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## GROWTH MANAGEMENT AND CONSTITUTIONAL RIGHTS PART II: THE STATES SEARCH FOR A GROWTH POLICY

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This is the second part of a two part Article discussing various approaches to the resolution of a basic dilemma underlying the current conflict over growth policy — the conflict between the value of personal mobility and the value of a desirable living environment. The first part of this Article discussed the constitutional problems of growth management in light of present judicial standards of review as well as problems of judicial relief.<sup>1</sup> This part will consider state legislative growth policies and their potential for resolving this dilemma.

The crux of the dilemma is the problem of overcrowding. Everyone recognizes that overcrowding can reduce the desirability of any living area. But when considering the desirability of moving to any particular place a person rarely considers growth implications. In utilitarian terms, one must balance the positive utility of living in that desirable place against the miniscule impact that such a move might have on negative factors such as overcrowding. In assessing this balance today it is very unlikely that one will refrain from moving because of the negative impact on the area. An illustration of this dilemma of overcrowding is Garrett Hardin's parable "the tragedy of the commons" in which many individual herdsmen destroy a common tract of grazing land by the decision of each one to add a few sheep.<sup>2</sup> No one person adds

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\*Partner — Ross, Hardies, O'Keefe, Babcock & Parsons (Chicago, Ill.). B.A., University of Colorado, 1956; L.L.B., Harvard University, 1959. Much of the work in this Article is part of a larger study of the coordination of land use and environmental controls sponsored by the National Science Foundation-RANN program.

1. Bosselman, *Growth Management and Constitutional Rights — Part I: The Blessings of Quiet Seclusion*, 8 URBAN L. ANN. 3 (1974) [hereinafter cited as Bosselman].

2. G. HARDIN, *EXPLORING NEW ETHICS FOR SURVIVAL* 254 (1972). The citizens of a community have a tract of common land used as a pasture open to all. Every person owns a flock of sheep and has freedom to decide how many sheep should be in the flock. In deciding whether to add another sheep to his flock, each person does his own cost-benefit analysis. The benefits include all the meat and wool obtainable from one sheep. The cost is a minuscule reduction in the quality of meat and wool resulting from the necessity of distributing the same amount of grass to one additional sheep.

[T]he rational herdsman concludes that the only sensible course for him to pursue

significantly to the overcrowding of a location, but the combined impact ultimately results in overcrowding.

Since the right to move about the country has a certain constitutional status, the first part of this Article examined the possibility of using litigation to resolve the dilemma.<sup>3</sup> Existing court decisions were studied, particularly those involving the issue of whether exclusion of poor minorities from particular areas constitutes a violation of the fourteenth amendment. It was concluded that the issues were so complex that they did not lend themselves to the simple techniques of resolution for which judicial remedies are most appropriate.<sup>4</sup> Sweeping decrees requiring extensive and detailed judicial supervision would be needed for the issues to be adequately resolved on a national basis. Such decrees would create many new problems and require more judicial participation in governmental affairs than most people would deem desirable. If the courts are not readily able to resolve the conflict between environmental protection and freedom of movement, then the question becomes whether the problem can be resolved through legislation.

Dr. Hardin suggests that the tragedy of the commons can be resolved only by coercive action, by which mutually agreed upon limits on grazing are adopted.<sup>5</sup> But in his parable the amount of grazing land is a constant while the number of sheep can be varied. Where population growth is concerned, however, the extent of growth is a constant.<sup>6</sup> The variable is the land people occupy. A market characterized by many small producers will continually produce the tragedy of the commons in the absence of regulation. If building is limited to a given land area, and is unregulated within that area, no system of market incentives or self-regulation can overcome the incentive to build "just one more."

The problem of the commons could ideally be solved by increasing the amount of grazing land so every herdsman could graze all the cattle he desires. But it is not clear whether the growth dilemma can be solved by

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is to add another animal to his herd. And another . . . But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit — in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

*Id.*

3. Bosselman, *supra* note 1.

4. *Id.* at 31-32.

5. HARDIN, *supra* note 2, at 261.

6. We can predict with reasonable accuracy the number of people who will become independent of their parents at about age 20 for the next 20 years.

creating enough desirable places to live so the number of people seeking to move to Petaluma or Fairfax County, for example, would be no greater than that acceptable to the present residents. Thus there exists the dilemma to which these Articles are addressed. On the one hand, people want to move to new locations in order to improve their living environment and enjoy a better life style. On the other hand, an improved living environment requires restrictions on the number of people who can live in an area, thus limiting the ability of some people to migrate and settle in various parts of the country.

Governmental attempts to induce people to move to new locations or to remain in their present localities have usually been characterized as "growth policies." Many countries have devoted extensive efforts to such policies.<sup>7</sup> Our federal government has not taken significant steps in the direction of definite growth policies,<sup>8</sup> but some states have. This Article will examine the work of three of the states that have expended a substantial effort on such policies — Florida, Hawaii and Minnesota.

### I. GROWTH POLICY IN FLORIDA

For many years Florida encouraged population growth and development. Recently, however, the state has become concerned over the possible effects of too much growth, and as a result, has enacted a variety of statutes to aid in controlling this urban sprawl. No definitive state policy has yet emerged, however, and the precise direction of Florida's growth control efforts is not yet clear.

#### A. *Growth Trends in Florida*

In 1875 the population of Florida was about 200,000.<sup>9</sup> When one of the state's citizens was asked how the people of Florida made their living he

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7. See P. HALL, H. GRACEY, R. DREWETT & R. THOMAS, *THE CONTAINMENT OF URBAN ENGLAND* (1973); N. HANSEN, *FRENCH REGIONAL PLANNING* (1968); L. RODWIN, *NATIONS AND CITIES: A COMPARISON OF STRATEGIES FOR URBAN GROWTH* (1970); A. STRONG, *PLANNED URBAN ENVIRONMENTS* (1971); Sundquist, *Europe Stops the Urban Swarm*, *NATION*, July 20, 1974, at 39.

8. See COMM. ON COMMUNITY DEVELOPMENT, THE DOMESTIC COUNCIL, EXECUTIVE OFFICE OF THE PRESIDENT, *NATIONAL GROWTH AND DEVELOPMENT: SECOND BIENNIAL REPORT TO THE CONGRESS* (1974); D. Holland, *National Growth Policy: Notes on the Federal Role*, 1973 *URBAN L. ANN.* 59; Comment, *Toward a National Policy on Population Distribution*, 47 *WASH. L. REV.* 287 (1972).

9. Bureau of the Census, U.S. Dep't of Commerce, *1970 Census of Population, Vol. I — Characteristics of the Population, Part 11 — Florida*, 1, 11-7 (Apr. 1973). The 1870 Federal Census: 187,748; 1880 Federal Census: 269,493.

replied, "We live on sweet potatoes and consumptive Yankees and we sell atmosphere."<sup>10</sup> The inflow of non-Floridians grew at an accelerating pace, ultimately resulting in immigration in excess of 7,000 per week from July, 1973, to June, 1974.<sup>11</sup> As early as 1930 two counties had population densities exceeding 100 persons per square mile, and by 1960 fourteen counties exceeded this density.<sup>12</sup>

For many years land development and tourism have been the chief components of the Florida economy.<sup>13</sup> In recent years, however, Florida's concern over its growth rate has been increasing. It experienced a speculative land boom during the 1920's, and its dramatic collapse brought the depression to the state early.<sup>14</sup> Many older citizens remember that land boom and fear a repetition of the collapse. Others are concerned with growth because they are becoming increasingly aware of the importance and uniqueness of the state's natural systems.<sup>15</sup> They fear irreversible alteration of the Florida environment, especially the fresh water system, by extensive development activities. These concerns were heightened during 1971, when many attributed a severe drought in southern Florida to excessive growth in that area.<sup>16</sup>

### B. *Creation of Control Systems*

In 1972, following the work of several gubernatorial task forces, the legislature adopted a package of legislation proposed by Governor Reuben Askew to give the state new techniques to regulate and channel

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10. C. TEBEAU, *A HISTORY OF FLORIDA* 271 (1971).

11. DIVISION OF STATE PLANNING, *FLORIDA DEP'T OF ADMINISTRATION, STATE COMPREHENSIVE PLAN, LAND DEVELOPMENT ELEMENT 5* (Proposed Draft. 1975).

12. R. WOOD & E. FERNALD, *THE NEW FLORIDA ATLAS* 110-11 (1974).

13. For example, in 1972, building permits were issued for 266,982 residential units in Florida. Bureau of the Census, U.S. Dep't of Commerce, *Construction Reports—Housing Authorized by Building Permits and Public Contracts*, Mar., 1973. In 1967, the state completed its efforts to attract the Disney World complex by enacting legislation creating the Reedy Creek Improvement District, special district legislation that in effect gives the Disney World management sweeping governmental powers. Ch. 67-764, [1967] *Laws of Florida* 256; see L. CARTER, *THE FLORIDA EXPERIENCE* 34-38 (1974) [hereinafter cited as CARTER]. There was no ambivalence in the state's promotion of growth.

14. TEBEAU, *supra* note 10, at 385-95.

15. See, e.g., CARTER, *supra* note 13; R. DASMANN, *NO FURTHER RETREAT: THE FIGHT TO SAVE FLORIDA* (1971).

16. The shortage of water parched developed areas and led to widespread wildlife losses in the Everglades National Park and other natural areas. See Harte & Socolow, *The Everglades: Wilderness Versus Rampant Land Development in South Florida*, 1 *ENVIRONMENTAL AFFAIRS* 141 (1971). See generally CARTER, *supra* note 13, at 16-18.

growth. This package included the Florida Water Resources Act of 1972,<sup>17</sup> the State Comprehensive Planning Act,<sup>18</sup> and the Florida Environmental Land and Water Management Act of 1972.<sup>19</sup> The Florida Water Resources Act of 1972 established six water management districts to assist in the implementation of a policy to provide management of water and related land resources and to promote conservation, development and proper utilization of surface and ground water.<sup>20</sup> The State Comprehensive Planning Act called for establishment of a state comprehensive plan and an annual development program as major elements of the governmental decisionmaking process.<sup>21</sup> Until January, 1975, lack of appropriated funds for the Division of State Planning had precluded any significant work on the State Comprehensive Plan.<sup>22</sup> The Florida Environmental Land and Water Management Act of 1972<sup>23</sup> consisted of a procedural system by which state or regional policies could be enforced in areas of critical state concern or for developments of regional impact. Proponents of the 1972 legislative package were careful to point out that the proposed legislation was neutral on the issue of what kind of growth was desirable or undesirable. Rather, it created mechanisms by which policies could be established and implemented, but it did not attempt to establish an overall growth policy.

