Larger than Regional Policy Concepts

(Draft)

A Report from the
Quality Region Taskforce Working Group D
of the Capital District Transportation Committee's
Quality Region Task Force

For the New Vision 2030 Plan

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Introduction

The Capital District is a region at a critical crossroads. With the specter of increased development pressure, the region is being challenged to assess its ability to accommodate growth in a sustainable manner. The Capital District Transportation Committee (CDTC), as part of the "New Visions" plan update, has been examining the regional transportation/land use issues and policies that directly affect this sustainability. This report is part of that effort. Its basic purpose is to enumerate and amplify the many regional growth-related policy issues that have emerged at CDTC and other forums, which would require state (or federal) intervention, and/or new regional structures/agreements in order to be implemented. These issues have included: the structure of local government in New York, home rule authority, local government planning statues, development incentives and infrastructure subsidies, the decline of cities and the effects of suburban growth, municipal annexation, growth boundaries, tax sharing, and statewide growth management programs. (For a discussion of the regional issues, challenges and opportunities in the Capital District see the report: "Pursuing Quality in the Capital Region" available at: http://www.cdtcmpo.org/qualreg.htm).

The urban and regional issues and policies discussed in the following report are challenging and controversial. However, as challenging as regional growth management may be, its importance should not be downplayed nor dismissed. A purely local view of development falls short in understanding the regional scale of urban issues and the true functioning of 21st century metropolitan regions. The cumulative effects of thousands of local land use decisions over time adds up to numerous regional concerns – traffic congestion, air pollution, sewage and solid waste disposal, water quality and quantity, racial and economic segregation, housing availability and affordability, and fiscal disparities and inefficiencies, to name the most salient.

This report will explore a set of identified "larger than regional policy concepts" that are recognized to be politically controversial, but also to be too important to ignore. The approach will be to acknowledge and articulate the existing local "home rule" context of New York State planning and development, and to examine the challenges and problems that emerge from such a context, as well as to explore the potential opportunities, new approaches or alternative governmental structures that may be pursued to address these issues. The intention of this report is not to advocate a particular position, but to articulate the identified issues and policy concepts. Since the issues and policies discussed in this report are of statewide concern, the intended audience is both regional (Capital District) and state-level policy makers.

There are a number of instances across the country where the policies and structures examined in this report are established practice (or are being considered). Therefore, in addition to exploring the large-scale challenges of regional planning in the New York State context, this report will also examine examples from other areas of the country to see if there are lessons to be learned, ideas to be explored, or pitfalls to avoid.

Multiple Units of Local Government

The Capital District – Albany, Schenectady, Saratoga, and Rensselaer Counties – has a population of approximately 794,293 persons (2000 census), and is currently comprised of 79 separate minor civil divisions. There are four central cities, four smaller cities, 23 villages, and 48 town governments. In addition, the region is covered by 43 different school districts. In each case there is a separate elected board with the ability to make laws, adopt policies, incur debt, and assess taxes and fees.

In addition to these multiple units of local government, there are numerous special districts, including parks, lighting, fire response, library use, potable water, sewage treatment, drainage, garbage disposal, and others, which are also governed by boards (usually appointed) that set policies and assess fees for services.

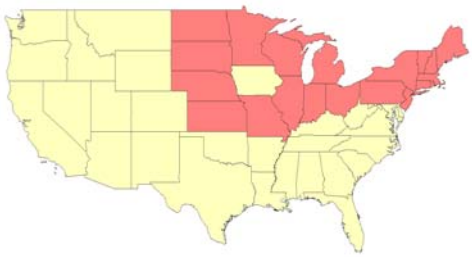
According to the U.S. Census Bureau, Statistical Abstract of the United States, 2003, there are a total of 3,420 local governmental units in New York State: 57 counties (62, counting New York City), 616 cities and villages, 929 towns, 683 school districts, and 1,135 special districts.

In the United States, from 1962 to 2002, the number of county governments has been relatively stable (3,043 to 3,034). The number of municipal (city/village) governments increased by 8% (18,000 to 19,429), the number of towns/townships decreased by 4% (17,142 – 16,504), the number of school districts decreased by 61% (34,678 – 13,506), and the number of special districts increased by 91% (18,323 – 35,052).

The general trend in local governance in the U.S. appears to be devolution into smaller and more specialized units for municipal services, and a consolidation into larger units for public education. In addition, the increase in municipal incorporation can be largely attributed to the creation of new villages and small cities. This increase in municipal secession/incorporation was often driven by the desire to gain local control over land development and the allocation of public resources. For example, during the 1980's (more recent figures could not be obtained), there were 1,635 "detachments" in the U.S. involving 597 square miles but only 60,000 people[1].

New York State is one of 20 states in which the township or town form of local government is utilized. The other states include: Connecticut, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wisconsin (see map below).

States with Towns or Townships



New York State's towns now encompass all territory within the state except that within cities. There is a great variation in the size, population and number of towns with each county in New York State. For example, the town of Hempstead has a population of over 700,000 persons while the town of Day has a population of just over 900 persons. Nassau County has a population of over a million people yet has only three towns, while Cattaraugus County, with a population of approximately 85,000 persons contains 32 towns.

The roots of town government in the United States can be traced back to New England and Dutch colonial arrangements. In New England, much of town government is little changed since colonial times. The town is the major unit of local government, which generally includes all the rural *and* urban areas within it boundaries. And the town is the unit that delivers most of the services that come from cities and counties elsewhere in the country. The distinguishing feature of New England town government is the town meeting, which has been long praised as the ideal vehicle of direct democracy.

In New York State, the town form of government can, in part, be traced to New England, which, after the revolutionary war, was the source of much of New York's immigration. And the tradition of local, rural town government was carried over with this immigration, though in a somewhat different form, since the annual town meeting was eventually abandoned.

In New York's Capital Region during the late 1700's and early 1800's, most present-day town boundaries were established by carving them out of larger "districts," (which were subsets of counties that where themselves carved out of the larger Albany County – Saratoga and Rensselaer in 1791 and Schenectady in 1809).

Over the course of the 19th and early 20th centuries, as employment and population clusters (hamlets) formed along stream corridors and trade routes, villages were often created within the towns by defining areas where urban services would be provided. Some villages eventually grew to become incorporated cities. Areas outside the villages and cities remained rural and largely in agricultural production.

Over the last half-century there has been a dramatic shift in residential (and to a lesser, though still significant extent, employment) away from cities to the adjacent towns, turning once rural farm communities into commuter suburbs. As these towns have become more urban in function and character, they have been given new statutory and constitutional authority to provide

virtually the full complement of municipal services. Many of these new powers were granted when New York State amended the state constitution by passing a "home rule" amendment, effective January 1, 1964. These amendments included both a bill of rights for local governments and a constitutional grant of expanded local legislative "home rule" powers.

These amendments were important in another significant way: many of the new powers granted to towns were previously only available to cities, which had been the engines of the state's urban development. Now cities would no longer necessarily retain primacy as the locus of regional growth. And if the urban infrastructure of cities – particularly public sewer and water systems – was to be expanded to accommodate new growth, the cities themselves could no longer easily expand by annexing the new territory served: It would now be the adjacent towns' prerogative to approve or disprove any city expansion. Most urbanizing towns found it in their best interest to capture the new tax base for themselves; and a new competition between declining cities and growing towns emerged and persists as one of the largest challenges to solving the problems of regional urbanization – problems that argue for 21st century regional solutions in the age when people live less connected to a local place and more connected and dependent on the larger economic and cultural region. However, the framework for controlling and coordinating the urbanization of the region is still the 19th century structure of rural towns.

The Cost of Multiple Local Governments

A recent report by the Public Policy Institute analyzed some of the primary factors causing the high Upstate New York tax burden and concluded that Upstaters pay approximately $4 billion dollars in excess taxes because of the excess number of local government employees.[2] The report notes that in New York State there were 57.3 local government employees per 1,000 population – a total of 1.08 million, which is 156,500 more than if the states ratio matched the national average. In Upstate New York alone there are 432,300 local government employees or 62.57 per 1,000 population – almost 25 percent above the national average. This works out to 93,500 more local government employees than there would be if Upstate matched the national average.

The report also notes that New York State government, by contrast, employs below the national norm – 13.8 per 1,000 population, verses a national average of 17.8 per thousand. The report states, "The key to closing the tax gap Upstate is to downsize local government."

What the report fails to note is that the large number of local government employees in New York State is largely a function of the large number of *local governments* in New York State compared to the national average: New York State ranks 8th in country for the number of local governments.[3] Moreover, local governments in New York State are responsible for funding and providing a larger share of public services than local governments in most other states, particularly regarding road financing, Medicaid and Medicare. This added burden creates an increased demand for additional employees to deliver the services.

Home Rule in New York State

In New York State, the state legislature provides for the creation of all local governments and prescribes their powers and jurisdictions. The constitutional and statutory foundation for local

government in New York State provides for counties, cities, towns and villages as "general purpose" units of local government. They are granted broad home rule powers to regulate the quality of life of their communities and to provide direct services to the people, making local governments a partner with the state in the shared responsibility of providing services to the people. The home rule powers available to New York local governments are among the most far-reaching in the nation.[4]

Article IX of the New York State Constitution, entitled "Local Government," grants power to local governments over their own property, affairs and government, and restricts the power of the State Legislature from acting in relation to these areas to general laws or to special legislation upon home rule request.

Among the powers granted are the power to adopt ordinances, resolutions, rules and regulations; the power to acquire property; the power to levy taxes; and the power to adopt land use regulations (except for counties) and to conduct comprehensive planning. These powers cannot be repealed except by the action of two successive Legislatures, with the concurrence of the Governor.

However, the Statute of Local Governments reserves certain powers to the State Legislature, even where the exercise of these powers could or would diminish or impair local power. These include the power to take actions related to the defense of the state, to adopt laws upon local home rule request, to adopt laws relating to creating alternative forms of county governments, and *to adopt laws relating to matters of overriding state or regional concern*.

Arguments against greater regional planning authority usually claim that the authority to make land use decisions is wholly within the home rule authority of New York's municipalities. However, John Nolon, an attorney from the Pace Law School, has argued that the case and statutory law that has developed since the 1970's indicates that local home rule authority is neither a legal nor a political barrier to effective land use legislation in the broader state interest. He argues that the courts have made it clear that home rule must yield to the public purpose determinations of the state legislature, and that there are numerous objectives that justify preempting, affecting, guiding and shaping the local control of the use of the land.[5]

For example, there have been a number of instances, confirmed by court rulings, in which the state has preempted local home rule when issues were considered of "overriding state or regional concern." These have included issues related to taxation, indebtedness, education, social services, and aspects of banking and civil service, as well as more direct land use issues affecting water supplies, environmental and cultural resources, economic development, mining, power generation, transportation and highways. In regards to land use control, however, Nolon demonstrates that New York State has been narrowly focused, rather than comprehensive, in its preemption of local home rule authority.

Joseph Stinson, also from the Pace Law School, sums up home rule in New York:

> "The nature of home rule is twofold: it is both a deliberate and limited grant of authority by the state to local governments and an acknowledgment that there are certain areas of *purely local concern* [emphasis added] wherein local governments may operate free from state interference. It is the latter proposition that fuels the common misperception that home rule in New York

> embodies the inherent right of self-determination for local governments. It is the state that grants home rule authority, and the state has reserved the right to define interests as being within its, as opposed to local, authority. Where the state has chosen to refrain from interfering in purely local concerns today, tomorrow it may perceive a substantial state interest entwined in those same areas of concern."[6]

More and more, community leaders and policy makers are coming to recognize that within metropolitan regions, land use is *both* a local and regional concern, and therefore should be a state concern. Attorney and educator Patricia Salkin, writing about regional planning in New York State, has noted that many of today's problems, such as those related to the environment, affordable housing, economic development, and transportation infrastructure transcend local political boundaries and are therefore regional in nature. She states, "Without a requirement for some coordination, cooperation and consistency in local planning at some higher level, New York can never achieve sound, regional planning which is needed to address myriad social and environmental concerns."[7]

Although New York State has yet to approach regional land use issues in a coordinated, comprehensive fashion, a number of other states have acted on the recognition that land use is more than a completely local concern and have enacted statewide growth management programs. These programs are summarized later in this report in the section "Other State Approaches to Land Use."

Local Government Planning in New York State

City, Village and Town Planning

One of the most important local government powers authorized by state statute is the power to regulate the physical development of the municipality. In New York, the power to control land use is granted to each municipality by reference in Article IX, Section 2, of the Constitution and by the various state enabling statues.

Land use controls are an exercise of the police power to provide for public order, peace, health, safety, morals and the general welfare of citizens. This power resides in the sovereign state and in the case of land use controls in New York State, is delegated to its municipalities as specified in the General City Law, the Town Law, the Village Law, the General Municipal Law, the Municipal Home Rule Law and its companion Statue of Local Governments.

It is the prerogative of local governments in New York to regulate land use. In addition, there are no state requirements that compel local governments to prepare comprehensive plans. New York State statutes provide a definition of a comprehensive plan; however, the definition is broad and does not include any specific requirements regarding the goals, objectives, or policies that must be included in the plan. Moreover, the state statues do not require municipalities to consider the regional impact of local land use decisions.

If local governments so choose, they have the power to utilize a variety of planning tools authorized by state statute, including: creation of planning boards, comprehensive planning,

zoning laws, zoning boards of appeals, subdivision laws, site plan review, and numerous other techniques such as clustering, performance zoning, planned unit developments, overlay zones, incentive zoning, official maps, historic districts, and transfer of development rights. If a local community decides to adopt zoning, the zoning must be based on a previously established comprehensive plan.

In summary, New York State municipalities can choose to plan; and if they plan, they can plan as they choose.

County Planning

County governments may not directly regulate land use in New York State. Counties do, however, have the statutory power under General Municipal Law to create planning boards, authorize the preparation county comprehensive plans, and authorize county planning boards to make non-binding recommendations on certain local land use actions. These action include the following:

- Adoption or amendment of a comprehensive plan pursuant to section two hundred seventy-two-a of the town law, section 7-722 of the village law or section twenty-eight-a of the general city law;
- Adoption or amendment of a zoning ordinance or local law;
- Issuance of special use permits;
- Approval of site plans;
- Granting of use or area variances;
- Other authorizations, which a referring body may issue under the provisions of any zoning ordinance or local law.

The proposed actions set forth above are subject to these referral requirements if they apply to real property within five hundred feet of the following:

- The boundary of any city, village or town; or
- The boundary of any existing or proposed county or state park or any other recreation area; or
- The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
- The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
- The existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
- The boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, except this shall not apply to the granting of area variances.

