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# DO STATE GROWTH MANAGEMENT ACTS MAKE A DIFFERENCE? LOCAL GROWTH MANAGEMENT MEASURES UNDER DIFFERENT STATE GROWTH POLICIES\*

*Douglas R. Porter\*\**

## I. INTRODUCTION

The recent rash of new state growth management acts<sup>1</sup> suggests that many legislators and their constituents believe that local governments must be prodded to manage urban growth effectively.<sup>2</sup> These state acts

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Before joining ULI in 1979, Mr. Porter was a planning and development consultant to public and private clients for nearly 20 years. He received his undergraduate degree in city planning from Michigan State University and his master's degree in planning from the University of Illinois.

1. Although some states adopted state planning laws in the 1970s, a so-called "second wave" of state acts occurred in the mid- to late-1980s. These acts, which typically mandated local planning according to state standards, began in Florida in 1985 and spread to New Jersey in 1986, Vermont, Maine and Rhode Island in 1988, Georgia in 1989, and Washington in 1990. Oregon's law in 1973 was the first such enactment and for many years the only one.

2. "Growth management" is a term variously defined but which in this Article is intended to denote public programs formulated to guide the character, location, and sometimes the pace of urban development. Such programs include comprehensive planning and the usual zoning and subdivision regulations as well as implementing programs and regulations that often involve special techniques such as urban growth boundaries and requirements to make development contingent on the adequacy of public facilities.

typically require all local governments to plan, set standards for that planning, and enforce the standards through some form of state review.

How do those requirements actually affect the local planning process? This Article attempts to answer that question by comparing the growth management planning of two local governments acting under such state laws—Sarasota County, Florida and Clackamas County, Oregon—and two that do not—San Diego, California and Lincoln, Nebraska. These communities were among twenty-seven case studies of local growth management programs carried out by the Urban Land Institute in 1989 and 1990. All the examples were suggested by local political and business leaders as communities that practiced effective growth management. Thus, this comparative analysis deals with communities that have achieved some recognition for their programs.<sup>3</sup>

## II. THE STATES MOVE INTO GROWTH MANAGEMENT

### A. Overview

One of the most widely quoted phrases in land use circles originated in the title of a 1972 report: "The Quiet Revolution in Land Use Control."<sup>4</sup> The authors of the report argued that the recent actions of states to assert some control over land use suggested a revolution in progress, a revolution perhaps quiet and disorganized, but widely supported. "The *ancien regime* being overthrown," they wrote, "is the feudal system under which the entire pattern of land development has been controlled by thousands of individual governments, each seeking to maximize its tax base and minimize its social problems and caring less what happens to all the others."<sup>5</sup> The Model Land Development Code then being formulated by the American Law Institute reflected this emerging Revolution with its provisions for state planning for critical areas and developments of regional impact.<sup>6</sup>

The early 1970s saw a rash of state enactments that illustrated this

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3. The case studies from which this information is drawn were jointly carried out by Development Strategies, Inc., under commission from the Urban Land Institute (ULI), and ULI staff. The studies included analysis of plans and other documents, on-site interviews with public and private interests, and follow-up telephone interviews and analysis. All judgments and conclusions from these studies are those of the author and do not necessarily reflect the position of the Urban Land Institute. ULI expects to publish the case studies in late 1991.

4. F. BOSSELMAN & D. CALLIES, COUNCIL ON ENVIRONMENTAL QUALITY, *THE QUIET REVOLUTION IN LAND USE CONTROL* (U.S. Gov't Printing Office 1972).

5. *Id.* at 1.

6. See MODEL LAND DEV. CODE §§ 1-12 (1976).

point. Oregon's famous state planning act of 1973<sup>7</sup> asserted state interests in achieving specified development goals, laid down requirements that local governments plan for development, and set standards for that planning. Through its requirements for urban growth boundaries, it stimulated the empowerment of regional agencies and the formulation of inter-local agreements. Notice, however, that the Oregon act did not call for state-level planning. Rather, it was an attempt to encourage effective, reasonable planning by local governments.

Most subsequent state planning acts followed Oregon's lead, at least in general terms.<sup>8</sup> Florida, in 1975, and in stronger terms in 1985, as well as Vermont, Maine, Rhode Island, Georgia, and Washington, in more recent acts, called for mandated local planning consistent with specified state goals and planning standards. Most also required some type of regional planning, again consistent with state requirements. And one or two of the new acts required state agencies to coordinate their planning as well, a significant step beyond the past state of the art—and perhaps beyond the realm of cooperative human possibility. Of the recent state growth management acts, only New Jersey's takes a different tack by creating a state land use plan. Over the past year or so, however, New Jersey officials have been engaged in a "cross-acceptance" process in which local, regional, and state plans are to be made mutually consistent. Thus, the process is different but the results promise to be similar to other states' actions.<sup>9</sup>

These acts raise a host of questions and issues, but perhaps the primary question is: After all the controversies have been fought and the dust has settled, what difference do state growth management acts really make in the quality of local planning? If the primary objective of most state acts is to improve the rationality and strategic coordination of local plans, how have they really worked? Have local plans improved? Have local governments behaved more responsibly to guide development?

