

CHAPTER 6

REGIONAL PLANNING

This Chapter proposes statutory alternatives for the formation and organizational structure of regional planning agencies. The model legislation describes a full range of functions and duties for such agencies. It details the contents of regional comprehensive and functional plans (such as those for housing and transportation) and procedures for their adoption. A special feature of this Chapter is model language for the designation of urban growth areas within a regional comprehensive plan. The Chapter also proposes a variety of implementation tools, including the review of plans of state agencies, local governments, and special districts and of major capital projects of extra-jurisdictional or regional significance. Further, the Chapter includes model legislation for agreements between the regional planning agency and other governmental units to implement regional plans. Finally, a model statute is provided for the designation of the regional planning agency as a substate district organization.

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THE EVOLUTION OF REGIONAL PLANNING IN THE UNITED STATES

WHAT IS REGIONAL PLANNING?

Regional planning is planning for a geographic area that transcends the boundaries of individual governmental units but that shares common social, economic, political, cultural, and natural resources, and transportation characteristics.¹ A regional planning agency prepares plans that serve as a framework for planning by local governments and special districts.

Throughout the United States, there are regional planning agencies that are either voluntary associations of local governments or are mandated or authorized by state legislation (e.g., the Metropolitan Council in the Twin Cities or the Metropolitan Service District in Portland, Oregon).

These exist for purposes of: undertaking plans that address issues that cut across jurisdictional boundaries; providing information, technical assistance, and training; coordinating efforts among member governments, especially efforts that involve federal funding; and providing a two-way conduit between member governments and the state and federal agencies. Regional planning agencies may also serve as a forum to discuss complex and sometimes sensitive issues among member local governments and to try to find solutions to problems that affect more than one jurisdiction. Sometimes these organizations have direct regulatory authority in that they not only prepare plans, but also administer land-use controls through subdivision review and zoning recommendations, review proposals for major developments whose impacts may cross jurisdictional borders, and review and certify local plans. And, in some cases, they directly implement the regional plan, as in the operation of regional transit systems.

States authorize the establishment of these regional planning agencies in different ways. In some parts of the country, the regional agencies take their structure from general enabling legislation (e.g., for regional planning commissions or councils of government). In other places, they are the product of intergovernmental or joint powers agreements, as in California, or interstate compacts, as with

Reasons for Regional Planning

- Provision of technical assistance to local governments.
 - Maintenance of forum for exploring and resolving intergovernmental issues.
 - Development of regional plans to guide, direct, and/or coordinate local planning.
 - Articulation of local interests and perspectives to other levels of government.
 - Establishment of two-way conduit between local governments and other agencies.
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¹See, e.g., Alfred Bettman, "How to Lay Out Regions for Planning," in *Planning Problems of Town, City, and Region: Papers and Discussion* (Baltimore, Md.: Norman, Remington, 1925), 287-301; John Friedmann, "The Concept of a Planning Region – The Evolution of an Idea in the United States," in John Friedmann and William Alonso, eds., *Regional Development and Planning: A Reader* (Cambridge, Mass.: MIT Press, 1964), 497-518.

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the Delaware Valley Regional Planning Commission in the Philadelphia, Pennsylvania/Camden, New Jersey, area, or the Tahoe Regional Planning Agency in Nevada and California. In some states, regional agencies are created by special state legislation that applies only to one particular agency (e.g., the Northeastern Illinois Planning Commission in the Chicago area, or the Cape Cod Commission in Massachusetts). In still others, they may exist as private, voluntary organizations that seek to provide a regional perspective through independently prepared plans and studies. Examples of such agencies are the Regional Plan Association in New York City and Bluegrass Tomorrow in the Lexington, Kentucky area.

THE ORIGINS OF REGIONAL PLANNING AGENCIES

The first regional planning agency with planning powers was the Boston Metropolitan Improvement Commission created by the Massachusetts legislature in 1902. Seven years later, in 1909, the Commercial Club of Chicago, a private organization, financed the preparation of the Plan of Chicago, which was completed by a team headed by Chicago architects Daniel H. Burnham and Edward H. Bennett. The plan placed the City of Chicago in a regional context and contained regional proposals for parks and transportation.²

From 1913 to 1915, when the state legislature repealed the statute creating it, Pennsylvania authorized the establishment of a Suburban Metropolitan Planning Commission. Within a 25-mile radius of Philadelphia, the commission could levy assessments and prepare comprehensive plans for highways, parks and parkways, sewerage and sewage disposal, housing, sanitation and health, civic centers, and other functional areas.³ The commission had the authority to make recommendations to governmental units on a wide variety of issues, including “the distribution and relative location of all public buildings, public grounds, and open spaces devoted to public use, and the planning, subdivision and laying out for urban uses of private grounds brought into the market from time to time.”⁴

The major regional planning effort of the 1920s – and for many years afterwards – was the *Regional Plan for New York and Environs*, financed by the Russell Sage Foundation and prepared by an advisory committee. Work began on the plan in 1921 and was completed in 1929. The eight-volume document covered a 5,528-square-mile area with 500 incorporated bodies. Even by today’s standards, the Regional Plan is an impressive work. It contained regionwide proposals for transportation, land use, and public facilities, as well as specific design proposals for New York City. After its publication, the advisory committee issued periodic reports on its implementation.

²Daniel H. Burnham and Edward H. Bennett, *Plan of Chicago* (New York: DaCapo Press, 1970, reprint of 1909 edition), esp. Chs. III, IV, and V.

³This statute appears in Frank B. Williams, *The Law of City Planning and Zoning* (New York, N.Y.: MacMillan, 1922), 594-597.

⁴*Id.*, 596.

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In 1922, the first metropolitan area planning commission was established in Los Angeles to advise the County Board of Supervisors on planning for the county and on approving subdivisions. In 1923, the Ohio General Assembly enacted the first enabling legislation for regional planning commissions. That legislation, which was drafted by Cincinnati attorney Alfred Bettman, was to provide the model for the regional planning provisions of the *Standard City Planning Enabling Act* (see below), on whose advisory committee Bettman would become a member. The same year, the Chicago Regional Planning Association, a quasi-public organization, and the Allegheny County Planning Commission (Pittsburgh) were created.

THE SCPEA: MODEL LEGISLATION FOR REGIONAL PLANNING

The *Standard City Planning Enabling Act* (SCPEA), drafted by an advisory committee to the U.S. Department of Commerce and published in 1928, contained model legislation for regional planning. The SCPEA authorized the planning commission of any municipality or the county commissioners of any county to petition the governor to establish a planning region and create a planning commission for that region. The governor was to hold at least one public hearing before making a determination to grant the application, define the region, and appoint the regional planning commission.⁵

Under the SCPEA model, the regional planning commission was composed of nine members, all of whom would be appointed and removed by the governor. The commission had the authority to prepare, adopt, and amend a “master regional plan for the physical development of the region.”⁶ After adopting the plan, the regional planning commission was required to certify it to the governor, to the planning commission of each municipality in the region, to the council of each municipality that did not have a planning commission, to the county commissioners of each county located wholly or partially in the region, and to other organized taxing districts or political subdivisions wholly or partially included in the region.

Adoption of the regional plan by the municipal planning commission was optional; however, once the regional planning commission adopted it, the plan would have the same force and effect as a plan made and adopted locally. In addition, the municipal planning commission, “[b]efore adopting any amendment of the municipal plan which would constitute a violation of or departure from the regional plan certified to the municipal planning commission,” was required to submit the amendment to the regional commission. The regional commission would then “certify to the municipal commission its approval, disapproval or other opinion concerning the proposed amendment.”⁷

⁵Advisory Committee on City Planning and Zoning, *A Standard City Planning Enabling Act* (Washington, D.C.: U.S. GPO, 1928), §26.

⁶*Id.*, §28.

⁷*Id.*, §29.

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Once the regional plan was adopted by the regional planning commission, no street, park, or other public way, ground, or open space; no public building or other public structure; and no public utility, whether publicly or privately owned or operated, could be constructed or authorized in unincorporated territory until the project was submitted to and approved by the regional planning commission. However, the planning commission's disapproval could be overruled by the body or officer having authority to determine the location, character, or extent of the improvement, provided that, in the case of a board, commission, or body, not less than two-thirds of its membership voted to do so and provided a statement of reasons for such overruling in the minutes of records of the body or officer.⁸

One analyst of this period observed that:

By the end of the 1920's, metropolitan and county planning was a major topic of concern among professional planners. Many city planning commissions found that central city development plans ignored the surrounding local governments and that regional planning and cooperative political solutions were required. Some saw the need for an agency empowered to take an overall view of serious problems besetting the entire metropolitan area.⁹

REGIONAL PLANNING DURING THE DEPRESSION AND WAR YEARS

The federal government, through the National Planning Board (later the National Resources Committee) in the Department of the Interior, provided the major push for metropolitan, regional, state, and interstate planning. The federal government supported the creation of the Pacific Northwest Regional Planning Commission, a four-state body covering Idaho, Montana, Oregon, and Washington, and the New England Regional Planning Commission, which included Massachusetts, Vermont, Rhode Island, Connecticut, and Maine.¹⁰ It backed a bistate St. Louis Regional Planning Commission, which it hoped would provide a model for similar efforts elsewhere in the U.S. It also supported the use of interstate compacts, in the words of a report by one federal agency, "as a means of solving regional problems wherever this procedure is found to be feasible."¹¹

By the end of the 1930s, according to a report of the U.S. Advisory Commission on Intergovernmental Relations, federal support had greatly expanded metropolitan and regional planning:

⁸Id., §30.

⁹U.S. Advisory Commission on Intergovernmental Relations (ACIR), *Regional Decision Making: New Strategies for Substate Districts; Substate Regionalism and the Federal System, Vol. 1* (Washington, D.C.: U.S. GPO, October 1973), 54.

¹⁰National Resources Committee, *Regional Factors in National Planning* (Washington, D.C.: U.S. GPO, December 1935), 117-135.

¹¹Id., x.

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In 1934, there were only 85 metropolitan and county planning bodies and 23 regional planning agencies in existence. By January 1937, there were 506 metropolitan multicounty and county planning agencies, of which at least 316 were official public bodies. Two years later, metropolitan planning agencies or regional planning boards, commissions, or associations were operating in at least 30 major cities. In addition to these metropolitan developments, by the close of the decade areawide planning had also been extended to a number of small urban areas and several nonmetropolitan regions.¹²

Of note during World War II was the formation of privately financed regional planning councils in San Francisco, St. Louis, Boston, Cincinnati, and Kansas City. In Pittsburgh, the Allegheny Conference on Community Development was established in 1945. Its membership drew from leaders in business, labor, and government, and it emerged as a prime mover in the transformation of Pittsburgh in the postwar era.¹³

REGIONAL PLANNING IN THE POSTWAR PERIOD

In the 1950s, federal aid for comprehensive planning became available with the enactment of Section 701 of the Housing Act of 1954. This statute provided monies for local planning and planning for metropolitan areas by official regional or metropolitan planning agencies.

According to a study by the U.S. Advisory Commission on Intergovernmental Relations, at least 13 states passed regional planning enabling acts in the three years following the enactment of the 1954 Housing Act. This set the stage for a tremendous increase in the number of multijurisdictional planning organizations. During this period, according to the ACIR, the legislatures of at least nine of these states enacted legislation requiring or permitting the establishment of planning agencies for entire urbanized areas. The statutes usually authorized the agencies to apply for and receive federal grants. Some states adopted specific statutes that created planning commissions for certain metropolitan areas. By the beginning of the 1960s, some two-thirds of the nation's metropolitan areas were engaged in some type of areawide planning.¹⁴

Complimenting the "701" program was the Federal-Aid Highway Act of 1962. This statute required a "cooperative, comprehensive, and continuous" planning process as a prerequisite for federal financial assistance for interstate highway development in metropolitan areas. The act required regional transportation plans in urban areas with populations more than 50,000 as a condition to construction funds. In contrast to the "701" grants, which split cost evenly with local governments, the Highway Act provided matching grants of 70 percent of the cost of preparing the necessary studies.

¹²ACIR, *Regional Decision Making*, 55.

¹³Judith Getzels, Peter Elliott, and Frank Beal, *Private Planning for the Public Interest: A Study of Approaches to Urban Problem Solving by Nonprofit Organizations* (Chicago, Ill.: American Society of Planning Officials, October 1975), 10-19. See also Jeanne R. Lowe, *Cities in a Race with Time* (New York, N.Y.: Random House, 1967), 110-163.

¹⁴ACIR, *Regional Decision Making*, 57-58.

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In some parts of the U.S., metropolitan transportation planning was assigned to a special commission or entity. This was the case, and still is, in Boston, San Francisco, and Chicago. In others, the transportation planning function was assumed by a regional planning commission or metropolitan councils of government (COG), which were voluntary alliances of local governments formed to undertake planning or any type of joint governmental activity that its members could agree upon.

One of the earliest studies of COGs was conducted in 1962 by the American Society of Planning Officials (ASPO), one of APA's predecessor organizations. The study examined eight councils. It observed that the agencies were operating without an overall metropolitan government that would carry out any plans they might propose. As a consequence, the agencies

must rely on persuasion to convince numerous local governments that joint area-wide action is necessary – a method not notable for its past successes

Probably the most important advantage of the voluntary governmental council is its acceptability to local political leaders. No change in government structure is necessary and there is no transfer of power from local units to a larger agency. The council is easily set up and established by the local governments themselves. Membership is voluntary and the organization is flexible and adaptable to many situations.¹⁵

During the 1960s and 1970s, the nation was almost completely covered by multistate river basin and economic development commissions and by metropolitan and nonmetropolitan regional councils. The expansion of COGs, prompted by the availability of federal funding, was dramatic. In 1961, for example, there were only 36 COGs, including 25 among the 212 metropolitan areas. By 1966, this number included 119 councils, of which 71 were metropolitan. By 1971, there were 247 metropolitan areas, and all of them had official regional planning, mostly under elected COGs. By 1978, there were 649 councils in the U.S. Of these, 292 were in metropolitan areas.¹⁶

Four federal laws were responsible for this expansion, and they were all enacted in a watershed year of 1965. The Housing and Community Development Act of 1965 made regional councils eligible for planning funds. The Public Works and Economic Development Act of 1965 provided funding for multicounty economic development districts and authorized the establishment of federal multistate economic development commissions. The Appalachian Regional Development Act established the multistate Appalachian Regional Commission, which accomplished its work through multicounty development districts. Finally, the Water Resources Planning Act of 1965 authorized

¹⁵James G. Schrader, *Voluntary Metropolitan Governmental Councils*, Information Report No. 161 (Chicago: American Society of Planning Officials, August 1962), 13.

¹⁶Urlan A. Wannop, *The Regional Imperative: Regional Planning and Governance in Britain, Europe, and the United States* (London, England: Jessica Kingsley Publishers, 1995), 385.

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the establishment of federal multistate river basin commissions.¹⁷ Under Circular A-95, promulgated by the U.S. Office of Management and Budget, regional agencies received authority to review applications for federal assistance for compliance with regional and local plans. In addition, regional agencies began to prepare regional water-quality management plans under Section 208 of the federal Clean Water Act of 1972.

Bruce McDowell of the U.S. Advisory Commission on Intergovernmental Relations observed:

This explosion of “areawide” regional councils and the multistate river basin and economic development regions occurred because of very intentional and systematic federal action which drew in the states as well as local governments. In the cases of the areawide councils, the federal actions included establishing 39 grant programs designed to require and fund regional planning, and direct appeal to the governors of all 50 states to establish statewide systems of substate districts to systematize the administration of the federal programs supporting regional councils. And many of the states did so.¹⁸

NEW ROLES FOR REGIONAL AGENCIES

Between 1960 and 1980, there were a number of studies that proposed new roles and authority for regional planning entities. These studies also called for changes in state statutes. Their chief recommendations are summarized below.

1. **ASPO Connecticut Report.** In 1966, ASPO, assisted by the Chicago law firm of Ross, Hardies, O’Keefe, Babcock, McDugald & Parsons, produced a report entitled *New Directions in Connecticut Planning Legislation*. The report, prepared for the Connecticut Development Commission, recommended major changes in the Connecticut planning statutes. Its major recommendation regarding regional planning agencies was an extension of their jurisdiction to review matters that may have regional significance, such as decisions involving property within specified distances from state highways, and development affecting the region, such as water, sewerage, and utility projects. The regional agency would still not be given veto power over local decisions. If a local or state agency took action contrary to a regional planning agency’s recommendation pursuant to a referral, that agency would be required to state in writing the reasons that had led it to a different conclusion. But if the regional agency chose not to comment on a proposal, such an action would be neutral, rather than constitute a project endorsement.

The ASPO report also recommended amending the state statutes to define a regional plan as distinct from a local plan. “The statute should direct the *regional* plan to cover *regional* facilities,”

¹⁷Bruce D. McDowell, “The Evolution of American Planning,” in *The Practice of State and Regional Planning*, Frank So, Irving Hand, and Bruce D. McDowell, eds. (Washington, D.C.: American Planning Association in cooperation with the International City Management Association, 1986), 56.

¹⁸Bruce D. McDowell, “Regionalism: What It Is, Where We Are, and Where It May Be Headed,” a speech given to the 1995 Annual Conference of the Virginia and National Capital Area Chapters of the American Planning Association, Falls Church, Va. (December 4, 1995), 2.

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noted its authors, “and, especially, to give attention to regional resource and conservation problems.”¹⁹

2. National Commission on Urban Problems (Douglas Commission). In 1968, the National Commission on Urban Problems, also known as the Douglas Commission, after its Chair, Senator Paul Douglas, issued its report, *Building the American City*. The Commission’s charge, among other things, was to examine “state and local zoning and land use laws, codes, and regulations to find ways by which States and localities may improve and utilize them in order to obtain further growth and development.”²⁰ To date, the study, with its wide-ranging scope, is one of the most comprehensive and thorough in terms of examining authority of governments to plan and regulate development.

Two Commission proposals to broaden choice in the location of housing called for regional approaches:

(1) Enactment of state legislation requiring multi-county or regional planning agencies to prepare and maintain housing plans. These plans would ensure that sites are available for development of new housing of all kinds and at all price levels. In the absence of a regional planning body – given the broader-than-local nature of the plan and the importance of political approval of such plans – the state government should assume responsibility for the necessary political endorsement of the plan.

(2) Amendment of state planning and zoning acts to include, as one of the purposes of the zoning power, the provision of adequate sites for housing persons of all income levels. The amendments would also require that governments exercising the zoning power prepare plans showing how the community proposes to carry out such objectives in accordance with

¹⁹American Society of Planning Officials (ASPO), *New Directions in Connecticut Planning Legislation: A Study of Connecticut Planning, Zoning and Related Statutes* (Chicago, IL: ASPO, February 1966), 166. The ASPO report recommended that the definition of a regional plan be amended to include the following: (1) conservation and management of water resources, including ground and surface supply, pollution abatement, flood control, and watershed protection; (2) abatement of air pollution; (3) conservation of land resources, including forest, wetlands, wildlife refuges, and seashore; (4) population and general housing types in the several parts of the region; (5) regional facilities, such as major commercial centers, regional parks, transportation, industrial parks, sewerage, and other facilities that would serve the region rather than a single municipality; and (6) a statement of objectives, policies and standards on which recommendations are based. Requiring the factual basis on which policies and standards were derived, wrote ASPO, “will facilitate review of plans by interested public or private group[s] and help them gauge the reasonableness of regional planning proposals. In addition, this requirement will focus attention on development policies underlying specific development proposals such as those for regional land use.”

²⁰National Commission on Urban Problems, *Building the American City: Report of the National Commission on Urban Problems to Congress and to the President* (Washington, D.C.: U.S. GPO, 1968), vii.