Such review may include inter-community and countywide considerations in respect to the following:

- Compatibility of various land uses with one another;
- Traffic generating characteristics of various land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities;
- Impact of proposed land uses on existing and proposed county or state institutional or other uses;
- Protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas;
- Drainage;
- Community facilities;
- Official municipal and county development policies, as may be expressed through comprehensive plans, capital programs or regulatory measures; and
- Such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of a satisfactory community environment.

If a county planning agency recommends modification or disapproval of a proposed action, the referring body shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

County Planning Boards may also be authorized by the county legislative body to review preliminary or final subdivision plats or to approve the development of undeveloped plats. In any city, town or village which is located in a county which has a county planning agency so authorized, the clerk of the municipal planning agency, upon receipt of application for preliminary and/or final approval of a subdivision plat or proposal to develop an undeveloped plat and/or plats already filed in the office of the county clerk, shall refer certain of such plats to the county planning agency. In the absence of a county planning agency, the county legislative body may authorize a regional planning council whose geographic area includes the county, to perform these same review functions.

Another tool allowed by New York State statute for regional growth and coordination, is the official map. The county legislative body may adopt an official map in order to facilitate the planning and development of roads and drainage systems and sites for public development. County official maps are designed to assist in the protection of rights-of-way that will be needed for widened, realigned or new roads; to protect drainage systems; and to protect sites for public development. County official maps serve as a basis for the adoption and administration of regulations for the control of development along or otherwise related to roads, drainage channels and sites for public development.

The official county map is final and conclusive with respect to the location, width and dimensions of all rights-of-way and sites as shown thereon. The county official map is deemed to be in addition to, or an amendment of, the official map of any municipality. If a municipality does not have an official map, the county official map as it affects such municipality is considered to be the official map of such municipality, and all provisions of law applying to

municipal official maps are applicable in the case of county official maps where they affect municipalities.

Regional Planning

The authority to form regional planning commissions in New York State is granted through Article 12-B of New York State Municipal Law "County Planning and Regional Planning Councils." Section 239-h defines the creation of regional planning councils, which states that a municipal legislative body may collaborate with the legislative body of a contiguous municipal legislative body to create a regional planning council. The legislative bodies of the municipalities participating in the regional planning council shall adopt by resolution an agreement setting forth the terms and conditions of such collaboration.

Membership and officers on such council shall be selected in a manner to be determined by the collaborating legislative bodies. In making such appointments, the collaborating legislative bodies shall include members from a broad cross section of interests within the region. Consideration should also be given to securing representation by population size, geographic location and type of municipality. The terms of membership as well as the filling of vacancies on such council shall be determined by the collaborating legislative bodies.

Regional planning councils are granted the following powers as shall be provided in the agreement among the collaborating municipalities:

(i) Conduct surveys, studies and research programs, which address regional needs and improve community services;

(ii) Distribute information resulting from such surveys, studies and programs;

(iii) Prepare a regional comprehensive plan and any amendments thereto pursuant to section two hundred thirty-nine-i of this article;

(iv) Consult and cooperate with appropriate state, municipal and public or private agencies in matters affecting the region, including, but not limited to the general protection, enhancement, quality of life, growth and development of the region;

(v) Assist with transportation planning in areas of the region not served by metropolitan planning organizations created pursuant to section fifteen-a of the transportation law; and

(vi) Conduct reviews of certain classes of planning and zoning actions by a city, town or village pursuant to sections two hundred thirty-nine-l and two hundred thirty-nine-m of this article, and review certain subdivision plats pursuant to section two hundred thirty-nine-n of this article.

Regional planning commissions in New York State may not directly regulate land use, nor may they undertake capital construction projects. Regional councils are also limited in their ability to take strong stands on regional issues because they are reliant on their member counties for funding. In addition to preparing regional studies and plans, they may, instead of county planning boards, and if given the authority provided in the agreement among the collaborating municipalities, review the same local land use actions that county planning boards would

otherwise review in accordance with the statutory power granted under General Municipal Law. In the Capital District, all the counties retain this review authority for themselves.

There are a few other established opportunities for regional input and review of local projects. State statutes require that if a county government that is part of a regional commission prepares a county comprehensive plan, the county must provide the plan to the regional planning commission for review and recommendation.

In cases where federal project funding is involved, regional councils in New York are given an opportunity to offer non-binding comments on these projects. This authority is a carry-over from the Intergovernmental Cooperation Act of 1968, the U.S. Office of Management and Budge issued Circular A-95, which required area-wide regional planning agency review of all proposals for local participation in federal development programs. This act, together with Title I, section 701 of the Housing Act of 1954, which offered a fifty-fifty federal planning fund match for participating projects, greatly stimulated the establishment of regional councils, since regional review would be required to access local planning funding.

Both the federal 701 program and the federal A-95 review requirements are no longer in effect; however New York State has chosen to continue offering regional councils the opportunity to review and comment on federally funded projects.

Metropolitan Planning Organizations, such as the Capital District Transportation Committee, are federally required transportation planning bodies responsible for the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) in its metropolitan planning area. The adoption of these documents is a prerequisite for the receipt of federal transit and highway funding.

MPO's were created by the U.S. Congress in the early 1970s to address the transportation challenges within metropolitan regions. Most MPO's are associations of locally elected officials and representatives of state and regional agencies. MPOs gained considerable influence with the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Efficiency Act for the 21st Century (TEA-21) passed in 1998. Under these acts, MPOs' responsibilities were expanded to identify long-range transportation needs and to program state and federal transportation investments to insure that regional transportation systems are efficient, integrated, and multi-modal.

With ISTEA and TEA-21, many MPOs, including CDTC, have begun to look more closely at regional land use patterns and their effect on regional transportation systems (this report is part of that effort). MPOs in New York State, while having considerable influence over transportation policies and spending priorities, have little direct control over local land decisions. Various MPO programs and policies can seek to influence and educate local land use decision makers, however the authority to make land use decisions in New York rests almost completely on the prerogatives of each individual municipality.

Development Incentives in New York State

Industrial Development Agencies

One of the results of having numerous units of local government in New York State is that municipalities within the same job market region (and even the same county) often compete with each other for the same jobs. The primary mechanism utilized in this competition is the Industrial Development Agency (IDA). IDAs are independent public benefit corporations whose general purpose is to promote and assist job growth and business retention. Among other things, IDAs have the power to bond, exercise the power of eminent domain, and grant various tax abatements. The specific powers and duties of IDAs in New York State are set forth in Article 18-A of General Municipal Law. As of March 2004, there were 117 IDAs in the state. There are 20 IDAs in the four-county Capital District.

IDA financial incentives and subsidies typically include property tax abatements (usually payments in lieu of taxes (PILOTs) on a sliding scale for ten years), low interest loans, lease-purchase agreements, sales tax exemptions, mortgage tax exemptions, infrastructure improvements, land grants, "shell buildings" and other benefits. Often a combination of these incentives is utilized on IDA-leased land that is pre-permitted for development ("shovel ready" sites).

One of the consequences of IDA competition is that with each community looking to create jobs and enhance their own tax base to pay for local services, municipalities – though more often, counties – engage in "bidding wars" with other communities by trying to offer prospective businesses the "best deal." The best deal usually means the attributes related to an identified development site – accessibility, infrastructure, few environmental constraints, proper zoning, skilled workforce, etc – as well as the amount of direct financial subsidies provided.

Savvy developers and businesses know that localities are eager for new jobs and added revenues; therefore, they negotiate to get the most public financial support for their project. Inducements have become an obligatory part of economic development, since all the competing jurisdictions are using similar tools to attract companies to their locality. However, bidding wars between communities skew the market and tend to escalate the financial benefits to new, larger businesses at the expense of the existing homeowners and older businesses of the locality.

In some cases when companies utilize IDA inducements as part of intra-regional competition, there is not so much a creation of new jobs within a region as a *relocation* of jobs from one part of the region to another. It is usually argued, sometimes justifiably, that the relocating business needs more room to expand than the existing site allows.

The IDA statutes contain a loophole that allows companies to skirt the IDA statute restriction that prohibits using IDA incentives to move jobs from one part of the state to another. The loophole allows the restriction on intra-state relocation to be nullified if the prospective company is "considering" moving out of the state. A statement to that effect by a company spokesperson at a public meeting will usually suffice.

Moreover, many of the IDA incentives reduce – at least temporarily – the tax base benefits the new development is supposed to be providing, since many businesses will usually avoid paying taxes for their first ten years. Most businesses, however, make a PILOT payment to the IDA for a portion of what would be the local tax payment. But there is nothing that keeps recipients of benefits from relocating elsewhere, with a new round of benefits, as soon as the old benefits sunset, though this is not usually the case.

Many of the IDAs in New York State have had relative success in business retention (though somewhat less success in business attraction). And it is often argued that without IDAs and business subsidies, many businesses would simply relocate to other states (or countries) where they can receive better benefits. The jobs, multiplier effects to other local businesses, and the PILOT payments from subsidized businesses are often considered far better than nothing.

What is most relevant in terms of regional land use patterns is that very often relocation from one part of a region to another means the abandonment of urban buildings close to housing, services and existing infrastructure for a new "greenfield" locations in suburban office parks. Office parks are rarely integrated with other uses, such as employee housing and services, and are therefore not usually accessible by foot. New office parks require costly public outlays for new sewer, water and road infrastructure, and they often generate demand for new housing within easier commuting range, which can also contribute to further abandonment of older urban areas.

While the incentives offered to businesses seem necessary in a climate of inter-state competition, this situation could potentially be remedied with federal legislation. The authors of the book "Place Matters" suggest that: "The federal government should repeal features of the tax code that work against cities and in favor of suburbanization, enact new provisions to dampen inter-jurisdictional competition, and pay more attention to equalizing its outlays within and across metropolitan regions. In particular, the federal government should prevent localities from using tax abatements and other incentives in "bidding wars" for private investment."[8]

A Recent Audit of IDAs

A report by the New York State Comptroller audited five IDAs located in the greater Capital District to examine their recent financial activities, governing board oversight, and policies and procedures to see whether the IDAs have criteria for selecting businesses receiving incentives, and whether the criteria are consistently applied. The report also examined whether IDAs monitor project performance to ensure fulfillment of proposed benefits or objectives.[9]

The report concluded that four of the five IDAs had not developed formal project evaluation criteria for use in their decision-making processes and that none of the IDAs maintained documentation indicating how the claims of project applicants were verified or used in decision-making.

The report also found that project performance was not adequately monitored. There was only limited evidence that steps were taken by the IDAs to ensure that sponsored projects meet the employment obligation indicated on application for IDA assistance or that the IDAs imposed sanctions and/or penalties in cases where projects failed to fulfill their obligations. There was

also a lack of adequate procedures established to verify the business-reported employment information.

The report offers a number of recommendations for improving the evaluation criteria and monitoring efforts of the IDAs examined, including the development and review of standardized project evaluation criteria, the verification of annual employment figures reported by businesses, and the specification of sanctions, such as "clawback" provisions or increased PILOT payments, for those projects that fall below performance standards.

Although the Comptroller's audit examined IDA project evaluation and monitoring efforts, it did not analyze the spatial affects of IDA policies and procedures. Therefore, it omitted an important element in understanding and improving the land use and tax base impacts of inter-jurisdictional competition, particularly between older, declining urban areas and new suburbanizing areas. In addition, the audit illustrates the need for a more comprehensive monitoring and evaluation system.

The Empire Zone Program

New York State Empire Zones (EZs), formerly known as Economic Development Zones are designated geographic areas that offer special incentives to encourage economic development, business investment and job creation. The program was established in 1986 with amendments to the General Municipal Law. The enabling legislation provided for up to 40 zones. The first zone was established in 1987.

Certified businesses in a zone that are eligible could qualify for significant tax credits, sales tax benefits as well as a utility discount. The wage, sales and real property tax credits offered by the program are State funded. EZ benefits include the following:

- ***Wage Tax Credit (WTC)***

  This NYS Income Tax Credit is available for up to five consecutive years for qualified EZ certified companies hiring full-time employees in newly created jobs within the zone. For employees in special targeted groups, this credit equals $3,000 per year per new job and $1500 for all other new hires. Businesses new to NY are eligible to receive a 50% cash refund of any unused WTC amounts. Other businesses may carry forward any unused credits indefinitely.

- ***Investment Tax Credit (ITC) and Employment Incentive Credit (EIC)***

  This NYS Income Tax Credit is available for qualified EZ certified manufacturing, R&D, and investment firms who make qualified investments in the zone. The percentage is 10% for business corporations (C-Corps) and 8% for individuals, sole proprietors, partnerships or S-Corps. An additional 3% credit (EIC) is allowed for each of the three taxable years immediately following the taxable year that the ITC was allowed provided certain employment requirements are met. Businesses new to NY are eligible to receive a 50% cash refund of any unused ITC amounts. Other businesses may carry forward any unused credits indefinitely.

- ***485-e Property Tax Abatement***

  This abatement provides a reduction in the taxable assessment based upon physical renovation or new construction within the Empire Zone. The abatement is spread over a ten-year schedule with 100% exempt for the first seven years and decreasing 25% per year thereafter.

- ***Sales Tax Refund***

A refund of sales tax paid on purchases of building materials used in commercial and industrial improvement projects within the EZ.

- ***The Real Property Tax Credit***

This refundable NYS Income Tax Credit is found by computing a formula based upon the number of new jobs created in the zone and the real property taxes paid on property within the zone. This credit is available for a 14-year period. After ten years, the credit decreases by 20% each year thereafter. Certain credit limitations may apply. (Effective taxable years beginning on or after January 1, 2001)

- ***Tax Reduction Credit***

This NYS Income Tax Credit is found by computing a formula based on the number of new jobs created in the zone, the company's assets in the zone and in the state, and the income taxes owed by the company. (Effective taxable years beginning on or after January 1, 2001)

- **Sales Tax Exemption**

4% NYS sales and uses tax exemption for tangible personal property and services sold to qualified EZ businesses that are used predominantly in an EZ. Please note: on an annual basis, an employment test must be met both in the zone and out of the zone within NYS in order to qualify for this benefit.

- ***Zone Capital Credit***

This NYS Income Tax credit is available for qualified investments in a Zone Capital Corporation, a direct equity investment in a certified EZ business or a contribution in an approved community development project located within the zone. The amount of the credit is equal to 25% of the eligible investment or contribution.

A utility discount on increased load of at least 25% may also be available.

The Evolution of the EZ program

The Economic Development Zone program was originally designed to target special benefits to geographically specific areas of need. The criteria for qualifying as a potential zone were explicitly based on the high levels of poverty, unemployment, and economic distress within a defined zone area. In addition, the targeted zone area was required to be contiguous. The original philosophy behind the program was that urban areas of poverty and disinvestment needed special help to level the playing field with new “greenfield” sites where most new industrial development had been recently locating. As the program evolved, a new provision for “subzones” was included. These zones were also to be limited in number and area, and were to be specifically related to the primary zone area. The overall area of a zone can be no more than two square miles.

