, efforts to require localities to consider regional and statewide interests in land use decisions focused on case-by-case challenges of local regulations in the courts. Court suits, however, have three primary limitations as a mechanism for promoting land use reform. First, legal battles are expensive, lengthy, and rely on private parties to contest individual land use decisions.<sup>20</sup> Second, court decisions are often based on narrow procedural grounds instead of the real issues at stake, making their applicability to other cases uncertain.<sup>21</sup> Finally, the courts have often been reluctant to interfere with traditionally local powers, arguing that policy decisions about the distribution of governmental authority is a legislative prerogative.<sup>22</sup>

During the late sixties, the increase in public concern about problems with effects extending beyond municipal boundaries, and the failure of the courts to significantly affect local land use controls, resulted in a plethora of reports recommending major changes in the land use management system.<sup>23</sup> In 1966, Babcock stated:

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\*Throughout the remainder of this dissertation, the terms "increasing the efficiency and equity of land use decision-making" and "improving land use decisions" will be used interchangeably. Whenever used, these terms will refer to the concepts as defined in the paragraph above.

Reform in current land use policy will require a substantial change in our state enabling acts along three lines: (1) more detailed statutory prescription of the required administrative procedures at the local level; (2) a statutory restatement of the major substantive criteria by which the reasonableness of local decision-making is measured; (3) the creation of a statewide administrative agency to review the decisions of local authorities in land use matters....<sup>24</sup>

The Douglas Commission went one step further, recommending:

...(T)hat state governments enact legislation denying land use regulatory powers, after a reasonable period of time, to local governments that lack a "development guidance program" as defined by state statute...Powers denied would be exercised by the state, regional, or county agencies as provided in the statute.<sup>25</sup>

Initially, these recommendations were confined to law review articles, planning journals, and voluminous government reports. They had little impact on local decision-making because there was no political constituency pushing for major reform of the land use management system. The negative effects of local land use controls were primarily viewed as the problem of excluded minorities and a few developers. In 1970, however, with the growth of the nationwide environmental movement, land use reform found a political constituency and moved into the mainstream of public policy debate.

As Ira Heyman states:

The seemingly most powerful stimulant towards regionalization of land use regulation is the environmental movement. Four chief reasons support this assertion.

1. First, the conditions it opposes are concretely perceived as ones requiring extra-local control: air and water pollution, loss of open space, and freeway traffic.
2. Second, these conditions are part of everyday life

and not visited primarily on deprived classes or racial groups.

3. Third, a large constituency of politically able and influential persons are interested in these problems.
4. Finally, for many people the costs of environmental quality do not enter into the calculus of decision-making because the trade-offs involved are remote or the added costs as distributed do not seem consequential.<sup>26</sup>

In 1970, the Council on Environmental Quality called the misuse of land "one of the most serious and most difficult challenges facing the environment."<sup>27</sup> In the same year, Senator Henry Jackson filed the first National Land Use Policy Bill,<sup>28</sup> and for the next five years state and national land use planning legislation was the focus of debate in both Congress and state legislatures throughout the country. Thus, the early 1970's heralded the first nationwide effort in almost fifty years to reform the system of land use planning and regulation in the United States.

Not surprisingly, the reform movement drew heavily upon past criticisms and recommendations for restructuring the land use management system. The reform movement, labeled "the Quiet Revolution in Land Use Controls,"<sup>29</sup> focused on the reassertion of state authority over local land use decisions. As Bosselman and Callies stated:

The ancient regime being overthrown is the feudal system under which the entire pattern of land use development has been controlled by thousands of individual local governments, each seeking to maximize its tax base and minimize its social problems and caring less what happens to all the others....It has become increasingly apparent that the local zoning ordinance...has proven woefully inadequate to combat a host of problems of statewide significance, social problems as well as



problems involving environmental pollution and destruction of vital ecological systems, which threaten our very existence....The tools of the revolution are new laws taking a wide variety of forms but each sharing a common theme - the need to provide some degree of state or regional participation in the major decisions that affect the use of our increasingly limited supply of land.<sup>30</sup>

Essentially, the state land use planning movement presumed that by subjecting local land use decisions to state promulgated criteria and to state administrative review, issues of greater than local concern would be taken into account in the decision-making process and more efficient and equitable land use decisions would result. State review and override of major land use decisions, state supervision of local plans and regulations through mandatory local planning requirements, and increased coordination of federal, state and local planning, regulatory and public investment programs were the primary mechanisms advocated for achieving reform of the land use management system. In short, the state land use planning reform movement defined the growth management problem as the inability or unwillingness of local government to take statewide or regional considerations into account. The solution embodied in this problem definition was equally clear: shift the power and responsibility for major land use decisions from localities back to the state.

Between 1970 and 1975, over half of the states in the nation enacted legislation recouping at least some of the land use regulatory authority that had been previously delegated to localities.<sup>31</sup> By 1976, however, the state land use planning movement came to a virtual standstill. A number of factors contributed to the movement's

rapid decline. The economic recession of 1973-74 slowed growth and crippled the housing industry nationwide. The energy crisis and the economic downturn took much of the momentum away from the environmental movement which had provided support for state land use legislation. In addition, more stringent regulations and the explosion in the number of permits necessary to undertake virtually any type of development increased public understanding of the hidden costs of environmental legislation and caused support for new regulatory programs to decline. Increasingly intense controversies about all sorts of development projects resulted in long construction delays, increased costs, stalemated decisions, and seemingly endless legal battles. Finally, even in states which enacted strong planning or regulatory statutes, land use decisions remained the subject of intense controversy. Local control advocates and developers who were defeated in their attempts to block passage of state land use legislation renewed their attacks during the implementation phase, often with some degree of success.<sup>32</sup>

In short, the state land use planning movement was anything but quiet and many analysts question whether a revolution actually occurred. As Norman Wengert commented, "Pressures for change are intense, but resistance to change is equally persistent. And the wave of reform anticipated by Bosselman and Callies has often been thwarted and confused by legislative and judicial action."<sup>33</sup> Callies himself stated, "With the hindsight of ten years, it is probably more accurate to characterize the 'ancient regime' of local

land use controls as having metamorphosed rather than having been overthrown."<sup>34</sup> Today, a decade after the quiet revolution was officially announced, we stand in much the same position as ten years ago. A majority of land use decisions are still being made by local government with little input from statewide or regional interests. More importantly, many of the most controversial and difficult land use decisions are still being determined through lengthy court battles, the results of which often are unsatisfactory to all of the parties involved.

Given this series of events, there is increasing evidence that the central assumptions and reform techniques advocated by the state land use planning movement have fallen short of producing anticipated improvements in land use decision-making. One explanation of these results is that the movement focused too much attention on the realignment of governmental authority and not enough attention on substantive and procedural planning and regulatory issues. As Lynton Caldwell states:

Many of our programs and proposals relating to the use of land appear to contain the cause of their own frustration...This has seldom been a calculated risk. It may best be described as inadvertent-caused because we have been looking at the problem from the wrong end. But misconception of a problem leads to its misinterpretation, and action based on mistaken premises cannot realistically be expected to prove effective. How can we develop land use policy that is not self-defeating? Perhaps the way is not to attempt statutory authorization comprehensive enough to meet policy objectives, but rather to focus on specific actions and behaviors that incidentally affect or involve the misuse of land.<sup>35</sup>

From this perspective, it is interesting to note that much of the literature which set the agenda for the state land use planning movement also contained the seeds of an alternative definition of the land use problem. The alternative characterization is that land use decision-making is essentially a process of conflict resolution, and that new institutional mechanisms are needed for resolving increasingly complex land use disputes. As Salvin stated in 1971, "Every state is currently involved in an environmental crisis. This crisis indicates a need for state government to develop methods to resolve constant conflicts that arise between development processes and the needs for environmental preservation and resource conservation."<sup>36</sup> William K. Reilly's seminal report, The Use of Land, echoed the same theme: "We need, therefore, to maintain a balance of power between the conflicting forces and to create institutional structures that can reconcile their differences so that we can achieve quality development."<sup>37</sup> Similarly, the Douglas Commission reported:

Agencies for resolving the conflicts of regional and local goals do not exist in most metropolitan areas at the present time...The courts, then, are the only existing decision-making institution which might resolve some of these goal conflicts. But such resolution requires policy decisions of a type that the judiciary usually declines to make. It is essential that some institution, other than the courts, be established to reconcile local conflicts and to assure that attempts to solve regional problems are not thwarted by the parochialism of individual jurisdictions within a metropolitan area.<sup>38</sup>

In spite of these characterizations, and repeated recommendations about the need to develop new mechanisms for conflict resolution,

analysts of the American system of land use controls have continued to focus on traditional adversary procedures embodied in administrative and judicial hearings as the primary mechanisms for resolving growth management disputes. As the former executive director of the California Coastal Commission stated, "There's just no way that you could (better) dramatize and make clear the issues than the sort of adversary, controversial attention-getting thing that a permit hearing is."<sup>39</sup> Mandelker also argues:

Demands for the preservation and enhancement of our environmental resources, the proper phasing and timing of urban growth, and the provision of housing for low income groups have put new stress on our management capabilities. In sorting out these conflicting societal pressures, the role of the comprehensive plan has become a critical factor... It should be clear that the most reasonable way to moderate these conflicts is to sort them out before decisions have to be made about the use of land resources.<sup>40</sup>

In accordance with these views, Healy has defined the two central elements of an effective state land use policy as: (1) "mandatory local planning and land regulation," and (2) "state review of certain local land use decisions."<sup>41</sup> He states, "Together, they force local governments to make careful decisions in matters of purely local interest, while making it possible for the state to intervene if non-local interests are injured or ignored."<sup>42</sup>

This perspective reflects the American tradition in which lawyers and judges, rather than planners, have taken the lead in developing the standards and theory of land use control.<sup>43</sup> Lawyers have always looked to the comprehensive plan to provide the basis

for specific land use regulations and decisions.<sup>44</sup> This view was first embodied in the Standard Zoning Enabling Act which required that "...such regulations (zoning) shall be made in accordance with a comprehensive plan."<sup>45</sup> It is based on the supposition that land use regulations are simply the implementing device to carry out community development policies set forth in the comprehensive plan. In practice, however, the judicial history of the relationship between planning and zoning has been less clear. As Haar stated in 1955:

For the most part...zoning has preceded planning in the communities which now provide for the latter activities, and indeed, nearly one half of the cities with zoning ordinances have not adopted master plans at all. As a result, there appears to have been a judicial tendency to interpret the statutory directive that zoning ordinances shall be "in accordance with a comprehensive plan" as meaning nothing more than that zoning ordinances shall be comprehensive - that is to say, uniform and broad in scope of coverage. The lack of a master plan is deemed irrelevant to the validity of zoning measures.<sup>46</sup>

Due to this judicial interpretation, many lawyers recently have begun to argue that it is necessary for states to statutorily mandate the preparation of local comprehensive plans and to require consistency between land use decisions and the locally adopted plans.<sup>47</sup> The rationale underlying this recommendation is twofold. First, planning is necessary to ensure fairness and predictability in land use decision-making. Second, planning, prior to the adoption of specific land use regulations, is necessary to forestall due process and taking objections to land restrictions.<sup>48</sup> That is, since land use regulations can significantly increase or

decrease property values, it is argued that a planning process which examines community priorities, alternative development patterns, and their implications is necessary to justify specific land use regulations and decisions. As the American Bar Association Advisory Commission on Housing and Urban Growth states:

A more recent trend in court decisions reflects an increasing judicial disposition to grant legal status, if not controlling weight, to officially adopted comprehensive plans....Comprehensive planning is needed more than ever to rationalize public decisions to restrict or intensify development so that land owners affected by these decisions will be fairly treated.<sup>49</sup>

Finally, Mandelker relates the concepts of fairness, predictability and mandatory planning to the traditional view that the courts are the key institutions for resolving land use conflicts in the American political system. He states:

We must now recognize that, in our system, only one forum is the final arbiter of fairness as it affects land development opportunities: the courts....I have become convinced that courts all across the country increasingly will demand fairness in land use regulation as a condition to constitutional acceptability, and to assure this fairness will look increasingly to the comprehensive plan as the basis for land use decisions.<sup>50</sup>

In essence, Mandelker, the ABA, and many land use commentators from the legal profession view the master plan or a comprehensive planning process as the key to providing decision-makers and the judiciary with substantive a priori criteria for making land use decisions and for resolving land use conflicts. In contrast, an increasing number of planners have begun to focus on developing new procedures for resolving land use disputes. These approaches

focus on consensual processes of conflict resolution, and have developed in response to two primary concerns.

The first concern is the immediate need to deal with the increasing level of controversy and the growing number of stalemates which have delayed and often defeated development proposals during the 1970's. Malcolm Rivkin has described this situation as follows:

...The National Environmental Policy Act of 1970 (NEPA) - and the movement towards citizens' environmental activism which accompanied it - created a conflict which intensified in the early seventies. Irate developers championed their rights in land, calling intervention by citizens and governmental bodies unwarranted and illegitimate. Irate citizens, reacting to what they perceived as continued rape of the environment, were quick to oppose major new undertakings. Arming themselves with technical experts, citizens used public hearings, the press and the courts to exert pressure on government to deny approvals for controversial projects.

Local governments were caught between two poles, with little guidance on how to resolve the dilemma.... As time passes without comprehensive and equitable systems of growth management, pressures intensify for less than perfect short-term accommodations.... Families, businesses, and industries need new facilities, and this inevitably involves controversy when appropriate standards are uncertain.<sup>51</sup>

The second consideration providing an impetus for new consensual approaches to land use conflict resolution is the gradual erosion of confidence in the classic paradigm of comprehensive planning which has occurred since the 1960's. While lawyers may be confident that strengthening the legal relationship between comprehensive planning and zoning will lead to more adequate resolutions of land use conflicts, the involvement of the planning profession in a two-decade



debate over the validity of comprehensive planning has made planners much less sanguine about this approach.

Ironically, Charles Haar, a legal scholar, initiated much of the debate over the validity of comprehensive planning. In 1960, Haar's "The Master Plan: Inquiry in Dialogue Form" focused on the arbitrary nature of development policies included in the classic comprehensive plan and questioned the special expertise of planners (or anyone else, for that matter) to formulate non-arbitrary development policies.<sup>52</sup> By the mid-sixties, the debate had shifted to the concept of comprehensiveness, and identification of "the public interest." In 1965, Altshuler argued that attempts to identify comprehensive long-range goals were a futile exercise because such goal statements tend to be too general to guide actual decision-making. As an alternative, Altshuler proposed mid-range operational planning.<sup>53</sup> At approximately the same time, advocacy planners such as Paul Davidoff and Lisa Peattie were arguing that comprehensive planning primarily represents the values and goals of powerful vested interests and ignores the needs of less powerful social groups.<sup>54</sup> Advocacy planners criticized the classic paradigm's assumption that there is a general public interest which can be determined through rational technical analysis. They argued that interest groups, particularly minorities and the poor, in a pluralistic society, much organize politically and present alternative plans representing their own interests.<sup>55</sup>

The most significant criticisms of the classic paradigm,

however, focused on the relationship between planning and political decision-making. In 1965, Banfield and Wilson summarized this problem as follows:

Planners (were) also becoming increasingly aware that the decentralization of authority and power that is so characteristic of American local government is incompatible with the ideal of master planning; they see that no matter how many planners are employed or how planning agencies are fitted into the structure of government, the political system continues to work mainly by bargaining and compromise, not by "implementing the general interest" and that the main decisions in a master plan must reflect the power distribution in the community at that particular time.<sup>56</sup>

In addition, Braybrooke and Lindbloom have argued that comprehensive planning is impossible because it is incompatible with the way decisions are made in the American political system. They contend that decision-making is by definition:

- 1) incremental or tending toward relatively small changes;
- 2) remedial, in that decisions are made to move away from ills rather than toward goals;
- 3) serial, in that problems are not solved at one stroke but rather successively attacked;
- 4) exploratory, in that goals are continually being redefined or newly discovered;
- 5) fragmented or limited, in that problems are attacked by considering a limited number of alternatives rather than all possible alternatives; and
- 6) disjointed, in that there are many dispersed "decision-points."<sup>57</sup>

The consensual approaches to land use conflict resolution have responded to these criticisms and to the increasing level of controversy in land use decision-making by utilizing collaborative policy formulation and informal project review processes which are geared directly to the realities of political decision-making.

Instead of focusing on comprehensive planning, which attempts to dictate land use choices and often becomes the subject of adversarial judicial proceedings, the consensual approaches seek to minimize conflicts and foster informal agreements.<sup>58</sup> These approaches emphasize "consensus building, joint problem solving and negotiations which allow the participants to advocate their own positions directly to each other and to find practical broadly supported solutions...."<sup>59</sup>

Consensual approaches to land use conflict resolution are based on two primary assumptions. The first is that "adversarial decision-making mechanisms currently available provide an insufficient set of opportunities for conflict resolution."<sup>60</sup> Second, "costly and frustrating adversary proceedings can be reduced and better decisions can be produced, by seeking consensus among disputing parties as early as possible in the decision-making process."<sup>61</sup>

Adversarial decision-making mechanisms are viewed as inadequate for three reasons. First, increasing numbers of unresolved land use conflicts have overloaded our systems of judicial and administrative appeals. Second, many land use disputes are increasingly complex and the courts generally do not have the expertise to sort out the issues involved. For example, courts are being asked to make decisions involving the impacts of development on uncharted ecosystems such as aquifer recharge areas and to assess hard to trace secondary impacts of development (i.e. air and water pollution, etc.). In addition, many land use disputes involve almost inseparable conflicts of both facts and values. Finally, the formality

and strict rules governing judicial and administrative proceedings often exclude important information and result in rulings which are based on narrow procedural grounds.<sup>62</sup>

In contrast, through the earliest possible involvement of disputing parties, non-adversarial decision-making procedures are designed to improve the exchange of information, sharpen the definition of issues at stake, allow for examination of conflicting values, and provide an opportunity to contrast alternative assumptions, data and potential solutions in the decision-making process. The central assumption is that this approach will result in decisions which are more likely to be implemented because they represent mutual agreement of all parties rather than the imposition of one group's solution over another's, through exercise of political or judicial power.<sup>63</sup>

In short, the consensual approaches emphasize changing the manner in which technical information, value conflicts, and alternative solutions are identified, presented, considered and decided upon in the land use decision-making process.

Thus, the consensual approaches have attempted to shift the focus of the land use debate. In contrast to the recommendations of the "quiet revolution" (i.e. redistributing power from local to state government and using comprehensive planning to guide adversary administrative and judicial decisions), the consensual approaches focus on increasing the recognition that land use decision-making is essentially a process of resolving value conflict

and emphasize involving all disputing parties in informal negotiations to resolve these disputes.

Advocates of the "quiet revolution", however, contend that land use planning and decision-making is more than just a bargaining or negotiation process and that a "scientifically" prepared comprehensive plan (governed by state criteria), and not "political horse trading" should be the basis for future land use decisions.<sup>64</sup> In addition, staunch advocates of the state land use planning movement contend that the dismal record of local government in protecting the environment and considering regional needs for low and moderate income housing make direct state control over local land use decisions a necessity.<sup>65</sup> These characterizations have made land use reform the subject of bitter and emotional debate between developers and environmentalists and between state and local officials. They have also added to the level of controversy surrounding land use decision-making.

In an attempt to reduce this controversy, more moderate state land use reform advocates argue that state review of local plans and regulatory actions does not represent a total usurpation of local power.<sup>66</sup> They also contend that the "quiet revolution" was really based on the presumption that local land use decision-making, with only select limitations, is the most desirable allocation of authority and responsibility.<sup>67</sup> These claims, however, have been rejected by local control advocates. The localists<sup>68</sup> contend that the true intent of the state land use planning movement was to

strip local government of the power to control the use of land. Thus, even a decade after its initiation, the state land use reform movement is still characterized by a great deal of confusion, controversy and deep seated suspicion over its actual objectives.

Irrespective of one's position on these issues, it is clear that the resulting confusion and controversy have contributed to the loss of momentum of the quiet revolution, and have reduced the opportunity for major land use reform. It is equally clear that new mechanisms for increasing the efficiency and equity of land use decision-making are still needed.

The major contention of this thesis is that the development of new procedures for land use conflict resolution may be as important as the realignment of governmental power and authority in increasing the efficiency, effectiveness, and fairness of land use decision-making in the United States. That is, the central issue in the reform of the land use management system is not so much who has the final authority to make land use decision but how these decisions are to be made.

The remainder of this chapter will analyze the history and major assumptions of the state land use planning movement. I will then discuss three primary issues that I consider to be central to the evaluation and improvement of state land use planning and regulatory programs.

## II. The State Land Use Planning Movement

Tracing the history of the state land use planning movement is somewhat like trying to answer the question "Which came first, the chicken or the egg?" Some analysts contend that the movement was initiated by the states themselves, in response to local and state-wide needs.<sup>69</sup> Other analysts point out that the reform movement was largely driven by the efforts of the American Law Institute through various drafts of its Model Land Development Code<sup>70</sup> and by the federal government with the promise of increased planning assistance embodied in proposals for a National Land Use Policy Act.<sup>71</sup> To a certain extent, both characterizations are true. As previously mentioned, the call for reform of the American system of land use planning and regulation began in the early 1960's. In 1963, the American Law Institute (ALI) received a \$500,000 grant from the Ford Foundation to prepare model state legislation to govern land use planning and regulation. The final draft of the ALI code, however, was not completed until 1975. In the interim, the recommendations being considered by the ALI commentators appeared in numerous state and federal land use reports. In addition, faced with severe growth pressures, many states enacted legislation embodying new planning approaches or tailoring the ALI concepts to their specific state-wide needs.

### A. The ALI Code

Allison Dunham, Chief Reporter for the American Law Institute's Model Land Development Code, has described preparation of the Code as follows:

Almost ten years ago the American Law Institute, a prestigious national organization of legal scholars, judges and practicing lawyers, received a large grant to undertake a comprehensive study of the laws concerning land planning and the preparation of a model law on the subject. In accordance with its usual procedure, the American Law Institute selected a Reporter and several associate and assistant reporters, and appointed an advisory committee not limited to lawyers of the Institute but including academics, professional planners, municipal attorneys and others to advise and assist the reporters in undertaking this project.

Under the ordinary procedure of the American Law Institute, the Reporter and Advisory Committee prepare a draft of a portion of the proposed law which they recommend to the Council of the American Law Institute....After this piece-meal presentation, the subject matter is then put together by the Reporter and Advisory Committee in the form of a Proposed Final draft of the model law, which is then presented to the Institute for final consideration....

I might add that the American Law Institute never gets involved in the legislative process. It does not promote legislation; it conceives of its role as application of skilled legislative drafting to a problem chosen by it for consideration and thereby as an educator - pointing out to various political and other forces the problems which should be resolved in the legislative process....<sup>72</sup>

In summarizing the conclusions which guided the Institute's drafting activities, the foreword to the code states:

The present legal framework for decision-making in the field of land use planning and regulation remains a product of the twenties, notwithstanding a mass of encrustations. When measured against the needs and aspirations of an increasingly urban and mobile society, this framework fails to provide the necessary guidance to local legislative and administration bodies, to reviewing courts and practicing lawyers, to land developers and, indeed, to the planning profession. This framework not only fails to further



the accomplishment of reasonable planning goals but its use is often incompatible with the functioning of the democratic process. This system, when it is applied by local governments within a region, tends to disregard the greater interests of the regional community and in many instances fails to recognize and protect valid local needs. It also encourages ad hoc decisions which impinge on the reasonable expectations of owners of private property. The public interest in devising an acceptable system for the rational allocation and development of the scarce land resources in such a society demands the strongest creative efforts of the profession from which leadership should be expected.<sup>73</sup>

In addition, Richard Babcock, chairman of the ALI Land Use Advisory Committee, contends that the code is based on three major premises:

- 1) First, land use regulation should be left to local decision-makers except where those decisions may impose external costs.
- 2) Second, to the extent that there should be a voice in some decisions that can speak for a constituency greater than the municipality, the state is the appropriate authority. This implies a rejection of at least two alternatives, the national government and metropolitanism....The appropriate role of the federal government is to reward states that demonstrate a willingness to take responsibility for growth policy, not to take on the hopeless role of decision-making in Washington. Metropolitanism, in its most innocuous forms - regional planning agencies - ...is on balance an exercise in futility....
- 3) (Finally) states must act not only to protect our natural resources from improper growth but also to encourage growth necessary to benefit our human resources and to rectify the long standing abuses of land use regulation. One can do nothing but welcome states' attempts to halt the rape of our natural resources. But...adequate housing for humans in an area reasonably accessible to jobs must surely be as legitimate an endeavor in an ethical society as resting places for terns.<sup>74</sup>

The purpose of the ALI code is succinctly described in the first section of the model legislation:

It is the legislative purpose to protect the land, air, water, natural resources and environment of this state, to encourage their use in a socially and economically desirable manner, and to provide a mechanism by which the state may establish and carry out a state land use policy, including,

- 1) the designation of the local governments of this State as the primary authorities for planning and regulating development in this State according to a system of uniform statewide procedural standards;
- 2) authorization of the acquisition and disposition of land development having a significant impact beyond the boundaries of a single local government or affecting an area of critical state concern;
- 3) provision for state review of decisions involving land development having a significant impact beyond the boundaries of a single local government or affecting an area of critical state concern;
- 4) encouragement for the adoption of local and state Land Development Plans to guide the use of land, water and natural resources of this State;
- 5) establishment of a system of administrative and judicial review of local and state land use decisions which encourages both effective citizen participation and prompt resolution of disputes;
- 6) provision of fair and efficient means for enforcement of land development regulations including the discontinuance of existing uses;
- 7) establishment of a system for permanently recording development regulations and decisions in a manner that will enable the most efficient and accurate dissemination of this information;
- 8) the encouragement of cooperation among governmental agencies to help achieve land use policy goals, and

- 9) provision that financial support for capital improvements be made in accordance with state and local land use policy.<sup>75</sup>

Articles seven and eight of the code contain the key legal tools and mechanisms for achieving these goals. Article 7 deals with state land use regulation "and...is designed to assist the states in finding a workable method for state and regional involvement in land development regulation."<sup>76</sup> The article focuses upon three issues: areas of critical state concern, developments of regional impact and the resolution of disputes through an administrative state land adjudicatory board.

The code defines an area of critical state concern as:

- a) an area significantly affected by, or having a significant effect upon, an existing or proposed major public facility or other area of major public investment;
- b) an area containing or having a significant impact upon historical, natural or environmental resources of regional or statewide importance;
- c) a proposed site of a new community designated in a State Land Development Plan, together with a reasonable amount of surrounding land; or
- d) any land within the jurisdiction of a local government that, at any time more than (3 years) after the effective date of this Code, has no development ordinance in effect.<sup>77</sup>

Article 7 goes on to establish procedures for state designation of critical areas, including notice, public hearings, etc. Once the state has designated a critical area, it prepares standards and guidelines for development in the area. Local governments are then given six months to adopt local regulations consistent with

the state standards. If local governments fail to adopt acceptable regulations within the six-month time period, the state is authorized to promulgate regulations for the area and order localities to secure their enforcement. Finally, the State Land Planning Agency, the local government, the developer or any party having standing to seek judicial review may appeal the enforcement of critical area regulations to the State Land Adjudicatory Board.

Article 7 also provides for state participation in land use decisions involving Developments of Regional Impact (DRI's). The code requires the State Land Planning Agency to adopt rules identifying development that because of its nature or magnitude or its effect on the surrounding environment is likely to present issues of statewide or regional significance. The rules categorizing DRI's must take into account:

- a) The extent to which the development would create or alleviate environmental problems such as air or water pollution or noise;
- b) The amount of pedestrian or vehicular traffic likely to be generated;
- c) The number of persons likely to be residents, employees, or otherwise present;
- d) The size of the site to be occupied;
- e) The likelihood that additional or subsidiary development will be generated; and
- f) The unique qualities of particular areas of the state.<sup>78</sup>

Developers seeking approval for projects covered by the DRI categories must notify the State Land Planning Agency, which in turn

publishes a weekly statewide list of all DRI applications. This provision is designed to give regional interests the opportunity to participate in DRI hearings. In considering a DRI application local governments must weigh the "probable net benefits" against the "probable net detriment" of the development.<sup>79</sup> Finally, the State Land Planning Agency and other parties that would be entitled to judicial review may appeal local DRI decisions to the State Land Adjudicatory Board, which can overrule local rulings.

In addition to the administratively defined DRI categories, any developer may request that a project be considered under DRI procedures if it constitutes a Development of Regional Benefit. The code defines Developments of Regional Benefit as follows:

- a) development by a governmental agency other than the local government that created the Land Development Agency or another agency created solely by that local government;
- b) development which will be used for charitable purposes, including religious or educational facilities, and which serves or is intended to serve a substantial number of persons who do not reside within the boundaries of the local government creating the Land Development Agency;
- c) development by a public utility which is or will be employed to a substantial degree to provide services in an area beyond the territorial jurisdiction of the local government creating the Land Development Agency; and
- d) development of housing for persons of low and moderate income.<sup>80</sup>

In essence, Article 7 provides for state input into land use decision-making in three ways. First, it gives state government the authority to promulgate standards for development in critical areas.

Second, it allows the state to define developments of regional impacts and requires that regional benefits and detriments be weighed along with local impacts in the decision-making process. Finally, Article 7 allows an administrative state land adjudicatory board to review and overrule local decisions relating to critical areas and DRI's.

Article 8 of the ALI code "authorizes the State Land Planning Agency to undertake a comprehensive process of statewide or regional planning. Essentially, this article affirms the prerogatives of localities to plan and regulate land subject to state guidelines and criteria."<sup>81</sup> The article provides for the establishment of a State Land Planning Agency in the Executive Office of the governor and enumerates the powers of this agency, including the power to set rules for local planning and administrative proceedings. Article 8 also outlines the contents of the state land development plan and of a short-term implementation program which is to accompany the plan. In addition, the article establishes procedures for legislative approval of the state plan. Provisions are also included for financial and technical planning assistance to localities. The code does not require localities to adopt comprehensive plans or land use regulations. It seeks to encourage local planning and regulation by giving additional land use regulatory powers to communities who prepare comprehensive plans, and by providing for state regulation of areas not regulated by localities.

Most analysts agree that the ALI code is a dramatic improvement over the outdated planning and zoning enabling statutes which govern land use decision-making in most states.<sup>82</sup> As T. William Patterson states, "Its provisions for regional intervention in the planning process are salutary as are the provisions for land use controls..."<sup>83</sup> On the other hand, the code has not been immune from criticism. As Pelham states:

As conceived by the Model Code, DRI can hardly be described as a revolutionary technique. It recognizes only a small percentage of land use decisions as having statewide or regional significance, a startling assumption in an increasingly urbanized society. Moreover, it permits local governments, the very institutions deemed responsible for the irrationality of the traditional land use regulatory system to retain initial decision making power over all land use decisions....Area of critical state concern is an equally conservative proposal. It relies primarily on state review of local development regulations and orders in critical areas designated by a state administrative agency. Thus, the Model Code's critical area technique represents only a modest encroachment on the traditional regulatory domain of local government.<sup>84</sup>

The Model Code has also been criticized for failing to mandate state and local comprehensive planning and for failing to link planning to actual decision-making by requiring all state and local land use actions to be consistent with adopted comprehensive plans. In addition, the code has been criticized for not devoting adequate attention to citizen participation in the planning process. As Patterson states, "Except for the provision for participation in local planning of...neighborhood organizations, and for required public hearings, the Code is weak in regard to

participation by elected officials, civic and professional groups, citizen organizations and individual citizens. The means for achieving local acceptability for implementation programs is in doubt under the Code."<sup>85</sup>

In spite of these criticisms, the ALI code has generated a great deal of interest among state governments interested in reforming their land use management systems. An American Institute of Planners' review of the code commented, "While the Code does suffer some deficiencies...it does offer a starting point for those legislatures considering a state land use program. It could well serve as a useful compilation of some of the basic constituent parts of a standard land use act."<sup>86</sup> In the early 1970's state legislatures across the country were deluged with land use reform bills modeled after the code. As Pelham states, "The irresistible attraction of article 7's dual techniques is their political feasibility...DRI and area of critical state concern require neither the creation of new nor the abolition of existing government structures...(G)iven the difficulty and debatable wisdom of creating regional governments, article 7 has received the attention of numerous states."<sup>87</sup> In addition to the interest that it generated among state governments, the ALI code quickly became the prototype for the nation's first national land use policy bill.

#### B. The National Land Use Policy Bill

While ALI commentators may not have viewed environmental concerns as the central focus of efforts to reform land use decision-making,



it was the political response to the environmental movement that brought land use issues into the spotlight of national attention. Commenting on the motives of Bill Van Ness, Senator Henry M. Jackson's chief counsel to the Senate Interior Committee and key draftsman of the first National Land Use Policy Bill, one congressional analyst stated, "...Van Ness had successfully anticipated the strength of the environmental movement as a political issue with the passage of the National Environmental Policy Act and he needed another issue to maintain the momentum gained and to keep Senator Jackson in the forefront of the environmental movement."<sup>88</sup> Consequently, as Lyday states:

The first National Land Use Policy Bill, S.3354, was introduced with rhetoric that suggested that it was pro-environment. Jackson claimed for example, that "intelligent land use planning and management provide the single most important institutional device for preserving and enhancing the environment." He also linked it closely to the National Environmental Policy Act. The title of the bill seemed to promise national policies and priorities that would somehow reconcile conflicting demands for housing, jobs, transportation and environmental protection.<sup>89</sup>

The Jackson bill would have provided large planning grants to states to prepare state comprehensive plans which would identify specific areas for housing, recreation, industry, power plants and major public facilities in advance of need. The bill would have expanded the role of the federal interagency Water Resources Council to include land use responsibilities. The new Land and Water Resources Council would have been responsible for reviewing and approving state comprehensive plans; and once approved, the plans

would be used to guide federal programs in the state. Federal agencies would be required to consult the plans and ensure that federal grants and development projects did not conflict with the state plans.

An April 15, 1970, Interior Committee memorandum described the purpose of the bill in terms of the alleviation or solution of the following problems:

- 1) increasing pressures for conflicting uses of particularly valuable land resources;
- 2) conflicts between environmental values and projected population and technology pressures;
- 3) inconsistencies in land use aims and consequences of various governmentally initiated, financed and sanctioned projects; and
- 4) failure of private enterprise to consider land use consequences as a high priority factor in planning for economic growth.<sup>90</sup>

The Nixon administration was more cautious. The proposal to provide federal grants to help states reassert control over land development decisions "certainly rubbed Nixon's natural conservative constituency the wrong way. (However)...the administration could not ignore the sprawling and uncontrolled development occurring across the land."<sup>91</sup> In early 1971, the Nixon administration introduced its own national land use bill which proposed to provide federal assistance to states for the development of programs dealing with land use issues of state or regional concern.<sup>92</sup> The President's proposal was modeled after the ALI code. As a condition for federal planning assistance, the administration bill required states to

develop programs for regulating critical environmental areas, developments impacting public facilities, large-scale developments and developments of regional benefit. "In 1972, the Administration bill and the earlier Jackson bill were combined into a single piece of legislation. It was this combined planning and regulatory reform measure that was debated in Congress for the next three years."<sup>93</sup>

The Senate passed the bill in both 1972 and 1973. The House, however, first failed to act on the legislation and then voted to disapprove it in 1974. The central role proposed for state government in the national land use policy bill, the nationwide debate over the federal legislation, and even the bill's ultimate failure, all served to emphasize the conclusion that state action was essential if the nation was to confront its growing list of land use problems.

#### C. State Actions in the Land Use Planning Field

Although the National Land Use Policy Bill never passed, anticipation of the new federal law and the potential of a significant new source of federal planning assistance did encourage a number of states to initiate action in the land use planning and regulatory field. Prior to 1970, fewer than ten states had enacted legislation dealing with statewide land use planning or regulatory concerns.<sup>94</sup> The best known of these statutes were Hawaii's land use law which divided the state into four types of districts and was basically a statewide zoning statute;<sup>95</sup> Vermont's Act 250 under which the state essentially controlled all development exceeding ten

acres or including more than ten residential units;<sup>96</sup> and the Maine Site Location Law which required a state permit for large scale commercial, industrial and select residential developments.<sup>97</sup> Between 1970 and 1974, however, the prospect of large planning grants under the proposed national land use bill and the availability of various drafts of the ALI code encouraged many states to enter the land use planning and regulatory field. In 1974, the Council on Environmental Quality reported that "Forty-eight states have now enacted legislation or are seriously studying proposals to expand the previously limited role of state government in the regulation of land use."<sup>98</sup> Statutes of particular significance were Oregon's 1973 comprehensive planning act known as Senate Bill 100;<sup>99</sup> The Florida Environmental Land and Water Management Act;<sup>100</sup> Florida's State and Local Comprehensive Planning Act;<sup>101</sup> Wyoming's mandatory local planning legislation;<sup>102</sup> coastal zone statutes in California, Delaware, New Jersey and Rhode Island; wetland statutes in Connecticut, Georgia, Maryland, Massachusetts, North Carolina and Virginia; and floodplain statutes in Minnesota, Michigan and Wisconsin.<sup>103</sup>

Thomas Pelham has divided these statutes into three categories: (1) state regulation of selected activities; (2) state regulation of critical areas; and (3) state and local comprehensive planning.<sup>104</sup>

Pelham's selected activities category is basically another term for the ALI code's Developments of Regional Impact. Statutes in this category focus on land development which because of its

character or magnitude has significant greater than local impact. Typical examples of such "selected activities" are power plants, surface mines, solid and hazardous waste facilities, low and moderate income housing and large-scale projects irrespective of whether they are commercial, residential or industrial.

In response to increasing controversy over such projects, state legislatures, during the mid-seventies, adopted a variety of statutes defining the procedures and criteria for permits relating to their development. Most of these statutes either broadened the power of state agencies to review and override local decisions regarding specific facilities, or transferred facility siting authority directly to the state.<sup>105</sup> By 1975, twenty-two states had adopted power plant siting legislation; five states had strengthened surface mining laws to include the denial of proposed sites; six states had enacted legislation generally regulating large-scale development;<sup>106</sup> and only one state had adopted legislation giving state government the power to override local decisions on low and moderate income housing.<sup>107</sup>

Pelham's second category consists of statutes governing the planning and regulation of "critical areas." These areas usually involve historic, archeological, natural or environmental resources. Typical examples are estuaries, aquifer recharge areas, floodplains, shorelands, swamps and other wetlands, deserts, mountains, wildlife habitats, woodlands, etc. "Effective management of critical areas requires a comprehensive areawide approach."<sup>108</sup>

Acquifers, wetlands and other sensitive resources do not stop at local jurisdictional boundaries. State regulations or guidelines were designed to allow the protection of large sensitive areas "by a single authority with a single set of standards and procedures. Thus the vagaries of the local regulatory lottery could be avoided."<sup>109</sup>

Most critical area statutes provide for state standards to govern local regulations in the area and establish procedures for state review and override of local development decisions. Pelham identifies two general types of critical area controls.<sup>110</sup> The first category includes the establishment of a regional authority to govern land use decisions in a specific geographic area. Typical examples of the regional authority approach are the Hackensack Meadowland District, the Adirondack Park Agency, the Tahoe Regional Planning Agency, the Martha's Vineyard Commission, and the Harvis-Galveston Coastal Subsidence District.<sup>111</sup> The second type of critical area program includes comprehensive statewide processes modeled after the ALI code. As of 1975, seven states, including Colorado, Florida, Maryland, Minnesota, Nevada, Oregon and Wyoming, had enacted statewide critical area programs.<sup>112</sup> In addition, there are, at least, two specific types of critical areas over which states have asserted land use control. These are wetlands and the coastal zone. Between 1965 and 1975, fourteen states enacted legislation protecting sensitive wetland areas and defining the criteria for their use.<sup>113</sup> Finally, the National Coastal Zone Management Act of 1972<sup>114</sup> has encouraged approximately

thirty states to adopt critical area procedures establishing state standards for the regulation of shorelines and the coast.<sup>115</sup>

Pelham's third category of state land use legislation covers both state and local comprehensive planning statutes. Basically, these statutes "subject every (land use) decision to a mandatory state and local planning process designed to protect and promote state and regional interests."<sup>116</sup> As Pelham states,

Each local government is required to adopt a comprehensive plan which is consistent or coordinated with statewide planning goals or guidelines and with which all local land use decisions must be consistent. To ensure that state and regional interests in all land development are promoted and protected by local governments which retain substantial regulatory power over land use, local comprehensive plans and regulations are subject to state and regional review.<sup>117</sup>

The ALI code rejected the notion of mandatory state and local comprehensive plans and opted, instead, for authorizing and encouraging voluntary planning efforts. The argument for rejecting mandatory local planning was that "comprehensive plans produced merely because of legal requirements most likely will be bad plans."<sup>118</sup> As Susskind states, "State mandated local planning is likely to be less effective than state supported local planning. Carrots and not sticks are needed to build local planning capacity."<sup>119</sup>

On the other hand, Pelham argues that mandatory comprehensive planning is necessary because: (1) selected activities and critical area models, by themselves, are inadequate to deal with statewide

and regional impacts which virtually all land use decisions entail; (2) the selected activities and critical area approaches almost always are process oriented, restructuring authority for decision-making but failing to establish substantive standards and policies to guide the decisions. He contends that mandatory state and local plans would provide the necessary standards and policies; and (3) it is necessary to require that state and local regulations are consistent with the plan, otherwise the planning process will have little impact on actual decision-making.<sup>120</sup> Finally, Mandelker argues that mandatory and binding comprehensive planning is necessary so that the courts will have standards by which to assess the fairness of individual land use decisions, and so that private land owners may reasonably predict acceptable uses for their property before actual decisions have to be made.<sup>121</sup>

Despite professional disagreement about the effectiveness of mandatory state and local comprehensive planning, thirteen states have adopted mandatory local planning statutes.<sup>122</sup> In addition, six and ten states, respectively, have enacted mandatory local zoning and subdivision control legislation.<sup>123</sup> Finally, four states have either attempted or are currently trying to implement mandatory state planning statutes. In both Vermont and Florida, mandatory state planning legislation was amended to make the plans only advisory after the legislature in each state failed to approve binding plans. Oregon and Wyoming are still in the process of implementing their mandatory state planning laws.<sup>124</sup>



Pelham contends that all future state land use legislation probably will be based on one or more of his three general models.<sup>125</sup> In contrast, a 1976 Council of State Governments report found that "the role and perspective of state planning...was evolving into a concept of growth policy planning and management."<sup>126</sup> The Council defined state growth policy as "the articulation of goals and implementation of programs designed to affect the quantity, quality and location of human settlement, economic development and government services."<sup>127</sup> The report stated:

In general, the concept of land use planning has had its focus changed from one aimed at directly controlling growth to one of coordinating development consistent with environmental and land use concerns....Both land use planning and economic planning are evolving towards a concept now being referred to as growth policy planning and growth management. Consistent with this approach, 17 states have some sort of official growth plan or policy guidelines. Twenty-one states have established state level growth commissions or processes.<sup>128</sup>

The Council identified three general types of "sophisticated... planning processes" in the emerging growth policy field: (1) alternative futures analysis; (2) strategic issue identification; and (3) public investment planning. Hawaii, Utah, Maryland, Kentucky, Vermont, Arizona and Pennsylvania were cited for their efforts with these techniques.<sup>129</sup> The new approaches focused on more cooperative relationships between state and local government. They were primarily designed to balance economic development and environmental needs, and to identify, and resolve conflicts between policies and priorities. For example, the Arizona

alternative futures analysis focused on developing a computer based economic and environmental trade-off model.<sup>130</sup> Maryland's strategic issue process included "issue identification, issue development, issue resolution, and implementation...(It had) an explicit 'action oriented mission' designed to result in an array of legislation, new programs or public investment of specific resources."<sup>131</sup> Pennsylvania's public investment system focused on identifying gaps between growth projections and "desired" expectations, and then attempting to target public attention and investments to address these gaps.<sup>132</sup>

In addition, Massachusetts was one of the original states to embark on a pioneering effort in the state growth policy and management field. In 1975, the Massachusetts legislature enacted the "Growth Policy Development Act".<sup>133</sup> This statute was the first attempt by any state in the nation to involve a broad spectrum of citizens, interest groups and public officials in the formulation and implementation of a concise set of state growth policies and priorities to guide state public investment and regulatory decisions. The Massachusetts legislation was based on the conclusion that land use decision making is essentially a process of conflict resolution which requires balancing economic and environmental concerns and state and local authority.

Unlike other state land use legislation, the Massachusetts Growth Policy Development Act did not increase the state's power

to supersede local land use decisions. Instead, the legislation created a voluntary participatory process giving citizens, communities, and regional planning agencies an opportunity to inform the state about local growth management problems and priorities, and to recommend policies for addressing these issues. That is, the legislation established a process to derive state growth policies from the bottom-up. It focused on collaboration and cooperation between state and local government to identify competing growth management values and objectives and to foster compromise and consensus on policies and governmental actions related to these issues.

In many ways, the evolution toward cooperative state/local growth policy and growth management systems represented a response to the changing economic and political conditions which had contributed to the decline of the state land use planning movement. During the mid-seventies, the public had grown tired of complicated and burdensome governmental regulations. The Watergate scandal added to the already growing mistrust of big government, and to the resentment of the centralization of power at the state and federal levels. Increasingly, the public mood favored government closer to home, streamlining regulatory permits, more coordination of governmental programs and more efficient expenditure of public funds.<sup>134</sup>

Between 1975 and 1976, this mood was reflected in the state land use planning field by a shift away from emphasis on new state

controls, which took power away from localities, to a focus on new, more collaborative relationships between state and local government. As Healy states:

Since the heady days of the "quiet revolution", many advocates of better land use have come to appreciate the political resources and potential implementation advantages that local governments have to offer. Hence the current popularity of collaborative planning, characterized by one researcher as "a mid-point compromise between a centralized top-down and a decentralized approach," designed to involve cities and counties significantly without relying on them so heavily that important regional and statewide goals are compromised. Land use control advocates, by now keenly aware of the general public's mistrust of centralized regulation, are likely to warmly embrace the collaborative approach....<sup>135</sup>

The new collaborative approaches have attempted to shift the focus of land use reform away from the reallocation of governmental authority and mandatory comprehensive planning and toward a new focus on mechanisms for consensus building and conflict resolution. As Reilly states, "There never was a consensus on land use in the United States, nor is one likely to arise in the near future. To resolve land use problems, then, attention must first be directed toward establishing a process for consensus building."<sup>136</sup> It is this objective which distinguishes early state land use planning legislation, with its emphasis on regulation and environmental protection, from later state planning, efforts which focused on balancing conflicting values and priorities.

### III. Key Issues in Improving Land Use Decision-Making

As the previous sections indicate, the history of land use reform efforts in the United States has been characterized by several changes in the movement's justifying political rationale (i.e. from metropolitanism to environmentalism to balancing economic and environmental concerns). In spite of these changes, however, it is interesting to note the manner in which the central objectives and recommendations of the movement have remained the same.<sup>137</sup> The espoused objective of the land use reform movement has always been to increase the efficiency and equity of land use decisions.<sup>138</sup> Recommendations for achieving this objective have repeatedly emphasized two issues:

- 1) redistributing governmental authority for land use decision-making (i.e. reasserting state authority over local land use decisions); and
- 2) altering the legal and institutional arrangements in the land use decision-making system (i.e. mandating and giving comprehensive planning binding legal status and creating state administrative appeal boards to supplement the courts in the adversary resolution of land use conflicts).<sup>139</sup>

The problem with this formulation of the key reform issues is that it ignores three important realities regarding American land use decision-making. First, the responsibility for land use decisions in the U.S. federal system has always been characterized by the sharing of authority among federal, state and local governments.<sup>140</sup> Consequently, changing the distribution of power is politically controversial and very difficult. Second, given the

cultural and historical significance of land in American society,<sup>141</sup> it is almost a fact of life that we will continue to be confronted with conflicting values regarding the regulation and use of land. The conflict between public values regarding land as an economic commodity, and land as an environmental resource, will not be resolved by changes in the distribution of power or the creation of new institutional arrangements. Similarly, the differing values of environmentalists and developers lead each group to a different assessment of the costs and benefits of specific land use decisions.<sup>142</sup> These differences cannot be resolved by technical analysis. Finally, given the interrelationship between land use problems and other complex economic, environmental, and social conditions in society today, any effort to develop comprehensive plans or to formulate land use policies will inevitably involve inconsistencies and contradictions. That is, various plan elements or policies will invariably conflict with one another.<sup>143</sup> Thus, simply mandating plan preparation and giving comprehensive planning legal status will not resolve these inconsistencies or ensure plan implementation. Requiring specific land use regulations to be consistent with a comprehensive plan may be meaningless because it will always be difficult to assess the consistency of the regulations with potentially conflicting policies or plan elements. In addition, the intent of the consistency requirements (i.e. predictability) can always be avoided by simply changing the plan and then modifying the regulations.

In the face of these realities, the recommendations of the state land use planning movement have failed to win broadly based political support, and even when adopted, they have often broken down during implementation.<sup>144</sup> In short, neither the courts, Congress, nor state legislatures have embraced the logic of the "quiet revolution" sufficiently enough to require major reform of local land use planning and regulation, or to require more than a few localities, in select instances, to include statewide or regional considerations in their decision-making processes.

It is my contention that this failure is the result of the fact that the land use reform movement has focused too much attention on the wrong issues. As Mandelker states, "...Justifications for state land use control focused on governmental and institutional failures rather than on the problems arising out of substantive regulatory concerns."<sup>145</sup> Consequently, I feel that if efforts to increase the efficiency and equity of land use decision-making are to be successful, it is necessary to shift the emphasis of land use reform from the issues of redistributing governmental power and altering legal and institutional arrangements to an emphasis upon issues which relate more directly to the actual process of land use policy formation and decision-making.

As an alternative to the considerations emphasized by the state land use planning movement, the purpose of this dissertation is to examine the potential of three new issues as a more appropriate frame of reference for considering improvements

in land use decision-making. These issues may be summarized as follows:

- 1) Building governmental planning capacity. (i.e. increasing the relationship between the planning process and political decision-making and increasing the impact of planning on day to day governmental actions. Capacity building involves utilizing planning and specific governmental decisions, to concurrently inform one another so that decisions are made with reference to general policy guidelines developed through the planning process, and policies are continuously reformulated to reflect the results of actual decision-making experience.<sup>146</sup>)
- 2) Developing an informed and supportive constituency for planning through more effective public participation. (i.e. devising broadly based participatory processes which result in increased public understanding of the problems, values and technical issues involved in land use decisions, and which lead to the development of active interpersonal networks and political constituencies to support and monitor agreed upon policies and actions).
- 3) Creating settings for informal land use conflict resolution. (i.e. facilitating voluntary ad hoc bargaining or negotiation which encourages all participants in multi-party land use conflicts to work together in developing mutually agreeable solutions to shared problems. Informal conflict resolution emphasizes consensus building and the maximization of joint gains rather than the win-lose dynamics of adversary administrative or judicial action.<sup>147</sup>)

I feel that these three issues constitute the interrelated elements of a conceptual framework which is useful for understanding and attempting to increase the effectiveness of state efforts to improve land use decision-making. The importance of each issue is summarized below.



#### A. Building Governmental Planning Capacity

Building governmental planning capacity is necessary in order to improve land use decision-making for two primary reasons. First, many land use problems that we face today are the result of unanticipated consequences of past governmental actions. Second, the classic paradigm of comprehensive planning, which has guided most local and state planning programs, has largely failed to link planning and actual land use decision-making.

As the preceding sections indicate, land use patterns in the United States are determined by numerous independent public and private actions. The public decisions are made by thousands of local, state and federal agencies. Many governmental decisions, with significant land use impacts, are made in the context of programs which were not originally established to deal with land use problems. Instead these programs were designed to address a variety of other objectives (i.e. economic development, pollution abatement, housing construction, improved transportation, energy development, etc.). These decisions often have unanticipated and unintended land use consequences. For example, a 1975 Council of State Governments study reported:

The lack of comprehensiveness and coordination in land use planning has been accompanied by serious development problems and abuses of land and natural resources such as:

- Decentralization of industry and commerce from urban centers to outlying locations;
- Haphazard scattering of urban development throughout rural and undeveloped areas;

- Increasing use of land for each dwelling unit;
- Burgeoning needs for energy, water and waste disposal;
- Problems with delays in finding acceptable locations for essential facilities which have particularly difficult impacts on natural resources and on other activities;
- Conversion of productive agricultural land and forests to other uses;
- Loss of open space and devastation of wetlands and other fragile resources;
- Construction in hazardous locations;
- Demolition of historic and architectural landmarks; and
- Destructive competition among communities for those land uses which pay high property taxes and which make few demands on public facilities and services.<sup>148</sup>

As this list of problems indicates, most major land use problems fall between traditional agency and jurisdictional lines of authority. That is, there is no one federal, state, or local agency that has, or is likely to be given, the power and authority to resolve these problems. As Healy states, "Land use is not a single problem, to be solved by a single decision or a single piece of legislation. It is a developing chain of decisions, involving the conscious design of the future human environment. They are decisions that cannot be made by any single level of government, but must involve all actors in the land development process - landowners, developers, consumers, and all levels of government."<sup>149</sup>

In reality, the organizational structure for land use decision-making in the United States consists of what Donald Schon has

referred to as a "functional system".<sup>150</sup> That is, a set of semi-autonomous agencies and institutions which deal directly and indirectly with land use problems. In the past, the elements of the land use functional system have not been linked very well to one another. The decisions of the various elements rarely have been made in a coordinated fashion, or even made with explicit consideration of the impacts of specific actions on the system as a whole. Consequently, if we are to improve land use decision-making it seems necessary to improve governmental planning capabilities to anticipate the unintended consequences of specific programmatic actions on land use and development patterns, and to better coordinate these decisions. While it is clearly impossible to predict the future or to anticipate all of the land use impacts of a specific program, better coordination and information flows between different agencies and levels of government could help to prevent many land use problems. Thus, land use decision-making could be significantly improved by increasing governmental planning capabilities in evaluating the potential land use impacts of agency decisions, and in coordinating and sequencing programmatic actions in order to avoid and address predictable problems.

A second consideration in improving governmental planning capabilities is increasing the linkage between planning and actual land use decision-making. For years, analysts have argued that the single most serious problem with land use decisions was that

plans were rarely taken seriously, and that planning was divorced from the actual land use regulations.<sup>151</sup> Lawyers contend that this situation is a function of the fact that current state enabling statutes do not mandate planning and do not require regulatory decisions to be consistent with established plans. The fault, however, may not lie so much with our existing statutory arrangements as with traditional planning assumptions and techniques.

The classic paradigm of comprehensive planning is essentially based on the assumption that land use problems have technical solutions. That is, it has been assumed that planning is a technocratic, rational problem solving process. From this perspective the planner's primary role is to act as technical staff to political decision-makers. As Allison Dunham states:

The original planners were technological optimists. Most of the planning enabling acts still on the law books started with a creed of optimism. These acts evidence a belief in the power of communications: that if technocrats or professionals put down on paper or in maps a systematic system for spatial coordination, an urban community would be transformed from a community of conflicting values into a community of shared values so that after this document called a plan was disclosed each decider in the community would voluntarily and uniformly act on the basis of values evidenced in the plan.<sup>152</sup>

The traditional model of land use planning emphasizes the preparation of master or comprehensive plans which consist of a series of surveys and technical studies designed to provide the basis for goal formulation, the spatial allocation of competing land uses and the adoption of regulations to govern specific land use decisions.

In 1955, Charles Haar described these plans as follows:

The master plan, a comprehensive long-term general plan for the physical development of the community, embodies information, judgements and objectives collected and formulated by experts to serve as both a guiding and predictive force. Based on comprehensive surveys and analysis of existing social, economic and physical conditions in the community and of the factors which generate them, the plan directs attention to the goals selected by the community from the various alternatives propounded and clarified by the planning experts, and delimits the means (within available resources) for arriving at these objectives.<sup>153</sup>

This view has been continuously challenged in planning literature over the past two decades.<sup>154</sup> One of the primary challenges has been that the classic paradigm, with its technical orientation, tends to ignore political considerations resulting in plans that are unrelated to the reality of day to day decision-making. Other criticisms relate to problems in defining the "public interest", our inability to accurately predict the future, limits to rationality, etc.<sup>155</sup> Taken together, these criticisms suggest "that general, long range comprehensive planning is impractical, if not impossible."<sup>156</sup> In response to this realization, the planning profession has developed a number of innovative planning approaches and techniques that focus on linking the planning process more closely to short-term implementation programs and the realities of political decision-making. These approaches include client-oriented or advocacy planning, middle-range or utilitarian planning, experimental or learning-oriented planning, capacity building and policy planning.<sup>157</sup>

Irrespective of these new developments, many state land use statutes, which include mandatory local planning provisions, require elements and approaches taken almost directly from the classic comprehensive paradigm. It is highly doubtful that such plans will actually improve the land use decision-making process because traditional comprehensive plans are rarely linked to the realities of political decision-making. Consequently, if we are to be successful in improving land use decisions it seems essential to move away from traditional technocratic notions of comprehensive planning. Improving land use decisions will depend on our ability to build government planning capabilities to develop mid-range planning processes which link planning and program implementation. As Herr and Lord state:

Designing competent simultaneous planning/implementation programs is far from simple...(However), ...the benefits of simultaneity are of two kinds. First, involvement informs the planners, enables them to better understand the abstractions they are dealing with, and thus enables them to both create better alternatives and better understand how to evaluate them. Second, involvement "raises the stakes", and thus makes it likelier that a broad spectrum of interests and major decision-makers will remain engaged in the process and not drop out...<sup>158</sup>

B. Developing an Informed and Supportive Constituency for Planning Through More Effective Public Participation

Developing an informed and supportive constituency for planning through more effective public participation is essential to improving land use decision-making because decisions and policies that do not reflect citizen concerns and priorities are virtually impossible to implement. Implementation of such decisions often fails because of

public apathy, public resistance, or simply because the proposed policy framework or decision is not based on an adequate understanding of the issues at stake. Susskind contends that the impact of citizen participation in land use decision-making heavily depends on the motives of those who manage and participate in the planning process.<sup>159</sup> The standard motives for participation have been summarized succinctly by Herr and Lord as follows:

- 1) To build support
- 2) To educate the public or other agencies
- 3) To test ideas
- 4) To get ideas
- 5) To "light fires" or initiate action
- 6) To satisfy legal mandates<sup>160</sup>

Traditionally, "building support" has taken the form of appointing blue ribbon advisory committees composed of carefully selected opinion leaders who are supposedly representative of key interests with a stake in the planning process. As Susskind observes, "Typically, the individuals appointed to such committees are busy with other responsibilities, and they lend their names to the proposal favored by officials. This strategy provides credibility for the proposed action."<sup>161</sup> This form of participation is sometimes sufficient to secure the passage of legislation or the adoption of a plan. Blue ribbon committees, however, rarely generate sufficient support to ensure implementation of a statute or the policies developed through a planning process. Opinion leaders

move on to other activities, or, because their participation was nominal, they do not monitor or exert the political pressure necessary to ensure implementation.

The objectives of educating the public, testing ideas, initiating action, and satisfying legal mandates have usually been pursued through public hearings. These hearings place citizens in a reactive position. Professional staff, consultants, or governmental officials generate ideas, policies, or program recommendations and citizens are asked to respond or criticize. The hearings generally occur late in the decision-making process. Such citizen involvement efforts are designed as one time exercises, and rarely offer opportunities for in-depth discussion of issues.<sup>162</sup> By the time citizen involvement is solicited, "The range of feasible alternatives has become sharply narrowed,"<sup>163</sup> often to the extent that public participation has little impact on actual decisions. In addition, formal public hearings inhibit participation by citizens who are inexperienced in testifying before governmental bodies. The hearings, also, promote little interaction between interest groups or between citizens and public officials. Finally, public hearings generate undue controversy as citizens with different views tend to overstate their positions in order to "get their point across." Often hearing participants are more interested in making their point or criticizing opponents than in looking for solutions to problems or opportunities for compromise. Consequently, public hearings usually do not result in new ideas for solving



problems, and they do not significantly increase public and participant understanding of the issues under consideration.

In short, the traditional reactive model of public participation, with its emphasis on blue ribbon advisory boards and public hearings, has become one of the major weaknesses of the existing land use decision-making process. It has resulted in the domination of land use policy formulation and decision-making by vested interest groups. Herr has described these groups as the planning agency's "natural community." This community "consists of that set of people engaged, to at least some degree, by the topic, style or personalities involved. Members of the 'community' get on the mailing list, attend at least some meetings, help enormously in both informing and supporting the plan, but are a special group hardly representative of all interests."<sup>164</sup> The domination of such groups and reliance on reactive public hearings have, in turn, failed to generate adequate understanding of land use problems or meaningful alternative solutions. Traditional forms of participation also have failed to establish viable political constituencies to support the implementation of land use decisions or policies developed through the planning process.

These considerations suggest that in order to improve land use decision-making, it is necessary to increase the effectiveness of public participation in developing informed and supportive constituencies for planning. As Nelson Rosenbaum states, "The basic objective of citizen involvement in land use governance is to

increase the probability that public decisions will be acceptable to at least a majority of affected citizens. This convergence between public policy and public preference is the 'payoff' of involvement."<sup>165</sup>

In essence, public participation in land use decision-making should focus on two major goals. First, the participatory process should increase citizens' and public officials' understanding of the values and technical issues involved in land use decision-making. This will ensure that public preferences are clearly defined and that their implications are clearly understood. Second, citizen participation should develop interpersonal networks and commitments which result in a political constituency to support the decisions resulting from the planning process. As Susskind states, "Planners have come to realize that the only way to ensure plan acceptance and subsequent implementation is to create a constituency for planning. They are now prepared to go to the public and get as many people as possible involved and committed, so that policy-makers will have no choice but to adopt the plans that are produced."<sup>166</sup> The failure of previous land use planning efforts to develop such an informed and supportive constituency helps to explain the lack of implementation of many land use plans and policies.

### C. Creating Settings for Informal Land Use Conflict Resolution

The final issue which I consider to be essential to improving land use decision-making is developing informal procedures for conflict resolution. In many ways, this is the most important issue and embodies many of the themes discussed under the headings of

building planning capacity and participation. The conflict resolution issue is critical because traditional adversarial procedures for resolving land use disputes have largely failed to increase the efficiency or equity of land use decisions. Adversarial judicial and administrative hearings have, in fact, added to the level of controversy and potential for stalemate in the land use decision-making process.

As indicated in the preceding sections, land use decision-making has always (at least implicitly) been viewed as a process of conflict resolution. The fact remains, however, that the state land use planning movement and other efforts to reform the land use management system have largely failed to confront the conflict resolution issue directly. Instead, these efforts have simply presumed that controversies could be resolved by changing the allocation of land use decision-making power and by shifting the locus of conflict resolution from the courts to administrative proceedings. It was assumed that giving the state final authority for land use decisions would put an end to disputes resulting from the failure of localities to consider statewide and regional interests. It was also assumed that administrative procedures would be more effective in resolving conflicts than the judicial system, because an administrative agency, unlike the judiciary, "can easily be endowed with the time, staff and expertise necessary to resolve...complex land use problems."<sup>167</sup>

The fault with this view is that land use controversies

usually involve significant value conflicts as well as technical differences. The decade of the 1970's has clearly indicated that irrespective of the locus of final decision-making authority, local governments and private interest groups have an arsenal of techniques at their disposal which allow them to delay and often thwart decisions that they perceive as inimical to their interests. Finally, legal disputes over the constitutionality of statutory changes in the distribution of land use powers, and adversary administrative procedures have often added to the mechanisms available to obstruct projects and delay final decisions.

In addition, the need to improve procedures for conflict resolution also stems from the fact that numerous decisions that affect land use patterns are made by agencies pursuing functional objectives that are not directly related to land use problems. Decisions under these programs rarely have been viewed in terms of their land use impacts and their interrelationships with the decisions of other federal agencies or levels of government. Consequently, their results have often been contradictory or offset one another. For example, while urban renewal programs have focused on the revitalization of central cities, federal highway subsidies, mortgage guarantees and tax policies have encouraged business and residents to flee the cities. In addition, over the past decade, federal and state agencies have spent billions of dollars on economic development and pollution control programs. At the same time, local zoning ordinances have sought to either

restrict economic growth or allowed deveopment that has exacerbated existing pollution problems.<sup>168</sup>

Given these contradictory results, one of the key purposes of state land use legislation has been to increase coordination among federal, state and local policies and programs. However, achieving policy and program coordination is no easy task. As Healy states:

One of the strongest arguments for comprehensive state land use planning and regulation is that it can coordinate the mass of piecemeal and sometimes conflicting policies that already exist. Frequently overlooked is the fact that those who presently administer these policies are not waiting eagerly to be coordinated.<sup>169</sup>

Pressman and Wildavsky state this problem even more forcefully. They contend that lack of coordination is really the result of conflicting agency goals and that either coercion, bargaining or securing consent of disputing parties are necessary to resolve these goal conflicts.<sup>170</sup>

These considerations suggest that it may be more useful to attempt to resolve land use conflicts through collaborative consensus oriented negotiations than to continue along the path of confrontation politics and judicial decision-making. Settlements negotiated through informal conflict resolution procedures can offer more flexibility than a priori regulations or planning criteria. Since consensus oriented conflict resolution processes are not governed by the narrow rules of administrative or judicial proceedings, the scope of the issues under discussion and alternative solutions considered can be expanded so that all parties involved have something to gain from the final decision.<sup>171</sup> That is,

informal conflict resolution focuses on maximizing the joint gains of all parties involved rather than the win-lose dynamics which dominate adversarial proceedings.<sup>172</sup> Finally, decisions which result from consensus oriented conflict resolution are more likely to be implemented than decisions which result from adversarial proceedings because the decision represents mutual agreement of the parties involved rather than an imposed settlement. Thus, there is less likelihood of resistance during the implementation phase.

Informal approaches to conflict resolution are uniquely applicable to state land use planning and regulatory processes because virtually all state land use decisions involve complex multi-party disputes. Given the state's traditional public investment and regulatory powers and various newly acquired controls over land use decisions, state governments are in a unique position to engage communities and private interest groups in informal negotiations over the preservation of sensitive areas, the siting of major development projects and the construction of low and moderate income housing. That is, these negotiations can directly confront the major problems which have plagued land use decision-making for decades.

The remainder of the dissertation will examine the Massachusetts and Florida state land use reforms in the context of their respective approaches to capacity building, conflict resolution and constituency building. Specifically, I will focus on the manner in which the two case studies influenced my thinking about the importance of these issues in increasing the effectiveness of state growth management systems.

IV. NOTES

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CHAPTER TWO. THE MASSACHUSETTS GROWTH POLICY PROCESS\*

I. Introduction

Prior to the Growth Policy Process, intergovernmental relationships for land use decision-making in this state were like a nervous system without a brain. The system consisted of a set of independent officials who made decisions in response to specific stimuli with little regard to how these decisions would affect other problems or other levels of government. The Growth Policy Process has provided a mechanism for linking these decision-makers, for increasing the flow of information and for establishing forums in which growth policy issues and land use decisions can be discussed and conflicts resolved. The ability of government to deal effectively with growth issues depends on cooperative interaction between the private sector and state, local and regional officials. Fostering this type of interaction is one of the most important outcomes of the Growth Policy Process.<sup>1</sup>

In 1972, Massachusetts cities and towns issued building permits for over 68,000 new dwelling units.<sup>2</sup> In the same year, Senator William

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L. Saltonstall filed legislation directing the Massachusetts Commissioner of Administration and Finance to prepare a statewide plan for land use and related resources.<sup>3</sup> Irrespective of the Commonwealth's rapid growth, the bill died in committee with little debate. In 1973, Senator Saltonstall, Representative Hatch, Representative Ames and numerous Massachusetts legislators sponsored a bill "to protect water and land in certain areas of the Commonwealth."<sup>4</sup> The Hatch/Ames legislation was based on the American Law Institute's Model Land Development Code, and included provisions for state regulation of areas of critical environmental concern and developments of regional impact. This bill also died in the maze of Massachusetts' legislative committee system.

In November of 1973, the Boston Globe reported:

It's been another frustrating year for Massachusetts advocates of land use planning. Heralded as the crucial environmental issue of the decade, land use has been treated with little urgency by the legislature. Representative John Ames states, "You've got all these people doing their own thing with land use. Meanwhile, nothing gets done....The Department of Community Affairs is moving in one direction...with an inventory of state land, while the Office of Environmental Affairs is taking a different course. Neither the Sargent administration nor Speaker of the House David Bartley has shown the leadership to bring competing groups together." 5

In September of 1974, when I began work as a part-time staff member for the land use subcommittee of the Special Commission on the Effects of Growth, a redrafted version of the Hatch/Ames bill<sup>6</sup> was already well on its way to another frustrating defeat. At the legislative hearing for the bill, two top Sargent administration

officials (the Secretary of Communities and Development and the Secretary of Environmental Affairs) recommended a two-year study of the proposal. A few environmentalists testified in favor of the legislation, however, much of the testimony on the bill focused on complaints about the effectiveness of existing Massachusetts statutes which allowed state government to override local land use decisions. In addition, the bill was opposed by the Massachusetts League of Cities and Towns, the Massachusetts Selectmen's Association, the Associated Industries of Massachusetts, the Massachusetts Homebuilders Association and numerous other powerful political groups. Without the support of the administration, and in view of the strength of the opposition, it was certain that the Hatch/Ames ALI bill would be defeated again.

As a newcomer to state government, this situation was particularly perplexing to me. I had always thought of Massachusetts as one of the forerunners in the land use and environmental movement. The state was a pioneer in developing wetland and coastal protection statutes.<sup>7</sup> The Massachusetts Environmental Policy Act (MEPA) was one of the strongest environmental impact statutes in the country.<sup>8</sup> Massachusetts was also the only state in the nation to have enacted legislation giving state government the power to override local exclusionary zoning actions.<sup>9</sup> In addition, ninety percent of the Commonwealth's cities and towns had already adopted master plans, zoning and subdivision controls. When Senator Saltonstall invited a group of MIT faculty and students to provide

staff support for his land use subcommittee, I thought we were becoming involved in an effort to consolidate state authority over land use decision-making in one of the most environmentally progressive states in the nation. I was soon to learn that the task would not be so clear cut.

As the meetings of the land use subcommittee began to unfold, I found that much of my academic training about land use planning, the ALI Code, and previous attempts to reassert state authority over land use decision-making seemed disconcertingly unsuited to the environmental, socio-economic and institutional conditions which formed the backdrop for Massachusetts' growth management problems. This was not a typical situation in which public policy was to be developed in response to problems defined by some clearly identifiable crisis. The growth crisis of 1972 had quickly evaporated. By 1974 the state was in the throes of an economic recession and a housing slump. In 1974 the number of building permits issued in Massachusetts had dropped to 27,000, or less than half of the number issued two years earlier.<sup>10</sup> In addition, organized citizen and interest group support for public action on the land use issue was in disarray. Everyone seemed to define the state's growth management problems differently. There was little communication among competing interest groups and, as Representative Ames had pointed out, there was no leadership attempting to bring these groups together.

In view of this situation, most of us on the MIT staff of

the land use subcommittee had no definite idea of the type of state actions or legislation which might be appropriate for addressing the diverse land use, growth and development problems facing Massachusetts. Our preconceived notions about the need for and the acceptability of an ALI code type statute had been severely shaken by the hostile reaction to the Hatch/Ames bill and by continuing complaints about the implementation of the state's wetland and anti-snob zoning statutes. Consequently, we followed Senator Saltonstall's lead. We worked to bring together a diverse set of citizens and interest groups to discuss the state's growth management problems, and we listened. Neither task was always easy. At first, Senator Saltonstall had to use his considerable personal influence as one of the state's leading environmentalists and a staunch Republican businessman to get environmentalists, business leaders, developers and state and local officials into the same room together. Once in the same room, discussions among these groups quickly became heated - accusations flew, tempers flared, individuals threatened to walk out - but Senator Saltonstall and mutual concern about growth management issues among the participants held the group together.

After ten months of intense debate, members of the land use subcommittee finally agreed upon a legislative approach for addressing Massachusetts diverse land use and growth management problems. Based on this proposal, the Special Commission on the Effect of Growth submitted legislation to initiate a statewide planning

process in Massachusetts.<sup>11</sup> The legislation was filed in July of 1975. It focused on establishing a process for producing a set of state and local growth policies and priorities which would guide future land use regulatory and public investment decisions at all levels of government. In December of 1975, the Massachusetts legislature adopted the Commission's recommendations and enacted the Massachusetts Growth Policy Development Act.<sup>12</sup>

This statute was the first attempt by any state in the nation to involve a broad spectrum of citizens, interest groups and public officials in the formulation and implementation of a concise set of state growth policies and priorities to guide future public and private development actions. Unlike state land use legislation in Vermont, Florida and Oregon, the Massachusetts Growth Policy Development Act did not increase the state's power to supersede local land use decisions. It did not establish guidelines for protecting critical areas or monitoring developments of regional impact, nor did it mandate local or regional planning. Instead, the legislation created a voluntary, step-by-step participatory process giving citizens, communities and regional planning agencies an opportunity to inform the state of their views about local growth management problems and priorities, and to recommend policies for addressing these issues.

In this context, the Massachusetts Growth Policy Development Act represents a significant departure from the conventional wisdom which had guided the state land use planning movement during the

late sixties and early seventies. In drafting the Growth Policy Act, the Commission rejected the assumption of the American Law Institute, and many other land use analysts, that the primary problems with land use decision-making are local parochialism and self-interest, and the inadequacy of local planning and decision-making procedures.<sup>13</sup> In addition, the Commission rejected the assumption that the best way to improve land use decisions is for state government to take back the power to overrule local land use controls and to establish guidelines for the planning and regulation of development of regional impact and critical environmental areas. The Commission report stated:

It may well be that statewide intervention is appropriate with respect to issues of more than local concern. But a "top-down" approach is not the answer, at least not for Massachusetts. First, we need to strengthen local and regional planning capabilities. Second, we must find ways of enabling development to occur in areas where growth is desired. A land use policy in Massachusetts must give as much attention to promoting new development as to preserving environmental resources. Third, the state must seek direction from localities in deciding upon the best approach to meeting statewide needs and dealing with development issues of more than local concern.<sup>14</sup>

The Commission also recognized that state government, itself, had been a major contributor to the problems of poorly planned growth and development. Its first interim report stated, "At the present time, the state government is engaged in numerous activities that affect land use patterns throughout the Commonwealth....All too often these activities are administered by competing agencies with little or no policy guidance."<sup>15</sup> Consequently, the Commission's

recommendations reflect the assumption that the lack of clearly articulated growth policies, at both the state and local levels, is at least as responsible for current growth and development problems as local planning and land use decision-making procedures. The Growth Policy Development Act was designed to deal with this problem by establishing an intergovernmental planning process which would result in an explicit policy framework to guide development decisions.

The Commission's decision to focus on the formulation of land use policies and priorities marked both a very difficult undertaking and a change from the traditional emphasis of land use reform on regulatory procedures and the distribution of governmental authority. As Godwin and Shepard state:

The necessity for identifying goals and priorities for land use policy is...a major obstacle faced by state governments....Although land use policy at the state level has only begun to attempt the formulation of goals, the development of certain procedures for affecting land use is well advanced. Instruments for implementing land use policy include: the provision and denial of water and sewage services, septic tank controls, the geographically selective setting and enforcement of pollution standards, publicly supported economic development projects; the placement and maintenance of streets, parks, schools, and parking facilities; state and local revenue policies; as well as the more traditional functions of zoning, formulating and enforcing building code ordinances, subdivision controls and annexation. As the partial inventory of land use instruments indicates, the development of land use policy raises substantial procedural difficulties in the (horizontal) coordination of policy between agencies of government and in the (vertical) coordination of policy among levels of government. Problems of coordination,



the division and sharing of responsibilities, and the delegation of power among states, counties and municipalities are particularly acute in the area of land use.<sup>16</sup>

The intergovernmental planning process embodied in the Massachusetts Growth Policy Development Act proposed to deal with these problems by reordering the sequence of events through which state land use and growth policies are developed. That is, instead of relying on the state planning agency to conduct a series of technical studies and evaluations of functional agency plans to develop general policies, which are then imposed from the "top-down" on other agencies and local governments, the Massachusetts state planning process attempted to derive growth policies from the "bottom-up" (i.e. from locally developed evaluations of the impact of state and local programs and trends on planning and development decisions). The bottom-up process was designed to link state growth policies to immediate local priorities and concerns, and to focus the state's planning and policy development efforts on current land use problems so that the policies would have an immediate impact on actual land use decision-making. As the Commissioner's report stated :

The development of a statewide growth management and land use policy is a matter of urgent public concern. It is imperative that such a policy reflect the problems of managing growth at the local and regional levels in Massachusetts and it is essential that public and private development and conservation preferences be reflected in such a state growth policy.<sup>17</sup>

My participation in the deliberations of the land use subcommittee and my involvement in the passage of the Growth Policy

Development Act convinced me that involving localities in the formulation of a set of statewide growth policies presented significant opportunities for improving land use decision-making in Massachusetts. Initially, the discussions of the land use subcommittee led me to question the applicability of the standard assumptions of the state land use planning movement to the growth management situation in the Commonwealth. For example, one of the primary assumptions of the state land use planning movement was that the major problem in land use decision-making was the inability of localities to plan for and regulate the use of land, and the unwillingness of local governments to take statewide and regional considerations into account in their land use decisions. State planning advocates also argued that in order to resolve these problems, it would be necessary for state government to reassert its authority to override local land use decisions. In Massachusetts, however, local governments had a long history of utilizing master plans, zoning and subdivision controls. In addition, the state's wetland protection statutes and the anti-snob zoning act gave state government ample authority to force communities to consider the regional environmental and social impacts of local land use decisions. In short, in Massachusetts it seemed that state and local government already had sufficient power and authority to influence land use decisions. Complaints from participants in the land use subcommittee meetings about local planning and regulatory practices and about the impact of the state's use

of its override authority indicated that the major problem was not lack of sufficient authority, but the lack of capacity to utilize existing land use authority effectively and the absence of the political will to utilize this authority in a concerted fashion. Consequently, I felt that the formulation of an explicit policy framework to guide the utilization of existing land use authority could significantly help to resolve Massachusetts' growth management problems.

The discussions of the land use subcommittee also indicated that one of the major problems with the state's existing growth management system was that different levels of government and various interest groups defined the state's land use problems differently. These alternative definitions were based on competing values, assumptions and technical data. These contradictory values, assumptions and alternative land use problem definitions all resulted in decisions which often seemed to respond more to past growth trends than to existing socio-economic and environmental conditions. For example, in 1972, when rapid suburban growth and housing construction in Massachusetts were at peak levels, only one community had adopted a moratorium on residential construction. By 1974, when residential construction was declining because of a nationwide recession, over thirty communities had enacted building moratoria,<sup>18</sup> and numerous other communities were considering similar actions. These activities were a response to past rather than current growth trends. Similarly, the

"construction grant" policies of the Massachusetts Division of Water Pollution Control lagged behind existing growth trends and seemed to exacerbate local growth problems by giving priority to the funding of sewer line extensions in undeveloped outlying areas rather than focusing on upgrading wastewater treatment capacity in areas that had already witnessed rapid growth. Consequently, I felt that one of the initial steps in getting localities and state government to address growth management problems more effectively would be to increase understanding of the underlying values and assumptions which were guiding both alternative growth management problem definitions and specific land use decisions.

Given this perspective, I began to view the policy formulation activities initiated by the Growth Policy Development Act as a process of "public learning".<sup>19</sup> I felt that if we could bring state and local officials together with representatives of competing interest groups to explicitly examine alternative definitions of land use problems, the underlying values and assumptions upon which these definitions were based, and the consequences of past growth management decisions, it might be possible to demonstrate the counterproductive results of the existing land use decision-making process. I believed that this type of explicit examination would result in an increased understanding of growth management issues which would change the behavior of individual state and local decision-makers. In addition, I felt that the interpersonal interaction that would take place in this type of policy formulation

process would result in the development of informal communication networks among the major actors in the land use decision-making system. I believed that these informal networks would increase horizontal and vertical communications both within and among levels of government. I also felt that these new communication patterns would provide linkages among decision-makers that would facilitate the transfer of information and subsequent changes in decision-making behavior (i.e. learning) throughout the entire growth management system. In short, when the Growth Policy Development Act was adopted, I viewed the statute as an attempt to initiate a process of public learning. I felt that increased understanding of land use problems and strengthening the intergovernmental decision-making networks through an explicit policy formulation process would significantly change state and local growth management decisions.

Finally, I also believed that in order to translate this type of learning into effective public action it would be necessary to develop a political constituency to support implementation of the policy framework. It seemed to me that one of the major differences between the failure of the Hatch/Ames bill and the passage of the Growth Policy Development Act was that Senator Saltonstall had used the land use subcommittee to foster early involvement of competing interest groups in the legislative drafting process. He had also consciously used the land use subcommittee as a forum to develop a political constituency to support the Growth Policy Act.

The development of the Hatch/Ames bill had included no such participation and no constituency building activities. I felt that these lessons were equally applicable to the formulation and implementation of a set of state growth policies. I believed that if localities and competing interest groups were involved early in the formulation of the state's growth policies that the resulting policies would reflect the priorities of these groups and that this type of involvement would help to create a constituency to support policy implementation.

This rough set of assumptions served as a basis for my thinking as I worked to implement the Massachusetts Growth Policy Development Act throughout most of 1976. When I assumed the position of research director for the Commission in June of 1976, however, I was once again forced to reconsider my assumptions. My new position led to an increased involvement with the Massachusetts Office of State Planning (OSP), numerous legislators and a broader spectrum of state and local officials. As a result of this involvement, I was consistently confronted with information that was inadequately explained by my public learning and constituency building perspectives.

The Office of State Planning (which had been created by newly elected Governor Michael S. Dukakis to deal with the state's land use problems) had an extremely practical political orientation. OSP had been given responsibility for implementation of the Growth Policy Development Act, and its staff had their own specific ideas

about how the statute could be utilized in their efforts to improve land use decision-making. OSP contended that the actions of state and local land use decision-makers would not change as the result of some esoteric concept of public learning. The OSP staff maintained that while public learning might be necessary, it was not sufficient to guarantee the formulation and implementation of a set of state growth policies. They argued that decision-makers change their behavior either because they are forced to do so by some higher authority (i.e., through coercion) or because significant incentives are offered that make it desirable to undertake new forms of action. In addition, the OSP staff contended that it was difficult to build a political constituency for a general set of state growth policies. They countered that political constituencies were built through involving people in specific project and programmatic decisions. Therefore, OSP advocated developing coalitions to solve specific problems, and then utilizing various groups from these specific coalitions to build a constituency for a more general policy framework. OSP allocated its staff resources, designed new institutional mechanisms and developed activities for the implementation of the Growth Policy Development Act in the context of this practical political orientation. OSP's style and approach of management transformed implementation of the Growth Policy Development Act from a simple participatory process for the formulation of a set of state growth policies into a complex set of interactions involving simultaneous

policy development, program review, and intervention into specific project and programmatic decisions. Many of the actions undertaken by OSP, in terms of project review and intervention activities, became as central to the Massachusetts Growth Policy Process\* as the original Growth Policy Development Act.