There are no definitive answers to these questions, because not much information is available concerning the effects of state growth manage-

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7. Land Conservation and Development Act, ch. 80, 1973 Or. Laws 127 (codified as amended at OR. REV. STAT. § 197 (1985)).

8. Several acts passed in the early 1970s, such as Vermont's Act 250, the California and North Carolina coastal zone legislation, and Hawaii's act imposing state "zoning," provided for more targeted mandates than the requirements of state acts since 1985.

9. The state acts cited are FLA. STAT. ANN. §§ 163, 183, 186, 187, 380 (West 1990); VT. STAT. ANN. tit. 32, § 4300 (1981); ME. REV. STAT. ANN. tit. 30, § 4961 (1978); R.I. GEN. LAWS § 45-22 (1988); GA. CODE ANN. §§ 12-2, 36-70, 45-12, 50-8 (Harrison 1973); WASH. REV. CODE ANN. (Supp. 1990); N.J. STAT. ANN. § 52:18A-16 (1986).

ment acts.<sup>10</sup> One can get a sense of how much the Oregon program has accomplished by noting that every city and county now has a plan (although it took thirteen years to achieve that goal).<sup>11</sup> If all those plans meet state goals, something more important than providing jobs for planners must have been achieved. Another piece of evidence is that the Oregon act has survived three state-wide ballots. Even a representative of the Homebuilders Association now says that Oregon builders oppose returning to the old system of wide-open individualism by local governments.<sup>12</sup>

Florida's act, only five years old, has yet to work out of what some believe is its adolescent stage. However, amid battles over state policies such as concurrency<sup>13</sup> and growth boundaries,<sup>14</sup> the present system of interlocking local, regional, and state plans is vigorously defended by both the public and private sectors. Florida's longer-term regulation of developments of regional impacts and areas of critical state concerns<sup>15</sup> has accomplished some worthwhile things but is not specifically aimed at improving local planning prowess.

Long-term popular support for state growth management in Oregon and Florida indicates that many voters believe that state requirements will stimulate good local planning.

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10. Only one state, Oregon, has established a significant track record in this field, but until recently the state had not evaluated its program. A current study is underway but its limited budget—\$50,000—suggests that it will barely scratch the surface of Oregon's experience.

11. See Nelson, *Blazing New Planning Trails in Oregon*, URB. LAND, Aug. 1990, at —, 32-35.

12. *Id.* at 35.

13. The Florida act prevents local governments from issuing permits unless public facilities and services are available concurrently with development. FLA. STAT. ANN. § 163.3202(2)(g) (West 1990). This brief statement is causing major disruption of development processes in many jurisdictions due to the backlog of facility deficiencies that must be made up before a level of adequacy is achieved.

14. A number of goals in the state comprehensive plan imply that urban development should be prevented from sprawling into rural areas. Florida's Department of Community Affairs has interpreted these goals to suggest that local plans should encourage "compact growth"—the keeping of most development within existing high-density settlements. 4 Florida Dep't of Community Affairs, Technical Memorandum, no. 4 (1989). The Department's actions in reviewing local plans have encouraged the use of urban growth boundaries similar to those required of Oregon municipalities.

15. See FLA. STAT. ANN. § 380 (West 1988) (Land Management Act of 1972). The Land Management Act provided for designation of Developments of Regional Impact (DRIs) and Areas of Critical State Concern, both modeled after the American Law Institute's Model Land Development Code. DRIs are projects considered to impact more than one local jurisdiction—in practice most sizeable projects—which must be approved after special processes involving lengthy studies and hearings. Areas of critical state concern chiefly involve environmentally-sensitive areas which may be designated by state action for special planning and regulatory actions.

### B. Two Fast-Growing Communities

San Diego and Sarasota County represent two rapidly-growing communities in two of the three states with the largest population gain over the past ten years. Population growth increases in the city of San Diego averaged 2.7% annually from 1980 to 1987 and employment rose by 7.0% a year during the same period. In Sarasota County (the unincorporated sector), population grew by almost 4.3% per year and employment by 4.5% per year between 1980 and 1987 (both growth percentages on a smaller base than San Diego's).<sup>16</sup> Both communities originated on and continue to benefit from waterfront locations and both have attracted strong in-migration from midwestern and other states. In addition, the two communities value open space and possess large park systems.

The two communities are otherwise quite different. San Diego is the central city of a multi-jurisdictional region, quite densely built, with a multi-ethnic population and employment base. Formerly a "Navy town," it now contains a wide range of industries, many of which focus on defense contracting. Sarasota County encompasses the partly developed rural area which surrounds the cities of Sarasota, Venice, Longboat Key, and Northport. Although urban growth has spread into the county, most development occurs at low densities and is stimulated by demands for resort and retirement living.

Both San Diego and Sarasota County have formulated rather comprehensive growth management programs, building on the four cornerstones of community planning: (1) comprehensive plans, (2) zoning regulations (3) subdivision regulations, and (4) capital improvements programs. San Diego's program was an early example of big-city growth management, having been initiated in the late 1960s and evolving to adoption of the "tier plan" in 1979.<sup>17</sup> Sarasota County's planning began in earnest in the early 1970s and matured with the adoption in 1981 of the "Apoxsee" comprehensive plan, a plan which attracted an award for planning achievement from the American Planning Association. This plan was updated and expanded in 1989.<sup>18</sup>

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16. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES (1988) [hereinafter 1988 CENSUS].