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county or regional housing plans. This would ensure that, within the region as a whole, adequate provision is made for sites for all income levels.²¹

3. ACIR Report on Substate Districting. In 1973, the U.S. Advisory Commission on Intergovernmental Relations published *Regional Decision Making: New Strategies for Substate Districts*. This report assessed the effectiveness of regional councils of local elected officials and substate planning and development districts. The report contained a number of recommendations for the federal, state, and local levels of government. The recommendations for state governments are especially relevant to the Growing SmartSM legislation. The ACIR recommended that states establish a formal procedure for the delineation and revision of the boundaries of substate districts. It called for a process involving the governor and units of general local government in a substate region, which would result in the governor's designation of a single "umbrella multi-jurisdictional organization" or UMJO in each region, with such designation conferring the legal status of an agency of local governments.²²

The UMJO's membership should be at least 60 percent local elected officials. The ACIR proposed that such organizations have a voting formula that involved the application of the one-government, one-vote principle in most voting matters, but permitted certain larger local jurisdictions to overrule this procedure on certain issues – such as actions that would affect the finances and operations of constituent local governments – and employ a proportionate, population-weighted rule. The UMJO would be responsible for the adoption and publication of regional policies or plans and of a program for their implementation.²³

The ACIR called for the UMJO to review and approve, in the context of adopted regional plans and policies, all proposed major capital facility projects of state departments and agencies scheduled for location in the UMJO's region. Similarly, the UMJO would have the authority to review and comment on major capital projects proposed by local governmental units. The ACIR proposed conferring on the UMJO "a policy controlling role" over multijurisdictional special districts operating within the UMJO's region. "The emphasis on a single functional purpose," wrote the ACIR, "often results in decisions which have side effects on other areawide policies, programs, and jurisdictions. *For this reason, a generalist-oriented and dominated multipurpose regional agency must have authority not only to plan, but also to set basic policy for special districts that transcend city and county boundaries*"²⁴ [emphasis supplied]. Means for securing policy control over the special district, according to the ACIR, included: appointment of the special district's policy board by the regional council; review and approval of the district's budgets and basic policies; assignment

²¹Id., 242.

²²ACIR, *Regional Decision Making*, 354.

²³Id.

²⁴Id.

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to the council of the power to halt temporarily or permanently any proposed district project; and empowering the council to serve as the special district's fiscal agent for bonding.²⁵

The UMJO could provide member governments with technical assistance and promote interlocal problem solving and contracting. Financing of the regional agency's operations was to come from member governments under a mechanism authorized in enabling legislation and from state funds.²⁶

The ACIR recommendations were later translated into model legislation. A portion of this legislation has been adapted for Sections 6-601 to 6-604, below, which deal with designation of substate districts and substate district agencies.²⁷

4. ALI Model Land Development Code. The American Law Institute's (ALI) *A Model Land Development Code* (1976) specifically rejected the establishment or designation of regional planning agencies as having a role in a statewide land development planning and regulation system. Instead, the Code proposed the creation of regional planning divisions of a state land planning agency with regional advisory committees to advise the director of the state agency (see commentary to Section 6-101 below).

The drafters of the ALI Code were highly skeptical of the potential for regional planning under voluntary associations of elected officials and questioned whether they could provide an independent perspective. "The more that metropolitan agencies have been asked to review functions that bring them into potential conflict with local governments, the more the structural weaknesses of such organizations become apparent," they wrote.²⁸ The drafters quoted one critic of the system's effectiveness:

[The COG] receives its legitimacy from its member governments – but those governments do not seem to want the COG to emerge as a force different and distinct from the sum of its governmental parts. Member governments do not generally see the COG as an independent source of regional influence, but rather as a service giver, a coordinator, a communications forum, and an insurance device for the continued flow of federal funds to local governments.²⁹

²⁵Id., 360.

²⁶Id.

²⁷U.S. Advisory Commission on Intergovernmental Relations, "An Act Providing for Designation of Uniform Substate Districts and Coordination Thereof," in *ACIR State Legislative Program: Local Government Modernization* (Washington, D.C.: U.S. GPO, November 1975), 119-132.

²⁸American Law Institute (ALI), *A Model Land Development Code: Complete Text and Commentary* (Philadelphia, Pa.: ALI, 1976), Note to §8-102, 312.

²⁹ALI, *A Model Land Development Code*, 311-312, quoting Melvin Mogulof, "Regional Planning, Clearance, and Evaluation: A Look at the A-95 Process," in *Journal of the American Institute of Planners* 37 (1971): 419.

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Because of these and other political factors, COGs, wrote the Code’s drafters, “engage in passive, consensus planning, giving each local government whatever it wants, regardless of the effect on the region,” resulting in the “absence of regional planning that really faces tough issues.”³⁰

As a consequence of this skepticism, the Code required that the basic land planning power “remain at the state level to be delegated by the State Land Planning Agency to the regional divisions or withdrawn therefrom as the state agency sees fit.”³¹ The ALI Code saw this as “essential to enable the coordination of regional land planning with other state activities and to ensure that regional land planning carries the weight and authority of the state government.”³² The Code noted that this would eliminate a “key defect” in most metropolitan planning agencies, which was “the absence of close ties to a governing body and ‘a strong chief executive who is able to override the contenders and force resolution of disagreements.’”³³

REGIONAL PLANNING IN THE 1980S AND BEYOND

In the 1980s, the federal government withdrew almost entirely from its support of regional planning. “Of the 39 programs designed and enacted during the preceding two decades to promote regional organization,” wrote Bruce McDowell, “only one – metropolitan transportation planning – remained relatively unscathed by this sudden reversal of federal policy.”³⁴ In the multistate programs, which had created most river basin and economic development regions, the federal government withdrew funding and the organizations died. Only multistate agencies created by federal law or interstate compact survived. The federal economic development programs, through

³⁰ALI, *A Model Land Development Code*, 312.

³¹Id., 316.

³²Id.

³³ALI, *A Model Land Development Code*, 316- 317, quoting Melvin Levin, “Planners and Metropolitan Planning,” in *Journal of the American Institute of Planners* 33 (1967): 80. See also Richard F. Babcock, “Let’s Stop Romancing Regionalism,” in *Billboards, Glass Houses and the Law and Other Land Use Fables* (Colorado Springs, Colo.: Shepard’s, 1977), 11-23. The late Chicago land-use attorney Richard F. Babcock saw regional planning agencies as “political bastards, the offspring of a loveless dalliance between cynics and dreamers, with no general government willing to acknowledge more than a foster parent relationship.” Id., at 15. Babcock, who chaired the ALI committee that oversaw the development of the Code and served as the governor’s appointee on the Northeastern Illinois Planning Commission, believed that only the state had sufficient independence and power to require the resolution of metropolitan planning conflicts: “The governor can – if anyone can – compel operating agencies such as the highway department and the state housing authority to recognize in their programs the inescapable interdependence of each with the other. The governor has a broad constituency that permits him to take greater political risks than would be ventured by any mayor or other local representative on a regional commission. If any agency can act as broker between central city and suburb – and perhaps none can – it will be the state. If any negotiation of our bitter metropolitan conflicts is foreseeable, it can occur in our reapportioned and increasingly responsible state legislatures, not in some politically irresponsible regional institution.” Id., at 17. Babcock’s views, of course, colored the approach taken in the ALI Code.

³⁴McDowell, “Regionalism, What It Is,” 3.

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the Economic Development Administration, and the Appalachian programs managed to continue, but in greatly abbreviated form.

A number of states – Connecticut, Florida, Georgia, Kentucky, and Virginia, among them – provided state support for regional planning agencies that replaced the lost federal funds. Florida, in 1972 with the enactment of the Environmental Land and Water Management Act, and Georgia, in 1989 with the Georgia Planning Act, strengthened the authority and responsibility for the agencies in statewide growth management systems. Florida’s regional planning councils were required to prepare regional policy plans, review developments of regional impact, and establish mediation and arbitration processes to resolve regional disputes. Under the new Georgia act, the regional planning agencies were recast as “regional development centers” and were given powers similar to the regional councils in Florida. Massachusetts enacted one of the most progressive special purpose regional planning statutes in the nation when it passed, in 1989, special legislation establishing the Cape Cod Commission with broad powers to plan and regulate development in an area of statewide significance.

Regional planning agencies responded to the federal cutback, in some cases, by becoming more entrepreneurial. They undertook joint purchasing programs, forecasting, data collection and dissemination, arranged training, operated programs such as regional ambulance services, or provided consultant planning services to member governments.³⁵

Where are regional planning agencies headed? The ACIR’s Bruce McDowell suggests that one role of such agencies is the development of “negotiated policies and programs.” Regional planning agencies, he observes, are “negotiating bodies” and provide “forums for mediating disputes, finding solutions to tough problems, and working out agreements, and developing cooperative action.”³⁶ A British planning professor, Urlan A. Wannop, predicts that giving regional planning agencies “real duties in planning and implementation” in a statewide growth management system of the type enacted in Florida and elsewhere will make them effective, offering a promise of reinvigorating them.³⁷ Allan Wallis, an assistant professor of public policy at the University of Colorado at Denver, suggests that, in the current fluid environment, solutions to regional problems will evolve from an identification of “strategic interests over which coalitions already have formed.” Thus, there will be no single solution or approach that will work in every region, even if the problems are, in Wallis’ words, “fairly generic and common to most other large metropolitan areas.” Developing out of the perception of the regional problems and the legitimacy of the coalitions that defined them, the

³⁵Wannop, *The Regional Imperative*, 288.

³⁶Bruce D. McDowell, “Regional Councils Then, Now, and in the Future,” a speech to the Board of Directors Retreat, Economic Development Council of Northeastern Pennsylvania (October 7, 1993), in *Regionalism: Shared Decision Making: A Background Reader* (Richmond, Va.: Commission on Population Growth and Development, July 1994), 4.

³⁷Wannop, *The Regional Imperative*, 292, citing John M. DeGrove, “Regional Agencies as Partners in State Growth Management Systems,” *Proceedings of the Joint ACSP and AESOP International Congress*, Oxford, UK (July 1991).

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particularized governance structures that result to address those problems “will be highly idiosyncratic, reflecting, as they should, such unique circumstances as local political culture.”³⁸

William R. Dodge, former executive director of the National Association of Regional Councils and a consultant on regional excellence, observes:

Regional agencies are undertaking new activities for private and civic sectors. They often provide technical support for developing regional economic development plans and have assisted in creating regional civic leagues and college/university regional studies centers. Now, regional planning agencies are bringing public, private and civic sectors together to address common regional challenges, in regional visioning processes and regional leadership forums. Regional planning agencies now serve federal, state and local governments, as well as the private and civic sectors, and often weave together their interests and resources in collaborative strategies to address regional challenges. Regions are experimenting with new models for governing themselves – for integrating transportation, land use, air and water quality, and other planning; negotiating the regional compacts for shaping equitable growth; and developing new public/private/civic partnerships for governing the regional commons – all of which will have an impact on regional planning agencies.³⁹

ORGANIZATIONAL STRUCTURE

Commentary: Regional Planning Agencies

Regional councils or some type of regional planning organization representing local governments operate in all states except Hawaii, Alaska, and Rhode Island, according to the National Association of Regional Councils (NARC). Regional planning in the U.S. is made institutionally complex by the federal requirement that a metropolitan planning organization (MPO) oversee transportation planning. The MPO may be separate from the established regional planning agencies – the situation in several metropolitan areas including Boston, Chicago, and San Francisco – or governed by a special policy committee inside the agency. Where the MPO is separate from the regional agency

³⁸Allan D. Wallis, “Inventing Regionalism: A Two-Phase Approach,” *National Civic Review* 83, no. 4 (Fall/Winter 1994): 447, 450; see also William R. Dodge, “Regional Problem Solving in the 1990s: Experimentation with Local Governance for the 21st Century,” *National Civic Review* 79, no. 4 (July-August 1990): 354-366; Patricia S. Atkins and Laura Wilson-Gentry, “An Etiquette for the 1990s Regional Council,” *National Civic Review* 81, no. 4 (Fall-Winter 1992): 466-487; Symposium issue on the future of regional governance, Janis Purdy, ed., *National Civic Review* 85, no. 2 (Spring-Summer 1996).

³⁹William R. Dodge, letter dated Sept. 10, 2001 to William R. Klein, Director of Research, American Planning Association.

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that addresses other planning, the two entities typically enter into an agreement to coordinate transportation planning with the planning of land use, air and water quality, and related issues. (Current federal requirements for regional transportation planning are discussed in the commentary to Section 6-204 below.)

Twenty-five states have “wall-to-wall” regional councils. Regional councils in at least 10 other states serve from 75 to 90 percent of all local governments. For the remainder, except for four, reports NARC, councils cover from 60 to 74 percent of all local governments. New Jersey does not have state-designated regional councils. Three councils, two of them MPOs and one a regional planning agency headquartered in Princeton, serve areas of the state. Alaska has divided the state into regions for economic development purposes, but no formal regional agencies exist. In Montana, there are no state-designated regional planning councils, but there are a number of regional planning commissions.⁴⁰

There are at least five possible structures for regional planning agencies:

1. **Regional Planning Commission.** Regional planning commissions may be single county, multicounty, or composed of multiple jurisdictions, depending on the geographic extent and population of the region. Typically, their governing board is composed of citizens who are appointed by local governments, although elected officials may also serve. They are primarily established to prepare plans, provide technical assistance to member governments, and, in some cases, administer development regulations (such as reviewing and approving subdivision plats). Interstate regional planning commissions cover portions of multistate areas, most typically metropolitan areas. In Ohio, such regional planning commissions are the result of special enabling legislation.⁴¹ In Philadelphia, the Delaware Valley Regional Planning Commission, whose jurisdiction covers portions of New Jersey and Pennsylvania, was created by a special interstate compact approved by Congress.⁴²

2. **Council of Governments.** While they may undertake planning, councils of governments (COGs) are somewhat different than regional planning commissions in that they can also carry out virtually any service delivery activity that a member government can undertake, provided the membership agrees that the COG should do so. For example, a council could operate a regional wastewater treatment plant or a regional ambulance service if the members permit. The governing structure of a COG typically involves appointed representatives from member governments but may

⁴⁰National Association of Regional Councils (NARC), *Directory of Regional Councils in the United States* (Washington, D.C.: NARC, April 1995), 3.

⁴¹Oh. Rev. Code §§713.30-713.34 (1994). The Ohio law permits creation by agreement of a board of county commissioners and the legislative authority of a municipality with such boards and authorities of adjoining states. An interstate regional planning commission may also be created by compact which must be reviewed by the attorneys general of the states included in the region and approved and signed by the governors of such states. §713.30.

⁴²Delaware Valley Urban Area Compact, P.L. 1974, c.193.

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include others, such as representatives of economic development organizations in the region. A variation includes a COG whose representatives are from local governments and from the state.

In Florida, for example, regional planning councils include representatives of member counties and other local general purpose governments in the geographic area covered by the regional planning council as well as representatives appointed by the governor from the geographic area covered by the council. The governor also appoints, as ex officio nonvoting members, representatives of several state departments.⁴³ The Metropolitan Washington Council of Governments includes one member of the Maryland General Assembly and one member of the Virginia General Assembly, representing portions of the Washington, D.C., metropolitan area. Both are selected every two years by separate caucuses of the members of the council from those legislative bodies.⁴⁴

In some states, like Michigan, Ohio, and North Carolina, COGs are creatures of special enabling legislation.⁴⁵ In others, like California, they are established through a joint powers agreement.

3. Regional Advisory Committee. The American Law Institute's *Model Land Development Code* rejected the creation of independent regional planning agencies. Instead, it proposed the optional establishment of regional planning divisions for portions of the state. The divisions could be delegated all or a portion of the authority of the state planning agency and would exercise that authority subject to the planning agency's oversight. The governor could also create regional advisory committees and could delegate all or a portion of the powers of the regional planning division to the committees. The committees were also charged with advising the state planning director.⁴⁶ The ALI model of regional advisory committees to a state planning agency has not been adopted anywhere in the country.

4. Regional Allocation Agency. Economist Anthony Downs, in his 1994 book, *New Visions for Metropolitan America*, proposed the creation of regional allocation agencies.⁴⁷ The regional allocation agency would be responsible for allocating federal funds within various program areas either to local governments or to households, service delivery agencies, or other recipients. At the outset, Downs wrote, the agency would be responsible for allocating federal funding for transportation, environmental control, housing, urban planning, education, welfare, and health care.

⁴³Fla. Stat. Ann. §186.504 (West 1987 and Supp.1995).

⁴⁴By-Laws of the Metropolitan Washington Council of Governments, §5.02(e) (December 14, 1988).

⁴⁵Mich. Comp. Laws Ann. §124.651 *et seq.* (1991); Oh. Rev. Code, Ch. 167 (1994); N.C.G.S. §160A-470 *et seq.* (1989).

⁴⁶American Law Institute, *A Model Land Development Code*, Note to §8-102, 306-319.

⁴⁷Anthony Downs, *New Visions for Metropolitan America* (Washington, D.C.: Brookings Institution and Lincoln Institute of Land Policy, 1994), 176-179.

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Within each categorical program, the regional agency would have to develop an allocation plan that addresses the needs and capacities of all potential recipients on an areawide basis and show how it was meeting those needs for persons living in all parts of the metropolitan area.

Examples of such agencies – although they might not reflect all of Downs’ criteria – would include the Metropolitan Service District or “Metro” in Portland, Oregon, and the Metropolitan Council in the Twin Cities in Minnesota.⁴⁸

According to Downs, governing members of the agency could be elected by the residents of the entire metropolitan area (as in Portland), appointed by the governor (as in the Twin Cities), or appointed by the local governments in the region. Once chosen, the members of this agency may delegate some of their powers to existing organization, appoint subagencies to handle funds within each program category, or use any other administrative methods they selected.

With respect to growth management activities, Downs proposed that a single government agency – either at the state level or regional (including county) level – be empowered to review all local land-use plans. The agency would check the plans’ consistency with state planning goals – adopted by the state legislature and applicable to all communities in the state – and their consistency with each other, and suggest revisions where inconsistencies of either type are found. Downs contended that the agency must have the power to withhold its approval of local plans and that withholding it should carry significant penalties in the form of ineligibility for various types of state financial assistance. “In some cases,” he wrote, “the agency should have the power to override local government decisions, such as zoning decisions that prevent the creation of low-cost housing. Most often, however, the agency would simply request the local government to revise its plans and repeat the process until final approval is obtained.”⁴⁹ In order to ensure consistency of state functional plans with local government plans and with each other, the same agency that performed the local plan review would also coordinate activities of state transportation departments, utility regulation departments, environmental protection departments, and other agencies.

5. Special Purpose Regional Agencies. Several states have special purpose regional agencies with the authority to plan and control development in environmentally sensitive areas or areas having statewide resource significance. Examples of such long-standing organizations include the Pinelands Commission in New Jersey, the Cape Cod and Martha’s Vineyard Commissions in Massachusetts, the San Francisco Bay Conservation and Development Commission in California, the Adirondack Park Agency in New York, and the bi-state Tahoe Regional Planning Agency in California and Nevada, which is the result of a compact.⁵⁰

⁴⁸Ore. Rev. Stat. Ch. 368 (1993); 1992 Metro Charter; Mn. Stat. Ann., Ch. 186 (1994 and Supp. 1995).

⁴⁹Downs, *New Visions for Metropolitan America*, 180.

⁵⁰See N.J.S.A. §13.18A-1 *et seq.* (Pinelands Commission); Commonwealth of Massachusetts, Ch. 716 of the Acts of 1989 and Ch. 2 of the Acts of 1990 (Cape Cod Commission Act); Commonwealth of Massachusetts, Ch. 637 of the Acts of 1974 (Martha’s Vineyard Commission); Cal. Gov’t. Code, §65500 *et seq.* (San Francisco Bay Conservation and Development Commission); N.Y. Executive Law, Art. 27 (Adirondack Park Agency Act, 1990); Nev.

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The last two alternatives, the regional allocation agency and the special purpose regional agency, require specialized drafting that takes into account regional and local political traditions and the issues that brought about the need for the agency. In the case of the regional allocation agency, the legislation must go beyond regional planning and into the area of restructuring metropolitan governance, which is emerging as one of the major governance challenges of the new century.

The models that follow address the first two types of regional planning agencies: regional planning commissions and councils of governments, as they are the most common in the country. They are adapted from legislation from Florida, Wisconsin, Massachusetts, Ohio, North Carolina, Georgia, and Michigan.⁵¹ The term, “regional planning agency,” is used throughout in brackets, but drafters may wish to substitute some other term such as “regional planning commission,” “regional council of governments,” or “regional council.”

Under the model legislation, a regional planning agency can have the planning responsibilities of a regional planning commission and the service provision responsibilities of a council of governments. Various organizational options are also provided including: (a) a voluntary regional agency versus a regional agency mandated by state statute for each substate district; and (b) a structure to be determined by agreement of member governments versus a mandated structure composed of local elected officials, appointees of the governor (often representing interest groups), and state agency representatives serving in an *ex officio*, nonvoting capacity.