As the growth policy process progressed, my responsibilities for the Commission increasingly involved dealing with private interest groups and state and local officials to resolve specific growth management problems. These interactions usually involved the generation and analysis of information relating to a specific policy proposal, program or regulatory decision. We would then develop action strategies to deal with the specific problem, and later use the results of specific decisions to inform our development of the state growth policy framework. In addition, I found that many of my own, and OSP's, activities involved not only the application of existing authority (i.e. coercion) or the use of incentives, but often involved considerable negotiation, bargaining and compromise to develop acceptable strategies for dealing with particular problems or policy issues. Finally, these activities convinced me that the most effective way to develop a political constituency for a set of statewide policies was both

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\*Consequently, when the term Growth Policy Process is used throughout this dissertation, it refers both to the implementation of the Growth Policy Development Act and to the numerous activities undertaken by OSP, localities and regional planning agencies in relationship to the statute.



through the early involvement of diverse interests in the policy formulation process and through linking together coalitions which had formed around specific project and programmatic actions. Thus, I began to reformulate my assumptions about public learning and general constituency building to emphasize three similar but slightly different concepts. My assumptions about public learning shifted toward an emphasis upon developing state and local planning and decision-making capacity. The capacity building concept involved generating information to define problems, developing specific action strategies in response to this information, and utilizing or creating incentives or authority to carry out these action strategies. Second, my belief that political constituencies would develop simply as a result of citizen involvement in a participatory process were expanded to include consideration of the need to build political constituencies by linking together coalitions which form to influence specific project or programmatic decisions. Finally, I became convinced that increasing planning and decision-making capacity, building political constituencies, formulating growth policies and dealing with specific land use problems all involved initiating negotiations which would encourage competing interest groups to examine their different positions and to work out compromises before problems and differences in viewpoints became irreconcilable conflicts. That is, I began to feel that creating settings for informal resolution of land use and growth management conflicts was as important

as creating a policy framework, developing political constituencies or reallocating governmental authority in increasing the efficiency and equity of land use decision-making.

The purpose of this chapter is to trace the shifts in my thinking about these concepts through a careful examination of the Massachusetts Growth Policy Process. The chapter begins with an analysis of Massachusetts' socio-economic trends and state and local planning capabilities during the early 1970's. It presents a detailed legislative history of the passage and implementation of the Growth Policy Development Act. The chapter, then, analyzes the activities and functions of the Office of State Planning, and describes the interrelationships between the actions of OSP, the Commission and localities in the implementation of the growth policy statute. Finally, the chapter concludes with a discussion of the manner in which all of these activities have influenced my own personal assumptions about the key issues in increasing the efficiency and equity of land use decision-making.

## II. The Massachusetts Context

### A. Demographic and Socio-Economic Conditions

As of 1977, demographic and economic conditions in Massachusetts reflected an almost contradictory combination of growth and decline. In 1970, Massachusetts was the second most densely populated state in the nation, with approximately 730 people per square mile, or over twelve times the national average of 60 persons per square mile.<sup>20</sup> Between 1960 and 1970, the rate of population growth in Massachusetts (10.5%) was slightly below the national average (13.3%); and considerably below that of the nation's most rapidly growing states, which increased between 20 and 30 percent during the same period.<sup>21</sup> Between 1970 and 1974 the trend of below-average population growth became even more pronounced as Massachusetts grew by only 1.9 percent while the rest of the nation grew at more than twice that rate.<sup>22</sup>

The percentages, however, are a bit misleading. While Massachusetts was not encountering significant growth rates between 1960 and 1970, the Commonwealth's actual population increased by 540,000 people. Only twelve other states in the nation added more people during that period.<sup>23</sup> Between 1970 and 1974, another 100,000 people were added, bringing the state's population to 5,789,478.<sup>24</sup>

This situation was complicated further by the regional distribution of additional population growth. Almost 90 percent of Massachusetts' citizens live in the eastern one-half of the state. Intrastate densities range from over 20,000 people per square mile in some parts of the Boston metropolitan area to less than 50 people

per square mile in rural western communities.<sup>25</sup> The state's population continues to become more suburban and exurban. During the 1960's nine of the state's fourteen central cities registered absolute declines in population. At the same time, suburban populations increased by 24.8 percent and towns outside SMSAs increased by 24.5 percent.<sup>26</sup> This trend continued through the first half of the 1970's, with central cities losing population, suburbs increasing somewhat more slowly than their 1960 rates, and exurban communities increasing more rapidly than they had during the sixties. At the same time, the smallest rural communities have either lost population or remained at their 1960 level.

Between 1951 and 1971 land in urban use increased from 420,000 acres to 780,000 acres, an increase of over 85 percent.<sup>27</sup> During the same period, population increased by only 21 percent.<sup>28</sup> This means that population growth during the past two decades has consumed four times the amount of land per capita as that consumed by previous development. Between 1960 and 1970, land in Eastern Massachusetts was developed at the rate of one-half acre for every additional person. (Prior to World War I, the rate was only one-eighth of an acre per person.) The supply of farmland in Massachusetts has steadily declined from two million acres in 1945 to less than 700,000 acres in 1976. During the 1970's agricultural land has been withdrawn from use at the astounding rate of over 20,000 acres per year.<sup>29</sup>

The loss of agricultural land represents more than just a change in land use patterns. Each year Massachusetts imports over

\$3 billion worth of food.<sup>30</sup> High food costs are just one of the expenses that make the consumer price index in Boston the highest of any mainland city in the United States. Even more significant are high energy and transportation costs which have combined to place the Massachusetts economy in its worst condition in decades. By almost every indication, the pattern of economic growth in the Commonwealth during the 1970's lagged behind that of the rest of the nation. Between 1970 and 1975 the unemployment rate in Massachusetts increased from 4.6 percent to 12.4 percent while the national average increased from 4.9 percent to 8.5 percent.<sup>31</sup> The state's transformation from an industrial to a service-based economy accounts for much of the unemployment. From 1960 to 1971, manufacturing employment in Massachusetts decreased by over 100,000 jobs from 695,000 to 594,300.<sup>32</sup> In the early 1970's the state lost another 59,100 manufacturing jobs, while service jobs increased by nearly 145,000 for the same period.<sup>33</sup> In 1973 over 60 percent of the Commonwealth's jobs were in the service sector. Thus, high unemployment rates in Massachusetts reflect, in part, a mismatch between the skills of the labor force and the needs of new business. Consequently, while other parts of the country have recovered from the effects of the recent recession, structural transformations and high operating costs have caused the Massachusetts economy to respond more slowly.

Just as population trends vary across the Commonwealth, so do economic conditions. Unemployment is highest in all of the state's large cities and in the medium-size centers in the western part of

the state. Increased growth in the service sector is located, predominantly, in the eastern suburban communities. These differences have resulted in the emergence of significantly different priorities in various communities.

#### B. State and Local Planning Capabilities

Population shifts and economic conditions provide only part of the picture. The state has a long history of local self-government and municipal autonomy. This tradition is symbolized by the town meeting form of government, which is over 300 years old in many localities. Unlike other less urbanized states, the entire land area of Massachusetts is included in either incorporated cities or townships. County governments play little or no role.

From a traditional perspective, Massachusetts' communities have relatively sophisticated planning capabilities, particularly when compared to localities in other states. Ninety percent of all Massachusetts' local governments have planning boards and have adopted land use regulations.<sup>34</sup> Over two-thirds of the communities have adopted master plans. In addition, many communities have conservation commissions which regulate wetlands and other critical environmental areas, local housing authorities to develop subsidized housing, historic preservation commissions, Industrial Development Finance Agencies (IDFA) and Economic Development and Industrial Commissions (EDIC) to encourage economic development. Tables 1 and 2 below summarize the local planning institutions in the state and the types of land use regulatory mechanisms that have been adopted.

TABLE 1.<sup>35</sup>Local Planning Institutions in Massachusetts

<u>Mechanism</u>	<u>Number of Communities (State total 351)</u>
Planning Staff	60
Planning Board	347
Conservation Commission	330
Historical Commission	230
Housing Authority	227
Redevelopment Authority	25
Recreation/Park Commission	300
IDFA	101
EDIC	4
Zoning Appeals Board	345
Citizen Advisory Group (non-mandatory)	71

TABLE 2.<sup>36</sup>Types of Land Use Regulations  
Adopted by Massachusetts Localities

<u>Planning &amp; Regulation Activities</u>	<u>Number of Communities (State total 351)</u>
Master/Community Plans	250
Zoning By-Laws	345
Flood Control Zoning	130
Cluster Development Zoning	90
Apartment Zoning	185
Commercial Development Zoning	250
Industrial Development Zoning	302
Subdivision Control Regulations	335
Mobile Home Park Regulations	26
Planned Unit Development Zoning	50
Building Codes	351

The existence of these planning institutions and regulatory mechanisms has resulted in a strong local perception that the control of growth and land use decision-making are primarily a local concern. Consequently, past attempts by state government to influence land use or growth patterns have always been viewed with great skepticism and

resentment.<sup>37</sup> The tradition of local autonomy was further strengthened in 1966 with the adoption of the Massachusetts Home Rule Amendment.<sup>38</sup> The Amendment gives localities the power to act on any matter not expressly preempted by the state constitution or legislative enactments.

The tradition of home rule and the skepticism toward state intervention must be contrasted by another trend in Massachusetts government. The state government has a long history of progressive social reforms and is known as one of the most innovative state legislatures in the nation. In 1971, when The Quiet Revolution in Land Use Control was published, Massachusetts was recognized as one of a select number of states leading the nation in the adoption of innovative statewide land use regulatory mechanisms.<sup>39</sup> The Massachusetts Zoning Appeals Law (1969) was the first attempt by any state legislature to overrule local exclusionary zoning.<sup>40</sup> Massachusetts also pioneered wetland protection legislation with a number of "model" statutes between 1963 and 1972.<sup>41</sup> In 1973, the Massachusetts Environmental Policy Act required review of all projects involving state funds or requiring state approval for potential impact on the environment.<sup>42</sup> In 1974, "An Act Protecting the Land and Water of Martha's Vineyard" established the nation's first regional land use commission with the power to overrule local zoning laws.<sup>43</sup> In addition, the legislature has, in recent years, enacted bills dealing with scenic rivers, scenic mountains, and public utility siting that essentially give the various state agencies power to override specific local decisions.

Numerous state agencies carry out programs that indirectly



shape land use and growth patterns (i.e. transportation investments, air and water quality management, school aid reimbursement formulas, tax policy, etc.). There was, however, little coordination among these programs. There are several explanations for what appears to be a contradiction between local resistance to state interference in land use decision-making and the enactment of various statutes which give the state override power. One view is that since all of these bills provide for substantial local involvement in their administration, they managed to win support in the legislature. The Wetlands Protection Act, for example, is administered by local conservation commissions. Another view is that all of the statutes mentioned (except the Zoning Appeal Law) are aimed at environmental protection which had strong lobbying force behind it in Massachusetts through the early 1970's. Many observers believe that these bills would not pass if introduced now.

The demographic, economic and political forces outlined above characterize the setting in Massachusetts prior to the enactment of the Growth Policy Development Act. In summary, Massachusetts' economic conditions were among the worst in the country. Population growth was stagnant. The state was suffering from comparatively high tax rates and a huge budget deficit. Local planning institutions, state environmental regulations, and traditional local land use controls had been in operation throughout most of the state for almost a decade. As one HUD report pointed out, this was hardly the environment in which the typical state would attempt to

develop a state growth policy.<sup>44</sup> Clearly conditions in Massachusetts differed substantially from the rapid growth facing most states that were reorganizing land use controls and planning institutions.

### III. Legislative History of the Growth Policy Development Act

#### A. The Creation of the Special Commission

In August 1973, the Massachusetts General Court responded to the conditions outlined above by creating the Special Commission on the Effects of Growth Patterns on the Quality of Life in the Commonwealth (Chapter 98 of the resolves of 1973).<sup>45</sup> This commission was given a broad mandate to study a variety of issues, including: demographic and population trends, the preservation of agricultural land and open space, the supply and utilization of the state's land and natural resources, and methods of community, regional and state planning. The legislature adjourned in November 1973. For almost a year, the commission remained relatively inactive.

In 1974 the General Court was deluged with bills dealing with land use, growth, environmental protection, economic development and proposals to reorganize planning responsibilities. Many of these bills were referred to the Special Commission, named the "Wetmore/McKinnon Commission" after its House and Senate chairmen. It quickly became obvious that in order to deal with the scope and variety of problems with which it was charged, the Commission would have to divide and structure its work. In June 1974, the Commission enacted a series of by-laws and created four investigative subcommittees dealing with (1) Growth Policy, (2) Land Use, (3) Demographic Information, and (4) Public Education. Chairmen were appointed for each subcommittee and directed to analyze proposed legislation and undertake activities necessary to prepare reports, recommendations,

and legislative proposals for review by the full Commission. Since the Commission was unfunded, it had to rely on voluntary staff support from a variety of state agencies, interest groups, and educational institutions.

The subcommittees varied in their ability to attract outside staff support and to generate citizen interest. Eventually, the Public Education and Demographic Information Subcommittee dissolved. The Growth Policy Subcommittee held a series of monthly hearings but produced no final report. Only the Land Use Subcommittee was able to maintain sufficient momentum to produce a final report and legislative recommendations.

In a large part, the success of the Land Use Subcommittee resulted from the fact that its chairman, Senator William L. Saltonstall, was able to gather together over fifty representatives of business, industry, labor, environmental organizations, state, regional and local officials, and the academic community to discuss what he termed "land use headaches in Massachusetts." In August 1974, Senator Saltonstall secured firm staff commitments from the Department of Urban Studies and Planning at the Massachusetts Institute of Technology and from the state Department of Community Affairs. With staff assistance, he was able to translate the "headaches" noted at the first two Subcommittee sessions into an agenda of bi-weekly meetings at which specific land use and growth-related issues could be discussed. The diverse membership of the committee and the desire of different interest groups to

present and contrast their views on land use and growth policy issues contributed to an on-going dialogue that finally resulted in legislation.

B. The Initial Meetings of the Land Use Subcommittee

The Subcommittee's work eventually divided into two phases. The first phase, from August 1974 through February 1975, focused on an analysis of the nature and causes of land use and growth management problems confronting the Commonwealth. The second phase, lasting from March through June 1975, focused upon alternative solutions to land use and growth management problems, on analysis of bills previously submitted to the General Court, and the drafting of a new legislative proposal.

During the first phase, the membership of the Subcommittee grew to over one hundred people. The group considered issues such as: the strengths and weaknesses of local land use controls, the role of regional planning agencies and middle-level government in land use decision-making, current statewide land use controls, economic development, agricultural land and open space, and the re-use and revitalization of central city land.

Six major interest groups emerged during these meetings:

(1) environmentalists - who wanted either strong state or regional control over land use and growth policy decisions; (2) promoters of economic development - predominantly business, industrial and labor leaders who felt that existing environmental legislation was partially responsible for the state's economic woes and wanted to

insure that no further restrictions were placed on development opportunities; (3) home rule advocates - who viewed land use and growth policy solely as a local responsibility and did not want the state to preempt their authority; (4) officials from various state agencies - vying for control over land use matters; (5) staff of the regional planning agencies - lobbying for greater authority at the regional level; and (6) advocates of compromise - who were looking for a balance between economic development, environmental preservation, state and local control.

Each group presented its position, questioned others concerning contrasting points of view, and tried to define more carefully the land use and growth management problems facing Massachusetts. In essence, the Subcommittee meetings resulted in the explicit examination of the values and assumptions underlying alternative positions on land use and growth policy issues. At first, each group simply tried to sell its own position. There was not very much listening; the level of trust among group members was low and the level of conflict high. After six months of bi-weekly meetings, perceptions slowly began to change. The level of trust and openness among Subcommittee members began to increase. Different interest groups worked a bit harder to understand the positions of others. With a clearer understanding came the realization that the positions of the various groups were not as irreconcilable as they first had seemed

Home rule advocates, for example, conceded that a variety of state policies and programs already had a substantial influence on

local growth patterns and that policy coordination between local, regional and state governments would be necessary if growth problems were to be resolved more effectively. State officials admitted that many existing state policies might be contradictory and have unanticipated impacts on local growth patterns and conditions. Several state legislators indicated that input from localities would be helpful in evaluating the land use impacts of existing programs and suggesting policy revisions. Economic development advocates confirmed their perception about the need to revise the existing regulatory system. Instead of viewing attempts to formulate new land use policies as another possible deterrent to economic development, however, they began to see how reform efforts might stimulate development and make the permitting and regulatory process more efficient. Environmental advocates were able to document the economic benefits which stem from various environmental protection efforts and agreed that the state needed well planned economic and residential growth which would provide needed jobs and housing while, at the same time, respecting the state's unique and sensitive environmental areas.

### C. Building a Coalition

These changing attitudes led to the creation of a coalition among Subcommittee members, who felt that the state could coordinate existing policies affecting land use and growth management more effectively. They also agreed that any new policies should reflect the direct input of a large number of communities and citizens throughout the

Commonwealth. The members of this coalition were predominantly state legislators, local officials, representatives of homebuilding and manufacturing interests and more moderate environmentalists.

This coalition pinpointed five key problems upon which to focus its legislative efforts. These problems were briefly summarized as follows:

- 1) many localities have not come to grips with the problem of charting development and conservation priorities;
- 2) many localities are facing serious growth management problems (such as inadequate water supply, solid waste disposal problems, traffic congestion, spiraling tax rates, loss of prime agricultural land, etc.), which are beyond what they can handle on their own;
- 3) important but unwanted regional facilities are being boxed out by individual communities which understand the need for such improvements but do not want to shoulder the burden of additional development;
- 4) critical natural resource areas are being threatened by development which individual communities are either unwilling or unable to control. Moreover, the effects of unplanned development in one community are spilling over into neighboring municipalities; and
- 5) state investment programs and regulatory policies have not been sufficiently responsive to local and regional needs and are partly to blame for some of the growth management and land use problems that cities and towns now face.<sup>46</sup>

The coalition decided that it might be appropriate for the state to encourage cities and towns to submit annual planning statements outlining current approaches to development and environmental protection, spelling out the steps that each community intended to



take to address priority needs, and analyzing the impact of state policies on existing growth patterns. These local statements would form the basis for regional and state land use policies. This approach placed as much emphasis on the process of local participation in articulating land use policies as it did on the policies that might emerge. This concept of annual planning statements eventually led to the approach embodied in the Massachusetts Growth Policy Development Act.

Although the coalition which developed these ideas dominated the Land Use Subcommittee, there was still a substantial minority which did not agree with the so-called "bottom-up" approach to the formulation of land use and growth management policies. This group consisted of the representatives of certain state agencies, staunch environmentalists, and many representatives of the regional planning agencies.

A number of state agencies were competing for designation as the state's lead land use agency. They had been actively involved in the land use debate for several years. When confronted with the notion of legislation that would involve citizens and local officials in land use policy making, they argued that growth management problems were well understood and what was needed was not "another study" but administrative action. They condemned the idea of local growth policy statements and substantial citizen involvement as drawing energy away from the things that really needed to be done, i.e., the designation of a lead land use agency and a

mechanism for state or regional review of local land use decisions.

These officials sided with a group of strong environmentalists who argued that the approach suggested by the coalition would not address the state's critical environmental needs. The environmentalists wanted to submit legislation that would require the identification of areas of critical environmental concern and developments of regional impact and that would give regional and state officials the authority to overrule local decisions in such areas. They cited the Martha's Vineyard bill as a model. In addition, the environmentalists accused the coalition of endorsing a weak concept simply because it had a better chance of winning legislative approval. They argued that the critical areas approach would, at least, offer a strong land use bill and would serve as a public education device even if it did not pass. On the other hand, they viewed the bottom-up "process-oriented" approach as a diluted compromise among groups with such divergent interests that it would have no significant impact on land use or growth policies.

Finally, regional planning agencies had long been advocating reform of middle-level government in Massachusetts. The Commonwealth has a weak system of county governments, and thirteen Regional Planning Agencies (RPAs) whose primary purpose is to permit cities and towns to plan jointly and to coordinate the orderly development of their jurisdictions. Regional planning agencies have only advisory powers, somewhat enhanced by their A-95 clearing house role.<sup>47</sup>

Representatives of the regional planning agencies, therefore, joined state officials and environmentalists in advocating land use legislation that would enhance the power of the regional authorities. Regional planning officials also maintained that communities and local citizens did not take advantage of existing participatory opportunities at the regional level and that a statewide participatory process would fail from lack of interest unless strong sanctions were imposed.

Thus, by late February 1975, the Land Use Subcommittee had split into two relatively distinct factions. Each group had its own idea of the land use bill that Massachusetts ought to adopt. The Subcommittee continued to meet as a whole to analyze land use-related bills submitted to the full Commission for review. In addition, each faction began to draft its own legislative proposals.

At this point the impact of the 1974 gubernatorial election became important. On February 27, 1975 the new Governor, Michael S. Dukakis, met with the Wetmore/McKinnon Commission to announce the creation of a new Office of State Planning. The Governor gave this office principal responsibility for land use, growth policy and comprehensive planning for the state. He indicated that he would instruct the new Office of State Planning (OSP) to generate a state master plan. This master plan would be used to guide the allocation of state funds and help to identify appropriate areas for development and preservation. While the newly created OSP was formally a part of the Executive Office of Administration

and Finance, the Governor made its director an ex-officio member of the cabinet, reporting directly to him. In addition, the Governor informed the Commission that he did not see the need for new land use or growth policy legislation. He stated that the Commonwealth already had a number of effective pieces of land use legislation and that the role of OSP would be to coordinate existing state planning activities, prepare the state master plan, and make existing regulatory legislation work. In essence, the Governor's message to the Commission was that he intended to take an administrative approach to the resolution of land use and growth management issues.

To existing state agencies, strong environmentalists and regional planning officials this message indicated that the "turf battles" for the control of land use were over. In addition, the Governor's statement suggested that the possibility of passing a strong regionally-oriented land use bill was extremely low. While the advocates of a "strong land use Bill" continued to work on statewide legislation modeled after the Martha's Vineyard Bill, their strength rapidly dissipated.

On the other hand, the "process-oriented" coalition was less seriously affected by the Governor's message. They maintained that it was one thing to say that a state master plan was needed and quite another to design a process by which such a plan could legitimately be produced. Basically, the coalition disagreed with the Governor's orientation toward a statewide master plan. They were more convinced than ever that it would be possible to demonstrate the need

for a bottom-up participatory planning process. Thus, they continued their efforts to forge an agreement with the advocates of strong regulatory legislation.

The MIT staff outlined a bill which attempted to merge the concept of local annual planning statements with the regulatory concerns of the "strong bill" coalition. Then, a series of formal and informal meetings were scheduled to discuss alternative legislative approaches. These meetings were aimed at reaching a compromise between the "process-oriented" and "strong bill" coalitions.

#### D. The First Draft of the Growth Policy Legislation

Each group met separately to draft its own version of compromise legislation. The "process-oriented" coalition produced a first draft of their Bill entitled: AN ACT RELATING TO LOCAL AND REGIONAL PARTICIPATION IN THE FORMULATION OF A GROWTH MANAGEMENT AND LAND USE POLICY FOR THE COMMONWEALTH.<sup>48</sup> It was built on the idea of annual local planning statements but had evolved into a proposed two-year process that would allow cities, towns and regional planning agencies to participate in the effort to formulate a state growth management and land use policy.

The Bill called for each of the 351 cities and towns in Massachusetts to prepare a Statement of Growth Management Problems and Priorities. These statements would identify specific developments with regional impacts and local areas of critical planning concern.

Localities would be encouraged to comment on the ways in which land-use related activities of state agencies could be coordinated more effectively. Finally, communities would be asked to describe ways of minimizing the time and cost involved in obtaining the permits and licenses needed to proceed with development.

A municipality would be free not to supply this Statement, but communities that did comply would receive first priority in the allocation of federal aids to planning, such as HUD 701 funds and other grants administered by the state government. Failure to comply would also result in unfavorable state and area-wide A-95 reviews for most subsequent federal grant applications.

Regional planning agencies would be asked to review local Statements and prepare composite Regional Reports describing regional growth management problems and priorities. These Reports would also identify developments of regional impact and areas of critical concern from a regional point of view.

Within eighteen months of enactment of the Bill, a specially designated state agency would prepare a Summary Report containing a review of the most pressing local and regional growth management problems and priorities. This Summary report would also include guidelines and standards for designating areas of critical planning concern and developments of regional impact, as well as strategies for more effective coordination of the land use-related activities of state agencies.

Based on the local Statements and Regional Reports, the

designated state agency would summarize recommended growth policies reflecting both local and regional preferences as well as state-wide concerns.

The Report of the designated state agency would be submitted to a temporary Commission composed of three members of the House of Representatives, three members of the Senate, and four secretaries designated by the Governor. Within twenty-four months of the effective date of the Act, the Commission would submit Growth Management and Land Use Policy legislation to the General Court. This legislation would be based on the Summary Report of the designated state agency and on the Commission's review of the material submitted by communities and regional planning agencies.

This Act was designed to ensure that localities and regional planning agencies were fully involved in the formulation of state-wide growth management and land use policies. It would also guarantee that the criteria for defining developments of more than local impact and areas of critical planning concern reflected local and regional preferences. The Act would encourage extensive public participation in the setting of development and conservation priorities. The preparation of local Statements and Regional reports would help to eliminate some of the obstacles and delays hindering development in areas in which residents desired additional growth.

The Act called for the expenditure of no more than \$20,000 a year for two years. These funds would cover the costs of

providing for local and regional participation. The Bill sought to ensure that a state-wide growth management and land use policy would be formulated from the "bottom-up", but that strong legislation protecting critical environmental resources, encouraging economic development where it is most desirable and pulling together fragmented state planning and management activities, would be forthcoming within twenty-four months.

The process-oriented coalition considered this bill to be a compromise because it contained a strong orientation toward areas of critical planning concern and developments of regional impact. In addition, it contained sanctions against communities which did not prepare local planning statements.

#### E. A Split in the Subcommittee is Resolved

The "strong Bill" coalition also prepared its own outline of compromise legislation. This draft called for a new system of regional councils with strong planning and regulatory powers. Regional land use commissions would be responsible for the development of regional plans according to state guidelines. These regional plans would be certified by the state. The regional commissions would be given the power to designate areas of critical concern and to establish guidelines for local decisions in these areas. Each regional commission and its land use planning and regulatory process would have to be approved by a regional referendum. If the regions did not establish such a system within five years, the state would set up a regional commission.



On April 16, 1975 the two groups met as a special drafting committee to hammer out final legislation to present to the entire Subcommittee on April 24th. The atmosphere of the meeting was tense. The "strong Bill" proponents attempted to convince the Subcommittee's leadership that the only solution to the state's land use dilemma was a total revision of the lines of authority in the existing regulatory system. The land use and growth management dilemma was clearly defined as the inability of local governments to deal with land use decisions having greater than local impact. The policy solution was equally clear: state or regional override of local land use decisions.

In essence, the "strong Bill" coalition had taken the position that regionalization of a centralized ALI land use regulatory system was the least they would accept. In fact, this was only a small concession, since discussions of this type had received considerable attention during the previous legislative session.<sup>49</sup>

The "process-oriented" coalition felt that it had made considerable concessions by placing substantial emphasis on areas of critical planning concern, developments of regional impact and sanctions against communities which did not comply. The meeting was nearing conclusion when the "process-oriented" coalition offered its final argument:

Social, environmental, economic and political conditions in the Commonwealth are changing rapidly. In the past, most of our legislation dealing with land use and growth policy on a state-wide basis has dealt with environmental problems (i.e., wetlands,

scenic roads, rivers, sensitive coastal and mountain areas, etc.). Now we are faced with a situation in which economic decline is clearly the most highly perceived issue in the state. If we are to prevent environmental legislation from becoming the scapegoat for our economic problems, we must attempt to design legislation that will work towards balancing the needs for economic development and the needs for environmental protection. That is, we must encourage economic growth in areas in which it is appropriate and where people want it. At the same time we must protect those areas which are most sensitive environmentally. Only a process that involves a large number of people from all levels of government will be able to formulate such policies and carry out their implementation. In the past few years, we have begun to see land use legislation in Vermont and Colorado come apart. The problems in these programs are largely due to the fact that economic and political conditions have changed; and there is no longer a viable state-wide coalition to support implementation efforts. A "bottom-up" policy formulation process will do at least two things. First, it will lay the groundwork for developing a state-wide coalition for implementing any recommendations which may stem from the process. Second, it will create a local network which will allow the state government to respond to rapidly changing conditions and problem definitions. Local groups, for the first time, will be given a formal mechanism for assessing their changing needs and priorities and informing state and local government of alternative policy solutions which may better address their needs.<sup>50</sup>

The drafting committee decided to present the bottom-up, process oriented bill to the full land use Subcommittee for consideration. During the week between April 16 and April 24, 1975, an event occurred that would later prove to be one of the most significant factors in the passage of the Massachusetts Growth Policy Development Act. Governor Dukakis appointed Mr. Frank Keefe as permanent director of the Office of State Planning (OSP). This appointment marked the virtual dissolution of the "strong Bill" coalition, since several of its members had been actively pursuing control of the newly created OSP.

On April 24th Keefe met briefly with the Land Use Subcommittee. He expressed concern about coordinating state policies which affect growth, streamlining regulatory procedures which impede economic development, and focusing on strategies for revitalization of urban centers. Keefe reiterated the Governor's position that new land use and growth policy legislation was not necessary and that policy coordination and growth management issues could be handled administratively. He did, however, promise to review the Subcommittee's draft legislation and committed himself to working with the Subcommittee.

On April 27th the leadership of the Wetmore/McKinnon Commission met to consider the revised draft of the legislation. This meeting consisted of the chairmen of the Commission's various Subcommittees, and Representative Wetmore and Senator McKinnon. The Commission leadership was extremely interested in the legislation and decided to have Frank Keefe review it, particularly in terms of its consistency with the goals of OSP.

During the next three weeks, the staff of the Land Use Subcommittee continued to revise the draft legislation in response to written comments from Subcommittee members and various interest groups. In addition, the staff met intensively with Keefe and his staff in an attempt to convince the Office of State Planning of the validity of the "bottom up" approach.

At first Keefe reiterated the Governor's position: "No new legislation was needed, integration and coordination of state and

local policies and planning could be handled administratively." The Land Use Subcommittee staff took the position that a joint legislative-administrative approach to the formulation of land use and growth management policies would be more effective than separate efforts by either group. They pressed all of the arguments that had originally been used to support legislation in the Land Use Subcommittee. In addition, they suggested a new argument relating to the organizational objectives of the Office of State Planning. When OSP was established, it was charged with the responsibility of coordinating state policy decisions, evaluating the impacts of existing growth related policies, and recommending policy changes. The staff of the Land Use Subcommittee argued that if OSP was to succeed in its policy coordination efforts, it would need a constituency to support its decisions. Other state agencies whose policies OSP would, more than likely, be challenging already had entrenched constituencies to support their policy decisions. If OSP was to succeed in coordinating existing policy, it would need a constituency to back its recommendations. Since many state policies seemed to have contradictory or negative impacts on localities, there was no more appropriate constituency for OSP than the localities themselves. Through the "bottom up" growth policy formulation process, localities could express their needs and concerns and provide support for potential OSP recommendations to change existing policy.

In response to these arguments Keefe began to change his

position. The idea of a joint legislative-administrative endeavor seemed to appeal to him. The possibility of creating a state-wide coalition for planning and coordination between local, regional and state policy also seemed to be well within the mandate of his office. Keefe subsequently convinced the Governor that a state master plan, in the form of a map, would be virtually impossible to produce and was less important than a comprehensive planning process. In addition, he took the position that the Subcommittee's legislation would tend to attract public attention and eventually increase public understanding of growth and development issues much more successfully than administrative efforts alone.

F. Governor Dukakis Lends His Support

On May 22nd Keefe met with the leadership of the Wetmore/McKinnon Commission and indicated support for a joint legislative-administrative approach to the formulation of growth and development policies for the Commonwealth. He requested two weeks to complete his review of the draft Bill and to make recommendations to the Governor.

In early June, Keefe sent a memorandum to the Governor detailing his thoughts on why the administration should support the "bottom up" legislation. Keefe's arguments in support of the legislation were:

- a) The Commission and its Land Use Subcommittee have worked long and hard on this legislation and believe that a "bottom up" participatory approach is essential to the credibility and acceptability of any state-initiated ("top down") growth policy and management program.

- b) It is the view of the Commission that all of this work will go for naught if the support of the Governor through the Office of State Planning does not emerge.
- c) The local and regional participation necessary for the proper functioning of OSP's planning efforts could be enhanced and extended substantially by the enactment of special legislation which formally encourages such participation.
- d) The legislation, if passed, would put the General Court on record as concerned about the reconciliation of economic development and environmental protection as well as in the position of collaborators in the effort to improve the state's policies and programs for growth management.
- e) The legislation is laudable insofar as it extends to the 351 communities and 13 regions the opportunity to participate in the development of growth policy and program evaluation at the state level. As such, it would serve the purpose of providing an effective response to any possible complaint that people at the local level were not involved in the process.<sup>51</sup>

Keefe made his support contingent upon Commission approval of the following revisions:

- 1) Remove all sanctions for communities that either choose not to take advantage of the opportunity to participate in the process or fail to comply with the schedule for completing the statement on growth problems and priorities.
- 2) Delete the requirement that the end result of the deliberations of the Office of State Planning and the Special Commission would be "growth management and land use policy legislation." It would be better if the submission of legislation were simply an option and not a requirement.
- 3) Adjust the proposed time frames so that the local statements would be prepared in three months, the regional reviews in one month, and the state's review by OSP (with summary and recommendations) within two months. This would not only convey a needed sense of urgency but conform better with the work schedule of the Office of State Planning, making

this legislatively-provided participatory process supportive of the state's administrative leadership in improving growth management. (This was a drastic reduction of the Bill's time-table from two years to approximately six months).

- 4) Drop all mention of small grants from the state to communities to finance the preparation of the local Statements. Instead, mention should be made of the opportunities for free technical assistance from the regional planning agencies and the Division of Local Assistance in the Executive Office of Communities and Development.
- 5) Replace the provision for endorsement of all local Statements by town meeting with a requirement that Boards of Selectmen be given an opportunity to submit a formal review and comment on the local Statements.
- 6) Insert a preamble to the legislation which describes the economic, environmental and social issues and concerns of poorly planned and mismanaged growth and development. <sup>52</sup>

On June 18th, Mr. Keefe, Representative Wetmore, Senator McKinnon and Senator Saltonstall met with Governor Dukakis to discuss the legislation and OSP's proposed revisions. At this meeting, the Governor endorsed the legislation, contingent upon the revisions suggested by OSP.

The June 25th meeting of the Land Use Subcommittee considered a revised draft of the legislation prepared by OSP. This draft included all of OSP's proposed revisions. The Subcommittee reviewed the draft and suggested a number of changes. The most important change was the extension of the time schedule to at least eleven months (one month for the formation of committees, four months for the preparation of local Statements, three months for regional reports, one month for preparation of the OSP report

and two months for the Commission report). Considerable concern was expressed over compressing the schedule even this drastically. The Subcommittee decided to send the modified OSP draft of the Bill to the full Wetmore/McKinnon Commission for approval.

On July 2nd, the Wetmore/McKinnon Commission met and approved the June 25th draft of the legislation. On July 21st, the Commission filed this legislation along with its first interim report. The Bill was entitled, "An Act Providing for the Formulation of a Massachusetts Growth and Development Policy." It was given House Number 6473 and sent to the Joint Committee on Commerce and Labor. The Bill was sent to Commerce and Labor because the Commission leadership wanted to emphasize its concern with balancing economic development and environmental protection. The legislation was not viewed as solely an environmental Bill.

#### G. The Legislative Hearing

The Committee on Commerce and Labor scheduled a public hearing on the Bill for September 10, 1975. Between late July and early September, various Commission members and the Land Use Subcommittee staff continued to meet with a variety of citizens and interest groups, including representatives of the Massachusetts Homebuilders Association, Associated Industries of Massachusetts, the First National Bank of Boston, the Boston and Massachusetts Chambers of Commerce, Boston Edison, Massachusetts Shopping Center Developers, Jobs for Massachusetts, Massachusetts AFL-CIO, the Association of General Contractors, the Massachusetts Forest and Park Association,



the Conservation Law Foundation, Audubon Society, Sierra Club, Massachusetts Association of Conservation Commissions, the Massachusetts Selectmen's Association, the League of Cities and Towns, the Massachusetts Association of Planning Board Directors, directors of the regional planning agencies, and others. By September, the Commission and its staff had mustered considerable support for the Bill and had an excellent idea of the revisions that would be suggested in the hearing.

At the hearing, numerous legislators, state, regional and local officials, representatives of economic and environmental interest groups and private citizens testified. All testified in favor except the Massachusetts Selectmen's Association, which opposed the Bill in the form presented. They suggested that the local growth policy committees should be appointed by the Board of Selectmen rather than by the Town Moderator; that there should be a local review and hearings on the regional reports before their submission to the Office of State Planning; and that the final local growth policy Statement should be subject to the approval of the Board of Selectmen.

In general, testimony at the hearing focused on the schedule. Almost everyone argued that the existing timetable was too short and that local committees would need at least six months to complete their part of the process. Several business groups argued that the preamble of the Bill was too negative and should be re-drafted to emphasize the benefits that would stem from the

formulation of state growth and development policies. Finally, several groups were concerned that the local growth policy committees would duplicate the efforts of local planning boards; others argued that there was no need to create a new Massachusetts Growth Policy Commission to perform the functions that could be handled by the existing Wetmore/McKinnon Commission.

As a result of the hearing, a drafting committee composed of the staff and leadership of both the Wetmore/McKinnon Commission and the Committee on Commerce and Labor met several times to redraft the Bill. The final redraft included all of the substantive changes recommended at the hearing.

As a result of these revisions, a final draft of the Bill was agreed upon, given Senate number S2087, and sent to the Senate Ways and Means Committee. This Bill essentially asked each city and town to establish a Local Growth Policy Committee consisting of the Mayor, City Manager or Chairman of the Board of Selectmen, the Chairmen of the community's Planning Board, Conservation Commission, Housing Authority, Redevelopment Authority and Health Department, the city or town Planner and at least five citizens representative of disparate social, economic and environmental interests. This committee was asked to prepare a statement of local growth management problems and priorities in response to a questionnaire from the Office of State Planning. The Committee would be required to subject its statement to community-wide review and debate and to hold at least two public hearings.

Any citizen or group desiring to submit comments agreeing or disagreeing with the statement would be empowered to do so and these comments would have to be appended as part of the local report. Within six months of the effective date of the Act, the local Statements were to be sent to the Office of State Planning, the appropriate regional planning agency, and adjoining municipalities.

Then regional planning agencies would be required to prepare a regional report summarizing the local Statements, highlighting conflicts and similarities among the local Statements, and identifying regional growth management problems and priorities. This report would be submitted to member municipalities for review and a public hearing on the report would be held. After the public hearing, the report would be revised and finally submitted to the Office of State Planning, the Special Legislative Commission and municipalities in the region. The regional reports were to be prepared within two months of receipt of the local reports.

The Bill spelled out specific guidelines to be used by the Office of State Planning in developing the questionnaire which would serve as the basis for the local Statements. In addition, it contained a list of issue areas to be emphasized in OSP's development of guidelines for the regional reports. The Bill also required OSP to analyze all of the local Statements and regional reports and to prepare a report to the Special Commission on Growth Patterns. This report would summarize the

responses contained in the local and regional Statements and recommend policies and administrative actions in response to local and regional recommendations and perceived state-wide needs.

Finally, the Special Commission would review the local, regional and state reports and all citizen comments. From this material, the Commission would prepare a report for submission to the General Court and the Governor, including both legislative and administrative recommendations reflecting, to the maximum extent feasible, the responses of the local, regional and state reports. The bill specified that the Commission report should include but not be limited to discussion of the following five areas:

- a) Standards and new approaches to guiding growth and development into areas where it is most desired;
- b) Criteria for identifying areas of critical planning concern and development of regional impact;
- c) Approaches to minimizing the time and costs of obtaining permits and complying with all necessary procedures to initiate new development;
- d) Strategies for coordinating the activities involved in allocating state and federal funds for economic development, capital improvements, open space acquisition, etc.;
- e) Other policy recommendations responsive to local and regional concerns. 53

This final draft of the Bill attempted to make it clear that the process was not calling for massive data collection or elaborate

technical studies. It emphasized that the process was aimed at documenting local attitudes and priorities and not at collecting lots of new information.

#### H. The Legislation Is Enacted

S2087 consisted essentially of the basic components outlined above when it came before the Senate Committee on Ways and Means. Due to the efforts of Senators Saltonstall and McKinnon, the Bill moved quickly through Senate Ways and Means and on to consideration by the full Senate. On the Senate floor the Bill received rather routine consideration. On October 14, 1975, the Bill passed the Senate and was sent to the House Ways and Means Committee.

Due to a heavy legislative agenda and the late receipt of the Bill, the Growth Policy legislation languished in House Ways and Means for almost two months. During this time, the Commission and its staff activated the growing network of individuals and interest groups that supported the Bill. Senator Saltonstall's Land Use Subcommittee now consisted of over 100 members. In addition, the September public hearing on the legislation had attracted the attention of additional public officials and interest groups throughout the state. The Commission utilized this network to organize a letter writing campaign, encouraging the House Ways and Means Committee to release the bill for consideration by the full House.

Over 300 letters were sent to the chairman and members of

House Ways and Means in support of the Bill. In addition, members of the Growth Policy network contacted their state representatives and asked them to urge the Ways and Means Committee to release the Bill. Eventually the Commission's letter writing and lobbying campaign was successful, and on December 3, 1975, House Ways and Means reported the Bill "favorably" for action by the House.

When the Bill appeared on the House calendar, the "home rule lobby" began to actively organize its opposition. There were rumors that home rule advocates had been partially responsible for the two month delay, and that a small group of legislators was planning a floor fight. When the Bill came up for debate, Representative Demers, a member of the Growth Policy Commission and House Chairman of the Commerce and Labor Committee, moved to postpone consideration until the end of the daily legislative session.

Representatives Demers and Wetmore were taking no chances. The home rule lobby, earlier in the year, had effectively delayed the passage of revisions to the state's zoning enabling Act for over three months. Such a delay at this late date in the 1975 session would kill the Bill. Therefore Wetmore and Demers wanted to be absolutely certain their supporters were lined up before the Bill moved into debate. They spent the rest of the day securing reassurances of support from the leadership and the other Representatives.

At the end of the day, the Bill was debated. Representative

Colo of Athol, a community of 11,000 in the central part of the state, spearheaded the opposition. Colo moved that the Bill be amended by striking the word "shall" from Section 3: "there 'shall' be created in every municipality in the Commonwealth a local growth policy committee" - and replacing it with the word "may". In debate, Colo argued that the Bill would not provide local input into state policy making; but would result in information, generated by communities, being used against them to promote a system of state-wide zoning. He therefore contended that each community should be given the option of participating. Replacing the word "shall" with "may", he argued, would ensure that the process was optional.

Representative Wetmore countered that participation was already optional. He contended that there were no sanctions for nonparticipation and that neither the Office of State Planning nor any other administrative agency could take action against communities which chose not to participate. In addition, Wetmore argued that a number of state policies already had far-reaching effects on growth patterns in every community in the Commonwealth. Furthermore, the administration was beginning to review many of these policies and to formulate comprehensive growth and development plans for the state. Therefore Wetmore contended that the Growth Policy Development Act would ensure that communities and the General Court would have significant input into that policy review. Colo's amendment was defeated

by a vote of 91 to 132. The Bill was ordered to third reading, and further legislative action postponed until December 9th.

When the Bill came up for debate on December 9th, Representative Colo offered repeated amendments. He proposed to add a new section providing that the legislation would only take effect in communities in which the City Council or Board of Selectmen voted to approve participation. He offered an amendment allowing alternative local agencies to carry out the duties of the growth policy committee. Finally, he even offered an amendment providing no person would be required to make presentations or comments in writing to the local growth policy committees.

During debate Colo repeated his earlier arguments: home rule, the threat of state-wide zoning, and the need to let localities decide whether or not they would participate. He warned that the localities were tired of the state telling them what to do and that this Bill was simply the first step toward even greater infringement on local authority.

Representative Wetmore countered by saying:

This legislation is not an attempt to reduce local autonomy. It is an effort to enhance planning capabilities of all levels of government. In the past, much of the land use and growth policy legislation that the General Court has reviewed was based on a predetermined notion that the state government knows precisely what Massachusetts' land use and growth management problems entail. In fact, one of the primary assumptions in previous legislative approaches was that local governments are incapable



of dealing with certain types of problems. In contrast, our Commission decided to ask the people of Massachusetts what they think the most important growth and development issues are. We've asked the citizens to help governmental officials to balance our needs for both economic development and environmental protection. We want future growth and development policies to reflect the needs and concerns of citizens and communities throughout the Commonwealth. This effort to involve local officials and citizens in the preparation and evaluation of state-wide growth and development policies is unparalleled by any state in the nation. Cooperation between the executive and legislative branches in the development of this Bill has been outstanding. If the Bill passes, this cooperation is insured of continuing. State growth and development policies are as much a responsibility of this General Court as of the executive branch. We now have the opportunity to develop coordinated growth policies for the state which will reflect local and regional concerns and have the backing which they need to be effective. For these reasons, I strongly urge passage of the S.2087. It does not infringe on local home rule. Quite the contrary, it seeks to ensure that the cities and towns will have substantial impact on their own and the state's future growth patterns.<sup>54</sup>

All of Representative Colo's amendments were defeated and the Bill was enacted.

On December 22, 1975, Governor Dukakis signed the Massachusetts Growth Policy Development Act into law. At the Bill signing ceremony, Dukakis hailed the legislation as,

The first in the nation to provide cities and towns throughout a state with the opportunity to tell state government what growth and development problems they have had in the past, what sort of future development goals they have for themselves, and most important of all, how state government can best assist them in achieving their development goals. This act provides the opportunity for the legislature, all state agencies, and cities and towns to decide cooperatively what sort of future the Commonwealth will have. This is a tremendous opportunity that, I trust, no one will overlook.<sup>55</sup>

The process of drafting and enacting the Massachusetts Growth Policy Development Act represents an effort to build a constituency for state planning. The process involved a broad spectrum of interest groups in face-to-face bi-weekly meetings which attempted to define and address the state's most pressing land use and growth management problems. As a result of these meetings, the representatives of various interest groups got to know each other on a personal basis, and established interpersonal networks from which a constituency was built. In addition, the land use subcommittee's meetings considered a variety of alternatives for addressing Massachusetts land use problems. The proposed Growth Policy Development Act also was changed on numerous occasions as a result of suggestions from the various interest groups. The constituency which developed in drafting the legislation was able to convince Governor Dukakis to support the bill even though he had previously indicated a preference for dealing with the land use issue administratively. The effectiveness of the constituency developed by the land use subcommittee is illustrated by two events. First, a Massachusetts coastal zone management task force was also advocating new land use legislation to deal with coastal zone problems. Dukakis also had told this group that he deemed new land use legislation unnecessary. Since the CZM group had focused on technical issues and not on developing a political coalition or constituency, they were never able to change the Governor's position

on the need for new CZM legislation. Second, when passage of the Growth Policy Bill was delayed by the House Ways and Means Committee, the coalition, developed by the land use subcommittee, was effective in exerting pressure which resulted in the release of the bill and which was instrumental in building legislative support for passage of the legislation by the House.

The drafting of the Growth Policy Act also illustrates that Massachusetts planners and legislators felt that increased understanding of the values which underlie land use disputes was essential to the development of meaningful state growth policies. Specifically, Massachusetts rejected the approach of attempting to develop a state master plan, from the top down, and instead decided to rely upon localities to help state government in identifying important growth management problems, policies and priorities. This approach illustrates the assumption that land use planning and decision-making must focus on value conflicts and political considerations rather than relying on technical studies to suggest necessary policy guidelines.

Finally, the negotiation procedures utilized by the land use subcommittee in resolving differences over the proposed legislation provided a model for future conflict resolution activities which would occur later in the growth policy process. These informal conflict resolution procedures focused on bringing together key legislators, public officials, interest groups and citizens in face-to-face discussions about specific problems.

The meetings concentrated on helping competing interest groups to understand each other's concerns, identifying potential areas for compromise and developing consensus on mutually agreeable proposals.

#### IV. The Role and Functions of the Office of State Planning

##### A. Mandate and Objectives

In order to fully understand the implementation of the Growth Policy Development Act, it is necessary to examine the role and functions of the Office of State Planning. Governor Dukakis established OSP in February of 1975. The Office's mandate and objectives were spelled out in a May 12, 1975 memorandum from Frank Keefe to the Governor and members of the Cabinet. This memo stated:

There has been a problem in the past with plans produced by one State agency which either duplicate or conflict with the plans of other State agencies. These redundancies and inconsistencies were reflections of two more basic problems. First, proper management of the State's various planning activities was not provided to ensure coordination and coherence to the final plans and recommendations of separate State agencies. And second, a clear sense of direction, from an overall policy perspective, on the critical issues of resource allocation was lacking. No central framework existed through which to identify potential clashes between programs and to select mutually supportive policies for guiding the implementation of State programs and the expenditure of State funds.

In order to address and ultimately to resolve these problems, the Governor has, on the one hand, placed great emphasis on the Cabinet as a central policy making body and, on the other, established the Office of State Planning. The Office, with its Director reporting directly to the Governor and sitting with the Cabinet, will attempt to improve the management and coordination of all planning activities at the State and regional levels and to develop a comprehensive plan for the Commonwealth's growth and development. The general goal of the Office will be the expeditious initiation of a comprehensive planning process in State government, which will serve to integrate the functional plans and programs of each Secretary into a compatible and internally re-enforcing overall program for allocating the State's resources.

The specific responsibility of the Office will be land use planning and policy development, since it is through our decisions on the use of land that we may reconcile the

potentially conflicting demands for better housing, improved transportation, more jobs, and a cleaner environment.

In order to complete these tasks continuing collaboration is essential with a number of cabinet members. In summary, a great deal of close cooperation will be required in the coming months in order to eliminate conflicts, choose trade-offs, arrive at compromises, and mesh our various policies and programs into an acceptable program for urban development and environmental enhancement.<sup>56</sup>

As this memo indicates, the Office of State Planning was created to fulfill two primary objectives. First, OSP was to develop a comprehensive planning process which would provide for the formulation of statewide growth policies, and would translate these policies into administrative and legislative measures necessary for their implementation. Second, OSP was given responsibility for advising the Governor and the Cabinet on immediate growth related decisions and problems. OSP was designed to provide direct staff support to assist the Governor in coordinating state programs and resolving conflicts ranging from policy disputes between state agencies, to conflicts over specific development proposals.

#### B. OPS's Operational Priorities

In order to carry out this mandate, OSP identified nine specific operational priorities which were the key elements of the office's work program. These priorities included:

1. Preparing a comprehensive growth and development policy paper.
2. Developing a coordinated and coherent state planning process.
3. Ensuring public participation in the state planning process.

4. Increasing the effectiveness of the A-95 review system.
5. Coordinating the work of regional planning and service agencies.
6. Reviewing state capital investment proposals for fiscal, employment and land use impacts.
7. Integrating economic development planning with the state's comprehensive planning effort.
8. Recommending measures to reduce the Commonwealth's reliance on property taxes.
9. Developing a simplified comprehensive project review system.

These priorities were detailed in a July 14, 1975 memorandum from Frank Keefe to the Governor. Keefe's discussion of each of OSP's operational priorities are excerpted below:

#### Comprehensive Growth and Development Policy Paper

A preliminary report outlining comprehensive goals, objectives, and policies for the future growth and development of the Commonwealth - from the state's perspective - will be submitted to the Cabinet for consideration. Following its review, revision, and acceptance by the Governor and Cabinet, the set of policies will be amended and expanded (as appropriate) through a broad-based participatory process.

#### A Coordinated and Coherent State Planning Process

Functional planning activities have long been carried on successfully in Massachusetts for transportation, recreation, wastewater treatment, etc. With the establishment of the Office of State Planning, a comprehensive planning process has been initiated in the Commonwealth, the overall purpose of which is to fit the various elements of functional plans and programs into a complementary and consistent strategy for growth, development, and conservation.

#### Public Participation

Crucial to the success of OSP's comprehensive planning efforts over the next year will be the development and implementation of a broad-based participatory process through which the knowledge and opinion of responsible officials at all levels

of government, and of lay persons and interest groups across the Commonwealth are incorporated into the statewide planning process. Not only will the quality of OSP's planning effort be improved as it addresses divergent views and additional information, but the acceptability of its planning products will be enhanced by virtue of the consensus that hopefully will be developed.

### The A-95 Review Process

OSP is utilizing the A-95 Clearinghouse function as a means to develop coherent, integrated criteria for the review of major categories of grant applications.

In general, the A-95 review process can be used much more successfully as a means of influencing the nature and direction of federal grants coming into the Commonwealth. Specific improvements will be proposed to strengthen the A-95 review procedure so that its effectiveness as a tool for encouraging consistency with state plans and policies is enhanced.

### Regionalism

According to a recent count of this Office, there are over 200 multi-jurisdictional districts in the Commonwealth. Together these districts form an irrational patchwork of uncoordinated planning and service activities. Clearly if regional planning is to play a role in the formulation and implementation of the state's growth and development policy, a more coherent regional, institutional framework must supplant the present array of ineffectual, uncoordinated structures.

As part of our comprehensive growth and development policy statement, this Office will examine the current status of regionalism in Massachusetts and propose new directions for regional mechanisms to address inter-municipal problems.

### Capital Investment

A critical instrument in the implementation of the state's growth and development policy is the formulation and review of a capital investment program which is consistent with this policy. Capital investments for infrastructure can substantially affect the location, type, and magnitude of growth and new employment. The Office of State Planning has begun working with the Office of Central Services to develop a method for joint review of the fiscal, employment, land use, and development impacts or proposed capital outlays. In



addition, OSP has begun examining other state capital investments, not traditionally reflected in the Commonwealth's capital outlay budget.

### Comprehensive Economic Development Planning

The Executive Office of Economic Affairs and the Office of State Planning will be working closely together over the next year in the area of statewide economic development planning. An Economic Development Administration Grant provides EOEAA and OSP with a unique opportunity to advance economic development planning by placing it firmly in the context of the state's comprehensive planning effort. The importance of such an approach is evident with recognition of the extent to which diverse functional planning activities implicitly determine the pattern, timing, cost, and benefits of growth and development, particularly economic development, in the Commonwealth.

### Property Tax

It is difficult to discuss any urban problem without confronting the property tax issue. Some of the negative effects of the property tax include: discouraging the maintenance, modernization and production of new housing, undermining the renewal of urban neighborhoods, increasing the cost of rental housing, encouraging industrial and commercial developers to favor suburban over urban locations, and encouraging fiscal zoning. The Office of State Planning will work with the Cabinet to address this issue...and inventory various property tax reform measures.

### The Development of a Simplified, Comprehensive Project Review System

There has been much talk about changing the scope, intent, and administrative procedures of the Massachusetts Environmental Policy Act with a view toward making it a more effective device for protecting the environment, on the one hand, or limiting it as a means of slowing down or stopping development, on the other.

Perhaps, we could begin to look at ways in which the Administration might transform MEPA from a narrow environmental review into a more comprehensive review process which would include serious consideration of economic and community impacts as well. This would make the Commonwealth's law more akin to the National Environmental Policy Act. As such, instead of providing a foundation for conflict and confrontation between environmentalists and everyone else, an integrated, comprehensive review requirement would establish a process whereby

a wide variety of views and values would be weighed, traded-off, and meshed together, resulting in a more efficient and coherent state-level decision making process.

Two alternatives for moving forward with this recommendation present themselves. First, the Massachusetts Environmental Policy Act could be broadened and made more inclusive through amendment. This would take (perhaps considerable) time and effort. The second alternative is to develop an ad hoc administrative procedure (sanctioned by the Governor through an Executive Order) whereby all development proposals subject to any state-level review whatsoever (curb-cut permit, wetlands license, A-95 review, etc.) are forwarded to the state's Clearinghouse in the Office of State Planning immediately upon submission to any agency of state government. The Clearinghouse will then notify all state agencies of the proposal and provide an opportunity for a timely review by all interested officials. On the basis of written comments, a comprehensive evaluation of the project can be completed which, if positive, could be used to hasten the issuance of permits and approvals or, if negative, could stipulate the specific shortcomings of the proposal and all steps that must be taken to receive the necessary authorizations to proceed. <sup>57</sup>

Keefe's description of the OSP work program clearly indicates his view of the office's role. OSP would be involved, simultaneously, in formulating long-range policies, and in making and implementing short-term project and programmatic decisions (i.e. increasing the state's planning and decision-making capabilities). The nine-item work program emphasized coordination of existing state programs, broad-based participation and consensus building on policy formulation and program review, and ad hoc conflict resolution to expedite specific project proposals.

#### C. OSP Staffing, Budget and Organization

The Office of State Planning was funded primarily by federal grants and a small state appropriation. Specifically, OSP received funding from the Department of Housing and Urban Development - '701' Comprehensive

Planning Program, the Economic Development Administration - '302' Economic Development Planning Program, and the Environmental Protection Agency - '208' Wastewater Treatment Planning Program. In addition, the office received several grants from private foundations to fund specific elements of its planning process.

OSP's staff consisted of 31 full-time employees. Twenty-four of the staff members were professionals - planners, lawyers, economists and management, fiscal and community development specialists. Tables 3 and 4 summarize OSP's staffing, and budget for the Growth Policy Process.

Staff duties within OSP were divided along three lines of responsibility: 1) functional responsibilities; 2) regional and local liaison responsibilities; and 3) specific project responsibilities. Functional responsibilities included work related to the three specific planning programs that OSP directed: 1) Growth Policy - '701'; 2) Economic Development - '302'; 3) Wastewater Management '208'. Three working groups, each consisting of approximately 10 people, were given primary responsibility for managing the separate planning processes. In addition, two small working units were responsible for the A-95 review function and for the development of a common demographic and economic data base (i.e. population and employment projections) to be used by all state agencies for planning purposes.

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TABLE 3: OFFICE OF STATE PLANNING: STAFFING

As of: 20 August 1976

<u>Title</u>	<u>Grade</u>	<u>Number</u>	<u>Salary*</u>
Director	30	1	\$26,572
Deputy Director	27	1	20,576
Admin. & Legal Officer	26	1	19,656
Chief Planners	24	3	18,038
Associate Planners	22	6	16,263
Principal Planner	20	1	14,248
Counsel I	19	1	13,813
Senior Planners	18	2	13,049
Assistant Planners	16	2	11,570
Research Analyst	16	1	11,570
Junior Planners	14	5	10,228
Planning Assistant	12	1	8,967
Head Clerks	11	2	8,460
Principal Clerks	9	4	7,618
Senior Clerk	7	1	6,937
TOTAL		31	\$422,000 (approx.)

\*NOTE: In some cases, individual salaries may be slightly higher than those listed, based on "step" increases for each year of State employment (approximately 4% per year).

TABLE 4: ESTIMATED EXPENDITURES FOR THE GROWTH POLICY PROJECT 59

Fiscal Year 1976:\*

Personnel: Direct	\$24,500
Fringe	3,680
Overhead (telephone, etc.)	3,000
Printing (inc. xeroxing)	8,500
Mailing	<u>1,400</u>
TOTAL	\$41,080
Source: State funds	\$ 5,100
H.U.D. "701"	<u>35,980</u>
	\$41,080

Fiscal Year 1977:

Personnel: Direct	\$ 61,500
Fringe	9,200
Overhead (telephone, etc.)	8,500
Printing (inc. xeroxing)	26,500
Mailing	<u>1,800</u>
TOTAL	\$107,500
Source: State funds	\$ 18,100
Rockefeller	
Brothers Fund	25,000
National Science	
Foundation	42,000
H.U.D. "701"	<u>22,400</u>
	\$107,500

\*NOTE: Virtually all of the funds for FY 76 were expended in the latter half of that fiscal year (i.e., January through June, 1976).

The OSP staff was also organized into a regional liaison system. Under this system, eleven staff members were responsible for monitoring major issues within each of the state's thirteen regional planning districts. The purpose of the regional liaison system was to improve communications between the state, regional planning agencies and localities. Each regional liaison served as the contact person for inquiries from a specific community or region. The system was widely publicized so that local and regional officials could relay questions or problems directly to the specific OSP staff member responsible for their region. The staff member would take responsibility for referring inquiries to the appropriate state agency and following up on the response. In addition, the regional liaisons held periodic briefings for Keefe and the Governor about local or regional issues. It became common practice for the regional liaisons to review the major newspapers for communities within their regions on a daily basis, and to frequently contact local officials on issues of state concern. The knowledge of specific local and regional issues gained by these staff members was used by OSP to assess particular projects requiring state approval and to provide a local and regional perspective to state policy discussions.

Finally, 13 of OSP's staff members were responsible for tracking and monitoring major development projects throughout the state. These projects had been targeted for priority by the Governor. The staff members were responsible for maintaining contact with appropriate state, local and federal officials involved in project funding or

permit approvals. In addition, OSP staff members maintained contact with private developers and citizens' groups with an interest in the projects. The project liaisons provided OSP with specific information necessary to expedite or resolve conflicts concerning projects. On very short notice, they could provide the Governor with such detailed information as the specific state employee or federal official that was reviewing a project's funding proposal or permit application, the status of that review and any problems that might be encountered. By the end of 1978, OSP's project review staff was monitoring over 70 priority projects on some 50 different cities and towns.

In summary, OSP's staff consisted of a small set of highly trained professionals. Since the office was funded almost entirely by federal grants, the staff was not accountable to the legislature or any particular executive office and had a high degree of flexibility in responding to the priorities of the Governor. In addition, the division of the staff responsibilities focused upon developing informal networks with local and regional officials (i.e., constituency building) and upon tracking specific projects that were important to the Governor. These staff responsibilities allowed OSP to cut across governmental and agency lines of authority. It also allowed OSP to play the role of mediator in informal attempts to resolve intergovernmental and interagency disputes, and allowed the state planning office to directly link its planning activities to actual local, state and federal decisions on project funding and permit approvals.

#### D. OSP Coordination and Outreach Mechanisms

In addition to its staffing pattern, OSP also created a number of mechanisms to coordinate its activities with other state agencies and to provide local input into its planning process. These mechanisms included: OSP's Citizen Advisory Committee, the State Planning Coordinating Committee, the State - RPA Subcommittee, the Development Cabinet, and the Governor's Regional Economic Development Conferences.

The Citizen Advisory Board (CAB) was created in August of 1975.

OSP described its purpose as follows:

...to assure broad-based participation in the execution and monitoring of the state comprehensive planning process, and to provide OSP with continuing contact and ready access to the technical knowledge represented in the Board's membership. The organization of the CAB is structured along five categorical disciplines, including professional, environment, business, government and citizens advocacy groups.<sup>60</sup>

The CAB consisted of 48 members. The geographic and substantive constituencies represented by the board members are summarized below:

TABLE 5: Constituencies Represented by CAB Members<sup>61</sup>

<u>Substantive</u>		<u>Geographic</u>	
Professional and Technical	9	New England	6
Environmentalists	6	Statewide	25
Government (Federal & Local Officials)	8	Urban	12
Citizen Advocacy Groups	14	Suburban	3
Business	<u>11</u>	Rural	2
	48		<u>48</u>

The CAB was a blue ribbon task force that met to review and comment on OSP activities and documents. It began meeting on a monthly basis,



but later only met periodically. Many of its functions were eventually subsumed by the broader networks of the Growth Policy Process.

The State Planning Coordinating Committee (SPCC) was created by OSP to facilitate coordination between comprehensive and functional planning efforts. It consisted of the program managers for functional planning from each of the state's 10 Executive Offices. The SPCC met quarterly and focused on issues such as the reduction of duplication in functional planning, the multiple use of information, the preparation of a consistent technical data base for planning programs, and the resolution of inter-agency disputes at a sub-cabinet level.<sup>62</sup>

The State-RPA Subcommittee was created to improve coordination and cooperation between OSP and Regional Planning Agencies. Periodic meetings were held between the OSP Director and RPA Directors to discuss regional concerns and to provide regional input on state activities.<sup>63</sup>

The Development Cabinet was created in the summer of 1976. Its primary purpose was to streamline and coordinate the state's economic development efforts. Its members included the Lieutenant Governor and the Cabinet Secretaries of Economic Affairs, Environmental Affairs, Transportation, Communities and Development, and Consumer Affairs, and the Director of State Planning who served as chairman. The group met weekly to consider major economic and growth policy issues, to monitor and expedite key development projects, and to advise the Governor on state programs and projects affecting economic development.

The Development Cabinet considered decisions involving difficult political, economic, or environmental trade-offs, or involving conflicts among state agencies or levels of government. It was designed to provide the Governor with balanced advice on the variety of economic development programs and projects over which state government had control.<sup>64</sup> The group worked to cut red tape, expedite permits, and package funding for significant economic development proposals. Status reports, prepared by OSP's project monitoring staff, were used to identify major problems or delays that the Development Cabinet should review.

Essentially, the Development Cabinet ensured that major projects or decisions were not delayed by months of mid-level state bureaucratic review.<sup>65</sup> In addition, as OSP formulated and refined the state's growth policies, the Development Cabinet became responsible for reviewing programs, projects and specific decisions to ensure consistency with the overall policy framework.

The Governor's Regional Economic Development Conferences were the final mechanism used by OSP to provide citizen input into its planning process. These conferences started as relatively informal local forums (often referred to as the Governor's town meetings). Originally, Dukakis would invite the citizens of a community to an open workshop to discuss local problems and the impact of state actions on these issues. Eventually, these informal meetings grew into Regional Economic Development Conferences. Participation remained open, but the meetings were extended from evening workshops to all-day

sessions with a formal agenda. As an OSP report stated, "The conferences were designed to highlight major development issues, stimulate local economic planning, and build state/local partnerships around a broad agenda of locally defined development objectives."<sup>66</sup> Between 1976 and 1978, 30 such conferences were held.

In preparation for the conferences the OSP regional liaison staff would work with the Executive Office of Economic Affairs, local officials, developers, business and labor leaders to identify local development priorities and issues. Local growth policy statements were used as initial briefing papers to inform the Development Cabinet and the Governor about local priorities. In addition, more detailed briefing papers were prepared with specific recommendations for state actions which would help to resolve local problems and promote local economic development projects. The Development Cabinet and the Governor would review the briefing papers, and attempt to finalize pending state decisions about local projects at their weekly meeting before the conference. The conferences "brought the highest state officials responsible for the conduct of the state role in economic development into direct contact with business and community leaders throughout the state."<sup>67</sup>

Of OSP's five coordination and outreach mechanisms, the Development Cabinet and the Governor's Regional Economic Development Conferences evolved to become the most important. The CAB was a traditional elite citizen advisory board and its activities were

quickly subsumed by the growth policy process. The State Planning Coordinating Committee became extremely involved in technical planning issues such as population, environmental and economic forecasting. Although this group was periodically called upon for technical advice, it did not play a major role in policy formulation. In contrast, the Development Cabinet became the focus of the Administration's policy formulation and implementation activities. The Development Cabinet focused, primarily, on resolving inter-agency disputes. It used face-to-face dialogue between cabinet secretaries to promote informal conflict resolution. Finally, the Governor's Regional Economic Development Conferences served as a mechanism to build local and regional constituencies to both define and support state actions. The conferences helped OSP to pinpoint local economic development project priorities and to identify the key problems in need of resolution. In addition, the conferences brought together key state and local officials to discuss these issues.

#### E. The "Ad Hoc" Nature of OSP's Operations

It is interesting to note that the Office of State Planning had no legal standing. It was created administratively by an executive order. In addition, all of its powers, staff responsibilities and coordination and outreach mechanisms were informal ad hoc arrangements that state agencies and local officials all could have chosen to ignore. The office was actually an arm of the Governor, and its authority stemmed directly from him.

As William Capron states:

(When Dukakis became Governor), he realized that there was no coordinating mechanism to deal with the many issues which cut across agency lines. There was no single place for state agencies, local officials, and the private sector to turn as they encountered problems or wished to undertake new developments. Most important, perhaps, was his strong desire for an office directly responsible to him, to flesh out key policies which he had identified for priority attention and to see that they were implemented. While he used his cabinet throughout his administration toward these ends, he recognized the need for a staff agency to help manage the process of specific policy formulation and implementation in regard to the state's role in economic and urban development.<sup>68</sup>

The fact that OSP was funded primarily through federal grants, and its ad hoc organizational relationships with other state agencies, gave the office the flexibility to carry out the Governor's mandate. Keefe clearly recognized this asset. When the Special Commission on the Effects of Growth was considering filing legislation to formally establish OSP in state statute, Keefe stated:

It would be legislatively and politically difficult to create an agency with the authority and flexibility to develop an overall policy framework for guiding state actions and coordinating state programs and decisions. In short, I'm not sure that it would be legislatively possible to give OSP the power that we have now.<sup>69</sup>

Both during and after his election, Governor Dukakis made clear his intent to make better use of state aid and investments to further the state's economic recovery and to revitalize its urban centers. A key instrument in carrying out that policy was the Office of State Planning.<sup>70</sup>

Keefe's ability to translate the Governor's ideas into policies, programs and action won Dukakis' confidence. Keefe used that

confidence, the Governor's power and eventually the Growth Policy process to reorient state planning in Massachusetts.

As the preceding discussion of the role and functions of the Office of State Planning indicates, Keefe focused on politicizing the planning process. As he stated in a 1978 Boston Globe article:

First of all, successful planning is realistic planning, and realistic planning is the political process. This office is very much involved in the political process that is in winning support for an agenda that is deemed in the public interest...

Public policy. There are people who study it, people who write reports about it....But there have got to be those shakers, those hustlers who are really going to take a broad view of public policy and translate it into action...this office is like that.<sup>71</sup>

Keefe sought to translate policy into action by focusing on constituency building, linking state and local planning to specific project funding and permit approval decisions and attempting to informally resolve conflicts between participants in the growth management decision-making system.

## V. Towards A Growth Policy For Massachusetts

### A. Content and Recommendation

One of OSP's first substantive efforts to reorient state programs and integrate the functional activities of various state agencies was the preparation of a comprehensive growth and development policy paper. By October of 1975, OSP had completed a draft of this paper, and after review by the full Cabinet, it was released to the public. The report was entitled, Towards A Growth Policy For Massachusetts.<sup>72</sup> It was a detailed statement of the Dukakis and Keefe philosophy that the major

growth problems facing Massachusetts were the deterioration of central cities, lack of economic development and unchecked suburban sprawl.

Herr and Lord described the report as follows:

It was a compactly worded elaboration of the Governor's (and OSP's) policies on growth and development, the rationale for them, and a guide to what the state would be doing to implement them. This was not a planner's searching among abstract conceptual alternatives, it was a direct statement of a single non-choiceful set of integrated policies aimed at making better use of investments already made in urban centers, and avoiding suburban sprawl spilling out into rural areas. <sup>73</sup>

The report argued that the major growth trend in Massachusetts over the past 50 years had been dispersal and suburbanization which had in turn created four major problems:

1. The inefficient use of land and increased public and private costs ensuing from that inefficiency (i.e. infrastructure and transportation cost, etc.)
2. Deterioration of older centers where substantial social and fiscal investments have been made.
3. Inequities among households and communities resulting from unequal access to jobs, housing, open space and municipal services.
4. An inadequate level of economic growth and residential development. <sup>74</sup>

The report recognized that state government was at least partially responsible for these costly and inefficient growth patterns. It argued that past state investment and regulatory decisions had been made by independent state agencies with no overall policy direction. Consequently, these decisions often had inconsistent and contradictory growth impacts and had unwittingly encouraged suburban sprawl.

To demonstrate how past state investments had encouraged dispersed development patterns, the report analyzed seven key state programs:

1. School building construction assistance.
2. School transportation reimbursement.
3. Highway construction.
4. Acquisition and development of recreational resources.
5. Wastewater facility construction.
6. Economic development and industrial commission programs.
7. State housing programs.<sup>75</sup>

The analysis of these programs emphasized the following findings:

1. The School Building Assistance Bureau (SBAB) had promoted low density development by recommending new schools on large outlying sites. According to SBAB the ideal school site was a "gently rolling wooded area" with a minimum of 10 acres for an elementary school, 20 acres for a junior high and 30 acres for a high school.
2. School transportation reimbursement formulas were based on mileage, thus, providing an incentive for outlying school locations.
3. More state and federal dollars per capita had been spent on sewerage treatment plants in small towns than in larger municipalities. These treatment plants and their associated connector lines had opened vast new areas to development.
4. State funding for housing for low-income families had been concentrated in urban centers, increasing urban educational and service costs while suburban communities had blocked family housing construction.
5. State funding for the acquisition of parks and recreational lands had been concentrated in outlying areas beyond the reach of most urban residents.



6. Industrial commissions and economic development financing programs had funded the relocation of firms from urban to suburban communities; thus, removing jobs from cities rather than creating new jobs.
7. State and federal transportation investments had increased access to outlying areas, thus encouraging low density suburban sprawl.<sup>76</sup>

The report included a set of specific recommendations to reorient these programs in a manner which would foster reinvestment in the state's existing employment and population centers. These recommendations included:

The revision of school construction funding priorities to give less emphasis to the size and physical characteristics of proposed sites and more emphasis to the site's relationship to existing facilities and population concentrations.

Future school transportation reimbursements should decrease with the distance traveled to encourage the location of schools in existing built-up areas.

Funding for wastewater treatment facilities in outlying areas should be curtailed, and funding for the renovation or enhancement of existing sewer systems expanded.

State funding for the acquisition of recreational lands should give priority to projects which help to revitalize and stabilize urban areas.

Priority should be given to transportation projects which foster economic development in urban centers, the denial of "curb cuts" on limited access roads should be used to discourage strip development and major outlying shopping centers.

New construction of low-income family housing should be emphasized in suburban communities with sound tax bases, little past family housing effort, and good accessibility to jobs. Housing programs should also be used to encourage rehabilitation of existing structures in central areas.

Economic development programs should give priority funding to projects in urban areas.<sup>77</sup>

The report recognized that changes in these programs would affect only a small portion of state investments and that there were numerous other federal, state and local programs which could be reoriented to produce more effective growth and development patterns. The report argued, however, that the first step in such a reorientation process was for state government to recognize past mistakes and "put its own house in order."<sup>78</sup>

Towards this end, OSP recommended that the state adopt a policy of concentrating state investments in existing population and employment centers. The report translated this general policy statement into four goals and six specific development objectives:

Goals:

1. To promote more efficient use of our physical and natural resources.
2. To promote revitalization of urban centers.
3. To promote greater choice and equity among communities.
4. To promote higher levels of economic growth and residential investment.

Objectives:

1. Stabilize the physical condition of residential neighborhoods.
2. Promote wider choice among residential environments.
3. Promote the rehabilitation and adaptive reuse of existing residential, commercial, and industrial buildings.
4. Promote the location of new commerce and industry as close as possible to existing core areas with the infrastructure necessary to support them, and in densities sufficient to make efficient use of that infrastructure and of available land resources.

5. Make Massachusetts' level of unemployment and income comparable with those of other industrial states by promoting the retention and growth of well-paying jobs and upgrading existing employment opportunities.
6. Preserve critical resource areas, enhance the environmental quality and character of the Commonwealth and promote the availability and accessibility of open space and recreation areas.<sup>79</sup>

Towards A Growth Policy For Massachusetts proposed that these goals and objectives be used to evaluate and coordinate all state agency decisions with significant growth impacts. The report concluded that one of OSP's primary roles within the administration would be to ensure that state investment programs and regulatory decisions were consistent with these goals and objectives.

#### B. Public Reaction

Public reaction to Towards A Growth Policy was mixed. Responses ranged from hailing the report as a long overdue and necessary enunciation of state policies, to criticism that the report was overly simplistic and did not contain specific recommendations for implementing the general goals and objectives. The following comments illustrate typical reactions to the report:

I found the report very interesting and exciting. It's exciting in that it is a very necessary step if a state wishes to become involved in a coordinated attack to improve the environment for people. Few governments are really taking a balanced comprehensive view of their actions, and the consequences are disastrous economically and environmentally.<sup>80</sup>

From a general perspective our major criticism is the paper's treatment and perception of the growth process. The paper presents a planner's view of growth! It is highly spatial in its orientation. It is as if growth

has been perceived from a city planning perspective and the disciplines of city planning are now being applied to a larger area. It fails to transcend this bias and offer state approach to state planning. Accordingly, it does not evidence a realistic view of locational decisions at the state level.<sup>81</sup>

I find the document to be too heavily weighted in favor of cities. Many of the statements and recommendations contained therein demonstrate a clear urban bias on the part of the authors which is not acceptable to me as an official of a small town with problems equally serious to those in a city.<sup>82</sup>

This report contains an unfortunate and misdirected indictment of two programs that have been of great value to the Commonwealth. These are the Massachusetts "Self-Help" and the federal land and water conservation fund programs. The Office of State Planning report complains that funds from these programs have been used to support conservation and recreation land acquisition by towns outside the urban cores and recommends that the overwhelming bulk (85-95%) of self-help and LWCF monies in the future be spent in urban centers. If the bulk of these funds are to be directed at urban centers in the future, excellent opportunities outside the centers will be foregone. As revisions are made in the draft report we believe a more balanced approach to future land acquisition policies for the Commonwealth should be adopted.<sup>83</sup>

In addition to these criticisms, OSP received negative comments on the process by which the report was developed. Essentially, the report was an "in-house" product prepared solely by OSP staff. There was virtually no public input, and even other state agencies and the Cabinet were only peripherally involved in its formulation.

This criticism was summarized by Sharon Francis of Massachusetts Tomorrow, who stated:

While the fact that there is a draft state growth policy at all is an important beginning, it is essential that the policy evolve to encompass a broader range of concern. The appointive Office of State Planning, with its small staff, will have little hope of redirecting state policy

without the support and participation of the Cabinet and executive departments. Likewise, a unified state government will have little hope of redirecting the future of the state without the support and participation of local governments and citizens at large.<sup>84</sup>

Herr and Lord also observed:

Many questioned the appropriateness of publishing Towards A Growth Policy without hearings or any other form of public inquiry. The (OSP) response was that it was unworkable for the Commonwealth to continue expending millions in infrastructure investments without any policy direction at all, and that if such investments were de facto to be policy guided, it was better to state the policy overtly than to leave it unstated.<sup>85</sup>

The numerous and often negative responses to Towards A Growth Policy, however, seemed to convince OSP that focusing its efforts on top-down, centrally enunciated policies might backfire unless more substantial attention was devoted to involving citizens in the policy development process.

#### C. OSP's First Growth Policy Conference

Consequently, OSP responded to its critics by organizing the first statewide conference on growth policy issues. The conference was formally sponsored by citizen advocacy and professional groups (i.e. the League of Women Voters, Massachusetts Tomorrow, Professional Societies of Architects, Planners and Civil Engineers). The conference was advertised as "an all-day discussion of the Office of State Planning's newly published draft, Towards A Growth Policy For Massachusetts. Workshops will allow conference attendees to react to the document and provide feedback to OSP for consideration in the document's subsequent revisions."<sup>86</sup>

The conference was held on December 5, 1975 in Boston, and attracted over 250 participants. Conference speakers included: Governor Dukakis, Frank Keefe, the Cabinet Secretaries of Environmental Affairs, Transportation, Economic Affairs, and Communities and Development, the Federal Regional Administrators of DOT, HUD and EPA, and prominent state legislators including Senators Saltonstall, McKinnon and Timilty and Representatives Wetmore and Frank.

The conference concluded with participants enunciating ten major criticisms and recommendations for improvement of Towards A Growth Policy. These criticisms are summarized below:

1. Too much emphasis on urban eastern Massachusetts. The growth policy fails to provide a clear definition of centers and to distinguish among centers.
2. Place more emphasis on the level of activity. The rate of growth should at least be a co-equal, if not a more prominent concern than that of location.
3. Heavily biased toward land use planning; it is not obvious that better land use planning will enhance the level of economic activity.
4. Must consider the need for higher levels of public investment in order to achieve objectives and the Commonwealth's fiscal capacity to support these higher investments.
5. Older centers may not have the capacity to absorb new growth as implied in the growth policy; some method is required to determine under-utilized capacity.
6. Centers have diverse social, economic, and public facility characteristics; the cost of reinforcing and revitalizing some of these centers may be too excessive. Moreover, where it is feasible and economical, since public resources are limited, priorities may have to be established among centers.

7. The relationship between public and private investments is not sufficiently well specified. The growth policy assumes that the former significantly influence the latter. This situation may be true in certain situations and less so in others. There may, in fact, be a hierarchy with respect to the influence of various types of public investments upon private investment decisions.
8. The growth policy fails to consider the importance of various services (e.g., education, public safety) in determining the quality and attractiveness of existing centers and their neighborhoods.
9. The growth policy does not contain a sufficiently detailed discussion of alternatives to the rejuvenation of "older" centers such as the support of newly emerging satellite centers.
10. The growth policy does not sufficiently discuss the tools necessary to implement a growth policy (e.g., mid-level government, zoning, property, tax reform).<sup>87</sup>

#### D. Impact of the Report on the Growth Policy Process

It is important to remember that Towards A Growth Policy For Massachusetts was prepared and publicized during the same time period that the Growth Policy Development Act was under consideration by the legislature. Consequently, this OSP report had two significant and lasting impacts on the Growth Policy Process. First, the report became a major stimulus for the passage of the Growth Policy Bill and for active local participation in the planning process. Second, the report created some degree of skepticism among citizens and local officials regarding how effective the recommendations from their local growth policy statements would be in changing OSP previously enunciated policies.

At the time of OSP's December 5th conference, the Growth Policy

Development Act was at a critical stage of legislative consideration. The Bill had passed the Senate, had received two favorable votes in the House, and had been delayed for further consideration until December 9th. Senator Saltonstall, Senator McKinnon and Representative Wetmore were all speakers at OSP's Growth Policy Conference. In each of their addresses, they urged conference participants to contact their legislators and express support for the unamended version of the commission's Bill. The response from the conferees was outstanding. Legislators from all over the state received calls in support of the Bill.

OSP's Toward A Growth Policy, and the appearance at the Conference of the Governor, four of his Cabinet Secretaries and numerous federal officials had convinced participants that the administration was serious about its growth policy proposals. The message was clear. The Dukakis administration was going to elevate planning to an unprecedented level of importance in Massachusetts, and was going to reorient state functional programs by making them accountable to a common set of statewide growth policies. Participants at the conference realized that if they were going to have significant input into the development of the state's new growth policies, passage of the commission's legislation was essential. The knowledge that OSP and the Governor placed a high priority on the refinement and implementation of the state's growth policies also served as a stimulus to serious participation throughout the entire growth policy process. As Representative Andrew Card stated:



OSP was created by an executive order of Governor Dukakis and will expire if a new Governor is elected unless the legislature acts to make it permanent. Because of OSP's status, I look at the OSP draft as a philosophy rather than policy to be implemented - I'm skeptical of that philosophy but with input from us (local growth policy committees) Mr. Keefe can turn his philosophy into real policy. We have a very, very important role.<sup>88</sup>

The release of OSP's Toward A Growth Policy also caused concern among a number of state agencies, legislators, and local officials.

As one HUD report states:

Despite the fact that the cover of the document is prominently labeled "A Preliminary Draft" and that everyone at the Office of State Planning refers to the "draft statement", a number of people, particularly in functional agencies, commented that the Office of State Planning and the Governor's office were acting as though the policy had been adopted and that they, in fact, doubted if anyone would bother to go through a formal process of changing the status from "draft" to "adopted".

Unlike the stereotypical fate of documents produced by planning offices, Towards A Growth Policy is having an impact on the operation of Massachusetts state government. As one indication, virtually everyone interviewed in both state and city government was aware of the document and of its general thrust. In fact, several city officials questioned how seriously the state would consider the growth policy statements being developed through the Wetmore Commission process since the executive branch had published its growth policy statements before the law was passed.<sup>89</sup>

In addition, Herr and Lord observed:

By the time the report was published, OSP was already engaged in implementing the policies. Cajoling, persuading, dickering, the OSP staff worked with the DPW on granting or denying curb cuts in relation to whether development fit the policies or not, with the Division of Water Pollution Control regarding where sewer grant money could go without inducing sprawl, and with the Department of Community Affairs regarding redressing imbalances in how family and elderly housing subsidies are distributed between central cities and suburbs.<sup>90</sup>

OSP countered these criticisms by stating:

Planning is a futile exercise unless the proposals and recommendations that planners produce are critiqued, reformulated, and given life through an extensive and vigorous participatory process. This paper is a preliminary draft for public discussion. It is designed to be a starting point rather than the last word. OSP is committed to involving a variety of different groups in the review and revision of this and all future position papers. 91

Both views have some degree of validity. At times, the Office of State Planning would act as an imperial agency forcing state and local officials, and even private developers, to conform to their policy mandates. At other times, OSP would negotiate, compromise and work to revise its policy framework responding to newly voiced perceptions or concerns. Once the Growth Policy Development Act was signed into law, however, OSP worked diligently and cooperatively with the commission and local growth policy committees to implement both the letter and the spirit of the law.