17. An early version of the tier plan was approved by San Diego's city council in 1965 but was rejected by voters in a referendum. A subsequent weaker plan was accepted by voters in 1967, which contained objectives that became the foundation for the "Progress Guide and General Plan, Guidelines for Future Development" adopted by the council on February 26, 1979. See Witt & Sammartino-Gardner, *Growth Management v. Vested Rights: One City's Experience*, 20 URB. LAW. 647, 649-52 (1988).

18. A report prepared by Milo Smith Associates for the Sarasota County Commissioners in 1971, "Policies for Growth," first suggested the urban limit line. The 1975 *Land Use Plan*

In the following section, three aspects of these plans are analyzed—their use of development boundaries or tiers; their proposals for infrastructure financing; and their expectations for environmental preservation. The effectiveness of each jurisdiction in achieving stated objectives in these key components of growth management programs is evaluated, considering that Sarasota County must meet state objectives in its planning program while San Diego must meet only local planning requirements.<sup>19</sup>

### III. THE TIER SYSTEM

The tier system in both San Diego and Sarasota County provides a device for defining basic growth policies within a geographic area through a complex form of urban growth boundary.<sup>20</sup> Tiers define areas within which distinct intentions toward development are expressed—essentially a type of zoning without the specifics of zoning. Tiers are differentiated by general statements of policies, densities of development, and types of land uses. Additionally, tiers implement policies through the use of incentives and disincentives, such as provision of urban services, differentiated impact fees, and the like. Ideally, also, tiers serve as coordinating mechanisms for other city or county actions.

A less recognized aspect of tiers is their potential use for limiting

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prepared by the planning department and adopted by the county made the line official. The 1981 plan, also prepared by the county planning department, was entitled "Apoxsee, Sarasota County's Comprehensive Framework for the Future," [hereinafter *Apoxsee Plan*] and adopted by Ordinance 81-30 on June 30, 1981. Its revision was adopted by Ordinance 89-18 on March 15, 1989.

19. The state of California has adopted a number of measures that contain planning requirements for local governments, including such mandates as allocations of affordable housing and consistency of plans with zoning provisions. The state lacks a review and enforcement mechanism, however, leaving local governments free to follow their own inclinations except for court challenges and citizen initiatives.

20. Both San Diego's and Sarasota's programs have been heavily influenced by the fertile imagination of Robert Freilich, a well-known land use attorney who has specialized over the past 20 or so years in fostering the explosive growth of his brand of growth management. Freilich heads the law firm of Freilich, Leitner, Carlisle & Shortlidge and is Professor at the University of Missouri School of Law in Kansas City, Missouri. A noted author, lecturer, and consultant, he has left a paper trail of growth management proposals across the United States that would please an archeologist wishing to trace the evolution of growth management. One of the earliest examples of the "tier" system, for example, can be found in the early-1970s regulatory program of Ramapo, New York, which also became notable in an early judicial test of requirements for adequate public facilities. See *Golden v. Planning Bd. of Ramapo*, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138, *appeal dismissed*, 409 U.S. 1003 (1972). Freilich assisted in drafting the innovative zoning provisions in Ramapo and the growth management ordinances in San Diego and Sarasota. A capsule description of his work in San Diego can be found in Rick, *Growth Management in San Diego*, URB. LAND, Apr. 1978, at 3-5.

growth. Tiers are defined according to the amount of land expected to be needed for future growth, and provision is made to adjust the boundaries as growth occurs. The determination can be made at the outset that all growth will not be accommodated or that growth will be steered in certain directions which may not necessarily conform to market inclinations. Furthermore, tiers may not be adjusted to respond to unexpected growth rates. Thus, tiers designated for urban growth fill up, and tiers designated as future urban areas gradually become sacrosanct rural reserves. This issue has arisen in both San Diego and Sarasota County.

#### *A. The Tiers of San Diego*

San Diego's tier system originally surfaced in the city's 1965 general plan and evolved over fourteen years to the present four-tier plan.<sup>21</sup> San Diego's 320 square miles were divided into four categories of development policy. The first category included "urbanized areas" that included the downtown area and largely built-up older neighborhoods targeted for redevelopment and rehabilitation. To achieve this objective, the city was to focus its capital improvement activities in this tier and charge no impact fees. The second category included "planned urbanizing areas" to be developed in continuous stages through the orderly extension of public facilities. Developers were to provide whatever capital improvements needed to support development in this tier. The third category of development policy was "future urbanizing areas," that were mostly agricultural or large federal holdings, to be held as an "urban reserve" and released for development as planned urbanizing areas were extended. It was expected this process would take twenty to twenty-five years. The fourth tier was to have consisted of parks and open space, canyons, hillsides, and mesas to be preserved through purchase, dedication, and regulation. The threat of takings claims by landowners dissuaded the city from delineating these areas.

Over the eleven years since the tiers were adopted, they have withstood almost all attempts at legislative changes.<sup>22</sup> The city's objective to encourage development in the urbanized areas was spectacularly successful: infill development was 90% ahead of expectations. Development in the urbanizing areas, on the other hand, was less than two-thirds of that expected. From 1980 to 1985, the population in the urbanized areas rose

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21. *See supra* note 17 and accompanying text.