A related issue is whether membership by local governments will be mandated; the model legislation provides alternative language for this, based on the Florida and Georgia legislation. In Florida, membership by counties in regional councils is mandated by statute, but municipal government membership is not required.⁵² By contrast, in Georgia all local governments must be members of a regional development center (RDC), the state’s term for a regional planning agency. Georgia, through its department of community affairs, also provides funding support for the RDC.⁵³ This suggests that where state law mandates local participation in the regional agency (and hence local costs), the state must be prepared to assume a portion of the burden of financing its operation. The model legislation below also contains provisions for partial state funding of regional planning agencies.

Rev. Stat. §277.200 (Tahoe Regional Planning Compact); Cal. Gov’t Code §66801 (Tahoe Regional Planning Compact).

⁵¹Fla. Stat. Ann. §186.503 *et seq.* (1987 and Supp 1995) (Regional planning councils); Wi. Stat. Ann. §66.945 (1990) (Regional planning commissions); Mass. Gen. Laws Ann., Ch. 40B, §§1-8 (1994) (Regional planning); Oh. Rev. Code, Ch. 167 (Regional councils of government) and §713.21 *et seq.* (Regional planning commissions) (1994) (Regional councils of government); N.C.G.S., Art. 19 (Regional planning commissions) and Art. 20, Part 1, §160A-470 *et seq.* (Councils of government) (1990); Code of Ga., Tit. 50, Ch. 8, Art. 2 (1994) (Regional development centers); Mi. Comp. Laws Ann., §124.653 *et seq.* (1991) (Metropolitan councils) and §125.12 *et seq.* (1986) (Regional planning commissions).

⁵²Fla. Stat. Ann. §186.504 (4) (West 1987 and Supp. 1995).

⁵³Ga. Code. Ann. §50-8-33 (1989).

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*There is no ideal form for a regional planning agency. The approach taken here, therefore, resists endorsing one, leaving that option up to local officials in the region and the state legislature.*⁵⁴ For that reason, the model legislation does not propose metropolitan or regional “superagencies” or new forms of regional governance, although this may always be an alternative.⁵⁵ Economist Anthony Downs has commented that regional growth management policies do not have to be administered “through a single agency acting as a regional policy czar.” Instead, he wrote, it might be desirable to have different growth management policies run by different local and regional agencies that are organized in ways best suited to their individual tasks, “as long they are linked through formal and informal coordination.”⁵⁶

As a practical matter, the formal organizational structure of a regional planning agency is less important than the powers and duties that it has, the clarity with which those powers and duties are described, how effectively those powers and duties are actually carried out, and its actual – as opposed to theoretical – relationships with implementing local governments and special districts and with public, private, and civic organizations. Conceivably, a regional planning commission whose representatives are lay citizens appointed by their local governments and who are their region’s leaders could have just as much informal independence, influence, and authority as the Twin Cities Metropolitan Council, whose board members are appointed by the governor, or the Portland, Oregon, Metropolitan Service District, whose board members are elected. *In adapting these models to local conditions, drafters must look at the desired outcomes of planning and consider modifying the authority of existing agencies **before** deciding to create new ones.*

6-101 Creation of Regional Planning Agency; Boundaries of Regional Planning Agency; Interstate Regional Planning (Two Alternatives)

Alternative 1 – Voluntary Creation of Regional Planning Agency

- (1) A [regional planning agency] may be created by agreement after adoption of a resolution by 2 or more legislative bodies of any local governments that want to create a [regional planning agency]. The agreement shall specify the area in which the powers and duties of

⁵⁴For a discussion of the question of support for strong planning roles by regional government, see Mark Baldassare, et al., “Possible Planning Roles for Regional Government: A Survey of City Planning Directors in California,” *Journal of the American Planning Association* 62, no. 1 (Winter 1996): 17-28.

⁵⁵For an argument favoring metropolitan government or reorganization under a variety of structures, see David Rusk, *Cities Without Suburbs* (Washington, D.C.: Woodrow Wilson Center Press), 91-119.

⁵⁶Downs, *New Visions for Metropolitan America*, 182.

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such a [regional planning agency] shall be exercised and shall provide for procedures for the amendment of the area and for the addition of other local governments [and may provide for the addition of other governmental units].

[or]

A [regional planning agency] may be established in the following manner:

- (1) Upon petition in the form of a resolution by the legislative body of a local government and the holding of a public hearing on such petition, the governor, or such state agency or official that the governor designates, may create a [regional planning agency]. If the petition is joined in by the governing bodies of all the local governments in the proposed region, including the [legislative body of the county], part or all of which is located in the proposed region, the governor may dispense with the public hearing. The governor may give notice by mail at least [30] days in advance to the clerk of each local government in the proposed region.
- (2) If the governor finds that there is a need for a [regional planning agency] and if the governing bodies of local governments located within the proposed region, which include more than 50 percent of the population [and equalized assessed valuation of the region as determined by the last previous equalization of assessments], consent to the formation of such [regional planning agency], the governor may create the [agency] by order and designate the area and boundaries of the [agency]'s jurisdiction, taking into account patterns of urban and rural development, distribution of population, patterns of transportation (including regional commuting), interrelatedness of social and economic problems, historic, scenic, and natural resources, and geographic or topographic features.

[or]

- (2) The legislative body of a county and the legislative body of a municipality located within such county may cooperate with other such counties and municipalities of this state and of any adjoining state to create by agreement an interstate [regional planning agency], whenever such local governments comprise a region that would benefit from cooperative regional planning.
- (3) An interstate [regional planning agency] may also be created by compact through appropriate action of the legislative bodies of counties and municipalities in this state, by resolution, ordinance, or otherwise pursuant to law, in agreement with the appropriate authorities of the political subdivisions of other states included in the region.
- (4) Any such compact shall specify:
 - (a) its purposes and duration;
 - (b) the extent of the region;

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- (c) the precise organization and composition of the [regional planning agency];
 - (d) the manner of financing the operations of the [agency] and maintaining a budget for the purposes thereof;
 - (e) provisions for the partial or complete termination of the compact; and
 - (f) any other matters deemed necessary and proper.
- (5) No such compact shall be in force and effect until it has been reviewed and approved by the attorneys general of the states included in the region to determine whether the compact is in proper form and compatible with all state and federal laws⁵⁷ and until it has been approved by the legislatures and governors of such states.

*Alternative 2 – Mandated Creation of Regional Planning Agency*⁵⁸

- (1) Where the governor has delineated substate districts pursuant to Sections [6-601 to 6-602], there shall be created in each district a [regional planning agency] within [1] year from the effective date of this Act.
- (2) Only one [agency] shall exercise the powers and duties granted herein within the geographic boundaries of any one substate district.

Commentary: Composition of Regional Planning Agency

⁵⁷The Constitution requires congressional approval for interstate compacts. See U.S. Const., Art I, §10, Cl. 3 (“No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State, or with a foreign power”). See also Stephen D. Galowitz, “Interstate Compacts and Affordable Housing,” in *Modernizing State Planning Statutes: The Growing SmartSM Working Papers, Vol. 1*, Planning Advisory Service Report No. 462/463 (Chicago: American Planning Association, March 1996), 147-151; Frederick L. Zimmerman and Mitchell Wendel, *The Interstate Compact Since 1925* (Chicago: The Council of State Governments, 1951), 30-42; Marian E. Ridgeway, *Interstate Compacts: A Question of Federalism* (Carbondale, Ill.: Southern Illinois University Press, 1971). Congress has, however, preapproved certain types of compacts, such as those for transportation planning for multistate metropolitan regions. See 23 U.S.C.A. §134(d)(2) (authorizing two or more states to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance for metropolitan transportation planning activities).

⁵⁸This alternative is linked to Alternative 2 – Mandated Composition and Membership of Regional Planning Agency by Local Elected Officials, Appointees of the Governor, and State Agency Representatives in Section 6-102.

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Membership in regional planning agencies is either permissive or mandated, based on whether the agency itself is a voluntary association of governments or mandated by state government. In either case, the membership needs to include representatives of local and state governments and private and civic sectors. Local elected officials represent at least a majority of the voting members on the governing board. Voting representation is usually extended to private and civic representatives, either selected by elected local officials or community groups. State governments have ex-officio members, usually state legislators or representatives of state government agencies. Federal government agencies often have ex-officio members. The number of voting members can vary from less than a dozen to over a hundred, but should be large enough to represent the full range of regional interests. Regional planning agencies often have the flexibility to add or change members to accommodate new membership needs, as long as the local elected officials retain a majority vote on the governing body

6-102 Composition of [Regional Planning Agency]; Finances; State Representation; Representation of Federal Military Installations [and Facilities] (Two Alternatives)

Alternative 1 – Permissive Composition and Membership of Regional Planning Agency

- (1) The number and qualifications of the voting representatives of member local governments of any [regional planning agency], their terms, [compensation, if any,] and method of appointment and removal shall be such as determined and agreed upon by the cooperating legislative bodies. [Representatives shall serve [with *or* without] compensation, and may be reimbursed for expenses incurred in the performance of their duties on the [agency] pursuant to rules adopted by the [agency].]
- (2) Any representative of a member local government on a [regional planning agency] may hold any other appointive or elective public office. After creation of a [regional planning agency], any local government in the region, upon the resolution of its legislative body, may apply for admission to the agency. Upon an affirmative vote of a majority of the [regional planning agency]'s membership, the local government shall become a member thereof. [After creation of a [regional planning agency], school districts, special districts, other units of government in the region, and Indian tribes⁵⁹ may also participate in the [regional planning agency], upon such terms, including contributions to the [agency]'s expenses, as may be agreed upon by the cooperating legislative bodies.
- (3) The proportion of the expenses of the [regional planning agency] to be borne respectively by the local governments cooperating in the establishment and maintenance of the [agency] shall be as determined and agreed upon by the cooperating legislative bodies, which are hereby authorized to appropriate their respective shares of such expenses. [The sums so

⁵⁹For a discussion of the sovereign authority of Indian tribes, see Alan Sweeney, “Tribal Land-Use Power: A Primer for Planners,” *PAS Memo* (Chicago: American Planning Association, May 1996).

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appropriated shall be deposited into the treasury of the county in which the greater portion of the population of the region is located, and shall be paid out on the certificate of the [regional planning agency] and the warrant of the [county auditor *or* other county fiscal officer] for the purposes authorized by this Act.]

- [(4) The state [may *or* shall] be represented as an ex officio member of each [regional planning agency]. In such instances, the governor shall appoint an employee from the [state planning agency], who shall represent the state in the deliberations of the [agency]. The state [shall *or* shall not] be a voting member of the [regional planning agency] or any committee of the [agency].]
- [(5) Whenever there is located, either wholly or partially, within the region, a federal military installation [or other federal facility] having a resident population of at least [500] persons according to the most recent available federal decennial census, the [regional planning agency] may, by a majority vote of its members, offer the commanding officer of the installation [or chief executive officer of the federal facility] the privilege of membership for the installation [or facility], with the commanding officer, [chief executive officer,] or the officer's designee serving as the representative to the [agency]. Upon the acceptance by the commanding officer [or chief executive officer] of this offer, the federal military installation [or federal facility] shall be deemed to be an ex officio member of the [agency], and shall have the same rights and obligations as other local governments.]

- ◆ The language in paragraph (5) would permit membership on the regional planning agency by a federal military base or other federal facility, such as a national park or national forest.

*Alternative 2 – Mandated Composition and Membership of Regional Planning Agency by Local Elected Officials, Appointees of the Governor, and State Agency Representatives.*⁶⁰

- (1) All local governments located in a region shall be members of a [regional planning agency] and shall pay a pro rata share of the costs of membership in the [agency]. Each local government shall appoint 1 voting representative, who is an elected official of that local government, to serve on the [agency]. At least [51 percent *or* two-thirds] of the representatives serving on the [agency] shall be local elected officials.
- (2) The governor shall appoint the remaining portion of the voting members on the [regional planning agency], subject to confirmation by the senate. No two appointees of the governor shall have their places of residence in the same county until each county within the region is represented by the governor's appointee to the [agency]. Nothing contained in this Section shall deny the option of appointing either locally elected officials or lay citizens, provided that at least [51 percent *or* two-thirds] of the [regional planning agency] is composed of local elected officials.

⁶⁰This section is linked to Alternative 2 – Mandated Creation of Regional Planning Agency in Section 6-101.

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- (3) In addition to voting members appointed pursuant to paragraph (2) above, the governor shall appoint the following ex officio nonvoting members to each [regional planning agency]:
- [(a) a representative of the state planning agency;]
 - [(b) a representative of the state department of transportation;]
 - [(c) a representative of the state department of environmental protection; and]
 - [(d) a representative of [*other appropriate state agencies, such as the state emergency management agency or the state housing agency*].]
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Commentary: Voting

An ongoing issue for some regional planning agencies is the matter of voting. Most regional agencies are structured and expected to function like a senate, with each member community having an equal vote. As noted earlier in this Chapter, the U.S. Advisory Commission on Intergovernmental Relations proposed in the 1970s that regional agencies have the option of allowing proportionate-population weighted voting in certain issues, such as actions that would affect the finances and operations of constituent local governments. As regional agencies move into areas that are less advisory and more legislative, such as ranking transportation projects for a metropolitan area or approving policies that have distributional consequences, a weighted voting mechanism, either mandatory or optional, may be desirable. Indeed, a number of regional agencies (e.g., the San Diego Association of Governments, the Southeast Michigan Council of Governments, the Puget Sound Regional Council, the Denver Regional Council of Governments, the Tampa Bay Regional Planning Council, the Metropolitan Washington Council of Governments, and the Miami Valley (Ohio) Regional Planning Commission) have various forms of weighted voting based on a jurisdiction's proportion to the total regional population.⁶¹ A 1994 ACIR analysis of 86 metropolitan planning organizations (MPOs) that undertake regional transportation planning found population-

⁶¹See U.S. Advisory Commission on Intergovernmental Relations, *MPO Capacity: Improving the Capacity of Metropolitan Planning Organizations to Help Implement National Transportation Policies*, A-130 (Washington, D.C.: U.S. GPO, May 1995), 34, 40-41 (discussion of prevalence of weighted voting among a sample of MPOs); National Association of Regional Councils, (NARC), *Regional Council Representation and Voting: A Guide to Issues and Alternatives* (Washington, D.C.: NARC, March 1979) (discussion of policy issues and court decisions relevant to regional council voting and representation).

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weighted voting in 18 MPOs in 10 states and the District of Columbia.⁶² MPOs are often part of regional planning commissions or councils of governments, thereby following the voting practices of those organizations.

The drafting of a weighted or proportional voting procedure will be unique to the individual state or region. Consequently, the model legislation below does not endorse a specific approach and only directs the regional agency in its bylaws to provide for an alternate voting system. Examples of such bylaws are discussed in a Note at the end of this Chapter.

6-103 Voting; Provision for Proportional Voting

- (1) Each [representative of a governmental unit or agency *or* representative of a member local government] shall be entitled to 1 vote in the governing body of the [regional planning agency], except as provided in paragraph (2) below.
- (2) The [agreement establishing *or* bylaws of] the [regional planning agency] shall provide for an alternate weighted voting procedure based on population that [any representative of a governmental unit or agency *or* any representative of a member local government *or* 2 or more representatives of member local governments] may call into effect.

6-104 Chair; Other Officers and Committees; Frequency of Meetings; Reports of Committees

- (1) Each [regional planning agency] shall elect its own chair, may elect an executive committee, and may create and fill such offices as it determines to be necessary.
- (2) The [agency] may create and appoint advisory committees whose membership may consist of individuals whose experience, training, or interest in a program, activity, or plan may qualify them to lend valuable assistance to the [agency]. Members of such advisory committees shall receive no compensation for their services but may be reimbursed for actual expenses incurred in the performance of their duties.
- (3) The [agency] may authorize the executive committee to act on its behalf in all matters, including the approval of contracts, pursuant to rules adopted by it, except that the executive committee shall not adopt rules, appoint, evaluate, or terminate an executive director, adopt an annual budget and work program, approve the initiation of a lawsuit, adopt regional plans, create advisory committees or appoint members to them, or elect members of the executive committee.

⁶²Seth Benjamin, John Kincaid, and Bruce D. McDowell, "MPOs and Weighted Voting," *Intergovernmental Perspective* 20, no. 2 (Spring 1994): 31. The states are Arizona, California, Colorado, Delaware, Michigan, Missouri, North Carolina, Ohio, Tennessee, and Washington.

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- (4) The [agency] shall meet at least [4] times each year.
 - (5) All actions of committees shall be reported in writing to the [agency] members no later than the next [agency] meeting or within [30] days from the date of the action, whichever is earlier. The [agency] may provide a procedure to ratify committee actions by a vote of the representatives.
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Commentary: Rule-Making Authority

The legislation should give the regional planning agency the authority to adopt rules. Such rules would ordinarily deal with routine matters, such as a quorum, call of meetings, order of business, and parliamentary procedure. However, as a regional planning agency's responsibilities grow and its tasks become more complex, a more formal rule-making authority may become necessary. For example, if the regional agency regulates developments of regional impact, then it would need to adopt substantive rules for that purpose, much like state environmental protection agencies. The model legislation provides two alternatives to address each of these situations.

6-105 Rule-Making Authority (Two Alternatives)

Alternative 1 – Simple Rule-Making Authority

- (1) The [regional planning agency] shall adopt rules for the transaction of business.

[or]

- (1) The [regional planning agency] shall have the authority to adopt rules concerning any matter within its jurisdiction, provided, however, that no rule shall be adopted until the [agency] has held a public hearing on the proposed rule.
 - (2) No rule shall become effective until it has been adopted by the affirmative vote of not less than the majority of the entire membership of the [regional planning agency] who are entitled to vote.
 - (3) All rules adopted by the [regional planning agency] shall be public records.
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- (4) The [regional planning agency] shall keep a record of its resolutions, minutes of meetings, transactions, findings, and determinations, which record shall be public record.

Alternative 2 – Detailed Rule-Making Authority

- (1) The [regional planning agency] shall have the authority to prepare and adopt rules concerning any matter within its jurisdiction.
- (2) No rule shall be adopted until the [regional planning agency] holds a public hearing on the proposed rule, publishes a notice of proposed rule making in a newspaper of general circulation in the region at least [30] days in advance of the public hearing, and provides notice of proposed rule making to the chief executive officer of each local government, special district, and other organized taxing districts or political subdivisions located wholly or partly in the region.
- (3) The notice of proposed rule making shall:
 - (a) contain a statement as to the substance of the proposed rule;
 - (b) specify the officer(s) or employee(s) of the [regional planning agency] from whom additional information may be obtained;
 - (c) specify a time and place where the proposed rule may be inspected before the hearing; and
 - (d) specify the date, time, and place of the public hearing, and the method for presentation of views and comments.
- (4) The [regional planning agency] shall afford any interested person the opportunity to submit written and oral comments in the record of the hearing on the proposed rule.
- (5) *[Use same language as Alternative 1, Paragraph (2).]*
- (6) *[Use same language as Alternative 1, Paragraph (3).]*
- (7) *[Use same language as Alternative 1, Paragraph (4).]*

6-106 Appointment and Responsibilities of Executive Director; Contracts, Purchases, and Leases

- (1) The [regional planning agency] shall appoint an executive director, who shall select, hire, evaluate, discipline, and terminate employees pursuant to rules adopted by the [agency], be responsible for the day-to-day work of the [agency], and manage and supervise employees and experts and consultants hired by contract, except for attorneys retained to provide independent legal counsel and for certified public accountants retained to conduct independent audits. The executive director shall serve at the pleasure of the [agency].

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- (2) The [agency] may hire by contract experts and consultants for part-time or full-time service as may be necessary to fulfill its responsibilities.
 - (3) The [agency] may purchase, lease, or otherwise provide for supplies, materials, equipment, and facilities as it deems necessary and appropriate in the manner provided in rules adopted by the [agency].
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Commentary: Powers and Duties of a Regional Planning Agency

More than the organizational form, the powers and duties assigned to a regional planning agency will determine its ultimate role. Drafters would be best advised to concentrate their initial energies on defining these powers and duties before moving on to structure.

There are four categories of powers and duties: (1) planning, information-gathering, and forecasting; (2) administration, education, and training; (3) implementation; and (4) service provision. The exact mix of powers and duties of a regional planning agency will depend on the degree to which the state legislature and the local governments want an activist agency with strong authority to coordinate and implement its plans as well as provide direct service.