Consistent with this approach is the Local Government Comprehensive Planning Act of 1975<sup>24</sup> which requires counties and municipalities to prepare and adopt comprehensive plans to guide future development and growth.<sup>25</sup> Coordination with state plans and plans of adjacent

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17. FLA. STAT. ANN. §§ 373.011-.6161 (1973).

18. *Id.* §§ 23.011-.019 (Supp. 1975).

19. *Id.* §§ 380.012-.10 (1973), *as amended*, §§ 380.05-.06, .11 (Supp. 1975).

20. *Id.* §§ 373.036, .069 (1973); *see* Division of State Planning, Florida Dep't of Administration, A Proposal for the Protection of Wetlands 11-14, Nov. 1974.

21. FLA. STAT. ANN. §§ 23.0114, .014 (Supp. 1975).

22. Interview with Helge Swanson, Chief, Bureau of Comprehensive Planning of Florida, Div. of State Planning, in Tallahassee, Fla., May 21, 1975.

23. FLA. STAT. ANN. §§ 380.012-.10 (1973), *as amended*, §§ 380.05-.06, .11 (Supp. 1975). For a discussion of this Act *see* Finnell, *Saving Paradise: The Florida Environmental Land and Water Management Act of 1972*, 1973 URBAN L. ANN. 103. The chief sponsor of the legislation noted that the major purpose of the Act was to restructure the land use decisionmaking processes to respond to public interests affected by major land development. *Id.* at 114-15.

24. Ch. 75-257, [1975] Fla. Laws 663.

25. The plans must describe the "principles, guidelines, and standards for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area." *id.* § 7 (1).

counties and municipalities is encouraged and the local plan's relationship to the other plans must be explained.<sup>26</sup> Local governmental regulations and decisions concerning development must be consistent with the local plan.<sup>27</sup> While this Act requires planning for certain types of growth, such as the study of potential sites for "housing for low and moderate income families and mobile homes,"<sup>28</sup> it retains the basically neutral attitude of the 1972 legislation.

### C. Legislative Attempts to Establish Growth Policy

The executive branch saw growth as a key issue in comprehensive planning. It embarked on a long-range program to develop a growth plan through the State Comprehensive Planning Act.<sup>29</sup> Governor Askew's concern about growth was reflected in a speech to a conference on growth and the environment in October of 1973: "Let's look around and see what unchecked, unplanned growth has done to Florida. . . . True, we have enjoyed economic prosperity. But [all can see] the warning signals and what they portend if we don't grab the reins of this galloping giant."<sup>30</sup>

In 1973, the Speaker of the Florida House of Representatives presented his position on growth. He created a special legislative committee to formulate and adopt a state growth policy in 1974.<sup>31</sup> After numerous drafts, in-depth committee review of expert testimony and animated debate, the House passed a resolution setting forth extensive policies for future state growth.<sup>32</sup> Although some of the policies were treated only in generalities, a wide range of issues was covered, some in considerable detail.

The House resolution first set forth a catalogue of growth-related issues including population projections, urbanization, growth distribution, environmental degradation, energy shortages and other economic and social considerations. The resolution then posed the question of what kind of growth was desirable for Florida and described the need for

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26. *Id.* § 7 (4).

27. *Id.* § 12 (1).

28. *Id.* § 7 (6)(f).

29. FLA. STAT. ANN. §§ 23.011-.019 (Supp. 1975).

30. CARTER, *supra* note 13, at 7-8.

31. See Sessums, *A Florida Approach, Legislating a Growth Policy*, 47 STATE GOVERNMENT No. 2, at 82 (1974).

32. Committee Substitute for H. Con. Res. 2800, 3d Fla. Leg., Reg. Sess. (1974).

a state growth policy. It set forth several such policies, including those pertaining to the quality of life,<sup>33</sup> the management of growth,<sup>34</sup> and the determination of an area's carrying capacity.<sup>35</sup> After some debate the House adopted the resolution substantially as composed by the House Governmental Operations Committee.

Having passed the House, the resolution moved to the Senate, where it ran into trouble. The leadership was conducting a visible offensive against Florida's "phantom government." Their goal was restriction of the flexibility and discretion of the executive branch of government.<sup>36</sup>

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33. "It is the policy of the State of Florida that the foremost function of its government shall be to help its citizens maintain and enrich the quality of life in Florida." Committee Substitute for H. Con. Res. 2800, 3d Fla. Leg., Reg. Sess. (1974).

34. "This shall be done through laws and programs designed primarily to influence the kind, rate and extent of growth and the ways of adjusting to that growth in any area of Florida." *Id.* at 1345.

35. The desired kind, rate and extent of growth shall be primarily determined by the carrying capacity of natural and man-made systems of an area.

Carrying capacity shall be based on availability of natural resources such as air, soils, water and space and may vary further depending on available energy, technology, means of waste disposal, other essential public services and the financial capability of an area.

In defining carrying capacity local government shall use a uniform statewide method of measurement as determined by the legislature and the legislature recognizes its responsibility to develop such a uniform method.

This shall be the primary basis on which local government adopts the desired kind, rate and extent of growth for its area so long as these do not exceed the carrying capacity of that area as found by the uniform statewide method of measurement.

*Id.* at 1346.

36. See, e.g., Administrative Procedure Act, FLA. STAT. ANN. §§ 120.50-.72 (Supp. 1975). The Senate was also concerned about the controversy that had resulted from the designation of the first "area of Critical State Concern." Under the Florida Environmental Land and Water Management Act of 1972, critical areas were to be designated by the executive branch, *id.* § 380.05 (Supp. 1975), but in 1973 the legislature decided to choose the Big Cypress Swamp as the first area to be so designated. Big Cypress Conservation Act of 1973, *id.* § 380.055 (1973). In designating this area the legislature did not prescribe specific boundaries of the swamp, leaving those to the Division of State Planning, if approved by the governor and cabinet.

The Big Cypress Act had moved quickly through the legislature with little real consideration of the legislation's impact. It was recognized that Big Cypress was an area of delicate ecological balance and that its continued integrity was and is intimately linked to the availability of fresh water in south Florida. The legislation was also pushed by the understanding that the Act was a prerequisite for obtaining federal funds for the purchase of portions of the areas of the swamp meriting absolute preservation.

The Division of State Planning designated an area considerably larger than most legislators had contemplated in enacting the Big Cypress Act. Large areas of well-drained agricultural land were described as part of the Big Cypress area, which angered agricultural interests. Eventually the boundaries were redrawn by the Division of State Planning, but the Senate leadership cited the case as an example of bureaucratic excess beyond the contemplation of a legislative action.

The Senate cut and watered the growth policy resolution until it was but a shadow of the meditative product of the House. The resolution that eventually passed was considerably less meaningful and had little independent significance.<sup>37</sup> Why did a state growth policy prove an unattainable goal in 1974? Neither pro- nor anti-growth forces were willing to trust state government. Anti-growth forces were finding increasing success in local elections and expected the trend to continue. Pro-growth forces hoped the slowdown in the construction industry would bring the local voters back to their side.<sup>38</sup> Thus both sides hoped for eventual victory at the local level and saw no need to compromise.

#### D. Growth Policy in the State Plan

Although the Senate had disarmed the growth policy resolution, the final 1974 appropriations legislation provided adequate funding for the Division of State Planning, including a doubling of professional staff for the Bureau of Comprehensive Planning, the organization responsible for development of the State Comprehensive Plan. In the spring of 1975 the Division of State Planning began releasing individual elements of its proposed plan.<sup>39</sup>

On the specific issue of influencing growth the legislature had resolved that "it shall not be the State's policy to stimulate further

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37. Committee Substitute for H. Con. Res. 2800, 3d Fla. Leg., Reg. Sess., 1344 (1974); see Sessums, *supra* note 31.

38. As developer Arthur Radice put it,

The adamant no-more-people advocate finds himself living among construction workers and retail clerks who have no jobs and are running out of money. I think public officials and private citizens who have favored population ceilings now see this sends land and home prices up, shutting many families out of the market. It also takes the wind out of building, and thereby causes stagnation.

FLORIDA TREND, Dec. 1974, at 12.

39. The plan is required by FLA. STAT. ANN. §§23.011-.019 (Supp. 1975). In addition, the Division of State Planning issued a report, Report on Implementation of the Florida Growth Policy, Pursuant to Executive Order No. 74-54, Apr. 1975, in response to Committee Substitute for H. Con. Res. 2800, 3d Fla. Leg., Reg. Sess. (1974).

During the first six months of 1975, drafts of five elements of the comprehensive plan were completed and released, including a growth policy element based on the various categories established under the growth policy resolution. The growth policy element of the comprehensive plan is made up of a statement of policy goals evolved from the House Concurrent Resolution, a description of the more specific objectives necessary to achieve these policy goals, and an analysis of the status of progress toward each of these objectives. See DIVISION OF STATE PLANNING, FLORIDA DEP'T OF ADMINISTRATION, STATE COMPREHENSIVE PLAN, GROWTH POLICY ELEMENT (Proposed Draft, 1975)



growth generally, but to plan for and distribute such growth as may develop."<sup>40</sup> The Division of State Planning translated this policy statement into two specific goals: discouragement of excessive stimulation of growth and distribution of development throughout the state. Between 1973 and 1974, however, Florida's population grew at a rate of just over five percent while the average rate for the previous three years had been slightly under three percent.<sup>41</sup>

The plan will be complete in 1976. Although the administration of other state regulatory law will presumably take cognizance of the completed elements, definitive policy will not be in evidence until the State plan is completed, regionalized and finally localized for application to land use decisionmaking.<sup>42</sup> The Land and Water Management Act is nevertheless being applied to three areas of critical state concern and innumerable developments of regional impact. The state is also beginning to review local plans under the Local Government Comprehensive Planning Act. In addition, under the State Comprehensive Planning Act individual policy elements are to be submitted to the Governor who, if he approves them, is to transmit them to the legislature which makes them "effective as state policy."<sup>43</sup> In the absence of a comprehensive growth policy upon which to base land use decisions, however, state planners can only make decisions as best they can on a pragmatic basis.