Over time, the zone program became less and less a technique to spur urban reinvestment in areas of need, and more and more a program to subsidize business growth anywhere in the state. By the mid 1990’s the program became so geographically widespread, though not yet covering all areas of need, that it was actually penalizing the few declining areas that didn’t have zone

designations. The availability of the zone program became a de facto prerequisite for any major private economic investment in New York State.

The program has now evolved to the point were nearly every county in the state has at least one (as of 2004 there were 72 zones). Moreover, the original intent to target growth in specific areas of need has been subverted. The contiguous nature of a zone area is no longer a requirement. This policy change has resulted in certain counties qualifying for zone designation based on the poverty of one area, yet the zone benefits being applied to individual businesses scattered throughout the county, with little or no direct geographic relationship to the original qualifying area. Moreover, there have been instances where zones have been created in areas where the median household income is among the highest in the region.

The Effectiveness of Empire Zones

The EZ program has also come under criticism for its performance in creating and retaining jobs and its cost to New York State taxpayers vs. the benefit that state receives.

A recent audit by the Office of the State Comptroller examined the effectiveness of the Empire Zone program.[10] The report involved an audit of eight Empire Zones located around the State, and found that the Zones are poorly administered, keep inadequate records, and do not hold firms that receive tax breaks accountable for actually producing jobs. Auditors determined that individual Empire Zones have routinely failed to do the basic analysis needed to determine whether the tax breaks given to businesses are cost-effective or if businesses were reporting accurately about the number of jobs created.

The audit reviewed the operations of Empire Zones located in Binghamton, Buffalo, Friendship (Allegany County), Islip, Rochester, Syracuse, Tonawanda and Yonkers, and found that:

- While 30 percent of the businesses that received tax breaks met or exceeded their job creation targets, 47 percent created fewer jobs than they promised and 23 percent actually lost jobs (Of 375 businesses tested by auditors, 113 businesses exceeded projections for job creation, 176 created fewer jobs than projected and 86 actually reduced employment).
- Overall for the eight zones studied, businesses created 2,380 fewer jobs than projected. Thirty-four of 86 businesses that reduced jobs nevertheless claimed real property tax credits, sales tax exemptions or wage tax credits tax benefits totaling nearly $2.4 million.
- Local zones did not evaluate the performance of companies, so firms continue to receive tax breaks for years even if they are not creating jobs and despite the fact that job creation is a criterion for receiving tax breaks.
- There is poor accounting for the amount of tax breaks given out, so it is difficult to quantify how much the program costs, what taxpayers are getting for their investment and which Empire Zones are effective and which are not.
- According to the DED, which administers the Empire Zone program, the local Zone Administrative Boards are ultimately responsible for the administration of individual Empire Zones. Auditors determined that the Zone Boards do not see this as their role and are not effectively monitoring and evaluating Zone performance.

- Companies that receive tax breaks are required to file Business Annual Reports (BARs) detailing investments and the number of jobs created. Zone administrators did not compare BARs to initial certification applications to determine if businesses had met goals. Zone boards can work with DED to decertify businesses for performance shortfalls, but auditors did not find a single instance of such action.
- In some cases, it appeared that Zone officials had failed to enter data from all BARs they received or that some businesses had not submitted BARs. As a result, Zone Annual Reports submitted to DED included inaccurate or incomplete data.
- In seven of the eight Zones studied, the Zone Board had not taken steps to determine whether providing benefits to businesses in the Zone was an effective use of tax dollars. Auditors also noted that no cost benefit analysis is conducted during the application process prior to the certification of an Empire Zone business to determine if potential job creation and investment benefits will outweigh tax breaks.

As with the review of IDAs by the comptroller, the review of Empire Zones focused primarily on the administration of the program without considering the spatial impacts of inter-jurisdictional competition between older, declining urban areas and new suburbanizing areas.

The Declining, "Inelastic" Status of Cities in New York State

Although New York State contains New York City, which is perhaps the most significant and influential city in the United States, almost all of the remainder of the cities in the state have been experiencing precipitous declines in employment, population, and therefore, overall status within their respective regions for the last half-century. Even New York City has experienced ebb and flow in its status during this period, however, the sheer magnitude of New York City puts it in a class by itself as a world city. The table below shows the change in population of the New York State's (and the Capital District's) major cities since 1950.

City	Population 1950	Population 2000	Percent Change 1950-2000
Albany	134,995	95,658	-29.14%
Schenectady	91,785	61,821	-32.65%
Troy	72,311	49,170	-32.00%
Saratoga Springs	15,473	26,186	69.24%
Rochester	332,488	219,773	-33.90%
Buffalo	580,132	292,648	-49.55%
Binghamton	80,674	47,380	-41.27%
New York City	7,891,957	8,008,278	1.47%
Utica	101,531	60,651	-40.26%
Rome	41,682	34,950	-16.15%
Syracuse	220,583	147,306	-33.22%

As shown above, by 1950, almost all the cities in New York State had begun what has become a dramatic half-century trend of losing population (and jobs). Much of this loss was to towns adjacent to or near existing cities.

Sprawl Without Growth

A Brookings Institute study titled "Sprawl Without Growth: The Upstate Paradox"[11] analyzed the growth and development trends and population in Upstate New York and found that:

- *Despite slow population growth, 425,000 acres of Upstate New York were urbanized between 1982 and 1997, resulting in urban sprawl in the form of declining density.* The total amount of urbanized land in Upstate grew by 30 percent between 1982 and 1997, while its population grew by only 2.6 percent, reducing the density of the built environment by 21 percent.
- *Compared with other Upstate regions, Western New York sprawled less between 1982 and 1997, and Central New York sprawled more.* All Upstate regions have falling population density, but Western New York's density dropped only 16 percent between 1982 and 1997. Meanwhile, Central New York—which includes Syracuse, Utica/Rome, and surrounding counties—urbanized over 100,000 acres even though it lost 6,500 residents, resulting in a 32 percent decline in its density.
- *People, jobs, and businesses are leaving cities and villages and moving to towns.* Upstate cities lost over 40,000 households in the 1990s alone, while unincorporated town areas gained over 160,000 households. Businesses have also disappeared from cities while growing in towns.
- *Sprawl hits Upstate cities hard.* City tax bases fell in the 1990s, vacant housing increased, and home ownership slipped. Towns remained comparatively prosperous.

The report states that continued decentralization of people and jobs away from Upstate New York's cities and villages is undermining the economic health and quality of life of the region. The authors argue that State and local leaders need to understand that these trends are not inevitable. Explicit state reforms in fiscal policy, annexation laws, and planning can go a long way toward fostering a better future for Upstate New York.

Vacating the City

A second Brookings Institute Report titled "Vacating the City: An Analysis of New Homes vs. Household Growth"[12] analyzed building permits and household changes in 74 of the largest U.S. metropolitan areas between 1980 and 2000 and found that:

- *From 1980 to 2000, the number of new building permits exceeded the number of new households by nearly 19 percent, although there were dramatic differences between decades.* New housing permits outpaced household growth the greatest in the Northeast and Midwest, at 30 percent and 35 percent, respectively.

- *When metropolitan building permits outpace household growth, it generally comes at the expense of the central city and possibly older, inner-ring suburbs.* The size of a city's share of metropolitan area building permits affects its change in households. All but one of the 27

cities that lost households in the 1990s had a small share (less than 10 percent) of their area's building permits.

- *If housing permits lag household growth in a metropolitan area, then the central city will not lose households and may actually gain them.* In contrast, the more that new housing permits exceed household growth in a metropolitan area, the more likely the central city will lose households. But if the city's share of the area's permits is large enough, the city can escape household loss and can grow.

New York State's Regions

The 74 metropolitan regions examined in the study included four in New York State: Buffalo, Rochester, Syracuse, and Albany. As indicated in the tables below, the Buffalo-Niagara region ranked the worst in the study. The ratio of new building permits to new households was 3.89, which is a 289% difference. The region issued 26,881 new building permits yet only gained 6,916 new households – clearly sprawl without growth.

As for the Albany, Schenectady, Troy MSA, there was a 35% difference between the number of new building permits (25,704) and the number of new households (19,066) – not as dramatic as Buffalo, yet still in the bottom quartile of the study (17th out of 74).

Building Permits and Household Change 1980 - 2000

Rank (1-74)	Metropolitan Area	Building Permits	Household Change	Ratio	Percentage Difference
17	Albany-Schenectady-Troy, NY MSA	25,704	19,066	1.35	34.82%
1	Buffalo-Niagra Fall, NY MSA	26,881	6,916	3.89	288.68%
8	Syracuse, NY MSA	16,222	9,627	1.69	68.51%
20	Rochecster, NY MSA	31,251	23,984	1.30	30.15%
72	Austin-San Marcos, TX MSA	106,422	125,879	0.85	-15.46%

Central City(s)	Change in Households	% Change in Households	Vacancy % Point Change	Building Permits	Central City Permits as a % of Metro Permits
Albany, NY; Schenectady, NY	-2,895	-4.1	2.8	1,315	5.1
Buffalo, NY	-13,716	-10.1	5.5	2,109	7.8
Syracuse, NY	-5,463	-8.4	3.6	627	3.9
Rochester, NY	-4,608	-4.9	3.4	861	2.8
Austin, TX	73,501	38.3	-7.4	51,231	48.1

A separate study by the Capital District Regional Planning Commission used satellite imagery to analyze regional growth from 1986 to 1997 and determined that the region gained approximately 15,000 acres of development on land previously undeveloped during this period - a 15.8 percent

increase in developed land, while there was a 3.4 percent increase in population during the same period, less than one-quarter the rate of land consumption.

The Patterns of Sprawl

The prevailing pattern of suburban growth within metropolitan regions in the U.S. over the last half-century has overwhelmingly exhibited the following characteristics:

- *Isolated/Unconnected* – Most new suburban residential growth has been built as isolated single-family housing subdivisions dispersed throughout the urban fringe, in many cases at a considerable distance from existing developed areas and employment centers. The dominant street patterns of the new residential developments are curvilinear rather than gridded, and they do not usually connect to adjacent developments (if there are any); rather, they more often connect directly to collector roads or highways. This is often the case even when one subdivision is adjacent to another and/or when a retail store is adjacent to a residential development. It is more common to see specific provisions made to *prohibit* interconnections using dead-ends (cul-de-sacs), berms, tree buffers, gates and fences.

- *Segregated by Use* – Following the prevailing "modern" zoning implemented by many communities over the last half-century, which largely outlawed mixed-use urbanism, developments are rigidly segregated by use: single-family housing subdivisions are separated from apartments, which are separated from shopping areas, which are separated from offices and employment centers.

- *Land Intensive* – As noted by the Brookings Institute study previously cited, land development has been greatly outpacing population growth throughout U.S. metropolitan regions. And the developments themselves, housing, retail, manufacturing and warehousing in particular, take up much more land in both buildings and parking, than their traditional urban predecessors.

- *Auto-dependant* – Developments that are spread out, isolated by design, segregated by use, and land intensive result in auto-dependency: owning and driving a car for almost all trips becomes imperative.

The prevailing pattern of sprawl development in the U.S. has come under extensive criticism because it is more costly to serve with infrastructure than traditional urbanism; is unnecessarily wasteful of land; despoils environmental resources, is socially alienating (separation by class and often race), and is inefficient for mass-transit service. Metropolitan regions that have experienced a large amount of sprawl development have suffered from traffic gridlock, air pollution, water quality degradation, urban fiscal distress, and concentrated poverty, and therefore, a decline in regional quality of life.

Loss of Farmland

The land-intensive nature of suburban development puts pressure on environmentally sensitive areas, wildlife resources, forest resources, and existing open space. Pressure on farmland along the urban fringe has been particularly great. According the USDA Census of Agriculture, the

Capital District has lost 21,357 acres of farmland from 1987 to 2002, which is an 8% loss. Much of this land has been converted to new housing developments, and much of this lost farmland is prime – having the most productive characteristics for farming. However, the land characteristics that make for productive farmland - well drained soils on relatively level terrain – are some of the same characteristics that make this land well suited for development. Suburban development pressure has served to expedite the demise of struggling farms along the urban fringe since the temptation to sell to a developer is often too great to resist given the financial challenges facing the region's small dairy farms. Suburban development often creates addition financial pressure on already struggling farmers. For example, new development often creates the need for additional municipal services, which in turn causes an increase in the property tax rate. Farmland in areas under development pressure often becomes assessed and taxed based on its development potential rather than its potential for farming (although these conditions are ameliorated if the farm is include in a state-designated agricultural district). Additional pressure also comes in the way of conflicts between new suburban residents and existing farms. Suburban residents are often transplants from the cities and they are seldom prepared for the smells, sounds and activities that are normal occurrences in rural farming areas.

Uneven Development

The combined affect of the decline in New York State's city populations with the state's fragmented local government structure has resulted in conditions of distinct racial and class segregation within metropolitan regions. Throughout New York State, the minority population (non-white, non-Hispanic) residents are highly concentrated within the central cities. For example, in the Capital District Region, the minority population, particularly blacks and Hispanics, are heavily concentrated within the cities of Albany, Schenectady and Troy. The percent minority population within the region is12.4%, however within Albany, Schenectady and Troy combined the minority population is 31%, in Albany its 39%, and in the Albany School District it is 70%. While the central cities of Albany, Schenectady and Troy contain only 26% of the Capital District's overall population, these three cities contain 64.4% of the region's minority population.

The concentration of black and Hispanic residents in the region's cities is increasing at a higher rate than the overall regional increase in minority residents. And the exodus of whites from the central cities is increasing faster than the overall population decline. For example, from 1990 to 2000, the city of Albany's overall population dropped by 4,373 persons, yet the city lost 16,041 (-22%) white residents during the same period.

Moreover, these same areas of racial segregation closely correspond with the region's highest concentrations of poverty, and with the region's oldest housing, highest concentration of vacant housing, and highest percentage of rental housing[13]. For example, the overall poverty rate of the Capital District is 9%, while the combined poverty rate within the cities of Albany, Schenectady and Troy is 22%. The region's owner occupied housing rate is 64%; within the city of Albany it is 38%, in the city of Schenectady it is 45%, and in Troy it is 40%.

An Uneven Playing Field

Opponents of regionalism, "smart growth," and land use regulation in general, often argue that the market – supply and demand – should dictate outcomes. They claim that the prevailing form of suburban growth is simply a reflection of market demand. However, what's overlooked in the "free market" argument is just how much government policies have shaped and influenced U.S. development patterns.

The federal government became actively involved in housing policy during the Depression era by backing private mortgages, which transferred the risks of many housing loans from private banks to U.S. taxpayers. The Federal Housing Administration, through the use of the Home Owners Loan Corporation's "redline" maps, sanctioned both urban disinvestment and racial segregation.[14] The 1956 Federal Highway-Aid Act, the nation's most expensive public works program, funded the construction of an extensive interstate highway system that made feasible the exodus of city residents to the outlying commuter suburbs.