OSP's dual decision, to move ahead with implementation of the policies expressed in Towards A Growth Policy and to enhance participation in the policy formulation process through rigorous implementation of the Growth Policy Development Act, transformed planning in Massachusetts. From this point forward, both the policies in Towards A Growth Policy and input from localities were used to guide important state investment and regulatory decisions. In addition, experience from these decisions and input from localities were used to revise the policy framework. In short, policy formulation and

decision-making were used simultaneously to inform one another. Consequently, the state's planning and growth management decision-making capabilities increased substantially.

## VI. Initial Efforts to Implement the Growth Policy Development Act

Initial efforts to implement the Massachusetts Growth Policy Development Act involved four interrelated activities undertaken by both the commission staff and the Office of State Planning. These steps included: (1) conducting conferences and workshops to provide training and information for members of the newly created Local Growth Policy Committees (LGPC's); (2) expanding of OSP's regional liaison system into a local liaison system to assist communities in forming LGPC's and completing their local statements; (3) developing the OSP Local Growth Policy Questionnaire; and, (4) securing funding to cover local costs of participation.

### A. Conferences and Workshops

In anticipation of the passage of the Growth Policy Development Act, the commission's MIT staff had applied for and received a grant to conduct a symposium on growth policy issues for local officials and members of LGPC's. As soon as the legislation was signed into law, a date for the conference was set. Notices were mailed to all selectmen, mayors, planning boards, regional planning agencies, conservation commissions and numerous public interest groups. The purpose of the conference was to increase public understanding of the value conflicts in the formulation of land use and growth policies and to develop networks among state and local officials who would be involved in implementing the Act.

The conference was held on January 19, 1976 at MIT. It attracted over 200 citizens and local officials. the conference combined a series of small group workshops, gaming sessions, and panel discussions. The entire conference was video-taped and a video cassette documentary on growth policy issues was produced.

The conference included a film on the controversy surrounding construction of low-income housing in a wealthy Boston suburb. The film was produced specifically for the symposium to illustrate the value conflicts among different interest groups involved in land use decisions.

The conference also consisted of workshops on three basic land use policy questions:

1. "The Home Rule Issue", a discussion of which level of government is best suited to make certain types of land use decisions.
2. "The 'Taking' Issue", a discussion of the conflict between individual property rights and governmental land use regulation.
3. "The Growth vs. No-Growth Issue", a discussion of the trade-offs between economic growth, environmental protection and social equity.

In small group discussions, the symposium's participants examined the value conflicts, opposing perspectives and the potential for dispute resolution with regard to each of these policy issues.

During the gaming sessions, small groups of participants were asked to simulate local citizens wrestling with difficult growth management decisions. Each group was asked to reach consensus on very specific policy options. These sessions concluded with discussions on consensus building techniques and methods for resolving policy conflicts. Frank Keefe stated, "the facsimile discussions taught participants to listen to the views of others."<sup>92</sup>

The conference ended with a panel discussion including legislators and state officials. The intent of the Growth Policy Development Act was explained and specific questions about establishing and conducting the work of local Growth Policy Committees were addressed.

By most accounts the conference was a success. Susskind stated, "the workshop accomplished its goal of highlighting each local growth policy committee member's sensitivity to the basic value dilemmas at the heart of the land use controversy in Massachusetts."<sup>93</sup> The Boston Globe reported:

They came to find out just what the state was up to, their arms held defensively high. They came from Nantucket, the Berkshires, central and eastern Massachusetts. Among them were selectmen, conservationists, planners, members of city and town boards, and interested citizens. Some arrived madder than hornets, sputtering about abuse of Home Rule and asking what damn right the state had to tell any community what to do...But despite the cynicism they came, more than 200, and although some left as they arrived, unconvinced, most felt the project had merit and could benefit the state's 351 cities and towns...The predominate criticism of the MIT session was its lack of specificity. Those participating would have liked more information on process rather than concepts. 94

The MIT symposium was only one part of a larger effort organized by the commission staff to increase public understanding of the legislation and growth policy issues. Other components of this strategy included:

1. Distribution of the video cassette produced from the conference.
2. A major media campaign to contact all newspapers, television and radio stations in the state, encouraging them to carry articles and editorials explaining the legislation and encouraging local participation.
3. Working with other organizations to sponsor growth policy conferences and symposia.

The video cassette programs resulting from the conference were produced in color and at broadcast quality so that the material could be easily transferred to commercial television. The commission tried, unsuccessfully, to secure air time for the program which was designed to explain important land use issues and inform viewers about the potential and techniques for participation in developing both local and statewide growth

policies. Although no commercial television stations aired the program, the video cassettes were used by numerous local and regional groups in land use seminars and discussions. In addition, several major television and radio stations carried a series of editorials urging local participation in the growth policy process.

The campaign to inform newspaper editors, and to solicit local press coverage of the legislation was more successful. Between January and February 1976, over 50 newspaper articles appeared in more than 40 different daily and weekly newspapers explaining the legislation. All of the state's major newspapers carried articles and editorials urging participation, and several local newspapers ran in-depth series on land use and growth policy issues.

The commission, its MIT staff, and OSP, also encouraged public interest groups to sponsor conferences on the Growth Policy legislation. Senators Saltonstall and McKinnon, Representatives Wetmore, Demers and Gilette, Professor Susskind, Frank Keefe, and his staff were continuously available to speak to local and regional groups about the legislation. Between January and May 1976, eleven separate conferences were held providing information on the Act and training for local officials. These conferences attracted approximately 2,000 participants. The topics and number of participants in these conferences are summarized in Table 5.

In addition, the commission and OSP also worked with the Massachusetts League of Women Voters to secure a grant to hold eleven additional symposia throughout the state on land use and growth management issues. These symposia were held between May 1976 and March 1977. They were designed to maintain citizen interest throughout implementation of the Growth Policy Development Act, to increase public understanding of land use issues and

to identify specific areas of policy consensus, conflict and concern. Each symposia focused on the major issues of concern in the region where the meeting was held. These symposia attracted over 1,000 participants. The dates and topics of the League's Growth Policy symposia are summarized in Table 6.

The conferences sponsored by the League and other organizations were designed to involve citizens and governmental officials in face-to-face discussions about growth policy issues, and conflicts. Each conference included a number of land use "experts" but these individuals were available as resource persons to clarify points of information and to stimulate discussion. Conference participants spent most of their time in small group discussions, rather than listening to experts.<sup>95</sup> Thus, the conference helped to increase citizen understanding of growth policy problems, helped state officials to understand local views, and expanded the direct personal networks among LGPC members from different communities.

#### B. OSP Network Development Activities

In spite of OSP and commission efforts to inform citizens and local officials about the Growth Policy Process and to encourage participation, communities were slow to create LGPC's. By January 22, 1976, the original deadline for appointing LGPC's, only 150 of the Commonwealth's 351 cities and towns had formally established committees. OSP extended the deadline to February 15th and began a major follow-up effort to encourage communities to appoint committees and to participate in the process. The follow-up effort included both a letter-writing campaign and personal phone calls from OSP staff to local mayors, selectmen and planning officials.

The letter-writing campaign was spearheaded by the Joint Task Force on State Planning. This task force was an independent advisory group



Table 5

MASSACHUSETTS GROWTH POLICY DEVELOPMENT ACT: CONFERENCES AND WORKSHOPS <sup>96</sup>

<u>Date</u>	<u>Place/Sponsor</u>	<u>Speakers/Panel</u>	<u>Target Group/Participants</u>
JANUARY 19th	M.I.T. Department of Urban Studies and Planning  Sponsor: The Massachusetts Foundation for Humanities and Public Policy	Frank T. Keefe, OSP Commissioner Marino Commissioner Winthrop Senator McKinnon Senator Saltonstall Rep. Wetmore Rep. Gillette <u>Moderator: Prof. Lawrence Susskind</u>	Local Officials, Members of Local Growth Policy Com- mittees, Legislators, RPAs, and State Agencies  200 People Attended
FEBRUARY 4th, 11th	Berkshire Community College, Local Government Training Institute.  Sponsor: Intergovernmental Personnel Act  2 Seminars/Workshops: Southern Berkshire Towns at Lee, Mass. Northern Berkshire Towns at North Adams.	Seminars taught by: Paul M. Carey, OSP staff liaison for Berkshire County. Gaylord Burke, Deputy Director, Berkshire County Regional Planning Commission	Local Officials, regional interest groups, members of Growth Policy Com- mittees.  30 People repre- senting 7 towns at Lee. 45 People represen- ting 9 towns at North Adams.
FEBRUARY 12th	Metropolitan Area Planning Council  Conference on Growth Policy  Sheraton Tara Hotel, Framingham	<u>Moderator: Richard Doherty</u> Executive Director, MAPC. Frank T. Keefe, OSP Senator McKinnon Senator Saltonstall Rep. Barbara Grey Prof. Lawrence Susskind of M.I.T.	MAPC Reps from 95 cities and towns in Eastern Mass. <u>300</u> people attended.

<u>Date</u>	<u>Place/Sponsor</u>	<u>Speakers/Panel</u>	<u>Target Group/Participants</u>
FEBRUARY 25th	LEGISLATIVE WORKSHOP Doric Hall, State House Sponsors: Special Commission on Growth Science Resource Committee	Commission on Growth: Senator Alan McKinnon, Chairman Senator William Saltonstall Rep. Robert Wetmore, Ch. James Howell, Vice President, First National Bank of Boston. Hugh C. Davis, Associate Director Institute for Man & the Environment. Donald L. Connors, Municipal Counsel Tyler, Reynolds, & Craig	State Legislators, Legislative staff, local officials, statewide interest groups. <u>150 People</u> participated.
FEBRUARY 27th 28th	Tufts University, Lincoln Filene Center Graduate Program in Urban, Social, and Environmental Sponsor: H.E.W. Environmental Fellowship	Moderator: Prof. Herman Field  Frank T. Keefe, OSP Sen. McKinnon, Ch., Commn on Growth Rep. Wetmore, CH. Commn on Growth Sen. Saltonstall William Flynn, Sec'y., Office of Communities & Development Commissioner Marino, DCD Commissioner Winthrop, Agriculture	100 communities in Eastern Massachusetts, including interested citizens, officials, members of local Policy Committees, State agency resource people. Professionals. <u>Over 220</u> attended.
MARCH 6th	Massachusetts Association of Conservation Commissions Holy Cross College, Worcester Annual Meeting of MACC	Moderator of Growth Policy Panel: Mrs. Nancy Anderson Frank Keefe, Sen. Saltonstall, Prof. Susskind, Panelists	Members of Local Conservation Commissions (who are required by the Act to serve on Growth Policy Committees). <u>80 CC members</u> attended.

Table 6

MASSACHUSETTS LEAGUE OF WOMEN VOTERS: GROWTH POLICY SYMPOSIA<sup>97</sup>

<u>Date</u>	<u>Location</u>	<u>Focus</u>
May 8, 1976	Holyoke Community College, Holyoke, MA	"Land: A Limited Resource": Questions about land use decisions to be faced by cities and towns in implementing the Massachusetts Growth Policy and Development Act.
Oct. 16, 1976	Middlesex Community College, Bedford, MA	"A Place to Live: Changes and Choices": The relationship between housing and land use. Alternatives available to encourage greater choices for accommodating housing needs.
Nov. 13, 1976	Greenfield Community College, Greenfield, MA	"Chapter 808, A New Zoning Act: A Hindrance or a Help?": The implementation of Chapter 808 and the hows, whys, and alternatives to Chapter 808.
Nov. 20, 1976	Massasoit Community College, Brockton, MA	"The Future of the South Shore": Demands place on South Shore cities and towns for economic development and environmental protection. Particular attention to four problems of concern to the region including recreation, public access, transportation corridors, solid waste, and public infrastructure and growth.
Dec. 4, 1976	Quinsigamond Community College, Worcester, MA	"Can We Keep Public and Private Rights in Balance?": Local versus regional or state control of growth. Balancing concerns for environmental quality and economic development. An emphasis on community response to the local growth policy reports and the state response.

<u>Date</u>	<u>Location</u>	<u>Focus</u>
Jan. 22, 1977	Bristol Community College	"Who Will Control Our Land? Must Home Rule Step Aside?": Home rule regionalism from the perspective of specific issues of concern in the region. Particular emphasis on solid waste, water quality, coastal zone management, and energy facility siting.
Feb. 26, 1977	Bunker Hill Community College, Charlestown, MA	"What Shall We Do With Our Shorefront Property?": Decision-making regarding the use of coastal lands in the Greater Boston area, including Charlestown Navy Yard, Fort Point Channel in South Boston, Boston Harbor Islands and the surrounding shorelines. Emphasis on the proposed state coastal zone management plan.
Mar. 12, 1977	Roxbury Community College, Boston, MA	"Orange Line-Commuter Rail: Impacts for Urban and Suburban Communities": To broaden interaction among communities affected by development along the Southwest Corridor.
Mar. 5, 1977	Cape Cod Community College, Barnstable, MA	"What's Ahead for Cape Cod?": Land use and economics on the Cape. To involve a diverse and representative participation in exploring ways in which the Cape can have both a viable economy and a quality environment.
Mar. 19, 1977	Northern Essex Community College, Haverhill, MA	"Air and Water: Stimulants or Controls to Growth?": The relationships between air and water and policies and programs at the local, regional, and state levels, including, the proposed state Water Policy, the proposed State Coastal Zone Management Plan, and those related to transportation and economic development planning. Special attention to local growth policy committee goals as they related to the above.
Mar. 26, 1977	Massachusetts Bay Community College, Wellesley, MA	"Can My Community Remain an Island?": The relationships of suburban cities and towns to each other and to the central city, Boston, in regard to decisions about land use including jobs, transportation, housing, and issues of equity and tax structure.

which had been created by the Massachusetts Selectmen's Association, the Massachusetts Mayors' Association and the Massachusetts League of Cities and Towns. The task force had been formed in December of 1975 to review and monitor proposals prepared by OSP, and to provide a local perspective on State planning. The task force was made up of 25 municipal officials representing approximately 5,000 members of the four co-sponsoring organizations. On January 19, the task force sent a letter to all members of the co-sponsoring organizations urging cooperation in the formation of local growth policy committees and participation in the process. In mid-February, the task force sent another letter to members of their organizations in communities that had not formed LGPC's.

This approach was designed to reach a broad spectrum of local officials who might be interested in participating in the process. OSP had already sent letters and a packet of information about the legislation to the chief executives in each of the Commonwealth's 351 cities and towns. Thus, the task force letters were directed at a larger audience. The new mailing was designed to show that state's municipal organizations supported participation in the process and did not view the legislation as a threat to home rule. The impact of the letters was particularly significant because the four co-sponsoring associations of municipal officials were the state's strongest home-rule advocates, and any organized effort to stifle participation in the Growth Policy process would have required their support.

In addition to the letter-writing campaign, the OSP staff spent hours in telephone conversations with selectmen, mayors, planning officials, etc. The OSP staff answered questions about the legislation and encouraged communities to participate. OSP's regional liaison system was transformed

into a local liaison system. Each OSP staff member was assigned responsibility for a specific set of communities. The staff, then, concentrated on contacting the communities that had not formed LGPC's. At times the OSP staff called local officials on a daily basis checking to see if a committee had been appointed, and giving chief executives the names of local citizens who had expressed an interest in serving on the local growth policy committee.

Eventually, this legwork paid off. By March of 1976, 311 of the Commonwealth's 351 cities and towns had established Local Growth Policy Committees, and by the end of the process, 330 communities had LGPC's.

The conferences and workshops, the letter writing campaign and OSP's personal contact with citizens and local officials were all designed to increase public understanding of land use issues and to build a constituency for the state's planning process. Irrespective of the content of the policies that might emerge, both OSP and the Commission realized that it was necessary to develop an informed and supportive constituency for planning. This constituency would be the key to completing the growth policy process, and would be necessary to monitor and support implementation of the resulting policy recommendations.

#### C. The Local Growth Policy Questionnaire

One of the reasons for the delay in appointing local committees, was that OSP did not finalize the Local Growth Policy Questionnaire until the end of January 1976. The Questionnaire was not mailed to the communities until the first week of February. This caused a great deal of confusion and consternation at the local level. As one newspaper article pointed out:

The problem is that the Act has been given little publicity, and the state, which must send local boards a copy of the Act and an explanation, has not done so yet in all cases... Without the packet from the state, local officials cannot understand the intent of the Act. 98

Drawing up the Questionnaire was a difficult process. The number and complexity of potential growth management issues and the diversity of local growth and development needs made design of an instrument which would ensure comparability of responses from one municipality to the next problematic. As Susskind stated, "We don't want to be too simplistic because the answers will be shot down later. On the other hand, we don't want to be too complex or people just won't bother to answer. We're struggling to reach a happy medium."<sup>99</sup>

OSP and the commission staff had begun work on the Questionnaire in September of 1975, three months before the Act's passage. By January of 1976, the Questionnaire had been through five drafts. These drafts were reviewed by a variety of interest groups and organizations. The review of the Questionnaire highlighted four major problems: (1) the length of the instrument, (2) the detailed nature of some of the questions, (3) the potentially leading character of a number of the questions, and (4) the ambiguity of some of the questions.

On January 27, 1976, the Wetmore Commission held a public hearing to solicit reaction and comments on the Questionnaire. Many of the participants wanted to see the Questionnaire shortened, others wanted to eliminate the multiple choice questions. OSP, however, argued that a more structured instrument was necessary to insure comparability of responses. Based on comments at the hearing, a compromise was reached and the final Questionnaire was completed. On February 4th, 1976, the Questionnaire and a handbook on its use were distributed to the Local Growth Policy Committees.

The final Questionnaire was twenty pages long and consisted of 96 questions. The Questionnaire was divided into four parts:

1. Past and Present Growth Trends

Questions focused on a general description of past growth trends, the factors influencing the impacts of past growth, steps the community had taken in response to this growth and problems and opportunities presented by these trends.

2. Projections about the Community's Future

Questions focused on the assets and liabilities of the community, expectations about the community's "most likely" future, a description of the "desired future," and actions necessary to achieve the desired future.

3. Perception of the Community's Role in the Region and the State

Questions focused on regional inter-relationships, regional development patterns, developments of regional impact, areas of critical planning concern and statewide roles and responsibilities.

4. Summary of Findings and Recommendations

Questions focusing on the community's goals, objectives and values, major growth-related issues, suggestions for resolving these issues and recommendations for policy and programmatic changes at the state and local levels. 100

The Local Growth Policy Questionnaire was designed to fulfill two functions. First, it was intended to stimulate intelligent discussion at the community level of the major growth policy issues facing a locality. Second, the questionnaire was intended to structure information in a manner which would allow OSP to compare local priorities and synthesize this information into a set of state growth policies. The final instrument emphasized the first goal over the second. It included a number of open-ended essay questions which did not easily lend themselves to tabulation and codification. This illustrates that OSP and the Commission were more interested in finding out about local priorities and problems, than in forcing localities to prepare a set of common elements which might be



unrelated to local concerns.

D. Bicentennial Grants to Assist Local Growth Policy Committees

Since the legislature enacted the Growth Policy Development Act without any appropriation, OSP's final initial implementation effort consisted of attempting to secure funding to cover, at least, basic municipal costs for participation in the process. Minimal funding was critical because so many smaller communities did not have resources even to cover the costs of public hearing announcements and typing of their final reports. As one Local Growth Policy Committee stated, "In our town we must go to Town Meeting to obtain funding. Our next Town Meeting will be in May, and until then we cannot legally buy so much as a pencil."<sup>101</sup>

OSP felt that financial support to communities was critical to widespread and active participation in the Growth Policy process. Therefore, the Office applied for and received a \$40,000 grant from the American Revolutionary Bicentennial Commission. The grant application emphasized the need to promote "grass-roots" citizen participation, and all of the funding from the grant was distributed directly to LGPC's. Since smaller, less wealthy communities were having the most difficulty paying for the local costs of the process, OSP targeted the "Bicentennial Grants" to communities with populations under 13,000 and with medium household incomes below \$12,000. This made 213 of the Commonwealth's cities and towns eligible for the grants.

The grants were limited to \$200 per community. Expenses for which the grants could be used included: public hearing costs (notice, meeting space, etc.); general secretarial costs (typing, stenography, etc.); reproduction and mailing costs; public relations (media and advertising); and conferences, workshops and related costs. OSP directly contacted every

LGPC to inform them of the availability of the grants. In addition, they sent a letter to every state legislator informing them of the grants. The letters to the legislators listed the name and address of the chairman of every LGPC in the legislator's district and included a sample letter which the legislator could send to personally announce the grants.

A total of 125 communities applied for the "Bicentennial Grants", and every community submitting an application was funded. The grants ranged from a maximum of \$200 to \$20, with most in the \$200 range.<sup>102</sup>

In addition to the initial grants, OSP had funding left over to sponsor additional local growth policy activities. Therefore, immediately after the completion of the Local Growth Policy statements, OSP announced a "second round of Bicentennial Grants". Once again, legislators were asked to assist OSP in publicizing the availability of funds. The purpose of the new grants was to sustain interest in the Growth Policy process and to help communities follow-up on recommendations in their local statements. Every community which had completed a Growth Policy Statement by October 1, 1976 was eligible for the follow-up funds.

Each grant was limited to \$500, and OSP received 110 applications from LGPC's throughout the state. Since OSP could not fund all of the applications, four criteria were used to evaluate the proposals:

1. The relationship of the grant application to the recommendations in the local statement.
2. The probable impact of the grant on the implementation of these recommendations.
3. The relationship of the grant application to sustaining local interest in the growth policy process.
4. The degree to which the grant would foster further citizen participation.

Eventually, 40 Local Growth Policy Committees were awarded "Second Round Bicentennial Grants". The types of projects undertaken by communities with the additional funding are summarized below:

<u>Type of Project Funded by Second Round Bicentennial Grants</u>	<u># of Communities</u>	
1. Revision of Local Zoning and Subdivision By-Laws	11	
2. Continue and Publicize Work of Local Growth Policy Committee	8	
3. Distribute and analyze locally developed questionnaires on land use and growth issues	6	
4. Develop Special Area or Comprehensive Plans	6	
5. Community Center Revitalization Projects	5	
6. Local Agricultural Policy Development	2	
7. Local Growth Policy Newsletters	2	
	<hr/>	
	TOTAL	40 104

The fact that a total of 186 communities submitted applications for the relatively small "first and second round Bicentennial Grants" indicates the degree of citizen interest that the Growth Policy Process had sparked. As Frank Keefe stated, "we were continually amazed at what localities could do with just a small amount of money. Some communities totally revised and updated their zoning and subdivision by-laws, others produced sophisticated revitalization proposals for downtown projects, and other communities greatly expanded the number of people participating in growth policy decisions."<sup>105</sup>

In summary, the initial efforts to implement the Growth Policy Development Act resulted in a significant increase in public understanding and awareness of land use and growth policy issues throughout the Commonwealth. In addition, these efforts greatly increased the number of people involved in land use decision-making and policy formulation. The con-

ferences sponsored by OSP, the commission and other interest groups involved over 3,000 citizens in growth policy discussions. The formation of 330 LGPC's involved 5,000 people in direct discussions of state and local growth issues. OSP's regional and local liaison system resulted in the establishment of new interpersonal networks between state and local officials. The Bicentennial Grants helped to stimulate innovative notices for public hearings and townwide surveys in local growth issues. The grants also brought legislators into the process by giving them a role in grant notification and award. Thus, in the first three months of the Act's implementation, the Massachusetts network of people involved in growth policy issues grew from a few hundred individuals, participating in Senator Saltonstall's Land Use Subcommittee, to over 5,000 citizens and public officials who were members of LGPC's or who had participated in conferences.

## VII. The Local Growth Policy Statements

Although many communities encountered delays in completing their Local Growth Policy Statements, eventually, 301 of the 330 LGPC's submitted final statements to their Regional Planning Agencies and the Office of State Planning. The original timetable had called for completion of the local statements by July 15, 1976. In actuality, all of the statements were not received until the end of October. Between July and October, OSP received approximately 70 local statements a month.

In order to encourage communities to finalize their statements, OSP, again, utilized its local liaison system. Beginning in August of 1976, the OSP staff prepared weekly status reports on local progress. These reports were distributed to RPA's and interested legislators. In preparation of the reports, the OSP staff would contact the chairmen of the LGPC's. The local liaisons would provide information on specific questions that were delaying committees. They kept track of when local hearing were held or scheduled. They encouraged communities to submit tentative reports after the second hearing, and each week asked for assessments of estimated completion dates. When the final statements were received, OSP would send copies to the legislators representing the community, and would encourage the LGPC to remain involved by reviewing the statements of neighboring communities and working with the RPA's on their regional reviews.

### A. The Process of Preparing the Local Statements

Approaches for preparing the Local Growth Policy Statements were as diverse as the communities themselves. Essentially, the approaches for completing the OSP questionnaire fell into three categories:

1. Perfunctory responses prepared by one or two people.
2. Responses resulting from the domination of the LGPC by public officials or major interest groups.
3. Responses resulting from active dialogue among diverse interests and substantial public outreach.

Some communities viewed the Growth Policy Process as "another state mandated program", an intrusion on "home rule", and a repetition of existing planning activities. Many of these communities, however, were concerned that failure to submit a Local Growth Policy Statement would give the state an excuse for turning down applications for state and federal grants. As local officials from one community stated:

The Committee will be set up on an "appoint it then forget about it" basis...The action will be taken to protect the town's eligibility for funding not because we see any value in it...If the town wants assistance with a new fire and police station, for instance, the first thing a funding agency will probably do is turn around and see what the local growth policy committee has recommended. Until now, master plans have been scrutinized in conjunction with practically all funding assistance 106  
...Now the new thing will be Growth Policy Statements.

In this community, the LGPC was not established until August of 1976. Its Growth Policy Statement was completed in one month. The questionnaire was filled out by one person with no other input. The response was perfunctory -- designed only to meet the mandate of the law and to ensure that the state could not claim later that the community did not participate in the process.

Other Local Growth Policy Committees were dominated by local officials. Chapter 807 made this possible by requiring representation of 7 local boards and commissions on a suggested twelve-person committee. Steven Yaffee highlighted this problem in his analysis of the Harvard LGPC:

A majority of the committee are people who are current and/or past planning agents. On the Harvard committee, there are 14 original members. Including alternates (who act no differently than formal board members), 8 of the 14 members represent existing planning groups -- 1 Selectman, 2 Planning Board, 2 Conservation Commission, 2 Board of Health, and 1 Town Planner. At least two of the remaining six citizen representatives have served on the Planning Board in the past. Hence, there is less than one-third representation that can be considered to bring new perspectives to local growth planning.

The domination of the committee's actions by past planning actors has, in the view of several members, been increased by the chairpersonship:..."The committee is weighted with people who already have preconceived ideas, just reiterating past activities. We'd be better off without them...About two hundred people run this town. A bunch of them sit on this committee."

The feeling that the outcome of the committee is predetermined has been extremely disappointing and frustrating to several of the committee members, especially those who haven't participated in the past town planning processes. "We've been meeting all these nights and haven't accomplished very much. 107

In other communities, local officials declined to participate in the process, and the work of the LGPC was left to local activists, usually representing one dominant interest group (i.e., environmentalists, business, revitalization advocates, etc.). Non-participation by local officials allowed individuals who had traditionally been excluded from local affairs to gain some influence in land use decision-making. This impact was often mitigated by the fact that the rebellious group's recommendations were not seriously considered by the local power structure. As one selectman stated, "If I never hear from the Local Growth Policy Committee again it will be too soon. These people were all the troublemakers in the town. They have an ax to grind and the statement only reflects one view of the situation here."<sup>108</sup>

The preparation of Local Growth Policy Statements by committees dominated either by local officials or interest groups tended to be a closed process with little outreach or public participation. In addition, discussions among the members of this type of committee tended to focus on preconceived perceptions, with very little consideration of alternative points of view. There was little conflict, dialogue or debate among these committees, and responses to the OSP questions were often short and incomplete with no exploration of the deeper issues implied.

In contrast to perfunctory responses or using the OSP questionnaire to restate preconceived local perceptions, many communities actively solicited public participation and encouraged the airing of alternative points of view. In Groton, Middleboro, Westboro, Charlton, Belchertown, and numerous other communities, short questionnaires were sent to town residents. In Framingham, seven questions adapted from the OSP questionnaire were included as a non-binding referendum on the annual election ballot. In Newton, residents were polled on growth policy issues by attaching a computerized questionnaire to the police census form, and 14 neighborhood centers were asked to contribute responses for the local statement. The Weymouth, Quincy and Braintree LGPC's cooperated to sponsor a tri-town radio panel discussion on a local radio station. Recommendations and opinions from people calling the program were included in each town's Local Growth Policy Statement. In Cambridge, the OSP questionnaire was distributed to representatives of each of the city's 14 neighborhood districts.

In addition to these outreach activities, the diverse membership of many Growth Policy Committees sparked considerable debate. The following quotes from newsclippings about LGPC meetings illustrate the tenor of the



dialogue:

MILFORD - A group of businessmen have been bristling at reports that the town's Growth Policy Committee is working on renewing, revitalizing and rejuvenating downtown. 'We don't need a eulogy because the patient isn't dead yet' downtown businessman Barry Marcus told the Committee Thursday night. Businessmen who attended the meeting acknowledged the downtown district has some problems, particularly with parking, traffic congestion, and youth loitering. But the businessmen disagreed [with the Committee] on the severity of and solutions to the problem. 109

ATTLEBORO - Several members of Attleboro's [Local Growth Policy] Committee met for two hours Thursday night at the library to begin filling out the [OSP] questionnaire. There was general agreement Attleboro had been fortunate in having moderate growth, but there was disagreement on whether the form the growth had taken was good.

Generating the most discussion was an opinion by Deborah Richardson, chairman of the Conservation Commission, that construction of many homes for low and moderate-income families had "depressed the market for better homes." Attleboro has thus lost the community service of corporate executives who buy homes in neighboring towns, such as Rehoboth, that have large-lot zoning, she said.

Contractor John Walsh disagreed, saying well-to-do people could still find desirable property in the city, but the greatest need was for housing for working people.

"Attleboro is an industrial city," he said. "You've got to provide housing for people who work in the city." Walsh said later the city had been fortunate in that local builders had kept home prices down. This kept large developers out and avoided explosive development that has hurt some other communities, he said.

This is the kind of debate the questionnaire usually stirs, said David Carter, an associate planner with the state. The state planning office is looking for a consensus, but realizes there may well be minority reports, he said. 110

These quotes typify much of the discussion which took place in the more successful Local Growth Policy Committees. These committees, generally,

held between 12 and 16 meetings, each of which lasted an average of 2 to 4 hours. The discussion and participation in these meetings were intense, and provided LGPC members with direct experience with attempting to resolve conflicts about contradictory growth policies and specific land use decisions. One LGPC chairman described his committee meetings, in a letter to Frank Keefe, as follows: "I believe our committee is typical of most with a diverse set of opinions on every question. We are able to answer 8-10 questions per meeting and meet once a week for two hours. At the above-mentioned rate of question answering, it will take 10-12 weeks just to answer the questions."<sup>111</sup>

In addition to their weekly meetings, each Local Growth Policy Committee held two public hearings to solicit citizen input on growth issues and reaction to specific LGPC proposals. Attendance at the local hearings varied widely from community to community. In a few localities in which the LGPC actively publicized their deliberations, hundreds of people turned out. In other communities, the hearings attracted no one. Few of the hearings attracted over fifteen people. The hearings were designed, primarily, to serve as a check on LGPC recommendations, and as an attempt to keep the process open. Intensive participation was intended to take place in the LGPC meetings. Consequently, while the low level of participation in the local hearings was disappointing, it did not severely damage the Growth Policy Process.

## B. Content and Quality of the Local Statements

Like the preparation of the local reports, the content and quality of the Growth Policy statements varied drastically. Some reports were very polished and professional, including graphics, and technical data documenting past and projected growth trends. Other reports simply consisted of the OSP questionnaire filled in by hand. Some local statements included site specific recommendations about development or preservation projects that the community favored or opposed, and recommendations for state and local action on these projects. Other statements emphasized general policy recommendations. A number of communities did not focus on growth policy issues at all, but used the report as an opportunity to air long standing complaints about state programs and levels of taxation. Some communities used their statements to clarify local growth issues and alternative solutions. Other communities focused on intermunicipal conflicts or disputes with state government. Finally, a number of communities submitted balanced statements including consideration of many or all of the issues discussed above.

While no one Local Growth Policy statement could be considered representative of all of the reports, the Brockton statement illustrates the types of issues discussed in many. For this reason, it is worth quoting at length. Excerpts from the Brockton statement are listed below:

SEWAGE TREATMENT - A ten year old sewage treatment plant is already overloaded by expanded demand. Part of the problem is the lack of proper storm drainage, which results in flooding of the system during a good sized downpour. The Sewer Department is presently planning expansion of the system at a cost of \$24 million. This project will enable the sewer system to meet expected need in the future. The Growth Policy Committee hopes that state and federal funds will be made available to implement this solution.

SOLID WASTE DISPOSAL - Because of health standards set by the State Department of Environmental Quality Engineering, Brockton had to close its landfill 3 and a half years ago. The city still needs landfill sites. There is no known place available in the region.

POLICE - Because of inequitable state distribution of LEAA funds, certain communities have been receiving millions, while others with comparable populations and crime problems get next to nothing.

OPEN SPACE AND RECREATION NEEDS - The recent spurt of construction has consumed much of the remaining open space of the city. Only 25% of city land is still vacant. The Growth Policy Committee would like to see this remaining land preserved as much as possible. Fortunately Brockton has recently taken measures to do this. An Active Conservation Commission has proposed the acquisition of three sites to the Executive Office of Environmental Affairs.

INDUSTRIAL DECLINE AND REVIVAL - The Growth Policy Committee feels that the city, local businesses, the Old Colony Planning Council and the State must make a concerted effort to sell Brockton to new industry.

Brockton has several features which make it (or, if developed could make it) attractive to new industry. Two hundred acres of industrially-zoned land are available for development, much of it land where factories once stood or still stand boarded up or used as warehousing. Vacant space in sound old shoe factories is getting rare. Most of what remains are eyesores which should be torn down. Since private developers don't want to take the initiative, it is up to the city to buy dilapidated factory buildings, demolish them and sell the cleared land for new development; a program which would require State and Federal economic and urban renewal assistance.

The newly developed, 40 acre West Chestnut Street Industrial Park is already a successful drawing card for new industry. This park was developed with assistance from the Economic Development Administration (EDA) of the Federal Government. Several vacant sites are still available for new businesses. The railroad line running through Brockton's center could be used to much greater advantage. Its tracks are in relatively good repair and the line is still in use. It connects to the Penn Central main line and to a rail line running to the Cape.

A number of firms have already approached Brockton about large sites next to the tracks. However, Brockton's railway is severely hemmed in by streets, particularly

Montello Street, which runs along its west side. No room exists for siding and spurs on lots less than 600 feet deep. Only two possible sites exist, but one is located in a residential area and near a community pool. Truck traffic generated from industrial firms and other blighting factors would make such development unacceptable to the neighborhood. This problem is currently being investigated by OCPC, but no solution has yet been proposed. The second site is the freight yards off Elliott Street, a large, ideal location. However, the lack of a north/south connector makes access to trucks very poor.

A demand also exists for small manufacturing or servicing shops in the 4,000 to 5,000 square foot range. This demand could be met by constructing a long, low building divided into several small sections. One possible location for this is Downtown, particularly on current industrial sites.

HIGHWAYS AND TRANSPORTATION - A new north/south highway is needed to help relieve the congestion on Main Street and Montello Street, which run through Downtown. This project is ranked as a high local priority. However, construction of the road is not possible at this time because of lack of local matching funds and neighborhood opposition to the widening of an existing road along the southern section. Furthermore, the northerly section will not subsidize, and land takings, which it probably won't finance at this time.

COMMERCIAL TRENDS - The construction of Route 24 through the city generated new commercial developments at the two interchanges just off the highway. The most notable is Westgate Mall, Brockton's first and largest shopping center. Although not the best planned or most attractive shopping center in the State, it successfully drew people from Brockton's Downtown. As a result, Downtown has steadily declined. The city must attract stores, restaurants and businesses of high quality to revitalize Downtown Brockton as a commercial, governmental, financial and cultural center. Little support exists right now in the private sector for such a revitalization, and everyone seems to be waiting for City Hall to take the first step. Of utmost importance are incentives to property owners to improve deteriorated properties. A tax break for improvements instead of automatic higher assessments might be one solution. The Growth Policy Committee wishes to stress emphatically that state offices should reverse their exodus from Downtown. The concentration of city and state services in this area can help in its revitalization.

PROBLEMS OF HOUSING - One major problem is the area of landlord and tenant rights and responsibilities. A housing court, perhaps modeled on the Boston Housing Court, is needed to mediate disputes between landlords and tenants. People could be allowed to present their own cases, as in small claims court, so the expense of lawyers would be eliminated. The State judiciary system would be responsible for the formation of such a court.

INTERMUNICIPAL CONFLICTS - Regional developments have contributed to the pollution of Brockton's brooks, rivers and ponds. Growth in Holbrook and Abington has polluted Beaver Brook, the Avon Industrial Park has polluted the Salisbury Plain River and the town of Whitman has polluted Washburn's meadow. More intra-regional cooperation is needed to solve these problems.

CONFLICTS BETWEEN THE CITY AND THE STATE - Generally, state departments plan for Brockton, but not with it. Rarely is the city or a private agency included early in the planning process. Usually, new programs are thrust upon the community. The result is mistrust, bad feelings, and duplication of services.

THE TAX STRUCTURE - All communities in Massachusetts suffer under the unfair burden of property taxes. These regressive taxes must pay for most of the operation of local governments. The state must help share the costs of education, the most costly budget item for Brockton and other communities. In addition, there was a concensus among members that the current flat rate income tax is regressive and must be replaced by a graduated income tax.

In general, more funds must be channeled directly back to the local communities and fewer mandatory programs voted in by the legislature without funding.

High corporation taxes, disincentives for new construction and improvement of existing structures, regressive personal income taxes and high local property taxes have acted and continue to act to discourage industry from moving into the State. The Committee recommends major State tax reforms, keeping in mind the needs of commerce and industry. In particular, the Committee would like to see tax incentives for the construction of new and the rehabilitation of old businesses made possible by a State Charter revision. This change would greatly aid our efforts to attract new business to the city.

HOME RULE VS. STATE CONTROLS - Committee members were particularly sensitive to encroachments on home rule by the State. They felt that certain laws passed by the legislature were chipping away at this power and

apply unrealistic and unfair standards across the board, without consideration of local problems and considerations.

One example the Committee raised was the dilemma of local conservation commissions, whose cease and desist orders and lists of conditions issued under provision of the Hatch Act could be overruled (and have been) by the Executive Office of Environmental Affairs.

BROKEN STATE PROMISES - If there is cynicism among Brocktonians toward municipal programs and efforts to revitalize the city, there is even more cynicism toward State government. There are several reasons for this. One prime example is the promise made by Governor Dukakis and the Office of State Planning to help buttress Downtown by keeping state offices there and by locating new ones in the city's center as well. This commitment was made after the Registry of Motor Vehicles had relocated from Downtown to Forest Avenue during the Sargent Administration. However, subsequent to this agreement, two more state offices moved out.

For this reason, Brockton citizens are rather cynical about the state mandated requirement for local growth policy committees and statements. The Brockton Growth Policy Committee has spent a good deal of time in formulating this statement and feels the State Legislature and Office of State Planning should commit themselves to taking our statement seriously and attempting to implement our recommendations. Otherwise, this will be just an empty exercise, costing a good deal of time and effort.

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The preceding excerpts accurately characterize the "flavor" of the Local Growth Policy Statements, and illustrate the type of issues and comments included therein. The Brockton report includes a detailed discussion of local development, and preservation priorities, and presents site specific recommendations for local action. The statement discusses local conflicts surrounding these proposals, and outlines state assistance and actions needed to implement the recommendations. In addition, it suggests a number of general growth policies to guide state and local decisions. It concludes with a discussion of intermunicipal local/state conflicts.

While most of the Local Growth Policy statements did not present priorities and issues as clearly as Brockton's, virtually all of the statements were helpful to OSP and the Commission in framing the state's growth

policies and recommending specific legislative and administrative actions. The Commission staff found that 90% of the statements contained useful information for policy and programmatic review.<sup>113</sup> As OSP stated, "We were impressed by the quality of the statements, the work that went into preparing them, and the intelligence and concern they represent."<sup>114</sup>

### C. Evaluating the Local Impacts

In addition to the contents of the Local Growth Policy statements, another way to measure the effects of the Growth Policy Process is to look at its impact on local planning practices throughout the state. In order to make this assessment, an MIT research team conducted a telephone survey of the chairpersons of 103 LGPC's.<sup>115</sup> A series of in-depth case studies including interviews with most of the members of twelve LGPC's was then used to verify the initial results of this survey.

The interviews and case studies suggested a four part ranking of LGPC's and their impact on local planning.

1. Type I Communities: Substantial Impact  
Noticeable impacts on attitudes toward local growth policies, local institutions for planning, attitudes of LGPC members, and community-wide perceptions of growth priorities.
2. Type II Communities: Moderate Impact  
Changes in the attitudes of most LGPC members and some impact on public attitudes toward local growth policies.
3. Type III Communities: Marginal Impacts  
Slight changes in the attitudes of LGPC members and slight impact on public perceptions of growth policy issues. No impact on the objectives of local growth policies or proposed changes in the design of local institutions for planning.
4. Type IV Communities: No Impact  
No change in attitudes of LGPC members. No impact on public perceptions of growth policy issues. No impact on the objectives of local growth policies or proposed changes in the design of local institutions for planning.



The M.I.T. sample revealed 13 Type I communities (13%), 59 Type II communities (57%), 19 Type III communities (18%), and 12 Type IV communities (12%). This probably underestimates the number of Type IV communities in the state, since the sample only included cities and towns that had established a Growth Policy Committee by August 1, 1976. Eight percent (8%) of all cities and towns in the state, 27 out of 351, chose not to create LGPC's, and eventually 50 communities (14%) did not complete local statements.

The communities in which the Growth Policy Act was most successful shared several antecedent characteristics: most were not especially sophisticated in land use planning, most had long-standing tradition of public participation in local decision-making, and, in most, local growth policy issues were already of some concern prior to the passage of the Act. LGPC's in successful communities tended to have strong committee leadership. Members were, for the most part, positively disposed toward the objectives of the Act. While suspicion of state government is almost universal among localities in Massachusetts, successful LGPC's seemed somewhat less negative toward the state than the "unsuccessful" cities and towns. Finally, most of the successful committees included a broad representation of local interests, and were chaired by strong and energetic leaders.

No new evidence suggest that strong group leaders are needed to help community participants confront their differences and to develop local policy consensus.

In most communities in which the Growth Policy Act was unsuccessful, hostility toward the State was so great that it undermined the entire participatory effort. These cities and towns were very negative toward the entire growth policy development process. They also seem to have had

much less impressive records, on average, with regard to past attempts to ensure public participation in local decision-making. LGPC heads in less successful localities did not focus debate on value differences within the LGPC or within their community. Nor did LGPC's in the least successful communities see themselves in an educative role. They made little effort to reach out for greater public participation.

D. Type I Communities

The Massachusetts Growth Policy Development Act seems to have served as an effective catalyst to the re-evaluation of local land use and growth policy in Type I communities. As a result of the LGPC's efforts in Type I communities, master planning processes were altered, zoning code modifications were proposed, new growth management techniques were proposed, responsibilities assigned to local boards were shifted, citizen watchdog groups were established, and efforts to enhance citizen involvement in local growth policy decisions were initiated. In short, Type I communities moved beyond an examination of existing growth policies toward proposed reforms in local planning institutions and adoption of modified growth policies.

Most Type I communities have experienced substantial growth pressures. In several towns, the recognition of serious growth pressures helped to develop a local interest in and support for the work of LGPC's. Although growth issues existed in these communities, a sense of crisis did not. At least seven and possibly ten Type I communities were not nearly so far along in figuring out how to cope with these problems as they were when the LGPC's completed their work.

Seven of the thirteen Type I communities show significant increases in concern for the rapid formulation of more effective planning institu-

tions. Six communities are attempting to alter the flow of information between local boards and to reorganize local policy making procedures. Ten LGPC's still remain intact, new vehicles for coordinating local growth management efforts. The other three Type I communities are actively engaged in placing LGPC members on other municipal boards.

Type I cities and towns attempted to promote open and direct discussion, and attempted to resolve conflicts and develop consensus on local growth management problems. New information was assembled, existing information codified. The confrontation among groups with conflicting values and goals accounted for considerable attitude change.

Most local officials in Type I communities perceived the growth policy development process as a useful opportunity for local review. They supported the work of LGPC's (although they were not necessarily enthusiastic about the state's role in the effort). They were serious about selecting committee members representing a cross-section of municipal interests. Without exception, LGPC heads in Type I communities were dynamic, respected, and effective as discussion leaders. Some committees specifically sought out individuals noted for their leadership abilities. In other municipalities, highly concerned, active individuals chaired the LGPC's because of their obvious interest in the process. In all but four cases, these leaders were already active on local boards or had been in the past. In some cases, this reinforced traditional views about local growth policy, but in most of these communities the chairperson served more as a facilitator than a director. The important role of the LGPC selection process and the leadership capabilities of the Committee head in the success of Type I LGPC's should not be underemphasized.

Several highly educated, small suburban towns near large urban centers had successful LGPC's, but these demographic characteristics did not always correlate with success. Communities of this description tend to have more positive attitudes toward citizen participation, are more prone to experimentation, and are frequently more amenable to land use planning and growth management. Thus, the residents in such places are likely to support a LGPC if it initiates positive actions and active, open discussion. In the final analysis, though, it is the committee's ability to generate discussion and its resourcefulness in initiating action following from its conclusions that account for local reactions.

In addition to the importance of the process by which LGPC members were selected, the role of group leaders, the overall support of local officials, and the resourcefulness of the LGPC itself, the M.I.T. survey explored the possibility that the size of the LGPC and the past tradition of public participation in local affairs might explain the success of Type I communities. The size of the LGPC turned out not to be particularly important (although successful committees tended to have somewhat larger than average memberships). Long-standing traditions of public participation in local decision-making seemed highly correlated with the success of Type I communities.

LGPC attitudes toward state government and regional planning agencies seemed to have little impact. The committees were self-directed. They did not rely on other levels of government. Attitudes towards the state government ranged from "deep suspicion" to "cynicism" to "an acceptance of the state's intentions at face value" to "it is about time" we had "an opportunity to express our view to the state."

Type I communities provided almost all the information requested by the Office of State Planning, but most saw this as a secondary function: important only if OSP followed up effectively and impartially in preparing its recommendations. Thus, the credibility of OSP was irrelevant to the initial success of Type I communities.

Finally, special efforts to enhance widespread citizen participation in framing the Local Growth Policy Statement appear to explain, in part, the success of Type I LGPC's. Given the difficulty of mounting public hearings on long-range, non-specific issues, the turnout for LGPC public hearings in Type I communities was quite good. All but three communities succeeded in involving more than thirty-five people in their first or second hearings. This was accomplished by advertising at polling places, at Town Meeting or in newspapers; sending flyers including abridged questionnaires home with school children; generating extensive newspaper coverage including emphasis on local growth policy issues; taking full-page ads, and, in one case, preparing a montage of twenty possible future headlines concerning the consequences of future growth to be discussed at the public hearing; using smaller precinct meetings in large communities; emphasizing personal discussions with friends, neighbors, and of course, promoting direct contact with Leagues of Women Voters, other citizen advisory committees, business associations, and fraternal organizations.

The extent of citizen involvement seems to have been as dependent upon the willingness of the committee to work at getting the public involved as it was on the presence of local issues of major concern. In return, citizen involvement seems to have reinforced the work of LGPC's. The credibility of LGPC's was enhanced and local consensus on growth management issues solidified by making local policies more explicit.

### E. Type II Communities

In many cities and towns the work of the LGPC's did not lead to immediate changes in local policy or proposed changes in the structure of planning operations. However, the probability of such changes occurring in the future increased as more and more residents became actively involved in growth management decisions and as the local agenda of land use planning issues was sharpened through debate and discussion. Thus, the politicization of LGPC members and the opening up of local growth policy debates are signs that the growth policy development process was successful. If individual choices are reconsidered, if different interests confront the variations in their beliefs, the seeds of reform are sown.

At least fifty-nine of the communities surveyed experienced moderate shifts in community attitudes toward growth policy questions. These were labelled "Type II Communities." Ten were almost at the point of enacting community-wide policy shifts. Twenty-three others were reconsidering prevailing policies, reformulating local growth management objectives, or rethinking planning responsibilities. Twenty-six displayed substantial shifts in LGPC member attitudes, but no impact on the larger community.

LGPC's in Type II communities tended to be unwilling to push for changes themselves, seeking instead to motivate existing boards. They were more accepting of the existing institutional structure for planning; only a couple of committees expected to remain intact once their OSP responses were finalized. They sought to define and clarify local policy rather than to change it. They viewed themselves as information and communication sources rather than as originators of policy. LGPC members in Type II communities gained a new sense of community identity and, in some cases, solidified anti-state feelings. Values were not confronted as

readily as in Type I cities and towns. Many committees kept discussions general to avoid disagreement over particulars. The most positive outcomes in these communities were the almost universal increase in concern about growth policy decisions, a large increase in knowledge about how planning is done, and an increased sensitivity to just how vulnerable most communities are to shifting growth patterns and pressures. For some LGPC's, this amounted to the town planners on the committee "educating" the citizen members; for most, it represented an exploration of community issues by individuals previously involved only with their own special interests.

Type II communities have relatively little in common. Of eleven mainland regions in Massachusetts, they come from nine. Their population ranges from 600 to 176,000. Educational levels are equally divergent. Most are smaller towns, generally located beyond the direct influence of metropolitan area and faced with 25% growth rates over the last ten to fifteen years.

Type II communities experienced little change in local growth policies and minimal pressure for the reform of local planning institutions as a result of the LGPC's work. But townwide attention to local growth issues did increase, local growth priorities were made much more explicit, and the extent of public participation in considering local growth policy was expanded. Many individual LGPC members in Type II communities learned a great deal about land use choices at stake locally and there were many participants who shifted their views about what ought to happen locally or regionally. LGPC's in these communities made no conscious effort to reformulate local growth policies or to translate what they learned into proposed reforms of local planning institutions. Had these communities

adopted such objectives, they might well have achieved them. Instead, they concentrated on documenting local attitudes and completing the OSP questionnaire.

F. Type III Communities

Not every LGPC in Massachusetts considered the growth policy development process a useful local exercise. Nineteen committees decided the process was unnecessary for their locality, although they acknowledged the possibility that their report might produce some benefits at the regional or state levels. All but three Type III communities considered their own ongoing planning activities far superior to the level of effort implied by the OSP questionnaire. Others thought they had no growth management problems to begin with.

In essence, many Type III communities felt that they were beyond the level of self-examination implied by the Act. Several are highly educated college-oriented towns. Most have relatively proficient planning staffs, have established citizen goals and policy committees before, and populated the LGPC with individuals already experienced in local planning. It is of little surprise, then, that the conclusions and recommendations of these LGPC's mirrored existing patterns of thought in these communities. What is surprising is that some of the most successful Type I LGPC's were in towns with very similar characteristics (e.g., higher-than-average educational levels, relatively high importance attached to growth policy issues or growth pressures, wide range in population size).

Type III communities participated reluctantly. Statements such as "the town is simply tired of worrying about land use issues" and "it's a massive effort for volunteers to define our goals and support the necessity of their restrictiveness without appearing overly selfish" were coupled with



a predominantly negative attitude in most of these towns toward the State government. The OSP questionnaire, a very long and elaborate information gathering tool, affirmed the sense that many Type III communities had of state incompetency.

LGPC's in Type III communities had no impact on local growth policies and promoted almost no reconsideration of the design of local planning mechanisms. There were a few instances in which local growth priorities were stated more explicitly as the result of the LGPC's efforts.

#### G. Type IV Communities

In twelve communities, there was simply no impact from participation in the growth policy process. Most felt quite negatively about the process itself and therefore did not participate actively.

Most Type IV communities are small towns from the western end of the state or from Cape Cod. Their feelings about their uniqueness and the state's insensitivity to non-urban needs runs high. The remaining two urban regional centers and two suburban centers are close to Boston and have had negative experiences with the State or the city of Boston. As "one more State program," the Growth Policy Development Act was the target of long-standing hostility.

Complaints from this group, as well as from some communities in the other three categories include:

The OSP Questionnaire: OSP, as required by the Act, sent each community a 95-question, 20-page questionnaire. The format included both multiple-choice and essay questions. More than 70% of the communities found fault with the form and style of the questions. They complained about the complexity of the terminology and what appeared to be a bias in favor of regionalism. Many LGPC members found the questionnaire tedious

and boring, thereby adversely affecting committee discipline and morale. Some LGPC members felt that the first part of the questionnaire, which asked about each town's history, was too long and kept people from the controversial and interesting issues relative to the town's present and future. There was confusion about whether the LGPC's were expected to thrash out each item until achieving consensus or merely to note different points of view. Many LGPC's adopted methods to limit discussion on each question by setting time limits (usually 15 minutes) or letting subcommittees or individuals answer them. In spite of instructions to the contrary, many communities felt that they needed professional advice and technical consultants to answer the questionnaire. The questionnaire asked for opinions and attitudes, but people felt compelled to include massive amounts of factual data. The language was considered too complex by some, too vague by others. Committees feared being trapped into making vague statements that might be misinterpreted by state officials.

LGPC's in rural areas thought the questionnaire was too urban oriented that large parts were inappropriate, and that important issues like schools were ignored. Some of these committees also felt that the highly structured nature of the questionnaire produced a "stacked deck for regionalization," that it was "written with the assumption that towns do not know what's going on," and a "more fluid, less restrictive format" would have been more conducive to independent thought.

2. Required Hearings: The required hearings came under considerable fire. Relatively few communities in the Commonwealth had successful citizen input. Average attendance for hearings was less than fifteen. The fault was attributed partly to the lack of funds (to mount a survey or other outreach efforts), but most of the blame was attributed to citizen apathy

and the unspecific nature of the growth issues under discussion. Although some communities felt that we "should get as much input as we can from citizens, since they have to live with the outcomes," it was also suggested that many residents are "selfish and parochial" and do not take the larger view, and that hearings are "not good for generating ideas, they are only good for reacting -- usually negatively -- to solid issues." Over thirty LGPC heads commented on what they perceived to be the impersonality of the process and lack of concern for local priorities in spite of the fact that the thrust of the Act was to secure local input into the formulation of state policy.

3. Technical Support: Some committees felt isolated and lacking in the technical support they believed was required. Conferences and workshops held at Tufts University and M.I.T. to explain the purposes of the Act and to help orient LGPC members were thought of highly, but left many attendees with doubts as to the state's intentions.

4. Timetable: Most communities -- Type IV in particular -- complained that the timetable for completing the questionnaire was too short. The schedule for completing local Statements continued into the summer, conflicting with vacations. It overlapped with town meetings and local elections in many places, taxing the time of the most active residents. It was "too short a period to develop a sense of achievement or to accomplish things." Support materials arrived late. These included the announcement of the law, the OSP handbook, the OSP Questionnaire, and (environmental, agricultural, and coastal) supplementary questionnaires which were added at the last minute (and largely ignored by the localities). The OSP faced a tight schedule. In retrospect it appears that more time should have been spent preparing the process and putting it in motion.

Several LGPC heads indicated that if something positive does come from the Act, it should be tried again because "skepticism would be removed and would do a better job...Citizen participation depends on the results of the process being used and people expecting this beforehand."

5. Appointment of LGPC Members: The LGPC appointment process was questioned by some cities and towns. A few committees felt that selection "by the powers that be" biased their particular committees towards either business or conservation interests. Others felt that "volunteer government officials [could] not be the most productive members of these groups due to other commitments, other citizens must therefore carry the weight;" more effort was needed as to who was selected and why; the group dynamics as a product of the personalities of the individual(s) and the need for an ideal chairperson needs more careful consideration." All in all, Type IV communities found numerous reasons for not participating in the growth policy development process.

The M.I.T. research concluded that the Growth Policy Development Act had a demonstrable impact on more than one half of the surveyed communities, and probably on the same percentage of cities and towns throughout the state. The impacts ranged from substantial efforts to change local policy or reform local planning institutions in Type I communities, to increased awareness of growth policy issues and modest changes in local attitudes and perceptions in the Type II category. The experiences of the Local Growth Policy Committee's indicates that it is extremely difficult to build local planning capabilities and develop consensus on local land use issues. The evidence suggest that strong group leaders are needed to help community participants confront their differences and to develop local policy consensus. An obvious corollary is that a broad representation of

local interests must be included on the local committees if meaningful dialogue and exploration of values is to occur. In addition, if the entire process of inquiry takes place in a positive atmosphere, one in which trust is possible, the odds of success are much greater. It was only in communities that were willing to accept the possibility of local advantage or the state's good intentions that the process was successful. In most communities in which the Growth Policy Act was unsuccessful, hostility toward the state was so great that it undermined the entire process. This suggests that efforts to improve land use decision-making by relying upon adversary judicial or administrative proceedings, to force local compliance with state guidelines, may encounter severe difficulties.

Finally, in the less successful Local Growth Policy Committees, the chairpersons did not focus debate on value differences within the LGPC or within their community, and they made little effort to reach out for greater public participation. These LGPC's did not see themselves in a constituency building capacity building or conflict resolution role. The experience of these committees highlights the importance of helping the participants in local planning processes to clearly understand the roles that they are expected to play. Although the bottom-up strategy embodied in the growth policy process was not successful in every community, it did seem to increase general public awareness of land use issues. The Act also changed the attitudes of a great many citizens and local officials about the need for more and better land use planning, and created a constituency for efforts to strengthen growth management capabilities throughout the state.

## VIII. The OSP Report

### A. Preparation

In reviewing the local and regional reports, the Office of State Planning undertook three interrelated activities. First, OSP established a "reader process" which involved a variety of private interest groups, state officials and the academic community in direct review of the local growth policy statements. Second, OSP's 11 member regional liaison staff was assigned to review each of the local growth policy statements and the regional report from their region. Finally, the readers and the OSP's staff were asked to recommend representative quotations from the statements. These quotations were then compiled into an "excerpts" report which was widely distributed to citizens and public officials throughout the Commonwealth.

These activities were primarily designed to ensure that the local growth policy statements were given a "fair" reading by the OSP staff and to help OSP in identifying major growth management problems and key elements of policy consensus in the local statements. These actions, also, helped to sustain public interest in the growth policy process. In addition, both the excerpts report and the reader process served to increase OSP's credibility among interest groups and local officials. By making the review process completely open, OSP reduced fears that the state would use the local statements against the communities.

#### 1. The OSP Reader Process

One of OSP's first steps in analyzing the local growth policy statements was to develop a "reader process." The purpose of the reader process was summarized in an OSP memo as follows:

OSP has considered developing a network of readers of the local growth policy statements. This network would include state, federal and quasi-public agencies, the academic community, business interests, OSP's citizen Advisory Board, special interest groups, legislators and citizens. The function of these readers would not be to interpret or 'grade' a particular communities (sic) statement, but rather to try to identify those particular areas of the questionnaire which made specific recommendations on state programs or policy issues, and to summarize those recommendations. 116

In July of 1976, OSP mailed letters to over 700 organizations and individuals inviting them to participate in the "reader" process. Organizations were invited to participate based on four criteria: 1) The organization (or its membership) possessed a level of expertise in some aspect of growth and development; 2) A balance of types of organizations was solicited; 3) An organization should be at least area-wide (preferably state-wide) in jurisdiction or scope of interest; 4) persons within the organization had to be willing to commit the level of time necessary to carefully review the statements.<sup>117</sup>

Invitations to participate in the reader process were sent to all state legislators, select legislative committee staff (i.e., Committee on Natural Resources and Agriculture, Local Affairs, Urban Affairs, Transportation, Commerce and Labor, Taxation, Counties, Government Regulation, etc.), staff of various state and federal agencies, academic institutions, business and labor groups (chambers of commerce, home builders associations, real estate associations, utilities, etc.), environmental organizations, and civic and advocacy groups (i.e., NAACP, housing groups, League of Women Voters, Urban League, Mass. PIRG, etc.).

The letter inviting participation in the reader process stated in part:

The recently enacted 'Massachusetts Growth Policy Development Act' provides a unique opportunity for your organization to participate in the formulation of a Growth Policy for the Commonwealth. We are inviting your organization to become involved over the next few months by reading and interpreting a number of Local Growth Statements.

The 'reader' system provides your organization with the opportunity to read Local Growth Statements and thereby become aware, firsthand, of the concerns of various communities with such issues as: the environment, housing, business, regionalism, State programs, tax policies, and so on. It also provides you (as well as other interest groups) with the opportunity to help us extract the communities' recommendations for state action from the Local Growth Policy Statements, thereby ensuring a more balanced interpretation of these statements. 118

In addition, OSP invited the business, labor, environmental and civic/advocacy groups to articulate their own concerns about growth-related issues in written comments and recommendations separate from the reader summaries. These comments were considered by OSP in conjunction with the local statements in preparation of the State Growth Policy Report.

In all, approximately 230 individuals representing 70 organizations participated in the reader process. OSP received over 500 reader summaries. The breakdown of participating individuals and organizations was:

<u>Type of Organization</u>	<u>Number of Readers</u>	<u>Number of Organizations</u>
1. Academic	39	16
2. Business/Labor	46	10
3. Environmental	47	14
4. Civic Advocacy	78	19
5. Government Agencies	<u>20</u>	<u>11</u>
Total:	230	70



Each "reader" was mailed between four and six local growth policy statements and summary forms. The readers were given approximately three weeks to review the reports and return the completed summaries. In distributing the local statements, OSP made sure that no reader reviewed a local statement from his or her own community, and that each statement was reviewed by a cross-section of readers -- at least one from each of the academic, business/labor, environmental and civic/advocacy groups.

The instructions accompanying the reader forms made it clear that the intent of the reader process was to summarize what the community was saying about state government. The reader form stated, "This is not an opportunity for readers to amend the local statement nor to evaluate the desirability or efficacy of its recommendations. OSP will be using your review along with that of others, to determine what the implied recommendations of the particular community are regarding state laws, programs, policies and activities relating to growth."<sup>119</sup>

OSP had six purposes in initiating the reader process:

1. To provide an important "check" on OSP's interpretation of the Local Growth Policy Statements;
2. To allow for a balanced, unbiased analysis of the statements from a large number of important interest groups in the state;
3. To continue to assure the openness, and participatory nature, of the process;
4. To assure that there is widespread sharing of the valuable insights and information generated from the statements;
5. To allow the volunteer readers to analyze the growth policy statements themselves, and to reach their own conclusions;
6. To expand the network of participants on the Growth Policy Process, hopefully stimulating wider interest and understanding of the land use issues, recommendations and positions presented by communities in their local statements. 120

This intent was clearly stated in an OSP letter to a community which objected to the distribution of its statement to private interest groups. The OSP letter stated:

From the very beginning of the Growth Policy process (as prescribed by Chapter 807), communities have expressed serious concern about what the State was going to do with the returned questionnaires (Local Statements). Basically, communities seemed to suspect that either: (a) the State would pay no attention to the Local Statements; or (b) the State would use the information in the Local Statements 'against' communities (that is, interpret the Statements with a 'bias'). These are serious and legitimate concerns, and we have attempted to respond in a number of ways. The 'reader' process is one of these ways.

While we certainly could have decided, within the provisions of Chapter 807, to review the Local Statements only by our own staff and then to produce a final State Report, we did not feel that that would be in keeping with the spirit of the law. Nor did we initiate this 'reader' process to avoid committing our own staff resources. We will be carefully reviewing your Statement in any case. Rather than saving us staff time, initiating and managing the 'reader' process will involve substantial additional staff time. We believe that this is a worthwhile expenditure of our time, if it provides a better assurance that the enormous amount of time and energy spent by local officials and residents in preparing their Local Statements will be accurately reflected in our 'State Report.'

In addition, we have been positively impressed by the quality of the Local Growth Policy Statements we have seen so far. Therefore, we felt that sharing these with 'private' individuals and groups not only would maintain interest and participation in the 'growth policy' process, but also would promote the ideas expressed in the Local Statements.

As I hope you can see, we take this process and responsibilities it entails for us very seriously. If we are overzealous in our attempts to ensure greater state responsiveness to local concerns, please let us know. It will only be through such give-and-take and the dialogue among all levels of government

that we will be able to shape a better future for the Commonwealth. I look forward to this ongoing exchange of ideas and opinions. 121

OSP concluded the reader process by holding a special conference for the individuals and organizations that had volunteered time and effort to summarize the local statements. The conference was held on December 17, 1976, and attracted over 150 participants. It included a discussion by OSP officials of what they had learned from the growth policy statements and the reader forms. At the conference, Frank Keefe stated:

When we started the Growth Policy Process we were not sure where we were going or where we would end up. Even now we are not certain how we are going to bring all of the diverse ideas from the process together. However, two things are evident:

1. The extensive participation of the cities and towns, and individuals like yourselves, has broadened the scope of our thinking. This participation has transformed the debate about land use issues into a larger debate about how we balance our needs for economic development and environmental protection, our needs for resource utilization and resource protection. Communities themselves have set the agenda and forced us all to reconceptualize what is going on in Massachusetts today. What we have seen is that which started as a land use process has uncovered a whole set of additional problems and issues.
2. There is, at least, one other tangible result from the process to date. The onus for justifying state policies and for developing new policies that direct and coordinate state programs is on state government. Previously, if the state decided to do something it was up to localities to show why the project shouldn't be undertaken. Now, with the local growth policy statements as guides, the state must justify and be accountable for its actions. We are developing a policy framework for evaluating state actions. In addition, the networks created at the local and regional levels will provide a

mechanism for monitoring state programs and decisions to ensure that they are consistent with local needs and concerns. If inconsistencies are discovered, these networks will help us to resolve differences, and to change either the policies or programs involved. 122

The conference ended with a two-hour small group discussion between the readers, legislators and state officials. The discussions focused on a set of common themes and issues identified by the reader process.

These themes included:

- Preserving and enhancing local community character
- Local role in managing growth
- Housing and residential development patterns
- Employment, jobs, and economic development
- Providing the facilities: sewers, water, solid waste, transportation
- Taxation: raising the revenues
- The planning process
- Regionalism in Massachusetts
- Local evaluation of state government 123

Joseph Flatley, OSP's Growth Policy Project Director, concluded the conference by stating:

OSP will now go back and attempt to summarize how communities feel about each of these themes. Many communities explicitly identified problems related to these issues, other communities simply implied them. Few localities had concrete suggestions about how the state could resolve the problems. Some communities expressed conflicting views about the most appropriate state actions. Therefore, the most difficult task facing OSP is to develop specific recommendations reflecting a consensus of opinion related to each theme. 124

In short, the reader process had five primary impacts. First, it exposed a large number of people from different interest groups to the original local growth policy statements. Second, it served to increase the visibility of the entire growth policy process throughout the state. Third, it helped OSP to interpret the local growth policy statements and to summarize the areas of consensus and conflict highlighted therein.

The reader process also provided OSP with a summary of policy recommendations which the readers had extracted from the local statements. Finally, the process helped to expand OSP's network and constituency building activities.

## 2. OSP Staff Review of the Local and Regional Reports

In addition to the reader process, OSP conducted its own staff review of the Local Growth Policy Statements. The OSP staff review was designed to highlight the common issues and themes discussed in the local and regional reports. The staff review was conducted by OSP's regional liaisons and included: an initial reading and short summary of the local statements; a series of intensive staff meetings to identify common themes; review of the "reader" forms to compare the readers' interpretations with that of the OSP staff; a second reading and completion of summary forms to tabulate local responses in regard to the agreed-upon themes; and weekly staff meetings to discuss the contents and format of the entire OSP report.

A January 7, 1977 memorandum from Joseph Flatley to the regional liaisons characterizes the detail in which OSP reviewed the local statements. The memo stated:

The options in this 'check-off summary' were developed from the reader forms that you filled out several weeks ago. This second reading basically attempts to determine how communities line up on certain issues and if they either support or oppose, the reasons for their concern, and most importantly, particular recommendations to solve the issues. The results of these completed summaries will be tabulated and incorporated in the local perspective section of the State's Growth Policy Report. For example, these summaries may suggest that 90% of all participating communities feel that state regulations are not sensitive to community differences or less than half of the LGPC's from older developed communities want new highways, and so on.

Hopefully, almost all of your check-offs can be determined from both your reader form and the 'outside' reader forms. For some areas, you may have to go back over the full Statement, but this is the last 'reading' you'll be asked to do. It may also prove helpful to consult the main Growth Policy file for newsclips on the Committee, citizen comments and supplemental statements. 125

When the local "check-off" summaries were completed, the Growth Policy Project Director took responsibility for synthesizing the material into a coherent chapter on local growth issues. The regional liaisons were then given responsibility for preparing individual sections of the regional chapter. At the same time, OSP's senior staff worked to summarize the state perspective on growth, which consisted of an enunciation of existing state policies and activities.

As the project progressed, weekly meetings between the project director, the regional liaisons, and the senior OSP staff became the focal point in efforts to draft the state growth policy report. Keefe attended all of these meetings and the Commission staff was invited. The meetings concentrated upon areas of conflict and agreement within the local, regional and state sections. They provided a forum for analyzing specific policy and programmatic recommendations. In addition, the meetings focused on political considerations surrounding the recommendations. The meetings often diverged into long debates about planning philosophy and the most appropriate mechanisms for dealing with state and local problems.

The discussions in these meetings were animated. Various staff members argued for different interpretations of growth and development issues, alternative policies were considered, and diverse types of programmatic action debated. The meetings represented the serious efforts

of a young and energetic staff to reach consensus among themselves about how to deal with the state's most pressing growth and development problems.

The following excerpts from one of these meetings illustrates the type of staff dialogue involved in the preparation of the OSP report:

\_\_\_\_\_ In looking at the consensus and conflicts sections, we need to consider how we've been influenced by the local and regional statements. What are we saying that's new, that's different from our previous policy perspective?

\_\_\_\_\_ We really haven't changed, we're not saying anything new.

\_\_\_\_\_ I think we have changed. Before we were talking about containing suburbanization. It was simplistic and had a negative implication. The local statements indicate that people favor urban revitalization and limited suburban and rural growth. This is both a refinement of the policy and allows us to state it more positively.

\_\_\_\_\_ But there is a conflict in that approach. Our projections show that the cohort of people turning 30 will put increased demand on the housing market. If housing starts continue at past levels, there will be a significant housing shortfall in the next decade, even if revitalization efforts are successful. On the other hand, the local statements illustrate that communities want to limit growth. Therefore, the conflict is between increasing housing demand and declining local desire for growth.

\_\_\_\_\_ We are really confronted with three problems:

1. The desire of communities for slow and moderate growth.
2. The demand for suburban housing which may be caused by the baby boom generation.
3. The ability of people to afford suburban housing due to high construction, land, energy, transportation and infrastructure costs.

\_\_\_\_\_ We've got to do something about the conflict or we'll see even more sprawl -- construction will take place further out to reduce land costs.

\_\_\_\_\_ There is a policy correspondence between the outer suburbs who want to grow more slowly and the inner suburbs and cities that would welcome industrial and middle-class population growth.

\_\_\_\_\_ I don't want to get into the stupidity of saying we want suburbanites to move back into cities.

\_\_\_\_\_ It would appear that the state policy approach should be twofold:

1. Focus on revitalization of existing urban areas to enhance the life style choice of investing in older neighborhoods for families entering the housing market.
2. Enabling suburbs to phase growth in order to facilitate better planned development and coherence with existing fiscal constraints. Approval of phased growth ordinances, however, should be contingent on the community meeting some type of low and moderate income housing criteria in order to deal with the cost problem.

\_\_\_\_\_ This approach also begins to address the suburban growth issue which we have been accused of avoiding.

\_\_\_\_\_ Even though there may be a policy correspondence, market forces may be working in the opposite direction. People still want suburban housing and that's where home builders want to build. In addition, many state and federal programs continue to encourage suburban growth.

\_\_\_\_\_ We could argue that we are anticipating changes in market forces that have already begun and are simply not evident. There are an increasing number of market forces working against increased suburbanization. For example: the lack of public investment capital to expand infrastructure, increasing property taxes and the inability of growth to pay for itself, smaller average family size and less need for single-family detached housing, energy and transportation costs, etc.



\_\_\_\_\_ The question is how could we implement the suburban growth strategy? Sometimes I think our ability to plan outstrips our ability to implement. In addition, this entire discussion is predicated on the assumption that Massachusetts won't witness a massive out-migration because of lack of jobs and high living costs, etc. I'm not sure we could convince people about the need for a suburban philosophy that isn't clearly defined by current market trends. 126

This dialogue illustrates the type of staff discussion that went into the preparation of the OSP report. Each meeting consisted of a great deal of self-examination by the OSP staff. Alternative problem definitions, policy options and programmatic responses were considered and discussed. The meetings were characterized by a dynamic tension between the need to respond to the local statements, to evaluate and refine existing state policies and to develop practical and theoretically sound programmatic responses to state and local development and conservation problems.

### 3. "Excerpts" Report

The final component of OSP's efforts to prepare the state growth policy report was publication and distribution of an "excerpts" report containing verbatim quotations from the local growth policy statements. The purpose of this report was to directly illustrate the type and range of opinions expressed by communities in their local statements. The report contained over 600 direct quotations from 267 communities. Ten thousand copies of the report were printed and distributed to LGPC's, local and state officials, legislators and interest groups throughout the state. The report was designed to sustain interest in the Growth Policy Process by giving localities a concrete state-wide product that had resulted from their work. The local statements and the regional reports had also provided concrete products of participation. However, the "excerpts"

report was the first indication to localities that state government was receiving their message, and that the state intended to utilize the local growth policy statements in developing policies and evaluating state actions.

As the introduction to the "excerpts" report stated:

Perspectives on Growth is a progress report on the Growth Policy Process, and yet it is a part of the process itself. For a clear goal of the process is devoted to the sharing of information, the sharing of perceptions, the sharing of values -- so that we may learn from one another's experiences, and so that we may better understand one another's points of view. Some may disagree with the opinions expressed herein. But that is an important element of the process as well. These differences must be understood in order to be addressed (or respected and left alone). State government must certainly learn how it can be more responsive to and supportive of the needs and values of its citizenry. As you will see, many of the excerpts are critical of how well state government has done in the past. Local governments can also learn from this self-examination how they can best address their own needs. And, we all can continue to learn to better anticipate future problems and opportunities, and together to better control our collective destinies.

The Growth Policy Process is based on a notion of 'bottom-up' participation, rather than a 'top-down' imposition of standards (as attempted in other states). This document attempts to emulate that philosophy. It was assembled by the Office of State Planning, but it is truly the product of the deliberations of the citizens of the Commonwealth. In selecting excerpts for inclusion here, we have attempted to choose those which are representative and which stand on their own. It must be remembered, however, that each of these excerpts comes from a much longer and more substantial Local Growth Policy Statement (typically 30 pages or more), and that a complete understanding of a community's position can only come from reading that statement in its entirety. . . . (I)n analyzing the Local Statements, we have found that reading them is the only reasonable way to get a true sense of local views on various issues. If we have learned anything to date, it is that communities are individual and distinct from one another, and that these differences must be respected. We have been extremely impressed with the candor and thoughtfulness of these

Local Statements, and concluded that it was incumbent upon us to share some of the thoughts contained therein. 127

All three of OSP's actions in preparing the state report were designed to increase public understanding of growth issues, to sustain interest in the growth policy process, to continue dialogue between key actors in the growth policy field, and to contribute to consensus building and conflict resolution. The reader process involved over 200 individuals in direct dialogue with OSP and each other about common themes and conflicts identified in the local statements. OSP's staff review focused on building consensus within the office about the interrelationship between the local, regional and state perspectives on growth. Finally, the "excerpts" report provided information to thousands of citizens and public officials on local perceptions about specific growth issues.

#### B. Contents of the OSP Report

By August of 1977, the OSP state growth policy report had been through five complete drafts. Because of delays in submission of the local and regional statements, intensive staff review and discussion, and efforts like the reader process and various growth policy conferences to involve the public in OSP's deliberations, completion of the report took almost one year. In addition, OSP had met continuously with the Commission to keep legislators informed of the progress and substance of the drafting effort. Finally, prior to the public release of the report, OSP distributed its draft report to about 40 representatives of business, environmental, academic and local interest groups for review and comment. OSP incorporated many of the suggestions of these groups into the final version of the report. The report was also carefully reviewed by the Governor and the

Development Cabinet and changed in response to their criticisms. In October of 1977, the Office of State Planning published its state growth policy report entitled, City and Town Centers: A Program for Growth.

The OSP report consisted of five parts: (1) an overview of local perspectives on growth management; (2) a region-by-region review of area-wide growth management concerns and priorities; (3) a summary of state perspectives on growth -- taken mostly from two previously published OSP reports; (4) an analysis of the points of agreement and disagreement revealed in the first three chapters; and (5) a long chapter outlining specific policy and action recommendations.

The Summary of Local Perspectives on Growth indicated that cities and towns are especially concerned about preserving their physical character (vistas, historic buildings, traditional town centers, open spaces), their social and cultural character (closely-knit neighborhoods, shared values, community pride) and the political or governmental organization to which they have grown accustomed (strong home rule, reliance on the town meeting form of government, heavy dependence on part-time local volunteer officials, a high degree of citizen participation). According to Local Growth Policy Committees, threats to community character include: rapid and ill-accommodated growth, environmental degradation, the loss of agricultural activities, suburbanization of outlying areas and the urbanization of inner suburbs, loss of open space and historic assets, deterioration of traditional town centers, poorly planned commercial developments and state or federal intrusion into local affairs. Ideas for preserving or enhancing community character, taken from Local Growth Policy Statements, include: ensuring that state statutes and regulations are sensitive to

community differences, improving the administration of the state's existing environmental laws and regulations, ensuring the preservation of agricultural land, increasing the level of funding for open space acquisition, neighborhood improvements and downtown revitalization, providing adequate funding for all state-mandated programs, improving and expanding enabling statutes requiring that local governments be consulted whenever a state action or investment will affect them, and improving or expanding technical assistance to cities and towns.

OSP's review of local concerns about issues such as economic development, housing and residential growth, taxation, growth-related facilities, transportation, waste water treatment, water supply, solid waste management, recreation, and growth management seems quite sensitive to the kinds of complaints localities have been making for quite some time, but which, for a variety of reasons, the state government has failed to acknowledge. Under the heading of economic development, the suggestions culled from the Local Growth Policy Statements include: improving the management of the state's regulatory process by streamlining permit and licensing procedures; developing a more aggressive approach to attracting federal public works programs; developing new programs to revitalize downtown business areas; providing the public facilities necessary to attract industry; improving manpower training programs to better meet the needs for skilled labor in new industries; and expanding small business assistance programs. With regard to housing new residential growth, OSP identified the following dominant local concerns: the need for a wider range of affordable housing opportunities; the need for a more equitable distribution of low and moderate income housing among communities; and the need to ensure that future

residential growth is consistent with each community's ability to absorb it.

According to the Office of State Planning, one of the single most important lessons drawn from the growth policy process is that "state-local fiscal relations are not what they ought to be."<sup>128</sup>

Nearly all the communities describe the present system of state and local taxation as regressive and a deterrent to economic development, the overall level of taxation as excessive, and personal property tax payments as both onerous and burdensome. <sup>129</sup>

In further discussions of fiscal problems, cities and towns pointed to inadequate and inequitable state aid to communities, unreasonable assessments on communities (such as the costs of county governments), unnecessarily high levels of state and local public spending, school committee autonomy, rapid growth which has outstripped local capacity to accommodate it, newer residents with higher expectations about public service levels, 100% valuation and its implications for residential neighborhoods, and bureaucratic mismanagement at the state level. While this list will not seem particularly fresh to the many Massachusetts residents who have tried for years to register these views with the legislature and the chief executive, its inclusion in a state report endorsed by the Governor represents an important step forward. Only when the agenda of problems and priority concerns is agreed upon, can progress be made toward solutions.

The OSP Report went on to recount the concerns and ideas expressed by Local Growth Policy Committees with regard to transportation (increased non-local funding for public transportation, a call for an end to major new highway construction projects, reform of the MBTA assessment formula, an increase in the flexibility of Chapter 90 administration, revitalization

of commuter and freight rail service, wastewater treatment (relax state water quality standards for smaller communities), water supply (provide more stringent protection for existing water supplies, require state agencies such as the Department of Environmental Quality Engineering to be more sensitive to community character and differences, give a higher priority to water quality concerns), solid waste management (make state standards and regulations more sensitive to the fiscal limitations on local government), recreation (increase non-local funding for open space, provide state payments in lieu of taxes for communities affected by state recreation investments, allow communities a larger part in making decisions about state park and forest management), and growth management (modernize or eliminate county government, promote inter-municipal planning in areas such as solid waste management and maintenance of water supply, improve the effectiveness of regional planning agencies, enable communities to enact design review for new commercial, industrial and apartment development).

In an effort to summarize local attitudes toward residential and industrial growth, OSP tabulated Local Statements about the "most desired future:"

<u>Desired Future Residential Growth</u>	<u>Number of Communities</u> <sup>130</sup>
Higher growth than in the recent past	14
About the same growth as in the recent past	99
Slower growth than in the recent past	103
No growth (including those communities that do not expect to grow)	52

Hard to say, not indicated, did not participate in growth policy process	83
	<hr/>
	351

<u>Desired Future Industrial Growth</u>	<u>Number of Communities</u> <sup>131</sup>
Broad growth	53
Limited growth	132
No growth	52
No issue	50
Hard to say, not indicated, did not participate in growth policy process	65
	<hr/>
	352 (sic)

Efforts to map these preferences reveal location patterns:

Those communities now seeking a higher level of residential growth and investment are largely those older cities whose departing population fueled the suburban growth of the fifties and sixties. The older cities of the state are all actively seeking an increased level of industrial growth. Other communities, having had what they consider to be favorable experiences with industrial growth also desire further industrial growth, as do those that seek to expand or fill their industrial parks. Those communities in predominantly rural or environmentally sensitive areas generally oppose further industrial growth. 132

The chapter on Regional Growth Perspectives includes a discussion of the following issues: housing and residential growth, industrial development, center revitalization, transportation, and environmental protection. An extensive region-by-region review provides an extremely sensitive reading of the differences among the various sections of the state. All too often, residents in the western and southeast portions of Massachusetts have found that legislative and administrative actions taken in Boston



reflect a narrow and inappropriate definition of their needs. The OSP Report openly airs the complaints, problems and priorities of these communities.

While the OSP Report talked about building stronger regional institutions, it carefully pointed out that it would not be desirable to do so in a way that forced area-wide collaboration on cities and towns that do not want to participate. The dominant local view (skepticism and perhaps disappointment with the ineffectiveness of existing regional planning agencies) seemed to have percolated up to the state level. OSP claims that rural areas are more likely to accept the idea of regionalization since they are quicker to acknowledge their own administrative limitations. This may be a somewhat questionable reading of certain of the Regional Reports, but the OSP observation that the larger cities, especially Boston, feel that the existing regional boundaries are too extensive is indeed correct. Unfortunately, no criteria are offered to use in drawing more appropriate boundaries.

The chapter summarizing the state's view of growth management priorities was not an attempt to respond to the issues raised in the local and regional sections, but purposefully summarizes the key ideas used in recent years to guide state investment and regulatory strategies. In essence, this chapter was a summary of two earlier OSP position papers: Towards a Growth Policy for Massachusetts and An Economic Development Program for Massachusetts.<sup>133</sup> Once again, the emphasis was on the location and quality of growth (a focus on center cities and revitalization of already developed areas), the level of growth (with respect to economic development, energy policy, capital formation and transportation), and the role of government

in stimulating and channeling growth.