The process of preparation of the policy elements has been slow. As of the end of April, 1976, only a few of the draft elements have been submitted to the Governor's office for approval while most of the others were in various stages of drafting within the Bureau of Comprehensive Planning or the Department of Administration.<sup>44</sup> The state planners believe, however, that the process of working out the policy elements has been a very beneficial one for all concerned. It has required represen-

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40. See note 39 *supra*.

41. DIVISION OF STATE PLANNING, FLORIDA DEP'T OF ADMINISTRATION, *supra* note 39, at 6. "Forty-six per cent of the state's growth was concentrated in 5 counties (12% of the land area), which already show signs of stress, while some rural counties have lost population in recent years. Florida's coastal zone contains 28% of the land area and 74% of the State's population." *Id.* at 5.

42. Interview with Helge Swanson, Chief, Bureau of Comprehensive Planning of Florida, Div. of State Planning, in Tallahassee, Fla., May 21, 1975. For further discussion of Florida's environmental protection legislation see Commentary, *Area of Critical State Concern: Its Potential for Effective Regulation*, 26 U. FLA. L. REV. 858 (1974).

43. FLA. STAT. ANN. § 23.013 (Supp. 1976).

44. Telephone interview with Helge Swanson, Chief, Bureau of Comprehensive Planning, April 30, 1976.

tatives of the various state agencies to sit down and spell out their own goals more clearly than they might otherwise have done and to examine the consistency of their goals with those of other agencies. This has been an educational process valuable to all concerned.<sup>45</sup>

The legislative leaders in the House of Representatives that supported the initial growth policy resolution are no longer in leadership positions and the current leadership of both houses has expressed little interest in the development of comprehensive growth policies at this time. Consequently, the eventual future of the Florida growth policy remains in doubt.

## II. GROWTH POLICY IN HAWAII

### A. *Growth Trends in Hawaii*

A guidebook to Hawaii published a century ago proclaimed the islands to be a tropical paradise.<sup>46</sup> At that time the Kingdom of Hawaii had a population of about 50,000 native Hawaiians and 5,000 foreigners.<sup>47</sup> A century earlier the islands had supported approximately 300,000 native Hawaiians and *no* foreigners.<sup>48</sup> Arrival of Europeans in 1778 brought diseases to which the natives lacked immunity and resulted ultimately in the decimation of the native Hawaiian population.<sup>49</sup> It is no wonder, therefore, that in 1875 Hawaii felt capable of absorbing large numbers of new immigrants.

The immigrants came from all directions — the United States, China, the Philippines, Portugal, Japan. In 1970 the state contained over three quarters of a million people from highly varied ethnic backgrounds.<sup>50</sup> By 1974 the population of the state approached 850,000.<sup>51</sup>

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45. *Id.*

46. "Those who are in search of a country where they can live cheaply, provided they dispense with luxuries, in a climate as fascinating as it is healthy, can find no place equal to the Hawaiian Islands." M. WHITNEY, *THE HAWAIIAN GUIDEBOOK* 119 (1875).

47. *Id.* at 120.

48. F. SIMPICH, *ANATOMY OF HAWAII* 23 (1971); Fisher, *Hawaii: Growing Pains in Paradise*, 29 *POPULATION BULLETIN* No. 3, at 3, 6 (1973) [hereinafter cited as Fisher].

49. DEPARTMENT OF GEOGRAPHY, UNIV. OF HAWAII, *ATLAS OF HAWAII* 99 (1973); Fisher, *supra* note 48, at 7.

50. HAWAII DEP'T OF PLANNING AND ECONOMIC DEV., *DATA BOOK* 1972, at 19 (1972).

51. BANK OF HAWAII, *HAWAII '75 ANNUAL ECONOMIC REVIEW* 12, 43 (1975).

### B. *Creation of Control Systems*

The State of Hawaii is divided into four counties, each of which have strong planning and zoning powers.<sup>52</sup> In addition, in the early 1960's the legislature passed a land use law creating a state Land Use Commission and directed it to divide the entire state into four districts — conservation, agricultural, rural and urban.<sup>53</sup> Land in the urban district may be used for any purpose permitted under the local zoning regulations. In the agricultural and rural districts land may be used only for agricultural or rural uses in compliance with the regulations of the state Land Use Commission. Land encompassed by the conservation district must comply with the regulations of the state Department of Land and Natural Resources.<sup>54</sup>

The Land Use Commission controls urban growth by drawing the boundaries of the urban districts. Only land so zoned is available for any intensive form of development. Although the Commission has in theory included enough land in the urban district to meet future needs for a ten-year period, it is apparent that much of the vacant land zoned urban is not readily available at prices developers are willing to pay.<sup>55</sup> Consequently, the Commission receives a large number of petitions from developers seeking the rezoning of nonurban district land to an urban district classification. The Commission's decisions on such applications constitute the most controversial aspect of the regulatory program.<sup>56</sup> Developers complain that insufficient land is available for housing, while conservationists grumble that too little land is being preserved for agricultural and conservation purposes.<sup>57</sup>

Although the land use law created a powerful development control mechanism, it does not establish clear planning policies with which the

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52. See Note, *Comprehensive Land Use Plans and the Consistency Requirement*, 2 FLA. ST. U.L. REV. 766 (1974).

53. HAWAII REV. STAT. § 205-2 (Supp. 1974). For a more detailed description of the Hawaiian land use legislation see F. BOSSELMAN & D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* 5-53 (1971) [hereinafter cited as BOSSELMAN & CALLIES]; D. MANDELKER, *ENVIRONMENTAL AND LAND CONTROLS LEGISLATION* (1976) (specifically ch. VIII, *Progress in Paradise: The Hawaii Land Use Law*).

54. HAWAII REV. STAT. § 205-5 (Supp. 1974).

55. BOSSELMAN & CALLIES, *supra* note 53, at 23-24.

56. See D. MANDELKER & S. SPIEGEL, *REPORT TO THE PEOPLE 24* (Hawaii State Land Use Comm'n, Technical Rpt. No. 1, 1975) [hereinafter cited as MANDELKER & SPIEGEL].

57. BOSSELMAN & CALLIES, *supra* note 53, at 12.

Commission must comply. Based on observations in 1971, it has been concluded that the Commission was attempting to reconcile three basic planning principles: (1) the preservation of prime agricultural land for agricultural use; (2) the fostering of tourist-oriented development without disturbing the attractions of the natural landscape; and (3) providing compact and efficient urban areas where people can live at reasonable cost.<sup>58</sup>

In accordance with these principles the Commission has attempted to confine new residential development to narrow areas immediately adjacent to existing urban districts. This policy, however, spawned new kinds of problems. The land use law may have reduced the lateral spread of urbanization, but not its upward movement. "The coconut grove of Waikiki . . . the residence of the ancient kings of Oahu"<sup>59</sup> has become a forest of high rise hotels, apartments and condominiums. Traffic congestion, crowds on the beaches and in the parks, and the crime rate have all increased correspondingly.<sup>60</sup> Opponents of this narrow urban limit policy argue that it has caused housing prices in Hawaii to be more than *double* the national average.<sup>61</sup> Conservationists argue, however, that this increase in housing costs is a small price to pay for preserving the natural environment of the state.<sup>62</sup> While the land use law provides a mechanism by which these conflicts can be resolved according to a statewide policy, the state has failed to provide such a policy. If the state had any policy in the 1960's, it was clearly a policy of encouraging growth.<sup>63</sup>

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58. *Id.* at-13.

59. WHITNEY, *supra* note 46, at 26.

60. See Collins, *Natural Environment 2000*, in G. CHAPLIN & G. PAIGE, HAWAII 2000, at 176 (1973). Attempts to channel growth to the neighbor islands, though often advocated, have proven less than successful. Economic attractions in Honolulu draw businesses to that city, leaving jobs scarce elsewhere. Outlying counties are becoming increasingly concerned about their growth rates and are less and less eager to welcome new development. See Fisher, *supra* note 48, at 32.

61. Fisher, *supra* note 48, at 30.

62. See MANDELKER & SPIEGEL, *supra* note 56, at 19-22.

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Governor John A. Burns in his 1968 state-of-the-state address actually encouraged population growth, using the theme of Hawaii as an open society. Immigrants should be attracted, he said. A legislative resolution encouraged the federal government to open the gates to foreigners. A 1969 Hawaii conference on immigration said people should be urged to come to the islands.

In 1971, Governor Burns saw no population problem overall, but favored a redistribution of Oahu population to the neighbor islands. In that same year, Mayor Frank Fasi of Honolulu said that Hawaii could absorb ten times its present

### C. State Policy Formulation

In 1970 an official commission to study a state growth policy was established.<sup>64</sup> The report of this Temporary Commission on Population Stabilization was issued in 1972.<sup>65</sup> It recommended that the legislature adopt a policy indicating what actions state and county agencies should take to stabilize population growth as well as a policy mandating rural-urban growth patterns throughout the state in a manner that would determine land use district boundaries.<sup>66</sup> Recognizing the constitutional limits on the state's powers to control migration, the Commission asked the legislature to "adopt a joint resolution requesting Congress to assist states in developing migration policies and possible controls between the states."<sup>67</sup>

Other consultants and study commissions made similar recommendations. In 1972 the Overview Corporation, which had been hired to study the state's open space needs, recommended that state and county governments work jointly to develop a long-range policy of stabilized population.<sup>68</sup> It suggested that state and county governments work "in concert toward both optimum statewide population levels and optimum population distribution patterns among the islands."<sup>69</sup>

At approximately the same time the Department of Planning and Economic Development released its central Oahu planning study<sup>70</sup> recommending that no further agricultural land in central Oahu be converted to urban use and that a "strategy of containing growth within the present urban land use districts . . . be adopted as a State policy for urban growth on Oahu."<sup>71</sup> Another temporary commission, the Temporary Commission on Statewide Environmental Planning, issued its report in November, 1973, recommending that Hawaii shift

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population and people who think the level can be controlled are wrong. Chaplin, *Hawaii Weighs the Future*, 9 CRY CALIFORNIA, No. 3, at 4, 8 (Summer 1974).