22. A city council vote in 1984 to reclassify 5100 acres from future urbanizing to planned urbanizing stirred a citizen's initiative that overturned the council's decision and prohibited other shifts without specific voter approval. Witt & Sammartino-Gardner, *supra* note 17, at 653.



by twice as much as in the urbanizing areas.<sup>23</sup>

A number of trends helped make the policy work. Housing price increases in the urbanizing fringe made inner neighborhoods more attractive, especially to first-time buyers looking for inexpensive housing. Downtown revitalization stimulated interest in inner-city living. Infrastructure construction in outer areas was prohibitively costly for all except higher-priced housing. Presently, the urbanized areas are about 82% built out while the planned urbanizing areas are 55% built out.<sup>24</sup>

The tier policy, however, has also run into trouble on a number of fronts. First, in the urbanizing area infill development occurred under the provisions of San Diego's antiquated zoning ordinance<sup>25</sup> which allowed conversions and replacements of single-family houses without significant attention to siting and amenity issues. Poorly designed infill raised resident complaints that led to drastic downzonings in many older neighborhoods, effectively preventing further redevelopment.<sup>26</sup> Second, according to a study by the San Diego Association of Governments, most of the acreage zoned for residential development fell into the category of sensitive lands, which will be much more difficult to develop under the city's recently stiffened environmental regulations. Some 80% of available land in planned urbanizing areas, for example, exceeds a 25% slope. At present rates of construction, the city may well be built out within twenty years.<sup>27</sup>

Third, the so-called "future urbanizing areas" are now seen as fictions. Except for one major area of 11,000 acres or so, most of the land in this category is owned by the military or reserved for public lands. Furthermore, city residents increasingly have viewed the urban reserve as the sole vestige of treasured open space in the city. As noted earlier, a citizen referendum in 1985 virtually killed rezoning in the future urbanizing area by requiring voter approval of any such proposal. Recent council actions have threatened to withdraw even the limited development opportunities available within the urban reserve. Although land in this area is zoned for one dwelling unit per ten acres, a cluster option

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23. See Stepler, *San Diego's System: Is It Working?*, in GROWTH MANAGEMENT: KEEPING ON TARGET? (Urban Land Institute 1986) (copies available from the Urban Land Institute, Washington, D.C.).

24. Interview with Janet Fairbanks, Deputy Planning Director for the City of San Diego (Mar. 5, 1991) [hereinafter Fairbanks Interview].

25. The 1920s-style chapter 10 of the San Diego Municipal Code has never been comprehensively revised.

26. Pursuant to an announced city council policy, the city has downzoned a number of older neighborhoods since 1985, leaving almost no multi-family zoning in place.

27. GROWTH MANAGEMENT REVIEW TASK FORCE, REPORT TO THE CITY COUNCIL (Dec. 1984) [hereinafter TASK FORCE REPORT].

allows development of four units per acre. With increasing pressures for land, developers were contemplating use of this option for developing golf course communities. After considerable public clamor over this idea, the council first voted in April 1990 to make any such proposals subject to council approval, then in October 1990 voted to preserve the clustering option but impose a one-year condition that the fourth "environmental/open-space" tier be enacted before holdings in the urban reserve may be developed.<sup>28</sup> Thus, instead of acting as a flexible policy instrument, the tiers have hardened into concrete barriers.

One reason for the increasing public clashes over the urban reserve would appear to be the failure of the city to address long-range development policy. In the twelve years since the general plan was adopted, only the housing, industrial, and open space elements have seen some revision. In 1985, a task force recommended a major overhaul of the plan<sup>29</sup> but political turmoil intervened and no action has been initiated to date. Instead, the planning department, which is directed by the city council, has been required to respond to political crises by such means as the growth cap initiatives, downzoning to protect established neighborhoods, increasing environmental protection, upgrading public facilities, and traffic demand management systems. As Janet Fairbanks, Deputy Director of the Planning Office, puts it, "We have been attacking problems but not evolving strategies."<sup>30</sup>

### B. *The Tiers of Sarasota County*

Sarasota County, with about 180,000 permanent residents, manages growth in about 525 square miles of unincorporated area, excluding the municipalities of Sarasota, Venice, Longboat Key and Northport. The county's central development strategy, officially recognized as early as 1971, is to keep urban development west and south of the Interstate 75 (I-75) right-of-way. The tier system, adopted in rudimentary form in 1975, then broadened in 1981 and reaffirmed in 1989, employs three tiers: urban, semi-rural, and rural.<sup>31</sup> In the urbanized areas, the 1981 plan also overlaid "intensity bands" to guide residential development, radiating out from existing city centers. In addition, the plan demarcated activity centers, including regional, community, village, and neighborhood centers, and major employment centers. The semi-rural areas allowed residential development at one unit per two acres. The rural areas were

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28. Fairbanks Interview, *supra* note 24.

29. TASK FORCE REPORT, *supra* note 27.

30. Fairbanks Interview, *supra* note 24.

31. See *supra* note 19 for a discussion of the evolution of these plans.

intended to remain vacant or agricultural; residential development was allowed at one unit per five acres—the minimum density the county's legal counsel could defend. Recognizing the importance of the I-75 interchanges, some activity centers were designated in both semi-rural and rural areas. Furthermore, a few partly-developed areas within semi-rural areas were designated "extra urban enclaves," essentially those areas that shelter nonconforming, pre-existing subdivisions. The 1981 plan also separated the four towns with greenbelt-like rural and semi-rural areas.