There is, not too surprisingly, a resemblance between the earlier positions espoused by OSP and many of the positions contained in City and Town Centers: A Program for Growth. This time around, however, OSP reformulated and tied many of its policy proposals to Local Growth Policy Committee sentiments and the concerns of Regional Planning Agencies. Some readers found it difficult to accept OSP's assertion that the desire expressed by many suburban and rural communities to slow or stop growth ought to be interpreted as support for the state's affirmative efforts to channel new growth into older urban centers. While the two views are not necessarily inconsistent, support of the first does not necessarily imply a vote for the second. Indeed, while many suburban and rural areas feel they are unable to accommodate additional development, they still feel that they have a legitimate claim on state resources needed to manage the impacts of growth they have already experienced. Consequently, such communities argue the OSP's policy of directing state investment into older centers fails to address their growth management needs. OSP, on the other hand, contended that the Local Growth Policy Statements demonstrated a consensus throughout the state indicating considerable support for many of their earlier positions.

The fourth chapter of the OSP Report highlighted the points on which the three levels of government (i.e., local, regional and state) agreed and disagreed. Areas of agreement include: there ought to be increased economic development; it is important to revitalize city and town centers; it is important to maintain environmental quality; property tax relief is sorely needed; farmland ought to be preserved; and the state must be more

sensitive to the difference in community preferences and seek to enhance community character. The points of disagreement are posed as "choices:" growth/no growth; public policy/market forces; regionalism/home rule; and revenue needs/tax reform. Obviously, these are not either/or choices. The general conclusions offered by OSP were that growth must continue, but its timing and location should be managed more carefully and sensitively than in the past; that public policy ought to be used more deliberately to shape and constrain market forces; that efforts to impose further regionalization are of little value, while efforts to enhance local capacity and nurture municipally initiated collaboration ought to be encouraged; and efforts to reduce the reliance on the property tax should move ahead quickly. This suggests leanings, but not clear choices, on the major points of disagreement.

In the final chapter, an eight-part statement of growth policy objectives was presented. Paraphrased and simplified, these policy objectives may be summarized as follows:

- (1) Growth should be channeled into already developed areas consistent with local priorities.
- (2) The quality of future growth and development is of overriding importance, particularly in terms of protecting environmental, historical, and cultural resources and promoting aesthetically pleasing design.
- (3) A level of growth must be maintained that will provide sufficient jobs and housing for all residents.
- (4) No community should grow at a rate that will strain its ability to provide the services its residents require.
- (5) Growth management processes must be responsive to local needs, timely, and open to public scrutiny.
- (6) Local controls should not be pre-empted.
- (7) Regional variations must be respected.

- (8) The state's job, basically, is to be responsive to local and regional concerns.

These policies lead directly to 36 specific action recommendations concerning centers, neighborhoods, buildings, jobs, farms, wetlands/coastline/scenic rivers, water, growth management, regions, and property tax. These action recommendations may be summarized briefly as follows:

#### Centers

1. Ensure that state and federal public investment and construction grant programs give maximum priority to the revitalization of community centers, especially the centers of urban areas.
2. Encourage cities and towns to initiate center revitalization programs.
3. Establish a Massachusetts Heritage Trust Advisory Commission to foster the identification, preservation and development of unique and unusual resources in centers both natural and man-made.

#### Neighborhoods

4. Modify state housing programs to encourage neighborhood preservation by stimulating private investment through state-assisted programs of housing rehabilitation, rental assistance, mortgage and interest subsidies, and insurance.
5. Provide overall programs for neighborhood maintenance improvement and protection.
6. Prohibit geographic discrimination in lending decisions.
7. Modify administrative procedures and file legislation to reduce arson.
8. Expedite the transfer of tax-delinquent property to new productive use.

#### Buildings

9. Establish local building recycling programs.
10. Revise the State Building Code to encourage the rehabilitation of existing buildings.

11. Amend Chapter 121A to provide greater flexibility and to encourage its use for building rehabilitation (c.121A allows local tax write-downs to encourage urban revitalization).
12. Include expansions under the Urban Job Incentive Program.
13. Coordinate the Urban Job Incentive and the Chapter 121A programs.
14. Expand mortgage financing for urban revitalization projects.
15. Establish Comprehensive Review Councils to consolidate the local development permit process.
16. Enact measures to facilitate financing for new jobs.

#### Farms

17. Establish an acquisition of development rights program.
18. Authorize a transfer of development rights program.

#### Wetlands/Scenic Rivers/The Coastline

19. Provide adequate funding to prepare a uniform mapping system for wetland protection.
20. Implement the Scenic Rivers Act.
21. Encourage coastal communities to revise local policies, zoning by-laws, subdivision controls, etc. to conform to the coastal zone management program.

#### Water

22. Continue implementation of the state-wide water conservation program.
23. Encourage water supply self-sufficiency.
24. Provide state intervention as a last resort.
25. Apply a total systems approach to water resources.

#### Growth Management

26. Encourage communities to establish a growth phasing and sharing program.
27. Increase the capacity of communities to prepare and implement local growth programs.

28. Empower more effective local control around new highway interchanges.
29. Require the Division of Water Pollution Control to size and locate sewer facilities in compliance with local growth policies and plans.
30. Revise design standards of Chapter 90 and other local highway assistance programs to allow communities to maintain and repair roadways consistent with local character.
31. Clarify the definition of "cluster development" in the Zoning Enabling Act.

#### Regionalism

32. Submit enabling legislation to allow regional planning agencies to exercise control over development of regional impact and/or areas of critical planning concern.
33. Initiate a thorough evaluation of county government.

#### Property Tax

34. Provide state assistance to communities in controlling and stabilizing local expenditures.
35. Commit a substantial portion of increases in state revenues to local property tax assistance.
36. Share property taxes generated by new non-residential development among communities. 134

The action recommendations were pointed and, to some extent, risky. Had the report stopped short of specific recommendations, almost everyone could have found something to agree with in the statement of growth policy objectives. Each action recommendation, however, included a detailed description of the problem being addressed and a number of legislative and administrative proposals. These proposals left OSP and the Governor (who had played a major role in reviewing and shaping the recommendations) vulnerable.

OSP's thirty-six action recommendations included sixty-one legisla-

tive and administrative proposals. Some of these proposals were restatements of recommendations that the Governor and his staff had been advocating for some time. This is not to imply that they did not represent a reasonable response to the concerns expressed by the Local Growth Policy Committees. Indeed, many found substantial justification for the first time in the problem descriptions provided by the cities and towns that participated in the growth policy process. In particular, the proposals dealing with capital formation, the management of the state's water supply, and strategies for central city revitalization responded directly to local calls for additional state help in underwriting municipal borrowing for local improvement projects, state-aided programs for housing rehabilitation, provision of state funds and technical assistance to encourage water supply self-sufficiency, and changes in state codes to encourage rehabilitation of existing structures, and help in expediting the transfer of tax-delinquent property to new, more productive uses.

Many of these proposals were refined versions of bills that had been filed in earlier legislative sessions. Often, the recommended changes were the direct result of comments from Local Growth Policy Statements. Other proposals were developed during the process of reviewing the local statements and were filed by the Governor before OSP's Growth Policy Report was finalized. Still other recommendations required totally new legislation or new forms of administrative action.

Specifically, OSP's recommendations can be divided into three categories:

- |   |    |
|---|----|
| 1. Administrative recommendations                                     | 15 |
| 2. Recommendations endorsing or refining previously filed legislation | 27 |

3. Recommendations for new legislation	19
	<hr/>
Total:	61

OSP's emphasis on previously filed legislation was part of purposeful strategy to focus legislative attention on the growth policy priorities that had developed between 1975 and 1977. Essentially, OSP had utilized the Growth Policy Process to inform many of their day-to-day decisions and recommendations to the Governor. In turn, these decisions influenced OSP's review of the Local Growth Policy Statements and were used as input into the development and refinement of the state's growth policy objectives. Therefore, many of the OSP recommendations focused on policy and programmatic decisions that were already under consideration, and targeted a number of previously filed bills and administrative recommendations for priority consideration.

The rationale underlying this strategy was twofold. First, OSP viewed the Growth Policy Process as a mechanism for implementing its original mandate, that is, as a mechanism to develop a set of state-wide growth policies, to coordinate state planning programs and investment decisions, to resolve conflicts among state agencies and levels of government and to expedite various economic development projects. In short, OSP used the Growth Policy Process to help in simultaneously carrying out both its policy formulation and decision-making responsibilities. Consequently, OSP had no qualms about recommending that the Governor file a piece of legislation or take a certain administrative action prior to the release of their growth policy report. In addition, OSP saw no problem with including recommendations that were under consideration as a part of their final report. They viewed the Growth Policy Process as a



continuous combination of short-term decision-making and long-term policy formulation. The report reflected this view by focusing both on a number of previously proposed recommendations and new initiatives.

The second reason for including many previously articulated proposals as a part of OSP's policy and programmatic recommendations was to avoid overwhelming the legislature with a massive new agenda. Given the breadth of the Growth Policy issue, OSP's recommendations could have gone off in a variety of different directions. In fact, many people considered OSP's thirty-six-issue, sixty-item agenda as being too large for the legislature and localities to address. By focusing almost one-half of its recommendations on legislation that was currently under consideration, OSP was able to focus legislative attention on high-priority bills that related to the center revitalization policy consensus. At the same time, they were able to introduce a number of new initiatives while not overwhelming the legislature or diverting executive energies from their main policy priorities.

Keefe believed in the adage, "if a legislator is unfamiliar with a bill or doesn't understand it, his/her tendency will be to vote no." Consequently, OSP's action recommendations were used as a vehicle to increase understanding of bills that were critical to the centers strategy. The report was also used to demonstrate the growing consensus and constituency supporting specific actions related to this strategy.

This approach was particularly significant because the 1975 and 1976 legislative sessions had been disastrous for the Dukakis administration. The 1975 budget debate and Dukakis' personal style had alienated so many legislators that the Governor's legislative program, during his first two years in office, had fared poorly. By the end of 1976, the Growth Policy

Process was beginning to provide a constituency for many of the administration's proposals that had never had the support to pass. By late 1977, when OSP's final report was submitted, the Growth Policy Process had added to, and helped to refine, the administration policy and programmatic priorities. The Growth Policy Process had given a number of people input into specific legislative proposals and had helped to mold, and increase understanding of, the state's growth policy objectives.

In addition, a number of OSP recommendations unquestionably responded to concerns raised directly in the local statements. For example, OSP called for passage of a new enabling statute, appended to the existing zoning enabling law, that would allow communities to establish a growth phasing system whereby:

- A local Growth Program would be prepared, reviewed, and adopted by the community. The Program would be prepared by the Local Growth Policy Committee, or similarly constituted group, reporting through the local planning board, and it would be presented to the town meeting or city council for adoption, following public hearings.
- The Program would include: an analysis of how much growth the community could reasonably accommodate; the community's program for public facilities (school, streets, sewer and water) for the coming five-year period; a statement of the expected demand for housing growth and proposed local actions to meet that goal. Reasonable growth would have to be justified on the basis of physical characteristics, existing or proposed public facilities, and historical growth patterns in relation to expected demand.
- The state would assemble and distribute data to be used by communities in preparing their Programs and in reviewing their neighbor's Programs, including particularly the expected demand for housing for each region/subregion of the state. These figures would be revised annually, and as Programs were updated they would reflect these revisions.

- The Program would be reviewed by the state and by the community's neighbors. If after review the Program is found to lack a serious commitment to regional growth demands, the state could find the Program unsatisfactory. If no one objects, then the Program would go into effect.
- Once in effect, the community could grant a special permit to any housing proposal in order to meet its goal, and could reject any proposal once its goal for the year had been met.
- Moderately-priced housing would be counted at two housing units toward meeting a community's goal; subsidized housing would count as four.
- Every two years a participating community would revise its Program and re-submit it for review and approval.
- At local option, a participating community could prepare and adopt a Subsidized Housing Program identifying specific initiatives to promote the development of subsidized housing. Once such a Program went into effect, potential developers would apply under its provisions, rather than those of Chapter 774. That is, the community would be effectively exempt from Chapter 774 as long as its own Program was in effect. 135

OSP asserted that the adoption of this measure would respect local control, would help to increase local planning capabilities and would be a boon to the Massachusetts construction industry:

The Programs would allow the construction of housing at lower costs, since communities would no longer have to use tools such as large lot zoning and exorbitant street and sidewalk requirements to control local growth. Local Growth Programs would help both home-buyers and home-builders by:

- Allowing all communities to assume a reasonable share of regional housing needs, thereby broadening opportunities;
- Avoiding unnecessarily rapid growth, with its incumbent costs for public facilities and services, ultimately passed on to consumers;
- Stabilizing or reducing housing costs through the removal of unreasonable requirements;

- Reducing construction delays through the use of special permits; and
- Providing stronger incentives for the construction of low- and moderate-income housing, while allowing communities to initiate their own Programs for such housing. 136

Although this proposal responded to local desires to phase growth, and included state-recommended growth targets and incentives for subsidized housing construction, it was criticized by housing advocates as not taking a strong enough position on "opening up" suburban housing markets, and not clearly articulating state policy on suburban housing growth. Critics claimed that OSP was wishing away the effects of the slow growth/no growth policies in effect in many communities.

OSP cited the failure of c.774, the state's anti-snob zoning law, as an example of the inability of state mandates to generate suburban housing construction. They argued that incentives were needed to break exclusionary housing policies and that their program would create state and intermunicipal negotiation of acceptable growth rates.

### C. Initial Criticisms of the OSP Report

In addition to criticisms of the phased growth proposal, the OSP report was criticized because its structure as well as many of the specific policy and action recommendations were tied tightly to prior OSP and gubernatorial positions. This suggested that an unfortunate degree of "selective perception" (i.e., previously-held positions) had dominated the process of categorizing and interpreting new information. Clearly, the report was a political document and as such was not likely to include recommendations inimical to the views of the Governor and his staff. OSP's insistence on hammering away its central city orientation unsettled

suburban and rural interests. The predominance of the "centers theme" was clearly illustrated, both by the title of the Report (i.e., City and Town Centers: A Program for Growth) and by the fact that more than half the recommendations presented in the final chapter related directly to the revitalization of community centers and the rehabilitation of existing structures. OSP supported its emphasis on "centers revitalization" by pointing to the frequently expressed concern of local growth policy committees about the preservation of community character. OSP maintained that the most consistent theme in the local Statements was that "Massachusetts communities want to preserve their own character, i.e., villages don't want to be suburbs, suburbs don't want to be cities, and cities don't want to be wastelands."<sup>137</sup>

The Report failed to address the private sector's complaint that continued reliance on inefficient regulatory schemes and government interference adds unreasonably to the cost of doing business in Massachusetts and, indeed, chases jobs out of the state. In the fall of 1976, the Department of Environmental Quality Engineering was reorganized; a new "permit tracking" process was implemented in an effort to reduce bureaucratic delays for construction projects that would help boost the state's economy. This process, however, fell far short of the "one-stop-shopping" or comprehensive state permit process that many developers had urged. OSP apparently chose not to deal with this issue. The Executive Office of Environmental Affairs contends that its reorganized permit system is working. Developers claim that more substantial reforms are needed. OSP chose to remain silent, perhaps because they were unsuccessful in attempting to implement a more comprehensive permit-granting pro-

cedure in 1976, and partially because it is unclear what type of reform package the development community would have been willing to support. Therefore, it would appear that OSP chose not to recommend a comprehensive state permit process in order to avoid conflict within the Dukakis administration.

Another criticism of the OSP Report was its perfunctory treatment of existing regional planning arrangements in Massachusetts. A number of Local Growth Policy Statements criticized the effectiveness of existing RPAs. Several communities expressed concern about the inappropriateness of existing substate regional boundaries. In addition, many cities and towns were extremely critical of the manner in which certain RPAs interpreted Local Growth Policy Statements and the general quality of the Regional Reports. OSP did not deal with these criticisms, passing up the opportunity to use the growth policy process as a means of demanding more effective performances from the regional planning agencies.

In general, however, local, regional and interest group response to the OSP report was positive. This was in direct contrast to the immediate criticism that had been directed at Towards a Growth Policy for Massachusetts two years earlier. It appears that the positive reaction to City and Town Centers resulted from the manner in which the report was produced (i.e., relying on the local statements and a great deal of public outreach) and from the fact that the report accurately reflected local opinions and concerns.

There are at least five ways of justifying the judgment that the OSP Report was responsive to the concerns expressed in Local Growth Policy Statements and Regional Reports. First, the choice of issues and topics

discussed in both the first and second chapters of the Report closely followed the descriptions of local and regional growth management concerns submitted to OSP. While it is true that OSP distributed the questionnaires to Local Growth Policy Committees and formulated guidelines to help Regional Planning Agencies frame their deliberations, the priorities identified locally and regionally did not appear to have been manipulated, even indirectly, by the state. A number of cities and towns chose to ignore the OSP questionnaire completely, submitting narratives better suited to the ideas they wanted to express.

OSP's sensitivity to regional variations was quite impressive. State policy has rarely taken such differences into account, except when legislation has originated locally and state legislators have acquiesced to the wishes of colleagues who, in turn, have tried to respond to local wishes. State-wide policies enacted by the Legislature have not taken regional differences into account.

Many of the action recommendations contained in the Report were aimed rather bluntly at sensitizing state agencies to the need for increased flexibility and responsiveness to variations in community priorities in the administration of state programs. In addition, OSP tried to call attention to the unintended side-effects of certain state programs (i.e., administration of Chapter 90 funds, the management of sewer and water programs, the administration of the state building code, and the operation of Chapter 774 [anti-snob zoning]).

The general thrust of the action recommendations was to enhance the capacity of local and regional boards to handle their own problems. Few additional restrictions and regulations were proposed. This was clearly

responsive to the message that cities and towns were trying to get across. While reform of county government or even new metropolitan systems of government may hold the solution to growth management problems in other parts of the country, there is absolutely no support for strengthening middle-level jurisdictions in Massachusetts.

Finally, OSP proposed very specific measures to further the growth policy objectives of the cities and towns in the Commonwealth. While other states have produced general policy documents, OSP generated action recommendations. The proposals for a new system of growth phasing and recommendations regarding water supplies, sewage treatment, Chapter 90 transportation funds and local aid increases demonstrate a commitment to the ideals expressed locally and not just a meaningless nod in the direction of local interests.

#### E. Conclusions

All in all, the OSP Report appeared quite responsive to the local and regional inputs received. OSP and Governor Dukakis obviously learned a great deal from the growth policy process, not only about local and regional priorities, but also about unintended and undesirable effects of past state policies. The specificity of OSP's action recommendations and its clearly articulated "centers strategy" made it unique among state reports of this type, which generally conclude with vague non-implementable policy recommendations.

While the OSP staff may have been guilty, in part, of "selective perception," that is, interpreting Local Growth Policy Statements from the narrow perspective of positions already adopted by the Dukakis administration, almost all the action recommendations found direct support in



the materials submitted by localities and regional planning agencies.

In addition, the OSP report is unique in that it does not represent a traditional state plan, consisting of a set of functional elements. Even the structure of City and Town Centers reflects the objectives of the growth policy process. For example, the first three chapters, which present the local, regional and state perspectives on growth, are designed to explicitly document the growth management problems and priorities as viewed from the perspective of each level of government, and to increase public understanding of growth management issues. The fourth chapter identifies the areas of consensus and disagreement among different communities, interest groups and levels of government. It discusses the key issues in the major growth management conflicts and outlines mechanisms for addressing these disputes. In this context, the fourth chapter reflects our revised assumptions about the need for informal approaches to conflict resolution, and lays the groundwork for continued negotiations concerning the unresolved conflicts. Finally, the fifth chapter presents a concise policy framework for guiding state and local development decisions, and recommends a specific set of legislative and administrative actions for implementing the policy consensus. Thus, these two chapters represent OSP's attempt to increase state planning capabilities by directly linking land use policies to legislative and administrative actions.

## IX. Commission Action On The OSP Report

Commission action on the OSP report focused on assessing the consistency of the statewide summary and recommendations with the views expressed in the Local Growth Policy Statements, and on translating mutually acceptable proposals into specific pieces of legislation. The Commission staff conducted its own review of all the local and regional reports. The staff also held meetings with legislators and key legislative staff members, familiar with different parts of the state, to solicit comments on the local statements and reaction to OSP's interpretations. The results of these reviews were then relayed to OSP in a series of Commission meetings on various drafts of the state report. In these meetings Commission members continually pressed OSP to tailor its summary and recommendations to specific comments from the localities and regions. As Senator Saltonstall stated, "The OSP report should be like holding up a mirror to the communities. It should clearly point out the consistencies and inconsistencies in their views. It should make positive recommendations in areas of agreement, and should suggest opportunities for future cooperation in resolving disagreements and dealing with inconsistencies."<sup>138</sup> Once the OSP report was finalized, the Commission held a series of public hearings throughout the state to solicit local comments on the report.

### A. The Commission Hearings

Between November 1977 and January 1978, the Commission held

seven public hearings on the OSP report. The hearings were held in Chicopee, Lawrence, Worcester, Pittsfield, Boston, Plymouth and Dennis. Locations were selected to represent each of the state's major geographic regions - Western Massachusetts, the "North Shore", Central Massachusetts, the Berkshires, Boston Metropolitan Area, the "South Shore", and Cape Cod and the Islands.

The purpose of the hearings was to test the responsiveness of OSP's recommendations to the needs and concerns expressed in the Local Growth Policy Statements. The hearings were specifically designed to give LGPC members, citizens and public officials a chance to comment on the OSP report, and to highlight issues which they did not feel were adequately addressed. Prior to each hearing, the Commission staff telephoned the chairman of the LGPC's, the chairmen of the Board of Selectmen, conservation commissions and planning boards, and chamber of commerce and real estate associations in the hearing area. The hearings were also widely publicized in the local press.

Approximately 400 people attended the hearings. One third of these participants testified, while another sixty people relayed written comments to the Commission on forms provided at the hearings. The majority of responses came from members of Local Growth Policy Committees and local officials. In addition, representatives from each of the state's thirteen regional planning agencies, and a significant number of regional and statewide interest groups testified.

The testimony focused both on the specific "action" recommendation

set forth in the OSP report, and on the Growth Policy process itself. The vast majority of participants found the report to be responsive to local concerns and priorities. Specific comments on OSP's "action" proposals fell generally into one of three categories: positive endorsement, recommendations for refinement, and negative reactions.

In positive testimony on specific "action" recommendations, participants endorsed the OSP proposals on the following issues:

1. Center Revitalization: the need to guide growth and public investment into city and town centers, and to promote community revitalization and building rehabilitation. (OSP Recommendations 1-5)
2. Local Self-Determination: the need for state government to recognize and respect the unique differences in community character by ensuring that land use and growth management decisions remain primarily a local prerogative and simultaneously increasing state activities to help improve local planning capabilities. (OSP Recommendation 27)
3. Economic Development: the need to ensure adequate job opportunities and to increase the level of economic activity in Massachusetts by improving the state's climate for business and industry and by reducing the costs of doing business in the Commonwealth. (OSP Recommendation 12-14)
4. Environmental Protection: the need to preserve the Commonwealth's dwindling supply of agricultural land, to effectively manage unique coastal resources, and to protect sensitive wetlands and environmental areas. (OSP Recommendations 17-25)

The second response category consisted of recommendations for further refinement of particular OSP proposals. Testimony on these recommendations was often a mixture of positive and negative comments, and requests by specific groups to be included in the Commission's efforts to draft legislation on these issues.

The recommendations in this category included:

1. Comprehensive Permit Review Councils: OSP "action" recommendation #15.
2. Growth Rate Ceilings on Local Tax Levies: The first component of OSP "action" recommendation #34.
3. Regional Sharing of Property Taxes Generated by New Non-Residential Development: OSP "action" recommendation #36.
4. Changing the Emphasis of the Chapter 705 Housing Program: from scattered-site rental assistance to mortgage subsidy insurance or revolving loan funds (the second component of "action" recommendation #4).

Almost every participant at the hearings commented favorably on the Growth Policy process. Local, regional, and special interest representatives alike were enthusiastic about the value of the process as a way of assessing growth and planning issues and increasing the capacity of localities to plan for and guide future growth and development. Requests were made at each hearing for a continuation of the growth policy process as a way of ensuring the implementation of the recommendations which had resulted from the cooperative efforts of the Local Growth Policy Committees.

Although many of the comments at a given hearing echoed those at other sessions, each hearing reflected the character and diversity of the communities in a particular region. For example, much of the Boston testimony reflected the concerns of inner city neighborhoods for revitalization and rehabilitation as well as the growth management concerns of the suburban communities. Comments at the Lawrence and Chicopee hearings expressed the needs of medium-sized

cities and their surrounding suburbs. Although participants at these sessions were concerned about downtown revitalization, their remarks also addressed rural and outlying suburban needs. The Worcester and Pittsfield hearings dealt, even more, with rural issues and with the concerns of the state's smaller towns. These hearings focused on agricultural, forestry and water quality issues, and the needs of small businesses. Finally, a predominant theme at the Plymouth and Dennis hearings was the preservation of unique environmental and coastal resources. In addition, these two hearings focused heavily on the need for new mechanisms to deal with increasingly rapid population growth and second home development.

The Commission hearings resulted in over thirty hours of oral testimony on the OSP report. The hearings, however, consisted of more than just testimony. Active dialogue between the OSP staff and hearing participants was encouraged. Often Frank Keefe was asked to respond directly to local criticisms or to expand and explain positions in the OSP report. The hearings had a significant impact on the Commission's view of OSP's action recommendations. In some cases, OSP proposals were modified directly in response to hearing comments. In addition, the Commission's hearings seem to indicate the emergence of a statewide policy consensus regarding growth and development issues. The key components of this consensus included: emphasis on the utilization of state investment programs to guide growth into already developed areas; a commitment to the revitalization of city and town centers; development of

mechanisms to encourage communities to accept their "fair share" of regional population growth; preservation of farmland, wetlands and sensitive environmental areas; reform of property taxes and continuation of local participation in the formulation and implementation of statewide growth policies for the Commonwealth.

Some observers have argued that the positive response to the OSP report during the Commission hearings was a function of the generality and lack of immediacy of the OSP recommendations. Herr and Lord state:

The (Commission) hearings did not generate a great deal of interest, and virtually all testimony was supportive. It was interesting to contrast the quiet OSP hearings with the stormy CZM hearings being held during the same period. There are many reasons for the differences.

Perhaps most germane to this study is the difference which immediacy makes: imminent administrative approval of the CZM program would have immediate consequences for many agencies and interests, while the City and Town Centers proposals really either reflect efforts already underway or will require legislative or other agency action before becoming effective. The relatively "soft" responses to OSP effort expressed at their hearings were akin to those earlier expressed towards the CZM effort, before decisive choices were obviously about to be made.<sup>139</sup>

The hearings, however, indicated considerable support for many of the OSP recommendations. Prior to the hearings some Commission members had argued that the OSP recommendations were too far-reaching - that the agency was "moving too fast". After the hearings, the Commission members, particularly the legislators, felt confident that the OSP report was responsive to local needs and concerns and that there was a substantial constituency which supported many of the OSP action recommendations.

## B. The Commission Report

The Commission's confidence in local support for the OSP recommendations was evident in its deliberations over its third interim report. The Commission met on five separate occasions to consider the 61 proposals included in OSP's "action recommendations". Each proposal was systematically analyzed in the context of staff review of the local growth policy statements, and oral and written testimony from the hearings. As a result of these deliberations, the Commission decided to endorse 48 of OSP's proposals. The Commission rejected seven of OSP's recommendations, and held six proposals for further consideration.

The Commission's recommendations are documented in its third interim report entitled: Implementing the Growth Policy Consensus: Proposals for Public Action.<sup>140</sup> The 160-page legislative report consisted of five parts: 1) Summary of Findings and Recommendations; 2) Summary of the Commission's Hearings; 3) An Outline of a Massachusetts Growth Policy Implementation Act to be drafted by a new Commission subcommittee; 4) a detailed description of the Commission's actions on each of OSP's specific recommendations; and 5) a work program to continue the activities begun by the Growth Policy process.

The Commission report described the state's emerging growth policy consensus as follows:

Having reviewed the local and regional growth policy statements, the Office of State Planning report and the testimony from our hearings, the Commission finds that a clear consensus has begun to emerge among our cities, suburbs, and small towns about a number of important



growth related issues. In brief, the key elements of this consensus are:

Local Self-Determination: Land use and growth management decisions should remain primarily a local prerogative. State government should recognize and respect the unique differences in community character. Furthermore, state government should increase efforts to help strengthen local planning capabilities.

Center Revitalization: All levels of government should work together to guide growth and investment into city and town centers, and to promote community revitalization and building rehabilitation.

Economic Development: In order to ensure adequate job opportunities and to increase the level of economic activity in Massachusetts, state government must continue to work toward reducing the cost of doing business in the Commonwealth and in general toward improving the climate for business.

Environmental Protection: The accommodation of growth need not mean the sacrifice of environmental quality. Particular vigilance should be directed toward the preservation of the Commonwealth's dwindling supply of agricultural land, toward the effective management of our coastal resources, and toward the protection of other sensitive environmental areas. Local officials should be encouraged to consider natural constraints in developing local growth management strategies.

Property Tax Relief: Meeting the Commonwealth's developmental objectives, as well as other social and economic goals, will depend upon relieving our over-dependence on the property tax. Any new state program or change in the administration of existing programs should be designed to avoid any additional burden on the local property tax; and the impact of proposed state actions on local finances should be carefully evaluated. No state mandated programs for local government, whether legislative or administrative, should be enacted without adequate funding. Furthermore, as increased revenues become available to state government, continued priority should be given to measures which will relieve local property tax burdens. The objective of relieving the local property tax burden must be made a top priority for state government.

The Commission also finds that, just as the development of a state growth strategy responsive to local and regional needs could best be achieved with the active participation of the localities and regions themselves, the implementation of such a strategy must also be based upon the continued participation and support of the Commonwealth's 351 cities and towns. We find, further, that the purposeful, coordinated investment of state and federal funds is one of the most effective tools available to state government in guiding future growth and development.<sup>141</sup>

The report, then, went on to endorse seventeen previously filed bills that either resulted from or were directly related to the Growth Policy process. These bills included:

1. H.5737: An Act to Prohibit the Arbitrary Denial of Residential Mortgage Loans on the Basis of the Location of the Property to be Mortgaged and to Encourage the Establishment of Review Boards (OSP Recomm. #6)
2. H.5639: An Act Requiring Insurance Companies to Furnish Fire Officials with Information Relating to Losses (OSP Recomm. #7)
3. H.5640: An Act Requiring Fire Insurance Companies to Contribute to Certain Costs for Fire Protection (OSP Recomm. #7)
4. H.5641: An Act Making Certain Changes in the Standard Form of Fire Insurance Policies (OSP Recomm. #7)
5. H.5643: An Act Making Certain Changes in the Standard Form of Fire Insurance Policies (OSP Recomm. #7)
6. H.5645: An Act Making Changes in the Application of Bylaws (OSP Recomm. #7)
7. H.6093: An Act to Assist Urban Revitalization Efforts through the Urban Job Incentive Program (OSP Recomm. #13)
8. S.1546B: An Act to Encourage Financing for Downtown Revitalization Projects through the Massachusetts Industrial Mortgage Insurance Agency (OSP Recomm. #14)
9. H.5675: An Act Relating to Industrial Revenue Financing (OSP Recomm. #14)

10. H.5674: An Act Establishing the Massachusetts Technology Development Corporation (OSP Recomm. #16)
11. H.5665: An Act Establishing the Massachusetts Industrial Finance Agency (OSP Recomm. #16)
12. H.5681: An Act Establishing the Community Economic Development Assistance Corporation (OSP Recomm. #16)
13. S.1420: An Act Clarifying the Duties of the Commissioner of Environmental Management Relative to Scenic and Recreational Rivers and Streams in the Commonwealth (OSP Recomm. #20)
14. H.5669: An Act Providing for Financial Assistance to Cities, Towns and Districts of the Commonwealth to Provide Safe Drinking Water (OSP Recomm. #25)
15. H.6044: An Act Providing for a Capital Outlay Program for the Commonwealth
16. S.1322: An Act Providing for the Orderly Administration of Justice in the Commonwealth
17. H.5679: An Act Making Appropriations for Fiscal Year 1979 142

In addition, the Commission drafted nine new pieces of legislation which responded to specific OSP recommendations and comments at the Commission's hearings. These new bills included:

1. An Act Amending the Procedure for the Collection of Local Taxes (OSP Recomm. #8)
2. An Act Amending the Law Creating Urban Redevelopment Corporations to Stimulate the Rehabilitation of Existing Buildings in Blighted Areas (OSP Recomm. #11)
3. An Act Amending the Law Relating to Urban Redevelopment Corporations (OSP Recomm. #11)
4. An Act Providing for a Concurrent Review Procedure for Local Permits (OSP Recomm. #15, revised)
5. An Act Providing for the Establishment of a Standard Set of Wetlands Maps for the Commonwealth (OSP Recomm. #19)

6. An Act Providing for the Flexibility in the Design Standards Used for the Construction, Reconstruction and Improvement of Highways Performed with State Highway Assistance Funds (OSP Recomm. #30)
7. An Act Amending the Zoning Act (OSP Recomm. #31)
8. An Act Requiring an Estimate of State Mandated Costs to Local Government (OSP Recomm. #34)
9. A Resolve Increasing the Scope of the Special Commission on the Effects of Growth to Undertake a Comprehensive Evaluation of County Government and Regional Planning Agencies (OSP Recomm. #32 & 33) 143

The Commission report also included nine administrative recommendations to the Governor. The report stated:

Our single most important recommendation to the Governor is that the consensus views and policies emerging from this process should serve as an ongoing and over-arching force in state administrative decision-making. Beyond these broader recommendations, a number of specific agency actions were identified which would substantially and effectively improve the administration of state government. Therefore, we recommend that the Governor:

1. Direct the Building Code Commission to expeditiously adopt provisions facilitating the rehabilitation of older buildings.
2. Direct the Secretary of Environmental Affairs to continue to work toward a more integrated approach to water supply and water quality programs.
3. Direct the Division of Water Pollution Control to administer state and federal wastewater programs in a manner more sensitive to and consistent with local growth policies.
4. Direct the Secretary of Communities and Development to utilize Chapter 705 funds for scattered-site public housing.
5. Direct the Office of Coastal Zone Management (CZM), within the Executive Office of Environmental Affairs, to continue to work with communities to ensure

consistency between CZM policies and regulations and local growth policies and development controls.

6. Direct the Commissioner of Banks to continue and expand efforts to ensure access to traditional lending markets to all.
7. Direct the Commissioner of Insurance to adopt administrative procedures to ensure that properties are not over-insured.
8. Direct the Department of Manpower Development, working through the Manpower Services Council, to promote and coordinate programs utilizing CETA funds for the employment and training of individuals in community revitalization activities.
9. Direct the Bureau of Solid Waste to work with communities to develop solutions to their solid waste problems.<sup>144</sup>

Finally, the Commission rejected seven specific OSP recommendations in direct response to testimony at its public hearings. The rejected proposals and the rationale for their disapproval are summarized below:

1. Regional Property Tax Sharing

OSP recommended enactment of new legislation under which a portion of any increases in tax revenues from new major commercial and industrial developments would be shared among communities within a statutorily defined region.

Participants at the Commission's hearings pointed out that the Boston Metropolitan Area, unlike the SMSA's surrounding many newer cities, does not simply consist of the older core city and a set of surrounding suburbs. Instead, the close proximity of such older cities as Chelsea, Lynn, Cambridge, etc., make it difficult to define an appropriate tax-sharing region and an equitable regional distribution formula. In addition, many communities in other parts of the Commonwealth were opposed to the tax-sharing concept because of uncertainty about the exact costs and benefits of new commercial and industrial facilities to the host

community, and therefore uncertainty about the percentage of newly generated taxes which should be shared. 145

## 2. Local Tax Ceilings

OSP called for legislation to enable communities "to impose growth rate ceilings on their tax levies". This approach would ostensibly allow communities to limit the increase of local taxes. Participants at the Commission's hearings were skeptical about the utility of this proposal. They maintained that a local tax ceiling would not deal with the most important property tax issues which were the impact of state-mandated programs and decrease in state aid. Localities did not feel that they should impose tax rate ceilings without guarantees that state expenditures and mandated local costs would also be limited.146

## 3. Establishing a Revolving Loan Fund for Housing Rehabilitation

This proposal called for legislation which would provide state grants to help communities establish revolving loan funds for housing rehabilitation. The state grants were to be funded from the unexpended surplus in the state's "scattered" site public housing program (c.705). The "705" program was the state's only state housing subsidy directly targeted for construction of low income housing in suburban communities.

The proposal was criticized at Commission hearings by a variety of groups concerned about low income housing. The criticisms were not directed at the concept of a revolving loan fund but at the diversion of "705" funds for that purpose. In response to this concern, the Commission dropped the loan fund proposal and substituted a recommendation that the Governor direct the Secretary of Communities and Development to use the remaining "705" funds for the development of scattered-site subsidized housing, especially in suburban communities, where subsidized housing programs have had difficulty getting established. These funds should be targeted in particular to areas of high employment growth with little existing low income, "family" housing.147

4. Tax Abatements on Sub-Standard Buildings

This recommendation endorsed legislation which would prohibit the payment of tax abatements for non-owner occupied dwellings if they do not meet building or health codes. The Massachusetts constitution clearly spells out the conditions under which the abatements can be granted or denied. These conditions did not include failure to meet code standards. Consequently, in view of constitutional defects, the Commission rejected the recommendation.<sup>148</sup>

5. Local Departments of Community Development

This recommendation endorsed legislation that would enable localities to merge the activities of local redevelopment authorities, planning boards, industrial development commissions and housing authorities. The Commission felt that the legislation, as drafted, was inadequate and required more local input. Consequently the recommendation was not endorsed.<sup>149</sup>

6. Comprehensive Review Councils to Consolidate Local Development Permits

This proposal called for new legislation to enable communities to create a comprehensive permit review agency which would assume the project review duties carried out by existing Planning Boards, Zoning Boards of Appeals, Conservation Commissions and Boards of Health. There was significant opposition to the Commission hearings to the idea of a single permit granting board. In response to local testimony, the Commission rejected the proposal for Comprehensive Permit Review Councils. As recommended by participants at several hearings, the Commission drafted enabling legislation to allow communities to establish a procedure for simultaneous review of various permits by the appropriate local boards at joint hearings. <sup>150</sup>

7. Establish a Massachusetts Heritage Trust Advisory Commission to Package and Coordinate State and Federal Grants to Facilitate Locally Agreed Upon Projects

This proposal called for the Governor to appoint a new Advisory Commission to advise the development cabinet

on the distribution of state and federal discretionary funds. The Advisory Commission would consist of prominent designers, historians, businessmen, a representative of the Massachusetts League of Cities and Towns and key state officials. Through the new Commission, communities would be invited to submit proposals for the preservation and enhancement of the unique character of community centers. The new Commission would suggest ways in which various funds and programs could be combined to support the best proposals. The Commission agreed with the concept of "packaging" state and federal grants, but felt that the new Advisory Commission was an added layer of bureaucracy.<sup>151</sup>

In addition to these specific actions on the OSP recommendations, the Commission report also included a proposal for a "centerpiece" bill which would codify the policies derived from the Growth Policy process into law and would encourage localities to further specify and follow through on recommendations from their local Growth Policy statements. In describing this legislative proposal, the Commission report stated:

The message, repeatedly conveyed at our hearings, was that the Commission's report must do more than simply propose a set of general policies, which would sit on some legislator's shelves, and have little impact on the actual operation of state programs. Similarly, the Commission found that simply proposing a number of specific legislative and administrative proposals to deal with each of OSP's 36 action recommendations would not ensure the broad based policy guidance needed to coordinate and direct the variety of state, federal and local decisions which presently guide Massachusetts' growth and development patterns.

An approach is needed which will promote local, state and federal adherence and accountability to the emerging growth policy consensus. The Commission realized that, to be effective, our report would need to tie together the entire Growth Policy process by giving localities and regional planning agencies a specific role both in drafting various



legislative proposals and in implementing the policy consensus which had been identified in the OSP report and reaffirmed by the Commission's hearings.

The Commission has begun to formulate such a strategy. Much work, however, needs to be done in order to translate our proposals into operational legislation. For this reason, the Commission has decided to involve citizens, governmental officials, interest groups, and members of local growth policy committees in the drafting of a new "Growth Policy Implementation Act".

The objectives of the proposed legislation may be summarized as follows:

1. To involve communities directly in guaranteeing that the growth policies formulated through Chapter 807 are carried out.
2. To increase the capacity of local and state government to guide growth and development.
3. To make state and federal investment programs more responsive to local needs and concerns.

A major contention of the OSP report is that the "targeting" of state and federal investment programs is, perhaps, the most effective tool available to state governments for guiding growth and development. In this context, OSP made the following recommendations:

All state and federal grant programs - for roads, rapid transit, sewers, parks, schools, and housing - should give maximum priority to projects in community centers. State and federal grants have always set the stage for new economic development. Without the state and federally funded roads and sewers of the 1950's and 1960's, the wave of construction in sparsely developed areas during those two decades could not have taken place. State and federal construction grants should now set the stage for a new wave of development in the downtowns of Massachusetts communities.

These comments characterize two of the key questions which the Commission is attempting to address in the Growth Policy Implementation Act: (1) How can the Commission guarantee that independent federal, state, and local agencies will adhere to, and help to implement, the proposed state growth policies;

(2) Can greater policy accountability be achieved through a procedure that gives localities a significant new role in the targeting of state and federal investment programs?<sup>152</sup>

The proposed Growth Policy Implementation Act attempted to respond to these questions by explicitly setting out the policy consensus established under Chapter 807 in statute, and providing incentives to communities to develop local plans and programs consistent with the policy mandate. The Commission report proposed that the new legislation begin with a preamble consisting of a set of policy statements to guide state and local planning and development decisions.

The legislation would then enable localities to formally reconstitute their local growth policy committees (LGPC).

The bill would give the new local growth policy committees a specific mandate which would include: 1) developing a local growth management program - establishing a growth rate for the community, specifying the number of housing permits to be issued annually, establishing infrastructure and capital improvement priorities and programs to accommodate this growth; 2) from the local growth management program the LGPC would develop a local priority list for state investment programs within the community (i.e. transportation, sewer facilities, open space, subsidized housing, etc.). Both the Local Growth Program and the State Investment Priority List would have to be ratified by town meeting or city council.

The bill would require the Office of State Planning and each

RPA to prepare annual estimates of the anticipated population and housing growth for the Commonwealth, and for each region and community in the state. These estimates would be reviewed and revised in response to testimony at public hearings, and then distributed to planning boards and Local Growth Policy Committees.

A community's proposed growth rate could differ from the regional allocation, to the extent that a community could demonstrate the reasons for such differences in terms of unique community problems or activities which should justify slower growth rates. For example, a community with specific environmental problems or inadequate existing public facilities might establish a growth rate and a specific improvement program so that it could respond to its "fair share" of regional growth over an increased number of years. Other mitigating circumstances might include past growth trends in which the community had accommodated a disproportionate share of growth compared to surrounding communities, or the implementation of new local programs to provide subsidized housing or to reduce housing costs by modifying excessive zoning or subdivision requirements.

The Local Growth Programs and the Local Priority List for State Investments would be submitted to the appropriate RPA, then to the Local Growth Program for certification (i.e. to ensure that it takes into account regional housing needs) and issuance of permission to directly control the number of housing permits issued annually.

A negotiation process would be established at the state level in case of disagreement between the locality and RPA over certification of the Local Growth Program.

The bill would require that any community, RPA or state agency that disagreed with a proposed local growth program (for example, if the program did not respond to regional housing needs) must submit objections within 30 days. If no objections were submitted during that period, the Local Growth Program would be considered approved and the Attorney General's office would be required to issue permission to the locality to directly control the number of building permits issued annually. If there were objections to the Local Growth Program the RPA would be required to initiate a negotiation process designed to reach a compromise between the community and any contending parties. The community could always stop the process entirely by withdrawing its Local Growth Program. However, the locality would then forego the ability to directly regulate the number of housing permits issued annually, and would not receive priority in the disbursement of state and federal discretionary funds. The Local Priority Lists for state investments would be compiled by the RPA's and submitted to the appropriate state agencies, House and Senate Ways and Means, OSP and the Commission.

The Governor, state agencies and House and Senate Ways and Means would be required to review the Regional Investment Priority Lists and take them into account in approving state and federal discretionary grants, and establishing annual agency and capital budgetary priorities.

The Governor would be required to hold an annual State Growth Policy Conference. At this conference, he would be required to report to LGPC's, RPA's and other state and local officials on: 1) the manner in which state and federal investments have been consistent with state policy and regional and local priority lists; 2) patterns of population growth and economic development throughout the state.

Although the Massachusetts Growth Policy Implementation Act was to be enabling legislation, significant incentives were provided to communities which formed new LGPC's and completed Local Growth Management Programs. These incentives included:

1. Increased state aid for professional planning and management staff;
2. Requiring that communities with approved growth management programs be given priority in the disbursement of state and federal discretionary funds;
3. Requiring that state investment and regulatory programs be consistent with certified regional and local growth management programs;
4. Streamlined packaging of state grant programs for local projects in communities which adopt growth management programs;
5. Requiring that any federal project which was not consistent with local and regional growth programs automatically receive an adverse report on A-95 review. 153

In addition, a number of optional activities for LGPC's were spelled out in the proposal for the Growth Policy Implementation Act. For example: 1) developing Local Center Revitalization and Building Recycling programs which would be eligible for packaged state grants;

2) designation of Agricultural Preservation districts - making district plans necessary to receive state funds for purchase of agricultural preservation restrictions; 3) water supply studies; 4) solid waste studies, etc.

Finally, the role of the Wetmore Commission in the new policy implementation process would be to sponsor and coordinate training programs for LGPC members on the state budgeting process, state investment programs, population projection, capital improvement programming, citizen participation techniques, and other growth management issues.

The legislation was designed to increase local planning capabilities by providing funding for professional staff and by involving local officials and citizens in the development of Local Growth Management Programs and Investment Priority Lists.

It attempted to increase coordination between state, regional and local activities by using state and federal investments and their effects on growth as a focal issue.

The legislation sought to make RPA's more effective by giving them a significant role in both approving local growth management programs and establishing regional budgetary priority lists. An RPA director could use the regional priority list as a means of bargaining with communities to get them to accept their fair share of regional growth or necessary regional facilities. If these regional powers were used effectively, localities would have an incentive to take RPA's more seriously and this might result in

additional reforms in the structure and activities of RPA's.

Finally, by holding state government accountable for the growth effects of its investments, and by using regional investment priorities as an indicator of state responsiveness to local needs and concerns, the legislation was viewed as a step toward increasing the responsiveness of state government.

In summary, the proposed Growth Policy Implementation Act was an attempt to expand the consensus building activities of the Growth Policy process to specific debates about local growth rates. It attempted to create settings for informal conflict resolution by encouraging state government and regional planning agencies to engage in direct negotiation with communities over the level and timing of residential growth. Finally, it attempted to provide significant incentives for local participation in the negotiations.

The Commission report concluded by outlining a work program for expanding and implementing the recommendations of the Growth Policy Process. In describing this work program, the report stated:

The continuing activities of the Commission have two primary objectives: (1) to maintain the momentum established during the process of developing the growth policy consensus and to direct it toward the refinement and implementation of that consensus; and (2) to expand the consensus to difficult issues which remain unresolved.

In order to accomplish these objectives, the Commission has developed the following work program for the remainder of 1978:

The Land Use Subcommittee, whose deliberations so successfully led to the formulation of the Growth Policy Development Act, will be reconvened and renamed the "Implementation Subcommittee." Its primary task will be aimed at refining and drafting a "Growth Policy Implementation Act," containing elements such as those outlined above.

The Food Policy and Agriculture Subcommittee of the Commission will be broadened to deal with the whole range of rural development issues, and be retitled the "Rural Growth Policy Subcommittee." Its mandate will be to generate a series of policy and action recommendations regarding rural and small town development issues in the Commonwealth.

A new Housing Subcommittee will be formed to address the issues of housing "short fall" (projected in the OSP report), regional housing needs, and specifically, the housing problems of low-and-moderate-income and minority families.

A new Regionalism Subcommittee will be convened to address the issues of county government reorganization and of the appropriate future role for existing regional planning commissions.

The Commission hopes that these actions will foster the continuation of the local, regional and state cooperation that the Growth Policy process has initiated. We strongly believe that Massachusetts has taken the first step toward embarking upon a new era of intergovernmental collaboration which has the potential of significantly influencing the future growth and development of the Commonwealth.<sup>154</sup>

In many ways, the Commission report went beyond the OSP recommendations. Even though it endorsed many of OSP's proposals, it was not simply a "rubber stamp" of administrative action. The Commission rejected the OSP proposals which received significant negative comments from localities in testimony at the hearings. In addition the Commission revised a number of the recommendations to account for problems pointed out at the hearings, and to make



them more responsive to local needs and concerns. The Commission translated nine OSP recommendations into specific legislation which was submitted to the General Court. Three of these bills attempted to refine existing state and local regulatory programs to increase their effectiveness (i.e. wetland mapping, cluster zoning, concurrent review). The rest of the bills focused on targeting state investments and reducing disinvestment in urban areas. In proposing the Growth Policy Implementation Act, the Commission attempted to deal directly with the suburban growth allocation problem that OSP had been accused of "side stepping". In addition, this proposal reenforced the state's commitment to using incentives, public investments and ad hoc conflict resolution mechanisms to guide growth and development. The work program of the four new subcommittees was an attempt to expand the growth policy consensus to issues which had been left unresolved. These subcommittees were designed to serve as mechanisms to promote future consensus building, conflict resolution and political constituencies to support planning. In short, the Commission report illustrates the focus of the Growth Policy process on constituency building, conflict resolution, and increasing planning capabilities by attempting to link state and local planning to growth rate and public investment decisions.

#### X. Substantive Results

The substantive results of the Growth Policy process can be divided into five categories: 1) legislation enacted by the

General Court; 2) state investments targeted to urban areas; 3) increased allocation of federal discretionary funds to Massachusetts; 4) land use disputes resolved by informal negotiated agreements; and 5) the impact of the Massachusetts process on national urban policy. In turn, these substantive results are directly related to four less measurable effects: 1) the increased in public understanding of growth policy issues; 2) the emergence of consensus about various elements of the state's growth policy; 3) the formation of a constituency and active coalitions to support the policy consensus and specific programmatic decisions; and 4) increased reliance on informal rather than adversary approaches to land use conflict resolution. Legislation was enacted and investment programs redirected primarily as a result of increased public understanding of growth issues and active constituency support of the legislative and administrative measures. Massachusetts was able to obtain a greater percentage of federal discretionary funds and exert a significant influence on national urban policy because the state was perceived as "having its act together" with the policy consensus guiding the distribution of funds. The substantive results of the Growth Policy process are discussed in detail below.

#### A. Legislation Enacted

The Commission report was completed in May and formally filed on June 29, 1978. During May and June, Commission members and

staff presented the findings of the report to legislators and urged passage of the legislation endorsed therein. Since the 1978 legislative session was drawing to a close, the Commission decided to focus on passage of the previously filed legislation as its major priority.\* In addition, both OSP and the Commission worked to activate the growth policy network of citizens and local officials to lobby for the legislation endorsed in the Commission report.

On July 12, 1978 the Massachusetts Legislature adjourned. Due to the intense lobbying efforts of OSP, the Commission and the growth policy network, eleven of the seventeen previously filed bills were enacted into law. During 1977, six bills directly relating to, and supported by, the Growth Policy Process had also been enacted. Therefore, between 1977 and 1978 the Growth Policy process helped to secure the passage of a total of seventeen statutes relating to growth and development issues in Massachusetts. These statutes are summarized below:

1. Chapter 561 of the Acts of 1977: An Act Amending the Massachusetts Housing Rehabilitation and Neighborhood Preservation Program

This statute changed the governing board of the Massachusetts Home Mortgage Finance Agency and

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\*Massachusetts law requires that every bill filed with the General Court receive a public hearing. Commission members felt their effectiveness would be reduced by dividing their energies between trying to schedule hearings on the new bills while at the same time trying to lobby for the previously filed legislation. Therefore the decision was made to focus on the previously filed legislation and to re-submit the nine newly filed bills in the next legislative session.

increased the flexibility of the agency's programs. The purpose of these changes was to promote targeting of reduced interest rate mortgages to moderate income families in neighborhood preservation areas and to encourage greater rehabilitation of existing housing. Among other things, the legislation required applications for neighborhood preservation programs to be reviewed by the state for consistency with state and local growth and housing policies.

2. Chapter 966 of the Acts of 1977: An Act Providing for Elderly and Handicapped Housing

This statute authorized a \$100 million bond issue for the rehabilitation and construction of housing for the elderly and the handicapped. The legislation targeted the construction of such housing to central locations and gave priority to the rehabilitation of existing structures. It also contained a provision authorizing such housing projects to include ancillary commercial facilities.

3. Chapter 804 of the Acts of 1977: An Act Further Regulating the Disbursement of Insurance Proceeds

This statute required insurers to pay delinquent property taxes to a city or town prior to paying fire claims. It also required insurers to state this practice on the face of all fire insurance policies. The purpose of the legislation was to reduce one incentive in arson-for-profit.

4. Chapter 939 of the Acts of 1977: An Act Further Defining the Requirements of Eligible Business Facility Under the Urban Job Incentive Bureau Program of the Department of Commerce and Development

This statute amended the state's Urban Job Incentive Program to allow business expansions as well as new facilities to qualify for the tax credits provided under the program. The state's Urban Job Incentive Program reduces the disincentive for a company to locate its business facilities in an area with high property taxes by providing the company with a credit against its state taxes equal to the

difference between its property tax in the high tax area and what those taxes would be at the statewide average. Prior to the enactment of Chapter 939, the credit was only available to new facilities. The purpose of the legislation was to encourage business expansions in urban areas.

5. Chapter 816 of the Acts of 1977: An Act Establishing the Capital Resource Company and Reforming the Taxation of Domestic Life Insurance Companies and Savings and Insurance Banks, and Providing for the Reduction of Unemployment Through Increased Investment in Massachusetts Businesses

This statute provided for the formation of the Massachusetts Capital Resource Company funded by \$100 million in unsecured loans from state chartered life insurance companies. The purpose of the legislation was to provide venture capital loans to small businesses seeking to start-up in Massachusetts. In return for establishing the loan fund, Massachusetts insurance companies were granted a lower tax on net earnings.

6. Chapter 780 of the Acts of 1977: An Act Providing For the Acquisition of Agricultural Preservation Restrictions by the Commonwealth

This statute authorized a \$5 million bond issue for the public acquisition of development rights on agricultural land. It was designed to protect Massachusetts agricultural land by encouraging existing farmers to maintain their land in agricultural use. The act authorizes "the state to pay a farmer the difference between the (higher) open market development value of his land and its (lower) value as used for agriculture. In return for the payment, the farmer agrees to a restriction barring future development to be attached to the deed."<sup>155</sup>

7. Chapter 446 of the Acts of 1978: An Act Regulating Contracts of Insurance Against Losses by Fire and Providing for Increased Cooperation Between Insurance Companies and Law Enforcement Agencies in the Investigation of Such Losses

This statute required insurance companies to provide information to arson investigators. It also required

applicants for fire insurance to provide sufficient information to determine the actual cash value and ownership of insured property. The statute prohibits insurance coverage from exceeding the actual cash value of the property. Finally, the legislation required all fire insurance policies for multi-unit residential property to include coverage for the costs of relocating tenants up to a limit of \$750 for each unit. The purpose of the legislation was to discourage the over insurance of property, thus providing a disincentive for arson-for-profit.

8. Chapter 406 of the Acts of 1978: An Act Providing Financial Assistance to Cities and Towns and Districts to Provide Safe Drinking Water

This statute authorized a \$75 million bond issue for the construction of water filtration facilities. The legislation established a 50% matching grant program to assist localities in paying for the construction of local water purification plants. The statute also contained a "grandfather clause" making communities that began water filtration projects during the previous five years eligible for reimbursement. Over 50 of the Commonwealth's largest cities and towns were eligible for receipt of these funds. The legislation was designed to deal with the problems of older urban communities whose water purification needs were not addressed by federal programs providing funding for waste water treatment facilities.

9. Chapter 495 of the Acts of 1978: An Act Amending the Law Relating to Industrial Revenue Financing

This statute extended the use of tax-exempt revenue bond financing to commercial projects in locally designated "commercial area revitalization districts." Previously the use of revenue bond financing (which provides a lower interest rate to developers than conventional financing) was limited to industrial projects. The legislation required localities to prepare commercial area revitalization plans, which must be approved by the state, before they could obtain revenue bond financing. The purpose of the legislation was to stimulate commercial investment in city and town centers. It recognized the link between a healthy commercial base and a community's overall economic vitality.

10. Chapter 496 of the Acts of 1978: An Act Establishing the Massachusetts Industrial Finance Agency

This statute created the Massachusetts Industrial Finance Agency to replace the previous Massachusetts Industrial Mortgage Insurance Agency, and to consolidate a number of industrial finance functions. MIFA was empowered to provide insurance on loans for the acquisition, construction and alteration of industrial facilities; it also was given the authority to provide mortgage insurance for the rehabilitation of designated commercial properties. The \$2 million appropriated for mortgage insurance was expected to generate \$18 million in investments. MIFA was also empowered to issue state-wide revenue bonds for commercial and industrial purposes.

11. Chapter 497 of the Acts of 1978: An Act Establishing the Massachusetts Technology Development Corporation

This statute established an independent public corporation to provide technical assistance and start-up capital to small, innovative technology-based businesses. The purpose of the legislation was to encourage the private venture capital market to invest in technology oriented firms that had provided a large part of the state's recent manufacturing growth.

12. Chapter 498 of the Acts of 1978: An Act Establishing the Community Economic Development Assistance Corporation

This statute created a technical assistance corporation to help local community development corporations and neighborhood redevelopment organizations in their efforts to encourage community revitalization and job creation. The local growth policy statements indicated that many community development organizations lacked the technical expertise to produce successful business proposals and applications for state and federal funding. Therefore the purpose of the legislation was to provide local economic development groups with a range of expert aid, including organizational development, financial planning, market research,

management training and assistance with federal grant applications. CEDAC's efforts were to be targeted to economically depressed areas of the state.

13. Chapter 499 of the Acts of 1978: An Act to Assist Urban Revitalization Through the Urban Job Incentive Program

This statute "amended the Urban Job Incentive Program to include commercial as well as industrial facilities as eligible for a state tax credit in high-tax (urban) communities. In order to be eligible, however, the commercial facility must be located in a locally-designated, (state approved) Commercial Area Revitalization District." 156

14. Chapter 526 of the Acts of 1978: An Act to Encourage the Financing for Downtown Revitalization Projects

This statute enabled the Massachusetts Industrial Finance Agency to insure mortgages for the rehabilitation of commercial buildings in locally-designated and state approved "commercial area revitalization districts." Previously, mortgage guarantees were limited to industrial projects. The rationale behind the bill was that "in a downtown revitalization effort, the first few buildings are the most difficult to finance conventionally. Because of this, the availability of mortgage insurance for the rehabilitation of a few critical buildings in a city or town center can effectively stimulate conventional financing for an entire downtown revitalization plan." 157

15. Chapter 513 of the Acts of 1978: An Act Providing for a Capital Outlay Program for the Commonwealth

The 1978 capital outlay budget contained two specific bond issues related to OSP's centers revitalization strategy. The capital outlay budget authorized a \$5 million bond issue for the "Urban Self-Help Program." This program provided 50% matching grants to localities for the acquisition and development of urban park lands which are part of a center revitalization project. In addition, the 1978 capital outlay budget authorized an additional \$5 million bond issue to fund the development of a Heritage State Park in Fall River.



The Fall River Heritage State Park evolved from a joint state-local planning process. It was designed to complement both the commercial area revitalization of the Fall River Central Business District and the industrial expansion of the state pier area.

16. Chapter 367 of the Acts of 1978: An Act Making Appropriations for Fiscal Year 1979

The FY 1979 budget contained a significant local aid package to help reduce the burden of property taxes on Massachusetts communities. The budget revised the school aid formula transforming it from an expenditure to a need-based formula in order to help older urban high-tax communities. In addition, the budget included an additional \$150 million in local school aid. The budget also included an additional \$60 million in general local aid. "All together, these and other portions of the local aid package amounted to an additional \$313 million in local aid for 1978 - an increase of 36% over 1977, all basically along the lines recommended in the Growth Policy Report." 158

17. Chapter 478 of the Acts of 1978: An Act Providing for the Orderly Administration of Justice in the Commonwealth

This statute was another measure designed to reduce the local property tax burden. It provided for state assumption of the administrative and financial responsibility for the county court system. Previously the costs of county courts were paid out of local property taxes. The Court Reform legislation was designed to provide \$70 million in increased state aid to localities over a four-year period.

The passage of these statutes clearly indicates that a primary emphasis of the Growth Policy Process became the use of public investments to guide growth and development, and particularly to assist efforts to revitalize city and town centers. Eight of the bills enacted created new bond programs or loan

funds to encourage development in city or town centers. Six of the bills dealt with targeting existing tax relief, local aid or broad programs to assist center revitalization efforts. Two others dealt with reducing disinvestment in urban areas by attacking the motivation in arson-for-profit. Finally, one bill provided a bond issue for the purchase of agricultural development rights - to guide growth away from prime agricultural land.

In addition, two of the statutes attempted to foster greater state/local cooperation in downtown development projects and established ad hoc procedures for negotiation and conflict resolution. These statutes were Chapter 561: Neighborhood Preservation Program, and Chapter 495: Commercial Area Revitalization Districts. Both statutes called for state approved local area revitalization plans and required that these plans be consistent with state growth policies.

#### B. State Investments Targeted to Urban Areas

The emphasis on the use of public investments as a major tool to guide growth and development and the focus on revitalization efforts is also illustrated by OSP's efforts to realign many of the state's existing public investment programs to promote center revitalization. Although OSP began the reorientation of these programs prior to the enactment of growth policy acts, the constituency and consensus developed through the growth policy process increased the effectiveness of OSP's efforts. For example throughout the growth policy process there was a running

battle between OSP and the Division of Water Pollution Control (DWPC) over the criteria used in disbursing federal "201" waste water treatment funds. OSP contended that the criteria used in awarding "201" grants did not consider the growth impacts of sewer extensions and expansion. DWPC argued that the purpose of the "201" program was to reduce water pollution. They contended that areas with the most severe pollution problems should receive priority for "201" funds, irrespective of the negative growth impacts. In Towards a Growth Policy, OPS recommended re-orienting "201" allocations to give priority to urban areas. At the time there was no cohesive constituency to support this proposal. The recommendation was supported by city officials and some environmentalists who favored non-structural solutions to suburban water pollution problems. However, these groups were not linked into an effective coalition that could counter support for the allocation system by other environmentalists and suburban communities that wanted the "201" funds. Consequently, throughout 1976 OSP was unsuccessful in changing "201" disbursements. In 1977, as a broadly based constituency began to develop in support of the growth policy process, OSP brought together a coalition consisting of city officials, urban developers, and suburban and rural residents who opposed the impact of sewer extensions on growth in their communities. This constituency helped OSP to get the DWPC to consider giving higher priority to urban "201" proposals on a project by project basis.

Although OSP was never successful in changing the criteria used to establish the DWPC priority list, they were successful in getting DWPC to grant higher priority to urban "201" projects which were related to specific urban revitalization efforts. The consensus among city officials, urban developers, environmentalists, suburban and rural residents about the negative growth impacts of the "201" priority system, and the constituency which formed because of interaction of these groups through the growth policy process, was partially responsible for the changes in DWPC's actions. The state programs which were reoriented to promote center revitalization were described in an OSP report as follows:

Since the publication "Towards a Growth Policy" in 1975, state government has realized many of its own public investment programs - programs that too often were insensitive to local desires and community character and that fostered sprawl development patterns to the detriment of city and town centers. Programs affected by this policy include:

Elderly Housing: A greatly increased proportion of elderly housing projects are being located in older urban centers, and in rehabilitated structures. About 70% of the most recent allocation went to the state's older urban centers (compared to less than 40% prior to 1975).

Parks and Recreation Funds: Increased emphasis is being given to parks in urban communities as part of neighborhood improvement programs and downtown revitalization projects. Since 1976, over three-quarters of the federal park funds coming to Massachusetts have gone to the state's major urban centers (compared with less than half prior to that date). The newly established "Urban Self-Help" fund, as well as the Heritage State Park program, are further

demonstrations of this commitment. Altogether, over 90% of these state and federal recreation investments are being spent in support of the revitalization plans of the state's major urban centers.

School Building Assistance: The state is now promoting (rather than inhibiting) the location of schools in central locations and in rehabilitated structures. To be specific, the School Building Assistance Bureau has revised its regulations to provide greater flexibility in siting standards, space requirements, and methods for controlling costs. A number of communities have decided to take advantage of this flexibility. Rehabilitated high schools in Chicopee, Pittsfield and Lowell, and one planned in Lawrence, demonstrate the cost savings which can be achieved by this approach.

Transportation Improvements: Highway, mass transit, and other transportation investments tied to local center revitalization efforts have been given top priority by state government.

Sewerage Investments: The Division of Water Pollution Control has given increased attention to the needs of urban areas. Over three-quarters of the grants awarded by the Division over the last year for the construction of sewerage facilities have gone to the state's older urban centers (compared with less than one-third prior to 1977).

Historic Preservation Grants: The state's major urban centers received about four-fifths of the historic preservation grants awarded by the Massachusetts Historical Commission between 1975 and 1978.

Downtown Location of State Offices: Executive Order 134 required all state agencies contemplating expansion or relocation to fill their space needs in existing buildings in city centers.<sup>159</sup>

With the support of the Growth Policy Process, OSP was able to redirect hundreds of millions of dollars in public investments into downtown centers and neighborhoods. These investments often spurred millions more in private investment and attracted

significant residential, commercial, and industrial growth into areas which had previously been considered unprofitable by developers. These projects often required lengthy negotiations between OSP, state and federal agencies, local officials and developers, but the negotiated investment strategy produced some of the best urban revitalization projects of the decade. The most frequently cited examples were Lowell, Springfield, Newburyport, Salem, New Bedford, Fall River, Worcester, Haverhill, Gloucester and Northampton.<sup>160</sup>

#### C. Increased Allocation of Federal Discretionary Funds

In addition to contributing to the passage of legislation and the realignment of state public investments, the Growth Policy Process also helped to improve Massachusetts' ability to compete for federal development funds. As an OSP report stated:

Massachusetts cities and towns, working with state government, have already shown that, in the words of HUD Secretary Patricia Harris, "the people of Massachusetts have opted to come to grips with the problems and are prepared to make the difficult choices that must be made if the benefits of continued growth and development are to be enjoyed... Massachusetts has been a leader among the fifty states...." Based in part on the national prominence which has been given to the Massachusetts Growth Policy effort, the state has done remarkably well over the last year in obtaining federal development funds. Some examples:

Urban Development Action Grants: In the past year, 10 projects in eight Massachusetts communities have been awarded "Urban Development Action Grants" by HUD, totaling over \$40 million. This represents 10% of all the funds awarded nationally, despite the fact that Massachusetts has only 2% of the nation's population. These communities are: Boston (3 projects), Springfield, Chelsea, Salem, Cambridge, Lynn, Fall River and Lowell.

Areawide Housing Opportunity Plans: Two regional planning agencies in Massachusetts recently received federal approval for their "Areawide Housing Opportunity Plans." Only ten plans in the whole country received approval. As a result, these two regions - Franklin County and Lower Pioneer Valley - and the communities they represent will receive federal funds totaling \$2,197,000 for housing, community development and planning.

Neighborhood Strategy Areas: HUD recently awarded funds for 21 "Neighborhood Strategy Areas" in 15 Massachusetts communities, representing about one-seventh of the national total. Only one other state received a larger allocation.<sup>161</sup>

As William Capron states:

Massachusetts success in winning Federal grants is partly explained by political factors, but there is substantial evidence that this record also reflects a recognition by HUD and other federal agencies that the state has a coherent set of policies and worthwhile programs. The State Government, led by Lieutenant Governor O'Neill, worked effectively with local officials in identifying and pursuing Federal funds for projects consistent with local urban revitalization plans....

Massachusetts received the following amounts of Federal funding in Fiscal Year 1977 for support of projects closely tied to urban revitalization:

(Millions of Dollars)

Community Development Block Grants	83.7
Local Public Works Program	16.2
Waste Treatment Facilities	50.0
Urban Renewal	39.4
Urban Mass Transportation	90.0

Massachusetts' total receipt of Federal funds was over \$2 billion in 1977, placing it ninth among the 50 states. Its increased Federal funding between 1977 and 1978 measured in per capita terms moved it from 17th to 12th place among the states.<sup>162</sup>

O'Neill, Dukakis and Keefe realized, however, that simply pouring money into urban areas would not resolve the development problems which plagued Massachusetts cities. They knew that complex urban revitalization projects had to be carefully monitored, and that cooperation and communication between federal, state and local officials, developers and neighborhood groups was essential to successful policy implementation. The Growth Policy Process was one mechanism used to keep the channels of communication open, and to ensure that the projects would meet mutually agreed upon priorities. OSP's project monitoring staff, the local liaison system, the Governor's regional economic development conferences and numerous other growth policy conferences were all used to focus public attention on these projects, coordinate the actions of various agencies, and monitor project implementation.

D. Land Use Disputes Resolved by Informal Negotiated Agreements

A fourth substantive result of the growth policy process was an increase in the number of major land use disputes which were resolved through informally negotiated settlements rather than adversary judicial proceedings. Three examples illustrate this trend.

The first example focuses upon the manner in which having communities explicitly identify their land use problems and priorities in widely publicized local statements enhances the



potential for informal conflict resolution. This example occurred early in the growth policy process.

In August of 1976, citizens and officials of Westminster received notification that the Army Corps of Engineers and the City of Fitchburg were finalizing plans to construct three new reservoirs - two in Westminster and one in Fitchburg. The purpose of the reservoirs was to augment Fitchburg's inadequate water supply.

Westminster, a town of approximately 4500, had known about the proposal for several years, and had consistently opposed the project on the basis that the dams would flood valuable agricultural lands, displace residents, and would destroy potential development sites while supplying few benefits and little revenue in lieu of taxes to the community. Westminster officials claimed that they had voiced these concerns to state and federal agencies before, but to no avail.

In July of 1976, Westminster had completed its Growth Policy Statement. In the statement, Westminster had identified the reservoirs as an inter-municipal land use conflict. Upon notification of the impending approval of the reservoirs, Westminster officials contacted the Office of State Planning. They complained that if the Growth Policy Process was supposed to make state decisions more responsive to local needs and concerns (the reservoirs also involved state funding), and if the process was designed to help resolve land use conflicts, then why had their

Growth Policy Statement and all previous correspondence to two different Governors been ignored:

OSP responded that they were just beginning to review the local growth policy statements, and that previous correspondence had probably been routed to state water supply agencies. They promised, however, to check into the conflict. Since OSP was the state's A-95 agency they would have had to review the project for approval of federal funds anyway. In conducting its review, OSP initiated several meetings between officials of Westminster, Fitchburg, the Corps of Engineers, and state water supply agencies. In these meetings, both opposition to and the need for the project were discussed. The meetings resulted in a set of alternative proposals that took into account both Fitchburg's water supply needs and the concerns of Westminster. The conflict was finally resolved when both communities agreed to a plan that eliminated one of the reservoirs. Thus, Westminster's concerns were met by accepting one slightly larger reservoir. Fitchburg got its needed water supply and a long court battle over the development was averted.

The Westminster/Fitchburg case illustrates the manner in which land use conflicts may be completely avoided or more easily resolved through face-to-face negotiations and informal approaches to conflict resolution. Once citizens and officials from Westminster and Fitchburg sat down together and began to

understand each other's perspectives more clearly, alternatives to the original proposal were generated, consensus was established and the dispute was resolved.

The second example of an informally negotiated settlement was not so easily resolved. This case was a multi-party dispute involving the City of Pittsfield, Pyramid Industries - a large shopping center developer, the town of Lenox and state government. In 1977, Pyramid Industries was finalizing plans to develop a large regional shopping mall in Lenox, a suburb about five miles from the City of Pittsfield. Pittsfield is the only major city in the Berkshires and has a population of 55,000. Its downtown is decaying and the city "has been trying for years - without success - to attract a shopping mall to its increasingly less commercial main street."<sup>163</sup> Pyramid's plans to develop in Lenox would have effectively killed any possibility of developing a viable downtown shopping complex. Market studies indicated that the region could only support one large shopping center. In addition, many Pittsfield citizens and public officials feared that the Lenox shopping center would exacerbate the loss of commercial business from the downtown area. Consequently Pittsfield residents and officials opposed the Lenox mall. In Lenox, sentiments were mixed. Some residents supported the proposal because of the taxes it would generate, others opposed the development because of traffic problems and potential changes in the community's character.

The Pyramid proposal also directly contradicted the center revitalization policy of the Dukakis administration. Consequently the Governor decided to exert pressure to stop the Lenox development. Dukaksi threatened "to disapprove environmental impact statements for the Lenox site and, if necessary, deny permission for curb cuts necessary for access and egress from state Rt. 7. Additionally, transportation Secretary Frederick Salvucci...threatened to withhold funds for the long-planned Pittsfield bypass until development of a downtown mall is assured."<sup>164</sup>

In order to resolve the dispute, OSP initiated multi-part negotiations involving the city, local merchants, the developer, the state, the federal Department of Housing and Urban Development and National Advisory Council on Historic Preservation. The purpose of the negotiations was to secure local, state and federal financial assistance that would subsidize the cost differential between higher development expenses in the central city and the lower suburban land and construction costs. In addition, the negotiations sought to ensure that a downtown mall would not destroy existing local businesses, and would not demolish significant historic buildings. Obviously, the problems were complex and the negotiations difficult.

At first the developer wanted no part of the downtown location. However, eventually OSP convinced Pyramid "that a combination of various pieces of state and federal financial

assistance would make downtown Pittsfield an equally financially attractive location for the mall."<sup>165</sup> In addition, the developer's decision was influenced by the fact that the Lenox Zoning Board of Appeals (encouraged by the state) voted to refuse Pyramid's special permit to develop at the suburban site. On June 2, 1978, Pyramid signed a joint venture agreement with the city and was designated as the developer for the downtown location. Eventually OSP secured informal commitments from HUD for approval of a \$24.9 million UDAG application "to cover a parking garage and an array of amenities related to the Mall and the existing retail district....The state DPW made a written commitment to about \$3 million in urban system improvements required to accommodate mall traffic."<sup>166</sup> In addition, Pittsfield voters and the city council approved an \$8.5 million bond issue to cover site preparation costs not included in the UDAG or Pyramid's expenditures. Finally, "Pyramid had spent about \$1 million in corporate and consultant cost in preparing plans for a 600,000 square foot mall, anchored by five department stores and supported by a 3,000 space parking facility."<sup>167</sup>

Negotiations on the entire project were not completed before the Dukakis administration left office at the end of 1978. The HUD grant and a number of historic preservation issues are still being debated. OSP's success in negotiating an agreement to develop the downtown mall, however, is a clear example of the manner in which informal negotiations can be used to help resolve land use disputes. OSP contends that it

did not usually resort to pressure tactics, such as unfavorable environmental impact statements and denial of curb cuts, to foster negotiations, and that their primary role was one of brokerage and compromise.<sup>168</sup> However, the Lenox-Pittsfield case illustrates how both regulations and public investments can be used through a process of informal conflict resolution to guide growth and development decisions.

Some observers contend that the Lenox/Pittsfield case is not an example of informal conflict resolution, but simply represents the use of state authority to stop an unfavorable project, combined with relatively standard negotiations about the packaging of local, state and federal funding to promote urban revitalization. This interpretation has some validity, particularly if one views the conflict as being between Lenox and Pittsfield or Lenox and the developer. Lenox was not actively involved in the negotiations to relocate the shopping center in Pittsfield. However, if one views the conflict as being between the developer and the state, the negotiations which led to the agreement to move ahead on the downtown mall seem to represent more than the standard use of state coercion to stop a project which was inconsistent with state policy, or the typical packaging of governmental funds for an urban revitalization project.

OSP could have simply waited to see if Lenox rejected the requested zoning change (which was highly probable) and

not become involved in the dispute at such an early stage. However, since the project was viewed as having major potential regional impacts and because it clearly contradicted Dukakis' urban revitalization policy, OSP decided to make the state's position on the development clear from the outset. From the very beginning, OSP also attempted to engage the developer in negotiations about alternative proposals which would be more consistent with state policy (and in this case, local priorities). OSP and state agencies could have also simply waited for the developer to submit applications for state permits and then denied the applications. Such a strategy, however, would have almost inevitably led to a drawn-out court suit because the developer would have had to invest a great deal more money into project design before the necessary state permits could be requested. Thus, one of OSP's objectives in entering the dispute from the outset was to attempt to keep the conflict from growing to the point at which a "win it all or lose it" court suit was the only option. OSP and Pittsfield could have also gone ahead with grant applications for center revitalization without including Pyramid Industries as a part of these efforts. However, OSP felt that it could emphasize the positive side of the state's urban revitalization policy (i.e. encouraging urban development versus discouraging outlying development) by initiating negotiations about the type of incentives that would be necessary to promote development of the downtown mall. Thus,

although informal negotiations did not resolve the dispute over the Lenox or Pittsfield mall sites, they were instrumental in getting the developer to at least consider the downtown site. Serious consideration of the downtown site probably never would have occurred had OSP not become involved in the controversy as early as it did, and utilized state regulatory, public investment and negotiating powers in a creative fashion.

A third example of OSP's use of informal conflict resolution to improve land use decisions involved the Copley Place Project in Boston. This \$250 million hotel, retail, office and residential complex represents the largest private development project in the history of Boston. It includes "more than 2 1/2 million square feet of space devoted to 100-150 housing units; an office building; a retail shopping mall with two or three major department stores, shops, restaurants, theaters, and community retail space; an 818 room hotel; and parking garages...."<sup>169</sup>

The 9.5 acre site for the development was owned by the Massachusetts Turnpike Authority (an independent state authority whose members are appointed to staggered terms by the Governor). One part of the parcel would be relatively easy to develop. However, another part of the parcel was exceedingly complicated because it involved a maze of railroad tracks, the turnpike, a series of exit ramps and downtown streets. The state and the Turnpike Authority did not want to allow development of the "easy parcel" without linking it to development of the more complex



part of the site. Most developers, however, wanted nothing to do with the more difficult parcel.

In addition to design complexities, development of Copley Place would affect a large number of citizens, interest groups, state and city agencies. Consequently securing agreement on a legitimate and financially feasible development proposal was a difficult task. In order to deal with these problems, OSP initiated an informal negotiation process and established a "Citizen Review Committee" (CRC) to identify design, environmental, economic and community considerations to serve as guidelines for the development. The CRC was composed of representatives of involved state and city agencies and neighborhood organizations and businesses in the South End, the Back Bay, Fenway, Roxbury, Bay Willage and Chinatown/South Cose areas of the city. 171

The major issues in negotiations over Copley Place included: possible residential dislocation, the potential for upsetting neighborhood stability by driving up housing costs, the impact of the project on existing businesses in the Back Bay, the creation of social and physical barriers between the project and existing neighborhoods, pedestrian access, traffic congestion and safety, affirmative action guidelines for construction and permanent employment and establishing equitable property taxes and rents which would make the project financially attractive for the developer, the Turnpike Authority and the city.

Initially, the developer's proposal simply "dropped" buildings around the site with little sensitivity to the neighborhood's social, economic or environmental concerns. After months of preliminary study and negotiations the CRC issued a report detailing the design, environmental, economic and housing implications of the project, and identifying the major unresolved issues concerning the development (particularly housing, traffic and pedestrian access).

Based on further negotiations, the developer agreed to numerous changes in the original design. "The alterations included building on all of the site; creating more attractive pedestrian 'edges' around the project; including between 100 and 150 units of mixed income housing...(25-35% of the units to be subsidized for low income renters); relocating traffic-generating, entry-exit ramps to the development....and changing turnpike ramp alignments to ease traffic flow...."<sup>172</sup> Virtually all of these considerations had been missing from the original development proposal. In addition, a rental agreement was negotiated between the developer and the Turnpike Authority, tax abatements and permits were agreed to by the city, state highway plans were changed, additional DPW funding was committed to on-street traffic improvements, and additional state housing subsidies were guaranteed for the surrounding neighborhoods.

All of these changes were agreed to over 20 months of intensive informal negotiations between citizens, neighborhood and business groups, public officials and the developer. OSP played the role of facilitator and broker throughout these negotiations. The Dukakis

administration policy of encouraging growth in downtown locations also served to guide many of the state's actions during the negotiations. The Copley Place Project, now under construction, illustrates the manner in which informal negotiations can be used to both expedite and improve urban revitalization development decisions. By bringing together all parties that had a stake in the proposal early in the project design, OSP was able to secure mutually agreeable solutions to a complex set of social, environmental, economic and financial problems. In addition, when compared to other major urban development efforts, OSP was able to secure these agreements with a minimum of controversy and delay.

The Westminster, Pittsfield and Copley Place projects all illustrate the potential effectiveness of informal conflict resolution procedures and negotiated settlements in resolving major land use disputes, and in increasing the efficiency and equity land use decision-making. In each of these cases, the decisions were made relatively quickly, and local, regional and statewide concerns were carefully considered in the decision-making process. In addition, under traditional adversary approaches of land use conflict resolution, all three of these decisions, probably, would have ended up in the courts. By initiating informal negotiations with the major stakeholders in each project, OSP was able to avoid lengthy and destructive court suits. These three cases are only limited examples of the manner in which OSP and the growth policy process fostered the use of informal conflict resolution in land use decision-making. The growth policy process encouraged the use of the same type of

techniques in numerous other state and local development projects and permit approval disputes. A 1978 OSP report entitled Major Economic Development and Urban Revitalization Projects discusses the status of over fifty projects in which similar techniques were used.<sup>173</sup>

#### E. Impact on National Urban Policy

The final substantive result of the Growth Policy Process was indirect. It involves Massachusetts' success (primarily through the efforts of Dukakis, O'Neill and Keefe) in influencing the development of the Carter administration's National Urban Policy. Although Jimmy Carter was elected with substantial support from the nation's cities, and the low income and minority groups living therein, his campaign did not focus on urban issues. In fact, Carter actually weakened several urban planks of the 1976 Democratic platform. Consequently, one of the major tasks confronting the Carter administration in early 1977 was to develop a coherent urban policy for the nation.

In order to address the urban policy issue, Carter appointed an Urban and Regional Policy Group chaired by HUD Secretary Patricia Harris, with White House direction from the President's chief domestic policy advisor, Stuart Eizenstat. From the very beginning, Dukakis urged Harris and Eizenstat to make the national urban policy review an open process with significant state and local input. In addition, Dukakis pushed hard for a significant role for state government in formulating statewide urban development strategies. Dukakis cited local participation in the Growth Policy process and

Massachusetts' emerging urban policy consensus as evidence in support of his proposals.

Dukakis' success in advocating this position was evident in both the process by which the national urban policy was developed and the substantive elements of the proposal. As one newspaper article reported:

That the Carter urban policy has evolved as well as it has is a tribute to the openness of the process that solicited ideas from mayors, governors, minority groups, members of the academic community, neighborhood associations and businesses. One could say it was a policy designed in an urban fishbowl, and the so called media "leakages" were an accepted and integral part of the process permitting much needed feedback.<sup>174</sup>

The policy development process also included a White House Conference on Balanced Growth and Economic Development. The Conference was held in January of 1978, and was modeled after the Massachusetts regional economic development conferences. As the National Conference of State Legislatures reported:

(The Conference was) frequently billed as "the first town meeting on economic growth" and brought together a wide spectrum of state and local officials, labor and business representatives, and urban and rural interests to hash out their differences over the "Sunbelt-Frostbelt" conflict, urban and rural development, energy and natural resource conservation and use, and unemployment.

The format and many of the issues discussed at the White House Conference clearly reflected Dukakis' hand. In addition, the Governor of Massachusetts was given a key role in a plenary conference session entitled: "Local Fiscal Plight: Who Pays for What?"