64. Fisher, *supra* note 48, at 6.

65. REPORT OF THE TEMPORARY COMM'N ON POPULATION STABILIZATION (1972).

66. *Id.* at 48-52.

67. *Id.* at 52.

68. OVERVIEW CORP., HAWAII DEP'T OF ECON. DEV., COMPREHENSIVE PLAN (1972).

69. *Id.* at 158-60. The Report also recommended that the state should reorganize its functions of planning, environmental protection and land use control into a single new Department of Environmental Planning and Growth Guidance.

70. HAWAII DEP'T OF PLANNING AND ECON. DEV., CENTRAL OAHU PLANNING STUDY, A SUMMARY REPORT (1972).

71. *Id.* at I.

from a growth ethic to a conservation or environmental ethic in the traditional Hawaiian spirit of "Malama."<sup>72</sup>

In 1974 the legislature responded by adopting the State Environmental Policy Act,<sup>73</sup> which declares the policy in the state to be the enhancement of the quality of life, to be attained in part by setting population limits. The Act also requires all agencies undertaking development programs to consider as far as practicable the "[r]ecognized optimum population levels for counties and districts within the state, keeping in mind that these will change with technology and circumstance, and adopt guidelines to limit population to the levels determined."<sup>74</sup> The 1974 legislature also ordered the Governor's office to look into growth control mechanisms and appropriated \$100,000 to do a two part study.<sup>75</sup>

In the same year the state Department of Planning and Economic Development published its growth policies plan for the state.<sup>76</sup> This plan recommends that the state's population growth rate be reduced to approximately 1.67 percent per year, a reduction of about thirty percent from the typical growth rate of the 1960's.<sup>77</sup> The proposed policy would reduce the net immigration to a level of approximately 3,000 to 4,000

72. TEMPORARY COMM'N ON STATEWIDE ENVIRONMENTAL PLANNING, *THE PLAN FOR HAWAII'S ENVIRONMENT* 13 (1973). "Malama" is Hawaiian for "to serve, honor, as a god." *Id.*

73. HAWAII REV. STAT. § 344-1 (Supp. 1974).

74. *Id.* § 344-4.

75. The Governor's office was directed to

1. Develop criteria to measure optimum carrying capacity, so that we will know when an area (for example, Waikiki) is overloaded or approaching overload. Similar carrying capacity criteria could be used to monitor systems, like transportation.

Whereas all of us "feel" that Waikiki and our roadways are overloaded, sound decision-making and the likelihood that tough decisions will be challenged in court demand the development of objective measures of where we stand.

2. Develop procedures for declaring some areas or systems, "At Overload" or "In Danger of Overload" and placing them under special control until the problem is corrected.

For example, Waikiki might be declared "Overloaded" by City Council, and thereafter, so long as the overload situation continued, no building permit could be issued or zoning changed unless there was a finding that the act was in the public interest.

Honolulu Star-Bulletin, Aug. 27, 1974, § A, at 12, col. 1.

76. HAWAII DEP'T OF PLANNING AND ECON. DEV., *STATE OF HAWAII GROWTH POLICIES PLAN: 1974-1984* (1974).

77. *Id.* at 58-59. The plan excludes from consideration changes in the military personnel force.

persons per year by (1) development of an information program directed toward informing potential in-migrants of the lack of jobs, costs of housing and isolation from the Mainland, (2) selectively slow employment growth, and (3) maintenance of modest housing supports.<sup>78</sup> For the Island of Oahu the state recommends reducing civilian population growth to approximately 1.4 percent per year, while permitting two to three percent growth on neighbor islands.<sup>79</sup> One unusual aspect of the plan is its attempt to maintain a welfare system that discourages in-migration.<sup>80</sup> The plan recommends that the state "for non-hardship cases, maintain some processing delays as a substitute for residency requirements."<sup>81</sup>

The state planners introduced legislation that would implement the plan by setting up a planning process through which proposed land uses would be evaluated against the planning policies. Civic and environmental groups opposed the bill.<sup>82</sup> These groups wanted to see a

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78. *Id.* at 60-61.

79. The first Hawaii state plan proposed a number of steps to channel growth away from Oahu to the other islands, and this issue is still a part of Hawaiian politics today. One of the other county planners from the outer islands was quoted as saying, "Honolulu's problems should be Honolulu's." Fisher, *supra* note 48, at 23. As a means of diverting growth to neighbor islands the plan recommends (1) state restrictions on hotel construction on Oahu, (2) financial incentives to encourage new industries on the neighbor islands, (3) restrictive occupational licensing on Oahu and lenient licensing on the neighbor islands, (4) relocation of a proposed new State University on a neighbor island rather than on Oahu, (5) restrictive standards for urban redistricting of Oahu land, (6) strict air quality standards for Oahu industries, (7) favoring the neighboring islands in expenditure of State housing funds, and (8) encouraging development of an improved inner-island transportation system. STATE OF HAWAII GROWTH POLICIES PLAN, *supra* note 76, at 63-64.

80. Because of the competitive nature of Hawaii's economy and its high cost of living, the State must maintain a welfare system that is sympathetic to its people. But care must be exercised to insure that welfare does not encourage in-migration of people desiring extended vacations at the expense of Hawaii's taxpayers.

STATE OF HAWAII GROWTH POLICIES PLAN, *supra* note 76, at 84.

81. *Id.* It was also recommended that population growth be channeled into compact urban developments to enable more efficient use of facilities, to protect agriculture, and to avoid social disruption in rural areas. *Id.* at 64. The state, however, came out against the proposed fixed rail mass transit system on Oahu, arguing that an express bus and marine transit system would provide a less costly and more flexible alternative. *Id.* at 74-77.

82. These groups did not believe that a process of planning at the state level would be adequate to insure that their interests would receive proper attention. They certainly did not trust professional planners. One group argued, for example, that population control would be ignored unless it was a mandatory provision of the master plan. Another group argued that limits on tourism could be invoked only if the legislature made them a required element of the master plan. Clearly these groups were arguing that the legislature must insist upon a document with a specific list of essential components because the professional planners would not

master plan with a map showing future land uses. Even some professional planners agreed.<sup>83</sup> As a result of this opposition the 1974 legislature made no significant change in the existing planning legislation, since the opponents could not agree on any proposals of their own.

#### D. County Policy Formulation

Interest in growth policy was also being exhibited at the local government level. A revision of the Honolulu county general plan was mandated by the new Honolulu City Charter, and the Department of General Planning was seeking to move away from the traditional one-page map that constituted the existing general plan. The new plan was to include not only "general social, economic, environmental and design objectives," but also a development plan containing "detailed schemes for implementing and accomplishing the development objectives and policies of the general plan within the several parts of the city."<sup>84</sup> Under Hawaii law the general plan is very important since the zoning in Honolulu can only be changed if it is in conformance with that plan.<sup>85</sup>

In March, 1974, the county issued a planning study by the Department of General Planning that evaluated four residential development alternatives: intensive development, directed growth, private sector proposals, and moderate expansion.<sup>86</sup> Employing a cost-benefit analysis, the study recommended that growth be directed to the Ewa area because it had the greatest potential for meeting future housing needs, minimizing long-run capital and environmental costs, and providing more flexibility for development of the area.<sup>87</sup>

While the state plan advocated various methods of controlling

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tackle the controversial issues unless they were forced into it.

Catanese, *Plan or Process*, 40 PLANNING 16 (1974).

83. The county planning directors all expressed cautious support for a statewide master plan on the ground that such a document "would let us know what the state is going to do in our county" and thereby allow for better planning. They expressed mild disapproval of the administration bill on the ground that a process approach would not necessarily assure state cooperation with local planning agencies.

*Id.*

84. CITY AND COUNTY OF HONOLULU CHARTER art. 6, ch. 10 (1973).

85. *Dalton v. City & County of Honolulu*, 51 Hawaii 400, 462 P.2d 199 (1969).

86. CITY AND COUNTY OF HONOLULU DEP'T OF GEN. PLANNING. AN EVALUATION OF ALTERNATIVE RESIDENTIAL POLICIES 1974.

87. *Id.*



population growth, the county plan did not include recommendations for controlling population growth and specifically rejected land use controls as a growth control mechanism.<sup>88</sup> The county's policy of accommodating growth rather than limiting it was reflected in its projected population of 1.3 million in 1990 as compared to the state's estimate of 860,000.<sup>89</sup>

### E. *A Legislative Synthesis*

While the county and state planners were arguing over policy, the Land Use Commission, which controls both the supply and location of urban land, was beginning to formulate its own growth proposals. The land use law requires the state Land Use Commission to make a comprehensive review of the classification and districting of all lands and regulations pertaining thereto at the end of each five years.<sup>90</sup> In December of 1974, the Land Use Commission made its decisions regarding specific rezonings<sup>91</sup> but did not issue a formal report until the spring of 1975.<sup>92</sup> That report emphasized that the Commission had undertaken extensive public hearings on the various proposals for boundary changes, but contained no particular justifications for making any individual boundary change.<sup>93</sup> In general, the action of the Commission set a precedent for further urbanization in the Ewa area consistent with the county's directed growth policy.<sup>94</sup>

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88. CITY AND COUNTY OF HONOLULU DEP'T OF GEN. PLANNING, *supra* note 86, at 196 (1974). "Not providing adequate housing or not seeking to meet the housing needs of the people of this community are not appropriate means for controlling population growth." *Id.* at 194-95.

89. TEMPORARY COMM'N ON STATEWIDE ENVIRONMENTAL PLANNING, *supra* note 72, at 10.

90. HAWAII REV. STAT. § 205-11 (1968); *see* ECKBO, DEAN, AUSTIN & WILLIAMS, STATE OF HAWAII LAND USE DISTRICTS AND REGULATIONS REVIEW (1969).

91. The Commission turned down a number of requests for urban zoning, especially on the windward side of the islands. It did, however, redistrict 945 acres of agricultural land (owned by the Campbell estate) to urban classification in the Ewa area. Dr. Shelly Mark, the outgoing Director of DPED, predicted that this action "would give the new administration's slow growth policy a running shove." Honolulu Star-Bulletin, Feb. 18, 1975, § A, at 1, col. 1.

92. MANDELKER & SPIEGEL, *supra* note 56.

93. *Id.* at 23-31.