6-107 Powers and Duties of a [Regional Planning Agency]

A [regional planning agency] shall have the following powers and duties necessary to carry out the purposes and provisions of this Act, including, but not limited to:

- (1) Planning. The [regional planning agency] shall:
 - (a) prepare and adopt plans for the region pursuant to Sections [6-201 to 6-203 and 6-301 to 6-304];
 - (b) coordinate its planning activities with the planning activities of state agencies, local governments, special districts, and private and civic organizations in the region;
 - (c) provide, upon request, technical assistance to local governments, special districts, and other governmental units in the region, including assistance in developing local comprehensive and other plans and implementing measures as well as in planning for natural disasters and post-disaster redevelopment;

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- (d) cooperate with and assist units of the federal government in the execution of their planning function to coordinate their planning activities with the plans for the region as described in Sections [6-201 to 6-203];
 - (e) conduct, as necessary, special studies and undertake research;
 - (f) participate in interstate, regional, and national planning programs that are relevant to the region; and
 - (g) review local comprehensive and other plans for consistency with the regional comprehensive plan and other regional plans pursuant to Section [6-401];
 - (h) gather, tabulate, analyze, and periodically publish information and reports on the location and pace of development throughout the region, including, but not limited to population, housing, economic, and building permit data, and cooperate with the [state planning agency] in this duty so as to minimize duplication;
 - (i) assess and report on, as necessary, the region's risk from natural hazards, including potential vulnerability of the region's buildings, structures, infrastructure, and health and human services to such hazards, and the implications of those risks to regional and local planning;
 - (j) serve, in cooperation with the [state planning agency], as the regional clearinghouse agency responsible for coordinating data collection and data dissemination among the state, the private sector, local governments, and special districts;
 - (k) maintain, as necessary, a computerized geographic information system or support, as necessary, local governments and special districts, in this duty;
 - (l) cooperate with the Bureau of the Census and other federal agencies to improve access to statistical productions, data, and information available from the federal government;
 - (m) prepare, at least twice in each decade, a [20]-year population forecast in [5]-year intervals for the region and its local governments, and cooperate with the [state planning office] in this duty so as to minimize duplication; and
 - (n) maintain a current inventory of local comprehensive plans, zoning ordinances, subdivision regulations, historic preservation and design review ordinances, and other land development regulations for all local governments in the region.
- (2) Administration, education, and training. The [regional planning agency] shall:

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- (a) administer federal and state grant-in-aid programs and other sources of revenue delegated or assigned to the [regional planning agency] by statute, executive order, or administrative rule;
 - (b) coordinate regional programs with the federal government;
 - (c) engage in a program of public information and communication regarding its activities;
 - (d) establish and maintain a regional program to ensure widespread public participation in its planning programs;
 - (e) have the power to contract with, as necessary, private or nonprofit organizations for assistance in building consensus in connection with any activity undertaken by the [regional planning agency];
 - (f) provide, as desired by its members, education and training programs in planning, public administration, and related topics to employees of local governments and special districts and to elected and appointed officials and cooperate with the [state planning agency] in the provision of such programs;
 - (g) have the power to sue and be sued;
 - (h) have the power to retain, employ, and remove employees, consultants, agents, and attorneys, consistent with its adopted administrative, personnel, and budgetary procedures;
 - (i) prepare and adopt an annual operating and capital expenditure budget and work program and have the power to expend such budgeted monies;
 - (j) have the power to apply for and receive state, federal, and private grants and loans;
 - (k) have the power to adopt rules pursuant to Section [6-105];
 - (l) have the power to lease and purchase real property; and
 - (m) prepare a biennial report, pursuant to Section [6-108] below.
- (3) Implementation. The [regional planning agency] shall:
- [(a) review, [and] comment on, [and] [certify] local plans pursuant to Sections [6-302 and 6-401];]
 - [(b) review and comment on proposed state plans pursuant to Sections [6-302 and 6-401];]

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- [(c) nominate properties as areas of critical state concern pursuant to Section [5-204];]
- [(d) enter into regional planning and coordination agreements pursuant to Section [6-402];]
- [(e) convene parties to formulate urban services agreements pursuant to Section [6-403];]
- [(f) participate in the development of regional impact review (DRI) process pursuant to Section [5-301 *et seq.*];]
- [(g) establish, by rule pursuant to Section [6-105], a process by which any individual or organization may obtain an opinion from the [regional planning agency] clarifying the application of any goal, policy, or guideline in the regional comprehensive plan or any regional functional plan, except that the [agency] shall not issue an opinion regarding any petition that seeks either to validate or invalidate a specific code, ordinance, administrative rule, regulation, or other instrument of plan implementation;
- [(h) review proposals for the formation of special districts that would operate within its boundaries and, within [30] days, submit a report on the areawide significance of the proposed formation to the referring local government(s);]
- [(i) review and approve any plans of special districts operating within its boundaries that have an areawide impact [pursuant to Section [6-401]],⁶³]
- [(j) review and comment upon all applications submitted by state agencies, local governments, special districts, and private nonprofit organizations within its boundaries for a loan or grant from a federal department or agency for programs and purposes required by federal law or regulation as to whether the application is consistent with its adopted regional comprehensive plan and any adopted regional functional plan pursuant to Section [6-604(3)];]
- [(k) review any major capital facilities projects proposed by any state, agency, local government, or special district to be located within the region's boundaries pursuant to Section [6-401];]
- [(l) administer dispute resolution and conflict resolution programs; and]
- [(m) have the powers of a local planning commission where the local government, by mutual agreement, transferred or delegated to the [regional planning agency] all or

⁶³This function, as it applies to projects of a special district, may not be necessary if a development of regional impact review (DRI) process is in place in the region that addresses capital projects.

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part of the functions, powers, or duties that the local planning commission may perform.]

(4) Service Provision. The [regional planning agency] may:

- ◆ The service provision powers and duties in paragraph (4) of this Section are appropriate only if the regional planning agency has expressly been created to provide services as well as engage in regional planning. Service activities have been traditionally carried out by councils of governments or regional agencies created under joint powers agreements. Through such agreements, the authority of the participating local governments is delegated to a public agency created under the agreement.⁶⁴

- (a) act as the administrator of a joint exercise of powers agreement entered into pursuant to [the state statute authorizing interlocal contracts or agreements] if requested by the parties to the agreement;

[or]

- (a) exercise any powers that are exercised, or capable of being exercised by, its member governments and desirable for dealing with problems of mutual concern to the extent that such powers are specifically delegated to it by resolution of the governing board of each of the member governments which are affected thereby;
- (b) perform any regional function or activity upon the affirmative vote of a majority of the member local governments, [exclusive of appointees of the governor].⁶⁵ The governments must represent at least [60] percent of the region's population, as determined by a formula specified in the [bylaws or agreement establishing the agency]. To finance the function or activity, the [agency] may impose user charges and issue and sell revenue bonds in accordance with procedures prescribed in [insert appropriate state statutory citation], and may accept grants from federal, state, and local governments;
- (c) perform, by contract, the purchasing of supplies, services, materials, and equipment on behalf of any [governmental unit] participating in the [agency] or on behalf of any other political subdivision; and

⁶⁴See, e.g., Cal. Gov't. Code, §6500 *et seq.* (1995) (joint powers agreements); and N.C.G.S., §160A-460 *et seq.* (1995) (interlocal agreements).

⁶⁵Where the regional planning agency's board consists of representatives of local government and appointees of the governor, the governor's appointees would not participate in the vote because the issue of service provision is a matter of local, rather than state, concern.

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- ◆ Service activities are carried out for state governments by councils of governments or regional agencies, and increasingly, for private and civic organizations, such as providing secretariats for regional economic development alliances, regional leadership training programs, and regional leadership forums.
 - (d) promote cooperative arrangements among its members, and between its members and other agencies of local or state governments (whether or not located within the state), and the federal government.

6-108 Biennial Report

- (1) Within [6] months of the end of the fiscal year of each even-numbered year, the executive director of the [regional planning agency] shall prepare a biennial report to the agency's members. The report shall discuss, for the 2 previous years, the [agency]'s activities in preparing and implementing regional plans, describe other activities, provide such other information that may be relevant to the [agency]'s duties and functions, and present the [agency]'s financial statements.⁶⁶
- (2) The executive director shall send the biennial report to all member governmental units of the [regional planning agency] and to the [state planning agency], and shall make the report available to the public. Copies shall be deposited in the state library and shall be sent to all public libraries in the region that serve as depositories for state documents.

PLAN PREPARATION

Commentary: Regional Comprehensive Plan

One of the main purposes of regional planning agencies is to prepare and adopt a regional comprehensive plan that is intended to address facilities or resources that affect more than one jurisdiction. It is to provide a framework or, in the words of one early planner, a “skeleton” for local comprehensive planning.⁶⁷ Consequently, a regional comprehensive plan should not have the same level of detail as a local plan. Indeed, it is probably undesirable for a regional comprehensive plan

⁶⁶Audited financial statements are typically available several months after the end of a fiscal year.

⁶⁷Thomas Adams, *Outline of Town and City Planning* (New York, N.Y.: Russell Sage Foundation, 1935), 295.

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to incorporate all local plans, including detailed land use, unless that detail is somehow necessary to carry out the plan's purposes.⁶⁸

Legislation describing a regional comprehensive plan may be of two types:

1. A broadly drafted description written to enable the regional planning agency to undertake any type of regional planning desired by its members and to respond to various federal and state programs calling for such planning. Such a description of a regional plan is appropriate when the state simply wants to authorize regional planning that is to be advisory. Alternative 1, below, is an example of such legislation.
2. A more tightly drafted description with specific components, and perhaps even formats, to ensure that certain goals and policies are addressed by the regional planning process. This approach is preferable when the regional comprehensive plan is intended to be used in connection with a vertically and horizontally integrated state/regional/local planning system, in which various levels of government adjust their planning to coordinate with and account for plans of another governmental level. Alternative 2, below, is a more focused and directive example and defines the plan's substantive contents as well as its relationships with the adopted plans of other governmental units.

6-201 Preparation of Regional Comprehensive Plan (Two Alternatives)

Alternative 1 – Regional Comprehensive Plan as an Advisory Document

- (1) A [regional planning agency] shall, with the involvement of the region's local governments, special districts, and citizens, prepare and adopt, and may, from time to time, amend a regional comprehensive plan.
- (2) The purpose of the regional comprehensive plan is to guide the coordinated, orderly, and harmonious development of the region and to advise the [regional planning agency], the region's local governments, and special districts in the performance of their functions and duties as to extra-jurisdictional and regional interests and issues.
- (3) In preparing the regional comprehensive plan, the [regional planning agency] shall undertake supporting studies that are relevant to topical areas included in the plan. In undertaking these studies, the [regional planning agency] may use studies conducted by others. The supporting studies shall concern the future growth of the region, including, but not limited to:

⁶⁸An example would be if the regional comprehensive plan called for high-density development around transit stops and the plan map showed detailed land-use concepts for all such areas.

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- (a) population and population distribution of the region and local governments within the region, which may include projections and analyses by age, education level, income, employment, or other appropriate characteristics;
 - (b) natural resources, which may include air, water, open spaces, scenic corridors and viewsheds, forests, soils, rivers and other waters, shorelines, fisheries, wildlife, and minerals;
 - (c) the economy of the region, which may include amount, type, general location, and distribution of commerce and industry within the region, the location of regional employment centers, and trends and projections of economic activity;
 - (d) amount, type, quality, affordability, and geographic distribution of housing among local governments in the region;
 - (e) general location and extent of existing or currently planned major transportation facilities of all modes, and utility, educational, recreational, cultural, and other facilities of statewide or regional significance;
 - (f) geology, ecology, and other physical factors of the region, including land areas in the region subject to natural hazards;
 - (g) the identification of features of significant statewide or regional architectural, scenic, cultural, historical, or archaeological interest;
 - (h) amount, type, location, and quality of agricultural lands; and
 - (i) amount, type, and general location of industrial, commercial, residential, and other land uses.
- (4) In preparing the regional comprehensive plan, the [regional planning agency] shall take into account adopted plans of state, regional, and other agencies (including special districts), and of local governments within the region.
- (5) The regional comprehensive plan may consist of text, maps, plats, graphs, and charts that shall show the [regional planning agency]'s goals, policies, guidelines, and recommendations to guide the physical development of the region. It may include, but shall not be limited to:
- (a) the general location, character, and extent of main highways and expressways, bridges, and viaducts; parks; parkways; recreation areas; sites for public buildings, structures, and other public places and areas; airports; waterways; routes or sites for public transit, including multi-modal facilities; and main and interceptor sewers, water conduits, and other public utilities, whether privately or publicly owned;

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- (b) the general location of land areas subject to natural hazards or containing historic or scenic resources;
- (c) areas for industrial, commercial, residential, agricultural, and other land uses; and
- (d) a long-range program for implementing the plan's recommendations, including estimates of costs, identification of responsibilities by local governments or other governmental agencies, proposals for legislation, and other relevant measures.

Alternative 2 – Regional Comprehensive Plan as a Document to Integrate State, Regional, and Local Interests

- (1) The [regional planning agency] shall, with the involvement of the region's local governments, special districts, and citizens, prepare and adopt, and update and amend, at least every [5 or 10] years, a regional comprehensive plan. The regional comprehensive plan shall be consistent with the state comprehensive plan, the state land development plan [and the state biodiversity conservation plan].
- (2) The purposes of the regional comprehensive plan are to:
 - (a) provide a mechanism by which the goals, policies, and guidelines in the state [*name of plan*] are interpreted and applied to the region and its local governments;
 - (b) provide a coordinating regional framework for local comprehensive planning and planning by special districts in the region;
 - (c) take into account adopted plans of local government to the extent that they affect state, extra-jurisdictional, or regional interests; [and]
 - (d) provide a unified physical design for the development of the region[. or ;]
- ◆ The following provisions, from Paragraphs (2)(e) to (2)(n), are optional as they contain statements regarding desired regional development form, or particular interests to be addressed or protected. Such statements may instead be addressed in the goals and policies of the regional comprehensive plan itself.
 - [(e) encourage a pattern of compact and contiguous growth to be guided into urban and rural growth centers [designated in accordance with the goals, policies, and guidelines in the state land development plan];]
 - [(f) direct growth to where infrastructure capacity is available or committed to be available in the future;]

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- [(g) support development patterns that discourage long-distance, single-occupant automobile commuting and encourage transit or other nonautomobile-oriented transportation;]
 - [(h) ensure the availability of housing with a range of types and affordability to accommodate persons and families of all income levels and in locations that are convenient to employment and quality public and private facilities;]
 - [(i) promote the development of new employment in areas that are convenient to existing housing and public transportation facilities;]
 - [(j) protect agricultural lands;]
 - [(k) conserve and manage natural resources, living and non-living, and the mineral resources base;]
 - [(l) conserve features of significant statewide or regional architectural, scenic, cultural, historical, or archaeological interest;]
 - [(m) ensure the adequate provision of employment opportunities and the economic health of the region; and]
 - [(n) protect life and property from the effects of natural hazards and disasters.]
- (3) In preparing the regional comprehensive plan, the [regional planning agency] shall undertake supporting studies that are relevant to topical areas included in the plan. In undertaking these studies, the [regional planning agency] may use studies conducted by others. The supporting studies shall concern the future growth of the region, including, but not limited to:
- ◆ Include language from Alternative 1, Section (3), but substitute the following for subparagraphs (a), (c), and (i):
 - (a) population and population distribution of the region and local governments within the region, which may include analyses by age, household size, education level, income, employment, or other appropriate characteristics, and which shall include [20]-year projections by [5]-year increments;
...
 - (c) the economy of the region, which may include amount, type, general location, and distribution of commerce and industry within the region, the location of regional employment centers, and which shall include analyses of trends and projections of economic activity;
...

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- (i) the amount, type, intensity or density, and general location within the region of various types of land uses and [20]-year projections of land uses for the region and for local governments located in the region by [5]-year increments. Such forecasts of land uses shall be divided into categories of intensity and net density, and shall be allocated, as appropriate, to urban growth areas as defined in Section [6-402(2)(a)].
- (4) In preparing the regional comprehensive plan and any amendments to it, the [regional planning agency] shall take account of and shall seek to harmonize the needs of the region as a whole, the adopted comprehensive plans of local governments, adopted functional plans of other governmental agencies in the region, and the adopted plans of the state.
- (5) The regional comprehensive plan shall provide for, address, and include, but need not be limited to the following:
 - (a) a statement of the economic, demographic, and related assumptions used and alternative assumptions considered and rejected in the preparation of the regional comprehensive plan;
 - (b) a statement of the relationship of the regional comprehensive plan to the state [*insert name of plan*] and to adopted comprehensive plans of local governments in the region;
 - (c) a statement, with supporting analysis, of regional goals, policies, and guidelines for the following:
 1. urbanization and management of the urban growth area;
 2. housing, including minimum net housing densities;
 3. transportation for all modes;
 4. regional public facilities, utilities, and services, excluding transportation;
 5. conservation and protection of the region's critical natural (both living and non-living), historic, and scenic resources;
 6. agriculture;
 7. economic development;
 8. natural hazards and disasters, including measures or proposals to mitigate the effects of natural hazards and disasters;
 9. human and social services; and

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10. any other goals, policies, and guidelines deemed appropriate and important by the [regional planning agency].
- (d) an identification, with supporting analysis, of lands within the region that may be appropriate for nomination as areas of critical state concern pursuant to Section [5-204];
- [(e) a regional fair-share allocation plan as described in Section [4-208.8, *Alternative 1B*];]
- (f) a statement describing [a hierarchy of] urban and rural growth centers in the region;
- (g) a regional comprehensive plan map that shows:
 1. urban growth area boundaries as defined in Section [6-402(2)(b)] for the region to permit the urbanization of the region at appropriate minimum land-use net densities and intensities [as specified in the state land development plan] for a period of not less than [20] years and to provide for urban services as defined in Section [6-402(2)(c)];
 2. existing and proposed transportation and other public facilities and utilities of extra-jurisdictional or regionwide significance;
 3. areas within the region that may be appropriate for nomination as areas of critical state concern pursuant to Section [5-204];
 4. areas within the region subject to natural hazards;
 5. [a hierarchy of] urban and rural growth centers; and
 6. any other matters of regional significance that can be graphically represented.
- (h) a long-range program of implementation for the regional comprehensive plan that includes:
 1. a [20]-year schedule of proposed transportation and other public facilities and utilities of extra-jurisdictional or regionwide significance. The schedule shall include a description of the proposed public facility or utility, an identification of the governmental unit to be responsible for the facility or utility, the year(s) the facility or utility is proposed for construction or installation, an estimate of costs, and sources of public and private revenue for covering such costs;

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2. proposed development criteria to be incorporated into plans of local governments and special districts and performance standards to measure the achievement of the regional comprehensive plan by local governments and special districts;
 3. a statement of the criteria and procedures that the [regional planning agency] will use in monitoring and evaluating the implementation of the plan by local governments, special districts, and the state;
 4. a statement of measures describing the ways in which state and/or local programs may best be coordinated to promote the goals and policies of the regional comprehensive plan;
 - [5. proposals for model ordinances and agreements that may be enacted by local governments and special districts; and]
 - [6. recommendations for further legislation at the state or local levels as may be necessary to fully implement the regional comprehensive plan.]
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Commentary: Urban Growth Areas

Urban growth areas are a regional land-use planning tool used to influence the spatial structure or pattern of development within a region and communities within it. The *Legislative Guidebook* introduces the concept of an urban growth area boundary in Section 6-201, Alternative 2.. In addition this Chapter contains an extensive research note on the mechanics of urban growth area boundaries and regional planning. The note also discusses the manner by which land-use needs may be projected and areas for future urban growth may be selected. Finally, the materials in this Section require the adoption of a land market monitoring system, including an ongoing process to evaluate amendments to the urban growth area. These topics are discussed in Section 7-204.1, Land Market Monitoring System.

WHAT IS THE PURPOSE OF URBAN GROWTH AREAS AND WHO HAS THEM?

Urban growth areas are devices to achieve or ensure urban containment by promoting compact and contiguous development patterns. These are patterns that can be efficiently served by public services and that preserve open space, agricultural land, and environmentally sensitive areas that may not be suitable for intensive development. Several states now either require or authorize urban growth area planning in various ways.