Accelerated commercial depreciation, mortgage interest and property tax deductions, (and even urban renewal, which displaced tens of thousands of urbanites and replaced many close-knit communities with concentrated ghettos), all aided the urban flight, urban abandonment, and the subsequent auto-centered suburban growth that's now dominant throughout the U.S.

Moreover, when one considers state subsidies for new school construction, new senior housing, and new water and sewer infrastructure, most of which is directed to suburban areas, and add to that the development incentives discussed previously, it becomes clear that development patterns are not the result of a free market, but rather the result of a government subsidized and influenced market. Local government zoning laws that limit growth, restrict apartments and other affordable housing options, and mandate large lot sizes also shape the conditions in which the "market" functions.

While many persons living in towns on the urban periphery earn (or earned) their wealth in cities, and many others patronize the cultural establishments that are still predominately located in cities, the general sentiment toward cities seems to be that of a disposable, discarded product. As such, the advantages of city living further decline with each exodus of middle class families and businesses, with each new suburban big box chain store that drains away downtown customers, with each less advantaged arrival needing social services, and with each increased tax bill to existing property owners who must shoulder the tax burden with less and less tax base to do so, so that the spiral of decline and disadvantage keeps spinning.

Cities are also at a structural disadvantage regarding the repair and maintenance of state highways. While state roads that traverse towns are maintained by the state. State roads that traverse cities are the cities' responsibility. Local governments own 87% of all road miles in New York, 43% of the functionally classified federal-aid system statewide and fully 55% of the urban arterial system (expressways, major and minor arterials within urban areas). The costs of paving, plowing, repairing and general upkeep are major expenses for most cities.

Lastly, many of the regional tax-exempt properties are located in cities (government buildings, churches, hospitals, public schools and universities), which cost the cities in public safety

services, and utilize land that could otherwise be put to tax-generating use, yet these services, while important, provide no direct contribution toward the local tax base to help fund these services.

Annexation

In 1964, rather than to strengthen the cities ability to capture the dispersing population (and tax) base, the state legislature weakened the cities ability to annex new territory, while also granting new powers to local towns. These new powers were granted when New York State amended the state constitution by passing a "home rule" amendment, effective January 1, 1964. These amendments included both a bill of rights for local governments and a constitutional grant of expanded local legislative "home rule" powers. Included within the bill of rights for local governments is the following section pertaining to annexation:

> "(d) No local government or any part of the territory thereof shall be annexed to another until the people, if any, of the territory proposed to be annexed shall have consented thereto by majority vote on a referendum and until the governing board of each local government, the area of which is affected, shall have consented thereto upon the basis of a determination that the annexation is in the over-all public interest. The consent of the governing board of a county shall be required only where a boundary of the county is affected. On or before July first, nineteen hundred sixty-four, the legislature shall provide, where such consent of a governing board is not granted, for adjudication and determination, on the law and the facts, in a proceeding initiated in the supreme court, of the issue of whether the annexation is in the over-all public interest."

By requiring the consent of the territory to be annexed, the state virtually eliminated the cities' ability to expand territory, and severely limited the ability for cities to expand their tax bases. In the majority of cases, the growth taking place on the periphery of cities was growth that otherwise would not have occurred without these cities. The cities still contained most of the regional jobs, cultural institutions, and services. In addition, the adjacent town growth was often predicated on the cities' willingness to extend water and sewer services, which they often did because it was at least a new source of revenue available to compensate for their shrinking tax bases. The adjacent towns also relied heavily on the city residents to patronize their new retail establishments.

What is perhaps surprising, given New York States' more recent aversion to municipal expansion, is that the most important municipal boundary adjustment in American history occurred in New York State. In 1898, Manhattan merged with Brooklyn (which at the time was the fourth largest U.S. city), Queens, Staten Island, and parts of Westchester County that became the Bronx. The size increased from about 44 to about 300 square miles, and the population increased by almost 2 million people.

According to historian Kenneth T. Jackson, without exception, the adjustment of local boundaries during the 19th century had been the dominant method of population growth in every American city of consequence. Without annexation or consolidation there would now be no great cities in the United States in the political sense of the term.[15] For example, Chicago and Philadelphia also underwent significant expansion in the 19th century, with Chicago expanding its area from two to 130 square miles. Philadelphia's consolidation with Philadelphia County in

Living and Working on an Uneven Field

Sam attends the same church as his friend, Charlie. They generally shop at the same Walmart in Glenville and use the same dentist in Niskayuna. They attend Broadway touring company productions at Proctor's Theatre in Schenectady and in the summer go to the track once or twice together with their families. They are truly "regional residents", enjoying all that the Capital Region has to offer.

As it happens, Sam and his family live in the Rosa Road area of northeast Schenectady and he works at a firm in the 21st century office park in Clifton Park. Charlie lives in the western part of Clifton Park and works at Ellis Hospital in Schenectady. They frequently pass each other on the Rexford Bridge as they reverse each other's modest-distance commutes.

This is where the parallel nature of their lives ends. The heavy dependence in New York on local governments for the cost of public services creates an uneven playing field that affects residents and workers of differing communities in vastly different ways. Because Sam's house happens to be in the city of Schenectady and Charlie's house just three miles away is in the town of Clifton Park, their fiscal circumstances contrast significantly:

- When the Capital Region witnesses an increase in immigration of lower income residents from downstate New York, Sam's Schenectady County property taxes rise. Charlie's Saratoga County taxes do not.
- When the two families attend an event at Proctor's, Sam has paid taxes to provide (city) police and fire protection, Charlie has not.
- When there is a traffic accident outside Charlie's work place in Schenectady, Sam has paid taxes to provide a (city) police response; neither Charlie nor his employer have.
- When there is a traffic accident outside Sam's place of work in Clifton Park, Sam, Charlie and their employers have all shared in the (state) taxes to provide a State Police response.
- As Charlie drives down Union Street to his work place, he can thank Sam for paying to maintain the condition of the street and operate the signal system on the city-owned arterial.
- As Sam drives along NY 146 to his work place, he knows he has shared the cost of maintaining the condition of the street and signals on the state-owned arterial.
- On top of all this, Sam and his wife Sarah debate educational plans for their young children. They wonder whether they should spring for the funds for private school tuition because of the low rating of the city' s public schools – schools that are challenged in meeting educational achievement goals with a student body heavily populated with disadvantaged children.
- Charlie and his wife Cathy face no similar dilemma – their house is located in the highly-rated Niskayuna School District which serves children predominantly from households with incomes far above the regional average.

In short, Sam is required to contribute tax dollars to provide social services and public infrastructure for the general benefit of the entire region (service to poor residents and to non-profit institutions) to a far greater degree than does Charley. As a result, Sam's personal finances suffer. His property tax annually totals $5,400 on his three-bedroom $100,000 house (whose value has only recently begun to recover from a ten-year decline.) Charley can work and recreate in Schenectady while enjoying steady increases in property values (his similar, three-bedroom house is now appraised at over $175,000) and pay $2,000 less in property taxes than does Sam.

1854 is still, in percentage terms, the largest single annexation in American history. In addition, many other great American cities, such as Minneapolis, Cleveland, Cincinnati, St. Louis, Boston, New Orleans, Pittsburgh, Baltimore, San Francisco, and Detroit expanded their boundaries (though not as dramatically as New York, Philadelphia and Chicago) during this period.

According to planner Tom Daniels, "Forty-four states allow annexations. Hawaii and New England states, except Massachusetts, do not. Although annexation laws vary from state to state, in twelve states property owners outside the city must start the annexation process. Annexation may or may not require the approval of the majority of the residents who are to be annexed."[16]

"Cities without Suburbs"

Although annexation and consolidation have fallen out of favor since the Depression era in the traditional eastern and mid-western cities, in other parts of the country (the South and West) annexation and consolidation have been the rule rather than the exception. For example, in Texas, Home Rule Law allows large cities to annex unincorporated territory without a popular referendum. Accordingly, the city of Dallas increased in area from 45 square miles in 1940 to 350 square miles by 1980. And Dallas was not unique. Each major city in Texas grew at least ten times larger by 1960 than it had been in 1900. Houston was twenty times as large.

And Texas was not the only state where major annexations and consolidations took place over the last half-century. Oklahoma City, Memphis, Chattanooga, Phoenix, Anchorage, and Indianapolis (among others) dramatically expanded their land areas, with Indianapolis eventually merging the city and county government. In 1968, Jacksonville, Florida consolidated with almost all of Duval County, making it the largest city in the continental United States. Jackson, Mississippi and Kansas City, Kansas both have more than doubled their areas do to annexation. Between 1970 and 1977, there were 48,000 annexations by municipalities with population over 2,500; the annexed areas had over 2.5 million people. Annexations continue at the rate of about 5,000 per year.[17]

Former New Mexico Legislator/Albuquerque mayor David Rusk's groundbreaking book, "Cities without Suburbs," examines in detail the cities in the U.S. that have embraced annexation and/or consolidation (and infill development), which he terms "elasticity," verses those that have been unable or unwilling to utilize these approaches, and his analysis substantiates a strong argument for reconsidering urban annexation as a critical component of urban revitalization.[18] According to Rusk, the first law of urban dynamics is: "only elastic cities grow." He seeks to understand why some cities have been elastic and others have not; the demographic, economic, and social consequences of inelasticity; and what can be done to make inelastic cities elastic.

Rusk analyzes a half-century of census data and derives 24 "lessons' from what has been happening in urban America since World War II. The lessons are as follows:

- The real city is the total metropolitan area – city(s) and suburb(s).
- Most of American's Blacks, Hispanics, and Asians live in urban areas.
- Since World War II, all urban growth has been low-density, suburban style.
- For a city's population to grow, the city must be "elastic."

- Almost all metro areas have grown.
- Some central cities have grown; others have shrunk.
- Low-density cities can grow through infill; high-density cities cannot.
- Elastic cities expand their city limits; inelastic cities do not.
- When a city stops growing, its starts shrinking.
- Elastic cities "capture" suburban growth; inelastic cities "contribute" to suburban growth.
- Bad state laws can hobble cities.
- Neighbor [counties] can trap cities.
- Old cities are complacent; young cities are ambitious.
- Racial prejudice has shaped growth patterns.
- Inelastic areas are more segregated than elastic areas.
- Inelastic areas that segregate Blacks segregate Hispanics.
- City-suburb income gaps are more critical a problem than overall income levels in metro areas.
- Fragmented local government fosters segregation; unified local government promotes integration.
- Dispersed and fragmented public education is more segregated than centralized and unified public education.
- The global economy sets the rules, but local areas can decide how to play the game.
- The smaller the income gaps between city and suburb, the greater the economic progress for the whole metropolitan community.
- Poverty is more concentrated in inelastic cities than in elastic cities.
- Elastic cities have better bond ratings than inelastic cities.
- Rebuilding inner cities from within has not happened.

Rusk categorizes all the major cities of over 100,000 persons in the U.S. according to their "elasticity" rating (their ability to continue growing within their borders and/or the ability to expand their borders), which is based on population density, land area, and their changes over time. For New York State, New York City, Buffalo, Rochester, and Syracuse all received the lowest elasticity score (zero elasticity). Albany received the second lowest (low elasticity). Albany had a slightly higher rating in part because it has some undeveloped land on its western periphery. However, most of this land encompasses the environmentally unique and sensitive Pine Bush.

In the Capital District, in addition to Albany, both Troy and Schenectady, using Rusk's criteria, would be considered inelastic – they have little land area within their boundaries to develop and they have not expanded their boundaries to capture the growth that has occurred on their peripheries. Accordingly, their populations have significantly declined; their income levels are lower than their surrounding areas (and decreasing at a faster rate), and their concentration of minorities is greater and increasing at a greater rate than their surrounding areas.

Saratoga Springs, the last central city in the Capital District, stands in contrast to the other cities in the region as one that would be considered elastic. The merger of the former village of Saratoga Springs with former town of Saratoga Springs, which formed the current city boundary, created circumstances in which the city has a large amount of excess land outside its central core where new growth can occur. Over the last fifty years, a number of large residential subdivisions have been built (and continue to be built) in this peripheral area. Even though the city's major retail growth has occurred just outside its northern border in the town of Wilton, it has continued to add new downtown retail businesses. In short, unlike the other three cities in the Capital District, Saratoga Springs has plenty of room to grow. Accordingly, this elasticity factor contributes to the fact that the city is the least racially segregated and the most financially independent of any of the region's cities, its income levels match or exceed those of its surrounding towns, and its population continues to grow.

It may be interesting to note one other point of comparison. Over the last few years, the Capital District's economic development community has repeatedly cited the city of Austin, Texas as a model to aspire to. This comparison began after the city of Albany became home to a major computer industry consortium know as International Sematech North. Sematech South is located in Austin, and many consider it to be a major factor in that city's exponential growth over the last few decades. However, another factor that may have had a bigger affect on the city of Austin's growth is its elasticity. According to Rusk, do to its ability to expand to take in new growth on its periphery (annexation is encouraged in Texas and their aren't any towns), Austin, Texas falls within Rusk's highest elasticity rating – "hyper elastic."

Rusk completes Cities without Suburbs by offering a series of "strategies for stretching cities." His four strategies are: end fiscal imbalance through revenue sharing between rich and poor jurisdictions; diminish racial and economic segregation through affordable housing requirements and housing assistance programs metro-wide; promote metro-wide economic development policies; and implement regional growth management policies. Many other prominent urban scholars across the U.S. have called for similar regional policies (Orfield, Daniels, Downs, Calthorpe, Fulton, Dreier, Mollenkopf, Swanstrom, Squires, Katz, Barnett, Yaro, Hiss, et al).

Other State Approaches to Land Use

In the last half century, there has been a growing recognition of the difficulties associated with a purely local land use approach to what have become region-wide development issues. In response, a number of states have supplemented or replaced their local planning and zoning statues with state growth management laws such as those recommended by Rusk and others. As of 2002, sixteen states utilize a statewide land use planning system; 10 of these require comprehensive local planning, while the remainder encourage it.[19]

Most of these new state planning laws share several common features: they require comprehensive planning that meets defined state-wide objectives, emphasize regional approaches to land use planning, and encourage compact urban growth patterns. Under the most stringent systems, jurisdictions that do not plan face legal sanctions (Hawaii), financial sanctions

(Florida), and a real estate excise tax (Washington), or loss of authority to issue building permits and approve subdivisions (Oregon) or to make other land use decisions (Vermont).