94. Honolulu County Planning Director Robert Way, however, found it impossible to discern any sensible pattern in the Commission's decisions. Interview with Robert Way, County Planning Director, Honolulu County, Hawaii, in Honolulu, Hawaii, Feb. 18, 1975. On the other hand, A.A. Smyser, Jr., Editor of the Honolulu Star-Bulletin and Chairman of the Temporary Commission on Statewide Environmental Planning, found it a reasonable compromise. Honolulu Star-Bulletin, Dec. 21, 1974, § A, at 12, col. 1.

The Commission published, as separate documents, reports prepared by its consultants containing various recommendations for changing the procedures and standards under which the Commission operates.<sup>95</sup> Legislation embodying some of the recommendations of the consultants, but differing substantially from those recommendations in other ways, passed the Hawaii Legislature and was signed by the Governor in the spring of 1975.<sup>96</sup> The legislation, which was strongly supported by Governor Ariyoshi, directs the Department of Planning and Economic Development to prepare a state plan that includes a statewide land use guidance policy and to present it to the legislature not later than January 1, 1977.<sup>97</sup> A policy council, consisting of the county planning directors of each county and the heads of a number of state agencies, is to advise on the preparation of the plan, monitor its implementation, and submit an annual report to the legislature and the county councils on progress in achieving the goals of the plan.<sup>98</sup>

After adoption of the state plan, which will presumably occur by legislative action in 1977, all amendments to land use district boundaries and any other action by the Land Use Commission must conform to the state plan.<sup>99</sup> During the period prior to adoption of the plan the Land Use Commission may amend district boundaries<sup>100</sup> only if the amendments are consistent with the "interim statewide land use guidance policy" set forth in the statute.<sup>101</sup>

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95. MANDELKER & SPIEGEL, *supra* note 56; KAPLAN, GANS, KAHN & YAMAMOTO, HAWAII'S VULNERABLE ENVIRONMENTS, (Hawaii State Land Use Comm'n Technical Rep. No. 2 (1975)). Prior to the issuance of these reports a representative of the Kaplan firm, speaking on his own behalf and without the firm's approval, testified before a state senate committee that the Land Use Commission was hiding the consultants' report from the public. See Honolulu Star-Bulletin, Mar 4, 1975, § A, at 5, col. 1. In its own report, the Commission noted that while "[the consultants'] principal suggestions are also reported. . . . the commission contemplates no major changes in its operations at present. However, the State Administration itself was preparing legislation for the 1975 session." MANDELKER & SPIEGEL, *supra* note 56, at 5.

96. H.B. 677, Eighth Hawaii Leg., Reg. Sess. (1975).

97. *Id.* §§ 1, 21.

98. *Id.* Such a council was recommended in an earlier study. TEMPORARY COMM'N ON STATEWIDE ENVIRONMENTAL PLANNING, *supra* note 72, at 40.

99. H.B. 677, Eighth Hawaii Leg., Reg. Sess. (1975).

100. The law also tightens up Land Use Commission procedures to follow generally the Hawaii Administrative Procedures Act.

101. (1) Land use amendments shall be approved only as reasonably necessary to accommodate growth and development, provided there are no significant adverse effects upon agricultural, natural, environmental, recreational, scenic, historic, or other resources of the area.

(2) Lands to be reclassified as an urban district shall have adequate public services

Whether the new legislation will bring the state and county to a common position on growth policy remains to be seen. Newly elected Governor Ariyoshi, who took office at the beginning of 1975, pledged "to work closely with the Legislature in establishing policies aimed at a slowdown in the rate of population growth and a more balanced distribution of population among the islands," thus exhibiting support for the policies of the preceding administration.<sup>102</sup> Meanwhile, migration to Hawaii from the mainland appears to be declining somewhat.<sup>103</sup> Perhaps as a result, the 1975 legislature gave short shrift to a freshman legislator's bill that would not only have set an absolute limit on the state's population growth, but would have required that residents have permits to live in Hawaii.<sup>104</sup> By the end of 1976, it should be apparent whether the state's planners have come up with a more rational solution.

### III. GROWTH POLICY IN MINNESOTA

#### A. *Growth Trends in Minnesota*

Minnesota's big boom in population growth came in the late nineteenth century. After the Civil War the Sioux and Chippewa were

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and facilities or as can be so provided at reasonable costs to the petitioner.

(3) Maximum use shall be made of existing services and facilities, and scattered urban development shall be avoided.

(4) Urban districts shall be contiguous to an existing urban district or shall constitute all or a part of a self-contained urban center.

(5) Preference shall be given to amendment petitions which will provide permanent employment, or needed housing accessible to existing or proposed employment centers, or assist in providing a balanced housing supply for all economic and social groups.

(6) In establishing the boundaries of the districts in each county, the commission shall give consideration to the general plan of the county.

(7) Insofar as practicable conservation lands shall not be reclassified as urban lands.

(8) The commission is encouraged to reclassify urban lands which are incompatible with the interim statewide land use guidance policy or are not developed in a timely manner.

HAWAII REV. STAT. § 205-16.1 (Supp. 1975). The Land Use Commission is directed to follow the interim policies except where the Commission finds that "an injustice or inequity will result." *Id.* This language was substituted by the conference committee for the phrase "insofar as practicable" and was "intended to insure that the interim statewide land use guidance policies are followed except in cases where a clear preponderance of the evidence demonstrates that an inequity or injustice will result." CONFERENCE COMM. REP. No. 15, Eighth Hawaii Leg., Reg. Sess. 2 (1975).

102. Honolulu Star-Bulletin, Jan. 20, 1975, § A, at 1, col. 5.

103. In 1974, immigrants (excluding military personnel and their dependents) totaled 18,644, down from 21,506 in 1973, and 24,383 in 1970. *Id.* Feb. 4, 1975, § A, at 5, col. 3.

104. *Id.* Feb. 28, 1975, § A, at 3, col. 6.

moved onto reservations and a Board of Immigration was created. This board sent agents to New York and Europe to attract immigrants, and even built housing and hotels as temporary homes for them.<sup>105</sup> By the 1960's, however, the farming and lumbering that attracted the early immigrants were much less able to provide work for their descendants. They began moving toward urban areas, and Minnesota's growth problems increasingly centered on the metropolitan area of Minneapolis - St. Paul.<sup>106</sup>

The Citizens' League, a highly regarded civic group in the Twin Cities area, analyzed the area's growth patterns in a 1973 study.<sup>107</sup> It found that housing development had "exploded outward" over the past twenty years into "pockets of commercially produced housing and at sites scattered along lakes and throughout much of the previously rural countryside."<sup>108</sup> During each year of the 1960's the outer suburbs added new incorporated territory the size of Minneapolis, producing new major local municipalities at the rate of twenty per decade.<sup>109</sup> The Citizens' League concluded that on balance the pattern of development,

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105. T. BLEGEN, *BUILDING MINNESOTA* 232 (1938).

106. In 1974, the seven county metropolitan area surrounding the Twin Cities had a population of just over two million, an increase of about 150,000 from the 1970 census figures. TWIN CITIES METROPOLITAN COUNCIL, *PRELIMINARY POLICY BASED FORECASTS OF POPULATION, EMPLOYMENT AND HOUSEHOLD* (1974). These forecasts project population for the area to increase to almost 2.2 million by 1980 and 2.5 million by 1990. While the metropolitan area as a whole is growing, the growth is only at the edges. The population of the two central cities has been declining and is expected to decline further in the future. This may be contrasted to the inner ring of suburbs that have stable population levels. The real dramatic growth increase has been outside the older suburban areas.

107. Citizens League Planned Unit Dev. Comm., *Citizens League Report, "Growth Without Sprawl,"* Sept. 19, 1973 [hereinafter cited as Citizens League].

108. *Id.* at 7.

109. *Id.* at 11. The growth spread beyond the boundaries of the Twin Cities metropolitan area which had traditionally included five counties. Seven surrounding counties experienced very substantial growth rates while an additional eight counties even farther away from the central city experienced significant increases in population. *Id.* at 9-10.

County	Population July 1, 1973	Population April 1, 1970	Percentage Growth
Carver	31,600	20,331	12%
Chicago	20,700	17,492	18%
Scott	36,000	32,423	11%
Wright	44,300	38,933	14%
St. Croix	37,400	34,354	9%

BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, *CURRENT POPULATION REPORTS, POPULATION ESTIMATES AND PROJECTIONS SERIES P-25, NO. 537* (1974).

described as urban sprawl, provided many more disadvantages than advantages.<sup>110</sup> Nevertheless, residents of the area still look for housing on the fringe.<sup>111</sup>

Unlike the Twin Cities area, the rest of Minnesota has until very recently suffered from population decline rather than from rampant growth. As a result, state agencies have concentrated on attracting the growth needed in outlying areas and have left the growth problems of the Twin Cities area to regional agencies created by the legislature to deal with those problems.<sup>112</sup>

### B. Regional Growth Policies

A Metropolitan Planning (Metro) Commission was created by Minnesota in 1957 to deal with regional concerns of the seven-county metropolitan area. This Commission recognized that its advisory nature made it unable to translate its plans into action and recommended its own replacement by a new metropolitan council with stronger review and operating powers. Support for creation of the Metro Council came from municipalities, business communities, civic organizations such as the Citizens' League, and from both major political parties.<sup>113</sup>

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110. The advantages to a few are temporary, while most of the disadvantages — in terms of cost to the many and to the environment — are permanent. While the initial settlers on the fringe may enjoy increased amenity, privacy, and possible lower housing costs, this lasts for only a relatively short period of time. As subsequent development takes place on lots adjoining theirs, increased services largely funded by people within the built-up area are required. Natural resource areas are also subsequently lost and ground and surface water pollution result as development proceeds outward with the filling in of vacant lots and the subdivision of larger ones. These costs to the greater number of people in built-up areas and to the environment are permanent and cannot be reversed.

Citizens League, *supra* note 107, at 42.

111. Residents of the Twin Cities have always been proud of their area and frequently cite a survey that rated the Twin Cities highest among 18 metropolitan areas in quality of life. Cassidy, *Can The Twin Cities Stay Number One?*, 40 *PLANNING* 10 (1974). This pride in their quality of life also includes a strong bias against urban lifestyles. A recent poll of residents of the region found that 32% preferred to live in the rural countryside, while 40% preferred suburban living. *Minneapolis Tribune*, Sept. 6, 1974, § A, at 2, col. 6.