Oregon. Oregon's statewide planning program requires all cities in the state to establish in their local comprehensive plans urban growth boundaries to "identify and separate urbanizable land from rural land" for a 20-year planning period. The boundaries are drawn and amended based on a series

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of factors in the state's adopted planning goals that relate to urbanization.⁶⁹ The state's housing goals require that buildable lands – lands in urban and urbanizable areas that are suitable, available, and necessary for residential use – must be inventoried. Local plans “shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.”⁷⁰

Washington. In Washington, all counties that are either required or choose to plan under the state statutes (the Growth Management Act) must designate urban growth areas within their comprehensive plans.⁷¹ Under the statute, an urban growth area is one “within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included in an urban growth area. An urban growth area may include more than a single city. . . .”⁷² Like Oregon, the Washington statute requires that the growth area include densities and land areas sufficient to accommodate urban growth for the succeeding 20-year period.

Maine. Maine requires local comprehensive plans to identify both growth areas (“those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years”) and rural areas (“those areas where protection should be provided for agricultural, forest, open space, and scenic lands within the municipality”).⁷³ The statute requires each municipality to establish for the growth areas standards and timely permitting procedures and to ensure that needed public services are available.

Minnesota. Minnesota, in its voluntary “Community-Based Planning” statute, authorizes the designation of urban growth areas in a city or county comprehensive plan. The statute describes an urban growth area as “the identified area around an urban area within which there is a sufficient supply of developable land for at least a prospective 20-year period, based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified areas.”

⁶⁹Department of Land Conservation and Development (DLCD), *Oregon's Statewide Planning Goals & Guidelines* (Salem, Ore.: DLCD, 1995), 21 (Goal 14: Urbanization).

⁷⁰*Id.*, 17 (Goal 10: Housing).

⁷¹Wash. Rev. Code §§36.70A.106 (1) and 36.70A.040 (1998).

⁷²*Id.*, §36.70A.106(1).

⁷³Maine Stat. Art. 30A, §4326.3A(1) - (2) (1998). The statute provides that a municipality “is not required to identify growth areas for residential growth if it demonstrates that is not possible to accommodate future residential growth in these areas because of severe physical limitations, including, without limitation, the lack of adequate water supply and sewage disposal services, very shallow soils or limitations imposed by protected natural resources; or it demonstrates that the municipality has experience minimal or no residential development over the past decade and that this condition is expected to continue over the 10-year planning period.” *Id.*

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⁷⁴ The statute requires that, after an urban growth area has been identified in a city or county plan, the city must initiate a negotiation process, in coordination with the county, that leads to “an orderly annexation agreement with the townships containing the affected unincorporated lands located within the identified urban growth area.”⁷⁵

Maryland. In 1997, Maryland passed a “Smart Growth” act⁷⁶ aimed at directing new development into “priority funding areas” that are automatically designated in the statute or may be designated by a county at its own initiative. The county-designated areas must meet specified use, water and sewer service, and residential density criteria. Under the statute, the state will give priority in funding projects with state money in these growth areas as well as existing municipalities and industrial areas. Beginning October 1, 1998, the state is prohibited from funding “growth-related” projects not located in these priority growth areas. State funding is also restricted for projects in communities without sewer systems and in rural villages. The intention is, of course, to channel state monies into areas that are suited for growth and limit development in rural areas by not extending sewers or making transportation improvements that would spur growth. In this way, conversion of rural and agricultural lands to urban uses is slowed, or at least actively discouraged through state policy.

In contrast to the other statutes, the Maryland program is incentive-based. The statute does not restrict the location of private sector or county development, only commitment of state funds. However, because it deals with minimum density requirements and public water and sewer service to support development, it is a form of urban growth area planning.

Tennessee. In 1998, Tennessee enacted a statute whose purpose is to create a “comprehensive growth policy for the state” that incorporates the designation of urban growth boundaries for municipalities and planned growth areas for unincorporated areas.⁷⁷ The statute establishes in each county a coordinating committee consisting of representatives of the county, municipalities, utilities, boards of education, and chamber of commerce.⁷⁸ In the alternative, if the population of the largest municipality in the county is at least 60 percent of the county population, the coordinating committee may be the county planning commission and the local planning commission of that municipality.⁷⁹ Each committee must develop a growth plan for its county by January 1, 2000, including, with recommendations from the municipalities, urban growth boundaries for each

⁷⁴Minn. Stat. §462.353, subdiv. 18 (1997).

⁷⁵Id., §462.3535, subdiv. 5.

⁷⁶The “Smart Growth” legislation is S.B. 389 (1997 Regular Session). Language relating to “priority funding areas” appears in Md. Ann. Code, Art. – State Finance and Procurement, subtit. B and 7-314(o) (1997).

⁷⁷State of Tennessee, 100th Gen’l Assembly, Senate Bill 3278 (passed 5-1-98, approved 5-19-98), Sec. 3.

⁷⁸Id., Sec. 5(a)(1).

⁷⁹Id., Sec. 5(a)(9).

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municipality in the county.⁸⁰ The proposed growth plan must first undergo at least two public hearings after due notice, and does not take effect unless ratified by the county legislative body and by the individual municipalities.⁸¹

If the county or any municipality rejects the proposed growth plan, it must state its reasons for rejection and the coordinating committee must reconsider its decision.⁸² If a county or municipality declares that there is an impasse in the ratification process, the Secretary of State appoints a three-member dispute resolution panel.⁸³ The panel can impose a growth plan if its recommended solutions are rejected, and the cost of the dispute resolution process can be assessed against a party acting in bad faith or putting forth frivolous objections.⁸⁴ Judicial review of the urban growth boundary by the county chancery court is available to any landowner or resident of the county, as well as to the county and municipalities, and the review is a de novo review in which the challenger must show by preponderance that the growth plan is “arbitrary, capricious, illegal, or ... characterized by an abuse of official discretion.”⁸⁵ All such reviews commenced against the same proposed growth plan must be consolidated in a single civil action.⁸⁶

Once a growth plan is ratified, all land use decisions must be consistent with the plan.⁸⁷ A growth plan stays in effect for up to three years, absent a showing of “extraordinary circumstances.”⁸⁸ The plan must indicate urban growth boundaries, planned growth areas, and rural areas.⁸⁹ An urban growth boundary must encompass the contiguous territory of a municipality, an area sufficient for 20 years of predicted growth, and territory in which the municipality is better able to provide urban services than other municipalities.⁹⁰ It must be based on population growth

⁸⁰Id., Sec. 5(a)(4).

⁸¹Id., Sec. 5(a)(3), (4).

⁸²Id., Sec. 5(b)(1).

⁸³Id., Sec. 5(b)(1), (2).

⁸⁴Id., Sec. 5(b)(3), (4).

⁸⁵Id., Sec. 6(a), (b).

⁸⁶Id., Sec. 6(b).

⁸⁷Id., Sec. 8.

⁸⁸Id., Sec. 5(e)(1).

⁸⁹Id., Sec. 5(a)(2).

⁹⁰Id., Sec. 7(a)(1).

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projections, a projection of infrastructure costs, and a land-demand projection.⁹¹ At least two public hearings must be held before an urban growth boundary can be ratified.⁹² The county can create planned growth areas, which are similar to areas inside urban growth boundaries and are subject to the same requirements, except that planned growth areas must be outside any urban growth boundary and any municipality.⁹³ Any territory that is not within an urban growth boundary or planned growth area can be designated as a rural area, which is intended to be used for the next 20 years for agriculture, forestry, wildlife preservation, recreation, or other low-density uses.⁹⁴

After a municipality has an urban growth boundary in place, it can annex only territory within that boundary, but the municipality is expressly authorized to amend the UGB, under the same procedure as the enactment of a growth plan, to include the territory that is to be annexed.⁹⁵ New municipalities can be created only in planned growth areas, and the county must approve the municipal borders and urban growth boundary before any vote on incorporation can be held.⁹⁶

Other. In addition to these state-authorized efforts there have been local initiatives of various types in California, Colorado, and Florida.⁹⁷ Since 1959, the City of Boulder, Colorado, has had some form of urban service area – lines containing the limits of various types of urban services that take into account the desired service level and available funding. Boulder’s program, administered jointly with Boulder County, has incorporated annual limitations on the number of building permits issued for residential use, a technique intended to control its rate of growth.⁹⁸ Boulder’s planning director, Peter Pollock, AICP, has described the urban service area concept there as defining “that part of the Boulder planning area where the City of Boulder already provides a full range of urban services or will provide services upon annexation. Land outside of the service area boundary

⁹¹Id., Sec. 7(a)(2).

⁹²Id., Sec. 7(a)(3).

⁹³Id., Sec. 7(b).

⁹⁴Id., Sec. 7(c).

⁹⁵Id., Sec. 12(c), (d).

⁹⁶Id., Sec. 13(a)(1), (d)(1).

⁹⁷Arthur C. Nelson and James B. Duncan, with Clancy J. Mullen and Kirk R. Bishop, *Growth Management Principles and Practices* (Chicago: APA Planners Press, 1995), 77-80 (describing urban service area in Sacramento County California, urban service boundary in San Jose, California, urban growth area in Larimer County, Colo., and urban growth boundary in Dade (Miami) and Orange County (Orlando), Fla.); see also Jim Sayer, “Bound for Success: California Communities and Urban Growth Boundaries,” *Lusk Review* 4, No. 1 (Spring/Summer 1998): 54-63 (discussion of council-initiated and citizen-initiated urban growth boundaries in California and criticizing lack of statewide framework for undertaking them).

⁹⁸For a discussion of the Boulder program, see Eric Damian Kelly, *Managing Community Growth, Policies, Techniques, and Impacts* (Westport, Conn.: Praeger, 1993), 54-64.

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remains in the county at rural densities until the city and county joint agree to bring the property into the service. Land can also be ‘moved’ out of the service area.”⁹⁹

Pollock also observes that, because of the tremendous job growth in the City of Boulder itself, and its limitations on residential growth, there has been a spillover housing demand in small outlying communities. The residential growth has occurred in communities without jobs and sales tax base. “This regional imbalance between jobs and housing has created tremendous problems with traffic congestion, lack of affordable housing, and school facility needs.”¹⁰⁰ Pollock concedes that the Boulder system has its pluses and minuses:

On the good side, it has allowed Boulder to determine its own ideal city size, with consideration of how much congestion is tolerated, what sized city leads to a high quality of life, and what is sustainable over time. On the bad side, it holds Boulder back from capturing some of the benefits that additional development could bring, such as more affordable housing and less dependence on the automobile by building mixed use, transit-oriented neighborhood centers.¹⁰¹

Lexington-Fayette County, Kentucky, has employed the urban service area concept in its planning since 1958, the result of an agreement between the city and the county. The effort was the first in the nation. According to its 1988 plan, the urban service area concept “delineates the location of urban growth by dividing the county into an Urban Service Area where development is encouraged and a Rural Service Area where urban oriented activities are not permitted.”¹⁰² The program was “designed to protect productive agricultural and horse farm lands, while also encouraging efficient development patterns.”¹⁰³ The urban service area is to be reviewed every five years. The most recent update was concluded in 1996 and resulted in the addition of approximately 5,330 acres immediately adjacent to the existing urban service area.¹⁰⁴

WHAT ARE THE PROS AND CONS OF URBAN GROWTH AREAS?

⁹⁹Peter Pollock, “Controlling Sprawl in Boulder: Benefits and Pitfalls,” *Land Lines: Newsletter of the Lincoln Institute of Land Policy* (Cambridge, Mass., January 1998): 1-3, at 2.

¹⁰⁰*Id.*, 2.

¹⁰¹*Id.*, 2-3.

¹⁰²*The 1988 Comprehensive Plan: Growth Planning System*, as adopted by the Lexington-Fayette County Planning Commission (Lexington, Ky.: Lexington-Fayette Urban County Government, May 25, 1988), 3.

¹⁰³Nelson and Duncan, *Growth Management Principles and Practices*, 80.

¹⁰⁴Siemon, Larsen, and Marsh, *Expansion Area Master Plan*, adopted by Lexington-Fayette County Urban County Planning Commission (Lexington, Ky.: Lexington-Fayette Urban County Government, Department of Housing and Community Development, July 18, 1996), 7.

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Like any device that affects the supply of a good or service in the face of a shifting demand, urban growth areas (UGAs) have impacts, either intended or unanticipated. Table 6-1 summarizes a number of pros and cons of urban growth areas drawn from a review of the literature on urban growth areas. The impacts, of course, will depend on the political leadership of the area or region, the nature and robustness of the regional economy, the quality and rigor of the underlying planning, the regularity with which the urban growth areas are revisited, and the relations among local units of government in the relevant region as well as those with the state.

There have been a number of studies of the impact of urban growth areas in Oregon and Washington.¹⁰⁵ A 1991 study of four areas in Oregon (Bend, Brookings, Medford, and Portland) conducted for the Oregon Department of Land Conservation and Development found that urban growth could be largely contained within urban growth boundaries (UGBs). In the Portland area only 5 percent of residential growth occurred outside the UGB. But in the Bend area 57 percent of the residential development occurred outside the UGB, in the Brookings area 37 percent, and in the Medford area 24 percent. Indicators of livability – although the study admitted they were incomplete – suggested some areas for concern: traffic congestion and real housing prices increased in all case study areas, but air quality improved. Though parkland was being acquired in some case study areas, the amount of developed parkland was probably not increasing as fast as population, the study showed. Moreover, fast-growing communities, the study found, appeared to be able to fund their sewer and water needs, but not their street and road needs. Actual developed densities within the UGBs varied considerably among the four case studies. The report recommended an extensive series of measures to improve the operation of UGBs, including minimum densities (in addition to maximums) in residential zones, strict schedules and unambiguous standards for UGB expansion, state programs to assist with the funding of local public services, and the prohibition or limitation of non-farm dwellings in exclusive farm or forest zones.¹⁰⁶

A 1991 study conducted by 1000 Friends of Oregon and the Home Builders Association of Metropolitan Portland examined the implementation of Oregon’s statewide housing goal in the Portland area through the metropolitan housing rule for the Portland area, adopted by the Oregon

¹⁰⁵For a digest of studies that look at the impact of growth controls generally, including urban growth areas, on property values, see Gerrit Knaap, “The Determinants of Residential Property Values: Implications for Metropolitan Planning,” *Journal of Planning Literature* 12, no. 3 (February 1998): 267-282, esp. 275-276. Concludes Professor Knaap: “In sum, research on the effects of growth controls within metropolitan areas has consistently shown that growth controls increase property values in growth control communities. Whether such effects reflect the creation of amenity creation or constraints in supply, however, remains uncertain. Most likely, growth controls within metropolitan areas shift the demand for land from one part of the metropolitan area to another. In some places, local governments have been able to mitigate the effects of growth controls on housing affordability by adopting affordable housing programs. Research on the effects of growth controls on housing affordability has produced conflicting results. . .” *Id.*, at 276.

¹⁰⁶ECO Northwest with David J. Newton Associates and MLP Associates, *Urban Growth Management: Case Studies Report*, prepared for Oregon Department of Land Conservation and Development (DLCD) (Salem, Or.: DLCD, January 1991), v-vii. See also Robert L. Liberty, “Oregon’s Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States,” *Environmental Law Reporter News and Analysis* XXII, no. 5 (June 1992): 10367-10391, esp. 10375 to 10379 (evaluation of success of Oregon’s urban containment policy).

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Land Conservation and Development Commission (Ore. Admin. Rules §660-07-000 *et seq.*). That rule requires local plans to provide adequate land zoned for needed housing types and to ensure that land within the metropolitan Portland UGB accommodates the region's population growth. Under the rule, each of the region's three counties and 24 cities must develop plans that allow for a new construction mix that includes at least 50 percent multifamily or attached single-family units and that allow development to occur at certain minimum target housing densities. This ranges from 10 dwelling units per buildable acre in the City of Portland to 6 to 8 dwelling units per buildable acre in suburban areas. The study found that the rule resulted in increasing the availability of affordable housing and making homeownership more attainable by diversifying the stock of single-family housing sites to include smaller lots. Further, the rule's implementation reduced the amount of land consumed by development during the 1985-89 study period. Had planned residential development occurred in the urban growth area at lower pre-housing-rule densities, it would have consumed an additional 1,500 acres of planned residential land – an area over two square miles in size. “Due to this savings in land area,” the study concluded, “an additional 15,000 housing units can be built within the UGB. In short, combining Portland urban growth boundary *and* ‘pro-housing’ policies helps manage growth and promote affordable housing development.”¹⁰⁷

A comprehensive 1992 assessment of the Oregon program by Professors Gerrit Knaap and Arthur C. Nelson concluded that: (1) UGBs facilitated intergovernmental coordination among cities, counties, and state agencies; (2) UGBs affected current land values (generally higher inside the boundary than outside) and allocation; and (3) UGBs had limited ability to manage urban growth (Knaap and Nelson noted that while development at urban densities had been contained within UGBs, development densities within them were lower than planned and development densities outside UGBs were higher than planned).¹⁰⁸

A 1996 study by the Portland State University Center for Urban Studies, commissioned by Don Morrisette, an elected member of the Portland Metro council and a home builder, examined the impact of the Portland UGB on the metropolitan housing market as part of the discussion over expanding the UGB. The report was intended to influence the amount of land added to the growth area. The report also critiqued the Metro's analyses and models supporting different growth scenarios and suggested a series of different assumptions. The report pointed out that housing prices in the Portland area were rising more rapidly than the rest of the nation. It noted that the median price home had risen from being 19 percent below the average of U.S. Metro areas in 1985 to 6 percent greater by 1994. The average price home in the Portland area rose from being 22 percent cheaper than the U.S. average to 7 percent greater by 1995. Over the period 1990-95, the report

¹⁰⁷1000 Friends of Oregon and the Home Builders Association of Metropolitan Portland, *Managing Growth to Promote Affordable Housing: Revisiting Oregon's Goal 10, Executive Summary* (Portland, Ore.: 1000 Friends of Oregon, September 1991), 10 (emphasis in original).

¹⁰⁸Gerrit Knaap and Arthur C. Nelson, *The Regulated Landscape: Lessons on State Land Use Planning from Oregon* (Cambridge, Mass.: Lincoln Institute of Land Policy, 1992), 66-68. See generally Chapter 2, Urban Growth Boundaries and Urban Growth Management, for a summary of relevant studies on urban growth areas conducted in Oregon.

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said, the average home price had risen by 33 percent in real terms and the median price home had risen by 30 percent in real terms over the period between 1990 and 1994.¹⁰⁹ However, the report, which did not contain any examination of the Portland economy during the analysis period, cautioned:

Admittedly, there are many causes of housing price inflation: the Urban Growth Boundary's impact *is only one cause* [emphasis supplied]. Land is only one of many inputs in the construction of a home. Other factors that can explain some of the housing price growth over the past 5-6 years include employment growth, real wage growth, net migration to the region, declining interest rates, and declining property tax rates (relative to local government service levels). Yet the ability of housing supply to moderate these demand pressures is affected by the growth boundary and the supply of land.¹¹⁰

A 1997 study by the Washington Center for Real Estate Research of Washington State University examined the impact of urban growth area designation on Clark County, Washington, immediately to the north of Portland, Oregon, across the Columbia River and considered part of the Portland-Vancouver, Washington, consolidated metropolitan area. Vancouver and other incorporated areas of Clark County established final urban growth areas in 1994. The study theorized that there would be significant and positive residential lot price effects resulting from the implementation of the Washington Growth Management Act (GMA) of 1990 and that the price effects would occur both inside and outside the urban growth areas.

The study stated that previous research had demonstrated that once urban growth controls are applied uniformly across a jurisdiction, residential lot and house prices experience significant inflation:

The study found an overall lot price increase of 35.5 percent after implementation of urban growth areas. Lot prices increased slightly higher within the urban growth area (38.7 percent) compared to all lots examined. A significant outside/post urban growth area lot price increase was not substantiated by the data. In this final case prices seemed higher, but a limited number of observations limited the statistical robustness of the model.¹¹¹

The study observed:

¹⁰⁹Portland State University Center for Urban Studies, *Impact of the Urban Growth Boundary on Metropolitan Housing Markets* (Portland, Ore.: The Center, May 10, 1996), 2-3 to 2-4. For a discussion of the debate over expanding the urban growth boundary in the Portland area, see Alan Ehrenhalt, "The Great Wall of Portland" *Governing* 10, no. 8 (May 1997): 20-24.

¹¹⁰Id.

¹¹¹Washington Center for Real Estate Research, Washington State University, *Urban Growth Areas and Lot Price: Clark County, Washington, Executive Summary* (April 1997), <http://cbeunix.cbe.wsu.edu/~wcrer/rsrchgc.htm>.