The plan revisions adopted in 1989 reveal some interesting changes. Most of the semi-rural and rural land west and south of I-75 is now designated for urban development, and the extra-urban enclave is now recognized as an urban enclave. Not only has the I-75 line apparently been breached, but the clear implication of the changes is that the next plan will continue the eastward march of urban development into the rural area. The plan gives three basic reasons for the changes. First, the unexpectedly rapid growth calls for more land to be designated for urban development than the old plan provided. In fact, all the land west and south of I-75, with one major exception in the south, is needed to accommodate future development to the year 2010.<sup>32</sup> Second, the hoped-for average density of three units per acre has not been achieved. Somewhat lower densities are assumed for future growth, which required allocations of more land for development.<sup>33</sup> Third, a highway corridor study recommended that economic development opportunities along I-75 be supported by permitting more development along that corridor.<sup>34</sup> Other changes included the elimination of the residential intensity bands, found to be unworkable and unnecessary, and the creation or expansion of some activity centers to accommodate perceived development opportunities.

These changes signal that tiers in Sarasota County, in comparison to those in San Diego, are employed as adjustable policy guides rather than immovable regulatory devices. Sarasota County has revised density and boundary designations to respond to development pressures. On the other hand, Sarasota County has been notably unsuccessful at encouraging infill or even medium-density development within the urban tier. In part this is because of the nature of the market, which emphasizes resorts and recreational communities organized around golf courses. Also, the large land areas still available for development put little pressure on the county or the market to emphasize higher densities. But the adjustable

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32. *Apoxsee Plan*, *supra* note 18, at 427.

33. *Id.* at 424.

34. Sarasota County Planning Dep't, *Sarasota County I-75 Corridor Plan* (1989).

boundary approach also pays homage to the county's overall inclination to accommodate, not resist, development.

This attitude was recently tested by a citizen-initiated referendum calling for a two-year moratorium on growth. Initiative leaders gave various reasons for the action, but the overarching intention was to drastically curtail growth in the east in favor of keeping large amounts of open space.<sup>35</sup> Although the ballot measure lost by a three-to-one margin, the fact that the initiative took place in a state otherwise inexperienced with such referenda suggests that future county decisions on growth management will be more sensitive to citizen's slow-growth attitudes.

Sarasota County appears to have the same difficulty as San Diego in working out strategies for long-term development. There is not a single word in the plan about what happens after the presently designated urban area is developed.

#### IV. INFRASTRUCTURE SYSTEMS

A second major component of each community's growth management system is the program of infrastructure planning and financing. Public policies and regulations regarding infrastructure in San Diego and Sarasota County have some similarities, although these are outweighed by the differences. The similarities are also traceable to Robert Freilich, who assisted local officials in establishing public facilities districts.<sup>36</sup> In San Diego, these are called Facilities Benefit Assessment Districts (FBAs), created to skirt the tax restrictions of California's Proposition 13.<sup>37</sup> Seven FBAs have been created within the fourteen Planned Urbanizing Areas. Court decisions in favor of impact fees in 1984 now allow the city to levy impact fees outside established districts.<sup>38</sup> Between 1982

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35. Interview with Daniel J. Lobeck, one of the initiative's chief sponsors (Apr. 3, 1990).

36. Before impact fees were widely used, according to planning officials in each jurisdiction, Freilich advised them to create public facility districts—special purpose taxing districts permitted in many states—that would charge developers one-time fees to pay for infrastructure improvements required to support new development. Robert Freilich is a contributing author to this Symposium. See Freilich & White, *TRANSPORATION CONGESTION AND GROWTH MANAGEMENT: COMPREHENSIVE APPROACHES TO RESOLVING AMERICA'S MAJOR QUALITY OF LIFE CRISIS*, 24 *LOY. L.A.L. REV.* 915 (1991).

37. CAL. CONST. art. XIII A (1981) was initiated as a ballot measure called Proposition 13. It limited the amount that jurisdictions could raise property tax rates each year, thus restricting revenues available for new infrastructure. See generally Smith, *Constitutional Reform Gone Away The Apportionment of Property Taxes in California After Proposition 13*, 23 *LOY. L.A.L. REV.* 829 (1990).

38. The principle cases in California are *J.W. Jones Co. v. City of San Diego*, 157 Cal. App. 3d 745, 203 Cal. Rptr. 580 (1984) and *City of San Diego v. Holodnak*, 157 Cal. App. 3d 759, 203 Cal. Rptr. 797 (1984).

and 1989 the city collected \$85 million in fees. The funds are allocated to projects outlined in the capital improvements program. Delays brought on by legal challenges, land acquisition procedures, and a long design period, however, resulted in only half the funds being earmarked and less than a quarter spent by early 1989. A recent update of those figures reveals only a slight increase in expended funds but all funds collected since 1982 have been appropriated for specific projects. Unfortunately, the economic downturn in 1990 and 1991 has reduced fee payments to a trickle and the city is now cutting back on appropriated projects.<sup>39</sup>

Developers have been understandably upset by the delays in expending these funds since their projects were not benefitting from the fee payments. Most disturbed by the city's financing policies, however, were residents in older neighborhoods outside FBAs. Since little development has occurred in some neighborhoods, little money has been generated to upgrade and expand public facilities. In effect, the city's dependence on impact fees has shortchanged the quality of public facilities and services in many areas of the city.