Although there is great demand for the rural lifestyle, those who achieve it express dissatisfaction with its temporary nature. Gradually, as open space and privacy are eroded and water becomes polluted, rural residents find that the initial decision to postpone the cost of public services means that when the services must finally be installed the cost is higher. Citizens League, *supra* note 107, at 40-41.

112. Interview with Joseph Sizer, Director of Environmental Planning, Minn. State Planning Agency, in St. Paul, Minn., July 22, 1974.

113. *Hearings on Regional Planning Issues Before the Subcomm. on Urban Affairs of the Joint Economic Comm.*, 92d Cong., 1st Sess., pt. 4, at 754-55 (1971); see S. BALDINGER,

The Minnesota legislature directed the newly created Metro Council "to coordinate the planning and development of the metropolitan area"<sup>114</sup> by preparing a regional plan to be known as a "development guide."<sup>115</sup> The Council initially prepared and adopted a series of individual chapters dealing with specific issues.<sup>116</sup> The initial chapters of the development guide were background support for the Council's proposals to regulate growth. Shortly after the Citizens League's study of urban sprawl was issued<sup>117</sup> the Metro Council issued a draft discussion statement on metropolitan development policy proposing that the region be divided into a series of five districts, one of which, the "rural service area," would be kept free from substantial development.<sup>118</sup> This proposal went through numerous drafts and public hearings before it was unanimously adopted by the Metro Council as the "development framework" chapter of the regional plan.<sup>119</sup>

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PLANNING AND GOVERNING THE METROPOLIS: THE TWIN CITIES EXPERIENCE (1971). *See also* A. Altshuler, *THE CITY PLANNING PROCESS* (1965). The Council's chairman is appointed by the Governor and confirmed by the Senate, but serves at the pleasure of the Governor. MINN. STAT. ANN. § 473B.02(4) (Supp. 1975). The 16 members are also appointed by the Governor and confirmed by the Senate but for fixed four-year terms. *Id.* § 473B.02(3). In 1974, the Metro Council had a budget of \$3,651,484 and a staff of 146 persons. METROPOLITAN COUNCIL OF THE TWIN CITIES AREA, 1975 METROPOLITAN COUNCIL WORK PROGRAM AND BUDGET 42, (1974).

Water pollution in the suburban area was a significant factor leading to creation of the Metro Council. The movement of people into the rural areas and to lakeside lands, coupled with the lack of adequate water distribution and sewage collection and treatment systems, led to heavy reliance on individual water wells and septic systems for water and sewer service. As early as 1959, the State Health Department reported that inspection of water wells indicated wells were recirculating sewage from septic tanks. BALDINGER, *supra* at 77-78.

114. MINN. STAT. ANN. § 473B.01 (Supp. 1975).

115. The Metropolitan Council shall prepare and adopt, after appropriate study and such public hearings as may be necessary, a comprehensive development guide for the metropolitan area. It shall consist of a compilation of policy statements, goals, standards, programs, and maps prescribing guides for an orderly and economic development, public and private, of the metropolitan area. The comprehensive development guide shall recognize and encompass physical, social, or economic needs of the metropolitan area and those future developments which will have an impact on the entire area including but not limited to such matters as land use, parks, and open space land needs, the necessity for and location of airports, highways, transit facilities, public hospitals, libraries, schools and other public buildings.

*Id.* § 473B.06(5).

116. TWIN CITIES METROPOLITAN COUNCIL, METROPOLITAN DEVELOPMENT GUIDE (1975).

117. Citizens League, *supra* note 107.

118. TWIN CITIES METROPOLITAN COUNCIL, DISCUSSION STATEMENT ON METROPOLITAN DEVELOPMENT POLICY 17-19 (1973).

119. Minneapolis Tribune, Mar. 28, 1975, § A, at 1, col. 5.

Basically, the Metro Council's development framework encourages development both in and near areas in which sewers and highways have already been built and also in a series of thirteen freestanding growth centers. Much of the remaining metropolitan area is designated as "rural service area," where development is to be discouraged. This rural service area has been precisely delineated on the Council's maps that were distributed as part of the development framework.<sup>120</sup>

The Council reported that metropolitan sewer service and urban transportation service would not be provided to rural service areas. The Council discouraged subdivisions in the rural service areas except after a showing that the proposal would not have a "significant adverse effect upon metropolitan systems."<sup>121</sup>

### C. The Metro Council's Proposed Control System

The Council's implementation program for its new growth policy called for the Metro Council and local governments to share the planning and implementation responsibility, with the Council adopting "system plans" for metropolitan facilities such as sewers, transportation, open space and airports.<sup>122</sup> Counties, municipalities and school districts would prepare and adopt detailed development plans consistent with the development framework.<sup>123</sup>

The Minnesota legislature has given the Metro Council most of the implementation powers that it sought. The 1974 legislature adopted legislation substantially increasing the Council's powers to coordinate the programs of other heretofore independent regional agencies.<sup>124</sup> In

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120. METROPOLITAN COUNCIL, METROPOLITAN DEVELOPMENT GUIDE, DEVELOPMENT FRAMEWORK (1975).

121. *Id.* at 49.

122. See METROPOLITAN COUNCIL, METROPOLITAN DEVELOPMENT GUIDE, WASTE MANAGEMENT, TRANSPORTATION, RECREATION OPEN SPACE, AIRPORTS (1975).

123. METROPOLITAN COUNCIL, *supra* note 120, at 52. The Council rejected the recommendation of its consultants that the Council adopt a system of "phasing" that would extend the boundary of urbanization into the rural service area in accordance with a schedule tied to improvements in the metropolitan systems. See R. Freilich & J. Ragsdale, A Legal Study of the Control of Urban Sprawl in the Minneapolis-St. Paul Metropolitan Region, Jan. 10, 1974 (prepared for the Twin Cities Metropolitan Council). For further discussion of land use controls in the Twin Cities area see Freilich & Ragsdale, *Timing and Sequential Controls — The Essential Basis for Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Regions*, 58 MINN. L. REV. 1009 (1974).

124. MINN. STAT. ANN. § 473B.06(5a) (Supp. 1975).

particular, new legislation required the Metropolitan Waste Control Commission to comply with an overall public facilities plan to be developed by the Metro Council and gave the Council power to disapprove sections of the Metropolitan Waste Control Commission's development program.<sup>125</sup>

The 1976 legislature enacted legislation creating a land use planning assistance program, administered by the Council, to provide grants to local government units for planning programs.<sup>126</sup> The Council's proposed bill had required that local plans be consistent with the Metro Council's development framework, but this failed to pass.<sup>127</sup>

Intertwined with the political deliberations on the proposed legislation to implement the Metro Council's Development Framework was the debate on the Metro Council's proposed housing plan. The Council prepared a number of drafts of a chapter of the Metropolitan Development Guide dealing with the housing problem.<sup>128</sup> In these drafts the Council encouraged the construction of more low- and moderate-income housing in the outer portions of the metropolitan area rather than concentrating such housing in the older central cities.<sup>129</sup> This issue aroused a great deal of controversy.

Local officials differed sharply on the desirability of the development framework. The Metro Council chairman claimed that ninety percent of the local officials in the Twin Cities area supported the development framework.<sup>130</sup> However, the development industry and many local governments initially expressed strong opposition to the legislation.<sup>131</sup>

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125. *Id.* §§ 473B.06(5a), 473B.062.

126. Ch. 127, 1976 Minn. Laws 222.

127. S. 804, 68th Minn. Leg., 2d Sess. (1974).

128. METROPOLITAN COUNCIL, METROPOLITAN GUIDE, HOUSING (1975).

129. *Id.* at 48.

130. Interview with John Boland, Director, Twin Cities Metropolitan Council, in St. Paul, Minn., Jan. 6, 1975. One city administrator, Patrick McGarvey, has praised the Metropolitan Council for its efforts in obtaining local views while preparing the development framework. He points out that Chaska is satisfied with the framework because it allows the village to grow as planned and permits construction of a regional shopping center. On the other hand, he notes that the village fathers in Chanhassen are not so happy that the development framework indicates a majority of the village should remain undeveloped because of the poor sewer system and large numbers of septic tanks. Interview with Patrick McGarvey, City Administrator of Chaska, in Chaska, Minn., Jan. 10, 1975.

131. Interview with Robert Engstrom, Director, Minn. Housing Institute, in Minneapolis, Minn., May 21, 1975.



The legislature placed somewhat greater restrictions on the power of the Council to disapprove local plans than the Council had originally wished. The law allows the Council to disapprove a local plan only if the plan "may have a substantial impact on or contain a substantial departure from" one of the four metropolitan systems plans: sewers, transportation, open space and airports.<sup>132</sup> The Council may comment on the relationship of the local plan to the development framework or other parts of the metropolitan development guide, but it is not empowered to disapprove a local plan merely because the plan is inconsistent with the development framework. It must find substantial impact on or departure from a systems plan. Thus, the Council apparently has no power to disapprove a plan merely because it fails to permit development that the Council thinks is desirable, unless it can show that such failure has a significant effect on metropolitan services — not an easy task. The Council seems to be effectively precluded from using the legislation to promote low- and moderate-income housing against the wishes of local government.<sup>133</sup>

The 1976 legislature also authorized the Council to adopt rules defining developments of metropolitan significance and gave the Council authority to review any proposals for such development. The Council may "suspend action on a proposed matter during the period of review and for a period not to exceed 12 months following the issuance of its final determination."<sup>134</sup> The Council intends to use this power primarily as an interim measure until the completion of all of the local comprehensive plans which is required by 1980.<sup>135</sup>

At this point in time the Council seems to have obtained legislative authority to implement half a growth policy; that is, it has the tools to keep development out of the areas where development is inconsistent with the growth policy, but it has only limited authority to ensure that development can be undertaken or will be permitted in those areas where its policy suggests growth should occur. An optimist would say that the Council's growth policy is half full, and that the work of the housing

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132. MINN. STAT. ANN. § 473.175, *as amended*, Ch. 127 § 14, 1976 Minn. Laws 228.

133. The legislature also set up procedures for a hearing before an independent state hearing examiner on any dispute between the Council and local government over the Council's finding of substantial adverse impact in regard to a local plan. Ch. 127 § 17, 1976 Minn. Laws 230.