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One implication of this study is that implementation of the GMA, particularly the component of [the] GMA which establishes urban growth areas as part of local comprehensive plans, may be incompatible with one goal of the law, "[to] encourage the availability of affordable housing to all economic segments of the population . . ." Based on an average lot price of \$43,282 prior to establishment of the final UGA in Clark County, the county-wide increase of 35.5% in price after UGA implementation translated into a \$15,365 increase in the price of a typical lot. This increase in price is sufficient to deny access to new housing to many consumers. In addition, as lot prices increase builders often feel compelled to build more costly homes on the lots to keep the land component of total housing cost within normal ranges. Further, as higher lot prices impact the overall local housing economy, the price of existing homes may also increase.¹¹²

¹¹²Id.

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Table 6-1: Some Pros and Cons of Urban Growth Areas

<i>Pro</i>	<i>Con</i>
Can ensure more compact development. May encourage retention and reuse of existing buildings, including those of historic significance.	Requires increases in housing density and land-use intensity that may meet with homeowner opposition.
Reflects preference for urban-type, higher density development. Reduces “urban sprawl.”	May run counter to consumer preference for low-density development. There is no agreement on what “urban sprawl” is.
Can ensure housing diversity through careful forecasting and land allocation to meet market demand in the planning period.	Increases in land and housing costs may occur if land supply and market changes are not monitored
If drawn on a metropolitan basis, can spread benefits (and costs) of growth among central cities, inner ring of mature suburbs, developing suburbs, and rural areas beyond.	If drawn for either a single or scattered group of local governments, growth may be shifted from one part of one community in the urban area to another community or may bypass the enacting community and jump outward to the next tier of vacant, but developable land.
Can limit the conversion of prime agricultural land outside urban growth boundary to urban use.	Requires strong controls or incentives on use of agricultural land outside urban growth boundary that may engender political opposition by farming interests.
Can protect agricultural land from conflicts with urban uses – e.g., hog feed lots next to subdivisions.	There may be no market for agricultural products. Land that is restricted to agricultural use may only have value for development. Urban growth may “leak” into rural areas because no other economically viable options are available.
Establishes predictability as to where urbanization will occur in advance, directing private investment.	May prompt political opposition from communities that want little or no growth.
Matches urbanization with new infrastructure and promotes reuse of existing infrastructure. Facilitates mass transit because of higher densities.	Requires local government to invest in infrastructure even if ability to generate additional taxes is limited. Absent changes in taxation authority or state grants, will necessitate impact fees and user charges.
Appropriate for metropolitan areas and jurisdictions within them.	May be burdensome for small freestanding communities not subject to metropolitan influence. Complexity of system to maintain urban growth areas may not yield commensurate benefits in absence of metropolitan growth pressure.

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THE MODEL STATUTE

The following Section provides optional statutory language to further guide the process of designation of urban growth areas as part of the preparation of a regional (or county) comprehensive plan, and that would apply to municipalities (as well as other local governments, if applicable) in the regional or county planning agency's jurisdiction. It is based in part on the Washington state statute and administrative rules.¹¹³

The model language places the overall responsibility for the designation at the regional or county level; if there is no regional planning agency in place then one will need to be created or the authority will instead rest with the county planning agency. Whether or not urban growth areas are allowed by a state is a policy judgment on behalf of the state legislature and/or the local governments in a region.¹¹⁴ **There are clearly costs and benefits to the use of urban growth areas and there can be a fair degree of debate on whether they should be employed and in what manner. However, if they are, the *Guidebook* advocates having one agency with a multi-jurisdictional perspective overseeing the designation process, rather than a collection of local governments individually determining growth boundaries on an ad hoc, uncoordinated basis. Developing an overall regional growth strategy first will enable each local government to develop a growth strategy that is consistent with the regional strategy as well as with the growth strategies of neighboring jurisdictions.**

Absent a regional (or county) framework, the consequence of either a single or scattered group of local governments initiating urban growth areas on their own will likely result in a situation where:

- (a) growth is simply shifted away from one part of one community in the urban area to another community in the area; or
- (b) growth may bypass the enacting community and jump outward to the next tier of vacant, but developable land.

Moreover, a regional urban growth area framework spreads the benefits of the system among the central cities, the inner ring of developed and mature suburbs, developing suburbs, and the rural areas beyond. Under this optional Section:

1. If a state has adopted a state land development plan that provides standards and criteria for the establishment of urban growth area boundaries (see Section 4-204), the regional (or county) comprehensive plan must incorporate those standards and criteria. If not, then the

¹¹³Wash. Rev. Code §37.7A.110 (1997); Wash. Admin. Code §365-194-335 (1993).

¹¹⁴An argument against urban growth areas may be that they would not be particularly workable in rural areas with diffuse population and no real urban centers. A state legislature may wish to adapt this model by authorizing urban growth areas only in counties that are part of metropolitan areas, but not in nonmetropolitan counties.

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regional or county planning agency is free to develop its own boundaries, consistent with the other requirements of the statute.

2. The regional or county planning agency must consult with municipalities and other local governments in its planning jurisdiction concerning the designation of urban growth areas. Each municipality must be included in an urban growth area, but such an area may also include more than one municipality. This is intended to ensure that urban development is supported by the kind of urban services typically provided by a municipal government.

The type of local government that would have a role in the designation process will vary by state. For example, in parts of the country, where towns or townships have authority over land use in unincorporated areas but lack the full range of municipal powers, they would be participants in the discussion over the location and extent of urban growth areas. In some states, such as Virginia and Maryland, counties have powers that are similar to or identical with municipalities. The Section that follows would need to be modified to reflect the role of counties in such situations.

3. If an agreement is reached with a municipality concerning the location and size of the urban growth area, then the regional or county planning agency incorporates or adopts that designated urban growth area into its regional or county comprehensive plan. The municipality must also incorporate the urban growth area into its own local comprehensive plan.
4. If no agreement is reached, the regional or county planning agency must state in writing its determination regarding the designation of the urban growth area. The municipality may then appeal that determination to a state comprehensive plan appeals board (see Sections 7-402.1 and 7-402.3) or other entity. However, the municipality must first follow any procedures for dispute resolution under rules promulgated by the state planning agency.
5. After the urban growth areas have been designated and incorporated into regional and local plans, the regional or county planning agency, municipalities, and other affected local governments **must then:**
 - (a) **establish and maintain a land market monitoring system (see Section 7-204.1, Land Market Monitoring System, in Chapter 7); and**
 - (b) **periodically review – at least on a five-year basis (and more often as necessary) – the growth area and consider amendments to such a growth area to ensure there is an adequate supply of buildable land.**

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The urban growth area designation process, it must be emphasized, is not to be employed by an individual municipality (or other local government) without the framework provided by a regional or county planning agency as described below. **THIS IS IMPORTANT: The provisions of Section 6-201.1 for establishing urban growth areas are only to be used if these conditions are met.**

In addition to criteria for the general designation and priority of designation of urban growth areas, Section 6-201.1 includes language authorizing the establishment of an urban growth area in unincorporated territory to allow for the establishment of a new fully contained community that will be supported by urban services.

6-201.1 Urban Growth Areas [Optional]

- (1) A [regional *or* county planning agency] [shall *or* may] designate urban growth areas pursuant to this Section, Section [6-201, *Alternative 2*], Section [7-402.2], and Section [7-204.2].
- (2) The purposes of an urban growth area are to:
 - (a) provide a mechanism whereby a [regional *or* county] planning agency and the local governments within its planning jurisdiction may coordinate the location and extent of urban growth;
 - (b) ensure a pattern of compact and contiguous urban growth;¹¹⁵
 - (c) encourage preservation and adaptive reuse of historic buildings;
 - (d) protect agricultural and forest lands, scenic areas, and other natural resources, living and non-living, from urban development;
 - (e) identify where urban services are being or will be provided;
 - (f) direct growth to where infrastructure capacity is available or committed to be available in the future;
 - (g) ensure that an adequate supply of buildable land for at least [20] years is provided; and

¹¹⁵For an analysis of the impact that Oregon's statewide land-use planning system has had on development patterns, see Jerry Weitz and Terry Moore, "Development Inside Urban Growth Boundaries: Oregon's Evidence of Contiguous Urban Form," *Journal of the American Planning Association* 64, no. 4 (Autumn 1998): 424-440.

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- (h) ensure a variety of affordable housing types at varying densities;
- (3) Each municipality shall be included within an urban growth area. However, an urban growth area may contain more than one municipality, as determined by the [regional *or* county planning agency] based on factors affecting the municipalities in common that may include, but shall not be limited to, [any goals, policies, and guidelines in the state land development plan pursuant to Section [4-204(5)(c).] topography, rates of growth, degree of existing urbanization, and sharing of and/or efficiency in providing urban services.
- (4) An urban growth area may also include unincorporated territory, but only if such territory:
 - (a) already has urban growth located on it;
 - (b) will be, or may easily be, provided with urban services [under an urban service agreement pursuant to Section [6-403]]; or
 - (c) has been or is proposed to be designated as a new fully contained community pursuant to paragraph (8) below.
- (5) In designating any urban growth areas, each [regional *or* county planning agency] shall use the following general procedure, but may adopt additional procedural rules to ensure and enhance a cooperative effort among local governments within its planning jurisdiction, provided that such additional rules do not conflict with this procedure and any rules adopted by the [state planning agency]:
 - (a) The [regional *or* county planning agency] shall consult with all municipalities [and other local governments *such as boroughs, towns, or townships*] located within its planning jurisdiction concerning the designation of urban growth areas and shall ensure early and continuous public participation in the designation process pursuant to Section [6-301] and Section [7-401], respectively;
 - (b) Each municipality shall propose to the [regional *or* county planning agency] the designation of an urban growth area that shall include the area within its municipal boundary and that may include additional unincorporated areas contiguous to its municipal boundary;¹¹⁶
 - (c) The [regional *or* county planning agency] shall attempt to reach agreement with each municipality located within its planning jurisdiction on the location and size of the urban growth area;

¹¹⁶The authority of a municipality to plan extraterritorially varies among the states. For example, a municipality may have the power to review and approve subdivisions within a certain radius of its boundaries for consistency with a thoroughfare plan and municipal engineering and design requirements.

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- (d) If an agreement is reached with a municipality, the [regional *or* county planning agency] shall incorporate and adopt that designated urban growth area into its [regional *or* county] comprehensive plan and shall delineate an urban growth boundary on the plan map pursuant to Section [6-201(5)(g)1; *Alternative 2*]. The municipality [as well as each local government included in a designated urban growth area] shall also incorporate and adopt the urban growth area into its own local comprehensive plan and shall delineate an urban growth boundary on the generalized composite comprehensive plan map pursuant to Section [7-201(8) above] and on the future land-use plan map pursuant to Section [7-204(6)(c)7] above.
 - (e) If the [regional *or* county planning agency] does not reach an agreement with a municipality within its planning jurisdiction on the designation of the urban growth area, the [regional *or* county planning agency] shall state in writing its determination regarding the designation of the urban growth area and the basis for that determination. The municipality may appeal the [regional *or* county] planning agency's determination to the [state comprehensive plan appeals board *or other entity*] pursuant to Section [7-402.3] below, provided however, that the municipality shall first follow any procedures for dispute resolution under any rules promulgated by the [state planning agency] pursuant to paragraph (10) below.
- (6) Any urban growth area established pursuant to this Section shall meet the following criteria:
- (a) The urban growth area(s) in a [region *or* county] shall contain land areas and minimum densities and intensities of land uses sufficient to accommodate [between [115] percent and [125] percent of] the urban growth that the [regional *or* county planning agency] has projected to occur in the [region *or* county] for the succeeding [20]-year period; and
- ◆ The numbers in brackets regarding the additional percentage of land areas that are necessary to accommodate urban growth are guidelines that are intended to ensure that there is a sufficient supply of vacant land inside the urban growth area boundary. The provision of additional land may thereby allow the efficient and competitive functioning of the real estate market and prevent landowners from monopolizing large parcels of vacant land, consequently driving up land prices. Depending on the type of system used to project urban growth and land supply needs, it may not be necessary to incorporate the bracketed percentages in the statute.
- (b) The urban growth area(s) shall contain those lands designated for land uses that are allocated to the urban growth area by the projections in the [regional *or* county] comprehensive plan pursuant to Section[[6-201(3)(i)]; *Alternative 2*]. The densities and intensities of those land uses shall be stated in the [regional *or* county] comprehensive plan pursuant to Sections [[6-201(5)(c) and (g)]; *Alternative 2*] [and shall be as specified in the state land development plan pursuant to Section [4-204(5)(c)]]].

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- (7) A [regional *or* county planning agency] shall observe the following sequence in designating land for urban growth in an urban growth area established pursuant to paragraph (6) above:
- (a) first, those land areas that are already characterized by urban growth and that have adequate existing urban services;
 - (b) second, those land areas primarily characterized by urban growth that are or will be served adequately by a combination of existing and future urban services provided by public or private entities [under an urban service agreement pursuant to Section [6-403]]; and
 - (c) third, those remaining land areas that are primarily vacant that will be served adequately by future urban services provided by public or private entities [under an urban service agreement pursuant to Section [6-403]].
- (8) In addition to following the sequence set forth in paragraph (7) above to designate land for urban growth, a [regional *or* county planning agency] may also, after consulting with municipalities and other local governments within its planning jurisdiction, establish by rule a process to designate an urban growth area in unincorporated territory in order to allow for the establishment of a new fully contained community, provided that the following criteria are satisfied:
- (a) the planning for such a community complies with all other requirements of this Act, including the establishment of minimum land-use densities and intensities;
 - (b) a mix of uses is provided for in order to offer jobs, housing (including affordable housing), and retailing to residents of the new community;
 - (c) the urban growth in such a fully contained community will be supported by urban services; and
 - [(d) *add other criteria, as desired*].¹¹⁷
- (9) The [regional *or* county planning agency] [,] [and] any municipality [, and any other applicable local government] that is included in a designated urban growth area shall:
- (a) establish and maintain a land market monitoring system pursuant to Section [7-204.1];¹¹⁸

¹¹⁷For example, the Washington state statutes provide “New fully contained communities may be approved outside established urban growth areas only if a county reserves a portion of the twenty year population projection and offsets the urban growth area accordingly.” Wash. Rev. Code. §36.70A.350(2) (1996).

¹¹⁸Section 7-204.1 describes a land market monitoring system and the procedures for reviewing the urban growth area and determining whether the growth area needs to be amended.

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- (b) evaluate the need to amend such urban growth area, the [regional *or* county] comprehensive plan, the local comprehensive plan, and the land development regulations of the affected local government:
 - 1. at least every [5] years; and/or
 - 2. when such urban growth area does not contain sufficient buildable lands to accommodate residential, commercial, and industrial needs for the next [20] years, as found pursuant to Section [7-204.1(5)].
- ◆ Subparagraph (b) requires that the urban growth area as well as the underlying comprehensive plans and local land development regulations be reevaluated at least every five years, and more often when the urban growth area has an insufficient supply of buildable lands to meet foreseeable needs.
 - (c) take other necessary implementing actions, including, but not limited to, restrictions on the provision of urban services, to ensure that urban growth occurs within the urban growth area.
- (10) Pursuant to Section [4-103], the [state planning agency] may adopt rules and, upon adopting rules, prepare and distribute guidelines in order to further implement this Section. These rules may include procedures for dispute resolution regarding the designation of urban growth areas.
- (11) The urban growth area shall be amended in the same manner as the original designation pursuant to this Section.
- (12) Pursuant to [Section 7-402.3], any municipality [or other local government] may appeal the written determination of a [regional or county planning agency] designating a proposed urban growth area under subparagraph (5)(e) above.

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Commentary: Preparation of Regional Functional Plans

Regional planning agencies may also prepare regional functional plans to cover topics like parks and open space, bikeways, water, sanitary sewerage and sewage treatment, water supply and distribution, solid waste, airports, libraries, communications, and other facilities. Rather than drafting legislation specific to each function, the approach taken below is to provide a generic statute for all types of functional plans. The model is based on Minn. Stat. Ann. §473.146, which describes policy plans for different functions overseen by the Metropolitan Council in the Twin Cities.

6-202 Preparation of Regional Functional Plans

- (1) The [regional planning agency] [shall *or* may], with the involvement of the region's local governments, special districts, relevant interested groups, and citizens, prepare and adopt, and update and amend at least every [5 *or* 10] years, regional functional plans for the following services and facilities [*list functional areas (e.g., water, sewer, transportation, housing, solid waste, open space and parks, historic preservation, and flood control)*], provided however that no such functional plan shall be adopted until the [regional planning agency] has first adopted a regional comprehensive plan. Such plans shall provide additional goals, policies, guidelines, and supporting analyses that detail, and that are consistent with, the adopted regional comprehensive plan.
- (2) Each functional plan shall include, to the extent appropriate for the services and facilities covered:
 - (a) a forecast of change for a [20]-year period in the need for the services and facilities for the region and by subareas of the region as a consequence of change in population, households, employment, development patterns, or other relevant factors;
 - (b) a statement, with supporting analysis, of issues, problems, needs, and opportunities with respect to the services and facilities covered;
 - (c) a statement of existing capacities, where appropriate, of the services or facilities, and a statement of the [regional planning agency]'s goals and policies with respect to the facilities and services that addresses the areas and populations to be served, the levels, distribution, and staging in time of services, and a general description of the facility systems required to support the services, and other similar matters;

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- (d) a map showing existing and future service areas for the services or facilities covered;
 - (e) an identification of providers, whether public or private, of the relevant services or facilities in the region;
 - (f) a statement of the fiscal implications of the functional plan, including existing and additional financial resources, if any, that may be required to effectuate the [regional planning agency]'s goals and policies. This may include amendments to a long-range program of implementation in the regional comprehensive plan [as required by [Section 6-201(5)(h)] above]; and
 - (g) a statement describing the consistency of the functional plan with other goals and policies contained in the adopted regional comprehensive plan and the other functional plans, including the location of service areas for existing and proposed public services and facilities in relation to urban growth areas.
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Commentary: Regional Housing Plan

The following Section describes the components of a regional housing plan that parallel the requirements of the state housing plan in Section 4-207 of the *Legislative Guidebook*. While the regional comprehensive plan, as described in Section 6-201 above, does call for studies of the “amount, quality, affordability, and geographic distribution of housing among local governments in the region,” (paragraph (3)(d)) and proposes the statement of regional goals, policies, and guidelines for “housing, including minimum net housing densities,” (paragraph (5)(c)(2) of Alternative 2) the housing plan proposed below is more specific. It emphasizes the forecasting of housing need for the region, especially affordable housing, and the preparation of a long-range program of implementation describing actions that various agencies can take to meet those housing needs. Like the state housing plan, the regional housing plan is intended to propose new programs or change existing programs related to housing and to stimulate or inspire other governmental agencies and nonprofit and for-profit agencies to address housing needs.

The regional housing plan may also be linked to the regional fair-share allocation plan described in Section 4-208.8, Alternative 1B, of the *Legislative Guidebook* as part of the Model Balanced and Affordable Housing Act.