Two regions of particular interest are Portland, Oregon, which utilizes metro-wide economic development and growth management strategies through the use of growth boundaries and a unified, elected regional government, and the twin cities of Minneapolis – St. Paul, Minnesota, which have implemented a regional tax-sharing program as well as urban service area boundaries. The following section summarizes some of the more notable statewide growth management programs in the U.S., including a detailed look at Portland and the Twin Cities.[20]

Florida

Florida began its first growth management program in 1972. In the 1970's Florida experienced rapid growth and development, which began to have an impact on the environment, particularly to the state's water resources. In response to the growing crisis, Governor Askew (D) shepherded through several key pieces of legislation that aimed to protect the state's critical and sensitive environmental resources: (1) the Water Resources Act (a key element in the success of the state's growth management strategy: (2) The Comprehensive Planning Act (greatly strengthened the state's role in planning by establishing the Division of State Planning in the Department of Administration); and (3) the Land Conservation Act of 1972 (issued $200 million in bonds to buy environmentally endangered lands).

A key concept in Florida's growth management strategy is *consistency* among state, regional, and local plans. The 1975 Florida State Comprehensive Planning Act mandated that all local governments prepare, adopt, and implement comprehensive plans. However, local plans contained only vague goals and policies, and most did not have a map component. In 1985, the State and Regional Planning Act required state agencies to prepare strategic plans. The state agency plans were combined to create the State Comprehensive Plan. The purpose of the State Plan was not to have the state designate uses for specific portions of the state or for specific parcels. Rather, the plan outlined 25 goals and over 360 strategic policies. The Local Government Comprehensive Planning Act of 1985 required that the state review local comprehensive plans to determine that they are consistent with State and Regional Plans. This act also required that proposed development projects be evaluated based on their "concurrency" with existing infrastructure. Developments are not approved unless adequate public facilities are in place to meet the needs for that development.

Florida's Land Management Act allows the state to reassert its authority over land use in Areas of Critical State Concern and also over projects deemed as Developments of Regional Impact (DRI). Areas of Critical Concern are defined as land that has special environmental, historical, archaeological, and other state or regional importance. The DRI process subjects projects such as airports, shopping malls, large housing projects or projects that cross multi-jurisdictional boundaries to special review by the regional planning authority, and possibly by the governor and cabinet.

Georgia

In 1987, a 35 member Growth Strategies Commission was appointed and given 18 months to devise a statewide growth strategy. Four different task forces, along with trained facilitators helped to develop the strategy reports. These reports became the foundation of the 1989 Georgia Planning Act. The Act took effect in October 1990 with full completion of the process in 1995. Five major target areas were identified: a three-tiered statewide planning system; human needs including human resources and education; protection of the environment; strengthening local communities; and building capacity for growth.

The Georgia Department of Community Affairs was appointed to provide administrative guidance on the implementation of the act. This is the state or first level of the three-tiered, bottom-up, top-down system. This department is responsible for overseeing local planning performances, while providing technical assistance. In addition, the department, through local or regional nominations, designates the Regionally Important Resources (RIR) and establishes a review procedure for Developments of Regional Impact (DRI).

At the regional level, the regional planning agencies are responsible for reviewing local plans for compliance with the established state standards. They also review RIRs and DRIs.

At the third or local level, financial incentives are provided for participating local governments that adopt acceptable comprehensive plans within a designated time frame. A one-cent sales tax increase provides $5 million in state grant money. Zoning control remains at the local level, but localities are required to set regulations consistent with minimum state standards. Localities are also required to develop capital improvement plans consistent with local comprehensive plans. By complying with and adopting the minimum state standards, localities may become Qualified Local Governments and may then levy impact fees. Localities are also required to adopt a housing element within their comprehensive plans.

Maine

Maine experienced little of the growth pressures that were sweeping the U.S. in the 1970's. However, in the 1980's, the state realized that incoming growth pressures were a "threat to quality of life due to unrestrained development". It was then that Maine chose to implement programs to accommodate growth while protecting natural resources.

After intense negotiations and immense public input, the State passed the Comprehensive Planning and Land Use Regulation Act in 1989. The Act created the office of Comprehensive Planning within the existing Department of Economic and Community Development. Its purpose was to review and comment on local plans, but not approve them. The office also provided technical and financial assistance to localities in creating their plans. The Act established a review process for local plans to be evaluated based on their consistency with state goals. An emphasis on regional consistency among neighboring localities was a significant component of the Act. The Act also included 10 state goals that local plans and certain state agencies had to

comply with. The state goals related to water quality, forest and agricultural lands, critical areas, transportation and housing.

The Act specifically focused on local programs, namely the inventory and analysis of demographic projections and infrastructure needs. Policy development consistent with state goals was to be linked to the inventory and analysis. Localities were to define an implementation strategy that required land use and other significant ordinances be adopted within one year of the law's adoption.

Localities that adopted comprehensive plans that meet state established criteria were eligible for certain programs and funding. For example, in the future only those localities with certified growth management programs would be eligible to mandate impact fees and other local fees related to land use regulation, such as site review and subdivision fees. One of Maine's state goals called for localities to ensure affordable housing opportunities for all citizens. Each municipality was to be sure that 10% of all new residential development met the definition of affordable housing. The state goal required localities to develop strategies employing devices such as density increases, public acquisition of sites, and the use of existing subsidy programs to advance the affordable housing goal.

However, ultimately the state legislature chose to discontinue the statewide requirements and make them voluntary.

Maryland

The Maryland General Assembly adopted the Smart Growth Initiatives in 1997. These initiatives are made up of several programs that collectively seek to curb the growth of sprawling development into Maryland's rural areas and also to revitalize older, developed areas. As with most states with strong growth management programs, Maryland's success in passing the Smart Growth legislation was made possible by strong leadership from Maryland governor, Parris Glendening.

"Priority Funding Areas" lie at the heart of Maryland's Smart Growth Initiatives. This legislation gives priority for state funding to areas already developed or designated for future growth. These are locations that the state and local governments have determined would be most appropriate for future economic development and growth, with minimal sprawl effects. Areas must meet several guidelines in order to qualify as a Priority Funding Area. These guidelines include intended use, availability of sewer and water systems, and permitted residential density.

Several other programs in the 1997 legislation support locally identified development areas. There is the Brownfields Program to attract commercial and industrial developers to sites that have already been developed. This program contains the Brownfields Revitalization Incentive Program to offset some of the problems associated with brownfield redevelopment, such as contamination clean up and liability issues. Also included in the Smart Growth Initiatives are amendments to the *1996 Job Creation Tax Credit Program.* These amendments encourage small business development and job growth in areas with an available labor force and also make more efficient use of existing infrastructure. The "Live Near Your Work (LNYW)" Program

encourages employees to purchase homes near their workplace. This program was enacted to stimulate home ownership in certain communities around the state. The program provides a minimum of $3,000 to those who purchase homes in the designated areas. The State not only provides resources to this program, but also participates as one of the major employers.

Another goal of the Maryland Smart Growth Initiatives is the preservation of open space and undeveloped land and the balance of this land with developed areas in the State. The Rural Legacy Program works at redirecting existing State funds into a land dedication program designed to limit the impacts of sprawl on agricultural lands and natural resources. Through this program the State expects to protect approximately 240,000 acres of resource lands by the year 2011.

The Maryland Smart Growth Initiatives are considered landmark legislation in the fight against sprawl. Early indicators show that the program is a success and many states have begun to model their growth management strategies after the Maryland example.

New Jersey

The New Jersey State Planning Act was enacted in 1985. This act created the State Planning Commission and mandated that the Commission prepare and adopt a State Development and Redevelopment Plan by July 2, 1987. By the fall of 1988, the Plan was available to begin a process called "cross-acceptance." This process is unique to New Jersey's growth management plan and involves a period of review by and negotiation among the planning units across the state and the harmonizing of local and county plans with the provisions in the state plan. The goals of the New Jersey State Planning Act were to curb suburban sprawl, concentrate development, steer new growth to mixed-use centers along transportation corridors, and to spur new growth in older urban areas.

The State Planning Commission developed a five-part growth management system to aid in reaching the goals set forth in the Act. A "tier system" growth management structure was created to delineate categories designated either for limited growth or as areas where development was targeted. An emphasis on regional planning was established with the "Regional Design System." This system organized growth within each of the tiers. State goals were set to guide the regional and local planning process through the "Statewide Strategies and Policies." These policies were to help achieve the goals that were common throughout the tiers by coordinating the government at all levels. The "Monitoring and Evaluation System" was enacted to assess the effectiveness of the State Development and Redevelopment Plan in achieving the state goals. And finally, the "Cross-Acceptance Process" was designed to assure an intergovernmental approach to creating the final Plan.

New Jersey has been marginally effective in assuring local compliance with the State Development and Redevelopment Plan since no central mechanism has been developed in the State that has regulatory powers to enforce compliance. The state has used persuasion and state infrastructure finance policies to obtain local compliance. The state also suggests that the judiciary might play a role in reviewing local decisions not to participate as their general welfare and relationship to the state plan affects the entire state.

Since the election of Governor James McGreevy, New Jersey has also attempted to implement the state plan by publishing a detailed, Geographic Information System-derived map of the entire state, which designated areas targeted for growth and areas subject to various restrictions. The map proved controversial and has subsequently been retracted.

A recently approved bill expedites development applications in those areas designated urban and suburban in the state plan, which cover approximately one third of the state. Much of the acreage in these areas, however, is still undeveloped. The new bill requires a state agency, in most cases the Department of Environmental Protection, to act on permit applications within 90 days; if it does not, a permit is automatically approved.

New Jersey has also been promoting the use of transfer of development rights as a mechanism to target growth in desired areas and limit growth in other areas, while also providing financial relief to growth restricted areas.

Oregon

Oregon enacted its acclaimed growth management law, the Land Conservation Act (LCA), in 1973. Its passage was largely in reaction to the problems associated with heavy suburban growth in the Willamette Valley and along the state's northwestern coastline during the 1960's and early 1970's. Strong leadership by Governor Tom McCall and Senator/dairy farmer Hector Macpherson led to the law's enactment.

The LCA requires that every city and county in Oregon develop a comprehensive plan in conformance with nineteen state goals established by the Land Conservation and Development Commission (LCDC). These goals include preserving agricultural lands (Goal 3), conserving forest lands to ensure a viable forestry industry (Goal 4), conserving open space (Goal 5), providing affordable housing (Goal 10), and providing for an orderly and efficient transition from rural to urban land use (Goal 14). Goal 14 has become one of the most renown as the LCDC read it to require all incorporated cities to adopt urban growth boundaries outside of which land is to remain rural. Although their actual effects are in dispute, UGBs theoretically stifle urban sprawl and promote urban forms characteristic of higher-density, more likely to be transit-oriented, and less likely to lead to urban decay as new development is largely directed to existing areas.

The LCDC is charged with reviewing each locality's plan for conformance with the state goals. This process is known as acknowledgement. Once a locality's plan is acknowledged, it must alter its land use and zoning regulations to be consistent with the plan within a period of one year. Subsequent decisions and actions of the locality are also required to be consistent with the plan. In addition, state agencies are required to conform to acknowledged comprehensive plans.

If a locality fails to receive acknowledgement of its comprehensive plans or land use regulations or is determined by the LCDC to have acted inconsistently with its plan, it can lose state revenues and grants and be subject to sanctions. Revenues from gas, cigarette, and liquor taxes can be withheld by the state. Since state law requires compliance with the LCA, the LCDC can

also seek a variety of enforcement and court orders that carry legal or equitable remedies. To activate its enforcement powers, the LCDC must issue an order demanding that a local government, state agency, or special district bring its comprehensive plan, land use regulations, and land use decisions into compliance. The order must specify the nature of the violation as well as the corrective action needed.

Vermont

In 1970, Vermont initiated its first move toward growth management with the passage of Act 250. However, due to under funding and understaffing, the legislation for adoption of a temporary plan to guide the beginning regulatory process never fully materialized. The plan included a land capability and development plan combined with a state land planning law. By the 1980's, growth pressures led to reconsideration for an effective growth management plan for the state.

Governor Madeline Kunin, through an executive order in 1987, created the 12 member Commission on Vermont's Future to develop "a new stimulus to plan for desirable and orderly growth… with a particular focus on planning at the regional level where local and state interests can be reconciled most effectively." The Commission was charged with: reviewing Vermont's growth patterns; the effectiveness of existing programs and laws addressing growth issues; propose state principles and goals to preserve Vermont's valued character (agriculture); and also to propose ways of providing jobs and housing for state residents; followed by recommendations to guide local, regional, and state action. Consensus was developed through a series of public hearings. Issues that came to light through the public hearing process are: a steep decline in farms and farming, no protection for natural resources through effective growth management, inflationary housing prices with a lack of affordable housing, and with economic growth in the low-wage sector.

After the Commission's report, the Growth Management Act of 1988 (Act 200) took effect. Originally, 32 planning goals were established. However, in 1990, the 32 goals were compressed into 12 specific, but simpler goals for the state, state agencies, regional planning commissions, and towns. Financial incentives are provided for developing non-mandatory town comprehensive plans. When towns do adopt comprehensive plans that are consistent with the state's goals they receive additional state funds, technical assistance, and influence over state policies that are applied locally.

Financial incentives are a key component of Act, which include a property transfer tax increase from .5% to 1.25%, with $100,000 exclusion for principal residences and working farms, and a trust fund for aiding affordable housing.

Washington

In 1990, Washington joined a growing number of states with comprehensive growth management legislation by passing the Growth Management Act (GMA). The catalysts for the law were high population growth during the 1970's and 1980's, particularly in the Central Puget Valley, and high public infrastructure costs to support the growth, which was largely taking the

form of low-density sprawl. Oregon's high-profile Land Conservation Act also provided Washington with an influential example of a successful growth management law.

The GMA requires that cities and counties with growth greater than 20% in the past 10 years, or with 50,000 people + 10% growth over 10 years, adopt comprehensive land use plans. Plans must consider the following elements: the uses of land, existing and projected housing needs, existing and projected public facility needs, existing and projected utility needs, open space corridors, and existing and projected transportation needs consistent with land use. Localities are also required to define urban growth areas based on 20-year growth forecasts outside of which only non-urban growth is allowed. A locality's subsequent development regulations must be consistent with the comprehensive plan. Plans may be modified only once a year.

Washington's Growth Management Commission reviews plans for consistency with the goals. The Commission's enforcement powers include incentives in the form of financial and technical assistance, and disincentives including loss of eligibility for state infrastructure grants and loans as well as loss of sales, liquor, and gas tax revenues. State agencies are required to comply with approved comprehensive plans.

The GMA encourages Washington localities to use innovative growth management techniques such as cluster housing, planned unit developments, impact fees, transfer of development rights, and to form regional transportation organizations. The GMA also has a concurrency requirement that can block new development if necessary.

Washington later passed the Shoreline Management Act, which requires coastal communities to develop an inventory of their shorelines and a master program for their regulation in accordance with state economic and conservation goals.

Rhode Island

Rhode Island passed initial land use legislation in 1978. In 1988, a refined and stronger "Comprehensive Planning and Land Use Regulation Act" was passed.