Sarasota County also created municipal service taxing units—in its case, just two—which imposed impact fees for roads and parks. But in addition to this, the county has approved revenue bonds for water supply improvements, general obligation bonds for beach acquisition, a one-cent gas tax increase for road improvements, and a one-cent sales surtax for a variety of public facilities. Sarasota County's problem was that it refrained from assuming responsibility for infrastructure systems until quite recently, in the hopes of discouraging development. When development continued—and 118 separate sewer districts were established, for example—county officials began getting serious about planning and financing for infrastructure needs. Now the county has initiated major planning and financing programs for sewer, water, drainage, and solid waste systems, in addition to a major parks and recreation program started several years ago and an impressive arterial road improvement program. Still, the county has a long way to go to put in place first-class facilities.<sup>40</sup>

Both jurisdictions also adopted adequate facilities requirements—San Diego in the early 1970s.<sup>41</sup> Sarasota County's requirements are

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39. Interviews with James Fawcett, Public Facilities Financing Division, City of San Diego Engineering and Development Department (Feb. 21, 1989 and Mar. 13, 1991).

40. Interviews with various county officials (1990).

41. Adequate facilities requirements are public ordinances that specify levels of public facilities that must be maintained as new development occurs. Developers may be required to pay fees or donate facilities to meet requirements before obtaining project approvals.

backed up by the state's concurrency requirements which are discussed later.

## V. ENVIRONMENTAL RESOURCES

A third major area of growth management for these two jurisdictions is the preservation of open space and environmentally sensitive lands. Both jurisdictions emphasize such preservation, both in land acquisition and regulation of development. For many years, San Diego has prided itself on its fine array of parks and recreation areas. However, its treatment of environmentally sensitive lands has been on-again, off-again, swinging with its boom and bust economies. In 1989, threatened by citizen initiatives, the city tightened its environmental controls over development in floodplains, wetlands, and on slopes of over a 25% grade.

Sarasota County, by contrast, structured an open space program only a few years ago. Once started, however, the county has assumed responsibility for existing city park systems, instituted an ambitious acquisition program, including beaches, and acquired thousands of acres of open space in the eastern county. About one-quarter of the area east and north of I-75 is now in public hands. In addition, years ago, Sarasota County adopted stringent environmental controls and has applied them regularly in the development review process.<sup>42</sup>

As discussed in an earlier section, the two jurisdictions present similar pictures of indecision over the retention of the third tier for open space. San Diego clearly cannot postpone development forever in the urban reserve, but the city has yet to decide how to secure it as open space. In all of Sarasota County's plans to date, the area east and north of I-75 has been designated for rural and agricultural uses. The wording of the plans, however, suggests that it is actually intended as an urban reserve, someday to be developed. The 1989 changes to the 1981 plan, the relatively low value of agricultural use, and the county's move to acquire a substantial part of the area all add to the suspicion that development ultimately is expected to move east from the present urban limit line. Furthermore, the current zoning of one unit per five acres will not resist development pressures indefinitely. Although there is considerable citizen unrest about its future, the county has not declared policy for this area beyond the official planning year of 2010.

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42. Interviews with Jerry Gray, Planning Director, and Dennis Wilkison, Assistant Planning Director of Sarasota County (Apr. 3, 1990).

A. *Two Slower-Growing Communities*

Another pair of communities that invite comparisons of their growth management programs are Clackamas County, Oregon, and Lincoln-Lancaster County, Nebraska. The former jurisdiction carries out growth management within the framework of Oregon's state law; the latter functions independently.

Clackamas County, located southeast of the city of Portland, has about 260,000 residents and is growing at the rate of 2000 households and 1500 employees per year.<sup>43</sup> The eastern growth boundary of the Portland metropolitan district passes through the county, encompassing about 30% of the county's land area. Pursuant to Oregon state law, the county's plan was "acknowledged" (approved) in 1981 and updated in 1989.<sup>44</sup>

The mostly agricultural county determined to pull itself out of the 1970s recession by encouraging industrial development. It chose, as one of the primary stimulants to development, construction of major road improvements, coupled with the state's construction of Interstate 205. Road improvements were financed with a combination of tax increment financing and other special taxing districts, a payroll tax, and the usual state and federal funds.

This strategy has been extremely successful in attracting new business, to the point that the county is running out of industrially-zoned land within the urban growth boundary. Residential development also has grown rapidly. By Oregon law, 50% of all new housing must be multi-family and the Metropolitan District has set a residential density target for Clackamas County development of eight units per acre. Although these policies have allowed considerable growth within the tight boundary, available land is running short.

Now Clackamas County officials must persuade the Portland Metropolitan Service District that restrictions on development in their county will not necessarily stimulate growth in other parts of the metropolitan area that have not been growing. Meanwhile, there is no question that state requirements have kept all types of development within a relatively limited area to which roads and other infrastructure could be extended in an orderly fashion.