6-203 Regional Housing Plan

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- (1) The [regional planning agency] [shall *or* may], with the involvement of the region's local governments, special districts, affected state agencies, home builders, developers, contractors, labor and other groups, nonprofit providers of housing, and citizens, prepare, adopt, review, and amend on a [5 *or* 10]-year basis a regional housing plan. The housing plan shall be consistent with the adopted regional comprehensive plan [and with the state housing plan].
 - (2) The purposes of the regional housing plan are to:
 - (a) document the needs for housing in the region, including affordable housing, and the extent to which private- and public-sector programs are meeting those needs;
 - (b) provide the framework for and facilitate planning for the housing needs of the region, including the need for affordable housing, especially as it relates to the location of such housing proximate to jobsites;
 - (c) identify barriers to the production of housing, including affordable housing, and
 - (d) develop sound strategies, programs, and other actions to address needs for housing, including affordable housing.
 - (3) In preparing the regional housing plan, the [regional planning agency] shall undertake supporting studies that are relevant to the topical areas included in the plan. In undertaking these studies, the [regional planning agency] may use studies conducted by others. The supporting studies shall include, but shall not be limited to, the following:
 - (a) an evaluation of and summary statistics on housing conditions for the region for all economic segments. The evaluation shall include the existing distribution of housing by type, size, gross rent, value, and, to the extent data are available, condition, the existing distribution of households by gross annual income and size, and the number of middle-, moderate-, and low-income households that pay more than [28] percent of their gross annual household income for owner-occupied housing and [30] percent of the gross annual household income for rental housing;
 - (b) a projection for each of the next [5] years of total housing needs, including needs for middle-, moderate-, and low-income and special needs housing in terms of units necessary to be built or rehabilitated within the region;
- ◆ Households most commonly identified as requiring “special needs” programs include the elderly, the physically and mentally disabled, single heads of household, large families, farm workers and migrant laborers, and the homeless.
- (c) an analysis of the capabilities, constraints, and degree of progress made by the public and private sectors in meeting the housing needs, including those for affordable housing and special needs housing, within the region; and

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- (d) an identification and comprehensive assessment of state and local regulatory barriers to affordable housing, including building, housing, zoning, subdivision, and related codes, and their administration.
- (4) The regional housing plan shall consist of the following:
- (a) a policy element that defines regional housing goals, policies, and guidelines, including numerical goals for each of the next [5] years for the production of housing units, both new and rehabilitated, for middle-, moderate-, and low-income households and special needs housing within the region. The policy element shall include summaries of supporting studies as identified in paragraph (3) above.
 - (b) amendments, as appropriate, to a long-range program of implementation in the regional comprehensive plan [as required by Section [6-201(5)(h)]] that describe actions that the state legislature, state agencies, the [regional planning agency], local governments, special districts, home builders, developers, nonprofit providers of housing, and others may take over the next [5] years to meet regional housing goals. Such amendments may include, but shall not be limited to, proposals for:
 - 1. financing for the acquisition, rehabilitation, preservation, or construction of affordable housing;
 - 2. use of publicly owned land and buildings as sites for low- and moderate-income housing;
 - 3. regulatory and administrative techniques to remove barriers to the development of affordable housing at all levels of government and to promote the location of such housing proximate to jobsites;
 - 4. use of federal funds and any state, local, or other resources available for affordable housing;
 - 5. stimulation of public- and private-sector cooperation in the development of affordable housing, and the creation of incentives for the private sector to construct or rehabilitate affordable housing;
 - 6. changes in state or local tax, infrastructure financing, and land-use policies, procedures, statutes and/or ordinances to encourage or support affordable housing. This may include the designation of a sufficient number of sites zoned at densities that may accommodate affordable housing at locations that are accessible to existing or proposed employment concentrations in the region;
 - 7. local opportunities for public housing resident management and ownership;

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8. expansion or rehabilitation of public infrastructure to support housing, especially affordable housing; and
9. a description of the means by which the [regional planning agency] will ensure that a variety of housing types, at appropriate locations with respect to existing and proposed jobsites, will be made available to accommodate low- and moderate-income households.

[(5) The regional housing plan [shall *or* may] include a regional fair-share allocation plan pursuant to Section [4-208.8, *see Alternative 1B*.]

Commentary: Preparation of Regional Transportation Plan

Federal involvement in regional transportation planning dates back to 1962 when Congress enacted the Federal Aid Highway Act¹¹⁹ that authorized such planning for metropolitan areas. In 1991, Congress passed the federal Intermodal Surface Transportation Efficiency Act (ISTEA), which changed the approach by which states and metropolitan areas plan for transportation needs. This was followed by the Transportation Equity Act for the 21st Century (TEA-21) in 1998, which revamped ISTEA.¹²⁰ These federal laws emphasize increasing spending on mass transit, improving the performance of the existing road network, mitigating congestion, and encouraging alternative forms of transportation, including bicycling and walking. They also stress designing highways that are sensitive to their context, designating and protecting scenic highways, and improving transportation through enhancements. They moved the focus from developing a transportation system based on moving vehicles from one place to another to a process to facilitate access for people and the movement of goods consistent with desired land-use patterns.

Under federal law, all urbanized areas over 50,000 population must have a metropolitan planning organization (MPO) to carry out the transportation planning process and prepare a long-range plan.¹²¹ The governor and the jurisdictions within metropolitan areas designate the organization and its boundaries. The MPO's boundaries are to encompass the urbanized area and the contiguous area to be developed within 20 years. For areas designated as nonattainment areas for ozone or carbon monoxide under the act, the boundaries of the metropolitan area must at least include the boundaries of the nonattainment area, but if the U.S. Environmental Protection Agency expands the

¹¹⁹P.L. 87-866.

¹²⁰The Federal Transportation Equity Act for the 21st Century can be found on the U.S. Department of Transportation's web site: www.dot.gov/tea21/legis.htm.

¹²¹23 U.S.C §§134(b), (g)(1), and (g)(2).

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nonattainment area, the MPO's jurisdiction may also expand as well, if the governor and MPO can agree on the boundary change.¹²² New MPOs, however, will address nonattainment areas as appropriate.

According to the U.S. Advisory Commission on Intergovernmental Relations (ACIR) (which no longer exists), there are 339 recognized MPOs responsible for the transportation planning required to keep regions eligible for federal highway, transit, and surface transportation funds. MPOs may be, as noted earlier, separate organizations from regional planning agencies. In the 1970s, about 75 percent of MPOs were staffed by metropolitan regional councils. That ratio is changing, and, according to ACIR, only about 44 percent are currently staffed by regional councils. Some are staffed by individual cities, counties, or city-county planning commissions, or they are independent entities having only MPO responsibilities.¹²³ Some regions have multiple MPOs, instead of a single MPO, which complicates the region-wide coordination of transportation planning.

The federal legislation requires that the MPO planning process consider projects and strategies that address seven factors listed in the statutes.¹²⁴ The projects in the transportation plan must be consistent with the state implementation plan for air quality. In addition, the planning for transportation improvements must be financially realistic. Projects that are listed in the transportation plan and the transportation improvement program (TIP) for each metropolitan area – a three-year schedule of projects that represents the MPO's priorities for federal projects – can be included “only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion . . .”¹²⁵ However, the financial plan for the transportation and TIP may include, for illustrative purpose only, additional projects that would be included for federal funding if reasonable additional resources were available.¹²⁶

Few states have complementary state statutes describing in specific terms the contents of regional transportation plans of the type contemplated by federal law. One exception is California, whose statutes, amended in 1993, define the contents of a regional transportation plan. This plan is to include: (1) a policy element, which considers important transportation issues and the desired short- and long-range transportation goals; (2) an action element, which describes the programs and actions necessary to implement the plan, assigns responsibilities to carry them out, and identifies programs

¹²²Id., §134(c).

¹²³U.S. Advisory Commission on Intergovernmental Relations, *MPO Capacity: Improving the Capacity of Metropolitan Planning Organizations to Help Implement National Transportation Policies*, A-130 (Washington, D.C.: U.S. GPO, May, 1995), 33-34.

¹²⁴23 U.S.C. §134(f). For an excellent discussion of how MPOs responded to the original ISTEA legislation, see Daniel Carlson, with Lisa Wormser and Cy Ulberg, *At Road's End: Transportation and Land Use Choices for Communities* (Washington, D.C.: Island Prerss, 1995).

¹²⁵23 U.S.C. §134(h)(3) (D).

¹²⁶23 U.S.C. §134(h)(30)(iv).

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designed to manage congestion; and (3) a financial element, which summarizes the cost of plan implementation, and compares these costs to a realistic projection of available revenues.¹²⁷

In a Growing SmartSM working paper,¹²⁸ Attorneys Robert H. Freilich and S. Mark White suggest four approaches at the state and (more important) the regional level for transportation planning.

1. **Status Quo (Demand Responsive).** This approach does not attempt to directly control land-use decisions, at least from a state or regional perspective. The location, magnitude, and timing of transportation improvements are directed primarily to areas of future expected high demand. In most areas, this means that new roadways are constructed in growing suburban areas, thereby encouraging development to move spatially outward and to deconcentrate.

2. **Congestion or Capacity Responsive.** This approach attempts to direct development away from areas of high congestion and into areas in which transportation improvements are underutilized. As with the demand-responsive regime, the result may be to force new development away from the urban core or developed areas, and towards areas in which sparse development patterns have resulted in high service levels.

3. **Mitigation Responsive.** This approach, favored by economists, requires those who place demands on the transportation network to assume the burden of addressing impacts through mitigation or monetary exactions. This approach was recently championed by economist Anthony Downs in *Stuck in Traffic*, in which he advocates congestion pricing (payment of user charges for the use of the transportation facility, especially when at its highest peak system usage), and is discussed in an APA PAS Report, *The Transportation/Land Use Connection*.¹²⁹

4. **Coordinated Transportation/Land-Use Planning.** This is the most proactive of the alternatives and involves the greatest degree of up-front planning. In essence, this approach identifies a desired urban form and desired transportation network, and attempts to strike a balance between the two. Transportation decisions are based on the effect of new capacity on the desired urban form, and the desired urban form is influenced by the availability of existing capacity and the ability or inclination to expand into new areas. They are also influenced by the mobility

¹²⁷Cal. Gov't. Code, §65081 (1995).

¹²⁸Robert Freilich and S. Mark White, "State and Regional Roles in Transportation and Land Use," in *Modernizing State Planning Statutes: The Growing SmartSM Working Papers, Vol. 1*, Planning Advisory Service Report Nos. 462/463 (Chicago: American Planning Association, March 1996), 127-131.

¹²⁹Anthony Downs, *Stuck in Traffic: Coping with Peak-Hour Traffic Congestion* (Washington, D.C. and Cambridge, Mass: The Brookings Institution and the Lincoln Institute of Land Policy, 1994), 129-169; and Terry Moore and Paul Thorsnes, *The Transportation/Land Use Connection*, Planning Advisory Service Report No. 448/449 (Chicago: American Planning Association, January 1994), Ch. 4.

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expectations and access needs of the traveling public, recognizing that capacity of physical facilities alone is not an adequate measure of transport supply.

The model legislation below is intended to parallel, but not duplicate in substantive terms, the requirements of ISTEA and its successor, TEA-21. Instead, it provides language that will enable the regional planning agency (if it is also the MPO) to address the four approaches described above. In particular, the model emphasizes the preparation of underlying studies about the supply of and demand for transportation that would support either the mitigation responsive or coordinated transportation/land-use approaches. The resulting transportation plan is also intended to mesh with an existing regional comprehensive plan. For example, the transportation improvement program requirement of federal legislation would be incorporated into the regional plan's implementation framework as a plan amendment.

6-204 Regional Transportation Plan

- (1) The [regional planning agency]¹³⁰ [shall *or* may], with the involvement of the region's local governments, special districts, affected state agencies, public and private providers of transportation, and citizens, prepare, adopt, review, and amend, on a [3- *or* 5-]year¹³¹ basis a regional transportation plan. The transportation plan shall be consistent with the adopted regional comprehensive plan [and with the state transportation plan].
- (2) The purposes of the regional transportation plan are to guide, balance, and coordinate transportation activities in the region, in conjunction with other related activities such as land-use planning and economic development, and to ensure that transportation planning addresses and maximizes the potential of all existing and developing transportation modes and facilitates the efficient movement of people and goods.
- (3) In preparing the regional transportation plan, the [regional planning agency] shall undertake supporting studies that are relevant to the topical areas included in the plan. In undertaking these studies, the [regional planning agency] may use studies conducted by others. The supporting studies shall include, but shall not be limited to, the following:

¹³⁰Here, it is assumed that the regional planning agency, or a committee of the regional planning agency, will be a metropolitan planning organization responsible under federal law for undertaking transportation planning.

¹³¹Federal regulations require that the transportation plan be "reviewed and updated at least triennially in nonattainment and maintenance areas [for air quality] and at least every five years in attainment areas to confirm its validity and its consistency with current and forecasted transportation and land-use conditions and trends and to extend the forecast period." 23 CFR §450.322(a).

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- (a) inventories of modal and multimodal transportation facilities and services in the region;
 - (b) forecasts and evaluations of population, employment, land use, and transportation, by mode, for a [20]-year period;
 - (c) identification and evaluation of transportation system alternatives with respect to intensity of use, public and private costs, impacts on economic development, land use, energy consumption, the environment (including air quality), and safety, and consistency with goals and policies identified in the regional comprehensive plan;
 - (d) identification and evaluation of the impact on the region of policies and programs that affect the supply of transportation or transportation congestion, as appropriate, including, but not limited to, addition of high occupancy vehicle lanes to existing roads, the construction of new roads with high occupancy vehicle lanes, building new transit systems or improving existing transit systems, improving traffic operations through signalization and other means, and removing traffic accidents rapidly from roadways;
 - (e) identification and evaluation of the impact on the region of policies and programs that affect the demand for transportation or transportation congestion, as appropriate, including, but not limited to, staggering work schedules, encouraging people to work at home, encouraging ridesharing, instituting peak-hour tolls on major thoroughfares or other congestion pricing measures, clustering high-density housing near transit station stops, concentrating employment in areas of new growth, imposing a tax on parking in areas of high parking demand, and increasing densities in transportation corridors; and
 - (f) any other studies that may be required by federal law or regulations.
- (4) The regional transportation plan shall consist of the following elements:
- (a) a policy element that defines regional transportation goals and policies. The policy element may address: coordination of transportation modes; the relationship of transportation to land use, economic development, the environment (including air quality), and energy consumption; the coordination of transportation among federal, state, regional, and local plans; transportation financing and pricing; transportation safety, and the equity of transportation services across the communities of the region.
 - (b) a system element in text and maps that proposes a coordinated and integrated transportation system for the region consisting of a multimodal network of facilities and services to be developed over a [20]-year period for air, rail, state and federal highways (including scenic highways), public transit, waterways, ports and waterborne transit, bicycle transportation, pedestrian walkways, and other modes to

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support the goals and policies identified in the policy element. The system element shall include summaries of supporting studies identified in paragraph (3) above, an identification of corridors (including scenic corridors) and transportation facilities of statewide, regional, or extra-jurisdictional significance, and statements of minimum levels of service that describe the performance for each mode in order to meet the goals and policies of the plan.

- (c) amendments, as appropriate, to a long-range program of implementation in the regional comprehensive plan [as required by Section [6-201(5)(h)]] that describe actions that the [regional planning agency], local governments, public and private providers of transportation, state agencies, and other affected agencies can take over the next [20] years to achieve regional transportation goals and policies. [Such amendments may be in a form or include contents to satisfy the requirements for a transportation improvement program as described in Section 134(h) of Title 23, United States Code.¹³²]

¹³²For an example of a state statute that defines a “congestion management program” to be prepared for every county that includes an urbanized area and subsequently to be incorporated into the regional agency’s transportation improvement program required under federal law, see Cal. Gov’t. Code, §65088 *et seq.* (1994).

CHAPTER 6

PROCEDURES FOR PLAN REVIEW AND ADOPTION

Commentary: Public Review and Hearings on Regional Plans (Two Alternatives)

The following alternative sections are a parallel to the procedures set forth in Section 4-209 for the adoption of state plans. They describe an informal workshop intended to alert the public at an early stage about how the regional planning agency intends to prepare a regional plan and engage their views as well as a more formal hearing at which members of the public comment on a draft plan proposed for adoption. Alternative 2 provides language that would permit the agency to give notice through a computer-accessible information network, such as the Internet or some other type of electronic bulletin board. It is conceivable that regional plans could be made available on such networks as a file for downloading and subsequent review by interested citizens.

There are many ways to obtain ongoing citizen participation as part of the preparation of regional plans.¹³³ The term “workshop,” in particular, should be construed broadly. A workshop could be a meeting of a small focus group intended to develop specific goals and policies or charettes to address the graphic presentation of a plan’s design recommendations. It could also be a “town hall” meeting that is broadcast on television throughout the region. The regional agency could employ a neutral facilitator to help participants identify problems and define potential solutions. Developments in computer technology and telecommunications make it possible to hold such meetings on-line or on interactive cable television, with the opportunity to express opinions on various alternatives. Public opinion polling and use of focus groups are other techniques that may be employed. However, particular approaches to citizen participation should be shaped not by legislation, but by the needs, issues, and political traditions of the region. The model provisions that follow simply provide a framework for what is to occur, but the specifics rely on the imagination of those engaged in the preparation of regional plans.

6-301 Workshops and Public Hearings (Two Alternatives)

¹³³For a discussion of citizen participation practices and techniques as applied to regional transportation planning see, e.g., Phil Braun, et al., *ISTEA Planner’s Workbook* (Washington, D.C.: Surface Transportation Policy Project, October 1994), Ch.1; *Community-Based Planning Under ISTEA* (Washington, D.C.: Bicycle Federation of America, 1993); see generally William R. Potapchuck, “New Approaches to Citizen Participation: Building Consent,” *National Civic Review* 80, no. 2 (Spring 1991): 158-168; Lenneal J. Henderson, “Metropolitan Governance: Citizen Participation in the Urban Federation,” *National Civic Review* 79, no. 2 (March-April 1990):105-117; Georgia A. Persons, “Defining the Public Interest: Citizen Participation in Metropolitan and State Policy Making,” *National Civic Review* 79, no. 2 (March-April 1990): 118-131.

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*Alternative 1 – Simple Procedure*¹³⁴

- (1) Before initiating work on the regional comprehensive plan, any regional functional plan, a regional housing plan, [a regional fair share allocation plan,] a regional transportation plan, or amendments to any plan, the [regional planning agency] shall publish notice. The agency may also hold workshops on the plan or amendment, provided that it publishes notice of the date, time, and place of the workshop at least [30] days in advance.
- (2) The [regional planning agency] shall hold a public hearing on a proposed regional comprehensive plan, any functional plan, or a proposed amendment to any plan at a date, time, and place in the region determined by the [agency]. Not less than [30] days before the hearing, the [regional planning agency] shall publish a notice stating the date, time, and place of the hearing, and the place where the proposed plan or amendment may be examined by any interested person prior to the hearing, and where copies of the proposed plan or amendment may be obtained or purchased. All notices shall be published in a newspaper or newspapers having general circulation in the region.
- (3) At the hearing, the [agency] shall permit interested persons to present their views orally or in writing on the proposed plan or amendment, and the hearing may be continued from time to time.
- (4) After the hearing, the [regional planning agency] may revise the proposed plan or amendment, giving appropriate consideration to all comments received.

*Alternative 2 – Detailed Procedure*¹³⁵

- (1) Within [90] days of initiating work on the regional comprehensive plan, any regional functional plan, a regional housing plan, [a regional fair share allocation plan,] a regional transportation plan, or on an amendment to any plan, the [regional planning agency] shall conduct at least [2] public information workshops or other type of public collaborative process within the region. The purposes of the workshops are to inform the public as to the process and schedule for preparing the plan or amendment and to solicit public comment and response on potential goals, policies, guidelines, priorities, design alternatives, problems, potential solutions, and implementation measures before a draft of the plan or amendment is completed. The [agency] shall give notice by publication in a newspaper that circulates in the area served by the workshop and may give notice, which may include a copy of the

¹³⁴This procedure is adapted from Minn. Stat. §473.146, Subd. 2 and 2a (1992) (hearings prior to adoption of policy plans for metropolitan agencies).

¹³⁵Parts of this section dealing with the form of the notice and submission of written and oral comments and recommendations have been adapted from the American Law Institute (ALI), *A Model Land Development Code* (Philadelphia, Pa.: ALI, 1976), §2-305.

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- draft plan or amendment, by publication on a computer-accessible information network, or by other appropriate means at least [30] days in advance of the workshop.
- (2) Upon completion of a preliminary draft of the plan or amendment, the [regional planning agency] shall conduct [not less than 2] public hearings on the plan or amendment at different locations in the region. The [agency] shall give notice by publication in a newspaper that circulates in the area served by the hearing and may give notice, which may include a copy of the draft plan or amendment, by publication on a computer-accessible information network or by other appropriate means at least [30] days in advance of the hearing.
 - (3) The notice of each workshop or public hearing shall:
 - (a) contain a statement of the substance of the workshop or hearing, and a description of the substance of the proposed plan or amendment;
 - (b) specify the officer(s) or employee(s) of the [agency] from whom additional information may be obtained;
 - (c) specify a time and place where the work program or draft plan or amendment may be inspected before the hearing; and
 - (d) specify the date, time, place, and method for presentation of views by interested persons.
 - (4) The [agency] shall provide notice to the chief executive officer of each special district, local government in the area served by the workshop or hearing, the [state planning agency], [other state agencies whose functions are related to the purpose of the workshop or hearing], [alternatively: the director of the state agency designated by the governor to serve as the distributor of regional plans and amendments to all state agencies], and to any other interested person who, in writing, requests to be provided notice of the workshop or hearing.
 - (5) The [agency] shall afford any interested person the opportunity to submit written recommendations and comments in the record of the hearing, copies of which shall be kept on file and made available for public inspection.
 - (6) The [agency] may establish additional procedures for the receipt of oral statements.
 - (7) The [agency] may prepare written responses to any written recommendations and comments submitted by any interested party. These may be included in the final plan or amendment document.
 - (8) Taking full account of the written and oral testimony presented at the public hearings, the [agency] shall make revisions in the preliminary draft plan or amendment as it deems necessary and shall prepare and distribute to all local governments and special districts in the region, [state planning agency], [other state agencies or the director of the state agency

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designated by the governor to serve as the distributor of regional plans and amendments to all state agencies], and other interested persons a final draft plan or amendment to be considered for adoption. The [regional planning agency] may modify or amend the final draft plan or amendment before adopting it.