The Act established a statewide land use policy and plan (State Land Use Plan) for Rhode Island for a twenty-year period to 2010. The purpose of the plan is to guide future land use and development by establishing policies to guide municipalities in implementing their comprehensive planning, zoning, and other land use responsibilities, as well as to guide the state and its agencies in activities directly or indirectly affecting land use. All public entities and private entities receiving public support are expected to carry out any land use activity in a way that is consistent with the state plan.

The Statewide Planning Office's Land Use Section is responsible reviewing local land use plans for conformance with 16 State Guide Plan elements.

A major update of the State Land Use Plan is currently underway, the third in twenty-five years.

Tennessee

The state of Tennessee passed statewide growth management legislation in May 1998 (S.B. 3278). The legislation requires each Tennessee county to establish a coordinating committee to develop its county growth plan. The growth plan must identify urban growth boundaries (UGBs) for each municipality within the county and identify planned growth areas and rural areas within the county. The coordinating committees had until January 1, 2000, to submit their plans to the county legislative body and the governing body of each municipality within the county. The plan is not required to be as extensive as those required in Oregon or Washington nor does it contain the mandatory planning requirements of the Florida or Rhode Island's laws. Other features of S.B 3278 are as follows: The UGBs must be large enough to account for anticipated growth for the next 20 years. Each county must establish a coordinating committee whose membership reflects government and special interests (the act excludes two counties, which have metropolitan forms of government). Every county must have adopted a growth plan by July 1, 2001, or lose access to state transportation funds. Annexation will only be allowed within the growth boundaries. The law provides for a dispute resolution process to iron out conflicts between cities and counties over growth management plans.

Case Study 1 – Portland, Oregon's Growth Boundaries and Regional Government[21]

Urban growth boundary definition and facts

The city of Portland urban growth boundary (UGB) is a legal boundary separating urban land from rural land. Under Oregon law, each city or metropolitan area in the state has an urban growth boundary. The boundary controls urban expansion onto farm, forest and resource (industrial, employment, etc.) lands. Land inside the UGB supports urban services such as roads, water and sewer systems, parks, schools and fire and police protection that create thriving places to live, work and play. The UGB is one of the tools used to protect farms and forests from urban sprawl and to promote the efficient use of land, public facilities and services inside the boundary. Other benefits of the boundary include:

- Motivation to develop and re-develop land and buildings in the urban core. This helps keep core "downtowns" in business.
- Assurance for businesses and local governments about where to place infrastructure (such as roads and sewers), needed for future development.
- Efficiency for businesses and local governments in terms of how that infrastructure is built. Instead of building roads further and further out as happens in urban "sprawl," money can be spent to make existing roads, transit service and other services more efficient.

The origins of Metro's urban growth boundary

The Columbia Region Association of Governments (CRAG), Metro's predecessor, engaged in a complete planning process and proposed an urban growth boundary (UGB) for the region in

1977. When voters created Metro in 1979, it inherited the boundary planning effort. A year later, the Land Conservation and Development Commission approved the boundary as consistent with statewide planning goals.

The location of the Metro urban growth boundary involved more than simply drawing a line on a map. The plans and growth projections of Washington, Multnomah and Clackamas counties, along with 24 cities and more than 60 special service districts had to be accommodated. The urban growth boundary encompasses approximately 369 square miles (about 236,000 acres). As of February 2000, about 1.3 million people lived within the UGB. The boundary was based on a projection of the need for urban land as well as the land development plans of individual property owners.

Metro's role

Metro is responsible for managing the Portland metropolitan region's UGB and is required by state law to have a 20-year supply of land for future residential development inside the boundary. Every five years, the Metro Council is required to conduct a review of the land supply and, if necessary, expand the boundary to meet that requirement. In its 2002 review, the Metro Council also asked technical staff to determine how much land would be required to meet a 20-year land supply for new jobs.

The state Legislature also granted Metro several specific land-use planning powers including:

- Coordinating between regional and local comprehensive plans in adopting a regional urban growth boundary.
- Requiring consistency of local comprehensive plans with statewide and regional planning goals.
- Planning for activities of metropolitan significance including (but not limited to) transportation, water quality, air quality and solid waste.

The urban growth boundary and Metro's 2040 Growth Concept

The 2040 Growth Concept is the Portland region's growth management policy; it defines development in the metropolitan region through the year 2040. The 2040 Growth Concept guides how the UGB is managed in order to protect the community characteristics valued by the people who live there, to enhance a transportation system that ensures the mobility of people and goods throughout the region and to preserve access to nature. The 2040 Growth Concept:

- Encourages efficient land use, directing most development to existing urban centers and along existing major transportation corridors.
- Promotes a balanced transportation system within the region that accommodates a variety of transportation options such as bicycling, walking, driving and public transit.

- Supports the region's goal of building complete communities by providing jobs and shopping close to where people live.

The 2040 Growth Concept was adopted by Metro in 1995 with the unanimous endorsement of local government partners. The Growth Concept is designed to accommodate approximately 720,000 additional residents and 350,000 additional jobs in this region. The total population served within this concept is approximately 1.8 million residents within the Metro boundary. The key policy elements of the 2040 Growth Concept are as follows:

Mixed-Use Centers

Mixed-use urban centers inside the urban growth boundary are central to the 2040 Growth Concept. These are higher density centers of employment and housing that are well served by transit to form compact areas of retail, cultural and recreational activities in a pedestrian-friendly environment. Mixed-use centers provide efficient access to goods and services, enhance multi-modal transportation and create vital, attractive neighborhoods and communities.

The Growth Concept uses interrelated types of centers:

- The central city is the largest market area, the region's employment and cultural hub.
- Regional centers serve large market areas outside the central city, connected to it by high capacity transit and highways.
- Smaller town centers with local shopping and employment opportunities within a local market area connect to each regional center by road and transit.

Planning for all of these centers seeks a balance between jobs, housing and unique blends of urban amenities so that more transportation trips are likely to remain local and become more multi-modal.

Open Spaces

Recognition and protection of open spaces, both inside and outside the urban growth boundary, are reflected in the Growth Concept. Open spaces, including important natural features and parks, are important to the capacity of the UGB and the ability of the region to accommodate housing and employment. Green areas on the Growth Concept Map may be designated as regional open space. That would remove these lands from the inventory of urban land available for development. Rural reserves, already designated for farms, forestry, natural areas or rural-residential use, would remain and be further protected from development pressures.

The Growth Concept includes a Concept Map, which shows some transportation facilities to illustrate new concepts, such as green corridors, and how land-use areas, such as centers, may be served. Neither the current regional system nor final alignment choices for future facilities are intended to be represented on the map.

Implementation

The 2040 Growth Concept sets the direction for implementing policies in Metro's functional plans and the regional framework plan required by Metro's charter. The direction will be refined, as well as implemented, in subsequent functional plan amendments and framework plan components.

The basic principles of the Growth Concept directly apply Metro's Growth Management Goals and Objectives. Separation of “urbanizable” land from rural land shall be accomplished by the urban growth boundary for the region's 20-year projected need for urban land. Rural reserves are intended to assure that Metro and neighboring cities remain separate. The result is intended to be a compact urban form for the region coordinated with nearby cities to retain the region's sense of place.

Flexibility

The percentages and density targets used in the Growth Concept to describe the relationship between centers and areas are estimates based on modeling analysis of one possible configuration of the Growth Concept. Implementation actions that vary from these estimates may indicate a need to balance other parts of the Growth Concept to retain the compact urban form outlined in it. Land-use definitions and numerical targets are intended as estimates to allow jurisdictions the flexibility to adopt a mix of characteristics consistent with each locality and the overall Growth Concept.

Expanding the urban growth boundary

The urban growth boundary was not intended to be static. Since the late 1970s, the boundary has been moved about three dozen times. Most of those moves were small - 20 acres or less. There were three times that Metro authorized more substantial additions:

In 1998 about 3,500 acres were added to make room for approximately 23,000 housing units and 14,000 jobs. In 1999 another 380 acres were added based on the concept of "subregional need." An example of "subregional need" would occur when a community needed land to balance the number of homes with the number of jobs available in that area. In 2002, an unprecedented 18,638 acres were added to the UGB to provide 38,657 housing units and 2,671 acres for additional jobs. This action also created important regional policies to support neighborhoods, protect industrial areas and enhance regional and town centers. These expansions represented an increase of only about 2 percent, even though the population has increased by about 17 percent since 1990.

Case Study 2 – The Twin Cities “Fiscal Disparities” Tax Sharing Program

In 1971, the state of Minnesota adopted a program of commercial-industrial tax base sharing within the Twin Cities metropolitan region (Minneapolis-St. Paul). Court challenges held up the

program's implementation until 1975. The "Fiscal Disparities Program" (the official name is the Charles R. Weaver Metropolitan Revenue Distribution Act) requires that each taxing jurisdiction within a seven county area contribute 40 percent of the growth in its commercial-industrial (C/I) property tax base into an area-wide pool.

C/I property includes all businesses, offices, stores, warehouses, factories, gas stations, parking garages, and similarly classified uses. It also includes public utility property and vacant land that is zoned commercial or industrial.

The growth in tax base value is based on the total net change in net tax capacity since 1971, including the effects of new construction, inflation, demolition, revaluation, appreciation and depreciation.

The primary goal of the fiscal disparities program is to equalize the imbalance between some local governments' public service needs and their financial resources. For example, communities with low tax bases (either due to under-development or loss of development) must impose higher tax rates to deliver the same services as communities with higher tax bases. Higher taxes in poor communities make them less attractive for business expansion, thus exacerbating the problem.

Tax sharing reduces the incentive for intra-regional competition in capturing high tax generating-low service demanding uses (commercial/industrial), and may also reduce needless infrastructure expansion and sprawl. Lastly, tax sharing spreads out the fiscal benefit of regional-scale facilities such as airports, large shopping centers and sports stadiums.

The redistribution formula estimates each community's population, and then measures how its per-capita commercial tax base compares with the regional per-capita average. Poorer communities receive more back from the fund than they contribute. Wealthier communities contribute more than they receive. Between 140 and 150 slow-growth towns receive more than they contribute in property valuation. These towns are subsidized by the four-dozen cities with high growth rates. For example, the city of Bloomington, with a commercial and industrial tax base valued at more than $1,000 per capita, due largely to the Mall of America complex, contributes nearly $20 million in net tax base value to the regional pool for redistribution to other areas within the region. St. Paul, with an aging business and retail core built largely before the disparities act took effect, is the biggest winner each year, receiving close to $30 million annually in net tax base. On the other hand, Minneapolis, with a more modern downtown than St. Paul, wins some years and loses in others, depending on the city's development pace. Overall, the law has reduced the fiscal disparity between the richest and the poorest jurisdictions in the region from 50:1 to 12:1.[22]

For more detail on Minnesota's Fiscal Disparities Program, see:
http://www.house.leg.state.mn.us/hrd/pubs/fiscaldis.pdf.

Regional Planning in the Twin Cities

The Twin Cities region is also engaged in other regional planning initiatives. In 1967, the State Legislature created the Metropolitan Council, which is the regional planning agency serving the

Twin Cities seven-county metropolitan area. The Metro Council proves the following services to the region:

- Operates the region's largest bus system
- Collects and treats wastewater
- Engages communities and the public in planning for future growth
- Provides forecasts of the region's population and household growth
- Provides affordable housing opportunities for low- and moderate-income individuals and families
- Provides planning, acquisitions and funding for a regional system of parks and trails
- Provides a framework for decisions and implementation for regional services, including aviation, transportation, parks and open space, water quality and water management
- Defines and maintains an Urban Service Area to guide in the orderly growth of the region.

The 17-member Metropolitan Council has 16 members who each represent a geographic district and one chair that serves at large. They are all appointed by and serve at the pleasure of the governor. The State Senate confirms Council member appointments.

In 1976, the Minnesota Legislature passed the Metropolitan Land Planning Act of 1976 to better coordinate land use planning by local communities with the Metropolitan Council's planning for regional systems. Under the act, local governments prepare comprehensive plans and Metropolitan Council reviews them for *consistency* with plans for the regional system. The act gave the Metropolitan Council the authority to require a modification to the plan if it would potentially have a substantial impact on or substantial departure from metropolitan system plans.

The Metropolitan Reorganization Act of 1994 further strengthened the coordination of regional policy with operational and capital decisions. The act merged the functions of three agencies (the Metropolitan Transit Commission, the Regional Transit Board and the Metropolitan Waste Control Commission) into the Metropolitan Council.

The merger meant that the additional regional services and investments that are key to the region's growth and development — especially wastewater treatment and regular-route transit — would now be carried out consistent with the Metro Council's overall policies and plans for the region. The Act of 1994 also specifically calls for giving priority on regional infrastructure investments to communities that have implemented plans to provide their share of the region’s low- and moderate-income and life-cycle housing opportunities.

Land Use Reform in New York State?

As the discussion above indicates, there are number of states that have been proactive in establishing statewide growth management policies. Many of these states view growth management as not only smart policy, but also an important tool of competitive capitalism.

Vibrant cities, efficient transportation systems, integrated communities (physically and socially), quality public and natural spaces, quality educational systems, clean water and air, productive farms, and diverse, balanced, sustainable regional economies are necessary characteristics for quality regions that hope to successfully compete in the global economy. Abandoned, derelict, insolvent central cities populated with the poor and disenfranchised whose children attend inferior schools, surrounded by miles of isolated, monotonous subdivisions and big box chain stores that are linked by congested highways are not the characteristics of competitive nor sustainable regions.

Many of the states that have embraced statewide growth management have chosen to do so because the impacts of sprawl had become so severe that they were compelled to act. There is growing evidence that many of the cities within the metropolitan regions of New York State, particularly outside New York City, have reached a crisis point where action is now necessary. As noted previously in this report, New York's regions face a somewhat different challenge from metropolitan regions in the South and West, in that the state's regions are sprawling *without* population growth. Therefore these regions are getting a double-whammy in that the traditional cities are being abandoned for new construction on the fringe, leaving new problems behind, while creating new ones on the periphery. Perhaps Buffalo is the most pronounced example with its dramatic population/tax base losses and its near fiscal insolvency. A state fiscal control board is now in charge of its finances, which have become so stressed that the city has been forced to close its 180 parks, playgrounds, pools, and ice rinks due to lack of funding.

In response to this crisis, and after considerable debate, Erie County voted to help the city keep the parks open by taking over the management the city's parks for an annual fee. City park workers would become county employees. In addition, the city and county have been had ongoing discussions about further areas where consolidation of services may be appropriate. Republican County Executive Joel Giambra together with Democratic Mayor Anthony Masiello has been calling for a "New Greater Buffalo," which would be a new regional entity that would result from the consolidation of the city and county.