Lincoln, Nebraska, as the seat of both the state university and state

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43. 1988 CENSUS, *supra* note 16, at 879.

44. All information on county plans and planning procedures is from an interview with Thomas Vanderzanden, the county's planning director (Jan. 1990), and from *Summary, Clackamas County Plan and Land Use Map, 1980 and 1989 Revisions to the Land Use Plan*, both prepared by the planning department.

government, enjoys a broadly-based and steadily-expanding economy. The city and county established a unified government that governs 183,000 residents, a population that has increased by 1.5% annually since 1970.<sup>45</sup> The well-educated, professionally employed voters are generally pro-growth but intensely interested in controlling that growth. Lincoln-Lancaster County adopted its first plan in 1952, a plan notable among midwestern cities in the cornbelt for incorporating an urban growth boundary. The enforcement of an agricultural greenbelt is assisted by several factors: the city/county unification; the city's three-mile extraterritorial control over development; a prohibition of new incorporations within five miles of the city; municipal ownership of most utilities; and, finally, the high value of agricultural land.<sup>46</sup> The city/county has capitalized on these powers by controlling the direction and location of development, by determining how and when infrastructure will be provided, by limiting commercial construction to a few areas in order to stimulate downtown development, and by instituting design review of all projects.

The plan is not without critics. Although the plan anticipates concentric circle development, most development has been occurring in the southeast. The city has resisted expanding the urban boundary there, despite rapidly diminishing land supplies, because it wishes to force development in the north and west. Developers claim that fulfillment of this wish is unlikely. Meanwhile, land prices have risen, and affordable housing is in short supply. Developers also claim the city's limit on commercial areas is foreclosing retail opportunities, especially for a big regional mall. But Lincoln has retained a thriving downtown and flourishing older neighborhoods, clearly a beneficial tradeoff for limits on fringe-area growth.

### *B. State Influence on Local Growth Management*

Experience with growth management in these four jurisdictions, two affected by state growth management acts and two without such acts, can be compared from three important perspectives:

1. Did Oregon and Florida state laws stimulate more or better planning by Clackamas and Sarasota counties, compared to the planning carried out by San Diego and Lincoln that took place without state mandates?
2. All of these communities have adopted compact growth pol-

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45. 1988 CENSUS, *supra* note 16.

46. All information on plans and the planning process in Lincoln is taken from the draft case study conducted by Development Strategies, Inc., May 1990.



icies to reduce urban sprawl and preserve open space and environmental resources. Have such policies in Clackamas and Sarasota counties been more successful because state laws encouraged them?

3. Have infrastructure planning and financing benefitted from state requirements to plan and program public facility expansions?

Whether state-mandated planning makes a difference in the quality of local planning is difficult to assess from these examples. Each of the jurisdictions involved is considered by many observers to possess relatively effective growth management programs which, in comparison, reveal relatively subtle differences. On the other hand, it would be pointless to compare well-managed programs with poorly-managed programs. A few conclusions can be drawn, however. Although Sarasota County was planning long before Florida's legislation was passed, it is clear that the 1975 state law prompted the county to undertake a more ambitious effort, in contrast to many Florida communities that elected to do little or nothing at all. Having completed the 1981 plan, the county had the pieces in place to update it to conform to 1985 state requirements, including the compact growth policy. Indeed, the county's plan in 1981 won an American Planning Association award, and the new one is considered one of the best, if not the best, in Florida.<sup>47</sup> Furthermore, the planning budget and staff have increased steadily—the planning department in this mid-size county now numbers forty, which does not include staff in another department that is responsible for environmental reviews.

Florida's law appears to have stimulated the county to do more than it might have and to take on one or two issues, such as historic preservation, which it otherwise might have ignored. Still, the Florida laws bracketed the period when the county was finally waking up to its planning responsibilities. The two conditions were probably serendipitous. This is not to say that Sarasota County has planned perfectly. Its plans, and its implementation of them, have not succeeded in preventing urban sprawl within the urban boundary, nor have they dealt adequately with the problem of affordable housing. Also lacking is a firm long-range vision of the future community that might drive present policies in a slightly different direction. As time goes on, future state planning re-

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47. For example, 1000 Friends of Florida, which reviews all plans submitted to the state, recognized the most recent Sarasota County plan as one of the best in the state. *Environmental and Urban Issues*, FAU/FIU (Joint Center of Environmental & Urban Problems Newsletter) (Fall 1990).

views may begin to focus more intensely on these issues, which will provide a clearer test of state influence over local planning.

San Diego, by comparison, has had its ups and downs. The State of California requires local governments to plan and has enacted many planning requirements, including mandates for provision of affordable housing, consistency of plans with zoning, and other planning elements, but has no mechanism other than the courts for enforcing these laws. If only in self-defense, most communities plan, but some do it better than others. Like many other communities, the city of San Diego plans when it has money, which generally is when development is occurring. During a building slowdown, budgets are trimmed and the planning office is one of the first affected.<sup>48</sup> Despite its tier system, therefore, San Diego has been incapable of planning continuously and comprehensively for future development. Its tier system has not been backed up by comprehensive rezoning or, until recently, by detailed neighborhood planning. Its infrastructure financing system was never expanded to cover inevitable shortfalls in budgeting improvements for older neighborhoods. Many of the city's environmental regulations were forced upon it by citizen initiatives.