134. Ch. 321 § 2 subd. 4(2), 1976 Minn. Laws 936.

135. Telephone interview with Robert Hoffman, Chairman of the Municipal Dev. Comm., Twin Cities Metropolitan Council, Apr. 26, 1976.

policy study committee created by the 1976 legislation<sup>136</sup> may eventually give the Metro Council full authority to implement its growth policy. A pessimist, however, may fear that the Council has been given a half empty bag of tools that can implement only the anti-growth aspects of its policy. Only time will tell.

#### IV. DEFINING THE STATE/REGIONAL ROLE

Although Florida, Hawaii and Minnesota are not the only states that have wrestled with growth policy issues,<sup>137</sup> they are far from average. Each has spent considerably more time and effort on the problem than the typical state.<sup>138</sup> Each is hopeful of eventually finding a solution, but it is obvious that none of them are now in a position to suggest that the solution has been found.

##### A. *Reexamination of Basic Assumptions*

Students of efforts to impose national growth policies would not be surprised that these states have found the task difficult. Many countries have tried to establish and implement growth policies, but few would claim to have totally succeeded. Yet in a classic comparative study Lloyd Rodwin noted that it is somewhat remarkable how much consistency is found in the growth policies of various nations despite the absence of much noticeable success.<sup>139</sup>

The lack of success may be caused in part by two key assumptions on which growth policies have traditionally been based: (1) Every part of a country, state or region wants to grow; (2) People inevitably flock to ever-growing metropolitan areas. These assumptions may no longer be valid.

#### 1. The New Ambivalence about Growth

It was traditionally assumed that all parts of a state or nation wanted growth, and that formulating a growth policy required the difficult

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136. Ch. 127 § 19, 1976 Minn. Laws 231.

137. See generally *Hearings on National Growth and Development Before the Subcomm. on Housing and Community Development of the House Comm. on Banking, Currency and Housing*, 94th Cong., 1st Sess. (1975).

138. See Patton & Patton, *Harbingers of State Growth Policies*, 47 STATE GOVERNMENT No. 2, at 75 (1974).

139. L. Rodwin, *supra* note 7, at 272-75. Many of these countries have, in efforts likened to those of the French, attempted to "disperse Paris . . . but keep Paris as the centre of all decisions." THE ECONOMIST, Jan. 17, 1976, at 6. See also note 7 *supra*.

political task of denying some areas the growth they wanted because it was being directed elsewhere. The political infeasibility of making these decisions explicit convinced many that a growth policy was an impossible dream. As evidence they cite Congress' so-called growth policy of 1970, that stated as a goal "the continued economic strength of all parts of the United States, including central cities, suburbs, smaller communities, local neighborhoods and rural areas."<sup>140</sup>

It is increasingly apparent that this universal desire for unlimited growth no longer exists.<sup>141</sup> More and more local communities are adopting explicit or implicit policies to limit growth.<sup>142</sup> And as the experience of Florida, Hawaii and Minnesota shows, whole states and metropolitan areas are giving serious thought to how much more growth is desirable. Thus future consideration of growth policy must be based on the assumption that although some areas will continue to want growth, others will not.

## 2. The Reversal of Urbanization

Also in need of reexamination is the assumption that greater and greater growth concentration in metropolitan areas is inevitable unless controls are instituted. It has traditionally been assumed that businesses will tend to locate in already concentrated areas in which they can draw upon the products and services of nearby businesses. Thus each firm that locates in an area creates additional external economies for other firms and the cycle is perpetuated.<sup>143</sup>

But the trend toward metropolitanization has apparently stopped. Census data on migration since 1970 shows that for the first time in the

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140. 42 U.S.C. § 4502(d)(2) (1970). This statutory nonpolicy was based on two reports that, while somewhat more explicit, were themselves attempts to obtain a consensus by promising a little bit to everybody. See ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, URBAN AND RURAL AMERICA: POLICIES FOR FUTURE GROWTH (1968); NAT'L COMM. ON URBAN GROWTH POLICY, THE NEW CITY (1969).

141. See generally *Hearings on National Growth and Development*, *supra* note 137.

142. See *Construction Indus. Ass'n v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975), *cert. denied*, 96 S. Ct. 1148 (1976); E. FINKLER & D. PETERSON, *NON-GROWTH PLANNING STRATEGIES* (1974). See generally *MANAGEMENT AND CONTROL OF GROWTH* (R. Scott ed. 1975).

143. Comment, *Toward a National Policy on Population Distribution*, *supra* note 8, at 293; see R. WERTHEIMER, *THE MONETARY REWARDS OF MIGRATION WITHIN THE U.S.* (1970). Another example of this assumption can be found in G. CAMERON & L. WINGO, *CITIES, REGIONS & PUBLIC POLICY* (1973). They state, "This pattern of excessive and imbalanced growth in metropolitan areas and excessive decline in the population-losing areas is cumulative and unlikely to be restrained by normal market processes." *Id.* at xi.

nation's history more people are moving out of metropolitan areas than into them.<sup>144</sup> About half the older metropolitan areas whose economies are based on manufacturing are near, at or below zero population growth.<sup>145</sup> Outside the South at least, there is a significant correlation between outward migration and the percentage of nonwhites in the metropolitan area. In the opinion of demographer Wilbur Thompson this evidence is not inconsistent with the hypothesis that net migration is flowing from the blacker cities of the East and Midwest and toward the whiter places there and in the West.<sup>146</sup>

But this movement out of older industrial metropolitan areas is not simply a matter of "white flight." Blacks and other minorities are also returning to rural areas in increasing numbers.<sup>147</sup> People from many backgrounds are seeking to enjoy the rural lifestyle and are no longer willing to accept the idea that rural life is a thing of the past. In New York State, for example, the number of farms increased by 1000 between 1973 and 1974.<sup>148</sup> As more and more people choose the self-sufficiency and independence of rural living, our whole concept of "urbanization" will need to be reexamined. "The common idea of a lost rural world . . . is in direct contradiction to any effective shape of our future, in which work on the land will have to become more rather than less important and central."<sup>149</sup>

Small rural areas beyond the fringes of existing metropolitan areas seem to be experiencing substantial growth.<sup>150</sup> As the economy becomes

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144. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, SOCIAL AND ECONOMIC CHARACTERISTICS OF THE METROPOLITAN AND NONMETROPOLITAN POPULATION: 1974 AND 1970, at 6, (text and Table F) (1975). In contrast to the period prior to 1970 when metropolitan areas grew at a faster rate than nonmetropolitan areas, between 1970 and 1974 both areas grew at about the same rate. *Id.* at 2.

145. Thompson, *Planning as Urban Growth Management: Still More Questions than Answers*, 9 AIP Newsletter No. 12, at 7-8 (1974).

146. *Id.* at 9.

147. BUREAU OF THE CENSUS, *supra* note 144, at 6 (Table F).

148. N.Y. Times, Feb. 15, 1975, at 37, col. 5.

149. R. WILLIAMS, *THE COUNTRY AND THE CITY* 300 (1973). If we consider man only as a producer, says E. F. Schumacher, then clearly agriculture should be mechanized to the greatest extent possible. But if we consider the pleasures of rural life as a good to be consumed, then "instead of searching for means to accelerate the drift out of agriculture, we should be searching for policies to reconstruct rural culture, to open the land for the gainful occupation to larger numbers of people . . ." E. SCHUMACHER, *SMALL IS BEAUTIFUL: ECONOMICS AS IF PEOPLE MATTERED* 107 (1973).

150. Nonmetropolitan counties gained 4.2% between April, 1970 and July, 1973, while metropolitan counties gained 2.9%. N.Y. Times, June 16, 1975, § A, at 17, col. 2. From 1970 to 1974 nonmetropolitan areas grew at the same rate or faster than metropolitan areas,

more and more "post-industrial" the need for agglomeration declines. Increased interests in leisure, mass consumption and science no longer depend on an urban focus.<sup>151</sup> And retired people, who are the most post-industrial of all, tend to locate in such states as Arizona and Florida.<sup>152</sup>

Thus the assumption that more and more people will crowd into metropolitan areas may be obsolete.<sup>153</sup> The demand for a rural style of life may drive increasing numbers of people toward rural communities, many of which are seeking to stem their own growth.<sup>154</sup>

### B. Key Issues in State Growth Policy

The current conflict that a growth policy needs to resolve, then, is between the right to migrate to small communities with a rural atmosphere and the right of such communities to prevent what they perceive to be overcrowding. This is a much different issue than the "stop-megalopolis" issue that appeared to be most serious in the 1960's.<sup>155</sup>

If basic assumptions are reexamined, the question becomes whether meaningful growth policies can be adopted and implemented at the state and regional level. Success or failure will depend on finding answers to three difficult issues that have arisen in all three of the states discussed in this Article.

1. Is it politically feasible to combine soundly articulated policies in a decisionmaking process that actually assures that these policies are carried out?

2. Can scientific standards be devised that will provide an objective

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depending on how the data is interpreted. BUREAU OF THE CENSUS, *supra* note 144, at 2, 5 (Table E). See REGIONAL PLAN ASS'N, GROWTH AND SETTLEMENT IN THE U.S. 54 (1975).

151. Friedmann, *The Role of Cities in National Development*, 38 NEW MEXICO Q. No. 3, at 26, 34 (1968).

152. N.Y. Times, June 16, 1975, § A, at 17, col. 1.

153. Much of the basis for this assumption rests on the experience of countries at an earlier stage of development. N.Y. Times, June 22, 1975, § E, at 3, col. 1. See Friedmann, *supra* note 151, at 29-32. But even in such countries many of the migrants to urban areas would have preferred to remain in rural areas if any reasonable opportunity had been available. E. BUSSEY, THE FLIGHT FROM RURAL POVERTY: HOW NATIONS COPE 111-12 (1973).

154. See Note, *Protection of Environmental Quality in Non-Metropolitan Regions by Limiting Development*, 57 IOWA L. REV. 126 (1971); cf. Freeman, *Toward a National Policy on Balanced Communities*, 53 MINN. L. REV. 1163 (1969).

155. J. GOTTMANN, MEGALOPOLIS (1961); J. PICKARD, DIMENSIONS OF METROPOLITANISM (1967).

basis for determining the level of population suitable to a particular land area?

3. Given the state's inability to impose direct controls on the movement of population, can land use controls be used to implement growth policy without causing severe inflation in land prices?