Consolidation, like annexation, and regional planning in New York, is possible only with mutually agreeing parties. It's unlikely that these circumstances exist in other regions in the state. And if it takes the severe financial stress facing Buffalo to spread throughout the state's regions in order for the state to act, the crisis by this time may become too great to manage.

Therefore, New York State's citizens and policy makers must ask themselves: *Are the existing structures for shaping regional land use and development producing the desired results? Is the status quo creating quality regions? If not, what is to be done?*

An important question in evaluating land use reform is whether the reforms that have been adopted elsewhere are working. *Do regional growth boundaries reduce sprawl? Does tax sharing reduce intra-regional bidding wars? Does annexation lesson urban fiscal stress?*

The authors of the book "Place Matters" point out that "Portland suffers less for the spatial concentration of the poor in the central city than do most other places. Portland's 1990 poverty rate of 14.5 percent was below that of most other large central cities, and the area's low-income

resident were spread out, not highly segregated, concentrated and isolated. The income gap between the central city and the suburbs remains one of the smallest in the nation." In addition, they note that by the 1990's, Portland's regional bus and rail system carried 43% of downtown commuters, compared with 20% in Phoenix, 17% in Salt Lake City, and 11% in Sacramento.[23]

Other groups, such as the Reason Public Policy Institute, which opposes Portland's growth boundaries, argue that the policy has caused inflated housing prices, housing shortages, and is an unnecessary infringement on private property rights.

A report by Jerry Weitz and Terry Moore in the Journal of the American Planning Association evaluated development inside urban growth boundaries, and noted that planning scholars have extensively evaluated Oregon's land use program.[24] According to the authors, Oregon's growth management program is generally credited with effectively shaping urban form, containing development of urban densities, and preserving prime farm and forestland from urban encroachment. However, they also note that other studies have found that urban growth boundaries (UGBs) have not been able to do everything their advocates had hoped. Residential development at the edge of cities has resulted in a low-density residential ring outside UGBs, and urban development inside UGBs has not occurred at the desired densities. The authors conclude from their own evaluation of three case study Oregon regions that recent development inside UGBs tends to be contiguous to the urban core rather than dispersed, but that UGBs alone may not be sufficient to achieve the urban form that Oregon's statewide goals imply is desirable. They suggest that while the contiguous patterns of growth that Oregon's planning policies encourage are indeed being achieved, additional urban growth management tools to achieve good urban form within the UGBs are needed to further improve urban development patterns.

Regional planners Peter Calthorpe and William Fulton argue that in both the Twin Cities region and in Portland, growth boundaries and regional tax sharing don't necessary eliminate sprawl. They believe that specific physical design policies are necessary in order to limit sprawl and create quality regions. They note "Minnesota leaders have recognized that, even with fairly strong state-led regionalism, they cannot truly transform their metropolis…without a strong commitment to designing the region affirmatively. The tax-sharing law, the Regional Blueprint, and the Metropolitan Urban Service Area all provide the region with mechanisms to improve social and economic equality. But sprawl remains a problem, as does local resistance in affluent suburbs."[25]

In order to implement their vision for what they call a "Regional City," Calthorpe and Fulton call for statewide growth management laws that require regional planning and include specific policies to physically plan, design and shape regions. They work from the basic building block of regional planning, the neighborhood, and move to a coordinated regional planning approach for designing the Regional City. They suggest that there are four elements needed to design complete regions, cities, and towns:

- *Centers*: the local and regional destinations at the neighborhood, village, town and urban scale
- *Districts*: the special-use areas, which are necessarily dominated by a single primary activity

- *Preserves*: the open-space elements that frame the region, protect farmland, and preserve critical habitat
- *Corridors*: the connecting elements base on either natural systems or infrastructure and transportation lines.

The authors state that smart growth is essentially "a recognition that the question today is not whether growth occurs, but how." They believe that growth management laws have fallen short by not focusing on design policies that shape neighborhood land use patterns into, connected, walkable, and ultimately "transit oriented" communities that fit into an integrated regional system. They believe that "the Regional City has more to do with the repair and revitalization of existing urban and suburban environment than with creating new places."[26]

In evaluating a number of statewide programs, these authors believe that the lessons to learn from existing growth management programs are: 1) The transformation of our metropolitan areas into Regional Cities is unlikely to occur without strong state leadership on growth issues. 2) Regional policies alone cannot do the job, even if they are promoted and supported by strong political leadership at the state level. 3) Only if those policies (and the infrastructure investments that go along with them) are married to a regional and neighborhood design vision can the transformation into a Regional City succeed.

Since 1998, members of the New York State Legislature have been introducing bills designed to foster smart growth strategies at the state, regional and local levels. The approaches have varied including: creating a smart growth task force, articulating state smart growth principles, establishing a smart growth demonstration program, and authorizing smart growth planning compacts. In the 2002 Legislative Session alone, almost a dozen smart growth bills were proposed, again representing divergent approaches to addressing smart growth. Some of these proposals included: the Smart Growth for the New Century Act, the New York State Smart Growth Compact Act, the Quality Communities Act of 2001, the Quality Communities Planning and Development Grant Fund, the Quality Communities Measuring Act of 2002, the establishment of a state smart growth office, authorizing the creation of local smart growth commissions, and authorizing intermunicipal quality communities commissions. None of these met with legislative success.[27]

A State legislative attempt to address smart growth in 2004 referred to as the "State Smart Growth Infrastructure Policy Act," could perhaps become New York's most far reaching effort so far to reconfigure and reprioritize its infrastructure funding policies toward existing urban systems rather expansion into outlying areas.[28] The bill states:

> "IT IS THE PURPOSE OF THIS ARTICLE TO AUGMENT THE STATE`S ENVIRONMENTAL POLICY BY DECLARING A FISCALLY PRUDENT STATE POLICY OF MAXIMIZING THE SOCIAL, ECONOMIC AND ENVIRONMENTAL BENEFITS FROM PUBLIC INFRASTRUCTURE DEVELOPMENT THROUGH MINIMIZING UNNECESSARY COSTS OF SPRAWL DEVELOPMENT, INCLUDING ENVIRONMENTAL DEGRADATION, DISINVESTMENT IN URBAN AND SUBURBAN COMMUNITIES AND LOSS OF OPEN SPACE INDUCED BY SPRAWL FACILITATED BY THE FUNDING OR DEVELOPMENT OF NEW OR EXPANDED TRANSPORTATION, SEWER AND WASTE WATER TREATMENT, WATER, EDUCATION, HOUSING AND OTHER PUBLICLY SUPPORTED INFRASTRUCTURE INCONSISTENT WITH SMART GROWTH PUBLIC INFRASTRUCTURE CRITERIA."

The bill goes on to state that no state agency shall approve or finance a public infrastructure project unless it conforms to the following criteria:

> "A. TO GIVE PRIORITY TO (I) PROJECTS FOR THE USE, MAINTENANCE OR IMPROVEMENT OF EXISTING INFRASTRUCTURE AND (II) PROJECTS LOCATED IN OR RELATED TO DEVELOPED AREAS OR AREAS DESIGNATED FOR DEVELOPMENT IN A MUNICIPALLY APPROVED COMPREHENSIVE LAND USE PLAN;
>
> B. TO PROTECT, PRESERVE AND ENHANCE THE STATE`S RESOURCES, INCLUDING AGRICULTURAL LAND, FORESTS, SURFACE AND GROUNDWATER, AIR QUALITY, RECREATION AND OPEN SPACE, SCENIC AREAS, AND SIGNIFICANT HISTORIC AND ARCHEOLOGICAL RESOURCES;
>
> C. TO FOSTER MIXED LAND USES AND COMPACT DEVELOPMENT, DOWNTOWN REVITALIZATION, BROWNFIELD REDEVELOPMENT, THE ENHANCEMENT OF BEAUTY IN PUBLIC SPACES, THE DIVERSITY AND AFFORDABILITY OF HOUSING IN PROXIMITY TO PLACES OF EMPLOYMENT, RECREATION AND COMMERCIAL DEVELOPMENT AND THE INTEGRATION OF ALL INCOME AND AGE GROUPS;
>
> D. TO PROVIDE MOBILITY THROUGH TRANSPORTATION CHOICES INCLUDING IMPROVED PUBLIC TRANSPORTATION AND REDUCED AUTOMOBILE DEPENDENCY;
>
> E. TO COORDINATE BETWEEN STATE AND LOCAL GOVERNMENT AND INTERMUNICIPAL AND REGIONAL PLANNING; AND
>
> F. TO PARTICIPATE IN COMMUNITY BASED PLANNING AND COLLABORATION."

Although the New York State Department of Transportation opposed this bill because of potential conflicts with existing federal legislation and executive priorities, it is largely compatible with the adopted policies of the Capital District Transportation Committee. CDTC's policies require local land use management plans prior to consideration of highway capacity expansion; provide priority for system preservation projects; and emphasize urban revitalization, public transportation and local planning efforts, among other policies consistent with the draft legislation.

The draft legislation is also compatible with the arguments articulated in a recent report by the National Governors Association Center for Best Practices entitled "Fixing It First: Targeting Infrastructure Investment to Improve State Economies and Invigorate Existing Communities," which outlines the best state approaches to spending funds more efficiency, increasing economic competitiveness and improving residents quality of life.[29]

The strategies outlined to meet these goals include:

- Prioritizing state investment around existing infrastructure and facilitating development in areas most suitable for growth.
- Coordinating planning in state agencies whose projects impact community development, including departments of transportation, economic development, environmental protection, housing and others.
- Investing in exiting assets and communities with a rich history and vibrant mix of residences, jobs, and retail. Such investments can spur job creation, attract new businesses and knowledge workers, and maintain a high quality of life.
- Involving communities in the planning process to define how area land use and development will occur.

- Considering school quality and siting. As these investments play a large factor in demand for growth and development, policies that define the placement and character of the school construction are becoming an important consideration in states' infrastructure investment decisions.

The report also included a matrix of states and the various "fix it first" strategies that they employ. There were no strategies or programs indicated for New York.

The New York State Smart Growth Infrastructure Policy Act's likelihood of passage is unknown at this time. As for the possibility of any other New York statewide growth management legislation that would involve the redefinition of local use authority, it appears unlikely at present, particularly because of the prevailing views about home rule authority in New York State.

Home rule makes great democratic sense, in theory. And most U.S. citizens oppose top down rule from afar. However, it instructive to note that the one example of true regional government in the U.S., Portland, Oregon, has an elected regional government with representatives chosen by and accountable to the local citizens. On the other hand the dominant trend in local government and local property rights throughout the growing metropolitan regions of the U.S. is the introduction of additional layers of *privatized* government that strictly control and limit residents property rights choices much more than any existing U.S. growth management policies.

According to Gerald Frug, professor of local government law at Harvard, "The privatization of government in America is the most important thing that's happening, but we're not focused on it. We haven't thought of it as government yet."[30] By 1997, the Community Associations Institute (CIA), which is a national association of homeowner associations, had estimated that homeowner associations were growing at the rate of 10,000 per year. There are currently over 200,000 such associations now registered with CAI. Authors Blakely and Snyder state that private homeowner associations are "a government growth industry. While at the national and state levels the public is asking for less government, at the local level, people are creating more governance institutions."[31]

Another important form of private government in the U.S. is the "common interest development (CID)." Edward Soja, in his book, "Postmetropolis," notes that: "By the 1980s, there were more than 80,000 CIDs [in the U.S.], and today they have probably become the principal form of new home ownership in almost every metropolitan area in the country."[32] Moreover, the fastest growing segment of the housing market utilizing CID agreements is the "gated community." According to author Setha Low, "The number of people estimated to be living in gated communities in the United States increased from four million in 1995, to eight million in 1997 and to sixteen million in 1998."[33]

Common interest developments, which include single-family housing developments, whole new towns, cooperative apartments and condominiums, are legal entities formed by contractual agreements between developers and new homeowners. All CIDs have homeowner's associations (HOAs) or residential community associations (RCAs), but not all HOAs or RCAs are CIDs. Within common interest developments, residents usually own or control common areas and

shared amenities while having certain rights and obligations, which are enforced by a private governing body or "community association." These rights and obligations are spelled out in the "Covenants, Contracts and Restrictions agreements (CC&Rs), which every new homeowner must sign as part of the home sale.

Arguments against strong regional planning and statewide growth management most often point to the loss of local control and property rights infringement. As such, many Americans would object to a regional government telling them that their neighborhood streets should be interconnected, their parks should be public, and small scale commercial and mixed income housing is appropriate in their residential neighborhoods. However, literally millions of U.S. citizens, when joining a CID, have agreed in writing to have someone else, unelected and unanswerable to themselves, enforce such things as what colors they can paint their house, what plants they can plant, how long their grass can grow, what size dog they can have, what color blinds and awnings they can hang, what kind of vehicle can be parked in front of their house, how many people can visit their home, and even what age their co-habitants must be. As Setha Low notes, CID legal restrictions "may be far more restrictive than any state statute or local ordinance."

The pervasive growth of CIDs and gated communities points out the true challenge to statewide growth management reform. The widespread use (and therefore, acceptance) of stringent land use controls within private developments suggests that people are not adverse to rigorous property rights restrictions per se; rather, there are great numbers of people that are willing to significantly attenuate their individual property rights for security, homogeneity and seclusion; while on the hand, people are staunchly opposed to any infringement of their property rights in the name of the greater, regional, public good. Therefore, if New York is to take up serious land use reform and implement regional policies such as regional property tax sharing, growth boundaries, annexation, and consolidation of local governments, it will be because the state is backed into a fiscal corner with problems so great that their appears no other choice but to act, regardless of the political opposition. State decision makers may also propose land use reforms if the changes are supported by developers and businesses. However, if state leaders wait until a voting majority supports statewide growth management, reform will be a long time coming.

Policy Implications and Choices

CDTC's New Visions process has succeeded in the past by engaging in a wide range of land use and transportation issues, forming policy direction through objective information and broad dialogue on policy choices. The material of this report – explicitly dealing with issues that go beyond regional policy control – presents a challenge to this process. The challenge is to determine which, if any, of the issues should be a priority for the region in guiding dialogue with state and national leaders.

The urgency of addressing the issues in the report can be summarized by the following observations:

1. The growth and development experience of the Capital District in recent decades is characterized by low density (as opposed to a variety of densities), single use (as opposed to mixed use), disconnected (as opposed to interconnected) development in a pattern of suburban growth coupled with urban decline (as opposed to suburban development with urban revitalization).
2. Adopted regional policy holds that maintaining economic and fiscal strength in the region's urban areas is essential both for providing an efficient transportation system (the street and transit capacities in cities far exceed suburban area systems' ability to absorb additional activity) and for ensuring a manageable rate of growth in suburbs.
3. The ability of cities to play a regionally-optimal role in the future is challenged significantly by circumstances and by larger-than-regional policies that provide an uneven playing field. Among the circumstances are the following:

    a. Current city leaders inherit from previous generations extensive public infrastructure that needs rehabilitation and replacement.

    b. Urban areas are cultural and governmental centers with a high proportion of tax exempt property providing region-serving functions that require city-funded services.

    c. Urban areas contain a majority of the region's affordable rental housing and public transportation and are the region's centers for social services. As a result, cities are the residence for most of the region's low income and under-employed residents who require more public services than do other residents.

    d. The built-out, small-lot nature of the region's cities does not match economic developers' preference for assembling few parcels, working with "greenfields" and using extensive land area for new development.