The substance of the Carter administration's National Urban

Policy also reflected many of Dukakis' ideas. For example, the national urban policy was billed as the "New Partnership". It emphasized a "partnership among local, state and federal government, private industry and neighborhood groups to make America's cities more attractive places to work and live. The policy focused on targeting more efficiently over \$30 billion in federal dollars, and countless more in state dollars, already going to localities. The 'gravest flaw' of past urban efforts was not too little money, said the policy, but 'too many programs were ineffective and too many canceled by other conflicting federal and state activities.'"<sup>176</sup>

This language closely paralleled the language used by Keefe and Dukakis in the 1975 Towards a Growth Policy for Massachusetts. The specific substantive elements of the national urban policy which reflected Dukakis' ideas included:

1. A \$600 million three year program providing planning grants to states to develop state urban strategies which channel more state and private sector resources into distressed urban areas. (Similar to the Growth Policy Process.)
2. Tax incentives to encourage more private investment in urban areas. (Similar to the Massachusetts Urban Job Incentive Program.)
3. A national development bank that would guarantee and subsidize interest rates on loans to lower the cost of doing business and of expanding or locating new operations in distressed areas. (Similar to MIFA.)
4. Limiting EPA spending for suburban waste water treatment facilities and emphasizing the rehabilitation of existing sewers in urban areas. (Similar to Dukakis' proposals for Massachusetts Division of Water Pollution Control.)

5. Management and coordination of the major elements of the urban policy by an interagency committee chaired by OMB and meeting weekly at the White House. (Similar to Massachusetts Development Cabinet.)
6. Requiring analysis of all new proposals of every federal agency for their impact on urban areas by the President's domestic policy staff (a role similar to that of OSP in Massachusetts).

The National Urban Policy consisted of 160 administrative changes in existing federal programs which did not require legislative action by Congress, and some 40 additional initiatives which would require new legislation. Again, the joint legislative administrative approach greatly resembled the Massachusetts Growth Policy Process. As one newspaper article reported:

The program (the national urban policy) is to a considerable extent modeled after the work of Governor Michael S. Dukakis of Massachusetts...and is being worked on in the White House in extensive consultation with Dukakis....There is much evidence that Carter Administration officials are strongly in favor of the Governor's basic idea....In mid-December Senator Edmund S. Muskie (D-Maine) had a private meeting with Carter. During it he gave the President a memo on urban policy that had been prepared by the staff of his Senate Intergovernmental Affairs Subcommittee. One important paragraph read: "The President's urban policy should include powerful incentives for the states to become more involved in helping their cities - through the adoption of statewide urban development plans, through the development of tax sharing arrangements between central cities and suburbs and through the reform of property tax systems which encourage, or at least do not deter, urban blight." In the margin, the former Governor of Georgia told his staff: "Push this."

Although many of the administrative recommendations included in the national urban policy were implemented, the legislative program fared poorly. Like many of Carter's initiatives, the legislative

agenda contained too many elements, was too complex and suffered from lack of direct lobbying due to shifts of action at the White House. Consequently, in August of 1978, most of the major legislative initiatives were rejected by various congressional subcommittees.

In September of 1978, the Growth Policy Process also suffered a major setback. Governor Dukakis was defeated in the State's Democratic primary by conservative candidate Edward J. King. King had run a pro-business, pro-development campaign. Although he endorsed many elements of the Growth Policy Process, he was not committed to the targeting of state investments or the coordination of state policy to achieve growth management objectives. Consequently, with the election of the King administration, the Growth Policy Process slowed to a virtual standstill. The Development Cabinet and OSP were dissolved, and although the subcommittees of the legislative commission continued to work, their effectiveness was constrained by lack of administrative counterparts.

With regard to the substantive results of the Growth Policy Process, all but the legislation enacted during the 1977 and 1978 sessions, and some negotiated agreements such as Copley Place, dissolved. The targeting of public investments to urban areas was deemphasized by the King administration. Policy coordination and development ceased. The lack of an explicit growth policy and rifts between King and Lieutenant Governor O'Neill limited the state's effectiveness in capturing federal development funds.



Coherent input into national urban policy also ended.

The debilitating effects of Dukakis' election defeat illustrate one of the major weaknesses of the Growth Policy Process. Given its emphasis on network development and ad hoc conflict resolution, when the major nodes of the networks were removed from office, the process was severely damaged. All of the substantive results, excluding the legislation which was enacted and some informal agreements, were only temporary measures which came to an end with the election of the new administration. The legislative commission had worried about such an outcome and had often discussed legislation to institutionalize OSP, the Development Cabinet, the policy consensus derived from the process and the coordinative role that these policies and agencies had played. However, the Commission was too slow in developing the legislative proposals.

In fairness, there were a number of other changes which contributed to stalling the Growth Policy Process. With Dukakis' defeat, Frank Keefe left state government. Senator Saltonstall did not run for another term in the Senate, so his significant influence was lost. Representative Demers moved to an executive position with the new administration, causing the loss of the most effective House supporter. Senator McKinnon lost a bid for a position in the Senate leadership, and Senator Wetmore focused his attention on other legislative issues. Finally, the Commission's staff director also left state government. All of these changes

left only a skeleton of the original state level growth policy supporters to continue the process. These results illustrate the vulnerability of ad hoc network oriented policy development and implementation to changes in key personalities in the process. Although the legislation enacted during the Growth Policy Process continues to have a significant effect on the level and direction of growth in Massachusetts, the impacts of the statutes are much less dramatic than they might have been. In addition, although the subcommittees of the Commission continue to try to draft legislation to implement the growth policy consensus, their progress has been significantly delayed by lack of strong administration support.

XI. Criticism of the Growth Policy Process

Criticism of the Massachusetts Growth Policy Development Act can be divided into five categories:

1. Inadequacies of the participatory process;
2. Overstatement of the degree of consensus;
3. Failure to confront controversial and politically difficult issues;
4. Development of an overly simplistic policy framework;
5. Overreliance on informal networks which make the planning process politically vulnerable.

Perhaps the most severe criticism of the Massachusetts Growth Policy Process is that local participation was shallow and was dominated by public officials of special interest groups. State Representative Richard Moore called the process "a veneer of local participation."<sup>178</sup> He states, "There wasn't even that much participation, I would guess probably in excess of 98% or 99% of the people have never seen, never read or don't even know a growth policy statement exists for their town."<sup>179</sup> Although Moore's statement represents the extreme reaction of a politician, who was upset because the Growth Policy framework had contributed to the siting of a state registry of motor vehicle office in downtown Worcester rather than at an outlying location that would have been preferred by many of his constituents, it does reflect a legitimate criticism which was raised by numerous planners and governmental officials.

Concern about developing a valid participatory process began early in the drafting of the Growth Policy Development Act. In the initial public hearings about the bill, the most repeatedly stressed criticism was that the timetable, proposed in the legislation, would

make local participation superficial. Critics argued that the statute did not provide enough time for localities to organize and conduct an effective participatory process. Even though the time schedule was eventually extended, both by statute and by OSP's granting of extensions, many critics contend that the unrealistically short time frame encouraged LGPC's to rush through the process simply to get the work done. Consequently, it is argued that many of the LGPC's did not spend enough time gathering data, soliciting public opinion or developing consensus to prepare adequate, representative or well thought-out responses to the OSP questionnaire.

Another criticism of the statute's participatory assumptions, which also surfaced early during consideration of the bill, concerns local motivation for participation. Initially, critics of the legislation argued that most localities wouldn't even bother to participate and that the state would either have to abandon the whole process or attempt to develop a state growth policy from the unrepresentative statements of a few communities. When most communities decided to participate, critics argued that the localities did so, only, to avoid future retribution by the state (i.e. withholding state or federal grants, reducing local aid, etc.). If motivation for participation was simply perfunctory compliance with the law, or the attempt to avoid future state retribution, then, critics question, how seriously can the attitudes expressed in the local statements be taken? The MIT survey of LGPC's indicates that numerous communities did participate, simply, to comply with the law. The survey also indicates that more than one-half of the communities participated because of serious local concerns about growth policy

issues. This dilemma illustrates that it is impossible to legislate "motivation" of good faith participation and that one of the most difficult tasks facing state planners is developing incentives for localities to seriously consider local, regional and state growth management issues. In the case of the Growth Policy Development Act, the primary incentive was an opportunity to influence state policy and future state actions. In many cases, this incentive was not enough to ensure serious participation.

A third criticism of participation in the Growth Policy Process is that involvement in both the LGPC's and the state hearings were not representative of diverse interests. Criticisms regarding the representativeness issue are threefold. First, some critics argue that because of the statutory requirements concerning membership of the LGCP's, the committees were dominated by local officials who have been traditionally involved with planning issues (i.e., planning boards, boards of appeal, conservation commissions, selectmen, etc.). Richard High states, "There was no deliberate statewide attempt to involve those traditionally outside the local land use decision-making process."<sup>180</sup> This criticism raises the possibility that policy development was dominated by planning-oriented individuals, and that the local statements only reflect the views of a biased minority. In contrast, other critics argue that many local officials refused to participate in the process and that the LGPC's were taken over by either environmental or development activists. In these communities, the representativeness problem is that the process was manipulated by special interest groups to air narrow concerns, and that the local statements do not embody a consensus of the community. Finally, some critics contend that neither OSP's networking activities, nor the Commission's statewide hearings added significantly to the people who

issues. This dilemma illustrates that it is impossible to legislate "motivation" of good faith participation and that one of the most difficult tasks facing state planners is developing incentives for localities to seriously consider local, regional and state growth management issues. In the case of the Growth Policy Development Act, the primary incentive was an opportunity to influence state policy and future state actions. In many cases, this incentive was not enough to ensure serious participation.

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generally participate in growth management decisions. Both OSP's activities and the Commission's solicitation of hearing participants focused on LGCP members and representatives of interest groups that had been involved in state land use issues for a long time. Thus, it is argued that participation in the Growth Policy Process focused on the involvement of citizens and officials who always take part in planning decisions and that not enough effort was made to involve new interests such as minority and low income groups, etc.

A fourth participatory issue, relates to local understanding of land use issues and local capabilities to develop meaningful growth policy statements. That is, did the Growth Policy Act require localities to act beyond their competence? Representative Moore states:

Some of the Local Growth Policy Statements are jokes. I've read several of the statements and the answers to the OSP's questions were very humorous, yet sad in another sense. It was obvious they were filled out by people who perhaps had good intentions, but had no concept of what they were really supposed to be doing.

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The Growth Policy Act assumed that a community could put together a representative group of citizens that had the capacity to deal with complex land use and growth management questions and to develop a consensus on these issues. This assumption may be questionable for three reasons. First, many people contend that small rural communities do not have the capacity to deal with such issues. For example, the Massachusetts Rural Development Committee has pointed out that the majority of communities that did not participate in the Growth Policy process were rural communities from the Western part of the state.<sup>182</sup> Whether these communities did not participate because of lack of capacity or because land use and growth issues are not a problem is difficult to determine.

Other critics contend that large heterogeneous suburbs or central cities lack the capacity to meet the objectives of the Growth Policy Act because their problems are too complex and related to other deeply entrenched political factors which make encapsulization of these issues, in the form of a growth policy statement, impossible. These critics contend that only small cohesive, rural communities or homogenous suburbs could take the process seriously.<sup>183</sup>

A final obstacle to developing local consensus on complex growth issues relates to the capacity of lay citizens to deal with the small group dynamics of consensus building. Ilene Greenberg's case study of the local participatory process in Wilmington, illustrates that the LGPC often developed consensus by simply accepting the first answer which a group member proposed to an OSP question. Greenberg suggests that this mode of response was a result of the fact that LGPC members, who had all known each other for years, were uncomfortable with face-to-face conflict with people that they had to see and work with on a daily basis. Thus, the group attempted to avoid controversy and develop consensus by simply accepting responses that submerged difference in individual views.<sup>184</sup>

Mansbridge suggests that the problem of conflict avoidance in small groups engaged in fact-to-face dialogue is a general obstacle to meaningful consensus building.<sup>185</sup>

All of these criticisms of participation in the Growth Policy Process illustrate the difficulties and pitfalls in developing effective citizen involvement in land use and growth policy formulation. Even though the Growth Policy Act attempted to foster participation and ensure representativeness by spelling out specific members of the LGPC's, and although OSP and the Commission attempted to encourage participation through widespread



publicity and personal contact with citizens and local officials, the growth policy process in many communities was not as open or well informed as it might have been. These problems illustrate that the design and implementation of citizen participation in land use planning require a great deal of care and a large commitment of time and energy on the part of both state and local officials. The growth policy process did dramatically increase both citizen involvement and public understanding of many growth policy issues. It also served to develop a political constituency to support many state and local growth management initiatives. However, as the preceding criticisms suggest, the process could have gone further in soliciting the involvement of traditionally silent and disenfranchised groups, and might have been more successful if it had allowed more time for local participation and devoted more energy to helping communities expand their participatory base.

A second criticism of the growth policy process is that both City and Town Centers and the Commission report may overstate the degree of consensus which actually exists about land use and growth management issues. Specifically, critics contend that the policies derived from the process represents a restatement of OSP's and the Governor's views, expressed in the 1975 preliminary draft of Towards a Growth Policy for Massachusetts. They contend that the degree of consensus claimed for the "centers strategy" is actually the result of OSP's selective reading of the local growth policy statements. That is, OSP interpreted local comments in the context of a set of preconceived policy notions, used the local statements to confirm their previous beliefs and ignored information which conflicted with these views. Representative Moore contends, "The Office of State Planning had decided upon a growth policy long before the official growth policy

process even began.<sup>186</sup>

On the other hand, Keefe counters that the consensus is real and is based on broad support from diverse groups. For example, suburbs support the policy because it attempts to reduce their growth pressures by focusing development in centers. Environmentalists support the policy because it attempts to guide development away from sensitive environmental areas such as wetlands, agricultural land, estuaries, the coastal zone, etc. Business is supportive because for the first time, they have an explicit statement of the state's growth management priorities.<sup>187</sup> Finally, cities support the policies because it recognizes their need for revitalization and other localities are supportive because various policy statements reflect messages about taxes and growth that they have long attempted to get through to the state.

William Alonso, however, points out that this may be an overstatement of the consensus because it is based on the perception that everyone can win and no one loses from implementation of the policy. He states, "The Massachusetts plan is neither good nor bad. It's a wish list, a political statement, in which everybody gets theirs."<sup>188</sup> High comments, "Everybody of course, cannot have theirs. No one should know that better than city planners, the self-appointed overseers of scarce resources."<sup>189</sup> These criticisms illustrate that one of the problems with processes which focus on consensus and constituency building is that they may have the potential of promising more than they can deliver. As Godwin and Shepard point out, "There is a need to recognize that there will be losses and losers as well as gains and beneficiaries in state land use policy formulation."<sup>190</sup>

In the context of the Growth Policy Development Act, it seems that the consensus about the state's new growth policies is real, but that this con-

sensus may be based on unduly high expectations. As High states, the "problem is the inevitable deterioration of consensus that results anytime a policy moves from a generally worded statement to a specific implementing action. It's the old problem of locating a correctional facility. Most people would agree that jails are necessary, but few want one next door."<sup>191</sup> In the Growth Policy Process, however, informal negotiations and ad hoc conflict resolution procedures were utilized and largely succeeded in dealing with this issue. The specific negotiations were based on the more general policy framework around which consensus had already been achieved. In short, the general consensus may be somewhat overstated, but it has provided a framework for bargaining in which parties see a potential for mutual gains instead of the win/lose dynamics of more adversary approaches to conflict resolution.

The third criticism of the growth policy process is that it was only possible to achieve consensus by avoiding important but controversial and politically difficult issues. OSP's failure to actively push for a "one stop" state permit process in order to avoid conflicts with the Executive Office of Environmental Affairs is an example of this problem. In addition High states:

Another issue -- housing opportunity for minorities in the suburbs -- proved so thorny that OSP nearly dropped it altogether. It was politics, not planning technique, that accounts for OSP's wavering stance on open housing in the suburbs. Housing was only one of a number of issues OSP was interested in promoting, and it was the one that could be traded most easily and effectively for suburban support of OSP's main goal -- revitalizing city centers. In effect, OSP shunted the issue by playing to the largest part of the attentive public, choosing to alienate a few liberal, suburban organizations and housing advocacy groups. Eventually, the growth policy commission caught some of the heat from OSP's decision and reacted by forming a housing subcommittee to work on the problem. The efforts continue, but it's obvious that open housing was one issue that did not fit neatly into

Keefe's center coalition concept,<sup>192</sup>

On the other hand, OSP and the Commission contend that it is impossible for any policy formulation process to confront all of the difficult growth management issues facing the state at one time. Thus, the intent of the Growth Policy Act was both to identify the areas of consensus, upon which immediate actions could be based, and to identify areas of conflict that would require future resolution. The fact that Chapter Foru of City and Town Centers focuses on both consensus and choice (i.e, difficult decisions which involve controversy and different perspectives)<sup>193</sup> illustrates this point. In addition, an April 6, 1978 letter from Keefe to the League of Women Voters illustrates OSP's intention to continue to attempt to deal with the exclusionary housing issue. The letter states, in part:

We do not have to choose between making the cities more livable and broadening suburban housing opportunities. Both policies can, and we argue, must be jointly pursued...In Chapter 3, presenting the "State Perspective", we assert that one of the five objectives guiding future growth should be to "promote wider choice among residential environments" and that forced income and racial segregation cannot be tolerated (pg. 39)...While the Growth Policy Report may have focused on approaches different from those of the League, we still support the strategies suggested by the League as well. The entire Growth Policy process has been an attempt to build consensus on the future course of growth and development in Massachusetts. As such, the League's suggestions and input are most welcome. Based on the perceptions reflected in the emphasis and awareness of the "equity" consequences inherent in growth policy deliberations...We look forward to working with the League to review and refine the recommendations which have been put forward and to see those recommendations implemented. 194

As Keefe's letter indicates, OSP viewed the growth policy process as a continuous and ongoing effort to implement policies on which there was agreement and to confront issues around which significant controversy and disagreement remained. The Commission's recommendation to give priority

in the disbursement of state discretionary funding to communities who accepted a fair share of low and moderate income housing, reflects concern about the controversial exclusionary housing issue, and suggests a mechanism for beginning to deal with this controversy. In short, although the growth policy process may have failed to adequately consider some controversial issues, it seems that both OSP and the Commission envisioned the process as continuing so that these issues could be resolved in the future. The criticism that the growth policy process failed to confront important and controversial issues illustrates, however, that state planners may damage their credibility, and the credibility of an entire policy consensus by focusing too much attention on areas of agreement and not enough attention on the politically difficult issues.

A fourth criticism of the growth policy process is that its reliance on citizen participation and local input resulted in the development of an overly simplistic policy framework. As High states:

Asking each city and town to establish its own growth policies and using the result as a basis for state policy is akin to asking each property owner how his parcel should be zoned and using the results as the basis for a comprehensive zoning map. What's best for the city is not simply the sum of what's best for each property owner. What's best for the Commonwealth is not simply the sum of what's best for each city and town. 195

In addition, Robert Sturgis, a trustee and former president of the Boston Society of Architects, contends that the centers strategy is "over-simple, incomplete, and fails to respond to the way a great number of people are living."<sup>196</sup> Sturgis states, "the assumption is made that older centers have sewer, and water systems that are under-utilized. But what may be the case -- it is certainly true in Boston -- is that those sewer and water systems are falling apart. The cost of replacing them is more

than putting new ones in virgin soil..."<sup>197</sup> William Alonso also agrees with the perception that the policy framework developed through the growth policy process is overly simplistic. Alonso states:

Their argument that too much land is being consumed by urbanization is not particularly strong. There is a value in the leapfrogging kind of land market. If you develop too early, the land is too cheap and therefore developed at too low a density. A leapfrogging land market raises land values and creates holding patterns until the land is mature. 198

A final theoretical criticism of the center's strategy is that the population losses being encountered by central cities are not necessarily bad, and that efforts to reverse these trends may be counterproductive. As Anthony Downs states:

Population declines in many large cities are part of a long range decentralization process that is improving the housing, work places and neighborhood environments of millions of Americans, perhaps even a majority of metropolitan area residents. Therefore, public policy should not aim at stopping or reversing this process as a whole. Rather it should try to offset the undesirable consequences of this process and remedy injustices arising from it. This means that a 'total city revival strategy,' aimed at restoring all large cities to their past peak populations, is undesirable, as well as impractical. 199

These criticisms illustrate that one of the dangers in attempting to develop a concise policy framework to guide state and local land use actions is that the framework may be oversimplify the complex forces and trends that influence growth and development patterns. Thus, planners involved in attempting to develop such policy frameworks must constantly be aware of the trade-off between formulating relatively simple policies that are useful to decision-makers, and developing policies which are either so general or so detailed and complex that they are useless in day-to-day decision-making. Finding this balance is an extremely difficult

task, and neither OSP nor the Commission entirely succeeded in walking this fine line.

The final criticism of the growth policy process is that land use policy formulation efforts which focus on constituency building, linking planning to the political realities of day-to-day decision-making and attempting to foster informal mechanisms of conflict resolution may only result in temporary changes because of their emphasis on informal decision-making systems. In an unpublished paper on the growth policy process, Mary Doebele, a graduate student in the MIT Department of Urban Studies, contends that the growth policy process resulted in substantial opposition from the existing bureaucracy and state agencies, and was a major factor in the defeat of the Dukakis administration in the 1978 Democratic primary. Doebele states:

The Development Cabinet's work antagonized the few Democratic Party members within the state administration whose support was critical to the governor's re-election.

Many of the projects the Development Cabinet reviewed and tried to change were ones which had been long on the agendas and in the planning and engineering programs of agencies well below the cabinet level. One can hypothesize that agency staff were none too pleased with the interest of the chief executive and his cabinet in modifying these plans and projects.

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In addition, High contends:

Keefe's goal of mustering support -- or at least the appearance of support -- was achieved for the short run, but the governor's policies were ended abruptly by an electoral defeat that few had expected... To the extent that local participation is orchestrated for short-run ends, and doesn't build up additional public awareness or support from those who are not already attentive, policies may be vulnerable in the long run.

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Although few political observers actually believe that the growth

policy process was a major factor in Dukakis' defeat, Doebele's and High's criticisms do point out the political vulnerability of middle-range planning processes which focus on increasing state and local capabilities by directly linking planning to concrete political and administrative decisions. This vulnerability results from the fact that when planning becomes political, it also becomes identified with a set of officials and personalities that can be removed from office. To the extent that the planning process is dependent upon the power of these officials and not institutionalized in statute, the entire process becomes vulnerable to the loss of these officials. One of the great strengths of the growth policy process was its informality and flexibility. These attributes allowed Keefe to use the policy framework to inform day-to-day decisions and also allowed these decisions to alter the policy framework. The Commission had worried about the lack of formal statutory and institutional mechanisms to continue the growth policy process, and even considered filing legislation to make OSP a formal state agency. It did not carry through with this proposal, however, and with the change of administration much of the momentum of the growth policy process was lost. Dukakis and Keefe, however, were not the only officials, who considered growth policy their major priority, that left state government in 1978. At the same time, Senator Saltonstall decided not to run for reelection, and the commission's staff director left state government. In addition, Senator Wetmore's priorities shifted. Thus, the failure of the Commission to institutionalize the policies and conflict resolution procedures of the growth policy process, and the loss of five key growth policy participants greatly decreased the prospects for continuing the process.



The preceding criticisms illustrate the immense difficulties in building and sustaining a planning process which focuses on constituency building, increasing planning capabilities and informal mechanisms of conflict resolution. The criticisms show that constitutencies can be built but that they will quickly dissolve unless there is leadership to focus attention on specific decisions and issues. In addition, the growth policy process demonstrates that it is possible to develop a set of policies which are derived from local participation and the simultaneous interaction of policy formulation and decision-making. It suggests, however, that it may be extremely difficult to institutionalize this type of planning and decision-making process. The growth policy process suggests that reliance on informal mechanisms of conflict resolution to settle land use disputes, also, may be difficult to institutionalize. Finally, the flexibility and informality which constitute the major strength of informal conflict resolution mechanisms may constitute their major weakness, particularly if proponents of their use are not in positions of power.

## XII. Conclusion

This chapter has examined the history and evolution of the Massachusetts Growth Policy Process. It traces a series of activities and interactions involving the legislature's Special Commission on the Effects of Growth, the Massachusetts Office of State Planning, individual citizens, interest groups and various local, regional and state officials in response to a complex set of growth management problems and issues. These activities and

patterns of interaction have served to guide the development and redefinition of my own personal assumptions about the key issues in increasing the efficiency and equity of land use decision-making.

During the initial phase of my participation in drafting and implementing the Growth Policy Development Act, my actions were primarily based upon three interrelated assumptions. First, I viewed our work to develop a statewide growth policy framework as a process of public learning<sup>202</sup> which would help to inform state and local land use decision-making. I felt that if public officials and private participants in the land use decision-making system explicitly analyzed the values and assumptions which guided their decisions, they would be confronted by the inconsistencies between their values and actions, and would re-evaluate their behavior in the context of these new understandings. Second, I believed that the face-to-face dialogue involved in the evaluation of land use values, and actions would result in a consensus among citizens and public officials about new land use policies and different decision-making criteria. That is, I believed that consensus would develop because the public examination of alternative values, assumptions and technical information would make the inconsistencies embodied in the land use decision-making process intolerable. I felt that the public enunciation of these inconsistencies would lead to new, mutually agreed upon and more effective forms of land use action. Finally, I believed that the

interpersonal interaction involved in this type of dialogue would result in a set of informal communication networks, both among local decision-makers within the same community and between local, state and regional officials. I felt that these networks would facilitate the transfer of information among participants in the land use decision-making system and would help to build political constituencies to support mutually agreed upon policies and decisions. In short, my initial assumptions about the growth policy process consisted of an interrelated set of relatively general ideas about public learning, consensus building and constituency development.

As my involvement in the growth policy process continued, I was consistently confronted with information which caused me to re-define and attempt to sharpen these concepts. My assumptions about public learning were slowly reformulated to focus on a more practical set of considerations about building state and local planning capacity. My assumptions about consensus building were expanded to include consideration of the use of informal conflict resolution procedures for dealing with specific policy, programmatic and regulatory disputes. Finally, my assumptions about building a political constituency to support a general set of growth policies evolved to focus on utilizing coalitions which developed to support specific project or programmatic actions to form a constituency for a broader set of policies upon which such project or programmatic decisions might be based. The major episodes that led to the refinement of my assumptions are discussed below.

A. Expansion and Reformulation of the Public Learning Assumptions

The reformulation of my views about public learning stemmed largely from the fact that as I reviewed the local growth policy statements, participated in local, statewide, and regional growth policy meetings, and met with state and local officials about specific programmatic decisions, I became increasingly convinced that people do not change their behavior simply because they are publicly confronted with inconsistencies between values, actions and technical information. I found that although generating this type of information may be a first step in changing decision-making behavior, it is not necessarily a sufficient step.

For example, one of the first instances that led me to question my view of public learning was an episode which occurred in a rural community regarding construction of single family housing funded by the Farmer's Home Administration (FMHA). Local officials were upset by the fact that the FMHA was providing a large number of guaranteed low interest rate mortgages for housing construction in their community. Local officials contended that they originally did not object to such housing construction but as time went on it became clear that the town was being asked to shoulder a disproportionate share of this type of housing as compared to other communities in the region. As one official stated:

Our community is a town of approximately 7,000. We have accepted more low and moderate income housing than other towns of similar size in our region. Subsidized units are now approaching ten percent of our total housing stock. Yet the Farmers Home

Administration continues to fund more of this type of housing in our community than in other towns with lower percentages of subsidized units. The new units are usually built beyond our existing sewer and water lines. They are on 30,000 square foot lots. Although they have their own septic and water systems now, I can envision increasing pressure for the town to extend services to these areas in the future.<sup>203</sup>

In response to this problem, the LGPC attempted to initiate a dialogue between the local planning board, board of health, building inspector, FMHA and the limited dividend developer sponsoring the construction. During meetings among these groups, local officials admitted that they were purposefully delaying subdivision approvals, percolation tests, building permits and inspections in order to delay construction of the housing. Local officials also admitted that these actions were inconsistent with the town's zoning and subdivision ordinances and were often illegal. The limited dividend developer admitted that the town was, in fact, bearing a disproportionate burden of this type of construction. However, since their offices were located in the community and they had considerable development experience in the town, it was easier to develop there than in surrounding communities which had accepted less subsidized housing. The FMHA's Housing Division also admitted that their funding policies might have negative impacts on this particular rural community, and that more might be done to channel mortgage guarantees into communities that had fewer subsidized units. FMHA officials, however, concluded that their priority was to fund housing construction, and they were more

concerned with building units than with the location of the development. In addition, they argued that funds had to be allocated on the basis of the proposals that were received. Lacking proposals from other communities, FMHA officials felt it was better to sponsor development in this locality than to allow the funds to return to Washington.

Eventually, the dialogue broke down. The town continued its delay tactics which raised the eventual cost of the housing. The developer continued to sponsor proposals for development in the town, and the FMHA continued to fund these proposals. Even though inconsistencies between values, assumptions and actions were openly discussed in a public forum, and even though informal communication networks were established between different agencies and actors in the decision-making process, nothing was done to resolve this dilemma. This situation led me to question the adequacy of public examinations of the inconsistencies inherent in existing actions to increase the efficiency and equity of land use decision-making. The results of local, federal and private land use actions in this case were clearly both inefficient and inequitable. The results were inefficient because neither FMHA nor consumers were getting full impact for their housing dollars due to local actions which delayed and artificially inflated housing costs. The results were inequitable because one community was bearing a disproportionate share of the region's low and moderate income housing construction. The public dialogue about the issues did little to solve these problems.

A similar episode occurred in the community of Wilmington.

Ilene Greenberg described this situation as follows:

During the (LCPC) meeting of March 10, Carlson identified an inconsistency between the group's espoused position - a desire for a community with a varied age stratification - and policies actually in force - a zoning code that prohibits multi-unit construction or single family homes on less than 10,000 square feet....Carlson conceptualized the age stratification issue in a way that made it personally threatening to several members of the Committee. He characterized Wilmington as a community that makes it virtually impossible for its children to afford housing and that will eventually force out the members, themselves, when they reach the age when they no longer need (or can no longer afford) their homes. The Committee members were forced to confront the possibility that zoning regulations are too high a price to pay for homogeneity and low density. They searched for an alternative (at least for purposes of discussion) until they discovered an acceptable trade-off. They claimed to be willing to give up some measure of homogeneity and low density through their support of cluster zoning and PUD's.<sup>204</sup>

The Wilmington dialogue about the housing issue, unlike the experience in the rural community, involved an explicit examination of inconsistencies between values and actions, a conscious effort to generate and examine alternative forms of action, and agreement on an action strategy. Wilmington, however, never enacted the recommended cluster zoning or a PUD ordinance. In addition, Greenberg found that there were numerous other inconsistencies that were never even discussed by the LGPC. She states:

Certainly, there were other contradictions between espoused objectives and actual town policies: the desire for peace and quiet contrasted with the policy of permitting truck routes through residential districts; the desire to protect water quality contrasted with the policy against conservation easements; the desire to protect the residential character of the community contrasted with the

policies that encourage industrial development, to name a few. These inconsistencies surfaced during personal interviews but were not raised during the meetings.<sup>205</sup>

Greenberg contends that the Wilmington LGPC's failure to confront these inconsistencies was the result of two major factors. First, the group lacked someone who could frame the inconsistencies and present them to the group (i.e. a formulator or interventionist). Second, personal and professional relationships among the Committee may have kept members from confronting each other with inconsistencies in order to avoid conflict.<sup>206</sup> In addition, she contends that in the one instance in which the group did explicitly examine the inconsistencies between values and actions, Carlson acted as a formulator.<sup>207</sup> She points out, however, that Carlson "was something of an outsider."<sup>208</sup> In fact, Carlson was not even a resident of Wilmington, but the manager of a large business in the community. Consequently, his political connections in Wilmington were relatively weak. This fact may help to explain why recommendations to adopt cluster zoning and PUD ordinances were quickly forgotten after the LGCP's deliberations ceased. Although the committee explicitly examined values and actions, discovered inconsistencies, framed alternatives, and recommended mutually agreeable actions for dealing with these inconsistencies, the recommendation may have failed because its major advocate was not linked to the political power structure of the community.

The Wilmington case increased my skepticism about the



adequacy of public learning as a mechanism for motivating change in land use decision-making. The case illustrated that one of the major factors lacking from my public learning assumptions was a political component. The public learning model assumes that behavioral change occurs because of inquiry and learning. In fact, Schon contends that politicization of efforts to examine problems and to formulate policies causes inquiry to become an "after the fact justification for political positions."<sup>209</sup> Carlson seemed to epitomize an apolitical interventionist. He characterized the objectives of the growth policy process as "encouraging surrounding towns to think and plan in a cooperative way; and getting the residents of each town to explore their problems and possible solutions more carefully."<sup>210</sup> It seemed that Carlson skillfully led the Wilmington LGPC through a process of inquiry about one issue, but that process, by itself, was insufficient to change the town's land use decision-making. It also seemed to me that one of the major reasons for Wilmington's failure to translate the Committee's zoning recommendations into action was the lack of political linkages necessary to transform newly acquired knowledge into action.

In addition to these two episodes, my review of the local growth policy statements and my participation in other LGPC meetings served to guide the reformulation of my public learning assumptions to a more practical set of considerations about building land use planning and decision-making capacity. LGPC comments

convinced me that local officials were quite well aware of the fact that community master plans were largely based on planning assumptions and data drawn from the 1950's and early 1960's. These officials indicated that local master plans usually allocated every square foot of a community to some type of residential, commercial, industrial or recreational use. The plans were generally prepared by outside consultants with nominal citizen participation through blue ribbon advisory boards. The planning process was essentially sealed from public scrutiny. Few people were aware of the actual contents of the plan, and those who were rarely believed that the growth projected in the plans would actually occur. Areas were designated for certain uses more as holding actions than in expectation of development. Consequently, officials stated, the plans had little relationship to the socio-economic and environmental conditions which communities faced, and the plans were often changed or ignored in the land use decision-making process.

In addition, local officials admitted that specific regulatory actions were usually made in a piecemeal fashion with little regard for the cumulative effects of these decisions. Planning board members indicated that most of their time was dominated by consideration of disjointed proposals for subdivision approvals or zoning changes. They also indicated that there was generally little public participation in these site specific decisions, and that the decisions were made with little consideration of overall community growth and development patterns. Planning board members

complained that after dealing with their weekly agenda of immediate decisions there was little time left for updating the master plan or developing planning processes for the future. Finally, local officials also complained that state and federal public investment decisions and requirements, particularly with regard to highway and sewer construction, often opened whole new areas of their communities to development, basically negating previous local planning and regulatory efforts.

These explicit examinations of local planning and decision-making behavior seemed to indicate that although 90% of the Commonwealth's cities and towns had master plans, zoning and subdivision ordinances, local officials felt that these traditional land use control mechanisms did not provide an adequate framework or procedures for helping communities to deal with ongoing growth management problems and decision-making pressures. Plans were generally ignored, and decisions were made on a project by project basis, not only without consideration of state and regional interests, but largely without consideration of community-wide development impacts.

Irrespective of this explicit examination of the problems associated with local land use planning and decision-making, the MIT analysis of the effectiveness of LGPC's indicated that only 13% of the localities participating in the process (i.e. the Type I communities in which the LGPC's generated new understanding of land use issues and translated this knowledge into action) actually changed their decision-making behavior.<sup>211</sup> In many communities,

changes in land use practices could not have been expected because participation in the growth policy process was perfunctory and no explicit examination of values, assumptions or actions ever occurred (i.e. Type III and Type IV communities).<sup>212</sup> However, the MIT survey of LGPC's indicated that many Type II communities had engaged in an explicit examination of values and actions but were unable to translate this inquiry into changes in actual decision-making behavior.<sup>213</sup>

The MIT survey and my participation in LGPC meetings convinced me that there were four key differences between the Type I and Type II communities which help to explain the former's success in translating new knowledge into action. First, the Type I communities seemed to be more successful in involving the public in the deliberations of the LGPC's (i.e. Type I communities attracted more people to public hearings and often based their deliberations on townwide surveys).<sup>214</sup> Therefore, Type I communities' policy and programmatic recommendations often proposed actions which a large number of citizens were specifically interested in moving upon. Second, the Type I communities often decentralized the process of responding to the OSP questionnaire (i.e. they relied on neighborhood or precinct meetings and townwide surveys to help answer the questionnaire).<sup>215</sup> This decentralization, like increasing participation, resulted in proposals for specific actions which were based on the recommendations from neighborhood groups or from a number of local

citizens. Third, the LGPC's in Type I communities devoted more effort to increasing horizontal communications among functional agencies and to developing the interpersonal and political ties of the LGPC to these functional agencies.<sup>216</sup> These networks and linkages seemed to increase the probability of translating recommendations into actions because functional agencies were involved in the decision-making and were aware of their role in the overall action strategy. Finally, the LGPC's in Type I communities often remained active after the completion of the local growth policy statement, created citizen watchdog groups or established procedures to review and monitor implementation of their recommendations.<sup>217</sup> Such monitoring activities increased pressure on local officials to follow through on LGPC recommendations. Thus, the major difference between Type I and II communities was that the Type I LGPC's moved beyond the explicit examination of land use values and decisions and engaged in a number of specific activities to translate information generated by this examination into action. These activities helped to convince me that my assumptions about public learning would have to be expanded and sharpened if they were to provide guidance for understanding the growth policy process and improving land use decisions through its implementation.

In short, my involvement with LGPC's led to two basic conclusions. First, the explicit examination of land use values and actions (i.e. my public learning perspective) was not sufficient, by itself, to promote changes in traditional approaches to land use

decision-making. Second, it seemed that changing and more adequately informing land use decisions would depend on improving local capabilities in four primary areas:

1. Increasing participation in the formulation of general growth policies and increasing participation in deliberations about specific land use decisions.
2. Decentralizing land use policy formulation and decision-making.
3. Increasing horizontal communications and improving the flow of information between local officials and functional agencies involved in land use decision-making.
4. Developing monitoring and intervention activities to ensure the implementation of land use policies and decisions.

My involvement with the Office of State Planning during the implementation of the Growth Policy Development Act served to further confirm these new assumptions about the need to expand my public learning perspective. OSP staff members felt that although dialogue at the local level and between state and local government would be useful in improving land use decision-making, it alone would not be sufficient to change long standing inefficiencies and inequities in the growth management system. The OSP Local Growth Policy Handbook stated:

The fundamental aim of the Growth Policy Act is to initiate a dialogue among all of those who are or will be affected by growth and growth-related activities - dialogue within communities, dialogue among communities, and, perhaps most importantly, dialogue among local, regional, and state levels of government. That "dialogue" is not going to resolve all of the issues, for, if we are to effectively plan for the future of the Commonwealth, some hard choices will have to be made. 218

The OSF staff, like the Type I LGPC's therefore, concentrated on activities to translate the new information generated by state-wide dialogue about growth management issues into specific actions. For example, OSP's network building activities, including the local liaison system, sponsoring growth management conferences, the bi-centennial grants, the reader process, regional economic development conferences, etc., were all designed to increase participation and to decentralize land use policy formulation and decision-making. OSP's local liaison system and project monitoring staff were also designed to increase vertical and horizontal communications among various state agencies between state and local government. The OSP staff also used the review of the local growth policy statements, the project monitoring staff and the Development Cabinet to generate, evaluate and decide among alternative growth management policies and actions. In addition, the project monitoring staff and the Development Cabinet established criteria, procedures and institutional mechanisms to review and monitor the implementation of land use policies and decisions. Finally, OSP's local liaison system, the project monitoring staff, the regional economic development conferences, the reader process, etc., were all used to strengthen the political ties between the OSP staff, state functional agencies and local decision-makers.

In conclusion, my interaction with the LGPC's and the Office of State Planning convinced me that if the growth policy process was to be successful in changing land use decision-making, it would

have to go beyond the public examination of growth management values and actions (i.e. public learning). It seemed that both the successful LGPC's and OSP focused on activities that would improve state and local land use planning and decision-making capabilities. That is, they focused on capacity building activities which would help to translate newly generated information directly into action. These activities included: increasing participation; decentralizing land use decision-making; improving the horizontal and vertical flow of land use information; generating, evaluating and deciding among alternative forms of action; strengthening the political linkages between planning officials, functional agencies, and local and private decision-makers; and developing monitoring procedures to ensure policy, programmatic and project implementation. Thus, my view of the growth policy process shifted from a focus on the general concept of public learning to an emphasis on a set of activities which seemed more specifically related to building state and local land use planning and decision-making capacity.



B. Refinement of Assumptions about Consensus Building and Inclusion of the Concept of Informal Conflict Resolution

During my participation in drafting the Growth Policy Development Act I felt that involving local officials and interest groups in the "bottom-up" formulation of a set of statewide growth policies would result in consensus about the actions necessary to address Massachusetts' land use problems. My assumptions about consensus building were both exceedingly general and inextricably linked to my view of the Growth Policy Development Act as a process of public learning.

I believed that existing inefficiencies and inequities in land use decision-making were caused by an inadequate understanding, among public and private officials, of the inconsistencies and negative impacts of their land use actions. I felt that as the process of public inquiry clarified the nature of these negative impacts, agreement on more efficient and equitable forms of action would result. In short, I believed that once decision-makers were publicly confronted with the incongruent effects of their actions, consensus would develop about methods for overcoming these inconsistencies. I believed that agreements could be reached as different interest groups came to understand each other's positions more completely and found that they had more in common than they originally perceived. I also felt that consensus about new approaches to growth management problems might develop as interest groups discussed the problems, defined critical issues more completely and discovered workable solutions which were more consistent with each group's newly shared understanding of the problems.

My review of the local growth policy statements and my interaction with LGPC's, however, convinced me that developing consensus about policies and actions to address growth management problems often requires more than just increasing understanding of the problems and the incongruent impacts of land use decisions. The local growth policy statements repeatedly emphasized that land use decisions involve conflicts between localities, levels of government and groups with very different interests. As I interacted with these groups in growth policy conferences, workshops and meetings, I soon discovered that my involvement often took the form of facilitating negotiations or acting as a mediator attempting to find a "middle ground" which would allow competing interest groups to agree on a strategy of action to resolve specific problems. At times, generating new information or helping individuals to re-examine their values and assumptions would cause competing groups to redefine their self-interest and would create opportunities for consensus about new policies or forms of action. In other instances, however, the process of public inquiry identified legitimate and correctly perceived differences in self-interest. In these instances, our discussions generally turned to finding trade-offs or compromises which would allow each group to achieve enough of their objectives to foster agreement on specific policies or modes of action.

Consequently, I began to view many of my own and OSP's interactions with state and local officials in the context of creating

settings for informal negotiations about land use disputes, and of taking an active role in mediating the disputes or helping competing groups to reach agreement through negotiation. That is, I began to view our activities as a mechanism for dealing with the conflicts inherent in land use decision-making. These negotiations were not designed to make land use conflicts go away, nor did they necessarily resolve all of the value of technical issues in dispute. The negotiations did, however, allow diverse interest groups involved in a land use conflict to mutually agree on a policy, programmatic decision, or some other form of action to address the problem at hand.

The information generated and networks created by the LGPC's, and regional and state activities involved in translating local recommendations into a statewide policy framework, provided opportunities for environmentalists, developers and state and local officials to meet with one another and to informally discuss specific policy and programmatic or regulatory conflicts. During these meetings it often became clear that competing interest groups were willing to negotiate and attempt to resolve land use conflicts before the disputes reached the stage at which court suits or formal administrative proceedings were necessary.

I had not originally recognized facilitating informal negotiations and mediating land use disputes as explicit objectives of the Growth Policy Development Act. However, as the growth policy process unfolded, I found that more and more of my own and OSP's staff time was devoted to establishing and structuring informal negotiations about specific land

use policies and controversies. Two specific provisions of the Growth Policy Development Act helped to facilitate these negotiations. The statute required the local and regional growth policy statements to include a discussion of:

Conflicts involving land needed and suitable for industry and commerce; urban development, including the revitalization of existing communities with limited economic bases; recreation parks and open space; scientific and educational purposes; the generation and transmission of energy; solid waste management and resource recovery; transportation; health, education and other state and local governmental services; multiple-use siting of facilities; and conflicts or significant changes regarding water supply and sewerage. 219

In addition, the regional reports were to include:

An assessment of inter-municipal conflicts within the region; local-regional conflicts, including but not limited to conflicts between municipalities and the regional planning agency and conflicts between municipalities and counties; conflicts between special purpose governmental units and any other units of government; and conflicts involving counties and regional planning commission with one another; a statement of steps taken, if any, to resolve said conflicts, such as but not limited to bilateral meetings between parties in conflict, mediation by the regional planning agency or legal action, and obstacles, if any, which may prevent the resolution of such conflicts, such as but not limited to inadequate technology or information or funding, or the lack of an adequate forum for resolving disputes. 220

In response to these provisions, discussion at growth policy conferences often focused on local complaints about existing formal mechanisms of land use conflict resolution. For example, at a 1976 conference in Worcester, one LGPC member brought and distributed a 1974 newspaper article on the increasing number of environmental law suits in Massachusetts. The article stated:

Environmental law suits are on the increase and court watchers expect no let up in the rising number of such cases reaching the already overburdened Massachusetts courts. Over 225 environmental cases are waiting to be heard in the state courts. And approaching deadlines on many air, water and land clean-up acts passed in the early 1970's may precipitate an explosion in law suits in years to come...The suggestion for an environmental court keeps popping up when the responsible agencies become bogged down in cases or when uninformed judges do not resolve the issues.<sup>221</sup>

The local official who had distributed this article commented:

The predictions from this news clipping have come true. Our LGPC found that our community spends more money for the service of town counsel to initiate and defend against law suits related to land use controls and growth and development issues, than for any other part of our planning or regulatory programs. These law suits drag on for years, and no one is ever satisfied with the decisions. We don't need an environmental court. What we do need is a better method of resolving these land use and growth management conflicts.<sup>222</sup>

Many of the participants at the Worcester growth policy conference agreed with this local official's characterization of the problems of resolving land use disputes through the courts. Discussion of this issue emphasized that local dissatisfaction with formal judicial mechanisms of conflict resolution related primarily to the cost of court suits, and the long delays involved in these actions. The local officials also complained that judicial decisions were often based on narrow procedural grounds that didn't take important local considerations into account and left many important issues unresolved. In addition, many local officials complained that the formal administrative appeal procedures embodied in the state's wetland protection and anti-snob zoning statutes were not resolving conflicts or resulting in agreed upon forms of action, but were often prolonging or increasing

the level of controversy involved in the conflicts. Thus, the growth policy process seemed to indicate a high degree of dissatisfaction among local officials and private interest groups with formal adversary mechanisms of land use conflict resolution.

As a result of this dissatisfaction, and the identification of land use conflicts in the local growth policy statements, numerous communities began to contact the commission or OSP for assistance in resolving growth management disputes. The resolution of the conflict between Westminster and Fitchburg, over the selection of sites for Fitchburg's water supply reservoirs, is simply one example of the type of negotiations that were initiated as a result of local requests. In the Westminster/Fitchburg case, either community could have initiated law suits in response to the conflict. After initial contact, however, we discovered that both communities were willing to negotiate about their differences in preference to turning the decision over to the courts. Fitchburg officials wanted to get on with the project and did not want to delay construction by fighting numerous Westminster court suits about environmental impacts, land condemnation etc. Westminster officials knew that they could delay the project but were worried that they might eventually lose in the courts and be forced to accept a project that offered the community few benefits. Consequently, when the networks established by the growth policy process offered an opportunity for informal resolution and the conflict, both communities were eager to, at least, try negotiation.

OSP's activities in the Westminster/Fitchburg case served to expand my understanding of the types of actions which might be helpful in resolving growth management conflicts informally. First, OSP sought to identify and bring together the competing groups that had a stake in the reservoir siting decision (i.e. Fitchburg officials, Westminster officials, the Army Corps of Engineers, State water supply agencies, environmentalists, developers and agricultural interest groups). OSP attempted to help these groups to more adequately define the issues, values and assumptions at the heart of the conflict (i.e. Fitchburg's interest in the water supply and flood control benefits of the project, Westminster's interest in maintaining the development and agricultural potential of the lands which the proposed reservoirs would flood, the Corps of Engineers' and state water supply agency's interest in salvaging design work that had already been completed etc.). OSP also helped the competing groups to generate alternative solutions to the problem (i.e. changing the size, location and number of reservoirs under consideration). The competing groups then evaluated the impacts of these alternatives, each side gave ground in one area for gains in another and compromises were reached concerning the number, size and location of reservoirs. Finally, OSP helped the communities to secure commitments from appropriate state and federal agencies to ensure implementation of the agreed upon bargain (i.e. funding and new design work from the Corps of Engineers and state water supply agencies). The Westminster/

Fitchburg case illustrates a rough set of principles that both OSP and I were developing to guide intervention in land use decision-making through informal negotiations.

These principles focused on facilitating interaction that would move land use conflicts from a situation in which disputing parties were coerced into a settlement or decision by a third party, such as a court or a state agency (through administrative appeal) to a situation in which state government played an active role in helping disputing parties reach settlements voluntarily through informal negotiations.<sup>223</sup>

As the growth policy process continued, OSP began to view this objective as the major focus of the activities of its project monitoring staff. When the project monitoring staff was initiated, Keefe seemed to believe that priority projects could be expedited simply by tracking projects and applying gubernatorial pressure to bottlenecks delaying permit or funding applications. OSP staff members quickly learned that gubernatorial pressure was often insufficient to move projects ahead. Private developers or environmentalists, who were often responsible for project delays, did not have to respond to gubernatorial pressure and state bureaucrats were quite adept at blunting the pressure by placing the blame for delay on others. Consequently, OSP's project monitoring staff increasingly found themselves involved in complex multi-party negotiations to resolve disputes delaying project implementation. By the end of 1978, the OSP staff was involved in such negotiations on over fifty major development projects.



Although OSP's involvement in negotiations over Copley Place was more intensive than its efforts surrounding other projects, this episode provides a detailed example of the manner in which the principles of informal negotiation became a focal element of the growth policy process. Similar to the Westminster/Fitchburg case, OSP's involvement in Copley Place began by bringing together the parties that had a stake in the outcome of the project (i.e. the developer, the Turnpike Authority, Boston officials, neighborhood groups, tenant organizations etc). OSP staff, then, encouraged these groups to identify the key issues and disputes involved in the project (i.e. the profitability of the project, the Turnpike Authority's desire to develop the entire site, neighborhood concerns about traffic, housing and job impacts etc.) Each group generated alternative design proposals and prepared their own analysis of the impacts of alternative designs. The impact analyses were then compared and negotiations ensued to resolve differences about data and projections. Specific trade-off and compensatory actions were identified to foster mutual agreement about project design and development (i.e. the provision of a residential component in the project, inclusion of subsidies for low and moderate income housing, pedestrian walkways and the redesign of traffic patterns, increased neighborhood subsidies for low and moderate income housing, affirmative action provisions, tax and rent agreements for the developer etc.) Finally, a contract was signed to bind the parties to the agreements resulting from the negotiations.

In summary, my involvement with local Growth Policy Committees and my interaction with OSP's project monitoring staff convinced me that land use decision-making is, in many cases, a process of conflict resolution. These experiences also illustrated that many land use decision-makers were extremely dissatisfied with the formal adversary approaches of conflict resolution embodied in our existing legal requirements for judicial review and administrative appeals of land use decisions. In addition, these experiences convinced me that numerous local, state and private officials were willing to engage in informal negotiations in order to resolve land use disputes and to avoid the costly, time-consuming and highly uncertain process of formal judicial and administrative appeals. After the growth policy process drew to a close, in reviewing my own major activities, I found that many of OSP's and the Commission's interventions in land use decision-making had taken the form of attempts to structure informal negotiations to resolve growth management disputes. In June of 1978, when Susskind first published his nine steps toward environmental dispute resolution, it seemed to me, that for the first time, someone involved in the growth policy process had explicitly stated the principles which had heretofore implicitly guided many of the Commission's and OSP's interventions into land use decision-making.<sup>224</sup>

Susskind characterized the nine steps toward dispute resolution as follows:

1. Identifying the parties that have a stake in the outcome.

2. Ensuring that each interest group is adequately represented.
3. Identifying the key issues and narrowing the agenda of points in conflict.
4. Generating a sufficient number of alternatives.
5. Agreeing on the boundaries and time horizon for impact assessment.
6. Weighing, scaling and amalgamating judgments about impacts.
7. Identifying possible compensatory actions.
8. Implementing the bargains that are made.
9. Holding parties to their commitments.<sup>225</sup>

Although the Commission's and OSP's interventions in the land use disputes did not always involve each of Susskind's nine steps, our activities, as illustrated by the Westminster/Fitchburg and Copley Place cases, usually included a majority of these steps. Consequently, as I began to reflect upon my activities and experiences, after terminating my work for the Commission, I became increasingly convinced that one of the key actions that state planners could undertake to increase the efficiency and equity of land use decision-making was to encourage the use of informal negotiations to resolve land use conflicts. That is, I came to believe that land use

decision-making could be significantly improved by encouraging competing interest groups to informally negotiate solutions to land use problems before these disputes reached the stage at which formal judicial or administrative appeals were necessary to resolve the conflicts. Thus, my original assumptions about consensus building expanded from an emphasis on generating agreements by increasing the understanding of land use issues and problems to include a focus on facilitating decisions through compromise and trade-offs reached as a result of informal negotiations.

This new formulation has many similarities to my previous assumptions about public learning (i.e., establishing interpersonal networks to address problems, identifying key differences in values, assumptions and technical information that contribute to problem definition, generating alternative problem definitions and solutions etc.). However, the major distinction between the two notions is that the conflict resolution approach focuses upon the need to actively encourage competing parties to bargain and compromise in order to reach agreement and move forward on specific decisions. In contrast, the public learning framework contends that bargaining is an inadequate approach for developing effective responses to public problems. Specifically, Schon suggests that bargaining and compromise are inappropriate models for enhancing inquiry and developing new solutions to complex problems. He argues that the bargaining model assumes that the elements of an effective solution already exist in the competing positions of diverse interest groups. He contends that ineffective policy and program recommendations result from bargaining among competing interests because the positions of these groups are based on preconceived

notions that do not reflect sufficient understanding of societal conditions. Thus, he views compromise as a process of diluting preconceived solutions rather than increasing understanding of problems and utilizing new problem formulations to guide decision-making.<sup>226</sup>

My experiences throughout the growth policy process, however, indicated that informal negotiations about specific land use disputes often resulted in compromise solutions which were not previously considered by any of the competing parties. I also found that while increasing understanding of land use problems was the first step toward improving many land use decisions, it was also necessary to actively utilize such new understandings to identify trade-offs that would help competing groups reach agreement on a strategy of action. In addition, I found that although the public learning framework advocated establishing interpersonal networks to involve diverse agencies and individuals in the decision-making process, it did not explicitly address the issue of ensuring representative participation of competing interest groups. In our efforts to facilitate and conclude successful negotiations, I found that securing the participation of a representative set of agencies and individuals with a stake in the dispute was, often, one of the most important factors in the outcome of negotiations. Thus, I came to the conclusion that state efforts to improve land use decision-making must combine the processes of public inquiry and conflict resolution in order to address complex land use problems. It seemed to me that my original public learning and consensus building notions represented the initial phase of an effective conflict resolution process, but that more active efforts to facilitate bargaining and to establish agreements were necessary to improve land use decision-making.

C. Refinement of Assumptions about Building a Constituency to Support Land Use Policy Formulation and Implementation

At the outset of the growth policy process, my assumptions about building a constituency to support land use policy formulation and implementation were based on a relatively classic set of notions about citizen participation. I believed that it was necessary to move beyond reactive public hearings and blue ribbon advisory boards if citizen involvement was to have any meaningful impact and result in political support for policy development and implementation. I also felt that an effective participatory process must: (1) solicit citizen involvement early in the policy formulation effort; (2) attract a broad spectrum of citizens, public officials and interest groups; (3) be constantly open to new participants; (4) give citizens a creative role in exploring issues and developing policies rather than simply soliciting reactions to preconceived proposals; (5) involve two way communication between citizens and public officials; and (6) be continuous throughout both policy formulation and implementation. I believed that this type of participation would result in a constituency to support both policy formulation and implementation because the proposed policies would accurately reflect the ideas and priorities of the participants. As Babcock and Weaver state:

The result of such active participation... is a plan that has a ready-made body of defenders and protectors. People seem by nature to be more dedicated to preserving their own ideas

than to preserving the ideas of others. If the planning process demands the active participation of decision-makers, property owners and residents in the formulation of the plan, the plan becomes their idea and acquires a natural defense mechanism against destructive change or avoidance.<sup>227</sup>

Throughout the growth policy process many of my experiences served to confirm these assumptions. Active citizen participation in the drafting of the Growth Policy Development Act resulted in a political constituency which convinced the governor and Keefe to support the legislation. In addition, this constituency was instrumental in securing House passage of the bill. It may be argued that the statute involved relatively low stakes (i.e. the bill included no funding and established no new governmental authority) and the constituency did not have to overcome major opposition. However, it seems reasonable to assume that the busy House Ways and Means Committee would not have even released the bill, and the House might not have passed it, were it not for the concerted support of the constituency which developed through participation in the drafting process. Critics of the legislation point out that opponents maintained the attitude, "since the bill is basically harmless, if this group wants it so bad let them have it." Even this attitude illustrates that the constituency developed through open participation in the drafting process had mounted sufficient pressure to convince opponents that there were numerous people who wanted the statute enacted.

The viability of an effective participatory process in building

a constituency to support a set of state growth policies was also illustrated by the differences in citizen response to OSP's original Toward a Growth Policy for Massachusetts and the final City and Town Centers report. Public reaction to Towards a Growth Policy was largely negative, while the response to City and Town Centers was much more positive. One plausible explanation of this difference is that City and Town Centers was based on an active and open participatory process which built a constituency for many of its policy and programmatic proposals, while Towards a Growth Policy was prepared exclusively by OSP's staff with no public input. Many of the policy and programmatic proposals in the two reports were similar. However, the public response was different because Towards a Growth Policy was viewed as OSP's report, while City and Town Centers was viewed by many citizens as including their own ideas. Consequently, a constituency was developed to support City and Town Centers, because the report was viewed as representing many of the ideas which grew out of the deliberations of the Local Growth Policy Committees.

My involvement in implementing the Growth Policy Development Act and my participation in drafting City and Town Centers and the Commission's report, however, also served to refine some of my original ideas about initiating and sustaining citizen involvement in a policy formulation process and about translating the involvement of diverse individuals in a participatory process into a cohesive constituency to support action. Immediately after the Growth Policy Development Act passed, I quickly learned that it is difficult to initiate citizen participation in an effort to develop general state



growth policies. Policy formulation is generally to diffuse to spark the kind of citizen concern necessary to initiate participation. Consequently, we found that communities were slow to form LGPC's. OSP's phone calls to local officials, specific requests from the associations representing Massachusetts municipal officials and the early conferences conducted by MIT, Tufts and others were all designed to spark interest and encourage local participation. Through each of these activities it was repeatedly emphasized that both the Dukakis administration and the Commission intended the policies developed through the growth policy process to have an immediate and substantial impact on land use decisions in the Commonwealth. I feel that the high percentage of communities that participated in the growth policy process (94%) was a direct result of these outreach efforts and the emphasis on the fact that the policy framework would have immediate impacts.

As I continued my involvement in the implementation of the Growth Policy Development Act, I also found that many of the activities undertaken by OSP and the Commission to sustain participation focused on immediate short term projects that had immediate tangible results. Some of the projects were directly related to the implementation of the legislation. For example, the reader process involved numerous interest groups in review of the local growth policy statements. The immediate result of this process was the "excerpts" report which was distributed to every community, LGPC member and legislator throughout the state. Other projects in which OSP and the Commission became involved included negotiations about specific land use disputes

(i.e. Lenox/Pittsfield, Westminster/Fitchburg etc.), packaging funding and securing development approvals for major developments (i.e. Copley Place and the fifty other developments tracked by OSP's project monitoring staff). In addition, throughout the growth policy process both OSP and the Commission continuously analyzed the local statements to get a sense of local opinion on specific pieces of legislation consistent with the objectives of the emerging policy framework.

For example, as soon as the local statements were complete, the commission staff began analyzing them for input on the issue of preserving the state's dwindling supply of agricultural land. Agricultural interest groups had been trying for two years to draft and win support for legislation providing for the transfer or purchase of development rights on agricultural land. Up until mid 1976, these groups had achieved little success. Legislators and public officials throughout the state were well aware of the rapid decline of the state's farm acreage (from over 2 million acres in 1940 to less than 600,000 acres in 1970). Legislation to preserve agricultural land, also, seemed consistent with Dukakis' anti-sprawl policy. Irrespective of these conditions, efforts to draft agricultural preservation legislation had failed to win the support of the governor and were moving very slowly.

The Commission's review of the local growth policy statements on the agricultural preservation issue was prompted by the Department of Agriculture's request for help in drafting the legislation. Our review of the local growth policy statements indicated that 75% of the

communities responding felt that the preservation of agricultural land was a priority issue.<sup>228</sup> In addition, a few of the statements included specific recommendations which were useful in drafting the legislation. The Commission staff utilized these recommendations to help Food and Agriculture officials complete and refine a bill providing for state purchase of development rights on agricultural land. We also contacted numerous LGPC members to review and revise the legislation. As a result of these efforts a new constituency began to form in support of the bill. This constituency consisted of both the old agricultural interest groups and a new compliment of local officials, citizens and even urban residents concerned about food costs. The constituency helped to win gubernatorial and legislative support for the proposal and within a year the bill was enacted. The constituency that was formed to support the legislation remained active to draft guidelines for its implementation and offered support on numerous other growth policy initiatives.

The drafting of the agricultural legislation, OSP's and the Commission's involvement in resolving land use conflicts and promoting major development projects all exemplify the types of activities undertaken during the growth policy process to sustain and expand participation in the policy formulation efforts. Although many of these activities did not relate specifically to our policy formulation mandate, input from citizens involved in these projects and the outcomes of the projects, themselves, were used to inform the general policy framework. For example, our interaction with agricultural interest groups resulted in the addition of an agricultural

preservation provision to the emerging policy framework. Our involvement in specific land use conflicts and projects also led to the refinement of some of the previous urban revitalization policies. Essentially, we found that although it was difficult to initiate and sustain participation in the development of a general set of state growth policies, it was possible to secure active citizen involvement by focusing on problem and project specific activities. These activities were useful in developing the policy framework because they allowed us to see, first hand, the implication of potential policies by examining the results of our project specific actions.

Finally, we found that powerful coalitions or constituencies often formed to support or oppose imminent projects or decisions. Instead of simply letting these constituencies evaporate after a project was initiated or a decision was made, both OSP and the Commission worked to keep the individuals from these constituencies actively involved in our policy formulation efforts. The numerous conferences held throughout the growth policy process were designed to bring together LGPC members, state and local officials and the numerous individuals that we had encountered during our project specific activities. Both OSP and the Commission developed mailing lists including all LGPC members and every individual that we had interacted with on specific projects or decisions. Updates on growth policy activities were continuously mailed to these people. These individuals, also, received invitations and often phone calls to solicit their participation in conferences, regional hearings or work-

shops. In addition, when important legislation was pending, letters and calls soliciting support and encouraging people to contact legislators were directed to these individuals. All of these activities served to link diverse project specific constituencies together to support the emerging growth policy framework and created a general constituency which developed a shared commitment to both the growth policy process and its specific recommendations. It was this broad multi-faceted constituency that helped to secure passage of the 17 bills enacted during the growth policy process.

All of these activities served to refine my assumptions about building a constituency for a general set of state growth policies. I learned that devising an active and open participatory process was the first step in informing policy formulation and building a constituency to support implementation. I also learned that a great deal of personal contact and networking activities were necessary simply to initiate this type of participation. I found that sustaining participation was enhanced by undertaking specific project related activities with immediate and tangible results. These activities helped to inform policy formulation by providing concrete experience with decisions which could be related to the emerging policy framework. In addition, I found that conferences and other networking activities which periodically brought participants from project related constituencies together, helped to create and sustain a broader constituency to support the entire growth policy process and its outcomes. Finally, with the defeat of the Dukakis administration, I learned that when active efforts to build a constituency for a general set of

policies are disbanded, the constituency quickly evaporates. Without the conferences, phone calls, letters and OSP's specific requests acting as a catalyst to mobilize this constituency, Massachusetts quickly returned to the situation in which constituencies form to support or oppose specific decisions, but are rarely linked to other constituencies or remain active to support a general policy framework. In addition, when it became clear that the King Administration intended to abandon Dukakis' set of growth policies and that no effort would be made to develop new policies or priorities, people quickly returned to the project specific lobbying that had characterized land use decisions in the past. Thus, the Massachusetts experience served both to confirm and expand my assumptions about building a constituency to support the formulation and implementation of a set of state growth policies. The expansion of these assumptions related primarily to the use of project and problem related activities to inform the policy formulation process, sustain involvement and catalyze a broader constituency to support the policy framework.

The reformulation and refinement of my assumptions about the growth policy process led me to the conclusion that it might be possible to significantly enhance our understanding of the impacts of state intervention into land use planning and decision-making by thinking about such state interventions in the context of the manner in which they address the issues of (1) building state and local planning capacity; (2) establishing procedures for resolving land use disputes; and, (3) developing political constituencies to support land use policy and programmatic decisions. It seemed that these issues were at the heart of many of the land use prob-

lems which we encountered during the growth policy process. State and local plans often seemed to provide inadequate information to help public officials anticipate or avoid imminent land use problems. Most existing master or functional plans at either the state or local level were too general to be useful in guiding specific decisions. In addition, standard judicial and administrative procedures for resolving land use disputes often resulted in long delays or stalemates which did not satisfy any of the competing parties. Finally, many Massachusetts state and local land use programs had been less than fully effective because there was no political constituency to support their implementation.

Consequently, my experiences in Massachusetts led me to view state intervention into land use decision-making from the perspective of three interrelated normative assumptions:

1. Building state and local planning capacity involves two primary types of activities. First, the planning process must be reoriented to focus on current decision choices which will have impacts on long-term problems and conditions. Second, the planning process must increase horizontal and vertical communications among state agencies and between state and local government. Focusing the planning process on immediate problems does not mean simply dealing with current crises. It involves developing information and programs to solve specific problems and structuring these activities and avoid problems which, given current trends, would arise in the future. In Massachusetts, our capacity building activities focused on utilizing information generated by LGPC's and specific project and programmatic decisions to inform the formulation of a state growth policy framework and then using the emerging policies to guide other immediate decisions. The state's growth policies were designed to address problems that seemed evident from existing trends (i.e., central city decline, the loss of agricultural land, economic stagnation, etc.) and were utilized to guide specific programmatic decisions in these areas. My experiences in Massachusetts also indicated that in order to increase state and local planning capabilities, it would be necessary

to improve the flow of information between state agencies and between state and local government. The LGPC's found that the decisions of separate local agencies often resulted in contradictory growth impacts, and that numerous state public investment and regulatory decisions not only contradicted one another, but directly cancelled the effects of previous local land use regulations. By increasing horizontal and vertical communications between agencies and levels of government, particularly concerning specific project and programmatic actions, the growth policy process increased the capacity of state and local officials to foresee and avoid potentially contradictory land use decisions. In short, my experiences in Massachusetts convinced me that state efforts to build state and local land use planning capacity should move beyond traditional notions of comprehensive planning by focusing the planning process on current decision choices and by developing interpersonal networks to increase vertical and horizontal communications both within and among levels of government.

2. State involvement in growth management decisions often involves efforts to resolve specific land use conflicts. These conflicts center around state public investment or regulatory decisions, disputes between neighboring communities or the design and location of major developments. The growth policy process indicated that it was often possible to resolve such conflicts more quickly and equitably through informal negotiations than through adversary judicial or state administrative proceedings. Many developers and environmentalists indicated a willingness to engage in such negotiations in preference to submitting disputes to costly, time consuming and uncertain judicial and administrative appeals. In addition, one of the major findings of the growth policy process was that localities were willing to engage in short-term cooperative efforts with state agencies or surrounding communities to resolve specific conflicts or to respond to inter-municipal problems. Localities, however, were equally clear that they were not willing to give up their land use decision-making powers to state or regional entities in a priori anticipation of such conflicts and problems. Consequently, my Massachusetts experiences convinced me that the initiation of informal negotiations to resolve specific land use disputes might be one of the most effective tools available to state government for influencing growth management decisions.



3. Finally, my involvement in the growth policy process convinced me that land use planning and regulation is basically a political process, and that state intervention into the land use decision-making system must recognize this reality by focusing on developing a statewide political constituency to support land use policy and program implementation. My Massachusetts experiences indicated that an active and open participatory process has the potential of facilitating the development of a broadly based political constituency to support land use policy formulation and implementation. Two factors, however, seemed to be critical in developing and sustaining such a constituency. First, the participatory process must give citizens, interest groups and public officials a creative role in policy formulation and program design. Only in this way will the policies and programs reflect the ideas and priorities of the participants and generate their concerted support. Second, the constituency building process must emphasize developing interpersonal networks to link separate coalitions which form to influence specific project or programmatic decisions. Developing and nurturing these interpersonal networks can provide the basis for translating numerous distinct coalitions into a broader constituency to support a statewide growth policy framework and actions related thereto. The demise of the growth policy process, after the defeat of the Dukakis' administration, convinced me that when efforts to sustain and enhance these inter-coalition networks are abandoned, the statewide political constituency will quickly evaporate.

In essence, my involvement in the Massachusetts growth policy process led me to conclude that the effectiveness of state efforts to increase the efficiency and equity of land use decision-making might be significantly enhanced if state growth management systems were designed to explicitly and directly confront the issues of capacity building, conflict resolution, and constituency building. I recognized, however, that the actions undertaken as a part of the growth policy process represented only one very specific response to these issues, and that conditions in other states might warrant a completely different response or emphasis on other issues.

Consequently, I decided to examine the potential and transferability of the ideas developed in Massachusetts by exploring their applicability to the state land use planning and regulatory programs in Florida.

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CHAPTER THREE. FLORIDA LAND USE PLANNING AND REGULATION IN A  
RAPID GROWTH STATE

I. Introduction

Let's look around and see what unchecked, unplanned growth has done to Florida. It (threatens) to create megalopolis along the entire length of the east coast and from Jacksonville across central Florida to Tampa Bay and down the south Suncoast. Its waste products have polluted our waterways from one end of the state to the other.... It has transformed vast estuarine areas and wetlands into waterfront home sites and canals. It has destroyed beautiful and valuable sand dunes and lined our beaches with hotels and high-rise condominiums....resulted in severe water shortages...intolerable traffic congestion in many urban areas... and threatened (public access to) recreational areas.... True, we have enjoyed economic prosperity. But (all can see) the warning signals and what they portend if we don't grab the reins of the galloping giant.

Over the past decade, the State of Florida has devoted more time and effort to the task of managing the "galloping giant" of uncontrolled growth than any other state in the nation. These efforts have focused on the passage and implementation of innovative land use planning and regulatory statutes which have attempted to change the institutional relationships between state and local government in land use decision-making.

Between 1972 and 1975, the Florida legislature enacted three major pieces of state land use planning legislation. These statutes include:

1. The Environmental Land and Water Management Act of 1972  
(ELWMA);<sup>2</sup>
2. The State Comprehensive Planning Act;<sup>3</sup>
3. The Local Government Comprehensive Planning Act of 1975.<sup>4</sup>  
(LGCPA).

With the passage of ELWMA, in 1972, Florida became the first state

in the nation to enact legislation embodying the "critical area" and "development of regional impact" provisions of the American Law Institute's Model Land Development Code.<sup>5</sup> This action "placed Florida firmly in the vanguard of the quiet revolution" in land use controls.<sup>6</sup> Fred Bosselman described the ELWMA as "one of the most significant advances in state land use legislation in this country's history."<sup>7</sup> Gilbert Finnell called the Florida statute "a model for the rest of the nation."<sup>8</sup>

In 1975, Florida moved well beyond the ALI code with passage of the Local Government Comprehensive Planning Act. Under the Model Code, state and local comprehensive planning is voluntary and plans retain their traditional advisory status in relation to land use regulations. The LGCPA made local comprehensive planning in Florida mandatory, and required all land use regulations and development decisions to be consistent with the local plans. These provisions, combined with the State Comprehensive Planning Act of 1972 and the ELWMA, make Florida the only large dynamic growth state to experiment with a comprehensive statewide approach to land use planning and regulation. As Pelham observes, "Florida is truly the nation's chief land use laboratory."<sup>9</sup>

The statutes comprising Florida's new growth management system were essentially the result of an environmental crisis. The bills were drafted by an elite group of environmentalists, academics and governmental officials with minimal public participation. In addition, the legislation has benefitted from the strong and continuous personal support of former Florida Governor Reubin Askew. During his two terms as Governor (1970-78), Askew consistently emphasized the passage and im-

plementation of land use planning and regulatory statutes as a major priority of his administration. In contrast, many developers and local officials have consistently opposed Florida's state land use initiatives. These groups contend that the new statutes infringe on home rule, limit private property rights and unnecessarily complicate the development process.

Proponents of Florida's new growth management system contend that the new legislation attempts to balance the needs for both development and environmental protection, and attempts to reconcile local land use control and statewide interests through a process which gives local government substantial decision-making and implementation responsibilities.<sup>10</sup> Numerous controversies, however, have erupted between environmentalists and developers and between state and local officials over state planning and regulatory guidelines and their restrictive impact on development and local authority. These controversies have served to erode the political coalition which originally supported passage of the various elements of Florida's growth management system. The erosion of political support has created problems during implementation of the three statutes, and has resulted in numerous court suits challenging the new legislation.

Irrespective of these controversies, most analysts agree that the Florida growth management system has been, at least, partially successful in protecting sensitive environmental areas and regulating large scale development.<sup>31</sup> The statutes' mandatory planning requirements, however, have been less successful in promoting the preparation of meaningful state and local comprehensive plans.

In essence, Florida's state land use legislation exemplifies a centralized or "top-down" approach to land use planning and decision-making advocated by the "quiet revolution". It is based on the assumption that efficiency and equity in land use decision-making can be increased by re-asserting state authority over local land use decisions. It assumes that it is the responsibility of state government to formulate guidelines and overarching comprehensive plans to guide local and regional land use decisions. Thus, Florida is the only state in the nation which has enacted and attempted to implement a series of statutes which embody the assumptions of the "quiet revolution" and which contain each of the major components of the ALI Model Land Development Code.

The purpose of this chapter is to examine the applicability of my assumptions about building state and local planning capacity, facilitating informal conflict resolution, and developing political constituencies to support state land use planning and programmatic actions, in the context of Florida's multi-faceted state growth management system. I was not directly involved in the activities described in this case study. However, I decided to examine the applicability of my assumptions to Florida's land use experiences because the state's three major planning and regulatory statutes represent one of the most innovative state growth management systems in the U.S., and embody the key components of the ALI code's recommendations for nationwide land use reform. The chapter begins by describing environmental and socio-economic conditions in Florida during the early 1970's. It examines the passage and implementation of the Environmental Land and Water Management Act of 1972 (ELWMA). The results of the ELWMA's critical areas and development of regional impact provisions are traced in detail. The chapter also analyzes the implementation of

the 1972 State Comprehensive Planning Act, and presents the initial results of the 1975 Local Governmental Comprehensive Planning Act. Finally, the chapter concludes by discussing the manner in which reflecting upon the activities involved in the passage and implementation of these statutes has influenced my assumptions about the importance of capacity building, conflict resolution and constituency building as key issue in the design and implementation of state growth management systems.

## II. The Florida Context

### A. Demographic and Socio-Economic Conditions

For the past three decades Florida has witnessed astronomical population growth. Between 1960 and 1970 the state's population grew by 1.8 million people; an increase of 38% which was second only to Nevada's growth rate.<sup>12</sup> During the 1970's Florida gained nearly three million full-time residents, an increase of 43.4%.<sup>13</sup> As L.J. Carter reported:

In 1950 Florida had 2.7 million people and ranked only twentieth among the states in population; by 1970 it had 6.7 million and ranked ninth and was growing faster than any other large state. By 1973 the total had reached 7.8 million and the influx of retirees and other migrants was now a flood, with an average of more than 6,000 newcomers arriving each week. Tourism had also shown extraordinary growth. An estimated 25 million tourists and other visitors came in 1972, a number fivefold the total a generation earlier. Along with the growth of population and tourism there had, of course, been an enormous increase in residential and commercial development.....<sup>14</sup>

Florida's growth boom was concentrated in the southern and central regions of the state, while the northern panhandle counties continued to grow slowly or to lose population. This trend was particularly problematic because most of the state's land with a "high tolerance" for development is located on the northern panhandle not in the environmentally sensitive southern peninsula. The growth problem, therefore, has been defined, most often, in terms of its rate and its concentration in the state's most sensitive environmental region. This region is characterized by swamps, wetlands, estuaries, dunes and beaches. The sensitive ecology of these areas is easily upset, but new development

techniques have allowed the construction of millions of new homes and businesses on shorelines, wetlands, and flood plains. Virtually all of this construction has required land drainage, dredging, filling or water impoundment. Often this development has resulted in water pollution, flooding, saltwater intrusion and the destruction of wild-life habitats.

The high cost of land alteration and the great demand for new housing along the coast and in sensitive wetland areas also complicated the growth issue in Florida. These forces resulted in larger scale and higher density development than were typical in most other parts of the country. As Healy stated, "Although single family houses are still popular, the high prices of land and building materials have made the town house, the residential cluster and the garden apartment a predominant type (of development) in Florida...."<sup>15</sup> Waterfront coastal properties were in such great demand that high density condominiums were the only type of development which could offset land, site preparation and construction costs. For example, in 1973 Time Magazine reported, "Near Orlando, Florida, a grove owner sold 30 acres of land 15 miles from Disney World...for \$285,000. Two weeks later, the buyer resold it for \$375,000. One week later a subdivision developer bought it for \$525,000. Several months later the developer turned down an offer for \$750,000 for the property upon which he is now constructing apartments."<sup>16</sup>

The large scale and high density of Florida's development projects created both opportunities and problems. On the one hand, large scale development allowed conscientious developers to engage in better

planning. Environmental, social and economic considerations were included in project design, and some large planned unit developments have included residential, commercial, recreational and industrial facilities. These developments have resulted in more balanced physical and economic growth than incremental urban sprawl. On the other hand, many of the large scale developments were poorly planned, and located in highly sensitive water recharge areas without adequate environmental safeguards. Often, these developments were designed to house over 10,000 people. In a few months, such a development could increase the population of a county by several hundred percent. Consequently, these developments resulted in rapid changes in county character, and placed significant pressure on established social, fiscal and environmental systems. In many cases these systems were incapable of adequately responding to either the scale or rate of growth. As Carter reports:

Dade County's backlog of pollution problems, largely from domestic sewage, is such that public investment of at least several hundred millions of dollars in sewers and treatment works will be needed to remedy it.... As recently as 1970, almost 40% of all housing units in the county were still served by septic tanks, and 5 percent of all housing had both septic tanks and individual water wells, - a dangerous combination....

At peak hours, traffic on expressways and thoroughfares serving greater Miami generally approaches design capacity or exceeds it.<sup>17</sup>

As these examples illustrate, Florida has not been able to develop public facilities fast enough to keep up with the state's growth. The infrastructure problem, however, is twofold. Traditionally,



the state of Florida and its localities have not invested heavily in infrastructure development. In 1972, Neil Pierce reported "on a per/capita basis, Florida ranked forty-eighth in the United States in its expenditures on highways, and twenty-eighth in support of local schools. In the late 1960's state and local tax collections represented only 3.2 percent of personal income, Florida ranking thirty-first in the nation in that regard."<sup>18</sup> During the 1960's and 1970's Florida's infrastructure development lagged behind the demand caused by rapid growth. In addition, even when new roads or sewers were developed, they often exacerbated growth problems by simply opening whole new areas to development.

Florida's rapid growth also resulted in an expanding economic base and caused "most economic indicators for the state to remain fairly stable from the period 1967 to 1978."<sup>19</sup> Between 1960 and 1970, total non-agricultural employment in the state increased from 1.3 million to 2.2 million. By 1978 the total had grown to 3.1 million employees, a 46% increase from 1970.<sup>20</sup> Despite this rapid economic growth, the relative distribution of non-agricultural jobs remained almost constant between 1960 and 1978. Wholesale/Retail Trade, Services, Government, and Manufacturing consistently ranked as the State's four largest employers. The distribution of non-agricultural jobs for 1970 and 1978 are summarized below:

Table I: Distribution of Florida Non-Agricultural Employment 1970 and 1978.<sup>21</sup>

<u>Rank</u>	<u>Sector</u>	<u>% Non-Agricultural Employment 1978</u>	<u>% Non-Agricultural Employment 1970</u>
1.	Wholesale/Retail Trade	26%	26%
2.	Services	22%	18%
3.	Government	18%	18%
4.	Manufacturing	13%	15%
5.	Finance/Insurance/ Real Estate	7%	6%
6.	Construction	7%	8%
7.	Transportation/ Public Utilities	6%	7%

Unemployment rates in Florida have fluctuated with the national average. Between 1970 and 1978, Florida's unemployment rate increased from 3.4% to 6.6%, while the national average grew from 4.9 to 6.5%. From 1970 to 1973 the Florida unemployment rate was consistently below the national average. Between 1974 and 1976, however, Florida unemployment rose above the national average, reaching a peak of 10.7% in 1975 compared to a national rate of 8.5%. Recently, however, Florida's unemployment rate has stabilized at approximately the national average. For example, in 1977 Florida's rate was 8.2% compared to 7.6 nationally. In 1978 the corresponding figures were 6.6 (Fla) and 6.5 (National), and in 1979 the Florida and national rates were 6.0% and 6.3% respectively.<sup>22</sup> Another sign of the stability of Florida's

economy is that state per capita personal income has increased at approximately the same rate as national average per capita income. Between 1972 and 1977, per capita personal income in Florida increased from \$4,378 to \$6,684.<sup>23</sup> During this period, Florida's per capita income remained consistently between 95% and 100% of the national average. In short, Florida's rapid growth has been accompanied by the steady expansion of a relatively stable economic base.

The major economic problems in the state result from the fact that the large tourism and agricultural industries pay relatively low wages and the work remains semi-skilled and seasonal.<sup>25</sup> In addition, the state's economy has not diversified sufficiently to decrease dependency on these low paying jobs. Finally, a disproportionate share of the state's low wage jobs are also held by members of minority groups, who now constitute approximately one-sixth of Florida's population.

Housing problems for the minority and low-income residents are also severe. As a recent HUD report stated:

The emphasis in the homebuilding industry has been on producing housing for the incoming population. Little attention has been paid to providing adequate housing for the disadvantaged. For example, housing problems for the resident population in urbanized south Florida are becoming acute as apartment complex after apartment complex converts to condominium. As the population continues to increase and the relative supply of apartments decreases, rental expenses are taking bigger and bigger bites out of the salaries of the working class.<sup>26</sup>

Thus, Florida's rapid growth has brought both prosperity and problems. Although the state's economic base has expanded significantly,

sensitive environmental areas have been destroyed, water resources depleted and housing shortages continue. Conflicts between old and newer residents, white and minority populations, and different age groups have become common place. Bitter struggles over land and water resources, conservation, housing and economic development dominate the political scene and have strained the political system.