### 1. The Role of Planning

In each of the three states discussed herein, the power to develop policy and the power to implement that policy resides in separate bodies. In Hawaii implementation power is in the Land Use Commission and to a lesser extent in the Department of Land and Natural Resources. Both agencies have strongly resisted attempts to make them define their policies more clearly and have sought to maximize their flexibility in decisionmaking. Policy development, on the other hand, has been generated largely by state agencies that not only have no power to implement the policies but that also have had little success in persuading the Land Use Commission or Department of Land and Natural Resources to adopt the policies voluntarily. The legislature has demanded a coordination of agency policies by the end of 1976, but it remains to be seen whether such coordination can be accomplished successfully.

In Florida the state's power over land use decisions rests largely in the new Department of Environmental Regulation and the Division of State Planning. Thus far, most of the actual decisions have been made on an ad hoc basis, and specific policies that have been developed by the Bureau of Comprehensive Planning are just beginning to exert influence. In Minnesota the Metro Council has expended extensive efforts toward the development of a growth policy. The state legislature, however, has been less than willing to grant it full powers to implement this policy.

In each of these states a merger is sought between the power to plan land use and the power to control land use — powers that traditionally have been independent. The separation of land use planning and land use control has tended to leave planners with no serious responsibility to assure that their plans are capable of implementation. It has also left regulators free to decide specific cases without paying serious attention to planning principles.<sup>156</sup>

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156. For a similar experience see the discussion of Vermont's regulation in BOSSELMAN & CALLIES, *supra* note 53, at 81-83. The system of case-by-case regulations has proceeded as

There is some indication that courts are beginning to insist on a greater degree of coordination between planning and land use control at the local level.<sup>157</sup> Similar pressure may be needed at the state and regional level in order to avoid reliving many of the classic problems of inconsistency between planning and zoning that have been experienced at the local level.<sup>158</sup>

## 2. The Role of Science

As pointed out in the first part of this Article, most local growth management systems have used relatively arbitrary standards to determine the desirable rate or level of growth.<sup>159</sup> Recognizing the weakness of basing restrictive measures on arbitrary standards, advocates of growth management have long searched for more defensible standards for basing growth limitations.<sup>160</sup>

Particularly attractive to advocates of growth management is the concept of "carrying capacity," which has been widely used by ecologists in wildlife management.<sup>161</sup> Going back to Dr. Hardin's parable, it is possible to determine the optimum number of cattle that can graze on a piece of land under given conditions by the use of scientific analysis based on the biological and physical qualities of the land and the animals. Why, therefore, is it not possible to make similar scientific determinations of the optimum number of *people* that can live in a given area?

Efforts to use carrying capacity methodology to determine standards for human population are in their infancy and it is far too soon to pass

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planned in Vermont, but the legislature has refused to adopt a statewide land use plan. See also Macpherson & Paulus, *Senate Bill 100: The Oregon Land Conservation and Development Act*, 10 WILLAMETTE L.J. 414 (1974).

157. See *Dalton v. City and County of Honolulu*, 51 Hawaii 400, 462 P.2d 199 (1969); *Baker v. City of Milwaukie*, — Ore. —, 533 P.2d 772 (1975); Sullivan & Kressel, *Twenty Years After — Renewed Significance of the Comprehensive Plan Requirement*, 9 URBAN L. ANN. 33 (1975); Comment, *Toward a National Policy on Population Distribution*, *supra* note 8.

158. R. BABCOCK, *THE ZONING GAME* 62-66 (1966).

159. Bosselman, *supra* note 1, at 12-13.

160. Juergensmeyer & Gragg, *Limiting Population Growth in Florida and the Nation: The Constitutional Issues*, 26 U. FLA. L. REV. 758 (1974); Macinko, *Saturation: A Problem Evaded in Planning Land Use*, 149 SCIENCE 516 (1965).

161. Godschalk, *State Growth Management: A Carrying Capacity Policy*, in III MANAGEMENT AND CONTROL OF GROWTH 328 (R. Scott ed. 1975).

judgment on their success.<sup>162</sup> Experience shows that under the right conditions people can live happily in very large cities.<sup>163</sup> Increased density can minimize economic costs and maximize environmental protection per capita.<sup>164</sup> The conditions under which such densities are considered satisfactory by the residents, however, will depend on many imperfectly understood variables.<sup>165</sup> Extensive studies are now underway in Florida and Hawaii to refine the carrying capacity methodology in a manner that makes it usable in the growth control field. The results of these studies may help determine whether the carrying capacity concept can be useful in formulating state growth policies.

### 3. Constitutional Limitations

It is generally agreed in all of the states studied in this Article that there is no direct state power to tax or regulate the immigration of new residents.<sup>166</sup> States, as well as local governments, have therefore tended to look to land use controls as a means of accomplishing indirectly what they are unable to accomplish directly.<sup>167</sup>

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162. In a recent survey of the various experiments using carrying capacity methodology, it was concluded

Some basic problems are likely to plague most efforts to base land decisions on carrying capacity analysis. Consider:

— *Any identification of an area's carrying or holding capacity is an invitation to use or fill that capacity. . . .*

— *It is very hard to come by scientific and other data that are both reliable and refined. . . .*

— *Since all regions are part of a larger, indeed global, system, a carrying capacity assessment limited to specific boundaries is apt to be arbitrary and inadequate. . . .*

— *It is important to decide how long a given level of population, or of environmental quality, is to be maintained. . . .*

— *The carrying capacity of a region is likely to be highly flexible. . . .*

— *The ultimate drawback of the carrying capacity concept, perhaps, is its limited usefulness in making the ultimate land-use choices that are necessary — choices that must be framed not only in ecological terms but in social and economic terms as well. . . .*

Carrying Capacity Analysis is Useful—But Limited, Conservation Foundation Newsletter, June 1974, at 6-8.

163. See generally W. HOWARD, *THE CONCEPT OF AN OPTIMUM SIZE CITY, A SELECTED BIBLIOGRAPHY* (1968).

164. See generally REAL ESTATE RESEARCH CORP., *THE COST OF SPRAWL* (1974).

165. See generally E. HALL, *THE HIDDEN DIMENSION* (1969); PEOPLE AND BUILDINGS (R. Gutman, ed., 1972); C. PERIN, *WITH MAN IN MIND* (1970); H. PROHANSKY, W. ITTELSON & L. RIVLIN, *ENVIRONMENTAL PSYCHOLOGY: MAN AND HIS PHYSICAL SETTING* (1970); R. SOMMER, *PERSONAL SPACE: THE BEHAVIORAL BASIS OF DESIGN* (1969).

166. See Bosselman, *supra* note 1, at 16-18.

167. Cf. D. HOOD & B. BELL, *IN-MIGRATION AS A COMPONENT OF HAWAII POPULATION GROWTH: ITS LEGAL IMPLICATIONS* (Hawaii Leg. Ref. Bureau 1973).



Land use controls are certainly capable of being used in a manner that will, within certain limits, effectively regulate population growth. The most effective method of regulating population growth is severely restricting the location of new industries or other facilities that provide jobs.<sup>168</sup> This would reduce the inflow of people who are dependent on jobs to determine their location.<sup>169</sup>

In practice, however, growth management has tended to concentrate not on jobs but on housing. Job-producing facilities typically add to the tax base and provide additional benefits to local governments while housing is looked upon as a negative factor in cost-benefit analysis. Therefore, local governments have concentrated on restricting the location of new housing.<sup>170</sup> It appears likely that restrictive housing policies will substantially increase the cost of housing for people who have not already purchased an equity interest in housing in the area.<sup>171</sup> If growth policies are to be equitable, however, it is important that they concentrate on jobs as well as housing.<sup>172</sup> Moreover, a state policy that encourages growth and immigration must insure the provision of adequate housing to meet the needs of the people sought by the state. Thus incentive or subsidy programs for the construction of housing in locations deemed desirable by the state should be a separate and important element in any overall policy that encourages growth.<sup>173</sup>

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168. Cf. Phillips, *Developments in Water Quality and Land Use Planning: Problems in the Application of the Federal Water Pollution Control Act Amendments of 1972*, 10 URBAN L. ANN. 43, 62-64 (1975).

169. Of course, the extent to which people are job-dependent is decreasing as the number of retired people and the number of people engaged in service occupations that permit a wide choice of residential location are increasing. The segment of the population dependent on its job to determine its residential location, however, is quite substantial. J. SPENGLER, *POPULATION AND AMERICA'S FUTURE* 122-26 (1975).

170. See H. FRANKLIN, D. FALK & A. LEVIN, *IN-ZONING, A GUIDE FOR POLICYMAKERS ON INCLUSIONARY LAND USE PROGRAMS* (1974); Smith, *Does Petaluma Lie at the End of the Road From Ramapo?* 19 VILL. L. REV. 739 (1974).

171. See D. MANDELKER, *THE ZONING DILEMMA* 42 (1971).

172. It must be recognized that in Florida some of the immigrants are retired people rather than people seeking jobs, but job-seekers are the great majority. J. SPENGLER, *supra* note 169, at 126. Thus control over jobs would be less effective in that state than in the average state. See, e.g., American Law Inst., *Model Land Development Code* §7-305 (1976).

173. See H. FRANKLIN, D. FALK & A. LEVIN, *supra* note 170, at 145-75; *THE USE OF LAND* 219-61 (W. Reilly ed. 1973); Patton & Patton, *supra* note 138, at 81; Widner, *State Growth and Federal Policies: A Reassessment of Responsibilities*, 47 STATE GOVERNMENT No. 2, at 87 (1974).

### CONCLUSION

Development of state and regional growth policy is in its infancy. There are serious and difficult issues to be resolved and at the moment it does not appear that we know how to solve them. There are, however, some optimistic signs. As mentioned in the first part of this Article, the public is increasingly dissatisfied with ad hoc decisionmaking and is demanding more stability and certainty in governmental policy.<sup>174</sup> This demand should give a new impetus to the formulation of growth policy.

Because growth policy is increasingly considered a matter of regional and state concern, the issues must be answered by the state legislature. At these levels of government the policy-makers will need to take into account the needs of the wide range of people they represent. This will be more difficult than developing policy for a more homogeneous local government, but if policies are successfully developed at the state or regional level they are likely to be less subject to allegations that they are discriminatory.

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174. Bosselman, *supra* note 1, at 8-11.