    The impact of these circumstances is compounded by certain public policies that make the playing field uneven. These include:

    a. There is generally greater access to state and federal funding (sewer, water, schools) for building new infrastructure to serve suburban development than for rebuilding existing urban infrastructure.

b. Highway jurisdictional policy focuses county highway spending outside city limits and provides for state jurisdiction of state touring routes outside city limits while leaving cities to fund arterial maintenance and rehab largely from city budgets.

c. Law enforcement practices frequently provide county sheriff or state police services in suburban and rural areas, but emphasize city-funded police protection within city limits.

d. State policy (atypical of practice nationwide) imposes a large share of state-mandated social service costs such as Medicaid on counties. (This has the effect of distorting the fiscal demands on county budgets in urban counties, relative to predominantly suburban counties.)

e. State legislation makes the region's cities inelastic, relative to cities in competing regions elsewhere in the nation, in terms of the ability to grow in area to encompass suburban development and to share tax burdens.

f. State fiscal practices lead to a higher share of public expenses falling on local government than evident in any other state.[1] This leads to a significant dependence upon property taxes and a large disparity in property tax rates between urban and other communities.

g. Application of tax sharing or fiscal burden sharing is limited. That is, property tax demands fall upon properties within the municipality incurring the fiscal burden, regardless of whether the expense is related to discretionary public services or necessary public health, safety and social expenses derived from broader societal concerns.

h. Public programs originally designed to address unique urban needs (such as the Empire Zone program) have been modified over time to spread benefits throughout the state, diminishing the urban benefit.

4. The region's suburban and rural towns are not fully prepared to handle the expected growth pressures in a manner that leads to functional, attractive communities with a strong sense of identity and place. Among the policy challenges facing these communities and facing the region in addressing the growth pressures in these communities are the following.

a. Uneven application of municipal comprehensive planning. Some plans are outdated; others were never adopted. Many have only limited relationship to regulation to help ensure their implementation. Financial commitment to the regular maintenance and upkeep of these important tools is uneven.

b. Limited application of county planning authority, including the use of official county maps.

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[1] *Governing* magazine in February 2003 reported that New York is one of only three states in which the majority of taxes are raised at the local level and that the "state contributes less funding to local governments than anywhere in U.S." New York's local tax burden as a percentage of income is the highest in the nation, while its state tax burden is 27th.

c. Limited funding for construction of street systems and other infrastructure in order to direct, as opposed to respond to, development pressures. While cities are challenged in finding sufficient private development to re-use existing systems and provide tax revenues to rehabilitate them, suburban towns are challenged in finding revenues to build infrastructure to encourage the type and location of new development desired by the community.

d. Difficulty in maintaining traditional community characteristics as development occurs parcel by parcel. Additionally the "buildout" potential of cumulative development at current zoning in most suburban towns far exceeds the community's collective desire for development and the capacities of the community's infrastructure. These two factors affect the long-term sustainability, livability and identity of towns currently attractive to development.

5. CDRPC projects a four-county growth of 80,000 persons over the next 30 years. At this rate of growth the region cannot sustain past development experience without a polarization of economic conditions within the region and a further decline of fiscal health in urban areas, loss of traditional qualities of the region's suburban towns, and increasing pressure for extensive development in rural places. Such an outcome would threaten the region's overall quality of life and competitiveness for sustaining economic health.

   At a faster rate of growth, the threat would be even greater.

Policy Choices

New Visions policy development follows a practice of sorting policy issues into two sets. The first set includes statements of common sense policies or actions that CDTC working group or task force members believe would receive the support of a majority of interested stakeholders in the region. For this set, the practice is to carefully articulate the policy or action and determine if a broad buy-in can be established.

The second set of policy issues includes those for which it is not possible to judge what a likely regional consensus position may be. For this set, the practice is to articulate the choices and their implications and encourage a regional discussion. Only after the discussion can a draft consensus position be found, if one exists.

Discussions within the New Visions 2030 effort lead the participants in Working Group D to conclude that the following policy statement appears to have consensus support throughout the region:

> ***Significant efforts are required on the part of many parties to improve the ability of cities to participate in the future economy of the region and prepare suburban and rural communities to leverage development pressures to achieve community sustainability, livability and identity. The outcome is not likely to be successful without altering practices of the past.***

But with regard to the form and focus of efforts to alter the practices of the past, consensus positions are not as readily apparent without further regional dialogue. *There are several policy choices and questions facing the region:*

- ***Should elected officials and other stakeholders in the Capital Region pursue with fervor changes in state and federal legislation, policies and programs? --*** Possible answers are: "*Yes, they must do so if the region is to grow in a balanced and sustainable fashion.*" Or,"*No; there is no state or federal action that would be both realistic and regionally-supportable to justify the effort*."

  If effort is essential and realistic, should it focus on:

  - ***Addressing the disproportionate fiscal burden levied on urban counties and city tax payers?*** This might involve addressing the county share of Medicaid expenses; state school aid formulas; increased state funding for PILOT contributions for communities burdened with tax exempt properties;**.**

    Assuring a level playing field with regard to access to infrastructure (school, sewer, water, street and highway) funding? Effort in this area would deal with assuring comparable access to state and federal funds for sewer, water, school infrastructure reconstruction as for new construction. It would also include increased state highway funding to cities in proportion to the mileage of state touring routes or transfer of jurisdiction of those facilities to state ownership.

    Establishing strong state growth and coordination programs? Effort in this area would involve seeking state policy that steers or prioritizes access to funding based on designated statewide or regional growth categorization and other policies.

    Permitting greater city annexation of adjacent growth areas? This would involve relaxing the criteria for annexation to match those in other states in which annexation is a common method of assuring fiscal sustainability of cities.

    Encouraging comprehensive planning at the municipal level? Initiatives here might include state financial assistance (perhaps on a 50-50 matching basis) for development of local comprehensive plans that meet certain criteria.

    Facilitating municipal consolidation? An effort in this arena would entail providing financial incentives or other benefits to municipalities (village and town; city and county; adjacent towns) to merge.

    Encouraging metropolitan governance? Efforts in this subject would relate to seeking a stronger, representative form of decision-making authority over a wider range of subjects than the collaborative, consensus process at CDTC. It could also involve

exploration of multi-municipal or multi-county service delivery, such as sewer, water or highway services.

Seeking tax code and other incentives to more effectively encourage brownfield redevelopment and land parcel consolidation to permit both commercial and residential redevelopment in older areas? Initiatives could include federal or state funded programs for large-scale acquisition, remediation and replatting of obsolete industrial, commercial or residential sites. Alternatively, efforts could focus on adjusting and enhancing tax incentives (such as the Empire Zone) that were intended to achieve the same results.

The second major policy question facing the region relates to the use of existing tools and techniques:

- ***Should the region work to achieve the maximize benefit possible from more successful use of available tools and techniques?*** Possible answers are, "*Yes, this is important in combination with work on federal and state policies and programs*". Or, "*Yes, this is probably the only realistic avenue to make a difference in the foreseeable future*." Or, "*No; what more can be achieved with existing tools is not very promising.*"

  If effort to get more out of existing tools and techniques is promising and important, should this effort focus on:

  Greater use of official documents – comprehensive plans, official street maps, official county maps? This would involve seeking greater financial resources for comprehensive plan updates and/or requiring the presence of a comprehensive plan meeting certain criteria as a pre-requisite to funding access for infrastructure or other projects.

  Greater application of county and state review authority? This is a procedural change to ensure that the county has the opportunity to review a wide range of proposed actions that currently operate below the "radar screen", relative to state statute. It would also involve encouraging state agencies to take a proactive role in the SEQRA process from the perspective of issues of over-riding regional consequence.

  Exercising greater state prerogative on matters of regional or statewide significance. The state does intervene with regard to local home rule decisions in many areas, ranging from group home locations to power plant siting. Additional activity might involve the greater use by state agencies of existing authority on local development approvals that create or contribute to regional problems or are inconsistent with existing state policy. This would be exercised through the SEQR process or permitting process such

as NYSDOT's ministerial actions on work permits for curb cuts. (A hypothetical example would be the withholding by NYSDOT of work permits for a major residential or commercial development that by its location and design is inconsistent with the State Energy Plan.)[34]

Increased use of intermunicipal cooperation and coordination opportunities? As an effort to reduce the cost of government, this initiative could be advanced though the provision of outside technical support and/or financial incentive such as a set-aside of funding for exclusive use by intermunicipal projects.

Greater leveraging of existing federal, state, regional, county and local policy through more tight linkages to implementation programs? This area of work would relate to a wide range of subjects such as community and environmental sustainability. Existing national or state policy (such as Quality Communities policies, the State Energy Plan, SEQRA and NEPA) would be leveraged to ensure a tight connection between these policies and implementation programs like Empire Zones, Coastal Zone, and Small Cities funding. The local policy linkage would involve more extensive establishment of local regulation to foster implementation of the mixed use development, street systems and community form contained in local comprehensive plans.

Voluntary establishment of regional growth and coordination tools, such as an "urban service area" delineation to establish reasonable expectations for public services in outlying areas. This could be as simple as an agreement at CDTC that limits access to sidewalk funding to areas within a defined area, or could be as formal as a regional "compact" that documents a multi-jurisdictional consensus on the location of urban-type infrastructure investment.

These subjects need extensive discussion before it is possible to determine whether there is a broad regional consensus on the appropriate actions to take. What is clear is that the positions advanced by CDTC in the original New Visions plan have gained considerably more supporters over the years to permit steady, incremental change. Conditions that would permit a quantum leap in smart growth are not quite in place. However, on the heels of Governor Pataki's steps towards "Quality Communities", Governor Spitzer created a Commission on Local Government Efficiency and Competitiveness on April 23, 2007.[35] Among other things the commission will grapple with regional collaboration and smart growth issues, affording CDTC and its members a high-level forum with which to share Capital District success stories and consider new policy steps.

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[29] Fixing it First: Targeting Infrastructure Investments to Improve State Economies and Invigorate Existing Communities, by Matt Lambert and Kil Huh, NGA Center for Best Practices, Issue Brief, 2004.

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[31] Blakely, E, and Snyder, M (1997) *Fortress America: Gated Communities in the United States*: Brookings Institute and Lincoln Land Institute.

[32] Soja, E. (2000): *Postmetropolis: Critical Studies of Cities and Regions*: Blackwell Publishers.

[33] Low, S. (2003): *Behind the Gates: Life, Security, and the Persuit of Happiness in Fortress America*: Routledge.

[34] The State Energy Plan (*2002 State Energy Plan and Final Environmental Impact Statement*, NYSERDA, available at www.nyserda.org) is a subject that illustrates New York State's limited use of its prerogative to intervene in actions of local government that have regional or statewide significance. The State Energy Plan is aggressive regarding a commitment to reducing greenhouse emissions and relies on efforts to *"prevent suburban sprawl, promote Quality Communities, reduce vehicle miles traveled, and support, adopt, and enhance transportation measures that reduce energy use and pollutant emissions*." NYSDOT reviews Metropolitan Planning Organization plans and programs (such as CDTC's New Visions plan and TIP) for consistency with the State Energy Plan, but consistency is not currently a criterion used by NYSDOT or other state agencies to influence local land use planning, regulation or development approvals.

[35] Governor Spitzer on April 23, 2007 signed an Executive Order creating the Commission on Local Government Efficiency and Competitiveness, which will review ways that New York State's over 4,200 local governments can save taxpayer dollars and become more efficient by sharing services and undertaking regional collaboration. The Commission will be chaired by former New York Lieutenant Governor, Congressman, and Mayor of Jamestown, Stan Lundine.

"The sheer number of taxing jurisdictions has led to a significant degree of overlap in public services, which has had a devastating affect on local tax burdens" said Governor Spitzer. "Under Stan Lundine's leadership this Commission will help local governments administer services more efficiently and cost effectively."

"We are extraordinarily fortunate that Stan has agreed to take on this task," Governor Spitzer added. "His experience at three levels of government, understanding of these issues, and commitment to bringing people together around a solution make him uniquely qualified for this job."

Former Lieutenant Governor Lundine said: "I applaud Governor Spitzer's commitment to regionalization and local government efficiency and I am honored to be part of this effort. There is much that can be done to drive efficiency

at the local level without reducing the public's access to important services. I am honored to chair this Commission and look forward to working with Commission members to advance the Governor's agenda."

Under the Executive Order, the Commission will be composed of fifteen members, including four recommended by the legislative leaders of each house and one by the State Comptroller. The Commission members include current and former local government leaders, academics and other experts in this field.

The Commission is tasked with identifying barriers to more efficient local government through merger, consolidation and or regionalization of services, and partnerships that enable localities to provide services more efficiently. The Commission will also advance smart growth and other regional initiatives that can improve the efficiency, competitiveness and quality of life of New York's localities.

The Governor announced that he will be sending a letter to local officials across the state, asking them to identify at least one major initiative that is already underway or can be initiated this year, which could be a test case for the Commission's one-year regional efficiency study. The Commission will use a selection of these programs to study how regionalization of services can be applied at state level.

The state will provide assistance and support via state agencies including the Department of State, the Office of Real Property Services, the Division of the Budget, the Empire State Development Corporation, and the Governor's Office of Regulatory Reform. In addition, the Commission will work with independent agencies – the Office of the State Comptroller and the State Education Department.

A small staff will support the Commission directly, and the project will be overseen by Lloyd Constantine, Senior Advisor to the Governor. The Commission is to carry out its preliminary analysis within one year, reporting its recommendations by April 15, 2008.

A website has been established: www.nyslocalgov.org for ongoing public involvement in the process and where ideas for local government reform can be shared with the Commission.

The Members of the Commission are:

Appointed by the Governor Former Lt. Governor Stan Lundine Former Lt. Governor Alfred Del Bello Gerald Benjamin, Ph.D. Jonathan Drapkin Kathryn Foster, Ph.D. Hon. Sandra Frankel Former Mayor William Johnson Hon. Jamie Rogers G. Thomas Tranter, Jr. Hon. Howard Weitzman

Appointed by the Comptroller Mark Pattison
Appointed by the Senate Majority Leader Hon. Elizabeth O'Connor Little
Appointed by the Senate Minority Leader Hon. Craig Johnson
Appointed by the Assembly Speaker Hon. Sam Hoyt
Appointed by the Assembly Minority Leader Walter Robb, Ph.D.