#### B. State and Local Planning Capabilities

Prior to 1970, "the interests of Florida's state government in land use had focused on promoting development--attracting new industry, improving the highway net, encouraging the opening of new farmlands and promoting the tourist industry."<sup>27</sup> State environmental legislation regulating the dredging of wetlands was loosely enforced, and "official attitudes toward Florida's natural resources favored more or less unchecked private exploitation."<sup>28</sup> In addition, the state did little to encourage local governments to engage in land use planning and regulation. "Florida was the last state in the union (in 1967) to make a general grant of zoning authority to its counties.... As late as 1973, less than half of the counties exercised land use controls.... and more than 50% of the state's land area was without local development controls of any kind."<sup>29</sup>

Florida's local government system consists of a fragmented set of 66 counties, 389 municipalities and 446 special districts. Most of Florida's growth has occurred in unincorporated areas. "For example, in 1970, 38.7% of the population in Hillsborough County (Tampa) lived in unincorporated areas; by 1978 that figure had grown to 51%."<sup>30</sup>

In addition, the executive structure of Florida's state government makes state planning difficult. The Florida Cabinet dates back to the post-reconstruction era and was designed to keep the governor relatively weak.<sup>31</sup> The governor shares many traditional executive responsibilities with the cabinet, which is composed of six independently elected state officials - the attorney general, the commissioner of agriculture, the commissioner of education, the comptroller, the secretary of state and the treasurer. "The governor directs ten departments (e.g. administration, community affairs); each cabinet officer heads a separate department; and the governor and the cabinet share responsibility for seven other departments (e.g. general services, natural resources)."<sup>32</sup> Each cabinet officer has his or her own constituency and power base. This situation "infuses their weekly meetings with considerable public posturing and more than occasional controversy."<sup>33</sup> As Carter reported in 1975, "so freehanded was the cabinet in allowing dredging and filling, that in some instances entire estuaries were in danger of being converted into labyrinths of landfills and finger canals...."<sup>34</sup> In short, the task of policy coordination and statewide planning was even more complex in Florida than in states with a powerful executive branch.

### C. The 1971 Water Crisis

Rapid growth, its impact on the environment and character of southern Florida, and the lack of state and local land use planning and regulatory mechanisms brought the land use issue to the forefront of public attention in Florida during the late 60's. Finally, however, it

was a crisis that sparked reform of the state's growth management system. The crisis was the drought of 1971.

Beginning in the early 1940's, southern Florida had suffered from a recurring series of annual droughts. During the 60's, the increase in urban development on coastal and inland wetlands had simultaneously decreased aquifer recharge areas, and increased municipal water demands. Consequently, the drought which began in October of 1970 and lasted through April of 1971 resulted in the most serious water crisis in Florida's history. As Carter reported:

By the end of April 1971 , fires had swept over more than 400,000 acres of the Everglades.... The City of Miami had to shut down eight of its water supply wells because of salt-water intrusion. The water table in south Dade dropped below sea level and farmers had to install stronger pumps and make other costly changes in their irrigation equipment. Some south Florida cattle ranchers were appealing for federal emergency funds for the digging of wells and ponds for their endangered livestock...."<sup>35</sup>

In response to this crisis, Governor Askew convened the South Florida Water Management Conference. The conference concluded that future water crises could only be prevented by the adoption of strict land use controls. The recommendations and follow-up work from the conference produced the legislation which constitutes Florida's existing growth management system.

### III. The Florida Environmental Land and Water Management Act of 1972

#### A. Introduction

The major element of Florida's new growth management system was the Environmental Land and Water Management Act (ELWMA).<sup>36</sup> This statute sought to combine increased utilization of environmental impact assessment techniques with a process of state review and potential override of specific local land use decision. The state review process was to be conducted under strict administrative procedures and created an adversarial appeals mechanism for resolving land use disputes.

The ELWMA was based on five primary assumptions. First, "while planning is desirable, land use problems are so urgent that regulation should not be put off until the state has prepared a comprehensive plan."<sup>37</sup> Second, "only a minority of land use decisions involve significant state or regional interests and should be subject to state intervention."<sup>38</sup> Third, "where there are nonlocal considerations, the state should make policy but should leave its implementation and enforcement to local governments."<sup>39</sup> Fourth, the state can protect against violation of its policies by providing for an administrative appeal of local decisions.<sup>40</sup> Fifth, administrative appeal is preferable to judicial proceedings because, "unlike the judiciary, an administrative agency can be easily endowed with the time, staff and expertise necessary to resolve satisfactorily complex land use planning problems...and to the extent the courts must be involved, judicial scrutiny of a single administrative agency is much simpler and more effective than reviewing the actions of hundreds of local government units."<sup>41</sup>

The ELWMA created two parallel processes to govern land use decisions with greater than local impacts. First, it gave the state the power to identify Areas of Critical State Concern (ACSC). The state would analyze the environmental constraints and development potential of such areas, and would establish development guidelines to govern local planning and regulatory activities in ACSCs. Second, the legislation established a process for regulating Developments of Regional Impact (DRI's). This process requires the local governing body to consider a regional impact report in deciding to approve, deny or attach conditions to development permits for large scale developments.

Ultimately, both the ACSC and the DRI provisions of the ELWMA rely on adversarial administrative and judicial appeal procedures to ensure enforcement of their land use control guidelines and standards. Under the critical area provision, designation is made by a state administrative agency supposedly based on the technical environmental characteristics of the area. Localities may appeal the designation under the state administrative procedures act. The process, however, is characterized by win/lose dynamics. That is, the area is either designated, and becomes subject to state guidelines, or it is not designated and localities retain land use control. If localities do not enforce the state guidelines, court injunctions must be obtained to secure implementation. Disputes have erupted between state and local government and between developers and environmentalists over both designation and enforcement. Court suits have not definitively resolved these disputes and there is still a great deal of controversy



over the statute. The DRI program gives developers and regional planning agencies the opportunity to appeal local conditions attached to the approval of large scale developments. The administrative ruling are also subject to judicial appeal. Recent court suits have focused on the statutory definition of DRIs and judicial interpretation of technical studies regarding the impact of development.

Consequently, implementation of both the ACSC and DRI provisions of the Florida legislation display the characteristics of traditional adversary methods of land use conflict resolution. Greenberg and Straus have described these methods as follows:

The usual methods of resolving complex multiparty disputes are legal and political. Parties with sufficient resources hire consultants, lawyers and lobbyists to work for their interests in the courts and political arenas. Technical issues are usually made unnecessarily controversial because the hired experts use data, assumptions and methods to prove a point not to estimate impacts or to seek a workable solution. In other words, the emphasis is on one side's winning rather than on all sides agreeing. Judges, often with the assistance of experts, are left to decide which printout and experts make more sense.

While cross-examination is permitted in the courtroom and to a limited extent in an administrative hearing, the formality of these procedures gives little opportunity for constructive testing of new, alternative methods of conflict resolution. Persons without legal standing are excluded from the deliberations, regardless of how relevant or valuable their knowledge may be to the decision. And, in general, most of the parties leave dissatisfied with the decision. Losers claim that their technical issues were not adequately addressed, for example, or that some important information was not considered. Even the winners may be unhappy because of the court costs or because of the expensive delay in resolving the issue.

Society as a whole may also suffer through the delays in important resource management decisions.

We probably can look forward to more adversary confrontation, even though our courts are already choked with cases, and even though, in many instances, courtroom decisions have disadvantages that could be avoided by using other forums for dispute resolution. Courts must fix blame and must require that information be presented in black-and-white form. Court rulings are often inflexible. Finally, and perhaps most important, they often unnecessarily traumatize winner and loser to the point of causing long-lasting rancor between them.<sup>42</sup>

The following discussion of the passage and implementation of Florida's Environmental Land and Water Management Act focusses upon the manner in which the Florida legislation characterizes an adversarial approach to land use conflict resolution. This approach has resulted in numerous court challenges which have delayed implementation of the program and have left various policy decisions and the future of the entire program in the hands of the Florida courts. In addition, implementation of the ACSC and DRI provisions of the legislation illustrate the difficulty of sustaining a political constituency to support statutory implementation over a long period of time, and demonstrate the problems of attempting to treat land use conflicts as primarily technical issues.

#### B. Drafting the ELWMA

Governor Askew responded to the 1971 drought by "calling together 150 experts for a crisis conference on water management."<sup>43</sup> The South

Florida Water Management Conference was attended by an elite group of key state legislators, conservation group leaders, local, state and federal officials, and scientists and engineers from Florida's universities. The final conference report stated:

For an adequate long-range water supply the state must have an enforceable comprehensive land and water use plan....

There is a limit to the number of people which the South Florida basin can support and at the same time maintain a quality environment. The state and appropriate regional planning agencies must develop a comprehensive land and water use plan with enforcement machinery to limit population...."<sup>44</sup>

Clearly, the participants at the South Florida Water Management Conference were responding to the immediate water and environmental crisis that the state faced. Uncontrolled growth was viewed as the primary cause of the crisis, and the conference recommendations focused on limiting rather than guiding growth. As Carter reported:

A true consensus even of the large and diverse group of conference participants probably cannot be claimed for all of the report's more far reaching recommendations.... Yet one can infer that most conferees were agreed that the solution to south Florida's recurrent drought problem would have to involve land use control measures and could no longer be found primarily in the manipulation of available water resources.<sup>45</sup>

In order to translate these recommendations into legislation, Governor Askew appointed the 1971 Task Force on Resource Management. The Task Force consisted of fifteen members including: two state

senators, two state representatives, four academics, and seven state and local officials. Professor John DeGrove was appointed chairman, and Fred Bosselman, a major contributor to the ALI code, was retained as legal consultant to the Task Force.

Again, this task force was an elite blue ribbon group. It consisted predominantly of people with an environmental orientation, and did not include representatives of real estate, business or housing interests. Lobbyists for the development industry charged that "the task force worked in secret"<sup>46</sup> and did not involve citizens or interest groups in its deliberations.

Although the task force did not solicit outside input, it did consider a number of alternatives for restructuring Florida's land use management system. It considered and rejected a proposal drafted by Florida's Speaker of the House which was modeled after Hawaii's comprehensive statewide zoning statute.<sup>47</sup> It also considered and rejected approaches which "seemed to concentrate primarily upon geographic problems, such as Wisconsin's shore-land protection program, or upon functional needs such as the Massachusetts Zoning Appeals Law."<sup>48</sup> Finally, the task force carefully studied the American Law Institute's (ALI) Model Land Development Code, and decided that this approach was most suited to Florida's needs.

In selecting this approach, the task force had several major considerations in mind. As DeGrove stated:

It felt that 'a state as large and complex as Florida simply was not amenable to the statewide zoning approach followed by Hawaii.' Also it did not want to see created a large centralized state bureaucracy that would be constantly interfering in local decisions. What it wanted was a new land control process wherein the state, intervening in the 'big cases', would ensure that decisions were reached only after a 'balanced consideration of all the competing environmental, economic and social factors'."49

Healy also noted:

The Florida Law... contains most of the ideas and much of the language of the ALI code's Article 7. Two of the Code's major concepts appeared to have an almost uncanny applicability to Florida's land problems. The ALI recommendation that a state regulate very large developments (called 'developments of regional impact') seemed quite relevant to the 'new kind of growth' we have already described. And the Code's idea that a state designate some geographic areas as being of 'critical state concern' appeared well suited to a state with so many places of environmental value and unusual delicacy.... It is no coincidence that a consultant to the Florida committee was Chicago attorney Fred Bosselman, associate reporter of the ALI committee that has been drafting the Code.<sup>50</sup>

The final recommendation of the Task Force on Resource Management emphasized the "development of regional impact" and "critical areas" approach to state involvement in land use decision-making. However, it also recommended comprehensive state and local planning statutes to supplement the "selective cases" approach. The task force recommendations consisted of three components:

- (1) In order to actually eliminate environmental crisis situations such as the drought in south Florida, the state had to direct and guide development patterns in the state. The most effective way of doing that was to control all development in certain ecologically delicate areas and to control all development of scale sufficient to impact an area larger than its immediate environment.
- (2) The Existing Bureau of Planning had become hopelessly bogged down in paper processing and was structurally incapable of administering the broad land and resource management controls envisioned. The office had to be restructured, upgraded from a bureau to a division... The New Division of State Planning would be the focal point of coordinating the state action and a comprehensive state plan would be the principal tool for accomplishing coordination.
- (3) Local governments must have a major role in implementing the necessary land and resource management controls. The planning capabilities of local governments had to be upgraded and there was a need for comprehensive and thorough going recodification of local government planning authority.<sup>51</sup>

Governor Askew accepted the first two components of the task force's final recommendations. However, he decided to defer filing the third component until the first two bills were enacted. Carter reported:

[T]he draft legislation initially submitted by the task force to Governor Askew contained a lengthy section aimed at having all local governments undertake comprehensive planning. As Finnell recalls, the governor, while not rejecting the idea that a legislative mandate for such planning was in order, felt that this section should be dropped from that particular bill so as not to ask the legislature to take on too much at one sitting. There was indeed reason for such caution. Even as submitted to the legislature, the task force proposal would encounter strong opposition. If these proposals became law the governor could come back later with a comprehensive planning bill that would be the essential complement to selective land use controls affecting DRIs and areas of critical concern.<sup>52</sup>

Given this strategy, Governor Askew introduced the Florida Environmental Land and Water Management Act (ELWMA) as his top priority for the 1972 legislative session. The legislation consisted of three major elements:

1. It authorized the state to designate "areas of critical state concern" (ACSC) (primarily sensitive environmental areas) and to establish standards for local land use regulations governing development in these areas.
2. It empowered the state to adopt guidelines and standards for defining "developments of regional impact" (DRIs), required local governments to consider the regional impact of projects of this nature, and gave the state authority to overrule local decisions about such developments.
3. It established the Environmental Land Management Study Committee (EMLS); and advisory body to assist in establishing definitions of DRIs and to recommend additional land use legislation to the legislature.

Proponents of the ELWMA contended that the purpose of the legislation was to realign government power and to redistribute land use responsibilities, while at the same time leaving the primary authority for land use control with local governments. Richard G. RuBino stated:

Florida's Act provides for a state local partnership in land resource management. Florida state government has become involved in setting policies, guidelines and standards over certain types of activities; but the major responsibility for the implementation of the Act will remain in the hands of local government. <sup>53</sup>

Healy argued, "More than any other state, Florida has tried to reconcile to aspirations of strong local governments with regional and state-wide interests in environmental protection."<sup>54</sup> Finally, Earl Gallop stated:

General purpose local government is the designated repository of land use power. Whether considering the DRI... or considering a proposed ACSC...local governments have the responsibility to take very important initiatives. Only in instances of local default or significant disagreement may the state intervene to override the local decision through the administrative appeal process.<sup>55</sup>

In summary, Florida's first statewide initiative in the land use field was the result of a severe environmental crisis caused by rapid population growth and recurring water shortages. The new land use legislation was drafted in direct response to this crisis by an elite blue ribbon task force with strong gubernatorial support. There was little public input into the task force's deliberations, and development interests were not included in the drafting process. Formulation of the legislation entailed participation by members of the state legislature, the executive branch and strong input from Florida's academic community. Although the task force considered a variety state land use control mechanisms, the alternative were predominantly approaches drawn from other states and not from Florida's local officials or residents. In addition, the fact that the task force chairman and legal consultant strongly favored the ALI approach suggest that alternative consideration may have been somewhat perfunctory. Finally, although proponents of the legislation claimed that it represented a balance between state and local authority, the proposed statute included significant new state powers for overruling local land use decisions. The major assumption underlying the Governor's task force proposal was that limited state override of certain local land use decisions could prevent



both further environmental crises and could improve local growth management capabilities by requiring localities to comply with and implement specific state formulated guidelines and standards.

### C. Passage

The legislative struggle over passage of the ELWMA illustrates the level of controversy surrounding land use issues on Florida. It also demonstrates the strength which the water crisis had imparted to the state's emerging environmental coalition, and the necessity for strong gubernatorial leadership and legislative cooperation in the reform of the state's land use management system.

Analysts have emphasized six major factors in explaining the passage of the legislation.<sup>56</sup> These factors include:

1. The 1971 water crisis.
2. The strength and organization of environmental interest groups.
3. The late start and disorganization of opponents of the bill.
4. Adept management of the bill's legislative consideration.
5. Strong gubernatorial support.
6. Support of the state's major newspapers.

With regard to the first two issues, Phyllis Myers noted:

... the severe drought demonstrated the effects of resource mismanagement...When people came to believe that they were up against local government mechanisms that could not or would not help them, they turned instead to the state capitol in Tallahassee....

The conservationists were well organized. Building on the momentum of Earth Day, they had scored important victories in the 1969 and 1970 legislatures.... They banded together in a new coalition, Conservation 70's, and opened an office in Tallahassee. Although poorly funded, the lobby developed political savvy as it countered the well heeled business and development groups endemic to the Florida legislature.<sup>57</sup>

Senator Graham, the bill's floor manager also stated:

Whatever the rationale, the catalyst for enactment of state land use legislation, has, in virtually every instance, been an immediate crisis.<sup>58</sup>

SB 269 would have been lost had it not been for the environmentalists' tenacity and diligence in keeping the bill alive through letters and personal contact with legislators.<sup>59</sup>

With regard to the disorganization of the legislation's opponents, Myers stated:

Both supporters and opponents of the bill agree that natural enemies did not coalesce. Agricultural interests worried a lot about property rights but did not fight land use regulation as hard as they would the next session.... The powerful land industry--real estate, land sales, construction, developers--was caught off guard. 'We slipped it in in the middle of the night, we caught them napping,' are common explanations of the bill's passage.<sup>60</sup>

The legislative strategy for consideration of the bill was purposefully designed to keep opponents off balance.<sup>61</sup> Two bills were sent to the House, and two to the Senate to diffuse opposition.

Myers stated:

Strong leadership charted a pragmatic course as the bill went through the legislative maze, hammering out changes to make it more palatable to opponents. On key issues implementation was delayed and differences buried in ambiguous language that moved resolution to another day....<sup>62</sup>

Even with strong legislative leadership, the ELWMA came very close to procedural defeat. In fact, the regular session of the 1972 Florida legislature ended with the bill having passed the Senate but still under consideration by the House. The bill was saved, only, when Governor Askew extended the session and exerted his personal influence with the legislature. Myers reported, "Just before the key House vote, he called in about 25 legislators, including some outspoken opponents, for an informal question and answer session. As he said good-bye, he shook hands with them saying, 'I'll see you at the roll call.'"<sup>63</sup>

Although the development interests, opposing the bill, were not as well organized, and began their lobbying efforts later than the environmentalists, they were still able to extract major concessions from the bill's supporters during its legislative consideration. The legislative debate resulted in a series of amendments which weakened both the critical areas and development of regional impact sections. The amendments illustrate both the degree of controversy and the major issues at stake in the adoption of Florida's new land use management system.

The first major issue addressed by amendment was the growth/ no growth issue. Opponents of the bill contended that the legislation could have brought development in Florida to a standstill. They claimed

that the whole state could have been declared a critical area. Consequently, the critical areas section was amended to limit the amount of land that could be designated to 500,000 acres in the first year, and never more than 5% of the state's total land area (approximately 1.8 million acres). Proponents of the legislation argued that the 5% limitation had no relationship to the technical characteristics of Florida's land, and that it was arbitrary. The amendment, however, prevailed. In addition, a provision which gave the state power to adopt interim regulations while a proposed critical area was being studied was removed from the bill.<sup>64</sup>

The protection of private property rights was another issue which became the focal point for amendments. First, opponents of the bill succeeded in including a grandfather clause exempting any development authorized prior to a critical area designation. This was a particularly significant concession because many subdivisions, which had been officially platted but not developed, fell under the exemption. In addition, opponents of the critical areas approach delayed its implementation by requiring the Division of State Planning to inventory all the state land before making any designations. More significantly, a provision was included requiring that the critical areas program would not become effective until Florida voters approved a \$240 million bond issue for the purchase of environmentally sensitive lands.<sup>65</sup>

The original legislation called for the designation of critical areas by the state planning agency, and would have established a gubernatorially appointed "adjudicatory commission" to hear appeals concerning both ACSC's and DRI's. The bill was amended to have the

governor and his cabinet designate critical areas and hear appeals. Proponents of the original legislation argued that the governor and his cabinet had neither the time nor the expertise to fulfill these functions. They also contended that the cabinet's role would subject land use decisions to undue politicization.<sup>66</sup> Opponents of the bill argued that the original language would have given "unbridled authority to non-responsive bureaucrats."<sup>67</sup> Thus, the implicit issue at stake was whether land use decision should be based primarily on technical or political considerations.

The political versus technical aspects of land use decision-making was also a key underlying issue in the DRI section of the bill. This section was, perhaps, the most controversial part of the legislation. "Motions to delete the section...were defeated on tie votes in the Senate Committee on Ways and Means and on the Senate floor..."<sup>68</sup> The legislators could not agree on the types of development which should be subject to DRI regulations, and they did not trust the Division of State Planning to unilaterally make these decisions. Consequently, the ELWMA was amended to require that the Division of State Planning consult with the Environmental Land Management Study Committee (EMLS) in preparation of DRI guidelines. These guidelines would also be subject to approval by the Administrative Commission (i.e. cabinet) and the legislature. In addition, the DRI section was amended so that standards and guidelines to govern the program would not become effective until July 1, 1973.

Finally, another amendment relating to the DRI section specified the composition of the ELMS committee. As Myers stated:

With the issue of membership on the governor's task force still raw, amendments now specified that the governor's nine appointees would represent discrete interest groups--environment, organized labor, business, home construction, land sales, real estate, agriculture, and the academic community. Now it was the conservationists turn to be upset when they saw the heavy representation of business and development.<sup>69</sup>

The specification of the governor's appointments seemed to emphasize the legislature's distrust of technocratic land use decision-making. It is also interesting to note that not one representative of local government was included on the ELMS committee.

In summary, the passage of Florida's Environmental Land and Water Management Act was characterized by confrontation politics between two of the state's most powerful interest groups. The position of the environmentalists had been enhanced by the 1971 water crisis, strong support from the governor and cooperation of key legislative leaders. The development interests had organized slowly but had used their power effectively to push through major amendments. The environmentalists maneuvered to "slip the bill through" by drafting the legislation with little public input, and selling the bill as a "new partnership" between state and local government. They also attempted to reduce conflicts by drafting particularly controversial sections of the legislation in vague and ambiguous language. The development interests maneuvered to dilute the impact of the legislation by delaying its implementation, and subjecting major components to multiple approvals and statutory restrictions. The debate over the legislation revealed that the supporters of the bill considered land use decision-making to be, primarily, a technical process which they wanted to insulate,

as much as possible, from political forces. On the other hand, the developers sought to politicize various controversial elements of the legislation by subjecting DRI guidelines to legislative approval and requiring a public referendum on funding to purchase environmentally sensitive lands. These actions were designed so that developers could have greater input into program guidelines, or, perhaps, so that they could later thwart implementation. As a result of the drafting process and the bitter struggle over enactment of the ELWMA, the level of disagreement between Florida's environmentalists and developers over land use issues, remained high. Neither group agreed to make real concessions. Consideration of the legislation was characterized by "win/lose" dynamics and an adversarial relationship between the state's conservationists and development interests. The enactment of the ELWMA actually contributed to these adversary relationships which continue to dominate land use decision-making in Florida today.

#### D. Areas of Critical State Concern

##### 1. Introduction

Implementation of the critical areas section of the ELWMA illustrates three key issues concerning the viability of the "selective cases" approach for improving state growth management capabilities. First, although the ELWMA was continually billed as creating a new state/local partnership in land use decision-making and leaving most land use controls in the hands of local government, the three critical areas designations, to date, have resulted in a great deal of hostility between localities and the state. As a result, the coalition opposing

state intervention in land use decision-making has gained strength and through continuous procedural and judicial challenges, has brought implementation of the program to a virtual standstill. Second, the Division of State Planning has found it difficult to fully justify its critical areas proposals on the basis of technical information. Consequently, the data requirements of the program are viewed as one obstacle to future critical area designations. Finally, given these problems, the state has shifted its focus from formal designations to establishing informal voluntary agreements to protect potentially critical areas.

## 2. The Critical Area Designation Process

The critical areas section of the ELWMA provided for designation of three types of areas of critical state concern:

- (i) An area containing, or having a significant impact upon, environmental, historical, natural, or archaeological resources of regional or state-wide importance.
- (ii) An area significantly affected by, or having a significant effect upon, an existing or proposed major public facility or other area of major public investment.
- (iii) A proposed area of major development potential, which may include a proposed site of a new community, designated in a state land development plan. (This provision was repealed in 1979).<sup>70</sup>

The process for designating "areas of critical state concern" consists of the following five steps:

- a. Nomination and Review of Proposed Critical Areas. Any Florida citizen, local government, regional planning agency, state official or private organizations may nominate lands for designation as critical areas. The nominations are reviewed by the Division of State Planning and ranked according to priority. The division may reject nominations, refer the



nominations for purchase under the Land Conservation Act, suggest informal mechanisms for resolution, or recommend the nomination for further analysis. Five criteria are used in categorizing the nominations: "a) Development pressure or the immediacy of the threat of degradation to the environment or public investment. b) Statewide interest-politically or in the resource to be protected. c) Legal and technical abilities of local government as exhibited historically. c) Interest expressed by the governor or the administration Commission. e) Potential success if state regulations are imposed."<sup>71</sup>

- b. Critical Areas Analysis. The Division of State Planning prepares a detailed report on the high priority nominations. This report specifies "the boundaries of the proposed area, states the reasons why the particular area is of critical concern to the state or the region, the dangers that would result from uncontrolled or inadequate development of the area, and the advantages that would be achieved from development... in a coordinated manner, and recommends specific principles for guiding the development of the area."<sup>72</sup> These principles usually deal with technical issues such as density, site alteration, soils, storm water run off, ground water, etc.
- c. Designation. The Administration Commission reviews the DSP report and recommended critical area guidelines, holds public hearings on the proposal and adopts, modifies or rejects the nomination.
- d. Promulgation of Development Regulations. After the Administration Commission has designated an area of critical state concern the local government with jurisdiction has six months to adopt local development regulations (i.e., zoning, building and health codes, subdivision regulations, etc.) which are consistent with the state promulgated guidelines.
- e. Approval and Implementation of Development Regulations. The local development regulations are reviewed by the Division of State Planning for consistency with the state guidelines. If the local regulations are satisfactory, they are approved and become the basis for future development permits in the area. If local regulations are not adopted within six months, or if the proposed local regulations do not comply with state guidelines, the Division prepares regulations to govern development in the area for approval by the Administration Commission. Upon approval, such state regulations supercede existing local ordinances and the local government is ordered to enforce the state regulations. In order to ensure local implementation of the state regulations, the Division of State Planning is authorized to institute judicial proceedings against local governments to compel proper enforcement. In

addition, regional planning agencies and the Division of State Planning are authorized to appeal specific local development permits issued in the critical area to the Adjudicatory Commission. Finally, if neither the state nor the local government adopts development regulations within twelve months of an area's designation, the designation is terminated and the area can not be redesignated for at least twelve months from the termination date.

Between 1973 and 1978, the Division of State Planning received seventy-nine critical area nominations. Of these approximately 56 were rejected after initial review. As of 1978, sixteen nominations were currently under study or still pending. Four nominations were resolved by informal agreements after detailed study, and three areas were officially designated as areas of critical state concern.<sup>73</sup> The three designated areas are: (1) the Big Cypress Swamp (1973); (2) the Green Swamp (1974); and (3) the Florida Keys (1975). The major issues in each of the critical areas designations are discussed below.

### 3. The Big Cypress Swamp

Actually, the Big Cypress was not designated under the provisions of the Environmental Land and Water Management Act. Instead, the area was designated by a special Act of the legislature.<sup>74</sup> This approach was taken because mechanisms for implementing the ACSC provisions of the ELWMA were still being prepared by the Division of State Planning and the area represented a particularly sensitive environmental resource which was being threatened by development. The area included the Everglades National Park, and contained the aquifer providing much of the fresh water for southwest Florida. In addition, the Big Cypress was the center of environmental controversies regarding the development of a jet port and construction of a new state highway. The U.S. Congress

was also considering, and has since established, the Federal Big Cypress National Freshwater Preserve in the area. The governor and many state legislators felt that the critical area designation would enhance the prospects of the Federal purchase. Proponents of the Big Cypress designation argued that the legislative approach was necessary because of the immediacy of the problems facing the area. Earl Starnes, former Florida Director of State Planning stated:

In the Big Cypress Swamp the integrity of the hydrosystem supplying Everglades National Park and the 10,000 islands along the lower west coast of Florida was being degraded by uncontrolled land sales and development in Collier County. The county appeared to have little local desire or capability to protect these state and national resources. Developers operated in a virtual vacuum of regulation in these sensitive wetland regimes. Thousands of acres were systematically being drained and ecologically destroyed.<sup>75</sup>

The Florida Big Cypress Act earmarked \$40 million of the 1972 Land Conservation Bond Issue for the purchase of land which the state would donate to the national preserve. It also gave the governor and the cabinet the power of eminent domain to buy these lands, exempted the designation from the 5% ceiling established in the ELWMA, and most importantly bypassed local government completely by giving the state total authority for regulating development in the area. The Act defined the area of critical state concern as the proposed federal preserve "together with such contiguous land and water areas as are ecologically linked with the Everglades National Park."<sup>76</sup>

Critics of the Environmental Land and Water Management Act, who had originally argued that the legislation would mean state supercession

of local prerogatives, criticized the Big Cypress Act for not including local governments in the formulation of regulations, and warned that the state was trying to strip local government of its land use responsibilities.

Many of these criticisms seemed justified when the Division of State Planning published its draft boundaries and regulations for the Big Cypress area.

As Healy noted: "When the draft regulations were released and submitted to public hearing, local residents - and many legislators - were horrified. The planners had interpreted literally the legislative mandate to regulate not just the purchase area, but other Big Cypress lands important to south Florida's ecology. The draft regulations covered more than 1.5 million acres, including 90% of Collier County."<sup>77</sup>

Over 1,000 people attended hearings on the proposed Big Cypress boundaries and regulations. The testimony at the hearing was primarily hostile and angry. One landowner stated, "How would you like to live in a police state? We will be living in one with these proposed regulations. They would depreciate land values, tell you how you can use your land, or rather how you can't use it, and they're not going to give us one red cent."<sup>78</sup>

Farmers were one of the most vocal opposition groups at the hearings. Their reaction was particularly significant because one of the compromises included to secure the passage of the ELWMA was exemption of agricultural activities from the provisions of the legislation.

Development interests and three of the five Collier County Commissioners opposed the draft boundaries and new regulations. Many

state legislators also felt that the boundaries and regulations went beyond the legislature's intent. "One Senator from West Palm Beach who had voted for the Big Cypress legislation told the crowd, 'the bill passed with virtually no debate.... We believed we had simply ratified the Big Cypress purchase.'"<sup>79</sup>

The legislature pressured the Division of State Planning to revise its recommendations. "In October, 1973, bills were introduced in both houses of the legislature to pull back the Big Cypress area of critical state concern to the proposed federal reserve area. Each was signed by a majority of the legislators. Chastened, state officials went back to the drawing board."<sup>80</sup>

Finally the regulations were weakened, and the total area within the Big Cypress boundary was reduced to include the federal preserve and a 285,000 acre buffer zone. As Thomas Pelham stated:

As finally adopted...the boundaries of the Big Cypress critical area encompassed lands in three counties constituting only about 50 percent of the total Big Cypress area. All municipalities and urbanizing areas were excluded, and less than 50,000 people resided in the designated area. Reflecting the narrow natural resource considerations that prompted designation, the land development regulations adopted by the commission are extremely limited in scope, focusing almost exclusively on the quantity, quality and flow of water in the area. Within these parameters, the regulations are fairly restrictive. However, because the area has experienced little development since the designation there have been little permitting activity and no appeals from local conditions to the Adjudicatory Commission.<sup>81</sup>

On the other hand, Collier County has enforced the state regulations and has turned down development which does not meet the state criteria.

In addition, the county hired an environmental consultant and has begun to develop its own planning staff. As Robert Rhodes, Chief of the Bureau of Land and Water Management in the Division of State Planning indicated, "The impact of raising the issue has had an interesting spinoff, there is new impetus for Collier County to master plan and zone."<sup>82</sup>

In addition, Rhodes cited three lessons which Florida officials learned from the Big Cypress designation. Rhodes reported:

We shouldn't try to knock out local governments. The Big Cypress legislation...put the full burden on the state planning agency in developing boundaries and proposed regulations. If local government are not included in the process and are bypassed, they obviously will be upset and will not effectively administer the program. Another lesson is the need for a massive education process. We have to get people to understand that this is zoning and nothing more. The third is more staff. It takes 3500 hours of staff time to work up a critical area, accumulate the data and prepare the final report.<sup>83</sup>

A fourth lesson of the Big Cypress experience was identified by Earl Starnes. He stated,

We are dealing with inadequate information.... We just don't have the tools for judging the systems. We can talk about aquifers, recharge areas, hydrolic units, but we need to develop with more care the critical link between the existence of environmentally sensitive areas and the damage done by urban development.<sup>84</sup>

Healy supports this perception and contends that the technical information problem is the fundamental difficulty within the Act. He stated:

If a land use agency issues permits for projects, it can usually require the developer to provide any information needed to judge the environmental or other impacts his project will have. Even this is sometimes hard in practice, but at least the burden of proof usually falls on the person wishing to change the environment. With critical areas, however, the regulators must furnish all the information. Moreover, they must implicitly bear the burden of proof that development of whatever kind, will prove harmful to some statewide interest. It is a time-consuming, expensive and inexact procedure.<sup>85</sup>

The Big Cypress designation damaged the credibility of the entire critical area process. The lack of technical data to back up the Division of State Planning's originally proposed boundaries, and the lack of local involvement in preparing the initial recommendations were the primary factors in the loss of credibility. In addition, the Big Cypress designation served to coalesce development interests, local control advocates and the agricultural community in opposition to the program. Although the governor and environmentalists were able to save the designation and defeat several 1974 proposals to weaken the ELWMA, the final boundaries and regulations governing the Big Cypress had to be significantly weakened and limited as a result of vocal opposition.

#### 4. The Green Swamp

Florida's second critical area was designated under the procedures established by the ELWMA. This area, the Green Swamp, was threatened by development spilling over from Disney World and Orlando. Like the Big Cypress, the motivating factor in the Green Swamp designation was environmental degradation. In this case, "the major issue

was the protection of the recharge functions of the Floridian aquifer which provides nearly 90% of all water used in the state."<sup>86</sup> Consideration of the area was initiated when "the governor and the cabinet passed a resolution directing state agencies to explore ways of protecting the area from uncontrolled development."<sup>87</sup>

Like the Big Cypress, the Green Swamp encountered difficulties in linking development guidelines to technical analysis of the site, and met with strong local opposition. Starnes reported, "information on the Floridian aquifer was badly dated. The only source was the geological survey from deep well data and only weak knowledge of the actual recharge functions of the soils overlying the aquifer."<sup>88</sup> In addition, local opposition to the designation was vocal. The Division of State Planning tried to counter this opposition by holding two sets of hearings in the area even before the proposed boundaries and development guidelines were submitted to the Administration Commission.<sup>89</sup> Finally, the Division recommended approximately 332,000 acres to be included in the Green Swamp area of critical state concern. On July 16, 1974 the Administration Commission approved the boundaries and guidelines. The vote, however, was close (4 to 3) reflecting local, business and agricultural opposition to the designation.

Opposition to the designation was also reflected by the fact neither of the two county governments in the area prepared acceptable regulations to govern development. As Starnes stated, "Polk County did make an effort to comply with the time requirements, but Lake County in essence said 'Let the state do it.'"<sup>90</sup> Consequently the Division of State Planning was forced to prepare regulations for approval by



the Administration Commission.

Local opposition was further manifested when the validity of the proposed regulations was challenged under the Florida Administrative Procedures Act.<sup>91</sup> Local refusal to adopt regulations and the appeal under the Administrative Procedures Act resulted in substantial delays in approval of regulations. "Consequently, the regulations did not become effective until July 20, 1975, twelve months and four days after the adoption of the designation rule."<sup>92</sup> Local opponents used the failure of the Administration Commission to adopt regulations within the statutorily mandated twelve month deadline as the basis for a court challenge of the regulations.<sup>93</sup> The court challenge succeeded but became secondary to larger constitutional issues and legislative action (which are discussed in the next section on the Florida Keys).

The major point illustrated by the Green Swamp designation was that local opposition to the critical areas program could effectively delay its implementation. Essentially, the Green Swamp designation revealed four specific points at which localities could resist critical area designation and the implementation of regulations. First, the two counties refused to adopt acceptable development regulations. This forced the Division of State Planning (DSP) to hurriedly prepare regulations to govern development in the area. Second, the regulations were appealed under Florida's Administrative Procedures Act. Third, the regulations were challenged in court. Finally, if the counties refused to enforce the state regulations (which was not the case in the Green Swamp area) the state would be forced to seek a court order for enforcement and might have to appeal individual local permit

decisions both to the Adjudicatory Commission and to the courts. Obviously, the opportunities for local resistance and delay of the implementation of critical area regulations are substantial.

Pelham has characterized these problems and their interaction with Florida's Administrative Procedures Act as follows:

The administrative designation process...is cumbersome and time-consuming. Assembling the information necessary to support a recommendation by the Division of State Planning and a designation by the Administration Commission, with due consideration given to the 5 percent limitation, cannot be speedily accomplished. Persuading the commission of both the merits and the political feasibility of a proposed designation may further prolong the process. Additionally, even if the commission officially designates an area of critical state concern, the adoption of critical-area development regulations in accordance with ELWMA, which does not permit development moratoria or interim controls, may take twelve months.<sup>76</sup>

Since designation is by administrative rule, a designation can be made only in accordance with the APA's rule-making provisions. The Administration Commission must give the statutorily prescribed notice of its intention to adopt a proposed designation rule, prepare a detailed statement of the rule's economic impact, give affected persons who so request an opportunity to present evidence and argument pertaining to any issue raised by the proposed rule, and schedule and conduct a public hearing in accordance with the APA on the request of any affected person. In addition, any substantially affected person may, within fourteen days after publication of the notice of intent to adopt a designation rule, request an administrative determination, that the proposed rule is an invalid exercise of the agency's delegated legislative authority. An administrative decision of invalidity, if judicially affirmed, prevents adoption of a proposed designation rule. Finally, any adversely affected party may seek judicial review of a designation rule. Thus, while the APA's panoply of procedural safeguards provides protection against arbitrary agency action, they may also constitute formidable obstacles to the designation of critical areas in Florida.<sup>95</sup>

The delays inherent in the critical area program are largely the result of the fact that the ELWMA created an adversary designation and regulation process subject to strict administrative procedures. This process pits the state against local government, private property owners and development interests. Consequently, like most adversary decision-making mechanisms, Florida's critical areas process has become characterized by the polarization of interest groups and win/lose dynamics. This situation has in turn heightened the degree of controversy around specific critical area decisions, stifled the rapid resolution of disputes and placed a number of final decisions in the hands of the Florida courts.

#### 5. The Florida Keys Critical Area

The adversary nature of Florida's critical area program and the increasing judicial role was also evident in the designation of the Florida Keys as the state's third critical area. Unlike the Big Cypress and the Green Swamp, which were predominantly rural areas with no incorporated towns and low population densities, the Florida Keys included four municipalities and rapidly growing unincorporated areas. Consequently, the profit and losses at stake in this designation were much higher than in the previous areas. Like the other designations, the Florida Keys sparked considerable controversy, and the lawsuit over the designation eventually resulted in the entire critical areas program being declared unconstitutional.

The formal designation of the Florida Keys occurred in April of 1975. The designated area consisted of approximately 70,000 acres

on 97 islands which stretch 130 miles into the Gulf of Mexico. The designation was the result of the impact of tourist and residential growth on both the environment and public service capabilities of the islands. The Florida Keys nomination was made by the Coastal Coordinating Council and emphasized "a collapse of the coordination of Monroe County approved development and the available water supply provided by the Florida Keys Aqueduct Authority."<sup>96</sup> The Division of State Planning's (DSP) final report on the designation found not only that water supplies were inadequate, but that highways, bridges, solid waste and sewage disposal facilities could not support the population which could result from approved developments. The report stated, "Proposed public investments may cost more than a quarter of a billion dollars in state, federal and local money in the next five to ten years, simply to meet the demands of existing and 1985 populations."<sup>97</sup>

Given the designation's emphasis on both environmental conditions and public facilities, the development guidelines for the Florida Keys were much more comprehensive and complex than those issued for Big Cypress or the Green Swamp. The development guidelines included performance standards to protect water resources but also required state agencies to identify possible federal and state financing for necessary public facilities. In addition, the designation required local development decisions to consider the cost effectiveness of public investments, and required large scale developers to submit community impact assessments showing the availability of public services for their projects. The City of Key West was required to adopt a historic preservation plan, and all municipalities were required to

develop local comprehensive plans.

Typically, the designation encountered criticism of the supporting technical data and opposition from local, business and development groups. As Starnes stated, "In the Florida Keys study, only fragmentary research ties the upland degradation stemming from development to the health of the surrounding ecosystems."<sup>98</sup> Local opposition was manifested by the fact that the City of Key West and over 300 individuals and businesses filed suit against the designation. (Cross Key Waterways v. Askew).<sup>99</sup>

On August 10, 1977, Florida's First District Court of Appeals ruled that the critical area designation provisions of the ELWMA constituted an unlawful delegation of legislative power. Therefore, the rule establishing the Florida Keys as an area of critical state concern was quashed.<sup>100</sup> The Administration Commission appealed the case to the Florida Supreme Court. On November 22, 1978, the Florida Supreme Court upheld the lower court ruling and declared the critical areas program unconstitutional.<sup>101</sup> The Court ruled that the program violated the separation of powers provision of the Florida Constitution because it delegated rule making power to the Administration Commission without adequate legislative standards. The justices unanimously concurred that the ELWMA did not contain adequate "standards to guide administrative choice among competing state interests - nothing to distinguish environmental resources from historical natural or archeological resources of regional or statewide importance."<sup>102</sup> The Court stated, however, that the legislature could designate critical areas or could ratify administrative recommendations. Consequently, both the

Florida Keys and the Green Swamp designations were nullified. The Big Cypress was not affected because it was approved by a special act of the legislature.

Shortly after the Supreme Court's decision, a special session of the Florida legislature was convened to address the critical areas issue. During this session the legislature enacted a law temporarily redesignating the Florida Keys and the Green Swamp.<sup>103</sup> In 1979, the legislature took the issue up again and enacted legislation containing more specific legislative standards for the identification of critical areas, requiring legislative review of future designations and extending the Green Swamp and Florida Keys designations subject to repeal by the Administration Commission no later than July 1, 1982. "However, repeal of the designations is contingent upon approval of the Division of State Planning of land development regulations and comprehensive plans adopted by the constituent local governments."<sup>104</sup>

Pelham contends that the 1979 amendments to the ELWMA are inadequate to protect future critical area designations from constitutional challenge. He states:

The Florida legislature's response to the non-delegation problem in the context of future designations is largely cosmetic. It combines more detailed statutory standards for identifying types of resources and public facilities that can be administratively designated as critical areas with a weak form of legislative review. But while the new statutory provisions do describe with somewhat greater specificity the general areal categories from which critical areas may be designated, they are still so broad as to encompass almost any area of the state, a possibility that was condemned in Cross Keys Waterways....

The new legislation provides for legislative review of administrative designations. While it may reject, modify or take no action relative to the adopted rule, the legislature is not required to ratify the rule.... This method of legislative oversight may not satisfy the requirements of Cross Key Waterways. Under this procedure the legislature will not exercise its constitutional prerogative and duty to identify and designate critical areas....<sup>105</sup>

Irrespective of these problems, the designation of the Florida Keys seems to be working. The local governments in the area have adopted development regulations consistent with DSP guidelines. Pelham states, "most disputes between state and local governments have been resolved on an informal basis. Following its review of local development orders, the division has been successful, with one exception, in persuading local governments to modify objectionable orders without the necessity for an appeal."<sup>106</sup> Thus, it seems that one of the results of the strong opposition to the critical areas program, and the successful court challenge is that the Division of State Planning has begun to work towards informal, less adversary, mechanisms of conflict resolution.

#### 6. Informal Resolutions

The trend toward informal resolution of the conflicts inherent in critical area designations actually began in 1975 in response to the problems involved with the Big Cypress and Green Swamp designations. In two cases, detailed critical area analyses were begun, but designation was not required because the Division of State Planning was able to reach informal agreements with the parties involved

to protect the statewide resources under consideration.

One of these cases involved phosphate strip mining which threatened to pollute the Swanee River. In this case, the Division of State Planning terminated critical area designation proceedings after the mining company agreed not to mine approximately 10,000 acres in the river's flood plain. Healy suggested that "it is unlikely that county governments involved would have pressed for this kind of concession."<sup>107</sup> In the second case, the nomination of Hutchison Island was withdrawn after Martin and St. Luci counties agreed to form a council of governments and adopted development regulations to protect the island. Starnes stated, "This procedure in which agreements for specific land development standards of performance are stipulated and agreed upon by local or state agencies exists as an alternative to regulations or acquisition."<sup>108</sup>

More recently, in 1977 a voluntary resource management program has been established between state and local governments to protect the Appalachicola River and Bay System. This area was also subject to a detailed critical area study but the Division of State Planning decided to forego official designation and to establish an informal program of technical assistance and resource management. Pelham states,

Ostensibly, the division's decision was based on the perceived inability of local governments in the area to comply with critical-area regulatory requirements, the devotion of 80 percent of the land in the system to agricultural and forestry uses which are exempt from critical-area regulations, and the slow pace of development changes in the area. Undoubtedly, however, the political controversy and the legal challenges generated by the Florida Keys designation were prominent fac-



tors in the division's decision....

To coordinate the program the Apalachicola Committee, consisting of representatives of state and regional agencies and each of the constituent counties, was created....

As an unofficial, voluntary land management project, the Apalachicola plan is not subject to Florida's statutory critical-areas regulatory procedures. Therefore, its success depends entirely on the willingness of local officials to cooperate with state and regional agencies in solving the area's problems. The threat of an official designation for the area, an option that theoretically is still available to the state, may prompt local governments to supply the cooperation necessary to the success of the plan. Although the division is already promoting the plan as a legitimate and successful "working alternative" to official designation, it is much too early to evaluate the success of this approach. If the plan achieves even modest successes, it will demonstrate effectively how the mere existence of state critical-area controls can induce local governments to act voluntarily to protect state and regional interests without the necessity for official implementation of such controls. <sup>109</sup>

Florida's movement away from formal critical area designations and strict procedural appeals and toward an informal system of cooperative state/local agreements and negotiated settlements of disputes about local development controls is largely a function of the sustained opposition to the program by local officials, development and agricultural interest groups. As DeGrove stated:

An initial flurry of activity at the state level, resulting in the designation of three "areas of critical state concern," stirred a great deal of political controversy and hostility between local governments and the state. In every case where a critical area designation has taken place, there has been a substantial amount of strong local resistance to and resentment of the state role in

The process. The "areas of critical state concern" components of the law came to a virtual standstill after 1976 partly as a result of the resistance, partly as a result of an apparent lack of enthusiasm among certain sectors of state government for designating additional "critical" areas and partly as a response to the drastic slowdown of growth in Florida. The above noted adverse ruling simply added to the mitigating forces against the formal designation of new areas. Thus, no new areas have been designated since the Florida Keys regulations were put into operation in 1976. The Bureau of Land and Water Management within the state land planning agency has devoted its efforts since 1976 to organizing and staffing voluntary state-local efforts at solving problems that, if left unattended, would eventually require a formal designation.<sup>110</sup>

The impact of continued local opposition, the lack of adequate technical data and dissatisfaction with adversarial procedures of conflict resolution in the critical area program were also reflected in the Florida Legislature's 1979 amendments to the ELWMA. As Pelham stated, "(M)ost significantly, the new legislation signals a move toward a more voluntary, cooperative approach by making appointment by the governor of a resource planning and management committee, similar to the Apalachicola River System Council, a prerequisite to official designation."<sup>111</sup> In short, after almost six years of experience with the critical areas program, the Florida Legislature has opted for a more informal negotiation system to resolve critical areas disputes. The appointment of resource planning and management committees may bring appropriate local, regional and state officials together at a much earlier stage in the decision making process. If the Swanee River, Hutchison Island and Apalachicola case are representative, these committees may be able to negotiate settlements to land use problems

that are satisfactory to all parties, and avoid the costly controversy and delay that has characterized Florida's critical areas program to date.

## 7. Conclusion

Given these experiences, it seems that the critical area provisions of the ELWMA have had mixed results. On the one hand, the critical area program has resulted in over one million acres of Florida's environmentally sensitive land being subjected to state approved principles for development. In addition, a number of county and local governments have initiated land use planning and regulatory activities which probably would not have been undertaken otherwise. Although no new critical areas have been designated since 1975, cooperative agreements have been established between state and local governments to protect other potentially critical areas, and the state legislature has attempted to institutionalize more participative and informal mechanisms for resolving critical area disputes.

On the other hand, the critical areas program has generated a great deal of controversy and hostility between state and local government. Several county governments refused to adopt regulations consistent with state guidelines, and opposition to the program has resulted in continuing court challenges which, at least temporarily have halted critical area designations.

The current stalemate in Florida's critical area program is the result of several factors. First, the adversary procedural mechanism of conflict resolution utilized by the program has heightened the controversy surrounding the designations. The focus of the designation

procedure and appeal process is on approval of the designation -- that is, winning or losing. The process has not focused on getting state and local officials, developers and environmentalists to agree on appropriate development guidelines for the area. Instead the state conducts a technical analysis of the area and promulgates guidelines which the locals and developers are virtually forced to take or leave.

As Starnes stated:

The program has become polarized as a state/local issue. In this state/local conflict, state planners have difficulty maintaining a clear role as professional advocates. Often the excitement of winning a designation can cloud objectivity as issues are debated.<sup>112</sup>

Given the win/lose dynamics, opponents of the program have utilized every procedural mechanism available to delay and obstruct designations.

In addition, the battles over critical area designation have fostered such contentious relationships between development and environmental interest groups, and between the state and local governments, that legitimate compromises have become very difficult. Thus, implementation of the program has come to represent the relative power of the various interest groups at different points in time. In the early stages of the program, when the environmental coalition was very strong, three critical areas were designated. Later, when Florida's building industry was hit hard by the 1974 recession, and rain patterns returned to normal, the strength of the local control and development coalition increased and no further designations were made. In the mid 1970's, the changes in environmental and socio-economic conditions in Florida

reduced the relative priority of the land and water crisis. Consequently, the relative strength of the environmental coalition declined while the political clout of the ELWMA's opponents increased. Since neither the passage nor implementation of the ELWMA focused on building a viable multi-interest coalition to support the program, its implementation has varied directly with the strength of Florida's environmental movement. If properly administered, the new legislative provision requiring the formation of resource planning and management committees may reduce the win/lose dynamics of the program and result in more viable coalitions to support negotiated settlements on critical areas.

Another factor contributing to the current stalemate of the critical areas program is its emphasis on resource management and regulatory issues. Proponents of the ELWMA claimed that the legislation was not "preservationist but rather attempts to establish a process and administrative structures within which all factors can be balanced."<sup>113</sup> The experience with the three critical areas designated to date does not support this contention. Both the Big Cypress and the Green Swamp were designated to protect water resources of statewide significance. The state development guidelines in these areas provided for strict land use regulations which opponents argued virtually prohibited all development. The lack of development activity in these areas seems to support the opponents' claim.

The Florida Keys were designated to protect both environmental resources and major public investments. State standards and guidelines for the Florida Keys, however, focused upon regulatory considerations.

Although state agencies were asked to identify funding sources for needed public services, and local decisions were required to consider the cost effectiveness of public investments, the designation guidelines do not seek to utilize public investments to channel growth. The state could have utilized capital improvements such as road construction, new wastewater treatment facilities and sewerage lines to encourage growth in certain areas, and could have made the lack of such facilities a growth limiting factor in other areas. Instead, the guidelines sought to use regulations to direct growth away from certain areas, and have devoted little attention to the positive role that public investments can play in guiding growth.

In addition, the original ELWMA provision allowing the state to designate critical areas in "a proposed area of major development potential" was repealed in 1979. This was a victory for local control advocates who did not want the critical area process used to site low and moderate income housing. Proponents of the original legislation argued that this provision would have allowed the state to "positively encourage the development of certain sites, by designating them as critical and approving regulations that would make their development profitable."<sup>114</sup> These areas were to have been identified in the state's comprehensive plan. The plan, completed in 1978, contained no provisions for such areas. Thus, it became clear that the critical areas program was to be a regulatory, growth limiting program, and would not utilize state power to expedite or positively guide development. The one major incentive for developers to support the program was effectively removed.

A final factor contributing to the current stalemate in Florida's critical area program is the difficulty of obtaining and adequately linking technical data about environmental impacts to specific development guidelines and standards. In each of the three critical area designations there have been major controversies over the adequacy of the technical data used to support regulatory guidelines and standards. Supporters of the ELWMA, however, have clung to the perception that land use decisions are primarily technical, that the environmental carrying capacity of an area can be measured and the area regulated accordingly. The latest example of this assumption was in the debate over 1979 amendments to the ELWMA. Proponents of the technical approach argued against resolving the nondelegation constitutional issue by simply having the legislature designate or approve critical area designations. The rationale for continued designation by the Administration Commission was that the legislature did not have the technical expertise to make such decisions.

The critical area program illustrates three key factors in the passage and implementation of state land use planning and regulatory legislation. First, statutes which are developed by blue ribbon commissions with limited public input are likely to encounter strong public resistance which may obstruct implementation. Second, statutes which rely on adversary mechanisms of conflict resolution may heighten the degree of controversy surrounding land use decisions resulting in the formation of coalitions which oppose implementation and continually challenge the legislation in court. This opposition may eventually lead to more informal methods of conflict resolution

to avoid the delays and controversy which result from the adversary approach. Finally, the link between technical environmental analysis and specific land use regulations is tenuous. The massive data demands of Florida's critical area program and the tenuous relationship of this data to specific development guidelines has limited the state's ability to utilize the critical area approach and has damaged the credibility and public acceptance of the program.

#### E. Developments of Regional Impact

##### 1. Introduction

The second major element of Florida's Environmental Land and Water Management Act, the Development of Regional Impact (DRI) provision, illustrates many of the same issues highlighted by the critical areas program. The DRI process was designed to leave the major responsibility for land use control in the hands of local government while ensuring that regional and statewide interests were considered in the decision-making process. The DRI procedure has encountered significant opposition from development and local control advocates, and these groups have succeeded in delaying and limiting the impact of the program. Initial efforts to implement the program according to strict technical guidelines created numerous loopholes through which developers escaped from the process. The program has been used primarily to limit growth and protect environmental resources. The DRI process also relies on adversary appeal procedures to resolve permit disputes. Consequently, the program has resulted in numerous informal settlements, negotiated outside of the formal appeals procedure, and continual court challenges which have left the future of



the program uncertain.

## 2. Major Provisions of the DRI Program

Generally, the DRI program provides for regional input into, and state review of, local land use decisions involving specific developments with greater than local impacts. It requires local governments to take certain substantive factors into account in making decisions about large scale developments, and gives the state power to overrule these local land use decisions. As Healy states:

Florida's DRI process is a mixture of regional evaluation, local control, and state review. The process takes place under rules drawn up by the state, and the Division of State Planning is kept informed of the progress of each DRI application. But until an issue comes to the cabinet on appeal, the state remains in the background. The regional council is directly involved from the start, but its power, except for appeal power is one of persuasion rather than compulsion.... Florida's law makes local government the linchpin of the entire proceeding. There is, in fact, no state permit at all. The developer's final goal is a 'development order' issued by local government and stating what he can build and what conditions he must meet.<sup>115</sup>

The DRI process, like the critical areas program, represents limited state intervention into land use decision-making. It only deals with large scale projects and requires local governments to make land use decisions on the basis of a set of considerations which go beyond traditional self interest and parochialism. This requirement is enforced by mandated procedural guidelines and the threat of state override of the local decision.

### 3. Steps in the DRI Process

The DRI process consists of four major steps:

#### 1. DRI Application

The process is initiated by a developer submitting an application to build a project which would have regional impacts. Generally, the ELWMA defines a DRI as "any development which because of its character, magnitude or location would have a substantial effect upon the health, safety or welfare of the citizens of more than one county." After considerable controversy this definition was refined by administrative guidelines to include twelve categories of development. These categories include:

- Airports
- Attractions and Recreational Facilities
- Electrical Generating Facilities and Transmission Lines
- Hospitals
- Industrial Plants and Industrial Parks
- Mining Operations
- Office Parks
- Petroleum Storage facilities
- Port Facilities
- Large Residential Developments
- Post Secondary Schools
- Shopping Centers. <sup>117</sup>

If a developer is uncertain as to whether a project is subject to DRI regulations, he may request a determination from the Division of State Planning, called a "binding letter of interpretation". If the Division rules that the project is a DRI, the developer must comply with the programs' regulations and submit a DRI application. The application consists of a detailed statement of the environ-

mental, fiscal and economic impacts of the project. Copies of the application are sent to the local government with jurisdiction, the appropriate regional planning agency (RPA) and the Division of State Planning.

2. Regional Impact Analysis

Upon receipt of the application, the RPA determines whether the information contained in the developer's application is sufficient, and either accepts the application or requests more information. The RPA, then conducts its own regional impact review which focuses on the greater than local social, environmental, economic and fiscal impacts of the project. The regional impact analysis concludes with recommendations as to whether the local government should approve, deny or attach conditions to the development order for the project. The regional review is only advisory. Although the local government is required to consider the regional report, it is not required to accept the RPA's recommendation.

3. Local Decision on DRI Development Order

Local governments conduct their own review of the DRI application and consider the regional impact analysis on the project. After receipt of the regional report, the local government is required to hold a public hearing on the DRI application. Local officials, then, decide whether to approve, attach conditions to, or deny the DRI development order. If the local government denies the application, it must explain in writing the reasons for the denial, and specify changes which would make the application acceptable.

4. Appeals

The decision of the local government may be appealed to the Adjudicatory Commission by the developer, the regional planning agency or the Division of State Planning. It is interesting to note that appeals cannot be filed by an abutting local government who may be impacted by the project. The Adjudicatory Commission generally appoints a hearing officer to conduct the appellate proceeding and to make recommendations on the disposition of the appeal. The Adjudicatory Commission may approve, overrule or attach additional conditions to the local government's initial decision on the DRI application.

#### 4. Controversy Over Establishing DRI Guidelines

The question of how to establish categories or guidelines for defining DRI's generated considerable controversy during both passage of the ELWMA and the DRI program's initial implementation. This controversy demonstrates the problems of attempting to create strict technical definitions of DRI's, and illustrates the political problems of sustaining a coalition to support implementation of state growth management legislation.

In 1972, when the ELWMA was under consideration, Florida legislators could not agree on guidelines to define DRI's. Consequently, the legislation was amended to require that the guidelines and standards for identifying DRI's be drafted by the Division of State Planning in consultation with the ELMS committee for approval by both houses of the legislature and the Administration Commission. The legislature also amended ELWMA to give development interests the majority of positions on the ELMS committee.

The struggle to win approval of even weak DRI guidelines was bitter. The ELMS committee with its heavy representation of development interests disapproved guideline proposals from the Division of State Planning for DRI categories including coastal and inland wetlands and low and moderate income housing. Myers' description of the legislative struggle over the guidelines is worth quoting at length. She states:

The guidelines were signed off on by the Environmental Land Management Study (ELMS) Committee and the Governor and cabinet before being sent to the legislature. Inputs, however, came from many places: primarily the planning division but also other state agencies, key

legislative committees, and the governor's staff. Since the outcome was so crucial, the idea was to come to the legislature with a package that would pass. In the House, where the guidelines went first, a favorable committee approved them, with the stipulation that the vote had to be "yes" or "no" without modifications. The going was rougher in the Senate, where a two-thirds floor vote was needed to wrest the guidelines out of the Natural Resources Committee. The strategy of having developers on the ELMS Committee paid off, as they lobbied for passage. Both houses passed the guidelines at the tail end of the 1973 session.

For residential developments, the DRI net is sized according to a county's population: 250 units if the county has under 25,000 people, 500 units if there are between 25,000 and 50,000 people, 750 between 50,000 and 100,000 and so on; in the counties with over 500,000 people (Broward, Dade, Duval, and Pinellas), a project must have 3,000 units to be considered "of statewide or regional significance." DRI shopping centers occupy more than 40 acres of land or encompass 400,000 square feet, or provide parking spaces for 2,500 cars. Similar numerical definitions are specified for airports, recreation facilities, electrical generating facilities, hospitals, industrial plants, mining operations, office parks, petroleum facilities, ports and post-secondary schools...

Supporters of the legislation had hoped for more. Some licked their wounds and decided it "was the best they could get." Others said they were "so disappointed we just stopped caring." Embattled legislators say supporters fizzled at just the time powerful interest groups coalesced.

The legislature of 1973 was not the same scene as in 1972. Senator Graham, now the chairman of the Education Committee, was no longer on the Natural Resources Committee. Although Graham remained the staunchest environmental fighter in the legislature, this key committee's membership, controlled by the Senate President, was now less sympathetic to land-use legislation. "We thought we had a tough committee in '72. We didn't know what tough was," comments a local reporter. The land industry descended on Tallahassee in greater numbers than ever. The Miami Herald, in a series "The Greening of the Legislature," reported that building and real estate interests contributed heavily to the 1972 election

campaigns for the 1973 legislature. More than one-fourth of the total contributions received by the members of the Senate Natural Resources Committee came from builders and developers.

Fighting shoulder-to-shoulder with them now was "agribusiness," a \$2-billion industry in Florida linking rural interests with urban banking, insurance, and speculative corporations. County and city officials lobbied extensively for their prerogatives. Recreation interests were ambivalent -- some welcomes the protection of scenic and aesthetic values, and others wanted exploitation-as-usual; the hoped-for strong interest of fishermen and crabbers and sportsmen somehow did not materialize. Conservation 70s had closed its Tallahassee office, and while many conservationists testified, they didn't as a whole have the same urgency. "Unfortunately, most Americans, including conservationists, are so naive about our political processes that they believe passing a law solves everything. . . We organize and work like fury to get a good law on the books, then turn our attention to other things as if the battle has been won," wrote Bill Partington of Florida's Environmental Information Center after the session was over. <sup>118</sup>

Partington's comments seem to accurately portray the fate of the DRI program. Environmentalist and supporters of flexible DRI guidelines were not as organized or as active in 1973 as they had been in 1972. In addition, groups who had been part of the 1972 environmental coalition failed to continue their involvement in 1973. Consequently, the coalition which had effectively supported passage of the ELWMA, just one year before, was no longer intact to support the adoption of administrative guidelines which would ensure the effective implementation of the DRI program. The breakdown of the environmental coalition illustrates how fragile crisis oriented legislative support groups can be, and indicates the need for continuous network building activities if viable coalitions are to be sustained to promote statutory implementation.

The initial DRI guidelines also illustrate the problems of attempting to develop a priori quantitative standards for the identification of developments of regional impact. Ostensibly, specification of minimum DRI thresholds was justified on the basis of past Florida development experiences and technical analysis of the potential impacts of different size developments. In addition, the thresholds were designed to provide certainty and predictability to developers in assessing whether projects were subject to DRI regulations. On the other hand, the Governor's 1980 Resource Management Task Force stated:

The most common criticism of the guidelines and standards is that they were arbitrarily fixed and therefore provided little more than loopholes under which developers stealthily creep to avoid the costly and time-consuming DRI process.... The DSP interpreted the presumptive guidelines as being conclusive and non-rebuttable. For example, a residential development of 499 dwelling units located within a county where the DRI threshold was 500 dwelling units was not a DRI, and conversely, a development of 501 dwelling units was a DRI.<sup>119</sup>

Obviously such inflexible thresholds were logically and technically indefensible. However, the political climate and the legislature's insistence on the right to approve all DRI guidelines forced the Division to adopt a conservative posture.

The problems in the formulation and adoption of the DRI guidelines also relate directly to what Myers previously referred to as the ELWMA legislative strategy in which "implementation was delayed and differences buried in ambiguous language that moved resolution to another day."<sup>120</sup> In the case of the DRI guidelines, ambiguity and delay allowed opponents time to organize. At the same time,

efforts to sustain support for the legislation dissolved. The result was the adoption of less than effective standards to govern the DRI program.

In addition, Myers' contention that "the strategy of having developers on the ELMS Committee paid off"<sup>121</sup> because the committee lobbied for the passage of the DRI guidelines must be seriously questioned. Given the weakness of the initial guidelines, an alternative explanation is that composition of the ELMS committee, along with a breakdown of the environmental coalition, contributed to the adoption of unduly narrow and inflexible DRI guidelines creating numerous loopholes through which the regulatory process could be avoided.

#### 5. Implementation of the DRI Program

Evidence from the implementation of the DRI program suggests that strict application of the DRI thresholds did encourage developers to size projects just under the minima to escape the DRI review. For example, DRI applications declined dramatically after the first year and have remained low ever since:

	No. of DRI Applications <sup>122</sup>
FY 1973-74	103
FY 1974-75	43
FY 1975-76	18
FY 1976-77	8
FY 1977-78	7
FY 1978-79	22

As Pelham states, "The continuing decline in the number of DRI applications, although undoubtedly due in part to a slowdown in economic activity in Florida, strongly suggests that developers are taking



advantage of threshold loopholes."<sup>123</sup> In addition, the 1980 report of the Governor's Task Force on Resource Management stated:

A cursory sampling of binding letter of interpretation issued between July 1973 and April 1978 lends strong support to this argument. It was not uncommon for a particular type of development to start at a given quantity (dwelling units, square feet, marina slips) and during the course of the binding letter application period mysteriously scale down to just under the particular threshold size for that type of development.<sup>124</sup>

These trends have led to the criticism that the DRI process has actually discouraged well planned large-scale development, and encouraged smaller scale projects. This is exactly opposite to the results that the act was designed to achieve. On several occasions the Division of State Planning attempted to rectify these problems. DSP proposed changes in the DRI administrative guidelines in both 1975 and 1977. However, due to the difficulty of securing legislative approval of the proposed changes, and the lack of a political coalition to press for the revisions, the Division's recommendations were never approved.<sup>125</sup>

Pelham describes the controversy over the DRI administrative guidelines as follows:

The controversy is two-dimensional. First, do the administrative guidelines create conclusive presumptions that development encompassed by the guidelines does, in fact, constitute DRI? Second, can categories of development other than the twelve contained within the administrative guidelines constitute DRI? From the inception of the DRI process, the Division of State Planning took the position that the guidelines were both conclusive

and exclusive, while developers contended that the administrative presumptions could be rebutted and other critics of the division's position argued that any development having regional impact should be subject to the DRI process.<sup>126</sup>

## 6. Court Challenges

Like the land use controversies involved in the critical areas program, the debate over DRI guidelines was eventually (but only partially) resolved by the Florida courts. In General Development Corporation v. Division of State Planning<sup>127</sup> the First District Court of Appeals ruled that the DRI guidelines were presumptive not conclusive or exclusive. The court stated:

Under the statutory definition, the character or location of the proposed development may conceivably make it of regional impact though its projected magnitude or density is less than the Rule 22F-2 threshold. That is not presumed--indeed, the presumption is to the contrary--but it may nevertheless be found as a fact. Similarly, the character or location of the proposed development may relieve it of regional impact although the projected density exceeds the threshold of the rule's presumption. If number alone were conclusive, there would be little need for the substantive definition in Section 380.01(1), or for a mere "presumption", or for "binding letters of interpretation." In determining whether a newly proposed development will have regional impact because of its "character, magnitude, or location," the Division may and should consider existing area development, whether "vested" in Section 380.06(12) terms or not. A new residential development in the midst of a piney woods will have a different regional impact than the same development on the edge of an already overburdened multi-county water supply. The Division's task under Section 380.06(4) is not simply to count the houses and apply the presumption of Rule 22F-2, but rather to determine whether the statutory definition is satisfied.<sup>128</sup>

Although the General Development Corp. decision adds flexibility to the DRI program, it may subject the "binding letter of interpretation" phase of the process to numerous court challenges. For example, if the Division gives DRI status to a project not covered under the twelve initial categories, a developer may challenge the ruling on the basis that the ELWMA requires legislative approval of all guidelines for identifying DRI's. On the other hand, an administrative ruling that a project is not a DRI will be increasingly susceptible to challenge by parties seeking to delay development. Such a court suit might contend that the Division did not adequately consider evidence relating to specific regional impacts.

Since 1978, two such suits have been filed.<sup>129</sup> However, both were decided on procedural grounds. In these cases, the court ruled that Regional Planning Agencies do not have standing to contest "binding letters of interpretation." In one of the cases, the court did find that the Division had presented adequate evidence in its determination that the proposed project was not a DRI. Given the possibility of future court challenges, the Division must collect detailed information to justify its decisions regarding binding letters of interpretation.

In essence, each administrative decision regarding whether a project is a DRI has become the subject of a potential judicial appeal. The burden of proof for justifying the DRI decisions will be on the Division. Consequently, much of the future of Florida's DRI program may be in adversary court proceedings. These court proceedings will probably display the same win/lose dynamics which have characterized

critical area designations. The primary conflict will be "is a project a DRI or not?"

The potential for DRI rulings to become increasingly controversial and subject to drawn out court battles is also illustrated by another 1978 court case, Estuary Properties v. Askew.<sup>130</sup> In this case, Estuary Properties made three major allegations:

1. The local and state denial of its DRI development order was contrary to competent and substantial evidence on record.
2. Denial of the development order resulted in an unconstitutional taking of private property without just compensation.
3. The entire DRI provision of the ELWMA is unconstitutional because the standards for regional impact assessment are so vague as to constitute a delegation of purely legislative powers.

The court ruled in favor of Estuary Properties on the first two points and refused to rule on the constitutionality issue because the case was decided on other grounds. The court ordered the Adjudicatory Commission to grant Estuary Properties a development order which could be terminated only if the county decided to condemn and purchase the property.

The court's rationale for overturning the Adjudicatory Commission ruling concentrated on four issues. First, the court ruled that denial of the development order had deprived Estuary Properties of its right to due process because the developer was required to bear the entire burden of proving that the project would not damage the environment or the public interest. Second, the court found the regional planning

agency's regional impact review to be "nebulous" and not backed by factual technical data. Third, the court criticized both Lee County and the Administration Commission for failing to balance the positive and negative impacts of the proposed development. Finally, the court found that denial of the development order represented an unconstitutional taking of private property because once certain dredge and fill activities were denied there were no changes that the developer could undertake to make the project eligible for approval. The court stated:

The hearing officer found that the Petitioner's proposal was satisfactory in four areas: economy, public facilities, housing and energy. He found against the Petitioner only on the questions of environment and policies of the Planning Council. Neither he nor the Adjudicatory Commission purported to balance the positive impacts in four major areas against the negative impacts in the other two by assigning meaningful weights to the various impacts. Instead the Petitioner's application was denied because Petitioner failed to carry the burden of proof in every single area of inquiry. Such an all or nothing standard for Petitioner's use of its land places it entirely at the mercy of governmental caprice.<sup>131</sup>

The Estuary Properties decision suggests that virtually all DRI development orders may be challenged in court on the basis of the competence of the technical analysis of the regional impact review, and upon the manner in which positive and negative impacts have been balanced. In addition, by refusing to rule on the constitutionality of the DRI standards for regional impact assessment, the court left the whole DRI program open to future questions of constitutionality.

## 7. Informal Negotiated Settlements

Prior to the Estuary Properties and the General Development Corp. decisions implementation of the DRI program had become characterized by informal negotiated settlements as a method of conflict resolution. Between 1973 and 1978, of the 23 DRI appeals, which the Adjudicatory Commission ruled upon, 17 were decided by informal negotiated settlements without the necessity of a procedural hearing.<sup>132</sup>

As Pelham states:

The administrative appellate process provides the commission, and those who invoke its jurisdiction, with the leverage to negotiate conditions and restrictions that might not be supported by the weight of the evidence adduced in an adjudicatory proceeding. Consequently, the adjudicatory process may be transformed into a series of negotiating sessions between the parties.... The pressure on the developer to negotiate a settlement is considerable. Having obtained a favorable local DRI development order after lengthy and extensive proceedings, the developer can ill afford to risk reversal at the state level. Consequently, the developer may be unable to resist the temptation to secure state approval by agreeing to additional conditions and limitations. Given the investment already made in the project, a restricted development order may be readily perceived as better than none. Thus, the administrative appellate process provides the state and regional agencies with an opportunity to correct local DRI decisions that fail to address and resolve the adverse regional impacts of DRI instead of outright denial to develop.<sup>133</sup>

This scenario may have been more the case before Estuary Properties than today. However, the fact remains that the DRI adjudicatory process and the threat of time consuming court battles may provide a significant incentive for developers to negotiate informal

DRI settlements. In addition, the Estuary Properties case may also provide a strong incentive for state and local governments to negotiate DRI settlements rather than subject their technical analysis and balancing of impacts to court review.

#### 8. Potential for Continued Adversary Judicial Decision-Making

Thus, the implementation of the DRI program illustrates two countervailing trends. On the one hand, the program has resulted in numerous informally negotiated settlements which have attached conditions, relative to environmental resources and regional interests, to the approval of permits for large scale developments. On the other hand, recent court decisions suggest that the future of the program may be increasingly determined by adversary court proceedings. These court proceedings will probably focus on three critical questions:

1. Does a project actually constitute a Development of Regional Impact? Has the state presented sufficient evidence about a project's potential regional impacts to justify its regulation under the DRI process?
2. Does the technical analysis included in the regional impact assessment justify the denial of the DRI development order or the conditions included therein?
3. Have the state and local governments properly balanced the positive and negative impacts of the proposed project in arriving at the DRI decision?

The first two questions suggest that the Florida courts may become increasingly involved in evaluating DRI technical evidence and deciding whether a developer's or the state's "expert" analysis best

justifies the utilization of DRI regulations. The third question suggests the the Florida courts may increasingly engage in a form of judicial policy making by balancing a project's impacts and deciding the relative importance of "positive" versus "negative" effects.

The court's role in weighing technical evidence was illustrated in the Estuary Properties decision. In this case, the developer's DRI application sought permission to construct 26,500 residential units to house 73,500 people on 6,500 acres of wetland. Project construction was to be phased over a 25 years period. The developer proposed to dredge an interceptor waterway 7.5 miles long, and to dig 27 artificial lakes to fulfill the ecological functions of the wetland and to provide fill to raise the elevation of the site. The proposal also would have required the destruction of 1800 acres of sensitive swamp land vegetated by black mangroves.

The developer contended that the interceptor and the lakes would provide a satisfactory substitute for the environmental functions of the mangrove swamp. The regional planning agency contended that Estuary's DRI application did not adequately demonstrate how the proposed development techniques would mitigate negative environmental impacts. In addition, the RPA contended that its regional impact assessment indicated that the project would result in significant environmental degradation including flooding and water pollution of the surrounding bay, fishing areas and shellfish beds. The Adjudicatory Commission agreed with the RPA's technical analysis and denied the permit. The court found the RPA analysis to be "nebulous", and reversed the Adjudicatory Commission decision.



The court, however, did not actually base its decision on the technical evidence of either the developer or the RPA. Instead, the justices based their ruling on narrow procedural grounds. The court stated:

Petitioner urges such conclusions (regarding negative environmental impacts) to be without evidentiary basis and in fact contrary to the evidence. A decision by us in that regard is rendered unnecessary by our holding as to other points, post. The Adjudicatory Commission, Lee County, and the Planning Council required petitioner to meet an incorrect standard of proof and to carry an unconstitutional burden of proof.<sup>134</sup>

In short, although the court was asked to weigh the technical evidence regarding the potential impacts of the proposed development, they sidestepped the issue and made their decision on narrow procedural grounds. However, the court's opinion of the RPA's technical analysis was evident in its statement that "the Regional Planning Council's report is replete with nebulous assessments in the form of factual determinations."<sup>135</sup>

#### 9. Potential for Judicial Policy Making

The potential for judicial policy making is also suggested by the Estuary Properties case. The DRI provisions of the ELWMA contain no statutory standards for making decisions on a project that may have positive social, economic and housing impacts but negative environmental impacts. Thus, the question becomes: Can a local government or the Adjudicatory Commission deny a DRI development order if it finds that a project has negative environmental impacts even

though other impacts of the project are deemed to be positive?

Prior to the Estuary Properties case the DRI program had been used almost solely to limit growth and protect the environment. In each of the seventeen negotiated DRI settlements, the state used the DRI process to attach more stringent environmental conditions to project construction. In Estuary Properties' appeal to the Adjudicatory Commission, the Commission stated "the primary consideration is the effect the development will have on the environmental and the natural resources of the region."<sup>136</sup> In another case appealed to the Adjudicatory Commission,<sup>137</sup> the hearing officer concluded "determination of whether the positive value of the proposed development can override the negative environmental impact is necessarily a subjective one."<sup>138</sup> Pelham stated:

Based on his subjective evaluation of competing values, the hearing officer determined that "the environmental factors predominate".... The commission's early decisions manifest an inordinate preoccupation with physical values to the exclusion of other equally important social concerns.<sup>139</sup>

In contrast, the court in Estuary Properties ruled:

The history and interpretations of the ELWMA FS380.06 show that the creators of the development of regional impact process intended that governmental agencies balance the various impacts of a proposed development.... Such a balancing is required by the very fact that as reasonable people we know that to some degree every use of land, every felled tree and every structure has

some impact on the environment... In failing to balance the numerous factors involved and in placing upon Petitioner the burden of proving that the public interest would not be impaired by its proposed use of the land, after it has adduced substantial competent evidence in support of its application as to each statutory requirement, the hearing officer, Lee County and the Adjudicatory Commission erred.<sup>140</sup>

Thus, while Lee County and the Adjudicatory Commission sought to utilize the DRI program as primarily an environmental protection mechanism, the court viewed the DRI process as a tool for balancing different development impacts. The court's suggestion that the developer had produced "substantial and competent evidence in support of its application" is based on the hearing officer's finding that the project's water and sewerage treatment facilities and the planned nature of the projected growth was preferable to incremental sprawl.<sup>141</sup> The court's decision, therefore, represents a significant shift in the policy focus of the DRI program--from environmental protection to balancing impacts.

The potential for judicial policy making is also evident in a hypothetical scenario in which housing activists might attempt to use the General Development Corp. and the Estuary Properties decisions to involve the DRI process in facilitating the construction of low and moderate income housing. Hypothetically, housing activists could request a "binding letter of interpretation" giving DRI status to a low and moderate income housing project. If DRI status was denied, the decision could be challenged in court. Advocates could cite General

Development Corp. as precedent, arguing that the character of the proposed project makes it a development of regional impact even though such projects were not included under the original twelve administrative DRI categories. If proponents could show that the proposed project had potential impacts on more than one county, it is, at least, possible under the General Development Corp. ruling that the project might be granted DRI status. In addition, if the local government or the Adjudicatory Commission denied the development order, housing advocates could challenge the denial on the basis of Estuary Properties requirement for the balancing of positive and negative impacts. Thus, under these two court decisions it is possible that the DRI program could be broadened from its predominantly environmental orientation to include mechanisms for evaluating and citing developments of regional benefit (i.e. low and moderate income housing). Such a transformation of the DRI program would be a clear case of judicial policy making because in 1973 the ELMS Committee rejected a DSP proposal to make low and moderate income housing an administrative DRI category. Although this hypothetical scenario has not occurred, it is clear the the Estuary Properties and General Development Corp. cases provided substantial opportunity for advocacy groups to force the judiciary into a policy making position.

#### 10. Conclusion

In conclusion, the DRI program, like its critical areas counterpart has resulted in mixed outcomes and illustrates a number of issues about the passage and implementation of state land use

legislation. First, the DRI program has resulted in the regulation of over 200 large scale projects. Second, consideration of the regional impacts of these projects has resulted in development permit conditions which should make the projects more environmentally acceptable.

Third, the DRI program has resulted in numerous informal negotiated settlements attaching conditions to large scale projects. On the other hand, the DRI program began slowly because of controversy over establishing definitive DRI guidelines. The uncertain start of the program illustrates the difficulty of sustaining a political coalition to support program implementation. In addition, strong political opposition to the program and the collapse of the supportive environmental coalition resulted in the adoption of weak initial DRI guidelines.

These guidelines allowed developers to size projects just under the DRI threshold, to escape regulation, and, in fact, encouraged small scale developments. The adversary conflict resolution mechanism embodied in the program's appeals procedure has resulted in numerous court challenges which have left the constitutionality of the program uncertain, and have subjected the entire program to judicial interpretation. The judicial decision-making illustrates six characteristics of traditional adversary conflict resolution mechanisms. First, DRI decisions have been subject to considerable delay. Second, courts are put in the position of having to evaluate competing technical evidence. Third, the court decisions have been made on procedural rather than substantive grounds. Fourth, because of lack of standing important participants (RPA's and abutting communities) have been excluded from the decision-making process. Fifth, the entire program has been the subject of

significant controversy and win/lose dynamics. Finally, there is a great potential that the future of the program will be dominated by implicit policies established by the judiciary.

IV. The Florida State Comprehensive Planning Act of 1972.

A. Introduction

The second major element of Florida's new land use planning and regulatory system is the State Comprehensive Planning Act of 1972.<sup>142</sup>

Members of Governor Askew's 1971 Resource Management Task Force realized that the ACSC and DRI provisions of the Environmental Land and Water Management Act were only limited mechanisms for addressing Florida's growth and development problems. As Carter stated:

... The report of the Conference called for limiting population densities within the region according to a comprehensive land and water use plan... By definition, a state land use control policy that focuses on the big cases and ignores the vast majority of local land use decisions is one which, at best, cannot have more than an indirect effect on the growth and development that comes in innumerable small increments. To cope with incremental growth as well as the big cases, obviously growth and land use policies are needed to cover all development.<sup>143</sup>

In response to these concerns, the 1971 Task Force recommended adoption of the Florida State Comprehensive Planning Act. The passage and implementation of this statute is important in the context of three key issues. First, the preparation and contents of the plan would appear to reflect the limitations of synoptic comprehensive planning, which have been debated in planning literature for the past two decades. Second, the failure to Florida's legislature to approve the plan suggests the difficulty of building and sustaining a political constituency to support plan implementation. Finally, the failure of Governor Askew's successor to support the plan and its current low

priority status further exemplifies the constituency problem and would appear to indicate the necessity of strong gubernatorial support if planning is to have any impact on state decision making.

B. Provisions of the Florida State Comprehensive Planning Act

The Florida State Comprehensive Planning Act of 1972 designated the Governor as the state's chief planning officer, created the Division of State Planning within the Department of Administration, and mandated the preparation of a state comprehensive plan. The statute did not contain any guidelines for the process to be used in preparing the plan and did not specify the contents of the plan. The act simply stated:

"Preparation and revision of the state comprehensive plan shall be a continuing process. Such process shall, to the extent feasible, consider studies, reports and plans of every department, agency and institution of state and local governments, regional planning agencies, and the federal government...and shall provide long range guidance for the orderly social, economic and physical growth of the state by setting forth goals, objectives and policies."<sup>144</sup>

The Act delegated seven powers and duties to the Division of State Planning:

1. To prepare and revise the state comprehensive plan.
2. To assist in the preparation of the annual executive budget and legislative program.
3. To coordinate planning among federal, state and local levels of



government.

4. To coordinate all state agency planning activities.
5. To prepare necessary studies and functional plans.
6. To serve as the state planning clearing house.
7. To make basic demographic, geographic and economic data and projections available to public and private agencies.<sup>145</sup>

Finally, the statute required that the plan be submitted to the Governor for revision and approval. Before the plan became effective it was to be adopted by a joint resolution, passed by a majority of both houses of the Florida Legislature. The Act stated:

"Nothing contained in the plan...shall authorize the implementation of any programs not otherwise authorized pursuant to law. Any part of the plan not otherwise authorized by law shall be subject to review and approval by the legislature as expressed through its acts, both through substantive law and emphasis as contained in appropriation acts... Upon legislative approval the provisions of the plan shall become effective as state policy. State department and agency budgets shall be prepared and executed based upon and consistent with law and the state comprehensive plan."<sup>146</sup>

It seems that the 1972 legislature intended the comprehensive plan to serve as a guiding policy document for all state agencies. Agency budgets were to serve as the primary mechanisms to ensure implementation of policies contained in the plan. Finally, the powers and duties of the Division of State Planning, and the legislative language regarding "long range guidance for orderly social, economic and physical growth" suggested that the 1972 legislature wanted a comprehensive plan not just a land use map.