Since 1979, when its general plan was adopted, San Diego has never officially revised its overall strategy for growth, although citizen actions may have directed strategy changes. In some respects, San Diego's plan is a shell—an impressive framework with many blanks still to be filled in. Planning in San Diego tends to be crisis management, day-to-day, reactive rather than proactive. A well-enforced law such as Florida's might have made a difference, at least in ensuring that planning continued even during lean times. A law that required state review of local plans, including reasonable programming of capital improvements, might also force state legislators to re-scrutinize the crippling damage wrought by Proposition 13 on the local growth management processes.

The experience of Lincoln—another city whose planning is not guided by state requirements—is less conclusive, if only because Lincoln's program is well advanced over those of most cities, and almost certainly ahead of state government in Nebraska. One would hazard a guess that any attempt at state guidance by Nebraska over Lincoln's activities might be counterproductive. But Clackamas County almost surely would not have practiced the kind of growth management it has—with restrictions on sprawl and requirements for higher densities—absent Oregon's requirements. One might cavil at these policies, but they prob-

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48. Interviews with James Fawcett, *supra* note 39.

ably helped Clackamas County deal with its growth problems. The county's determination to use infrastructure improvements to drive its economic rebirth, however, obtained little support from the Oregon law and its administration, which for many years did not stress capital facility planning and financing.

Regarding the question of establishment of urban growth boundaries, it appears that state requirements for boundaries were instrumental for Clackamas County, which in the 1970s was a classic rural county still waking up to its growth management responsibilities. In most circumstances, such a jurisdiction could be expected to embrace urban sprawl, at least until too late to stop it. Not only did the Oregon law require urban boundaries, but also it required jurisdictions in the Portland area to organize a regional entity that could set and maintain a boundary. The Portland Metropolitan Service District, governed by the only popularly elected regional legislature in the United States, has rigorously enforced the Oregon provisions.

Sarasota County, like Clackamas County, might be expected to favor low-density sprawl, but since the 1970s it has used a major highway alignment to mark its edge. Sarasota County definitely did not need Florida's law to prompt it to enact urban containment policies, but it was one of the few jurisdictions in Florida that independently determined to follow that course. On the other hand, Florida's requirements have yet to influence the county's attitudes toward sprawling development within its urban boundary.

It seems unlikely that either San Diego or Lincoln would have done anything different under a state law requiring growth boundaries. However, a California law might have prompted San Diego to plan more responsibly to fit growth into its growth boundaries. It might be interesting to see the results if the city were forced to demonstrate how it expects to accommodate development when so much developable land has been removed from consideration, either by ownership or regulation.<sup>49</sup>

Finally, how did these jurisdictions handle infrastructure financing in the presence or absence of state legislation? It is tempting to conclude that in this area states are less the solution than the problem. Many

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49. These conclusions beg the question of whether growth boundaries constitute an appropriate growth management mechanism. Experience in Sarasota County, Clackamas County, and San Diego indicates that such boundaries set up somewhat arbitrary lines that tend to harden over time into almost unbreachable walls. Several Oregon jurisdictions are now facing the problem of how to reset urban boundaries past the zone of "martini farms" that have developed on exception lands just outside present boundaries. Attractive in their simplicity, boundaries raise serious political and technical issues. See Lassar & Porter, *The Limits of Limits*, URB. LAND, Dec. 1990.

states, including California and Florida, have disinvested in infrastructure for a decade or more.<sup>50</sup> Until recently, states generally have not managed to raise revenues to meet identifiable needs. Should we expect such governments to be successful in prodding local governments to act responsibly?

Florida's growth management law puts the spotlight on tying infrastructure planning and construction to development expectations. Communities that previously paid lip service to capital improvement programs now are required to take them seriously. Sarasota County undoubtedly is taking its program more seriously now, especially since it has taken on so many responsibilities for building and operating facilities in recent years. The Florida law seems to provide a nudge in the right place and time to make a difference.

None of the other jurisdictions being considered here has that advantage. California's record on infrastructure planning and financing is certainly not a model for its local governments. Lincoln seems to exist in a separate plane, entirely answerable to itself for doing a good job.

In conclusion, do state mandates for responsible local planning have any effect? Looking at these jurisdictions, some positive influences can be discerned. Florida's law probably has stimulated Sarasota County to do a better and more complete job of growth management and to continue it. The real test of Florida's law will come in the next few years as local governments work past this phase of plan-making to more detailed implementation of their plans. Oregon's law certainly caused Clackamas County to undertake planning in the first place and to keep development tight and dense. The slowing of growth that descended on Oregon immediately after passage of the law, however, reduced the kinds of regulatory pressures that have so plagued fast-growth communities. A California law might have prevented some of San Diego's planning misfortunes. Lincoln is a special case, a city doing better than anyone ought to expect it to.

Another question that could have been asked—perhaps should be—could states do a better job of planning for their own actions? Absolutely. Many of the problems we see in these local jurisdictions came from misguided state laws and regulations, inadequate funding of state facilities, or lack of planning by state agencies. Perhaps states ought to get their own acts together before jumping on local governments.

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50. See *Development Trends, 1989*, URB. LAND, Mar. 1989, at 19.