### C. Preparation of the Plan

Given the far reaching mandate, it took the Division of State Planning two years simply to develop and initiate a process for preparing the plan. The process which was finally adopted drew heavily on traditional planning theory and closely followed the procedures and format which are characterized in planning literature as the classic paradigm of comprehensive planning.<sup>147</sup> Under the classic paradigm, the planner is viewed primarily as a technician whose roles are to conduct surveys and analyses of existing socio-economic conditions and problems, to develop a set of goals and policies which reflect the general public interest, to translate the goals and policies into specific programmatic actions, to monitor and evaluate the implementation of these programs and to periodically revise both policies and programs in order to meet public needs.

A 1970 HUD report summarized the traditional comprehensive planning process as follows:

Basic components to be considered in the planning process are:

- (1) Development of goals and objectives to provide a framework for planning and policy decisions, to relate functional elements to one another, and to relate the technical phases of the planning process to overall policy making. Goals are long-term in nature, requiring periodic updating and modification as realistic alternatives for meeting such aspirations emerge. Objectives should be set forth in measurable terms and time periods whenever possible to enable evaluation of progress toward the stated goal.
- (2) Identification of problems and opportunities as a basis for preparing a program to study and resolve problems and to meet jurisdictional goals.
- (3) Systematic collection and analysis of data relating to population, economic factors, health, education, welfare

services, land uses, transportation, community facilities, government organization and other factors relating to problems and opportunities.

- (4) Development, evaluation and testing of alternative courses of action to resolve the problems and to meet jurisdictional goals for consideration by the policy makers, affected interests and the public.
- (5) Development of a long-range comprehensive plan for future development. This may be basically a policies plan setting forth the agreed upon courses of action from item (4). The goals and objectives (item (1) should be refined and adopted as a component of the plan. The plan should provide a coordinative framework for functional planning with future needs and objectives expressed for the various functional areas based on such indices as population and employment characteristics, distribution and future estimates.....
- (6) Development of legislative, regulatory and administrative measures to implement the comprehensive plan, including short term action programs, fiscal plans and programming of capital investments and services together with budgetary measures.
- (7) Updating and refining in response to new agreements on goals and policies, current data and conditions, new methods and techniques and generally new concepts and ideas about the future.
- (8) Development and maintenance of systems to enable a continuing evaluation of the planning process and the measurement of the results of policy, objectives, program recommendations and implementation efforts. 148

The classic paradigm presumes that there is a unitary public interest that can be discovered by properly trained, authorized people (planners) through technical analysis of current problems, conditions and trends. Further, this model assumes that the planner can translate these interests into a set of goals and policies to guide future actions. That is, he or she can translate generally desirable sentiments into specific guidelines to govern public decision-making. Finally, the

classic paradigm assumes that the plan will be implemented by responsible decision-makers and political officials because its preparation has served to educate them about the technical aspects of specific problems and agreed upon public goals, and because the plan provides a benchmark against which to measure specific decisions.

Essentially, Florida's state planners attempted to utilize these traditional assumptions to guide preparation of the state plan. The preparation of the Florida state comprehensive plan has been described as follows:

[T]he process adopted involved the preparation of plan elements, which are the working papers of the state plan, by groups of various state agency members with the assistance of advisory councils of interested citizens and public officials. Following periodic review of the element working papers by federal, state regional and local agencies, interested citizens and organizations and the governor, the papers were subjected to two series of public hearings conducted throughout the state. Each working paper was then revised to incorporate new information aduced at the public hearings. The final step in the preparation process entailed the extraction from the papers of policy guidelines which were combined to form the proposed state plan submitted to the governor for approval.<sup>149</sup>

In preparing the elements, each work group was directed to undertake four specific tasks:

1. to identify the issues, problems and needs associated with the element's subject area.
2. to document current program operations in response to such issues and needs.

3. to evaluate alternatives for resolving problems.
4. to formulate a statement of goals, objectives and policies to guide future programs and decisions relating to the element.<sup>150</sup>

Each element serves several purposes:

- (1) it is a way of coordinating planning and operating policies;
- (2) it presents an assessment of what is known about, or what is being done in, the element area;
- (3) it is an education tool to inform decision-makers and citizens;
- (4) it establishes basic policy to influence future decision-making;
- (6) it provides a way to look at the relationships between the various responsibilities of government, and the existing policies between state, local and federal governments.<sup>151</sup>

This description of the Florida State Plan clearly illustrates the manner in which the planning process reflects the assumptions of the classic paradigm. Technical working papers were prepared by the state planners and interagency groups. These papers were reviewed by blue ribbon citizen advisory committees and other agency officials. Citizen participation occurred in the form of reactive public hearings, after the draft elements had been completed. The state planners, then, produced a set of goals, objectives and policies for each element. These policies were expected to guide future agency actions. Thus, the Florida State Comprehensive Plan (SCP), like the ELWMA, was prepared through a traditional "top down" planning process which viewed planning as primarily a technical activity.

#### D. Contents of the State Comprehensive Plan

The final Florida State Comprehensive Plan (SCP) consisted of fourteen elements: (1) Agriculture, (2) Economic Development, (3) Education,

(4) Employment and Manpower, (5) Energy, (6) Growth Management, (7) Health, (8) Housing and Community Development, (9) Land Development, (10) Recreation and Leisure, (11) Social Services, (12) Transportation, (13) Utilities, (14) Water.<sup>152</sup>

Pelham describes the contents of each element as follows:

Each section contains three types of policy statements of varying degrees of specificity: goals, objectives and policies. A goal is defined as a broad statement of purpose, intended to define an ultimate or desired end. An objective is the statement of a specific accomplishment or series of accomplishments necessary to the satisfactory pursuit of a goal. A policy suggests specific ways to achieve objectives.... The Florida state plan also assesses the status of each of its policies in terms of three levels of implementation: current, modified and new. Current policies are those that have sufficient authorization and are already in effect. Modified policies are those already in effect but intended to be substantially modified through additional authorization. New policies are those neither in effect nor authorized by law. Practically all the policies contained in the plan are current or modified, only six policies are new. This statistic strongly suggests that the Florida state plan is essentially a compilation of existing state legislative policies.<sup>153</sup>

The goals, objectives and policy statements contained in the Florida SCP are very general, and the plan does not include an assessment of the relative priority of the various policy statements. In addition, the plan does not explicitly address the manner in which the various policy statements interrelate or are to be coordinated by the implementing agencies. Thus, after six years in preparation the Florida SCP ended up as a 205 page multi-volume document which was of little guidance to decision makers because of its generality.<sup>154</sup> As Pelham stated:

"Of the plan's fourteen sections, the land development section obviously has the most immediate impact on the regulation of land use. A major premise of this section is that land is a finite resource which has not been developed in Florida in accordance with an overall management strategy...The overall goal of the section is so broad as to be practically meaningless and politically inoffensive: To achieve the highest long-term quality of life for all Floridians, consistent with sound social, economic and environmental principles, through proper land development. Objectives in pursuit of the overall goal are only slightly more specific and, like the overall goal, express sentiments with which few people can disagree."<sup>155</sup>

The following samples of goals, objectives and policies from the housing and wetlands sections of the plan clearly illustrate Pelham's conclusion:

Housing--Goal I-Availability

To attain a balanced housing market that is responsive to needs in terms of quantity, location, cost and type of housing units.

Objective A: Number of Units

Housing units should be produced in sufficient numbers that the needs for living accommodations of all social, racial, and economic groups are met.

Objective B: Housing Mix

Housing should be produced in a mix of types, sizes, and prices that is based on local and regional need and that is consistent with the state's growth policy.

Policies

Encourage planned unit development ordinances that include provisions for low and moderate income housing.

Encourage the housing industry to develop housing suitable to the needs of all types and sizes of households.

Encourage the housing finance industry to provide funding for housing in a range of types and prices.

Objective C: Low and Moderate Income Housing

An equitable distribution of low and moderate income housing should be available throughout each housing market area of the state.

Policy

Develop plans that address the need for low and moderate income housing among regional and local jurisdiction.<sup>156</sup>

WetlandsObjective I: Protection

The values and functions of wetlands and submerged lands should be retained and protected.

Policies

Encourage the development and use of wetlands and submerged lands for only those purposes which are compatible with their natural values and functions.

Encourage the use of wetlands, commensurate with their natural functions and capabilities, as a substitute for or supplement to technology and structures.

Encourage the re-establishment of wetlands in previously drained areas, where feasible.

Allow intensive use of wetlands and submerged lands for only those major developments of state significance that, by their general purpose, require location in these areas.

Enable wetlands to be reasonably used by individuals for purposes which will not adversely affect the values and functions of these resources.

Discourage the discharge into wetlands and submerged lands of pollutants or materials in amounts which would destroy or significantly harm their values and functions.

Discourage the drainage of wetlands and submerged lands.

Prohibit commercial, industrial, residential, and other development from locating on state-owned or submerged lands when, by their general purpose, such development need not be located on these lands.

Give maximum protection to wetlands and submerged lands that have been designated as having special significance to the state.

Require that development in adjacent upland areas be located, designed, and constructed so as to minimize the adverse impacts on the values and functions of wetlands and submerged lands.



Encourage research designed to assess the relative values of various wetlands and submerged lands in the state.<sup>157</sup>

As these excerpts indicate, Florida's State Comprehensive Plan essentially consisted of a list of the existing "goals, objectives and policies of various state agencies. The plan did not present an explicit articulated strategy to guide state and local actions or to govern growth and development decisions. Instead, the plan sought to set out, in one document, a comprehensive listing of all the state's local, economic, and environmental policies. The inside cover of the document summarized the intent of the SCP as follows:

"Over time there should be no goal of state government that is not contained and explained in the plan, along with clearly defined specific governmental steps for achieving those goals. The plan can be a benchmark by which the effectiveness of a program can be visibly measured from year to year."<sup>158</sup>

#### E. Legislative Response to the State Comprehensive Plan

The attempt to relate the state plan to all state programs and the manner in which the plan was developed created major problems when the plan was submitted to the legislature for approval. As Pelham states, "The legislature was simply unable or unwilling to evaluate the voluminous document and its far-reaching implications."<sup>159</sup> Since the plan had been developed largely by the Division of State Planning and other state agencies, there was no constituency to lobby for its approval. The legislators' had not been involved in the planning process, and citizen participation had been primarily in the form of reactive

public hearings. Thus, outside of the administration, there was no widespread understanding of the plan or constituency to support its legislative approval.

Instead of approving the plan, the 1978 Legislature amended the State Comprehensive Planning Act by removing the statutory requirement for legislative approval, and by deleting all reference to the plan as "state policy". The legislature's amendments specified that "the state comprehensive plan shall be advisory only."<sup>160</sup>

Members of the Governor's staff and the Division of State Planning contend that the amendments demonstrated legislative recognition that the principal purpose of the State Comprehensive Plan was executive branch planning and coordination.<sup>161</sup> It is interesting to note, however, that during the six years (1972-1978) between the initial passage of the State Comprehensive Planning Act and the submission of the first plan, the legislature's perception of the intent of the Act seemed to have changed dramatically. Under the Act's original provisions, the comprehensive plan was to be "effective as state policy" and all state agency budgets were statutorily required to be consistent with the plan. The 1978 amendments deleted all statutory language referring to agency budgets and appropriations and relegated the plan to advisory status. The failure of the legislature to approve the SCP and the adoption of amendments significantly weakening its status, disheartened many proponents of the Act. These groups had hoped that the plan would coordinate the actions of state agencies and would establish policies to guide local land use decisions.<sup>162</sup> The removal of the provision requiring state agency budgets to be consistent with the plan effectively

eliminated any statutory requirement for the coordination of state agency decisions. The fact that the plan was defined as "advisory only" also cast doubt on its usefulness as a mechanism for guiding local land use decisions.

F. Administrative Response

In response to the legislature's actions, Governor Askew issued Executive Order 78-48 on August 28, 1978. The Executive Order, titled Implementation of the State Comprehensive Plan stated: "The State Comprehensive Plan, as approved and submitted by me February 9, 1978, shall be considered as executive planning policy to be used as guidance in the preparation of all planning documents and related planning activities undertaken by executive agencies of the state."<sup>163</sup>

In addition, the executive order required all state agencies to evaluate existing programs to determine their consistency with the goals, objectives and policies contained in the SCP. It also required state agencies to make recommendations for future implementation of goals objectives and policies in the form of administrative, legislative or budget proposals."<sup>164</sup> Finally, the Executive Order required the Department of Administration to ensure implementation of the Plan by considering its policy directions as a major factor in the review and analysis of agency budget requests. Thus, Governor Askew sought to restore, through executive order, the status which the legislature had taken from the plan.

The Governor's staff described the purpose of the Executive Order as follows:

"The SCP must become a factor in the planning and management of all public programs, but is by no means a controlling factor. Such is not the intent of the State Comprehensive Plan. Its clear intent is as a point of desired goals .... (T)he Executive Order forms the basis for an intergovernmental communication and evaluation program, the objective of which is the assessment of current programs and policies. This evaluation will produce a set of recommendations for administrative, legislative or budget proposals necessary to maintain positive movement within the executive toward those desired results."165

G. Impact of the Florida State Comprehensive Plan

Governor Askew did not seek re-election in 1978. Consequently, shortly after Executive Order 78-48 was issued, his administration left office. Askew hoped that the State Comprehensive Plan would serve as a starting point for the new administration. In a letter to agency heads which accompanied the Executive Order 78-48 Askew stated:

(The SCP)...represents the culmination of years of work by many of us in state government and marks the beginning of a new phase of endeavor for you and your successors in the coming Administration. I am asking that you evaluate the progress your department has made in fulfilling the specific goals and policies contained in the State Plan.... This evaluation should cover the eight years of this Administration. It should examine where your Department has succeeded and where it has fallen short, and it should outline the direction your agency should take as we near the 1980's... As such, the SCP represents a transitional policy document....<sup>166</sup>

Even though Askew's successor was Robert Graham, the state Senator who had been highly supportive of Florida's planning efforts, the SCP became a low priority under the new administration. In fact, Graham did

not even reaffirm Executive Order 78-48. Consequently, after six years in preparation, the Florida State Comprehensive Plan had little or no substantive impact on the operation of state government, the coordination of state agency decisions, or the process of local land use decision-making.

As Governor Graham's 1980 Task Force on Resource Management stated:

At the state level, a Comprehensive State Plan was developed by the Division of State Planning ... Apparently, however, there is significant disagreement among other government agencies with the policies of the SCP, and there is presently no means for implementing the plan except by voluntary acceptance or executive direction... Critics of the State Comprehensive Plan argue that the system may be workable in theory but has been largely a failure in practice. This is primarily because of the isolation of the planning process from the political realities of policy making. Planning policy is often perceived as being 'ivory tower' and is not taken seriously by implementing agencies. This has been particularly true, for example, of several of the Water Management Districts' interaction with the Water Element."<sup>167</sup>

#### H. Conclusions

The failure of Florida's State Comprehensive Plan could have been predicted from a review of previous critiques of the classic paradigm of comprehensive planning. Basically, these critiques argue that general, long-range comprehensive planning is infeasible. Braybrook and Lindbloom have summarized these critiques by "arguing that comprehensive planning was doomed to fail because of the practical limits of rationality. They questioned the planners' ability to pinpoint goals or values which are constantly in a state of flux. They list as practical limits to comprehensive policy making: man's limited problem-

solving capabilities; the lack of truly comprehensive information; the costliness of comprehensive analysis; and the inability to construct a satisfactory means for evaluating values or goals."<sup>168</sup>

From a political perspective, the very purpose of comprehensive planning (i.e. the statement of general goals and policies to guide governmental decisions) is antithetical to the crisis oriented, programmatic fashion in which legislators are used to functioning. As Altshuler states:

Comprehensive planning requires of planners that they understand the overall goals of their communities. Truly comprehensive goals tend, however, to be too general to provide a basis for evaluating concrete alternatives. Consequently, it is difficult to build political interest in them, and politicians are rarely willing to let general long range goal statements guide their consideration of lower level alternatives.<sup>169</sup>

From this perspective the Florida Legislature's deletion of the binding provision that the plan "be effective as state policy" may be viewed as a response to a set of general policies which the legislature did not deem appropriate to guide its day-to-day activities. It seems that the 1972 Florida Legislature, which had no way of knowing what the final state comprehensive plan would look like, was willing to grant more statutory authority to the plan, than was the 1978 legislature which had the actual plan before it.

Likewise, it seems that the generality and lack of political support for the plan was a factor in its failure to become a program guidance device in the Graham Administration. Florida's state planners

had attempted to impose their view of goals, objectives and policies on other agencies. By 1980, as Graham's Resource Management Task Force indicated, it was clear that various agencies disagreed with the SCP policies and were ignoring them because of their irrelevance to the political realities of agency operations.

In short, the type of program coordination which the State Comprehensive Planning Act had envisioned became impossible because of the diversity of interests among state agencies and because of the Division of State Planning's failure to resolve disputes among the competing interests. Consequently, Governor Graham sought to initiate his own planning, budgetary and management process,<sup>170</sup> and has not pressed for implementation of the original SCP. Without the Governor's support the plan has declined even further in importance.

From a political standpoint, it is legitimate to ask "What happened to the Florida environmentalists who originally supported the State Comprehensive Planning Act?" The answer is two-fold. First, Florida's environmental coalition greatly declined in strength and organizational ability after 1974. Therefore, the coalition was not intact to support legislative adoption or executive implementation of the SCP.

As Pelham states, "by 1978 the state reform movement had lost much of its momentum in Florida. Consequently, according to Robert M. Rhodes, a principal drafter of the SCP amendatory legislation, reducing the state comprehensive plan to advisory status was essential to its salvation."<sup>171</sup>

Second, in 1977 many Florida environmentalists became discouraged with the SCP when it became clear that the plan would not provide spe-

cific guidelines for the operation of state programs and local land use decisions. In 1976, the environmentalists sought to force the Division of State Planning to adopt the SCP "by rule."<sup>172</sup> The Audubon Society threatened to petition for a declaratory statement on the issue when the Division of State Planning indicated its reluctance to comply. In requesting adoption by rule, the Audubon society and other environmental groups emphasized that they were looking for specificity and long-term commitment in the plan.

Representatives of the Division of State Planning argued that they wanted the plan to provide general policy guidance for state agencies. The Division contended that adoption by rule would make the plan inflexible and would result in numerous court battles over its legal status. Eventually, a compromise was reached providing that the Division would adopt, by rule, procedures for the preparation and revision of the State Comprehensive Plan, but the plan, itself, would not be adopted by rule.

After reviewing the plan and seeing its generality, environmentalists decided that the SCP did not meet their objectives for specificity and long term commitment. Consequently, they did not actively lobby for its legislative adoption, or executive implementation.

The generality of Florida's State Comprehensive Plan, its failure to establish clear priorities, the absence of any mechanisms for achieving implementation, the lack of a political coalition to press for adoption and implementation, and the withdrawal of gubernatorial support all contributed to the plan's demise. Thus, Florida state planners spent six years preparing a plan that now collects dust on



agency bookshelves and has little or no impact on state and local governmental actions. This unfortunate result is largely due to the classical assumptions and process which guided preparation of the plan.

V. The Local Governmental Comprehensive Planning Act of 1975

A. Introduction

The third major component of Florida's state land use planning and regulatory system is the Local Government Comprehensive Planning Act of 1975 (LGCPA).<sup>173</sup> The LGCPA required each of Florida's 460 local governments, including municipalities, counties and certain special districts, to adopt comprehensive plans by July 1, 1979. The statute outlined procedures for preparation and adoption of the plans, and contained a list of mandatory elements that each plan must include. Most importantly, the statute required all local land use regulations and subsequent development decisions to be consistent with the locally adopted plans.

The purposes of the LGCPA were clearly spelled out in the first section of the statute as follows:

... it is the purpose of this act to utilize and strengthen the existing role, processes, and powers of local governments in the establishment and implementation of comprehensive planning programs to guide and control future development....

It is the intent of this act to encourage and assure cooperation between and among municipalities and counties and to encourage and assure coordination of planning and development activities of units of local government with the planning activities of regional agencies and the state government....

It is the intent of this act that adopted comprehensive plans shall have the legal status set out in this act and that no public or private development shall be permitted except in conformity with comprehensive plans....

It is the intent of this act that the activities of units of Florida local government in the preparation and adoption of comprehensive plans...shall be conducted in conformity with the provisions of this act.<sup>174</sup>

In essence, the Local Governmental Comprehensive Planning Act was designed to initiate four major changes in the practice of land use planning in the state of Florida. First, the statute attempted to change the traditional advisory status of comprehensive planning by making the plan a binding legal document and by requiring all local land use regulations and development decisions to be consistent with the locally adopted plans. Second, the LGCPA was designed to combat fragmentation which has characterized land use planning and decision-making by numerous local governments with little concern for the impact of their decisions on neighboring communities, the region, or the state. The LGCPA attempted to ensure consideration of regional and state land use issues by requiring that each local and county comprehensive plan contain a "coordination element," and by requiring county and state review of the local plans. Third, the act sought to change the tendency of public investment decisions to cancel the impact of local planning by requiring that all development sponsored by government agencies be subject to the same requirements as private developments. Finally, the statute attempted to reduce the inconsistency and variation in quality among local plans by requiring the preparation of mandatory elements and by subjecting all local comprehensive plans to regional and state review.

The basic assumption underlying the Local Governmental Comprehensive Planning Act was that local governments were not adequately providing for land use control under Florida's existing planning and zoning enabling statutes. As Healy states, "It had become apparent that, if the philosophy of the 1972 Environmental Land and Water Management Law

had been to leave considerable power in the hands of local government, then these governments would have to be goaded, or even forced to plan for their future development..."<sup>175</sup> Proponents of the LGCPA claimed that the bill would "...replace the whole existing zoning system with a more effective flexible system that not only regulates but helps shape development into something that meets communities needs."<sup>176</sup> This contention was based upon the belief that the new comprehensive planning process would focus on spelling out policy guidelines and priorities that would guide development decisions. The statute stated:

The comprehensive plan shall consist of materials... appropriate to the prescription of principles, guidelines and standards for the orderly and balanced future economic, social, physical, environmental and fiscal development of the area.

...Those elements of the comprehensive plan requiring the expenditure of public funds for capital improvements shall carry fiscal proposals relating thereto including, but not limited to, estimated costs, priority ranking relative to other proposed capital expenditures and proposed funding sources...

...The comprehensive plan and its elements shall contain policy recommendations for the implementation of the plan and its elements... 177

As these provisions indicate, two of the major objectives of the LGCPA were to increase local planning capabilities and to develop land use policies and priorities which were missing from the Environmental Land and Water Management Act. Ravikoff stated:

There has been a realization that our existing system of controlling development is not working. Perhaps most significantly, there has been a growing awareness that land use control must have a cohesive policy supporting it, and often this policy must be based on a much larger geographical area than is covered by local government. The ELMS Committee felt that only if local governments throughout the state were required to participate in the planning process could the goals be achieved. 178

Unfortunately, implementation of the Local Governmental Comprehensive Planning Act has focused more on meeting the letter of the law than developing new local growth policies and priorities. That is, implementation of the LGCPA has focused upon preparation of the mandatory elements of the local plans, adherence to strict procedural guidelines concerning official notices and public hearings, and alteration of plans and land use regulations so that they are consistent with one another. In short, the passage and implementation of Florida's Local Governmental Comprehensive Planning Act illustrates the manner in which requiring the preparation of mandatory plan elements, taken from the classic paradigm of comprehensive planning, may divert attention from the need to develop meaningful land use policies and priorities. In addition, implementation of the LGCPA demonstrates many of the weaknesses of reactive public hearings and traditional notions of citizen participation in building a constituency to support better planning. Finally, the LGCPA exemplifies the difficulty of relying on adversary judicial proceedings to ensure the implementation of local plans.

B. Passage of the LGCPA

The Local Governmental Comprehensive Planning Act was drafted by the Environmental Land Management Study Committee (ELMS Committee) during 1973 and was first submitted to the Florida legislature in 1974. The legislative mandate of the ELMS Committee was to "study all facets of land resource management and land development regulation with a view towards insuring that Florida's land use laws give the highest quality of human amenities and environmental protection with a sound and economic pattern of well planned development."<sup>179</sup> O'Connell reports:

Of the 11 final recommendations of the ELMS Committee, the most important and far reaching was the proposed "Local Government Comprehensive Planning Act of 1974"... Based on public hearings, research and a planning consultant's report that many local governments were not accepting the responsibilities of home rule in the area of land use management, the committee felt that one of the major underlying concepts of Chapter 380 [the Environmental Land and Water Management Act] should be changed, to wit: local governments should not have the option to have no [land] use regulations at all. It should be recalled that 380.06 (5) exempted to some extent developments in unregulated jurisdictions from the development of regional impact review process (over 50% of the total land area of Florida).

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In August of 1974, Allan Milledge summarized the major findings of the ELMS Committee as follows:

More than fifty percent of our land area has no land use regulations at all. Ten of the fastest growing counties in Florida, percentage-wise, have virtually no land use controls or planning. In areas where there is some regulatory process or planning, there is little or no coordination between municipal or county efforts or between county plans and regional plans, if any. And the planning which does exist has little or not relationship to fiscal and capital realities. Finally, plans, good or inadequate, have no teeth. They have no legal status and are followed more in the breach than in the observance.

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In response to these problems, ELMS Committee filed the 1974 Local Governmental Comprehensive Planning Act. The 1974 bill required every municipality and county government in Florida to prepare and adopt comprehensive plans by 1978. It established procedural requirements for citizen participation and public review during the planning process. The proposed statute mandated the inclusion in each plan of a uniform set of functional elements. It also provided for state and regional review of local and county plans, regional and county review of local plans, and coordination of planning efforts among adjacent municipalities. In addition, the bill required all local land use regulations to conform to the locally adopted

plans. Finally, the bill proposed \$50 million in state aid to be distributed to localities over four years to finance the local planning. The state aid was to be funded by doubling the documentary surtax on real estate transactions.

As Milledge states:

This proposed legislation was radical. It converted planning to "a plan" and made the plan legally binding until amended. It required the plan to be something more than just the pious and usually fuzzy hopes for the community and something more than just a protector of the character of the neighborhoods. This Act required a plan for the public services and facilities necessary for projected growth. It required the economic assumptions on which the plan is based, the costs and sources of funds, to be provided for and set forth in the plan. In short, this Act required all cities and counties in Florida to recognize the consequences of growth in their communities...<sup>182</sup>

As mentioned earlier in this chapter, 1974 was not a good year for radical land use proposals in the Florida legislature. "Florida has been hard hit by the dramatic nation-wide falloff in housing starts that began in early 1974..."<sup>183</sup> Consequently, Florida legislators were exceedingly skeptical of legislation which would impose new land use controls. In addition, as the controversy over DRI guidelines indicated, Florida environmentalists were not as active or as well organized in 1973 and 1974 as they were in 1972 when they secured passage of the Environmental Land and Water Management Act. As a result, the 1974 Florida legislature failed to enact the ELMS Committee's proposed Local Governmental Comprehensive Planning Act.

Ironically, local governments were the major source of opposition to the 1974 bill. As Milledge states:

The proposed act initially drew favorable reaction from most of the development interests in the state. Predictability is essential for sound private investment and legally enforceable plans promise stability. Local government was initially the opponent. Plans are one

thing, but having to live with them is another. Subjecting a county or a municipality to the confines of its own plan was shocking. Bind the private developer, but do not make us live with our plans.

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It is interesting to note that ELMS Committee did not include any local officials. Therefore, local opposition may have resulted from the fact that local officials did not feel that they had been included in the legislative drafting process. In addition, the bill's provision for removing land use control from localities that failed to adopt plans, and subjecting these communities to county or state plans simply aggravated already strained relationships between state and local governments.

Despite this opposition and the lack of an active environmental constituency, the 1974 Local Governmental Comprehensive Planning Act passed the House by a vote of 80 to 27. This vote seems to have been the result of support from the Speaker of the House who was extremely concerned about land use and growth issues. In the Senate, however, the bill was never brought to the floor for debate. Rural West Florida was one of the greatest sources of resistance to the bill, and "the rules committee of the Senate, chaired by a West Florida senator, ranked [the bill's] priority too low for senate debate in the closing week of the session."<sup>185</sup>

In short, the defeat of the Local Governmental Comprehensive Planning Act of 1974 seems to have been the result of four factors: (1) changing socio-economic conditions (i.e., the national recession and the downturn in housing starts); (2) inadequate support from the environmental constituency which had supported other Florida land use initiatives; (3) local opposition: primarily from rural areas and strong home rule advocates; and, (4) concern about the high cost of the program. Debate over the 1974 legislation, however, did lay the ground work for refiling the bill in the



1975 session. With strong support from the Governor and key legislators, in 1975 an almost identical bill, without the recommended funding, was introduced and passed both the Florida House and the Senate by votes of 95-22 and 28-10 respectively. On July 1, 1975 the Local Governmental Comprehensive Planning Act went into effect, requiring all municipalities and counties in the State of Florida to prepare and adopt comprehensive plans by July 1, 1979. Finally, in 1976 the Florida Legislature appropriated \$700,000 a year to provide state financial assistance to help localities pay for the preparation and implementation of local comprehensive plans.

C. Mandatory Planning Requirement of the LGCPA

The mandatory planning provision of the LGCPA establishes a seemingly harsh penalty for communities and counties that fail to adopt local comprehensive plans by July 1, 1979. Essentially, the Act divests communities, who fail to adopt comprehensive plans, of the power to control the use of land and gives this power to either the county or state government. The statute states:

When a municipality within a county... or when a special district or local governmental entity...has not prepared and adopted a comprehensive plan by July 1, 1979 as required by this act, the comprehensive plan of the county in which such municipality, special district or local governmental entity is situate shall govern...

When a county...has not prepared and adopted a comprehensive plan...the state land planning agency shall prepare a comprehensive plan for such county and any municipalities, special districts or local governmental entities therein not having met the requirements of this act...and shall recommend its adoption to the administration commission. 186

The purpose of this provision was to encourage localities to adopt comprehensive plans and to ensure that the entire state was covered by planning and appropriate land use regulations. As Pelham states, "The

threat of control by a county plan may provide a powerful incentive for each municipality to adopt a comprehensive plan. However, ...the threat of state imposition of a state prepared plan may be an empty one given the division's staff limitations and the controversial nature of such an action."<sup>187</sup> Thus, even though the mandatory planning requirement of the LGCPA seems to be backed by a severe sanction, it is questionable whether this sanction could be effectively utilized if a large number of communities decided not to comply with the statute. In addition, the threat of imposing county or state plans on reluctant municipalities has simply created more mistrust and animosity in traditionally strained relations between Florida's state and local governments.

#### D. Procedural Requirements of the LGCPA

The LGCPA requires each local government to designate a "local planning agency" which would be responsible for preparing the municipal or county comprehensive plan.<sup>188</sup> "The agency may be a local planning commission, the planning department of the local government or other instrumentality."<sup>189</sup> The LGCPA requires that the ordinance or act establishing the local planning agency shall:

- (a) Establish a method of choosing the members of the agency.
- (b) Require the agency to set rules of procedure and to choose its officers.
- (c) Provide for the financial support for the staffing and operation of the agency.
- (d) Require that all meetings of the agency shall be public meetings and that its records shall be public records.
- (e) Set out the duties and responsibilities of the agency and its relationships to the governing body.

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The statute did not include guidelines regarding the composition of the agency nor did it specify the interests which agency members should

represent. Consequently, the local planning agencies range from complete county commissions, local planning commissions, zoning boards to a single county commissioner.<sup>191</sup> Eventually, 385 of Florida's 390 municipalities and all 67 Florida counties appointed local planning agencies.<sup>192</sup> In January of 1981, however, Diane Tunick reported, "at this late date, many communities are simply creating local planning agencies and manning them with the city's current planning staff, who generally are not development experts.... Still others are staffing the local planning agencies with inexperienced people already on the city's payroll."<sup>193</sup>

As a 1978 report on comprehensive planning in Hillsborough County states:

A second, perhaps touchy issue, is the lack of professionalism in the planning staff. Of the thirty-one filled positions that are "professional" in nature according to duties and responsibilities, only twelve individuals hold masters degrees in planning. There are seventeen individuals in professional positions holding only the bachelor's degree.... A staffer who holds a master's degree in planning and formerly worked in a large Northeastern county planning department remarked that the Hillsborough County Planning Department is an "intellectual desert." The fact that Horizon 2000 lacks innovation in the areas of land use planning and social policy tends to give credibility to this statement. 194

Consequently, the LGCPA has not ensured that local plans are prepared by groups representing diverse community interests or that the staff of the local planning agency is made up of qualified professionals. As Tunick's statement suggests, local governments simply may be using state planning assistance to pay municipal employees already on the payroll.

The second procedural requirement of the LGCPA relates to public participation in the planning process. The Statute states:

It is the intent of the Legislature that the public participate in the comprehensive planning process to the fullest extent possible. Toward this end, local planning agencies and local governmental units are directed to adopt procedures designed to provide

effective public participation in the comprehensive planning process and to provide real property owners with notice of all official actions which will regulate the use of their property.... During consideration of the proposed plan or amendments thereto by the planning agency or the local governing body, the procedures shall provide for broad dissemination of the proposals and alternatives, opportunities for written comments, public hearings as provided herein, provisions for open discussion, communications programs, information services and consideration of and response to public comments.

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In spite of this requirement, citizen participation in many communities has been less than fully effective. For example, with regard to participation in Hillsborough County, Catlin states, "Civic groups that do turn out at public meetings tend to be lukewarm to planning, while concerned with largely neighborhood based concerns. Therefore, like many community groups, their concerns and agendas have traditionally been overwhelmed by organized, single purpose, development oriented forces."<sup>196</sup> In short, the state mandate has not been able to counteract public apathy or local resistance to planning.<sup>197</sup>

The third procedural element of the LGCPA requires state regional and county review of local plans. The statute requires localities to send copies of their completed plans, prior to adoption, to: (1) the Division of State Planning; (2) the appropriate regional planning council; (3) the county planning department; and, (4) to any other unit of local government that has filed a request.<sup>198</sup> Although the statute does not authorize the state, county or regional planning agency to veto or change the local plan it does require these agencies to submit comments, in writing, to the local government on the proposed comprehensive plan. These comments must specify objections to the plan and make recommendations for modifications that the agencies deem necessary. The state, regional and county comments are required to focus on the relationship of the local plan to the state,

regional and county comprehensive plans respectively.<sup>199</sup>

The local governmental body is required to consider any comments received from the reviewing agencies and to respond to these comments in writing. "The local governing body must show in its minutes that it has considered the comments from the various agencies. But the act specifically states that the local body is not bound to accept such comments and recommendations."<sup>200</sup> All of the comments, objections, recommendations and replies must be kept as part of the public record and these documents are admissible as evidence in any proceeding in which the comprehensive plan or related land use regulations are challenged.<sup>201</sup>

This statutory provision was included in the LGCPA to ensure coordination between the planning efforts of Florida's state, county and municipal governments. In addition, the provision was designed to encourage localities to carefully consider statewide and regional land use issues in the preparation of their plans. If localities ignore the state and regional comments, it is possible that the courts will invalidate the local plans on the basis of state, county or regional objections which are part of the public record.

This advisory review procedure has been criticized for a number of reasons. First, Pelham contends, "the weakest cog of Florida's coordinating mechanism is the advisory nature of state, regional, and county review.... A more direct and binding form of state or regional review seems appropriate."<sup>202</sup> Making state or regional review of local plans binding, however, does not deal with the problem that the state and regional plans, upon which review and comments are supposed to be based, are widely viewed as imprecise and inadequate. In this context, the question becomes how meaningful is state or regional plans that are inade-

quate?

Another criticism of Florida's intergovernmental plan review process is that it is largely a paper passing exercise. The LGCPA requires all comments and reactions to be in writing but it does not require state, regional and local governments to attempt to resolve the disputes set forth in these comments. A related criticism is that the plan review process relies on adversary judicial proceedings to resolve conflicts between state, regional and local priorities. A simple statutory provision requiring intergovernmental negotiations over objection to the local plans could have reduced the potential for controversy and long drawn out court proceedings over the plans. Finally, since there is only one state staff person to review and comment on local plans,<sup>203</sup> it is doubtful that a sufficient number of comments will be generated or that the comments will be of adequate detail to have a significant impact on either court decisions or local planning activities. Given these criticisms, it seems unlikely that the LGCPA plan review procedure will increase intergovernmental coordination or improve land use decision-making to the extent that proponents of the legislation had expected.

The final procedural element of the LGCPA requires the local planning agency to update and to evaluate the success or failure of the plan, at least, once every five years. This evaluation must report on four issues:

- (a) The major problems of development, physical deterioration and the location of land uses and the social and economic effects of such uses in the area;
- (b) The condition of each element in the comprehensive plan at the time of adoption and at date of report;
- (c) The comprehensive plan objectives as compared with actual results at date of report;
- (d) The extent to which unanticipated and unforeseen problems and opportunities occurred between date of adoption and the date of report.

This provision was designed to ensure that the local planning programs were "continuous and ongoing processes."<sup>205</sup> The statute, however, contains no incentives or sanctions to promote periodic planning evaluations. Hypothetically, the state, a developer or a landowner could file suit against a local government which had failed to update its local plan after five years. Consequently, adversary court proceedings and judicial injunctions may be the only mechanism to ensure periodic review of the local plans.

In addition, the LGCPA establishes two separate procedures for amendment of the local comprehensive plans. If the amendment involves more than five percent of the total land area covered by the plan, then it must be adopted under the same procedures as adoption of the original comprehensive plan.<sup>206</sup> If the amendment involves less than five percent of the total land area, the amendment may be adopted by a majority vote of the local government, after one public hearing and written notification of every real property owner that the amendment will directly affect.<sup>207</sup>

The smaller amendments do not require notification of DSP, the county or RPA's nor extensive public notice and hearings as required for the larger plan amendments. This provision, like the ELWMA's original DRI guidelines, may simply encourage localities to adopt small piecemeal amendments to avoid state and county review. Thus, the LGCPA's objective of promoting greater coordination between local, regional and state land use decisions may be thwarted by piecemeal amendment procedures.

In summary, the procedural requirements of the Florida LGCPA create a mandatory ten step local comprehensive planning process. These steps may be capsulized as follows:

1. The local planning agency (LPA) must prepare the comprehensive plan. Plan preparation may include conducting any surveys, technical studies or public meetings that the LPA deem necessary.
2. The LPA must issue proper public notice, as defined in the statute, and hold a public hearing on the plan.
3. The LPA must submit the proposed plan to the local governing body for review and adoption.
4. The local governing body must submit the proposed plan for review by the Division of State Planning (DSP) the Regional Planning Agency (RPA), the county and other municipalities.
5. The state, region, and county have sixty days to review the plan and submit written comments to the local governing body.
6. If, DSP, the county or the RPA have objections to the proposed plan, the local governing body must consider and respond to these objections within four weeks.
7. The local governing body must wait two weeks after submittal of its response to objections before acting on the plan.
8. The local governing body may adopt the plan only after holding another public hearing with proper notice.
9. The local governing body must submit the adopted plan to DSP, the county and the RPA. (This provision was later repealed by the Florida legislature). 208
10. The LPA must update and evaluate the plan at least once every five years.

E. Mandatory Planning Elements Required by the LGCPA

In addition to these procedural requirements, the LGCPA mandated that each local comprehensive plan contain ten specific elements.<sup>209</sup> Juergensmeyer and Wadley have summarized these elements as follows:

1. A future land use plan designating the location, general distribution and extent of housing, industry, agriculture, recreation, conservation, education, public facilities. This is the key



- section of the plan, central to all the others. Recommended densities for all developments must also be specified which indicates that this element is geared toward growth management.
2. A traffic circulation plan examining the types, locations, and extent of existing and proposed transportation arteries.
  3. A sanitary sewer, solid waste, drainage and potable water element. While this element may be comprised of a detailed engineering plan, it need not be. But the services must be correlated to the principles and guidelines for future development.
  4. A conservation element detailing the proposed development, utilization and protection of natural resources. Comprehensive plans do not generally contain such an element; its inclusion here indicates concern for Florida's unique ecological problems.
  5. A recreation and open space element, including public and private, natural and artificial sites.
  6. A housing element which established standards, plans and principles to be followed in providing housing for present and anticipated residents. Provision must also be made for eliminating sub-standard housing, improving existing housing, identifying housing to be conserved, rehabilitated or replace and formulating housing implementation programs [and providing for adequate sites for future housing, including housing for low and moderate income families and mobile homes].
  7. A coastal zone protection element (applicable only to those government units located in coastal zones.
  8. An intergovernmental coordination section which must show how the comprehensive plan relates to plans of the state, region, county and adjacent municipalities. Principles and guidelines for accomplishing such coordination must also be included.
  9. A section conforming to the 10 year site plan of the Florida Electric Power Siting Act.
  10. Mass transit, port and/or aviation facilities elements (applicable only to those local government units with population greater than 50,000).

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The LGCPA also lists nine optional elements which may be included in the local comprehensive plans. The optional elements include: (1) non-automotive circultaion, (2) offstreet parking, (3) public services and

facilities, (4) public buildings, (5) community design, (6) redevelopment, (7) safety, (8) historic and scenic preservation and (9) economic development.<sup>211</sup>

Finally, the act requires that all elements of the comprehensive plan be based upon appropriate data, and that this data, surveys or studies undertaken in conjunction with the preparation of the plan be available to the public.<sup>212</sup> The LGCPA did not mandate a specific format for the various elements of the plan. The statute, however, did specify that existing comprehensive plans would not meet the requirements of the Act, and that new plans containing, at least, the ten mandatory elements must be prepared and adopted according to the statutory procedural requirements.<sup>213</sup>

The major mandatory elements required by the LGCPA (i.e., land use, transportation, public facilities, recreation and open space, housing, etc.) are the traditional functional elements which have characterized comprehensive plans since the 1950's. Requiring localities to include these elements in their comprehensive plans is based on the assumption that there are certain key elements which are essential to any "good" plan, and that these elements can be prepared through rational, technical analysis. It also assumes that local planning capabilities and land use decisions can be improved by forcing communities to prepare such elements. In this sense, the LGCPA represents a planning approach based upon the traditional assumptions of the classic paradigm of comprehensive planning.

There are several problems with this approach. First, Florida's experience with the State Comprehensive Planning Act indicates that planning processes which focus on the preparation of technical functional elements often fail to address value conflicts which are at the heart

of many land use disputes. Second, focusing upon the preparation of mandatory technical elements may divert attention from the formulation of land use policies and priorities. Third, since different communities have different needs and concerns, mandatory plan elements may not be uniformly applicable to all communities throughout a state.<sup>214</sup> It may be more appropriate to allow communities to organize and present the results of their planning processes in a manner which reflects these concerns. Finally, mandating the elements of a local comprehensive plan will not ensure that the plans will be prepared competently or in good faith. Localities may simply prepare the mandatory elements in a haphazard fashion to get the task out of the way.

#### F. Legal Status of the Local Comprehensive Plans

The final major provision of the LGCPA gives local comprehensive plans legal status. Unlike most state planning and zoning enabling legislation, which makes planning the advisory basis of local land use regulations and decisions, Florida's mandatory planning statute makes the local comprehensive plan a legally binding document and requires all public and private development actions and all local land use regulations to be consistent with the plan. The statute states:

After a comprehensive plan...has been adopted in conformity with this act, all development undertaken by and all actions taken in regard to development orders by governmental agencies in regard to land covered by such plan...shall be consistent with such plan. All land development regulations enacted shall be consistent with the adopted comprehensive plan.

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The act then goes on to define "land development regulations as any local government zoning, subdivision building, construction or other regulation controlling the development of land."<sup>216</sup>

The purpose of this provision was to link local land use decisions and regulations directly to comprehensive planning. It was designed to combat the tendency of local governments to adopt ad hoc land use regulations with little forethought or planning. Second, it was designed to make the comprehensive plan the standard by which the validity of specific land use regulations could be judged, if challenged in court. In addition, this provision contains the LGCPA's most significant incentive for the development and adoption of local comprehensive plans. The incentive is that all governmental development actions must conform to the local plans. Therefore, state government, which, traditionally has been immune from local land use regulations, can no longer grant permits or promote any development which is inconsistent with the local comprehensive plan.

Despite this incentive, the consistency provision of the LGCPA has been a major source of controversy and confusion. The statute does not define consistency or conformity. As Pelham states,

These concepts will require judicial interpretation. Inevitably local land development regulations will be challenged in court on the grounds of alleged inconsistency with the local comprehensive plan..., thereby forcing the judiciary to develop tests or rules for making consistency determinations.

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In the meantime, local governments must grapple with the consistency issue in preparing their plans. For example, "If something is not expressly allowed in the plan...does that mean it is prohibited?"<sup>218</sup> Which is to govern, the plan or existing land use regulations, during the interim period between adoption of a plan and revision of zoning and other land use controls? Specifically, what happens in a case in which a development would be permitted under existing zoning but seems inconsistent with a newly adopted plan? Finally, which plan governs when county and municipal

plans seem to conflict? These questions have plagued local governments in the preparation of their mandatory comprehensive plans.

In addition, the LGCPA sets no time limit for changing zoning or other land use ordinances to conform to the comprehensive plan. The statute simply states that after adoption of a local comprehensive plan "all land development regulations enacted or amended shall be consistent with the adopted comprehensive plan...."<sup>219</sup> As Pelham states:

...in sharp contrast to its provisions for imposition of a state-prepared plan upon failure of local government to adopt timely a comprehensive plan, the act imposes no penalty for failure to implement an adopted plan. Apparently, the only means of compelling compliance with the statutory duty to regulate is to seek a court order enjoining the local government to adopt land development regulations within a reasonable time. 220

The consistency provision of Florida's Local Governmental Comprehensive Planning Act also relies primarily on adversary judicial proceedings to ensure plan implementation. Reliance on the courts to promote plan implementation is problematic for three reasons. First, before courts can make decisions suits must be filed. This places a tremendous burden on local residents and adjacent communities who must expend considerable time, energy and money in preparing formal court challenges of development decisions. Second, adversary court proceedings may make plan implementation the subject of an unnecessary level of controversy. Third, court suits over the consistency issue may not only be used to promote plan implementation but also may give parties who wish to stop development a mechanism for challenging land use permits and subjecting development decisions to endless delay.

As Mike Garretson of the Florida Department of Community Affairs states:

Any citizen or adjacent local government has standing in terms of filing a complaint against a community that is issuing building permits that don't conform to its adopted land use plan. But filing a complaint with circuit court is no guarantee that the building permit -- whether for a commercial strip, sprawling residential community or whatever -- will be revoked; its basically a question of interpretation.

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As pointed out earlier in this chapter, the courts may not have the expertise to make such interpretations, and may prefer to confine their decisions to narrow procedural issues. Thus, it seems that the consistency provision of the LGCPA may simply increase the number of land use disputes which are resolved by adversary judicial proceedings.

#### G. Implementation of the Local Government Comprehensive Planning Act

Implementation of Florida's Local Governmental Comprehensive Planning Act has been a slow and arduous process. Consequently, it is still too early to completely evaluate the results of the statute. Over the past six years, however, sufficient evidence has accumulated to make some initial observations about the problems in implementing the statute. These problems can be divided into eight categories: (1) delay in implementation, (2) selective community participation, (3) funding, (4) continuing animosity between state and local government, (5) problems with the mandatory elements, (6) confusion about the consistency requirement, (7) potential for increased adversary judicial decision-making, (8) lack of constituencies to support plan implementation.

1. Delay in implementation. Although the initial deadline for the adoption of local comprehensive plans was July 1, 1979, less than half of Florida's 460 local governments had adopted plans by the end of 1980. The exact tally as of November 1980 was 224 completed plans, including 190 municipalities, 31 counties,

and 3 special districts.<sup>222</sup> The remainder of Florida's local governments have been granted extensions to finish the plans.

Catlin has described the problem as follows:

There simply was not adequate time to prepare a plan...According to the Commission staffers, the decision to plan was imposed on the Commission from outside by legislators concerned at the prospect of uncontrolled growth. As one individual remarked, "for sixteen years there was no effort to produce a comprehensive plan, now all of a sudden, we're supposed to make one yesterday." 223

2. Selective Community Participation. Most of the plans that have been completed are from the larger cities and suburban areas in Southern Florida. These communities have first hand experience with the problems created by rapid growth and planning was already a priority on the local political agenda before the passage of the LGCPA. In these communities, the incentive for planning was as much to respond to immediate land use and growth problems as to comply with the LGCPA mandate. In western and central Florida however, where growth rates have been less rapid, few local plans have been adopted and the type of planning required by the LGCPA is largely viewed as irrelevant. As Ed Leuch, director of the Appalachee Planning Council states:

In town meetings, you'd have all these farmers up there with mud on their boots asking why they should worry about urban growth. After all, they'd been doing the same things for 15 years. Why should they worry about plans that were geared for counties like Dade and Broward? 224

3. Funding. There are two primary funding problems. First, the state has only provided communities with \$700,000 a year in planning assistance since 1976. This is less than one tenth

of the \$50 million which the ELMS Committee proposed when they submitted the original local comprehensive planning bill in 1974. Tunick states, "...many legislators didn't want to fund local governments which should have been preparing growth plans all along."<sup>225</sup>

The second funding problem relates to appropriation for state review of local plans. Currently the Division of State Planning has only enough money to allocate one staff person to review all of the local plans. Pelham contends that this personnel limitation makes state review of local plans meaningless. He states:

According to Robert Kessler [the DSP official responsible for reviewing local plans] prospects for additional funding in the future are not bright. Although Governor Robert Graham, who assumed office in January of 1979, was a member of the original task force that recommended enactment of the ELWMA and the state and local planning legislation, his budget recommendations for the coming fiscal year [FY 81] do not include increased funding for the comprehensive planning process. 226

4. Continuing animosity between state and local government. The local Governmental Comprehensive Planning Act has done little to improve relations between state and local government, and many communities continue to view the mandatory planning law as an unfair imposition on home rule. For example, "two small communities, Reddick and Otter Creek, flatly refused to even consider preparing plans. They don't have the money and consider themselves too small to worry about it."<sup>227</sup>
5. Problems with the mandatory elements. The major problems with requiring local plans to include specific mandatory elements



are exemplified by the Hillsborough County Comprehensive Plan.

Catlin states:

The Florida Local Government Comprehensive Planning Act can result in two types of products, one being quick and dirty plans prepared simply to comply with the legislation. The other consisting of well developed efforts to identify problems, resources, and possible solutions that meet the definitions and criteria for long range comprehensive planning. An examination of Horizon 2000 [Hillsborough County's Plan] leaves this author with the feeling that the former, not the latter is the unfortunate result of this planning process. 228

The Hillsborough County Plan seems to be a classic example of the manner in which the preparation of mandatory elements can divert attention from significant community problems. The original plan was an 800 page document consisting of the following elements: (1) policy statement, (2) economic assumptions, (3) future land use, (4) traffic circulation, (5) mass transit, (6) seaport, (7) airport, (8) public facilities, (9) conservation, (10) recreation and open space, (11) housing, (12) coastal protection, (13) intergovernmental coordination. "When preliminary drafts of the plan were released to the Commission in August of 1977, the plan was attacked as being 'too general'." 229

In addition, the city of Tampa was extremely upset because the plan did not contain a social policy element. The county has a significant number of residents below the poverty level (22%), a significant minority population (20%), and problems associated with transient agricultural workers. 230 Another issue not discussed in the original plan was educational facilities. County planners argued that neither the social policy

nor educational elements were mandated, and therefore, they were not prepared. The city of Tampa eventually prepared its own social policy element which was "tacked on to the plan adopted by the Tampa City Council."<sup>231</sup> The Hillsborough County School District educational facilities plan was also added. However, "little attempt was made to integrate it with the other elements of the plan..."<sup>232</sup>

The Hillsborough County experience demonstrates that different communities and regions face different problems, and that no mandatory set of elements can ensure the consideration of all significant local growth issues in a mandatory planning process. If planners are so busy preparing mandatory elements and meeting legal requirements that they ignore locally pressing problems, it casts doubt on the entire planning process. Finally, poorly prepared and integrated plan elements also damage the credibility of the planning process. Thus, at least in Hillsborough County, the mandatory plan elements required by the LGCPA have not resulted in a credible comprehensive plan.

6. Confusion about the consistency requirements. There are two major sources of confusion concerning the consistency requirements of the LGCPA. Initially, the statute required local plans to be coordinated with the officially adopted state comprehensive plan. Since the 1978 legislature changed the status of the state plan to "advisory only", and since the plan has been a low priority in the Graham administration, localities are left to wonder how seriously to take the requirement that their plans conform to the state plan. In addition, "...in the opinion of

the state planner responsible for reviewing local plans,...the state plan is so broad that...it would be difficult for a local plan to be inconsistent with it."<sup>233</sup> For these reasons, the requirement that local plans conform to the "state comprehensive plan is basically meaningless and state review of the local plan appears to be a perfunctory process."<sup>234</sup>

The second source of confusion relates to the requirement that all local land use regulations and development decisions must be consistent with the local plans. As a county attorney complained, "Once they did their plan, they discovered half of their zoning conflicted with the plan. This was tough work for him and his commission to conform the zoning atlas to the future land use element of the plan."<sup>235</sup> In addition, there is continuing confusion about whether the plan or existing land use ordinances will govern during the interim period between plan adoption and the revision of land use regulations. Some communities have responded to these problems "by simply relabeling their current zoning map as their new land use maps."<sup>236</sup> Other communities have responded by developing plans that are so general that it would be difficult to construe regulations as being inconsistent. Obviously, neither of these approaches have furthered the LGCPA's objective of improving local planning and land use decision-making.

7. Potential for increased adversary judicial land use decision-making. The only way to ensure enforcement of the major provisions of the LGCPA is through adversary judicial proceedings. For example, if a locality refuses to adopt a plan the state or

county may prepare the plan and land use regulations for the municipality. However, the state may still have to secure a court order requiring the locality to enforce the plan. If localities do not change existing land use regulations to conform to their adopted plans, the primary mechanism for securing enforcement relies upon developers, civic groups, or land owners to file suit against permit decisions which are inconsistent with the plan. As Mike Garretson states, "The state doesn't have time to monitor a total of 57,000 square miles. Most of the small permits issued by local governments don't have the magnitude to attract the state's attention, even though they may not conform with the local plan."<sup>237</sup> Finally, if communities fail to update their plans, court injunctions may be the only way of ensuring periodic plan review.

Clearly, the LGCPA relies heavily on the potential of adversarial judicial proceedings to secure implementation. In March of 1979, Robert Martin observed, "Undoubtedly, as the deadline for submission of the mandatory comprehensive plan approaches, there will be much litigation concerning exactly what is required by the rather all-encompassing language of the LGCPA."<sup>238</sup> As the ABA reports, however, reliance on the judiciary for enforcement of the statute may be problematic:

Delegating the enforcement of the mandatory planning and plan consistency requirements to the courts...depends...on the willingness of the courts to interpret liberally the planning and plan consistency provisions. Even courts willing to take a strong view of the statute may be limited in the relief they can provide...

A recent Florida court case illustrates these limitations.

O'Connell reports:

One interesting circuit court decision, Northgate LTD.V City of St. Petersburg dealt with a land-owner's challenge to the validity of the city's comprehensive plan. The Plan was attacked for its failure to meet the requirements of the LGCPA, especially sections 163.3177 (2), (3), (4), and (6) (h) dealing with consistency among plan elements, economic feasibility and inter-governmental coordination. The court reluctantly concluded the city met the letter of the Act, but not its spirit. In the opinion, the court stated it thought the city was wrong in not clearly delineating either in practice or ordinance, a much closer relationship with the county to coordinate zoning between the two entities. The court also thought the city was wrong in not setting out in its plan the nature of the coordination and in not setting out in greater detail the financial obligations and burdens upon individual property owners imposed by reason of the plan. 240

The St. Petersburg case illustrates that, despite the LGCPA's intent to improve local planning and land use decision making, statutory requirements and judicial rulings cannot force communities to produce good plans or to implement the spirit of the law.

Similar controversies have erupted in other Florida counties. For example, "the city of Lakeland is contemplating suing Polk County [because the] County has granted building permits for a development which Lakeland feels is not in conformance with the county's plan."<sup>241</sup> In addition, controversy is currently brewing in Tampa over a commercial development which meets existing zoning requirements but would require a change in the city's land use plan.<sup>242</sup> As these land use disputes illustrate, Florida's Local Governmental Comprehensive Planning Act will

probably result in a new wave of court suits regarding the formulation and implementation of local comprehensive plans. While these suits may eventually improve land use decision-making, it will be a long slow process characterized by a high degree of controversy and policy making through adversary judicial proceedings.

8. Lack of Constituencies to Support Plan Implementation. The final problem facing the Local Governmental Comprehensive Planning Act relates to developing local and regional constituencies to support and monitor implementation by the Palm Beach County Comprehensive Plan which was adopted in July of 1980. The Palm Beach County Plan attempts to control growth by "allowing concentrated urban development only in areas that have adequate services such as roads, water and sewers. In areas where these services are not well developed construction is permitted only at lower rural densities."<sup>243</sup> The lack of an informed constituency to support implementation of the plan, however, has created problems as the County Commission attempts to translate the plans general objectives and policies into concrete rules, regulations and performance standards.

Daniel O'Connell, a land use attorney, a major draftsman of the LGCPA, and a participant in the Palm Beach County Planning process, is concerned that the plan could be compromised during the implementation process because of the lack of organized support. O'Connell states, "Defenders of the plan are few and their efforts have been uncoordinated. To initiate reform, one needs to develop more than lukewarm defenders."<sup>244</sup> O'Connell is parti-

cularly concerned about two issues: (1) the formulation of performance standards that spell out what adequate water, sewer and road systems are for urban development,"<sup>245</sup> and (2) ensuring that the County Commissioners utilize the principles of the plan in approving or rejecting new development applications.

With regard to performance standards, the Palm Beach County Commission has appointed a Citizens Task Force to draft acceptable guidelines. "The task force has been finding the job difficult..." O'Connell contends that part of the difficulty relates to the membership of the task force. He states, "the primary composition of the task force is persons involved in the development industry."<sup>247</sup> O'Connell suggests that the responsibility for writing performance standards should be given to a group representing broader interests including residents, politicians, public interest groups, county planning officials and planning staff members.<sup>248</sup>

In regard to County action on new development applications, O'Connell States:

Nobody respected what the County Commission did with zoning in the past. We're going to have to spend more time protecting the plan...It will be up to the County Commission to preserve the plan by refusing to permit new urban development that does not meet [the performance standards]. The County Commission is going to have to say 'no'. I know it's painful...supporters of the plan [will have] to encourage commissioners to be courageous in the face of developers. But there has not been that kind of broad support that will reinforce the Commissioners' resolve.

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In response to these problems, O'Connell makes the following recommendations:

Supporters of the plan [should] form a coalition that would include neighborhood groups, county commissioners, the county's cities, the press and environmental, taxpayer and professional groups. The coalition should act as an advocate for the plan, supporting both development where it is consistent with performance standards, and conservation...Neighborhood groups must support the overall intent of the land-use plan and not object to development in their own backyards unless it fails to meet performance standards. Otherwise they will be viewed as narrow special interest groups. County planners should also lend their support for the plan by giving seminars on it and by distributing copies of the plan widely to schools and libraries. It's a good document for learning.

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In short, the Palm Beach County experience illustrates that it is difficult to develop an informed and supportive constituency to monitor and ensure implementation of local comprehensive plans. Even with the LGCPA's intent of "fullest possible public participation" and the Acts strict procedural requirements, the statute has not succeeded in creating a strong constituency to support local planning and plan implementation. To a large extent this problem is the result of the fact that the local plans have been prepared in response to the state mandate rather than genuine local concerns. In addition, the participation requirements of the LGCPA focus on public hearings in which citizens react to various preconceived proposals. Such forums, generally, are not conducive to developing strong and lasting coalitions to support plan implementation. Public hearings usually are one time exercises which do not promote dialogue, inquiry or sustained face to face interaction between different interest groups, citizens and public officials. Consequently, these hearings do not help to create effective interpersonal trust, understanding and networks



which are prerequisites to forming constituencies and coalitions to support planning.

#### H. Conclusions

The major conclusion that stands out from the initial results of Florida's Local Government Comprehensive Planning Act is that state mandated local planning requirements cannot guarantee the formulation of sound, well thought-out local plans; and that the state mandate, by itself, will not improve local land use decision-making. As O'Connell observes:

Looking at the bleak realities of the adoption process, the large expense of preparing the plan, inadequate understanding of what a comprehensive plan should be, lack of support from the economic forces of the state, it was a naive assumption that the mere passage of a minimum-standard law would change local governments' decisions on land use. But it was a necessary step. 251

This first step, like the Florida ELWMA, has had mixed results. The communities which have responded most favorably to the comprehensive planning statute are those in which land use and growth management concerns were already a political priority. For example, Miami adopted a detailed plan for downtown revitalization and instituted an innovative land use intensity system. In the small community of Sanibel, the LGCPA resulted in a plan which reduced the proposed number of dwelling units for the town from 30,000 to 8,000. The Sanibel plan attempts to concentrate development in high density clusters, and focuses on the preservation of open space and the recognition of environmental constraints. As Diane Tunick states, "In Miami and Sanibel, the LGCPA seems to have done what it was supposed to do: help the community give some hard thought to the future."<sup>252</sup>

On the other hand, in many communities where planning is not a priority, the LGCPA has simply resulted in the preparation of perfunctory plans

which do not adequately address significant local growth issues. As Catlin states, in the Hillsborough County plan, "growth projections are sketchy and the land use plan's economic impact is not made clear."<sup>253</sup> In addition, Catlin has identified four major lessons of the Hillsborough County planning process. These lessons are applicable to many other Florida communities and may be summarized as follows:

1. A consensus for planning must be developed before the process can ever really begin. Horizon 2000 was born in controversy. The decision to plan came as a result of state law and county legislative reaction rather than genuine local support. Throughout the process, the Planning Director had to fight off attempts by anti-planning commissioners to fire him, while at the same time, prepare a comprehensive plan. Citizen support was weak and concerned only with localized issues, not overall comprehensive planning.
2. Planning will tend to be politically motivated until planners can convince political actors that short term expediency produces long range problems. It has been observed that pressure groups and politicians have similar piecemeal approaches to planning: "Their members are interested in direct and immediate consequences to themselves, not in the public interest." However, the planner can and must convince decision-makers and citizen groups that today's actions could result in disastrous consequences, later. To accomplish this, the planning staff must have credibility.
3. There must be broad-based public support for planning. In order to develop well thought out and relevant plans, citizen participation is a must. Citizen support when properly cultivated can offset special interests and result in major victories for planning. Hillsborough County and the City of Tampa have no formal mechanism for citizen participation.
4. The concept of a comprehensive county-wide planning body is good in theory but questionable in practice. Tampa has problems of age obsolescence, and creeping blight. Its major agenda is the strengthening of older neighborhoods and the CBD. Hillsborough County's decision-makers are mainly concerned with dealing effectively with growth. Because the ten

member County Planning Commission contains only four representatives from Tampa, it is "county agenda" oriented. Meanwhile, Tampa has no official planning department and pays Hillsborough County almost \$500,000 a year for planning services.

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As Catlin's observations indicate, the LGCPA has not succeeded in developing a constituency for planning or in focusing attention on major growth issues in areas that have a traditional anti-planning bias. Instead the mandatory requirements of Florida's local planning statute have resulted in the preparation of numerous technical planning elements which often ignore major local priorities and concerns. Traditional public hearings, which constitute the major form of participation in Florida's local planning process, have done little to improve these elements or to promote more than perfunctory local plans. The most serious consequences of the LGCPA, however, is that local land use regulations are now required to be consistent with these plans. This proposal is even more disconcerting because the LGCPA relies on adversary judicial proceedings to ensure the enforcement of the plans and consistency of local land use regulations. Over the next few years, Florida courts may be faced with the difficult task of either judging the adequacy of local planning, or ruling on the consistency between land use regulations and inadequate plans. Clearly, the courts are not eminently qualified and/or anxious to make decisions of this nature.

## VI. Conclusions

The purpose of this chapter has been to examine Florida's state land use planning and regulatory reforms in the context of my assumptions about capacity building, conflict resolution and constituency building. Essentially, the Florida case study appears to support many of my assumptions about the actions necessary to build state and local planning capacity and to develop a political constituency to support land use policy and program implementation. In addition, Florida's state growth management experiences have helped to refine my assumptions about the major considerations involved in utilizing informal negotiations to resolve complex land use disputes.

### A. Capacity Building

When Florida's land use planning and regulatory reforms were initiated, both state and local government had only limited previous planning experience and regulatory capacity. Over 50% of Florida's land area was completely unregulated and planning had never been a priority at the state or local levels. In response to this problem, Florida's approach to capacity building focused on the mandatory preparation of comprehensive plans. Florida's planning statutes are concerned primarily with spelling out the technical elements to be included in the plans and requiring agency budgets and local regulations to be consistent with the plans.

The results of Florida's State Comprehensive Planning Act suggest the difficulty of relying on traditional notions of comprehensive planning to build state planning capacity. Preparation of the plan followed

the classic paradigm of comprehensive planning: technical data was gathered, alternative policies considered, functional elements prepared, elements were reviewed by blue ribbon advisory boards and subjected to public hearings, the elements were revised, the Division of State Planning synthesized all of the elements into a comprehensive policy document, and the plan was sent off to the governor and the legislature for approval. In short, the plan was prepared through a "top-down" planning process. DSP was responsible for pulling together all of the work of the diverse interagency task forces. In its effort to be comprehensive and to synthesize the functional elements, DSP seems to have lost sight of agency priorities. Thus, when the plan was presented to the legislature, agency officials complained that it did not reflect the political realities of agency decision-making. This criticism significantly contributed to the legislature's decision to reduce the plan to advisory status. Lack of agency and legislative support has made the plan a paper exercise which has little impact on state or local land use decisions.

Thus, after taking six years to prepare, it seems that Florida's state plan has had little impact on state or local planning capacity. The same problem has occurred in some communities that have focused on the preparation of the functional elements mandated by Florida's Local Comprehensive Planning Act. For example, Hillsborough County's comprehensive plan was criticized for not responding to the social policy and educational concerns of Tampa and surrounding suburban communities. The county planning agency responded that a social policy and educational element were not required and, therefore, were not prepared. This comment seems to illustrate the most serious problem with attempt-

ting to rely on mandatory planning statutes to increase planning capacity. That is, if planning focuses on the preparation of mandatory elements rather than creating a process to respond to priority needs and concerns, it will result in little improvement of planning and decision-making capacity.

Analysis of the Florida case, however, also indicated that mandatory planning and consistency requirements do not necessarily lead to an exclusive emphasis on the preparation of functional elements. For example, St. Petersburg and Seminole County focused on designing planning processes to respond to immediate urban revitalization and growth phasing needs. These processes seemed to be effective in improving both planning and land use decision-making capabilities. Likewise, Dade County established a planning process which utilizes input from 20 neighborhoods to prepare the county plan. In addition, all three of these communities have used compliance with the consistency requirement as a mechanism to focus public attention on immediate zoning and plan amendments.<sup>255</sup>

Thus, while it is too early to evaluate the results of Florida's Local Governmental Comprehensive Planning Act, it seems that the manner in which a community uses the law is more important than the substantive requirements of the law itself. Some communities have successfully used the statute to stimulate interest in the planning process and this has resulted in greater planning and land use decision-making capacity. In other communities, where the focus has been perfunctory compliance with the statutory mandate, planning capabilities have not been expanded. It also seems that the Florida communities

that have been most successful in increasing planning capabilities concentrated on many of the issues that were identified in the Massachusetts case as important to building planning capacity (i.e., decentralizing the planning process, focusing on immediate decision choices, etc.).

B. Revised Assumptions about Informal Conflict Resolution

Investigation of the Florida case resulted in significant changes in my assumptions about utilizing informal negotiations as a primary mechanism for resolving land use conflicts. Our experience in Massachusetts indicated that state efforts to facilitate ad hoc negotiations and to informally mediate complex multi-party land use disputes offered significant opportunities for increasing the efficiency and equity of land use decision-making. In many cases, it seemed that informal negotiations were more effective than formal adversary judicial or administrative proceedings in ensuring that state or regional interests were taken into account in the decision-making process. It also seemed that informal negotiations offered an opportunity for expediting land use decisions and provided an alternative to awaiting the results of administrative or judicial appeals as the final step in the decision-making process. Consequently, I began to view the formal and informal systems for resolving land use conflicts as almost separate processes for addressing land use problems. Analysis of the Florida case, however, served to remind me that formal and informal approaches to land use conflict resolution are not alternatives to one another, but are, in fact, interrelated components of the large land use decision-making

system.

Both the critical area and development of regional impact (DRI) components of the Environmental Land and Water Management Act established formal state administrative appeal procedures for resolving land use disputes and attempted to explicitly set forth legislative criteria that would assist both the Adjudicatory Commission (i.e., the Florida Cabinet) and the judiciary in deciding cases under appeal. As I reflected on the Florida case, it seemed to me that these formal appeal procedures and decision-making criteria had significant impacts on the willingness of various parties to negotiate informally and on the types of concessions that groups were willing to make in order to resolve land use disputes.

For example, the DRI program requires the developer to submit a detailed permit application describing the regional environmental, fiscal, social and economic impacts of the proposed project. The regional planning agency (RPA) reviews this application and conducts its own regional impact analysis. Local governments consider both the RPA and the developer's analysis and decide to approve, deny or attach conditions to the permit. The local decision may then be appealed to the Adjudicatory Commission by the developer, the RPA or the Division of State Planning. In ruling upon the appeal, the Adjudicatory Commission must balance the social, economic and environmental impacts of the project. These procedures and criteria have given developers and governmental officials a set of incentives and disincentives for informally negotiating conditions to be attached



to DRI permits.

Prior to the General Development Corp. and Estuary Properties cases, these costly and time-consuming regional impact assessment procedures and criteria seemed to have two major effects on developers' responses to the new permit system. First, the formal decision-making criteria and adversary appeal procedures encouraged many developers to informally negotiate conditions for DRI approval rather than risk losing their investment in time and money by having the permit denied on appeal to the Adjudicatory Commission. In the first five years of the program (1973-1978), 79% of all DRI applications were approved by localities with conditions. In addition, twenty-one out of the total twenty-eight permit applications which were appealed to the Adjudicatory Commission were resolved through informal negotiations before reaching a formal hearing. Thus, in over 80% of the cases, the DRI process resulted in informal negotiations to resolve land disputes. A second outcome of the program, however, has been the dramatic drop-off of DRI permit applications. During the first two years of the program (1973-1975), 146 permit applications were submitted. Between 1976 and 1979, only 55 new applications were filed, dropping to a low of 7 in 1977. Thus, Florida's initial experience with the DRI process seems to indicate that the program's formal conflict resolution procedures encouraged some developers to resolve permit disputes through informal negotiations. However, it also encouraged others to attempt to avoid the entire process by sizing developments just under DRI thresholds so that submission of a DRI application would be unnecessary.

It is too early to tell what impact the General Development Corp.

and Estuary Properties cases will have on these trends. On the one hand, the General Development Corp. case, with its ruling that the guidelines defining a DRI are not presumptive, may make it more difficult for developers to avoid the permit process, and thus lead to more permit applications and more informal settlements. On the other hand, the General Development Corp. case may encourage more developers to challenge the initial determination of their project as a DRI on the basis that the state has not adequately demonstrated that the development will have significant regional impacts. Likewise, the Estuary Properties case may encourage more developers to carry through with appeals and challenge local and regional impact assessments and the governmental balancing of the development's positive and negative impacts. Finally, the Estuary Properties case may serve as an incentive for the state and local government to negotiate more reasonable permit conditions rather than having their impact assessments or balancing determinations reviewed, and possibly overturned, by the courts.

Irrespective of the ramifications of these two court cases on the DRI decision-making process, the outcomes suggest that formal and informal processes of land use conflict resolution are closely interrelated and have significant impacts on one another. The interrelationship between the formal and informal conflict resolution systems seems to play a significant role in disputants' decisions about whether to engage in informal negotiations and in their decisions about the type of settlements which will acceptably resolve disputes. Thus, my investigation of the Florida DRI program convinced me that in order

to understand the prospects of informal negotiations in resolving land use disputes, it is necessary to consider incentives and disincentives for negotiation and settlement created by the formal decision-making system.

Florida's experiences with the ELWMA's critical areas program helped to reaffirm and expand this conclusion. The critical areas program established formal adversary administrative procedures, subject to court review, for both the designation of environmentally sensitive areas and appeal of local land use decisions within these areas. The designation process is characterized by win/lose decision-making dynamics. An area is either designated or it is not. Initially, the emphasis of program implementation was on winning designations rather than fostering agreement between different interest groups on state guidelines to govern development of environmentally sensitive areas. Consequently, the critical areas program has generated a great deal of controversy between state and local government, developers and environmentalists. As a result of the emphasis on formal adversary designation procedures, opponents of the program have used every procedural mechanism available to delay and obstruct designations. The Green Swamp was challenged under both the Florida Administrative Procedures Act (APA) and in the courts. The APA challenge delayed the designation to the extent that it would have been invalidated, if the Cross Keys Waterways decision had not declared the entire critical areas program unconstitutional.

Continual opposition, along with administrative and judicial challenges of the critical areas program, have brought formal designa-

tions to a standstill. No new critical areas have been designated since 1975. Consequently, the Division of State Planning has shifted its focus from the win/lose dynamics of formal designations and judicial enforcement to initiating informal negotiations and establishing agreements with localities to protect particularly sensitive areas. Even after the legislature responded to constitutional defects of the critical areas program by temporarily redesignating the Green Swamp and the Florida Keys, most disputes about compliance with state guidelines in the Florida Keys have been resolved through informal negotiations. In addition, since 1975, the Division of State Planning has informally negotiated agreements with localities to protect sensitive environmental resources in three geographic areas which could have been subject to designation. Two primary factors have contributed to the use of negotiations. First, the Division of State Planning (DSP) initiated the informal negotiations and has encouraged informal agreements because the cost of non-agreement over formal critical area designation was becoming increasingly high. Since the critical areas program suffers from constitutional uncertainty, DSP seems to have decided that it was advantageous to informally negotiate cooperative resource protection agreements with localities, rather than initiating formal designation proceedings which could lead to further court challenges and the potential loss of existing state authority. Second, the threat of formal designation may have prompted local governments to enter into informal negotiations and agree to voluntary settlements to protect state and regional interests rather than having more stringent requirements forced upon them. Thus, the critical areas program

suggests the relationship between formal and informal decision-making and conflict resolution procedures. To a large extent, the informal agreements were made possible by the formal system and the manner in which it influenced the costs of non-agreement for both localities and the state.

It is interesting to note that the incentive to initiate informal negotiations and to reach cooperative agreements to settle land use disputes are somewhat different for the DRI and critical areas programs. The DRI program seems to have encouraged developers to initiate negotiations with the state and local governments in order to avoid the long and uncertain DRI administrative appeals proceedings. In the case of the critical areas program, however, it has been the state that has initiated the negotiations and attempted to secure informal settlements. State action was taken primarily to avoid the controversy and delay that formal designation procedures have created. Local governments and developers seem to have agreed to the negotiations and voluntary agreements partially because of the threat of formal designation.

In conclusion, investigation of Florida's DRI and critical areas programs helped to expand my assumptions about the viability of informal negotiations in increasing the efficiency and equity of land use decision-making. Florida's experiences suggest that the effectiveness of informal negotiations in resolving land use disputes is closely related to the incentives and disincentives for negotiation and agreement created by the formal decision-making system (including both statutes and court rulings).

### C. Constituency Building

The Florida growth management system has relied on the use of traditional public hearings as the major participatory mechanism in its state growth management system. It seems that many of Florida's hearings have had little impact in helping to inform or support state growth management decisions. Florida's growth management experiences, however, have included some participatory activities that seem to have been effective in building short-term political constituencies and a number of Florida land use analysts have begun to focus on the importance of the constituency-building process.

For example, increased recognition of the importance of the participatory process and the need to build political constituencies to support state growth management actions seems to be reflected in Florida's experiences with its critical areas program. The three formal designations have relied on public hearings as the sole source of citizen input. In contrast, the regional planning and resource management committees established to consider regulations in the areas protected by voluntary agreements have focused on early citizen involvement, interaction between state and local officials, and establishing dialogue and inquiry about appropriate regulatory mechanisms. These activities seem to have resulted in the political support necessary to secure passage and implementation of local regulations to protect the areas.

This type of participation stands in stark contrast to Florida's previous reliance on public hearings to develop input and political support for growth management actions. One can only wonder how much

more effective the Florida growth management system might be if more attention were devoted to designing effective participatory processes and building political constituencies to support state growth management actions. The fact that many of Florida's land use advocates are calling for increased public participation and political constituency-building seems to support my assumption about the importance of this issue in developing effective state growth management systems.<sup>256</sup>

This new realization was recently summarized by Nancy Stroud as follows: "The future of Florida's land use programs belongs to the coalition-builders. Effective implementation of the programs comes down to building personal rapport between citizens and state and local officials. Constituencies need to be built to establish and support meaningful land use policies."<sup>257</sup>

VII. Notes

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CHAPTER FOUR. KEY ISSUES IN STATE GROWTH MANAGEMENT: LESSONS FROM THE MASSACHUSETTS AND FLORIDA CASES

The Massachusetts and Florida case studies have described two divergent state growth management systems. Although the approaches differ, the fundamental objectives of both systems are to increase the efficiency and equity of land use decision-making and to enhance state government's ability to influence the quality and direction of development. In spite of considerable effort, both systems have been only partially successful in achieving these objectives.

The factors underlying the limited growth management accomplishments of each state are varied and complex. One of the advantages of case study research, however, is that it can help to sort out such a multiplicity of potential explanatory factors and suggest a set of key variables or issues which may be useful in examining complex phenomena. In this fashion, the Massachusetts and Florida case studies suggest three relatively unexplored issues which appear to be significant in explaining the outcomes of state growth management systems. These issues are: (1) the relative emphasis placed on developing more effective planning processes as opposed to mandating the preparation of comprehensive plans (i.e., capacity building); (2) the relative emphasis placed on the use of informal consensus-oriented negotiations to supplement formal adversary decision-making procedures in the resolution of land use disputes (i.e., conflict resolution); (3) the manner in which public participation is used to develop informed political constituencies to support state growth management actions (i.e., constituency building).

The purpose of this chapter is to analyze the manner in which the Massachusetts and Florida case studies influenced my thinking about these

issues. It begins by briefly summarizing the major characteristics and outcomes of each state growth management system. It then outlines the major instances from each case which helped to enhance and refine my assumptions about the issues of capacity-building, conflict resolution and constituency-building.

#### I. Characteristics and Outcomes of the Massachusetts and Florida Growth Management Systems

Before turning to an analysis of the manner in which the Massachusetts and Florida cases influenced my thinking about the issues of capacity building, conflict resolution and consensus building, it is important to point out that each state's growth management system was designed and implemented in the context of extremely different socio-economic, environmental and political conditions. The differences in these conditions have significant impacts on both the emphasis and outcomes of the two programs, and therefore, it is necessary to keep them in mind throughout the consideration of the other key issues.

For example, Florida is a dynamic growing sunbelt state. Its growth management system was designed in response to rapid uncontrolled growth and environmental degradation. In the past decade, Florida's population increased by 43 percent.<sup>1</sup> This astronomical growth rate has contributed to a variety of problems, including: the random destruction of wetlands and other sensitive environmental areas; increasing sprawl and large-scale development which rapidly changed the character of entire counties; exorbitant land and housing costs; inadequate municipal ser-

vices and infrastructure; and a recurring series of water shortages.

In 1972, when the first two components of Florida's growth management system were adopted, the state was suffering from a severe drought. This crisis was the major catalyst behind efforts to increase state intervention in land use decision-making. The drought threatened municipal water supplies and the state's lucrative agricultural industry. The crisis resulted in the development of an environmentally oriented political constituency which supported passage of the three statutes which now constitute Florida's growth management system.

Prior to enactment of these statutes, neither Florida's state nor local governments had been particularly active in land use control, and planning capabilities were minimal. Only about one-half of the state's land area was covered by any type of land use regulations.<sup>2</sup> Existing environmental statutes were loosely enforced and coordination between state agencies dealing with growth issues was virtually non-existent.

In response to these problems, Florida's new state growth management system established a "top-down" planning and regulatory process which reasserts state authority over land use decision-making. This system emphasizes state override of local land use decisions regarding sensitive environmental areas and developments of regional impact (DRI's). It mandates state and local comprehensive planning and requires consistency between local plans and land use regulations. In short, the primary focus of Florida's land use reform strategy was the creation of an adversary regulatory system designed to limit the rate and geographic location of the state's rapid growth. The secondary focus of Florida's growth management system was to increase state and local planning capa-

bilities by mandating the preparation and enforcement of state and local comprehensive plans. The system's two components were theoretically linked by statutory requirements that all local plans, state agency budgets, critical area and DRI guidelines reflect priorities of the state comprehensive plan.

The critical area program resulted in the regulation of over one million acres of environmentally sensitive land in accordance with state guidelines. These guidelines were developed under three formal designations and three voluntary agreements established through informal negotiations between state, regional and local governments. The critical areas program also has been the subject of a great deal of controversy and procedural maneuvering by diverse interest groups. Although much of the controversy reflects conflicting values and interests among state and local government, developers and environmentalists, the adversary win/lose dynamics of the program has contributed to long drawn-out court suits and administrative appeals which have delayed important development and resource protection decisions. The Cross Key Waterways v. Askew<sup>3</sup> suit resulted in the entire critical areas program being declared unconstitutional. Although the Florida legislature seems to have, at least, temporarily corrected the constitutional defects, no new critical areas have been formally designated since 1975. Instead, the Division of State Planning (DSP) has concentrated on negotiating voluntary cooperative agreements with localities to protect potentially critical areas. The potential of additional constitutional challenge and stalemate resulting from procedural delay seems to have provided an incentive for DSP to initiate cooperative informal negotiations with localities before



utilizing adversary formal designation procedures. The threat of formal designation seems to have provided an incentive for local governments to enter into negotiations and to agree to voluntary settlements which protect statewide environmental resources.

As a result of Florida's DRI program over 200 large-scale projects have been reviewed in terms of their regional impacts and have been developed according to regulations which reflect statewide and regional concerns. In over 80 percent of these cases, the conditions attached to DRI permits were established through informal negotiations between localities and the developer or between the state, the RPA, the community and the developer.<sup>4</sup> Developers, however, have found a loophole which allows them to avoid the complicated DRI regulatory process, and the number of permits issued under the program has dropped significantly over the past six years (from 103 in 1973 to 22 in 1979).<sup>5</sup> In addition, DRI decisions have been the subject of administrative procedural appeals and court suits. A recent judicial decision, Estuary Properties v. Askew,<sup>6</sup> overruled a state Adjudicatory Commission decision requiring certain conditions for the development of a DRI, because the Commission's decision failed to balance the various social, environmental and economic impacts of the development. The impact of the Estuary Properties decision on the ability of future DRI permit decisions to withstand judicial scrutiny, and the future willingness of developers, the state and localities to informally negotiate permit conditions is currently uncertain. It is difficult to tell whether the DRI program will continue to foster informal negotiations about conditions for large-scale developments or whether the program will become increasingly adversary with the courts

left to make win/lose decisions about the relative merits of a project's positive and negative impacts.

Florida's 1972 State Comprehensive Planning Act was designed to establish a state plan including policies and priorities to guide all state agency budgetary decisions as well as the critical area, DRI and local comprehensive planning programs. The plan was prepared through a traditional comprehensive planning process. This process involved state agencies in the preparation of 14 functional elements which were reviewed by blue-ribbon citizen advisory boards and public hearings. The plan was severely criticized by state agency officials for failing to set specific policies or priorities to guide state or local decisions. It was also criticized for ignoring the political realities of functional agency decision-making processes. As a result, in 1978 the Florida legislature amended the State Comprehensive Planning Act by eliminating the statutory provisions requiring state agency and budget decisions to be consistent with the plan and by reducing it to advisory status. Florida's new governor, elected in 1978, has virtually ignored the plan and it has had no significant impact on state or local regulatory or public investment decisions.<sup>7</sup>

Although it is too early to draw definitive conclusions about the effectiveness of Florida's Local Governmental Comprehensive Planning Act, the evidence to date suggests that the program's results have been mixed. On the one hand, the statute has encouraged 224 of Florida's 460 counties and municipalities to adopt new comprehensive plans.<sup>8</sup> Many of these localities are now in the process of revising their land use regulations to conform to the new plans. Most of these plans, however,

have been prepared by communities that already had existing land use plans and regulations. Some of the new comprehensive plans are an improvement over previous planning documents, while others are simply relabelings of old zoning maps.<sup>9</sup> In addition, over half of Florida's local governments have yet to adopt the mandatory comprehensive plans and have just begun to establish local planning agencies in compliance with the statute.<sup>10</sup> Many of the communities that have failed to complete comprehensive plans are those that have had the least experience with land use planning and regulation. Finally, even in localities that have produced plans, there is concern that the lack of citizen participation in the planning process will limit local ability to implement the plans. Consequently, it is difficult to determine whether Florida's five-year experience with the Local Governmental Comprehensive Planning Act actually has increased local planning capabilities.

Critics of Florida's state growth management system contend that the DRI and critical areas programs served to halt or overly constrain development. They argue that the DRI provision has added to the cost of well-planned development and delayed important projects. Others argue that the loophole in the DRI program has allowed developers to escape regional consideration of project spillovers. The DRI and critical areas programs both have been criticized for over-emphasizing resource protection issues and for not fostering a balanced consideration of competing social, economic and environmental development impacts. The state override provisions of both regulatory programs have also been criti-

cized for creating hostility between state and local government. Both the state and local planning provisions have been criticized for lack of citizen participation and for failing to increase linkages between state and local planning activities.<sup>11</sup>

In spite of these criticisms, the accomplishments of Florida's growth management system have been significant and cannot be overlooked. The DRI and critical areas programs have resulted in the protection of major environmental resources and the consideration of important state-wide and regional issues in the development and regulatory process. Given the previously unsophisticated level of Florida's local land use controls, it is unlikely that these accomplishments would have been achieved without state intervention. In addition, the DRI and critical areas programs have resulted in numerous informal negotiations between state, regional and local officials along with environmentalists and developers. These negotiations have contributed to the more efficient and equitable settlement of major land use disputes. Finally, proponents of the system argue that the state override provisions of the DRI and critical areas programs and the mandatory local planning requirements have encouraged localities to adopt more stringent regulations and carry out planning activities that otherwise would not have been undertaken.<sup>12</sup>

In short, Florida's growth management system consists of a strong state regulatory component, a state planning component, and a distinct local planning component. These three components operate separately and are not highly integrated. Initially, the regulatory component

relied on formal adversary decision-making procedures to resolve land use disputes. During implementation, however, the focus of the regulatory component has shifted to the use of consensus-oriented informal negotiations. In addition, both the state and local planning components have focused on the mandatory preparation of plans and have devoted little attention to mechanisms for improving the planning process. Finally, the major emphasis of Florida's growth management system to date has been on the regulatory component. Critical areas and DRIs have been given much more attention and staff time than either state or local planning. This emphasis is primarily a result of the fact that Florida's growth management system was designed in response to a severe environmental crisis. This emphasis may begin to change in response to shifting socio-economic and environmental conditions and the completion of local comprehensive plans.

In contrast, the Massachusetts growth management system was not designed in response to an immediate crisis. Instead, the system was developed to address a recurring set of land use problems resulting from rapid growth rates and environmental abuse in the late sixties, slower growth rates in the early seventies, deteriorating economic conditions, declining central cities and continuing growth pressures in suburban and exurban areas. In 1975, when Massachusetts' new growth management system was established, the state had been particularly hard-hit by the nationwide recession, and economic conditions were among the worst in the nation. The unemployment rate was significantly above the national average. Housing starts had dropped by one-half in only two years.<sup>13</sup> Comparatively high state taxes and astronomical local property tax rates dampened

development pressure. Between 1960 and 1970, population growth was slightly below the national average and initial 1980 census estimates indicate that the state only added 50,000 people during the entire decade of the seventies.<sup>14</sup>

In spite of slow growth rates, the state was still confronted with numerous land use controversies relating to urban revitalization, industrial and commercial expansion in outlying areas, conversion of agricultural land, wetland protection, the siting of low- and moderate-income housing and the construction of major public facilities. These problems seemed to continue to grow despite previous state efforts to reassert authority over land use decision-making, significant past attention to local comprehensive planning and a relatively sophisticated set of local land use regulations. During the late sixties, Massachusetts had adopted wetland protection and "anti-snob zoning" statutes which gave the state authority to overrule local decisions concerning sensitive environmental areas and exclusionary zoning actions. In addition, by 1975 ninety percent of Massachusetts localities had adopted master plans, or zoning and subdivision regulations. Therefore, even before the growth policy process began, the Massachusetts growth management system consisted of strong state regulatory authority and a high degree of local planning and regulatory activity. To a large extent, however, state and local dissatisfaction with implementation of the state's regulatory framework, the ineffectiveness of local plans and regulations, the contradictory impacts of state public investment decisions and the uncoordinated nature of the entire system led Massachusetts to experiment with the use of an integrated state and local planning process to address growth management

problems.

The Massachusetts Growth Policy Development Act established a "bottom-up" planning process which attempted to involve a local and regional government and broad spectrum of citizens, interest groups and public officials in the formulation and implementation of state growth policies to guide future public and private development decisions. The planning process created by this statute, along with pre-existing state and local regulatory activities, and OSP's policy and decision-making functions combined to form Massachusetts' new growth management system.

At the local level, the growth policy process resulted in the formulation of Local Growth Policy Committees (LGPCs) in 301 of Massachusetts' 351 communities. These committees involved over 5,000 people in direct consideration of local growth management issues. Since many of these people had been previously involved in land use decision-making, and the participation of 5,000 people in a state of six million represents only a small percentage of the population, it is difficult to determine the extent of increased citizen participation which resulted from the process. However, it seems to have been significant. More important, the face-to-face dialogue in the LGPCs increased interaction between citizens, public officials and functional agencies at the local level. This increased interaction had four primary results. (1) the identification of priority local projects and problems which were then addressed through informal negotiations between local officials or among state and local agencies; (2) the recommendation of specific policy or programmatic changes to be included in the state's growth policy framework; (3) a certain degree of increased coordination between planning and functional

agencies at the local level; and (4) specific improvements in a number of local plans and land use regulations.

Interaction between OSP, the Legislative Commission and members of LGPCs also increased communications about land use decision-making between state and local government. State-wide hearings, conferences and workshops involved over 4,000 LGPC members and other citizens in deliberations about the specific issues to be included in the state's growth policy framework. These deliberations helped to inform pending state decisions about regional economic development priorities and specific public investments. Face-to-face dialogue in these meetings, along with OSP and commission staff contact with individual LGPC members, also strengthened interpersonal networks between state and local officials in the growth management system.

The strengthening of interpersonal and intergovernmental networks had three primary results. First, it served to inform OSP and the Commission about important local and regional differences and priorities. Increased understanding of these differences helped state officials to identify and sometimes mitigate the negative impacts of uniform state policies or programs which did not adequately respond to local needs. Second, the networks helped OSP to identify development projects and land use disputes throughout the state that might have state-wide or regional impacts. The Development Cabinet became a forum for conducting informal negotiations about interagency disputes over such major projects and regulatory decisions. In addition, OSP's project monitoring staff often became directly involved in mediating disputes over such projects between localities, developers, environmentalists and state agencies.



Finally, the networks helped to build a state-wide political constituency which could be activated to support specific growth management policy or programmatic actions. Although this constituency largely dissolved after the defeat of the Dukakis administration, it seemed to be particularly effective throughout most of 1977 and 1978.

The information generated by the interpersonal networks and the recommendations included in the LGPC statements helped both OSP and the Commission to develop state growth policy reports. These reports outlined a set of growth policies and priorities to guide state public investment and regulatory actions. The reports also related the policy framework to a set of immediate decision choices, by recommending over 60 legislative and administrative actions to implement the policies. Finally, the reports identified major areas of policy disagreement and recommended future actions to help address these conflicts.

The recommendations from the state reports and the state-wide planning constituency contributed to the passage of seventeen specific statutes relating directly to the major growth and development issues facing the Commonwealth. In addition, the enunciation of state growth policy priorities and the supporting constituency helped OSP to target and redirect hundreds of millions of dollars in local, state and federal public investments to aid revitalization efforts in urban and community centers. The state growth policy framework also helped Massachusetts to win numerous federal grants and increased the proportion of federal funds flowing into the state.

The Massachusetts growth policy progress has been criticized

for abusing administrative discretion and for not being representative. In addition, the policy framework has been criticized for being oversimplistic, for being a "re-hash" of Governor Dukakis' previous growth policies, for overstating the degree of consensus among participants in the land use decision-making field, and for failing to confront politically controversial growth management issues.<sup>15</sup> To illustrate these claims, critics often point to the fact that the growth policy process came to an abrupt halt with the defeat of Governor Dukakis in 1978. The fact that the new administration abolished OSP and the Development Cabinet, and has chosen to ignore the growth policy framework is cited as evidence of the ineffectiveness of the process and lack of support for the policies.

Other analysts contend that the decision of a new administration to dismantle its predecessor's decision-making process and policies does not provide evidence, one way or the other, about the effectiveness of the process or the policies. They argue that a more balanced assessment of the Massachusetts growth management system is that a number of significant steps toward implementation had been made, but that given the short time period that the growth policy process was in operation (1975-1978), it is impossible to assess the effectiveness of the program.<sup>16</sup>

## II. Capacity Building

My Massachusetts experiences convinced me that increasing the effectiveness of state growth management systems requires improving or building state and local planning capacity. From my perspective, building planning capacity and carrying out a statewide planning process are simultaneous and highly interrelated activities. That is, the purpose of the planning process is not only to gather information and to frame alternatives and priorities for decision-making, but also to increase state and local capacity to carry out these activities. Work with the land use subcommittee had convinced me that Massachusetts' state and local planning efforts had failed to keep pace with changing environmental and socio-economic conditions and had not filled the need for current and accurate information necessary to increase the efficiency and equity of land use decision-making, or to guide growth.

Involvement in the Massachusetts growth policy process led me to six basic assumptions about building state and local planning capacity. First, I felt that state planning efforts should focus on carrying out a planning process rather than attempting to prepare a comprehensive plan. Second, I believed that the tangible products of that process should be a set of state growth policies to guide public investment and regulatory decisions. Third, I felt that the policies should be accompanied by recommendations which focus on current decision choices. Fourth, I felt that the planning process should structure information flows from the

bottom-up, rather than the top-down. That is, the process should be decentralized and the policies should be based on local needs and concerns. Fifth, I felt that the process should increase public participation in growth management decisions. Sixth, I felt that the process should strengthen the horizontal and vertical linkages between planning and functional agencies throughout the state.

During the formulation of the Massachusetts Growth Policy Development Act, we had also considered the possibility of adopting mandatory state and local planning legislation and requiring consistency between local plans and land use regulations. Consequently, I had also developed a set of assumptions about these issues. Essentially, I felt that mandatory planning and consistency requirements might increase friction between state and local governments and thus reduce the possibility of developing effective vertical networks in the growth management system. I also felt that mandatory local planning might result in the preparation of perfunctory plans which would not be implemented because of lack of public support. I believed that mandatory planning requirements might draw attention away from the need to focus on current decision choices by placing too much emphasis on the preparation of technical functional elements. Finally, I felt that consistency provisions might result in the relabeling of existing zoning ordinances, the preparation of plans that are so general that nothing could be inconsistent, and the simultaneous amendment of plans and zoning ordinances (i.e., making planning the same as regulation).

The Massachusetts and Florida growth management systems provide a forum for examining these assumptions. It is important to remember, however, that Massachusetts and Florida began their growth management efforts with very different levels of state and local planning capacity. In Massachusetts 90% of all cities and towns had adopted local comprehensive plans or zoning and state agencies considered functional planning a major priority (i.e., housing, water, open space, etc.). In contrast, over 50% of Florida's local governments had no planning experience, and at the state level, planning had never been a priority. In spite of these differences, one of the major objectives of each state growth management system was to increase state and local planning capacity. Partially, in response to these differences, the two states adopted significantly different approaches to the capacity building issue.

Massachusetts focused on a bottom-up statewide planning process involving local, regional and state governments in a cooperative effort to formulate a set of state growth policies. This approach embodies the assumptions listed above. In contrast, Florida addressed the capacity building issue by adopting separate state and local mandatory planning statutes. Florida's planning statutes are concerned primarily with spelling out the technical elements to be included in the plans and requiring agency budgets and local regulations to be consistent with the plans. In short, Florida emphasized the top-down preparation

and mandatory enforcement of plans, while Massachusetts focused on a bottom-up planning process.

Generally, the two cases seemed to support my assumption that implementation of a bottom-up intergovernmental planning process may have more potential than the preparation of a state comprehensive plan in building state government's capacity to make informed growth management decisions. Although it took six years to prepare, including numerous technical studies, interagency task forces, public hearings, etc., Florida's 205 page, 14 element, comprehensive plan has had little impact on state or local growth management decisions. State agency officials have ignored the plan, contending that its policies are too general. that it contains no priorities, and that it is isolated from political reality.<sup>17</sup> In response to these criticisms, the 1978 legislature reduced the plan to advisory status and no longer requires state agencies to consider it in their budget decisions. In essence, the plan has never had any impact on state or local decisions. In contrast, the Massachusetts growth policy process contributed to the formulation of a specific set of state growth policies which were used to guide public investment and regulatory decisions throughout the Dukakis Administration. Although the growth policies were only advisory, and were subsequently dismantled by a new administration, while Dukakis was in office these policies were used to guide major public investment decisions, and to support the passage of legislation which will probably have

significant impacts on Massachusetts' future development patterns.

My assumption about the potential impact of a bottom-up state-wide planning process on improving local planning capacity was not borne out by the Massachusetts case. An MIT study indicates that, although the growth policy process seems to have had positive impacts in approximately 60% of the surveyed communities, only 13% of these were able to translate Local Growth Policy Committee recommendations into action.<sup>18</sup> It is too early to assess the impact of the Local Government Comprehensive Planning Act on local planning capabilities in Florida. As of 1980, only about one-half of Florida's local governments had submitted plans or plan elements to the state. Of these, most were from communities that had significant previous planning experience.<sup>19</sup>

In spite of the problem of limited evidence examples from both the Massachusetts and Florida state and local planning efforts do seem to lend some support to my assumptions about four key issues in building state and local planning capacity. These issues include the need to: (1) focus planning on current decision choices; (2) increase citizen participation; (3) decentralize the planning process; and (4) improve horizontal and vertical linkages between planning and functional agency officials. Generally, it seems that Massachusetts' state planning efforts, the more successful local growth policy committees and the Florida communities which have had positive planning experiences, focused on these actions. In contrast, the less effective local growth policy

committees, Florida's state comprehensive planning effort, and the less successful Florida communities, have not emphasized these processes.

For example, St. Petersburg and Seminole County, two Florida localities which have successfully produced and are currently implementing plans, have focused their planning efforts on immediate problems rather than simple preparation of the mandatory elements. In St. Petersburg the plan emphasized making incremental decisions concerning urban revitalization and historic preservation. Seminole County focused on the immediate need to phase development by preparing a long-term (20-year) and a short-term (5-year) plan. The short-term plan deals with current public facility and regulatory decisions, while the long-term plan sets out general policies.<sup>20</sup> Likewise, the more successful local growth policy committees from the Massachusetts case were those that used the planning process to focus on imminent problems that would have long range impacts. Chelmsford focused on conflicts created by industrial zoning in its flood plain and translated this discussion into specific zoning changes.<sup>21</sup> Similarly, the Massachusetts Office of State Planning focused its review of the local growth policy statements and contacts with local officials on the identification of major land use disputes, programming public investment priorities and the formulation of specific legislative and administrative recommendations to address current development and environmental problems. In contrast, Florida's Division



of State Planning focused on the preparation of fourteen functional elements and long-range projections. This emphasis seems to have diverted attention away from more immediate problems and resulted in policy and programmatic recommendations that were irrelevant to most legislators, state and local officials. Likewise, one of Florida's less successful localities, Hillsborough County, devoted its entire planning effort to the preparation of only the mandatory elements required by statute. When the plan was complete, it was criticized for failing to even consider Tampa's most serious social policy problems (i.e., poverty, minority and agricultural transients). Suburban communities were also upset because the plan did not deal with pressing educational facility needs. The county planning office countered that neither a social policy nor educational element were mandatory, so they were not prepared.<sup>22</sup> Finally, the less successful local growth policy committees were those that focused on perfunctory completion of the OSP questionnaire, rather than using the process to inform the state about local needs or to address pressing local problems.<sup>23</sup>

In short, both the Massachusetts and Florida cases seem to support my assumption that efforts to build planning capacity should attempt to reorient the planning process to focus upon current decision choices which will have long-range impacts (i.e. major public investments, growth phasing, redevelopment needs, specific environmental problems, etc.). The Florida case,

however, does not indicate that mandatory planning requirements will generally divert attention from more immediate needs and concerns. Although Florida's state planning experience and some local activities do seem to support this assumption, other planning efforts under Florida's state mandate do not. In fact some Florida communities seem to have used the consistency requirement to generate citizen interest in current zoning and plan amendments.<sup>24</sup>

The need to increase citizen participation in the planning process is discussed in more detail in the third section of this chapter. For now, it will suffice to say that in both states, the planning processes which seemed to have had the most significant impacts on growth and development patterns moved beyond traditional reactive public hearings and blue-ribbon advisory boards, and focused on the early involvement of citizens and public officials through special citizen committees and diverse public outreach efforts.

My third assumption about building state and local planning capacity involves decentralizing the planning process. I feel that plans or policies which do not take unique regional, local and neighborhood differences into account may not be effective in developing responses to specific growth management problems or helping to inform immediate land use decisions. As indicated by the Hillsborough County example, plans which are prepared by central planning agencies with little input from local groups

often lose their credibility and become meaningless paper exercises.<sup>25</sup>

Likewise, the failure of Florida's State Comprehensive plan to consider important local and regional differences has rendered it almost useless in the review of local plans. The plan's failure to address local or regional issues is partially responsible for the fact that Florida's state review of local plans has turned into a perfunctory process with no impact on state or local decisions.<sup>26</sup>

In contrast, the Massachusetts Growth Policy Act decentralized the state's planning process. It specifically required the Office of State Planning to base its policy and programmatic recommendations on consideration of the local and regional growth policy reports. Although many of OSP's policies had been developed before the growth policy legislation was enacted decentralizing the planning process required OSP to test these policies in the context of regional differences and resulted in the addition of a number of policies in direct response to local concerns (i.e., the preservation of agricultural land water supply, etc.). The increased concern about local regional differences is also illustrated by the fact that OSP's final growth policy report is structured around these issues (i.e., local, regional and state perspectives on growth) rather than functional or policy elements.<sup>27</sup> The potential of decentralizing the planning process is also suggested by the fact that many of Florida's more successful local plans and the more effective local growth

policy committees based their recommendations on direct input from neighborhood associations. For example, Dade County's comprehensive plan consisted of a compilation of 20 neighborhood plans which were based on input from a diverse set of neighborhood groups.<sup>28</sup> In Massachusetts, Cambridge and Newton prepared their local growth policy statements by sending the OSP questionnaire to neighborhood agencies, and then preparing the city's general statement from these responses.<sup>29</sup>

In short, the Massachusetts and Florida cases helped to convince me that state and local planning capacity might be increased by decentralizing the planning process. This will require shifting away from the traditional top-down planning approach in which a centralized agency prepared a plan and then subjects it to review at the regional, local or neighborhood level. Decentralization requires plans or policies to be generated from the bottom up. This involves using local input as the primary foundation for the plan rather than as a mechanism for amending centrally conceived recommendations. Placing localities in a creative rather than a reactive role may help to increase planning capacity by forcing state plans and policies to reflect the political realities of diverse local or neighborhood needs and concerns.

My fourth assumption about building state and local planning capacity relates to strengthening the horizontal and vertical network linkages between planners and functional agencies throughout the

growth management system. This involves increasing the professional, interpersonal and political interactions between planners and agency officials, rather than simply dealing with the formal flow of information. Strengthening network linkages seems necessary because the implementation of plans or growth policies requires coordinating the regulatory and public investment decisions of numerous state and local functional agencies. This can only be done if agency officials are in direct contact with one another and have channels for informing each other about pending decisions. Without this interaction, inconsistent agency decisions often have contradictory growth impacts and destroy efforts to guide growth. In addition, if functional agency officials are not involved in the planning process or view the resulting policies as irrelevant to their day-to-day decision-making responsibilities, implementation of the plan may be impossible.

For example, although Florida's state comprehensive plan was supposed to be produced by a set of interagency task forces it appears that the Division of State Planning did not attempt to strengthen or sustain interagency network through the planning process. The plan was essentially prepared in two stages. First, the interagency task forces produced functional elements which were reviewed by citizen advisory boards, revised, and submitted to DSP. Second, DSP unilaterally compiled the functional elements and synthesized them into a single comprehensive plan which was then reviewed in public hearings. While the interagency task

forces had the potential of increasing horizontal communications and network linkages. These networks dissolved during the long period required to synthesize all of the complex functional elements. In addition, in the effort to synthesize the diverse functional elements, DSP seems to have over-generalized and lost sight of specific agency problems and priorities. Since more emphasis was placed on synthesizing the elements than on strengthening horizontal network linkages, there was no mechanism for continually ensuring that the more general policies actually reflected agency needs. Consequently, when the plan was presented to the state legislature, opposition from agency officials and complaints that the plan did not reflect the political realities of agency decision-making significantly contributed to the legislative decision to reduce it to advisory status. A similar process seems to be occurring with regard to Florida's state review of local plans under the Local Government Comprehensive Planning Act. The statute requires the state to review and make written comments on all local plans. The review provision could have provided an opportunity for increasing vertical communications and network between state and local government. However, only one planner has been assigned to review the local plans. The official has little contact with localities, and spends most of his time producing written reviews. Consequently, the review process is viewed as perfunctory and has little impact on local plans or regulatory decisions.<sup>30</sup>

In contrast, both the state and local planning efforts in Massachusetts and Florida which seemed to have had the most impact on actual decisions focused on strengthening the horizontal and vertical network linkages between planners and functional agencies. For example, in Florida's Seminole County, public investment decisions have been coordinated with the planning and regulatory process by having all applications for rezonings or plan amendments reviewed by a committee consisting of planners and staff of the county's functional agencies.<sup>31</sup> Likewise, the more successful LGPC's focused on strengthening horizontal network linkages among local functional agencies (i.e., six of the thirteen communities that the MIT survey judged successful in translating the local growth policy process into action defined increasing interaction and altering the flow of information between local boards as their major priority).<sup>32</sup> Finally, OSP's focus on strengthening both horizontal and vertical linkages seems to have been a key factor in the impact of the growth policy framework on state and local public investment decisions. On the horizontal level, OSP's project monitoring process brought state planners into direct contact with functional agency personnel on a daily basis. The "reader process" involved state agency officials in the review of local growth policy statements and brought these officials together in workshops and meetings to discuss the implications of the local reports. The Development Cabinet was also designed to keep the secretaries of development-related

agencies in direct weekly contact with one another. In fact, the discussion and revision of draft sections of the City and Town Centers report was a part of the weekly agenda of Development Cabinet meetings for over four months. In terms of increasing vertical network linkages, OSP's regional liaison staff was responsible for maintaining contact with local officials regarding progress on the local reports and major local development problems that could be resolved through state/local interaction. The project monitoring staff also had to maintain direct communications with local functional agency personnel who were responsible for specific project decisions. Finally, growth policy conferences and workshops throughout the state were used to bring state and local officials together with citizens to discuss major growth management issues.

In short, both the Massachusetts and Florida cases seem to suggest that strengthening horizontal and vertical network linkages between planning and functional agencies may be an important step in increasing planning capacity and enhancing the ability of the planning process to affect growth management decisions. The cases indicate, however, that increasing such network linkages will require more than simple statutory provisions calling for interagency or intergovernmental preparation or review of plans. Both the Massachusetts and Florida planning statutes contain such provisions and in numerous cases the formation of an interagency committee had little effect on actually strengthening network



linkages. The two cases do, however, suggest two factors which seem to be significant in strengthening horizontal and vertical networks. First, active outreach efforts, such as OSP's regional liaison system and the "reader process" seem to be important; contact must not only be made but sustained. Second, structuring interagency and intergovernmental interactions around tasks that are perceived to have actual short- and long-term impacts may help to strengthen horizontal and vertical network linkages. Seminole County's interagency review of zoning and plan amendments seems to be such an activity.. The policy and programmatic review functions of the Development Cabinet and OSP's project monitoring activities are other examples. Finally, OSP's and the Commission's efforts to act upon the input of the local growth policy committees while the growth policy framework was still being developed (i.e., passage of the Agricultural Preservation Restriction Act, packaging and helping to secure approval of grant applications for priority local projects) seemed to help convince the more successful committees that interaction with the state was useful and strengthened network linkages.

In summary, comparison of the Massachusetts and Florida cases served to refine my original assumptions about building state and local planning capacity. The two cases seemed to confirm my assumption that the implementation of a bottom-up intergovernmental planning process may have more potential than the preparation of a state comprehensive plan in building state

government's capacity to make informed growth management decisions. In addition, the cases seemed to support my assumptions about the importance of focusing on current decision choices, increasing participation, strengthening horizontal and vertical networks and decentralization of key issues in building planning capacity.

Comparison of the two cases, however, suggested a number of additional issues that seem to be significant in building state and local planning capacity. First, both the Massachusetts Growth Policy Development Act and Florida's State Comprehensive Planning Act created "one-shot" state planning efforts. Although the Florida statute stated that preparation and revision of the plan should be an ongoing process, the statute did not establish any provisions for updating the plan. Likewise, the Growth Policy Act did not formally establish procedures for reviewing or updating the state's growth policies. The failure of both statutes to establish explicit procedures for monitoring, review and update significantly hampered the efforts of some Florida planners to correct the defects of the original plan, and made it extremely difficult for Massachusetts land use advocates to continue the growth policy process once Dukakis left office. In contrast, Florida's Local Government Comprehensive Planning Act may have more lasting impacts on local planning capabilities because it contains procedures for update and review.

The two cases also seem to illustrate the importance of support from the chief executive in any state planning effort. Planning was a major concern of both Askew and Dukakis. This priority was not continued by either of the state's new governors, and state level planning consequently has suffered. In the same vein the two cases suggest that past planning experience and creative implementation of the planning process may be as important to increasing planning capacity as the statutory framework under which planning is carried out. Thus, while perfunctory compliance with statutory provisions did little to develop state or local planning capacity in either state, creative use of the statutory provisions by skilled planners with the support of citizens and key officials did seem to have an impact.

In short, the two cases convinced me that, while state and local statutes create the structure in which planning occurs, it is the planner's job to translate this structure into actions that will increase the efficiency and equity of land use decision-making. From this perspective it seems that the major failure of Florida's state planners has been to adequately integrate the state and local planning processes. While Florida's Local Governmental Planning Act may eventually increase local planning capabilities, under existing implementation procedures it may do little to strengthen vertical linkages between state and local governments or to help state government in guiding development.

In contrast, the major failure of planners in Massachusetts seems to have been their lack of attention to the issue of creating an institutional structure that would outlast the life of one administration. Although the growth policy process seemed to strengthen network linkages between state and local government and may have helped to build a constituency for specific policies and actions, the Commission and OSP failed to translate these networks and support into an institutional structure that might have continued the process to enhance state planning capacity.

### III. Conflict Resolution

My thinking about informal negotiations as a key issue in state growth management resulted from the fact that one of the most significant outcomes in both the Massachusetts and Florida cases seemed to be the increased reliance on the negotiation process to resolve land use disputes. These negotiations generally involved state, regional and local officials, along with environmentalists and developers in efforts to establish voluntary agreements to protect sensitive environmental resources and to improve the design of developments involving state-wide or regional impacts. In Florida, over 80% of all DRI applications were approved through informal negotiations which established voluntary agreements adding conditions to local development orders.<sup>33</sup> Likewise after considerable controversy over the formal designation of three critical areas, Florida's Division of State Planning has utilized informal negotiations to establish voluntary resource management committees and resources protection agreements in three areas which otherwise might have required formal critical area designation. In Massachusetts, informal negotiations involving diverse interest groups, state, regional and local officials were used to establish a clearcut set of state growth policies and priorities to guide state regulatory and public investment decisions. In addition, OSP's project monitoring staff and the Development Cabinet were directly involved in efforts to mediate disputes and to establish voluntary agreements between various state agencies and local officials concerning fifty major development projects throughout the state.

Before turning to a discussion of the manner in which these outcomes influenced my thinking about the potential of informal negotiations as a key component of state growth management systems, it is important to note that the use of informal bargaining in land use decision-making is not a new phenomenon. The precedents for the use of informal negotiations date back to early zoning ordinances. Although these ordinances were supposed to be self-executing, it has always been common practice for developers to purchase sites, not properly zoned for a project, and then to negotiate with municipal officials to obtain variances or zoning changes. Some of these negotiated agreements improved project design and benefited both the community and the developer. Others involved back-room deals which created windfalls for the developer, resulted in negative environmental and fiscal impacts for the community and generally decreased citizen confidence in local planning and land use regulation.<sup>34</sup>

The use of informal negotiations in land use decision-making became even more pronounced during the mid-sixties. As communities attempted to exert more control over growth rates and development patterns, local officials increasingly turned to flexible regulatory devices such as special use permits, conditional zoning, floating zones and planned unit development ordinances. These techniques gave the community a great deal of decision-making discretion, and local officials used this discretion to engage developers in informal negotiations about conditions for permit approvals. Administrative flexibility and the use of informal negotiations often resulted in the protection of sensitive environmental resources, the preservation of open space and the

provision of community facilities (e.g. sewers, roads, parks, schools, etc.) as part of the developers' responsibilities. On the other hand, the informal negotiation process was also used by localities to slow growth, and to pursue parochial and exclusionary self-interests. For example, in 1968 one witness before the Douglas Commission testified:

Regulations are frequently written so that each apartment developer has to negotiate with the community in order to get in at all. He negotiates either to get a zoning amendment because there is no permitted area zoned for apartments in the community, or he negotiates in order to get a special exception because the zoning ordinance does not permit apartments outright. In both cases the negotiation process is one of trying to bid up the price or cost of the apartment structure in order to limit the number of people who can come in at lower cost. 35

In addition, state and federal agencies have often used informal negotiations to secure intergovernmental agreements on the design and funding for major urban revitalization projects, infrastructure construction (e.g., reservoirs, highways, sewer lines, wastewater treatment plants, etc.) and the enforcement of environmental regulations. Like their local counterparts, some of these negotiations have expedited project approvals and have fostered creative solutions to complex multi-party disputes. At other times, these negotiations have resulted in agreements that give disproportionate benefits to powerful interest groups (e.g., urban revitalization projects which create new commercial opportunities but displace large numbers of low income residents), or have ended in stalemates which simply delay the decision-making process (e.g., negotiations over highway design or environmental impacts).<sup>36</sup>

In short, the use of informal negotiations in land use decision-making is not a new concept, and previous negotiations have had both positive and negative results. The significance of the use of informal negotiations in the Massachusetts and the Florida growth management systems, however, is that by the end of 1978, planning officials in both states were billing informal negotiations and the establishment of voluntary agreements as an alternative to the formal exercise of state regulatory and land use decision-making authority.<sup>37</sup> That is, state planners in both Massachusetts and Florida had come to view the use of informal negotiations as an integral component of their state growth management systems. This outlook is significantly different from the perspective of many land use reform advocates who have characterized informal negotiations as an aberration of the formal land use decision-making process or as a preliminary step (e.g., prehearing conferences) undertaken prior to initiating formal land use control procedures.

My assumptions about the importance of informal negotiating essentially evolved in two phases. First, my Massachusetts experience convinced me that informal negotiations and the resulting voluntary agreements may offer significant opportunities for increasing the efficiency and equity of land use decision-making. Second, analysis of the Florida case helped to support this assumption and also suggested that the effectiveness of informal negotiations in resolving land use disputes is significantly influenced by the formal land use decision-making system.



My Massachusetts experiences in informal bargaining sessions over both policy issues and specific regulatory and development decisions suggest that informal negotiations might increase the efficiency and equity of land use decision-making in four primary ways. First, they may help to reduce decision-making delays. Second, they can translate contentious interactions between disputing parties into cooperative joint problem solving exercises. Third, informal negotiations may facilitate balanced consideration of important statewide, regional and technical issues. Finally, informal negotiations can move the decision-making process beyond the binary "win/lose" alternatives that generally dominate adversary administrative and judicial proceedings.<sup>38</sup>

The potential of informal negotiations in reducing decision-making delays and associated costs is exemplified by OSP's mediation of the Westminster/Fitchburg dispute, and by the Copley Place negotiations. The informal negotiations between Westminster and Fitchburg over the siting of Fitchburg's water supply reservoirs brought a relatively quick end to a dispute which had been brewing for five years. It may be argued that the dispute was settled because a decision was imminent (i.e., the Corps of Engineers was completing final plans for the project). However, had it not been for OSP's successful mediation efforts, it is almost certain that Westminster would have initiated a law suit to stop the construction of the reservoirs on the basis of negative environmental impacts. Judicial action would have delayed and increased the cost of the project. Likewise, negotiations over Copley Place resulted in a very complex development proposal moving

from preliminary discussions to final commitment in a relatively short period of time. The developer signed the first option on the project in April of 1977 and finalized the original lease agreement in December of 1978. In the city of Boston, where some major projects languish in design review for years, eighteen months between signing the option and finalizing the formal lease represents a substantial reduction in the delay which characterizes most urban development proposals.

The time consuming nature of Florida's formal critical area designation process, as compared to the relatively rapid voluntary settlement of three potential critical area disputes (i.e., Swanee River, Hutchison Island and Appalachicola) also suggests the potential effectiveness of informal negotiations in reducing delays and increasing the efficiency of land use decision making. For example, it took almost a year to designate the Florida Keys as a critical area. It then took two and one-half years for the court suit concerning the designation to wind its way through the judicial system. When the designation was declared unconstitutional, legislative action to correct the statute's constitutional defects took another year. The Green Swamp designation also was plagued by similar procedural delays, and it is questionable whether the legislature's actions will prevent similar time consuming administrative and judicial challenges from delaying any new designations. In contrast, negotiations over each of the three informally designated critical areas took less than a year. Clearly, the issues in the Florida keys and Green Swamp cases were more complex, and the gains and losses at stake in the formal designations were higher than in the three informally

designated areas. However, it would appear that by bringing all parties with a stake in the dispute together, and by keeping these parties in direct communication, the three informally negotiated resource protection agreements reduced decision-making delays and resulted in more stable agreements than the formal critical area designations.<sup>39</sup>

The Copley Place negotiations also suggest the potential effectiveness of informal negotiations in translating adversary interactions into cooperative joint problem solving exercises. Joint problem solving in these cases resulted in the identification of trade-offs and forms of compensation which helped to facilitate compromises and increased efficiency and equity by more equally distributing the costs of the decisions. For example, while many of the Copley Place negotiations were stormy - with participants threatening to walk out - knowledgeable observers agree that the negotiations overcame contentious relationships between the developer, neighborhood residents and state officials, and established a positive dialogue which significantly improved project design. The Turnpike Authority agreed to subordinate the rent for the property, if profits were not adequate after 15 years, for the developer's agreement to develop the entire site. Indirect forms of compensation were provided to neighborhood residents by both the state and the developer to reduce neighborhood opposition (i.e., provision of a residential component in the project which included subsidized housing units, increased state subsidies for low and moderate income housing in the surrounding neighborhoods, affirmative action agreements for both construction and operation of the project).

Compromises concerning project design were also made to address specific neighborhood concerns (i.e., the redesign of traffic patterns, construction of pedestrian walkways, softening the project's boundaries, etc.). Although each party did not get exactly what it wanted, sufficient compromises and compensatory agreements were reached so that most participants were satisfied with the settlement.<sup>40</sup>

In the Westminster/Fitchburg case officials of the two communities were not even talking to one another prior to the initiation of negotiations. Instead each community was pursuing its objectives (i.e., securing approval or disapproval of the reservoirs) through traditional political channels (i.e., lobbying local legislators, seeking support of the governor, etc.). The negotiation process brought representatives of the two communities along with state and federal officials into direct contact. The increased communications enhanced understanding of the issues in dispute, reduced tensions between participants in the dialogue, and helped to secure a compromise which was mutually agreeable to both communities (i.e., the construction of two reservoirs instead of three).

In a similar vein, the dramatic difference between state and local relationships concerning Florida's formal critical area designations and the voluntary resource protection agreements seems to support my assumptions about the ability of informal negotiations to transform adversary interactions into joint problem solving exercises.

Each of the formal critical area designations has been characterized by a great deal of controversy and hostility between state and local officials.<sup>41</sup> Under the win/lose dynamics of the critical area process,

debate has focused on approval or disapproval of the signation rather than on establishing agreement about the substantive content of the proposed state regulatory guidelines. In contrast, the informally negotiated agreements protecting sensitive environmental resources in the Upper Swanee River, Hutchison Island and Appalachicola areas were subject to much less controversy than the formal designations. In both the Hutchison Island and Appalachicola cases, the creation of voluntary resource management committees consisting of state, regional and local officials seemed to reduce tensions between state and local government and resulted in compromises concerning voluntary changes in local regulations to protect sensitive areas.

The Westminster/Fitchburg case also illustrates the manner in which informal negotiations may increase the efficiency and equity of land use decisions by fostering more balanced consideration of statewide, regional and various technical issues. Both communities in this dispute supported their positions with a battery of claims relating to the statewide and regional importance of the environmental, social and economic impacts of the development. For example, Fitchburg presented technical information regarding water supply needs, regional flood control problems and the relationship of the project to future center city economic development, to support approval of the project. Although less sophisticated, Westminster presented technical information regarding the statewide need to preserve agricultural land, the social costs of residential displacement, and the regional environmental impacts of reduced river flow to document its position opposing the

project. During the negotiations, it became evident that both communities' claims were overstated. Each community had slanted its technical analyses to support its position. The negotiation process resulted in a more balanced consideration of the statewide, regional and technical issues at stake, and produced a mutually agreed upon technical analysis. The revised analysis indicated that, through modest conservation, Fitchburg could more than adequately meet its water supply needs by increasing the size of two of the reservoirs and eliminating the third. This change also helped to address many of the other technical concerns of both communities and reduced the project's overall costs. Thus, negotiations seemed to create a more balanced consideration of statewide, regional and technical issues (i.e. through data mediation) and helped to facilitate a compromise which resulted in a more efficient and equitable decision for all of the parties involved.

Similarly, during the initial phase of the critical areas program, DSP was accused of overstating the potential negative statewide and regional impacts of development in areas that were being considered for formal designation, and of designing overly strict regulatory guidelines which were based on inadequate technical data in order to win approval of the designations.<sup>42</sup> In contrast, the negotiations establishing voluntary resource management agreements appear to have been characterized by a more balanced consideration of statewide, regional and technical issues. For example, the negotiations between the state, county and a coal mining company in

the Swanee River area resulted in termination of formal designation proceedings as a trade-off for the company's agreement not to mine the river's flood plain. This decision balanced the need to protect water quality against the economic interests of the mining company and 40% of the area's residents who were employed in the mines.<sup>43</sup> The agreement was much less costly for the state, the county, the mining company, and the residents of the area than proceeding with formal designation. Thus, the informal negotiated settlement seemed to provide a more efficient and equitable solution to the area's problems than formal critical area designation.

Finally, the ability of informal negotiations to increase the efficiency and equity of land use decision-making by moving beyond the binary win/lose alternatives that generally dominate adversary administrative and judicial proceedings is also illustrated by both the Westminster/Fitchburg settlement and the Florida DRI program. The Westminster/Fitchburg controversy is a classic example of the type of land use decision that almost certainly would have ended up before the courts if informal negotiations had been unsuccessful. A court would have had to decide the case by either approving or disapproving the project. Consideration of alternatives, such as the construction of two larger reservoirs, would have been beyond the jurisdiction of the court. Consequently, under a judicial ruling, one community would have won, the other would have lost. As indicated above, such a decision would not have been either as efficient or equitable as the compromise which eventually resolved the dispute.

The results of Florida's DRI program also seemed to support my assumption that informal negotiations can increase the efficiency and equity of land use decisions by moving the decision-making process beyond the win/lose alternatives. Between 1973 and 1978, local governments acted on 179 DRI applications; of these, 24 (13%) were approved, 141 (79%) were approved with conditions through informal negotiations, and 14 (8%) were denied. As of mid 1978, only 38 of the local DRI decisions had been appealed to the state Adjudicatory Commission. Of these 21 (55%) were resolved through informal negotiations changing project design and amending conditions.<sup>44</sup> The high percentage of conditional approvals at both the local and state levels suggests that implementation of the DRI program has focused on informal negotiations and compromise rather than simple adversary approval or denial. Many of the conditions attached to the DRI development orders have increased the efficiency and equity of the decisions by addressing the problem of spillovers (i.e. traffic congestion, water pollution), providing public goods (open space), protecting environmentally sensitive areas (swamps, wetlands, etc.) and redistributing the costs of development (requiring developers to pay for the improvement and provision of public facilities).<sup>45</sup>

In addition to supporting my assumptions about the ability of informal negotiations to increase the efficiency and equity of land use decision-making, analysis of the Florida case transformed my thinking about the relationship between informal



negotiations and formal land use decision-making procedures. During my Massachusetts experience I had come to view informal negotiations and the use of adversary judicial and administrative procedures almost as alternatives to one another. That is, I did not explicitly consider the manner in which the formal and informal decision-making procedures were interrelated. For the most part, I assumed that parties were willing to engage in informal negotiations simply to avoid the delays, costs and uncertainty which seem to characterize adversary administrative and judicial procedures.

In contrast, the Florida case suggests that informal negotiations and formal land use decision-making procedures are actually interrelated components of the state growth management system. In addition, since the courts are always the potentially final arbiters of land use conflicts, informal negotiations operate as more of a supplement, rather than an alternative to the formal decision-making system. Finally, the Florida case also suggests that the decision-making roles and criteria of the formal system serve to significantly influence and structure the settings in which informal negotiations take place.

In Florida, informal negotiations concerning the protection of sensitive environmental areas and the regional impacts of large scale development probably never would have occurred

without passage of the ELWMA. Essentially, the formal decision-making procedures of the DRI and critical areas programs, and various related court rulings, created powerful incentives and disincentives for different parties to engage in informal negotiations. The Florida case suggests that the formal land use decision-making system structures the settings in which informal negotiations may take place by significantly influencing at least four critical factors: (1) the parties with formal standing in the decision-making process, that is, who the major participants in informal negotiations may be; (2) the cost of non-agreement for various parties; (3) the relative distribution of power between disputing parties, and (4) the agenda for negotiations.<sup>46</sup> While a complete discussion of these issues is beyond the scope of this thesis, several examples from the Florida case may help to illustrate the manner in which the formal decision-making system creates incentives and disincentives for informal negotiation.

Prior to enactment of Florida's ELWMA, environmentalists and communities concerned with the protection of sensitive resource areas and the regional impacts of large scale development had few effective channels for influencing such decisions. Since Florida had relatively weak state environmental statutes and few local land use regulations, developers operated in a predominantly uncontrolled setting. Major development decisions

were made primarily through the interaction of developers and local officials. The ELWMA significantly changed this situation by giving state government influence over local regulation in cretical areas and by giving regional planning agencies the right to take part in decisions regarding developments of regional impact. More specifically, the provisions of the DRI program limiting the right to appeal local development orders to the division of state planning and regional planning agencies has meant that negotiations over DRI permit conditions have generally involved the locality, the RPA and the developer, but not representatives of individual abutting communities. Thus, although the DRI program has generally expanded the parties participating in large scale development decisions, the provision on standing to appeal has constrained the ability of abutting communities to take part directly in local negotiations. The exclusion of abutting localities from direct participation in DRI decisions has been uted, to a certain extent, by informal negotiations over DRI appeals at the state level, and the decisions of various state-appointed hearing officers to allow abutting communities and even individual citizens to participate in the negotiations.<sup>47</sup>

In short, the DRI program suggests, at least two important interrelationships between formal decision-making procedures and the informal negotiation process. First, the formal system

significantly influences who participates in the negotiation process by determining legal standing with regard to a decision. Second, the flexibility offered by informal negotiations may be used to involve parties that do not have formal standing but have a significant stake in a decision. Finally, the participation of such groups may help to increase the efficiency and equity of land use decision-making by ensuring that important issues are considered and that the costs of the decision are fairly distributed.

Closely related to the issue of participation is the manner in which the formal decision-making system influences the relative distribution of power between the parties involved in the negotiations. Florida's experience with critical area designations highlights the importance of this issue. During the initial phase of the critical area program, informal negotiations played little role in the state's attempt to protect sensitive environmental areas. DSP was convinced that it had clear authority and a mandate to designate sensitive areas. Thus, state planners devoted most of their time to completing technical studies and drawing up guidelines and boundaries for the areas. They tended to ignore local complaints and did not actively involve localities in the decision-making process. In contrast, the power of local governments, citizens and developers to influence the critical area decisions came predominantly from their ability to challenge the designations through adversary administrative appeals and court

suits. In terms of the distribution of power, it seemed that DSP clearly had the upper hand. Although localities could delay the designations, as long as DSP followed proper administrative procedures it seemed that they had the power and support of political leaders to make their decision stick. Localities and developers felt relatively powerless to influence these decisions. Thus, there was little incentive for either party to negotiate.<sup>48</sup>

The intense controversy over the first three designations and finally the Cross Keys Waterways decision significantly changed each group's perception of its relative powers. First, the long drawn out controversies reduced DSP's political support within the legislature. Second, the Cross Keys Waterways decision and the legislative changes reinstating the three areas left a great deal of uncertainty about DSP's power to designate future areas. These events also convinced developers and localities that they had more power in the designation process than they had originally perceived. As each group began to see its relative power position as more equal, it seems to have created an incentive for resolving critical area disputes through informal negotiations. Since DSP was less certain about its ability to win in the formal designation process, it turned to initiating informal negotiations to protect environmental resources. Likewise, the legislature's decision to reinstate the critical areas left localities uncertain about their ability to win further appeals, and seems to have increased their incentives to engage in informal negotiations.<sup>49</sup>

In short, Florida's critical area experience seemed to suggest that the formal decision-making system (including court rulings) have a significant impact on disputing parties' perception of their relative power to win a dispute. The case also seemed to suggest that when the distribution of power is clearly unequal, neither powerful nor less powerful parties will be willing to negotiate. Finally, the critical area experience seems to suggest that the uncertainty involved in relying on the formal system may create a significant incentive for informal negotiations.

The Florida case also convinced me that formal decision-making procedures also influence the prospects for informal negotiations by partially structuring the costs of non-agreement among various parties. For example, under the DRI program the time and expense of completing the required regional impact analysis significantly influences the costs of non-agreement for the developer, the locality and the RPA. Since the developer has already made a substantial investment in the preparation of the regional impact assessment, it often is to his advantage to negotiate with the locality and agree to further conditions, rather than risking denial of the project or the delay of formal appeals. Likewise, in order to deny a DRI permit, a locality must show that it has reviewed the project's positive and negative impacts and has balanced environmental, economic and social considerations. Documenting this assessment is both expensive and time-consuming for the locality. Finally, in order to appeal a

positive DRI ruling, the regional planning agency must make a substantial investment in substantiating the negative regional impacts of the project. Thus, the formal procedures of the DRI program seem to create significant incentives for localities, RPA's, and developers alike to informally negotiate DRI disputes. In essence, the costs of the regional impact assessment for all three groups has become one significant factor in determining the cost of non-agreement among the disputing parties. Certainly, other factors enter into each group's assessment of the costs of non-agreement (i.e., the developer's previous investment in the project, the costs of planned versus piecemeal development for the locality, the specific regional impacts involved, etc.). However, the Florida DRI program does seem to suggest the manner in which formal decision-making criteria can influence the cost of non-agreement for disputing parties and provide incentives for informed negotiations.

The DRI program also illustrates the manner in which formal decision-making procedures may influence the agenda for informal negotiations. Prior to enactment of the ELWMA, regional considerations were rarely taken into account in Florida's large-scale development decisions. By structuring the factors which a locality must take into account in making its decision, the DRI program essentially establishes the agenda for the negotiation process. Under early DRI rulings this agenda focused primarily on environmental considerations, and spillovers such as traffic impacts on surrounding communities. The Estuary Properties ruling, requiring DRI decisions to balance environmental, social and economic impacts of a project, however, have restructured the agenda for both formal decisions and

informal negotiations. Thus, the Florida experience with the DRI program suggests the importance of the interaction between formal decision-making procedures, court rulings and informal negotiations in resolving land use disputes.

In addition to influencing my assumptions about the interrelationships between formal decision-making procedures and informal negotiations, comparison of the Massachusetts and Florida cases also suggested three significant obstacles to the use of informal negotiations to resolve land use disputes. These obstacles include: (1) the problems of insuring representativeness in the negotiation process; (2) the problems of initiating negotiations between parties with unequal power; and (3) the problems of binding parties to voluntary agreements.<sup>50</sup>

Both the Massachusetts and Florida cases seemed to indicate that one of the major obstacles to relying on informal negotiations in resolving land use disputes might be the problem of ensuring the representativeness of the negotiation process. For example, under Florida's DRI program, the first case to be appealed to the state Adjudicatory Commission involved a development which had received local approval through informal negotiations between the developer and the locality. These negotiations resulted in the attachment of a variety of conditions to DRI permit. However, neither an abutting county nor the RPA were involved in the negotiations. The abutting county eventually convinced the RPA that the conditions imposed did not adequately protect regional interests, the case was appealed, and the permit was eventually denied. The failure of the negotiation process to include representatives from



the RPA and abutting county resulted in an agreement which was not satisfactory to several major parties with a stake in the development. These parties turned to formal adversary procedures to air their complaints and the negotiated settlement was eventually overruled.<sup>51</sup>

At a larger scale, problems concerning representativeness continually plagued negotiations over general policies and programmatic priorities throughout the Massachusetts growth policy process. Critics contended that the LCGPC's were not representative and, therefore, that the policy and programmatic recommendations represented only the views of a small planning constituency throughout the state. While OSP and the Commission continuously attempted to involve major interest groups and regional representatives in the policy negotiations, the state's growth policies were criticized for not adequately representing the concerns of low- and moderate-income housing groups, environmentalists and suburban interests. This criticism was eventually used as part of the new administration's rationale for not continuing to implement the policy framework (i.e., the new administration argued that the policies only represented the views of Dukakis, Keefe and a small group of central city advocates rather than a representative cross-section of the general public). In short, both the Massachusetts and Florida cases suggest that it may be extremely difficult to ensure that informal negotiation processes are representative, and that the prospects for implementing negotiated settlements may be reduced if the process was not representative.

Another major obstacle to using informal negotiations to increase the efficiency and equity of land use decision-making is the problem of bringing parties with unequal power to the bargaining table. If a party feels that it has the power to achieve its objectives or to simply win a

dispute, the group may refuse to negotiate. Likewise, politically powerless groups may also not want to participate in negotiations because they see little to gain and feel that they may be co-opted by the process.<sup>52</sup> The manner in which the unequal distribution of power contributed to reliance on formal adversary mechanisms of conflict resolution in Florida's early critical area disputes has already been mentioned. In Massachusetts, the unequal power problem is exemplified by the fact that one of the most limited accomplishments of the growth policy process was in the low- and moderate-income housing field. Neither OSP nor the Commission were very successful in bringing low-income housing advocates and suburban interest groups together to negotiate either specific or general approaches to the state's exclusionary zoning problems. In part, the limited accomplishments in this area seemed to have resulted from the low-income group's lack of political power, and the power of suburban groups to overcome the formal mechanisms designed to give these groups more power (i.e., the anti-snob zoning act, state housing subsidies, etc.). Thus, both the Massachusetts and Florida cases indicate that informal negotiations may be more successful in addressing conflicts in which disputing parties have relatively equal power, than in dealing with conflicts in which the distribution of power is clearly unequal.

A third major obstacle to the use of informal negotiations in land use decision-making is the problem of binding parties to negotiated settlements. If informally negotiated settlements are not implemented, they certainly will not help to increase the efficiency or equity of land use decision-making. The predominate mechanisms used to bind parties to negotiated settlements in the Florida and Massachusetts cases were con-

tracts, grant agreements and permit conditions. However, both states encountered problems with enforcing these mechanisms and ensuring that parties lived up to their agreements. For example, in Florida the state does not monitor whether developers comply with conditions imposed by DRI development orders. Instead, the state relies on citizen or local complaints about violations. If violations are discovered, it may take expensive court action to ensure enforcement.<sup>53</sup> Likewise, in Massachusetts, some of the informally negotiated settlements on major urban development projects fell apart when parties did not, or could not, live up to their agreements. For example, the informally negotiated agreement to develop a downtown mall in Pittsfield came apart when the city could not live up to its agreement to clear a certain part of the parcel. Because of the city's failure, a HUD grant was withdrawn and the financial feasibility of the project evaporated. Even though the contracts and grant agreements were designed to bind the parties to a settlement when they could not be enforced, the settlement dissolved.

#### IV. Constituency Building

Involvement in the growth policy process convinced me that state intervention into land use decision-making is a highly political activity which requires the support of an informed and broad based constituency in order to be effective. My Massachusetts experiences also indicated that building such a political constituency would require increasing the effectiveness of public participation in the state growth management system. Two factors seemed to be critical in this effort. First, it would be necessary to move beyond traditional hearings and blue ribbon advisory boards and to utilize the participatory process to give citizens a creative role in land use planning and decision-making. Second, it seemed necessary to utilize the participatory process to build consensus among and link the diverse coalitions operating within the state growth management system. Essentially, my Massachusetts experiences led to five basic assumptions about the characteristics of such a participatory process:

1. The process should be broadly based and open, attempting to involve representatives not only of vested interests and the "natural planning community", but of all diverse groups that have a stake in the issues under consideration.
2. Participation should be initiated early in the decision-making process before alternatives have become constrained.
3. Citizen involvement should be ongoing instead of a one time exercise.
4. The process should involve dialogue and inquiry-- two way communications between citizens interest groups and public officials and the contrasting of alternative proposals rather than, one way citizen reaction to preformulated staff recommendations.

5. The process should focus on forging agreement among divergent interests and create networks between existing coalitions in order to create a political constituency to support and monitor the adoption and implementation of recommended policies and actions.

Since the Florida growth management system has relied on the use of traditional public hearings as the major participatory mechanism in its state growth management system, it is difficult to assess these assumptions in the context of the two cases. However, it seems that many of Florida's hearings have had little impact in helping to inform or support state growth management decisions. On the other hand, in the Florida cases in which public participation moved beyond reactive hearings to set up special committees, or when environmentalists worked to link existing coalitions among Florida's unorganized conservation movement, it appears that effective political constituencies were formed to influence public action. The examples outlined below suggest the manner in which a participatory process based on the preceding assumptions may help to build a political constituency to support state growth management actions.

Ensuring that the participatory process is representative and open is essential to building an informed and supportive political constituency for growth management actions because land use decisions involve numerous social, environmental and economic concerns and impacts. Decisions which are based primarily on one set of interests may be inequitable and may stir opposition from groups and individuals who feel that their interests have not been considered in the decision-making process. Narrowly-based coalitions may have the political power to pursue their interests and ignore opposition for short periods of time.

However, changing socio-economic conditions and the controversy caused by sustained opposition may reduce this power and limit the ability of such coalitions to continue to dominate the growth management system.

For example, when Senator Saltonstall convened the Massachusetts land use subcommittee, environmentalists had dominated the state's growth management system for more than five years. Changing socio-economic conditions and sustained opposition from the development community, however, was beginning to erode public support for some of the state's environmental programs and agencies. This opposition and waning public support for the environmental coalition had also contributed to the stalemate over passage of state-level land use legislation. Saltonstall used the land use subcommittee to carry out a representative participatory process. Instead of relying on the natural constituency of environmentalists to develop legislation, he brought together a broadly-based group consisting of fifty representatives of business, industry, labor, environmental organizations, state, regional and local officials to analyze the state's growth management problems and make recommendations for legislative action. Representative participation in the drafting of the Growth Policy Development Act resulted in the consideration of a number of alternative approaches to the state's growth management problems and eventually led to the formation of a political constituency to support the subcommittee's recommendations. This constituency helped to convince the Governor and Keefe to support the legislation and seemed to be instrumental in securing legislative passage of the bill.

In contrast, Florida's Environmental Land and Water Management

Act was based almost solely on the input of environmental interest groups. In fact, some developers and local officials contend that they were purposefully excluded from the legislative drafting process.<sup>54</sup> In addition, until recently, there was little effort to ensure representative participation in specific DRI and critical areas decisions. The lack of representativeness in both the drafting and implementation process has contributed to criticism that the statute has an environmental bias and is intended only to limit and stop growth. This criticism, the fact that both the DRI and critical areas programs increase the cost of development and reduce local land use authority, along with the lack of representative participation in the decision-making process, all appear to have reduced public support and increased opposition to the two programs. In 1979, this opposition led to a court suit which brought the critical areas program to a complete halt. Developers and local officials had chosen to voice their opposition through the judiciary and succeeded in challenging the constitutionality of the program. The environmental coalition still had enough power to win legislative approval of amendments which temporarily reestablished the existing designations. However, the coalition did not have enough power to secure amendments which would permanently redesignate the areas or totally correct the constitutional defects. Consequently, the future of the formal critical areas designation process remains uncertain, and no new areas have been formally designated since 1975.<sup>55</sup>

Opposition to the critical areas program seems to have resulted from a variety of factors. However, the importance of representative

participation in building a political constituency to support growth management actions is suggested by contrasting the fate of the formal designations with that of the three informally designated areas. In the informally designated areas, intergovernmental resource management committees have prepared plans and regulations to protect sensitive environmental resources. The committees have also been able to secure the political support necessary to adopt and implement the plans and regulations. In contrast to local opposition to the formal designations, one of the factors that seems to have influenced local political support for the voluntary resource protection agreements is that participation in the decision-making process was more representative. The resource planning and management committees involved state, regional and local officials in analyzing and deciding on the best approach for protecting the potentially critical areas. Participation of local and regional interests on these committees was actively solicited, rather than simply relying on public hearings to secure comments on DSP recommendations.<sup>56</sup> Thus, it seems that in both the Massachusetts and Florida cases, representative participation was helpful in developing an informed political constituency to support state growth management actions.

My assumptions about the need to generate early citizen involvement in order to build political constituencies stems from the fact that it takes a great deal of time to generate both the information and organizational capacity necessary to influence growth management decisions. If citizens are not involved from the very outset of a decision-making process, alternatives for action may become quickly



constrained and participants will have little opportunity to influence the pre-established alternatives.<sup>57</sup> In addition, without early citizen involvement, adequate time may not be available to organize a constituency to support or oppose a decision. In short, without early involvement, both the creative potential of citizen input is lost and the probability of developing an effective political constituency is reduced.

The potential of early citizen involvement in utilizing citizen creativity and helping to build a constituency to support state growth management actions is suggested by the difference in citizen response to OSP's original Toward a Growth Policy for Massachusetts and the final City and Town Centers report. Public reaction to Towards a Growth Policy was largely negative, while the response to City and Town Centers was much more positive. One plausible explanation of this difference is that City and Town Centers was based on an early active and open participatory process which built a constituency for many of its policy and programmatic proposals, while Towards a Growth Policy was prepared exclusively by OSP's staff with no public input. Many of the policy and programmatic proposals in the two reports were similar. However, the public response was different because Towards a Growth Policy was viewed as OSP's report, while City and Town Centers was viewed by many as including their own ideas. Consequently, a constituency was developed to support City and Town Centers, because the report was viewed as representing many of the ideas which grew out of the deliberations of the Local Growth Policy Committees.

The need to involve citizens from the outset of a decision-making

process is also suggested by the problems that Florida environmentalists have had in utilizing the information generated by the DRI program. Under DRI procedures, the only mechanism for citizen participation is the public hearing, which comes at the very end of the permit review. As Healy points out, "the DRI process has done little to involve individuals and citizen groups in project review. . . .Information brought out by the regional council review is useful. . .but Florida does not have enough organized environmentalists to take advantage of this new asset. The relatively short time that elapses between initial application and final decision on the development order meant that ad hoc groups have little time to organize. . . ."58 Thus, Florida's experience with DRI hearings seemed to support my assumption about the need to involve citizens early in the decision-making process. In addition, early involvement of regional, county and local officials in the resource management committees also seems to have given local officials time to organize an effective political constituency to support regulatory changes necessary to secure state agreement to curtail the formal critical areas designation process. Thus, in both Florida and Massachusetts, early citizen involvement in the decision-making process seemed to enhance the prospects of building a political constituency to support growth management actions.

My Massachusetts experiences also convinced me that public participation in the growth management system must be a continuous and ongoing activity if an effective political constituency is to be established to support land use decisions. As mentioned earlier, one of the major weaknesses of the growth policy process was that neither OSP

nor the Commission developed mechanisms for continuing citizen participation. Once the cycle was broken, the political constituency which had been built dissolved. While the constituency-building efforts in Florida were not as extensive or broadly-based as those in Massachusetts, the activities which did not occur seemed to illustrate the same problem. For example, during the drafting of the Environmental Land and Water Management Act, Florida environmentalists and public officials did attempt to encourage the participation of other environmental groups and worked to build a constituency to support the bill. These activities included: holding workshops and conferences; establishing special citizen committees; and sending out public information bulletins. Once the legislation was enacted, however, all of these activities came to a halt. By late 1974, when approval of the DRI guidelines came before the legislature, only a fragment of the constituency which had originally supported the bill remained in contact with one another. As a result, Florida environmentalists were not able to mount sufficient political support to change the proposed DRI guidelines. Commenting on the defeat of more stringent guidelines, one Florida environmentalist stated, "unfortunately, most Americans are so naive about our political processes that they believe passing a law solves everything. We organize and work like fury to get a good law on the books, then turn our attention to other things as if the battle has been won."<sup>59</sup> Since there was no ongoing effort to tie the Florida environmentalists together, they were not able to organize quickly enough to have an impact on the DRI guidelines decision. Likewise, it seems that a turning point in the process

of drafting Florida's state comprehensive plan came when DSP did not continue to meet with the interagency task forces and citizen advisory boards while it was synthesizing the elements of the comprehensive plan. During the long synthesis process, all citizen involvement halted and the support which had been built declined.

In contrast, one of the most significant factors which seems to have contributed to the development of the political constituency which supported Massachusetts' growth policy framework was that OSP established a set of ongoing participatory activities which sustained public involvement from 1976 until Dukakis left office. For example, it took OSP almost a year to synthesize the information from the local growth policy statements into its state-wide report. Unlike Florida's planning agency, however, OSP did not suspend citizen participation during this period. Instead, specific activities were undertaken to continue the involvement of localities and interest groups in policy formulation and programmatic decisions. These efforts included the reader process -- which directly involved groups in evaluating local statements; the second round of Bicentennial grants -- which provided funding for implementation of local growth policies; Dukakis' Regional Economic Development Conferences -- which involved localities in setting regional public investment agendas; OSP's personal contact with the business community, housing advocates and other interest groups on specific projects and program recommendations; the "excerpts report" -- which gave localities an opportunity to compare their perspectives with those of other communities; and the Regional Planning Agency hearings -- which were required by statute to allow

localities to comment on the regional reports. These activities simulated direct interaction between major actors in Massachusetts' growth management system and helped to establish interpersonal networks and communications channels which formed the basis for building the political constituency.

In short, both the Massachusetts and Florida cases convinced me that sustaining ongoing public participation is important to developing a political constituency to support state growth management decisions.

The development of a political constituency to support state growth management actions also appears to require placing citizens in a creative rather than a reactive role. That is, structuring the participatory process to include two-way dialogue and inquiry rather than simple citizen reaction to preconceived proposals. Participatory processes which involve citizens in the open discussion of problems, the formulation and evaluation of alternative solutions, and selection among these alternatives appear to result in proposals which are perceived as belonging to the citizens rather than the agency sponsoring the process. Dialogue and inquiry seem important to building a political constituency because citizens and interest groups are more concerned about supporting and preserving their own ideas than the ideas of others.<sup>60</sup>

The potential of dialogue and inquiry in helping to develop a political constituency to support state growth management actions is suggested by the public support of Massachusetts legislation pro-

viding for state purchase of development rights on agricultural land. The farmland preservation issue had not been a part of OSP's original growth policy framework. However, Commission analysis of the local growth policy statements indicated that over 70% of the communities responding to the OSP questionnaire considered the preservation of agricultural land to be important.<sup>61</sup> The Commission established a subcommittee to investigate the issue and a participatory process ensued involving agricultural interest groups, LGPC members, state and local officials in consideration of the problem. Dialogue and inquiry about the issues resulted in a number of alternative legislative proposals (i.e., transfer of development rights, strict agricultural zoning, etc.). Finally, the group agreed upon the purchase of development rights program. Originally, Keefe and the governor did not support the proposal. However, the political constituency which developed during the subcommittee's deliberations eventually won executive support and helped to secure legislative passage of the bill.

The differences between political support for Florida's voluntary resource protection agreements and opposition to the formal critical areas designations also suggest the importance of dialogue and inquiry in building political constituencies. Citizen participation in formal critical areas designations has primarily involved public hearings in which citizens react to DSP proposals for critical areas boundaries and regulatory guidelines. These hearings have been characterized by stormy citizen reaction and opposition. In contrast, the voluntary resource management agreements have been drawn up by joint participa-

tion of citizens, state, regional and local officials. The dialogue and consideration of alternative forms of regulation in drafting the resource management agreement appear to be one factor in helping to generate political support for local regulatory changes. In short, the Massachusetts and Florida cases seem to suggest that participatory processes involving dialogue and inquiry can help to build political constituencies to support state growth management actions.

My Massachusetts experiences convinced me that in order to develop a political constituency to support state growth management actions, a participatory process must forge consensus among divergent interests and link existing coalitions into a common network which can be used to activate support or opposition to specific decisions. As indicated earlier, there is no one interest group or coalition that has sufficient power to dominate a state growth management system. Environmentalists have seen their previous dominance undercut by changing socio-economic conditions. Developers have never completely regained the influence that they had before the environmental movement. In addition, there is a constant struggle among urban, suburban and rural interests and between different geographic regions to influence growth management decisions. Since no single group has the power to dominate the system, effective action depends on forging compromise and consensus among a diversity of interest groups.<sup>62</sup> Likewise, developing an effective political constituency depends on linking different coalitions into a broader group that can generate sufficient power to support growth management actions.

Senator Saltonstall's Land Use Subcommittee and, in fact, the entire growth policy process, represent examples of participatory activities that focused on forging consensus and linking diverse interest groups to support state growth management actions. The deliberations of the land use subcommittee brought a set of diverse interests together to negotiate an approach for dealing with the state's land use problems. The first phase of the subcommittee's work consisted of identifying the positions of different participants, analyzing technical data on state land use problems, and developing interpersonal trust and networks which could allow the subcommittee to function as a cohesive group. The second phase of the subcommittee's work consisted of examining alternative proposals, identifying trade-offs and building consensus about a specific course of action. The third phase of the subcommittee's activities involved linking moderate environmentalists, development interests, along with some state and local officials, into a constituency to support the legislation. These activities helped to mount a state-wide political campaign to support passage of the bill. Likewise, many OSP and Commission actions during the growth policy process were designed to foster consensus and link diverse coalitions into a political constituency. For example, OSP's reader process -- which involved public officials and representatives of various interest groups in the review of the local growth policy statements -- was an attempt to build consensus about the policy implications of the local reports. In addition, face-to-face interaction of these groups in conferences and



meetings with OSP staff was designed to strengthen network linkages between the diverse interest groups. The Commission staff used a similar process in preparing the legislation included in its report. Representatives of major coalitions were brought together in informal drafting sessions to hammer out the specifics of each bill. When these proposals came before the legislature, the Commission would contact the coalitions that had been involved in the drafting process to activate support for the bills. These activities and the political constituency that resulted appear to have helped to secure the passage of seventeen pieces of legislation that were recommended in the Commission's report.

Likewise, in Florida, two of the key factors which led to the passage of the Environmental Land and Water Management Act were the consensus and constituency-building activities of the Conservation 70's (C-70's) group. Although C-70's' efforts were not a formal public participation process, they did involve bringing diverse unorganized environmental groups together with key legislators and public officials to forge consensus and develop a lobbying force for the bill. As Carter states, ". . .while the legislators who served as trustees all had some conservation interests, some also had strongly conflicting development interests. . . .Yet, so much was needed on which wide agreement was possible, that the advantages to be gained from giving legislators a place in C-70's were perhaps compelling. . . ."63 In contrast, the lack of success of Hillsborough County's local planning effort has been attributed partially to the fact that citizen participation in

the planning process did not attempt to build consensus or link diverse interests. Reactive public hearings simply focused on local complaints about the plan and no attempt was made to resolve differences or to build a constituency consisting of the different interests. Consequently, political support for the plan has been nonexistent.<sup>64</sup> In short, both the Massachusetts and Florida cases appear to suggest the importance of using the participatory process to build consensus and link diverse coalitions in order to develop a political constituency to support state growth management actions.

While these examples are not definitive, analysis of the Massachusetts and Florida cases suggests that Florida's growth management efforts might have been enhanced by moving beyond traditional hearings and utilizing public participation more effectively to create political constituencies. It also appears that Massachusetts' emphasis on expanding citizen participation was one of the major facts which helps to explain the political support for various growth policy and programmatic recommendations. In both Massachusetts and Florida, it seems that the public participation activities that were most effective in building political constituencies included the early involvement of a representative group in an ongoing process which provided opportunities for dialogue and ended with efforts to build consensus and link diverse coalitions around common interests.

V. Notes

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3. 351 So 2nd 1062.
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8. Diane Tunick, "Environmental Planning: The Impossible Dream," Florida Trend, January 1981, p. 15.
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10. Diane Tunick, op. cit., p. 15.
11. See generally, Thomas G. Pelham, op. cit.
12. See generally, Robert G. Healy, op. cit.
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22. Robert A. Catlin, op. cit., p. 5.
23. Lawrence Susskind and Michael Elliott, op. cit., pp. 35-44.
24. Edith Netter and John Vranicar, op. cit., p. 21.
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26. Thomas G. Pelham, op. cit., p. 201.
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28. Edith Netter and John Vranicar, op. cit., p. 19.
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36. Malcolm D. Rivkin, op. cit., p. 3.
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51. Robert G. Healy, op. cit., pp. 123-125.
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CHAPTER FIVE. CONCLUSIONS

The preceding analysis of the Massachusetts and Florida state land use reforms has focused on three issues which appear to be important to increasing the effectiveness of state growth management systems: (1) building state and local planning capacity; (2) increasing the use of informal negotiations to supplement adversary land use decision-making procedures; and (3) increasing the effectiveness of public participation in building political constituencies to support state growth management decisions. The two case studies provide insight into the relative effectiveness of the consensus-oriented approach to state growth management (i.e., capacity building - conflict resolution - constituency building) and the adversary approach (i.e., the redistribution of authority - mandatory planning). This chapter will consider the basic question with which this dissertation began: Is increasing the efficiency and equity in land use decision-making predominantly a question of reasserting state authority or of reorienting the state planning process?

Most previous analyses of state growth management systems have focused on the distribution of planning and regulatory authority between state and local government as the key issue in increasing the efficiency and equity of land use decision-making. However, those analyses have not adequately considered the potential of the consensus-oriented approach. The Massachusetts and Florida cases suggest that a consensus-oriented state planning process may have more potential for increasing the efficiency and equity of

land use decision-making than reasserting state authority over local land use decision. That is, the central issue in the reform of land use management is not so much who has the final authority to make land use decisions but how those decisions are to be made.

Healy contends that a central element in any effective state growth management system is state authority to review and override certain local land use decisions. He states, "Together (selective state override and mandatory local planning) they force local governments to make careful decisions in matters of purely local interests, while making it possible for the state to intervene if nonlocal interests are injured or ignored."<sup>1</sup> Likewise, Pelham argues that the state should have strong central veto power over virtually all land use decisions by requiring local plans and regulations to be consistent with state plans or policies.<sup>2</sup>

Essentially, the advocates of this conventional view of state growth management presume that by subjecting local land use decisions to state promulgated criteria and state administrative review, issues of greater-than-local concern will be taken into account in the decision-making process and more efficient and equitable land use decisions will result.

The reassertion of state authority over local land use decisions is supposed to increase the efficiency and equity of land use decision-making in four ways: (1) state override of local decisions regarding sensitive environmental areas should serve to protect "public goods" such as water supply and quality; (2) state-mandated criteria for reviewing large-scale developments should distribute the costs of these projects



more equally by forcing localities to consider negative externalities and spillovers; (3) mandatory local planning and consistency requirements should increase certainty in the decision-making process and prevent arbitrary local decisions resulting in windfalls and wipeouts. Finally, state requirements should increase the accountability of local land use decision-makers leading to more equitable decisions. In short, the conventional view has defined the growth management problem as the inability or unwillingness of local government to take state-wide or regional considerations into account. The solution embodied in this problem definition is to shift authority for major land use decisions from localities back to the state. Those who advocate this view argue that judicial review is adequate to resolve any disputes that emerge between state and local government, between environmentalists and developers, or between other competing interests.

In contrast, other analysts contend that the reassertion of state land use authority is at least as likely to exacerbate as alleviate land use problems. As Weaver and Babcock state:

Reformers kid themselves if they believe that many of the problems plaguing the administration of land use controls can be solved by replacing a local official with a state or regional official. . . .It is no more difficult to abuse or bungle regional powers than it is to abuse or bungle municipal powers. . . . The issues are not of the sort that can be resolved by the application of expertise. They are fundamentally political, frequently involving the balancing of conflicting, but equally valid and important, interests and objectives. They should be made by elected officials who are close enough to the situation to define all the competing considerations, and who operate within a procedural framework that offers some hope of being able to give every side a fair hearing within a reasonable time.<sup>3</sup>

In this context, an increasing number of planners have begun to advocate consensus-oriented planning styles and informal negotiation as an approach to state growth management. Advocates of this view argue that reasserting state authority isn't as important to effective state growth management as bringing the key actors in the land use decision-making process to a clearer understanding of the cost and benefits associated with land use decisions. They also contend that it is important to create incentives for disputing parties to negotiate over the mitigation of various development or regulatory impacts and to find ways of compensating inequitable losses. That is, there is a need to create settings in which all the key stakeholders (i.e., those affected by spills, externalities, the loss of public goods) or their spokesmen can come together and work out efficient and equitable trade-offs to resolve land use disputes. The consensus-oriented approach assumes that the state government does not always have sufficient understanding of the value, technical or other issues involved in a decision to justify sole reliance on state override as the primary mechanism for increasing efficiency and equity in land use decision-making. The consensus approach also assumes that conflicts over land use decisions are inevitable, and because of the value, technical issues, and multiplicity of interests involved, courts may not always be the most appropriate setting to work out these conflicts. Rather, the consensus-oriented approach assumes that land use decision-making involves a variety of different impacts for various interests (i.e., the distribution of gains and losses) and that these need to be negotiated by those most affected by the decision. The

role of state government is to create incentives for negotiation, to create a context in which they may occur and to establish rules for the negotiation process.

The consensus-oriented approach to state growth management has focused on both collaborative land use and growth policy formulation processes and informal resolution of specific land use disputes. The approach is based on two primary assumptions. First, adversary decision-making mechanisms provide an insufficient set of opportunities for productive conflict resolution.<sup>4</sup> Second, costly and frustrating adversary proceedings can be reduced and better decisions can be produced, by seeking consensus among disputing parties as early as possible in the decision-making process.<sup>5</sup>

The consensus-oriented approach to state growth management assumes that the resolution of land use conflicts depends on the exchange of information, the sharpening of the definition of issues at stake, the collaborative examination of conflicting values, the opportunities to contrast alternative assumptions, and the search for solutions that maximize joint gains in both policy formulation and specific decision-making processes. The overriding assumption is that this approach will result in decisions which are more likely to be implemented because they will represent mutual agreement of all parties rather than the imposition of one group's solution over another's, through the exercise of political or judicial authority.<sup>6</sup> In short, the consensus approach attempts to shift the focus of the state growth management debate. Instead of concentrating on redistributing authority from local to state government and

using mandatory planning (in an effort to guide case-by-case or policy-by-policy administrative and judicial decision-making), the consensus approach promotes the use of informal negotiations and ad hoc resolution of disputes.

As indicated throughout this thesis, the Massachusetts growth policy process is a primary example of the consensus-oriented approach to state growth management. The Growth Policy Development Act established a state-wide planning process which encouraged localities to involve citizens, interest groups and public officials in developing consensus about local land use problems and priorities. The statute also attempted to involve citizens, state, regional and local officials in a dialogue to establish consensus about a set of growth policies to guide state regulatory and public investment decisions. OSP, the Commission and the Development Cabinet all viewed one of their primary roles as initiating informal negotiations to resolve policy and programmatic disputes, and OSP's project-monitoring staff was directly involved in mediating specific conflicts over numerous major development projects throughout the state.

The major outcomes of the growth policy process included: the development of an explicit policy framework to guide state growth management decisions, the passage of specific legislation and changes in administrative actions to implement the policy framework, the targeting of state public investments to encourage growth in urban areas, increased state-level understanding of local and regional priorities and differences, the development of a political constituency to support state growth management actions, and the establishment of intergovernmental and interpersonal

networks which seemed to enhance the probability of using informal negotiations to resolve land use disputes.

The majority of these accomplishments came to an abrupt end with the defeat of the Dukakis administration in 1978. In focusing only on the consensus-oriented approach and building a political constituency to inform and support state growth management actions, both OSP and the Commission underestimated the need to establish statutory authority which could sustain a commitment to informal dispute resolution and the policy framework that had been established over time. Comparison of the Massachusetts and Florida cases suggests that Massachusetts might have been more effective if emphasis were placed on institutionalizing state responsibility and authority for continuing the growth policy process. In contrast, Florida might have been more effective if greater emphasis were placed on the consensus-building process.

Florida's state growth management system focused primarily on the redistribution of land use decision-making authority. The critical areas and the DRI programs reassert state control over sensitive environmental areas and large-scale developments. The Local Government Comprehensive Planning Act requires localities to plan and regulate land and gives the state authority to prepare plans if the locality fails to do so. Although Florida's mandatory planning statute does not require local plans to be consistent with the state plan, it provides for state review, which is admissible as evidence in court cases challenging the local plans. Likewise, exercise of state authority under the DRI and critical areas programs depends on adversary administrative and judicial appeals. In spite of

various accomplishments, Florida's growth management system has also suffered some major setbacks. The state's comprehensive plan has had virtually no impact on either state or local land use decisions.<sup>7</sup> Neither the state planning statute nor mandatory local planning has served to increase the integration of state and local land use decision-making. State review of local comprehensive plans is perfunctory and localities have not used preparation of the intergovernmental coordination elements of their comprehensive plans to increase the integration between state and local planning. In addition, political controversy and court challenges have plagued both the critical areas and DRI programs. As a result, some critics contend that neither program has been actively implemented.<sup>8</sup> No new critical areas have been declared since 1975, and the number of DRI applications has fallen dramatically (from 103 in 1973 to a low of 7 in 1977).<sup>9</sup> Finally, the lack of an organized political constituency to support the programs has contributed to the failure of attempts to amend the DRI guidelines and to completely correct the constitutional defects of the critical areas program. Many of these shortcomings can be related to Florida's failure to emphasize the notions of consensus-building and informal conflict resolution.

On the other hand, redistributing decision-making authority in Florida's growth management system has resulted in the regulation of over a million acres of sensitive environmental land according to state guidelines, the consideration of state-wide and regional interest in land use decisions regarding large-scale development, and increased planning and land-use regulation at the local level. In addition, Florida appears to be beginning to place more emphasis on consensus-

oriented activities in both the critical areas and DRI programs.

Both the Massachusetts and Florida growth management systems appear to have achieved significant accomplishments and have suffered major setbacks. Although the causes underlying each program's mixed record are varied and complex, it appears that one significant factor in both cases may be each system's failure to find an adequate balance between establishing the parameters of state land use authority and utilizing consensus-oriented approaches to enhance state power over growth management decisions. This conclusion marks a refinement in my thinking which resulted from analysis of the two case studies. That is, in considering the question of whether increasing the efficiency and equity of land use decision-making is primarily a function of re-distributing authority or reorienting process, the two cases led me to the conclusion that the two approaches are not mutually exclusive. While I feel that process, generally, has more potential for increasing efficiency and equity, it is important to recognize that the two factors work hand-in-hand to influence the effectiveness of the state growth management system.

For example, the planning process may determine state government's power to effectively utilize its existing land use authority, both by generating information to guide, and helping to build a political constituency to support, state growth management decisions. The formal distribution of land use decision-making authority may significantly influence the prospects for informal consensus-oriented planning and conflict resolution by creating incentives and disincentives for various

parties to engage in consensus-oriented policy formulation and to enter into informal negotiations over specific land use disputes. The formal decision-making system, including the distribution of authority and specific procedural requirements, can also help to determine the costs of non-agreement for various parties involved in land use disputes, the relative access of different groups to the decision-making process and even the issues at stake in the decision-making process. It is also my view that both the consensus-oriented planning process and informal negotiations may help to reduce some of the unanticipated negative impacts which have resulted from the redistribution of land use decision-making authority (i.e., delay, increased controversy and adversary relationships in the decision-making process). Finally, informal negotiations may help to expedite decisions, facilitate a more balanced consideration of state-wide, regional and technical issues and expand the range of alternatives considered in the decision-making process. In short, upon examination of the Massachusetts and Florida cases, my thinking about the redistribution of land use authority and consensus-oriented growth management approaches shifted from looking at the two issues as alternatives, to viewing them as interrelated approaches for improving state growth management.

The change in my thinking leads me to the view that a state growth management system actually consists of two components: a formal and an informal subsystem. The formal subsystem includes the distribution of land use authority, the procedural requirements of planning and regulatory statutes and the actual plans, policies and regulations that guide the system. The informal subsystem consists of negotiation processes, inter-



personal and intergovernmental network development activities and political constituency building activities which influence the formal system. The formal subsystem is primarily concerned with the issue of authority (i.e., the right to decide), while the informal subsystem is primarily concerned with the issues of power (i.e., the ability to act or perform effectively) and influence (i.e., the opportunity to persuade).

In the context of the Massachusetts and Florida cases, it seemed to me that the limited accomplishments of each state's growth management system could be explained, at least in part, as a function of their overemphasis on either formal or informal subsystems and the issues of authority or power. The fact that Florida's formal growth management subsystem was initially so weak may explain, in part, why their reform efforts focused on this component. Similarly, the dysfunctions with Massachusetts' existing state regulatory authority and local land use controls were considered a part of the state's growth management problems. This partially helps to explain OSP's and the Commission's emphasis on the informal subsystem. The critical problem in each state, however, seems to be the almost exclusive emphasis on one subsystem versus the other. In short, the two cases convinced me that in order to increase the effectiveness of state growth management, it appears necessary to devote attention to both the formal decision-making structure (i.e., the issue of authority) and informal decision-making processes (i.e., the issues of power and influence). The relative emphasis to be placed on each of these issues should vary according to the specific conditions confronted by a particular state.

Rapidly growing areas may need to develop new forms of state authority. Areas characterized by decline or slower growth may need to develop mechanisms to cut through the red tape caused by existing authority. The use of the consensus-oriented processes may be useful in both instances. It is important to remember, however, to avoid exclusive emphasis on either redistributing authority or reorienting process.

Most previous analyses of state growth management systems have failed to differentiate between the concepts of power and authority and have focused almost exclusively on the formal decision-making structure. I feel that by emphasizing the interrelationship between the formal and informal subsystems and distinguishing between the issues of power and authority, planners may be able to increase the effectiveness of state growth management systems. It is my view that state planners should increase experimentation with consensus-oriented planning and the use of informal negotiations to both develop state growth policies and to resolve specific land use disputes. In turn, these activities should be used to inform the exercise of existing state land use authority and to recommend changes in formal decision-making procedures and structures.

NOTES

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