6-302 [Resolving Potential Conflicts Among State, Regional, and Local Plans—See Sections 7-402.1 to 7-402.5]

Commentary: Adoption of Regional Plans

In contrast to adoption of state plans, there are few, if any, realistic institutional alternatives for the adoption of regional plans. The provision below is similar to Alternative 3 in Section 4-210 of the *Legislative Guidebook*. The language requires the full regional planning agency to act on the plan, not a committee of the agency.¹³⁶ Adoption of a regional plan is a significant action that should not be delegated to a subordinate group, such as an executive committee, which does not fully represent the regional interests in the agency. Further, the chair, and not another officer of the agency, must preside at the meeting when the plan is adopted. This is to ensure continuity in the discussion of the plan and its amendments, and fix responsibility for orchestrating that discussion on one public official. This language also requires action on the plan within a certain period after the final public hearing by the regional planning agency. This places an obligation on the regional planning agency to make a decision on the plan. If it decides to delay the decision, amend the final draft plan, and then vote on it, it must do so within that time period, or it must hold another public hearing.

It should be noted that if there are strong disagreements over the adoption of a regional plan by the local governments and other entities affected by that plan, a regional planning agency has the authority to administer dispute resolution and conflict resolution programs under Section 6-107(3)(1) and to adopt rules governing such programs pursuant to Section 6-105.

The model also provides for the adoption of functional plans, such as transportation plans, that have been approved by another regional agency, such as a special district or metropolitan transportation commission. While another organization may approve the functional plan, the plan, under this model, will not become effective for the region until adopted by the regional planning agency.

¹³⁶For an interesting decision in which an executive committee of a regional planning commission, but not the full membership, adopted a regional land-use plan contrary to the requirements of a state statute, and, as a consequence, an appeals court found the plan had no effect, see *State ex rel Barbuto v. Ohio Edison Co.*, 16 Oh. App. 2d. 55, 241 N.E.2d 783 (1968), aff'd 16 O.S.2d. 54, 242 N.E.2d 562 (1968). The court held that the regional planning commission could not delegate the responsibility of officially adopting a plan.

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6-303 Adoption of Regional Plans

- (1) A regional comprehensive plan, any regional functional plan, a regional housing plan, [a regional fair share allocation plan,] a regional transportation plan, or an amendment to any plan shall become effective when adopted by the affirmative votes of not less than the majority of the entire membership of the [regional planning agency] [no later than [30] days] after the final public hearing on the plan or amendment by the [agency] at any meeting of the [agency] at which the chair is present. The action taken shall be recorded on the adopted plan by the identifying signature of the chair.
- (2) Where a regional transportation plan, other functional plan, or amendment thereto affecting the region has been approved by a public agency other than the [regional planning agency], it shall not become effective for the region until the [regional planning agency]'s membership adopts the plan or amendment in the manner provided in this Section.

6-304 Certification of Regional Plan; Availability for Purchase

- (1) Upon the adoption or amendment of any regional plan pursuant to Section [6-303], the [chief executive officer] of the [regional planning agency] shall, within [90] days, certify copies of the plan or amendment to:
 - (a) the director of each relevant state agency [*alternatively*: the director of state agency designated by the governor to serve as the distributor of regional plans and amendments to all state agencies];
 - (b) the director of each adjoining [regional planning agency];
 - (c) the chief executive officer of each local government, special district, and other organized taxing districts or political subdivisions located wholly or partially in the region;
 - (d) the director of each local government's planning department or, where there is no local planning department, the chair of the local planning commission in the region;
 - (e) each member of the state legislature, U.S. House of Representatives, and U.S. Senate representing all or a portion of the region;
 - (f) the state library and all public libraries in the region that serve as depositories of state documents; and
 - (g) other interested parties [including federal agencies as necessary].

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- (2) The [chief executive officer] shall make the plan or amendment available for purchase by the public at actual cost or a lesser amount.

6-305 Adoption of Plans by Local Governments, Special Districts, and Other Governments

- (1) Any governmental unit in the region, including local governments, special districts, school districts, and other governmental authorities, to which the [regional planning agency] has certified a copy of a regional plan, may adopt so much of the plan, part, amendment, or addition as falls within the jurisdiction of the governmental unit or, in the case of a local government, as part of the local government's comprehensive or functional plan, and, when so adopted, it shall have the same force and effect as though made and prepared, as well as adopted, by the governmental unit.

RELATIONSHIPS AND AGREEMENTS WITH OTHER UNITS OF GOVERNMENT

Commentary: Reviewing Plans and Major Capital Facility Projects

When a regional plan is adopted, ideally there should be a mechanism to ensure consistency of action by various units of government and agencies and private entities operating within the region. One alternative is a process of review and approval of local plans administered by the state planning agency, in which consistency with state and regional plans and plans of adjoining governmental units would be addressed.¹³⁷ This alternative approach is addressed in Sections 7-402.1 to 7-402.2 of the *Legislative Guidebook*.

Another alternative is a process in which the regional planning agency reviews plans of local governmental units, special districts, and state agencies operating in the region. Under this approach, the regional agency, after adopting a regional comprehensive plan or any other regional functional plan, would then adopt rules for review of local or other plans affecting the region for consistency with regional plans. The model statute, below, follows this approach, but leaves the specific details to the regional agency since those details will reflect the individual issues and concerns in the region.

The regional agency is authorized to comment on the plans and recommend revisions to them. Local governments, special districts, and state agencies would be required to consider the

¹³⁷See Nancy E. Stroud, "State Review and Certification of Local Plans," in *Modernizing State Planning Statutes: The Growing SmartSM Working Papers, Vol. 1.*, Planning Advisory Service Report No. 462/463 (Chicago: American Planning Association, March 1996), 85-88.

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recommendations and make a decision on whether to modify the plan to include these proposed revisions before adopting the plan. The model legislation permits the local government, special district, or state agency to reject all or part of the recommended revisions, provided it does so by a two-thirds vote that applies to each disputed revision, and, in the case of state agencies, only with the written concurrence of the governor. If the local government, special district, or agency rejects the revisions recommended by the regional planning agency, it must indicate in a statement to be included in the plan its reasons for the rejection. The comments and recommended revisions of the regional agency must appear as a comment section in the plan.¹³⁸

Apart from the review of plans, the other area of importance is the review of major publicly funded capital facility projects having an extra-jurisdictional or regional impact. The model legislation gives the authority to the regional planning agency to review such projects, preferably when they are in the pre-engineering or early design stages, that are sponsored by local governments, special districts, public utilities (whether publicly or privately owned), and state agencies.¹³⁹ An example of the type of conflict that might be resolved through such a review would be a proposed regional trunk sewer that would extend beyond an urban growth area boundary designated in the regional comprehensive plan, thereby opening new areas for development. In its review, the regional planning agency would observe this problem and resolve it through consultation with the sponsoring governmental unit, before detailed design of the sewer even got underway.

This approach, however, is not without its potential pitfalls and some commentators have questioned whether autonomous or semiautonomous state agencies will comply with regional planning agency advice and comments on proposed public works projects.¹⁴⁰ Presumably, local governmental units and special districts that had entered into regional planning and coordination agreements with the regional planning agency under Section 6-402 would have identified

¹³⁸This approach is an adaptation of procedures in: *A Standard City Planning Enabling Act*, §28, drafted by the Advisory Commission on City Planning and Zoning, U.S. Department of Commerce (Washington, D.C.: U.S. GPO, 1928); a model “County and Regional Planning Enabling Act” drafted by Attorney Alfred Bettman and appearing in *Model Laws for Planning, Cities, Counties, and States, Harvard City Planning Studies VII*, by Edward M. Bassett, Frank B. Williams, Alfred Bettman, and Robert Whitten (Cambridge, Mass.: Harvard University Press, 1935), 93-98, esp. §9 (Legal Status of Plan); Fl. Stat. Ann. §186.508 (1995) (state review of regional plans); and U.S. Advisory Commission on Intergovernmental Relations, “An Act Providing for Designation of Uniform Substate Districts and Coordination Thereof,” in *ACIR State Legislative Program: Local Government Modernization*, M-93 (Washington, D.C.: U.S. GPO, November, 1975), 122-132.

¹³⁹An alternative to this approach is review of *both* publicly funded and private projects of regional or metropolitan impact. For example, under Minn. Stat. §473.173 and Minn. Rules §5800.0010 *et seq.*, the Metropolitan Council for the seven-county Twin Cities area has established standards, guidelines, and procedures for determining whether any proposed project is of metropolitan significance. The intent is to “assure that the total effect of a proposed project alleged to be of metropolitan significance is considered and the orderly economic development of the area is promoted. . . [The rules state that it is not the Metropolitan Council’s intent to use the procedures] to stop development, but rather to work out differences among parties and arrive at consensus.” Minn. Rules §5800.0010 (1989).

¹⁴⁰See, e.g., Melvin Levin, “Planners and Metropolitan Planning,” in *Journal of the American Institute of Planners* 33 (1967): 79-80.

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predicaments like this well in advance by being aware of the contents of the various regional plans and their effects on the design of capital projects.

Regional planning agency review of large-scale public and private developments is also covered in Sections 5-301 *et seq.* on developments of regional impact (DRI). If a DRI process is in place at the regional level that addresses proposed publicly sponsored developments, language in the following section pertaining to “proposed major capital projects of extra-jurisdictional or regional significance” should be omitted. Section 7-402.4 provides an alternate approach for review of significant state, special district, and school district projects that are not included in state-approved regional plans.

6-401 Effects of Regional Plans on State Agencies, Local Governments, and Special Districts; Review of Plans and Major Capital Facility Projects of Extra-jurisdictional or Regional Significance

- (1) Upon the adoption of a regional comprehensive plan or any regional functional plan, each [regional planning agency] shall, within [90] days, adopt rules for reviewing local plans and plans of special districts and state agencies and proposed major capital projects of regional significance for consistency with the regional comprehensive plan and any regional functional plans.
- (2) Where a [regional planning agency] has adopted a regional comprehensive plan or any regional functional plan, each local government and special district located within the region and each state agency operating within the region shall submit to the [agency] for review, comment, and recommendation its proposed comprehensive plan, or any other proposed plans, or proposed plan amendments, which, in the judgment of the [agency], affect, or are affected by, the regional comprehensive plan or any regional functional plan. A county government may submit a plan that includes the plans of other local governments. The [regional planning agency] shall consider this to be a consolidated plan and shall waive the submission requirements for the units included. The [agency] shall have [30] days from the date of the submission of a plan to conduct its review and make written comments and recommendations for revisions, during which period the local government, special district, or state agency shall take no action to adopt or otherwise implement the plan.
- (3) Where the [regional planning agency] has recommended a revision or revisions to the proposed plan or amendment of a local government, special district, or state agency in order to be consistent with the regional comprehensive plan or any regional functional plan, the local government, special district, or state agency shall consider the revisions and shall either:
 - (a) make the recommended revision or revisions to the plan; or

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- (b) indicate in a statement to the [regional planning agency], to be included in the plan, its reasons for rejecting the revision or revisions as recommended by the [regional planning agency].
- (4) The comments and recommendations for revisions of the [regional planning agency] shall be included in the plan or amendment in a comment section. Nothing in this Section shall preclude the local government, special district, or state agency from adopting or rejecting any or all of the recommended revisions before its adoption of the plan or amendment. However, should the local government reject any proposed revision, it shall do so only by a vote of not less than two-thirds of the membership of its legislative body for each revision. Should the special district reject any proposed revision, it shall do so only by a vote of not less than two-thirds of the membership of its governing board. Should the director of the state agency reject any proposed revision, the director shall do so only with the written concurrence of the governor. If the state agency is a board or commission, it shall reject a proposed revision only by a vote of not less than two-thirds of its membership and with the written concurrence of the governor.
- [(5)¹⁴¹ Where a [regional planning agency] has adopted a regional comprehensive plan or any regional functional plan, each local government, special district, or public utility, whether publicly or privately owned, located within the region, and each state agency operating within the region shall submit to the [regional planning agency] for review all proposed major capital facility projects.¹⁴² The [agency] shall advise the local government, district, utility, or state agency within [30] days from the date of submission as to whether the proposed project has extra-jurisdictional or regional significance. If it lacks extra-jurisdictional or regional significance, the [agency] shall certify this finding. If the proposed project has extra-jurisdictional or regional significance, the [agency] shall determine in writing whether the project is consistent with the regional comprehensive plan or any regional functional plan and whether it is properly coordinated with other existing or proposed projects in the region. If the [agency] finds the proposed project is inconsistent with the regional comprehensive plan or any regional functional plan or lacks proper coordination, it shall notify the local government, district, utility, or state agency in writing as to the inconsistencies and lack of coordination. The local government, district, utility, or state agency shall resolve all inconsistencies and problems of coordination to the [agency]'s satisfaction before it initiates the project.¹⁴³ The inclusion of a major capital facility project in the regional comprehensive plan or in any regional functional plan shall constitute evidence of consistency.]

¹⁴¹The activities in this paragraph are duplicated in part in Section 6-604(4), which deals with the effect of designating a substate district organization on state agencies.

¹⁴²Preferably, this review should occur before final architectural, engineering, or related designs are completed so as to prevent the expenditure of substantial amounts of money on design work.

¹⁴³“Initiation,” in this context, refers to the preparation of final architectural, engineering, or related designs and may also refer to the actual bidding out of the project.

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Commentary: Agreements with Other Governmental Units

The model legislation below authorizes the regional planning agency to enter into written agreements with other governmental units as a means of implementing regional comprehensive plans and regional functional plans and monitoring the results of plans. These agreements may address the delegation of responsibility for different types of functional planning and the provision of urban services consistent with regional plans.

Sections 6-402 and 6-403 below are based on two Oregon statutes. Under Ore. Rev. Stat. §195.020 *et seq.*, counties, which exercise some of the regional planning functions throughout most of the state, and cities must enter into cooperative agreements with each special district that provides an urban service within an urban growth boundary. The agreement must describe the responsibilities of the governmental unit in comprehensive planning, including plan amendments, periodic review of and amendments to land-use regulations, and the provision of urban services. Under Ore. Rev. Stat. §195.060 *et seq.*, providers of urban services – local governments, special districts, and public utilities – must enter into urban service agreements that describe how they will provide such services to areas within an urban growth boundary identified in a municipal or county comprehensive plan.

One substantial example of how this might be done appears in the San Diego Association of Governments (SANDAG) *Regional Growth Management Strategy* (1993). The strategy contains standards, objectives, and recommended actions for nine quality-of-life factors: air quality, transportation/congestion management, water-quality management, sewage disposal, sensitive lands and open space preservation and protection, solid waste management, hazardous waste management, adequate housing, and economic prosperity. The strategy contains a self-certification process for determining local and regional agency consistency. Through the completion of a checklist contained in the *Strategy* document, local governments indicate to SANDAG the degree to which implementing measures contained in the strategy are being carried out by different units of government.

This checklist and self-certification process would be part of an agreement that the regional planning agency entered into with local governments. It would be the local government's responsibility, under the agreement, to complete the checklist each year and submit it to the regional agency.¹⁴⁴

Note: In the following sections, where there is no regional planning agency, the county can assume the same role with respect to the formulation of the agreements.

¹⁴⁴See San Diego Association of Governments (SANDAG), *Regional Growth Management Strategy* (San Diego, Ca.: SANDAG, January 1993), Appendix 2 (Self-Certification Process and Schedule).

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6-402 Regional Planning and Coordination Agreements

- (1) Within [6] months of the adoption of the regional comprehensive plan and the certification of the plan to local governments and to special districts, the [regional planning agency] shall enter into a cooperative agreement with each local government or special district that provides an urban service within an urban growth area shown in the regional comprehensive plan.
- (2) As used in this Section and in Section [6-403] below, the following definitions shall apply:
 - (a) “**Urban Growth Area**” means an area delineated in an adopted [regional *or* county] comprehensive plan [in accordance with the goals, policies, and guidelines in the state land development plan, prepared pursuant to Section [4-204]] within which urban development is encouraged by delineation of the area, compatible future land-use designations, and implementing actions in a local comprehensive plan, and outside of which urban development is discouraged. An urban growth area shall allow existing or proposed land uses at minimum densities and intensities sufficient to permit urban growth that is projected for the [region *or* county] for the succeeding [20]-year period and existing or proposed urban services to adequately support that urban growth.
 - (b) “**Urban Growth Area Boundary**” means a perimeter drawn around an urban growth area.
 - (c) “**Urban Services**” mean those activities, facilities, and utilities that are provided to urban-level densities and intensities to meet public demand or need and that, together, are not normally associated with nonurban areas. Urban services may include, but are not limited to: the provision of sanitary sewers and the collection and treatment of sewage; the provision of water lines and the pumping and treatment of water; fire protection; parks, recreation, and open space; streets and roads; mass transit; and other activities, facilities, and utilities of an urban nature, such as stormwater management or flood control.
- (3) The cooperative agreement between the [regional planning agency] and a local government shall:
 - (a) describe the process the local government will use to involve the [regional planning agency] in local comprehensive planning, including review of plans and plan amendments for consistency with adopted regional plans and amendments to land-use regulations to the extent that such plans and amendments affect extra-jurisdictional or regional interests;

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- (b) describe the responsibilities of the [regional planning agency] in participating in local comprehensive planning, including review of plans and plan amendments for consistency with regional plans and amendments to land-use regulations to the extent that they affect extra-jurisdictional or regional interests;
 - (c) establish the role and responsibilities of each party to the agreement with respect to local government approval of developments having extra-jurisdictional or regional impact;
- ◆ If there is a development of regional impact process at the regional level, then paragraph (c) would not be a topic that is necessary to include in the agreement.
- (d) establish the role and responsibilities of the local government with respect to the interests of the [regional planning agency] including, where applicable, review of capital projects having an extra-jurisdictional or regional impact, the provision of urban services as described in Section [6-403], the purchase of real property, including rights-of-way and easements, and the achievement of performance standards contained in the regional comprehensive plan;
 - (e) require a biennial report by the local government to the [regional planning agency] and by the [regional planning agency] to the local government concerning activities carried out pursuant to the agreement during the previous [2] years; and
 - (f) describe any other duties and responsibilities as may be agreed upon by the parties.
- (4) The cooperative agreement between the [regional planning agency] and a special district shall:
- (a) describe how the [regional planning agency] will involve the special district in regional planning;
 - (b) describe the role and responsibilities of the special district in regional planning, including preparation or involvement in the preparation of regional functional plans for the services that the special district provides;
 - (c) establish the role and responsibilities of the special district with respect to the interests of the [regional planning agency] including, where applicable, review of capital projects having an extra-jurisdictional or regional impact, the provision of urban services as described in Section [6-403], the purchase of real property, including rights-of-way and easements, and the achievement of performance standards contained in the regional comprehensive plan;
 - (d) specify the local governments and special districts that shall be parties to an urban services agreement under Section [6-403];

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- (e) require a biennial report by the special district to the [regional planning agency] and by the [regional planning agency] to the special district concerning activities carried out pursuant to the agreement during the previous [2] years; and
 - (f) describe any other duties and responsibilities as may be agreed upon by the parties.
- (5) The [regional planning agency] shall review in writing each cooperative agreement at least every [5] years or upon the adoption or amendment of a regional comprehensive plan or regional functional plans to ensure that it is consistent with adopted regional goals and policies. The [regional planning agency] may also amend the agreement from time to time, with the consent of the other party or parties thereto.

6-403 Urban Service Agreements

- (1) Each [regional planning agency] shall have the responsibility for convening representatives of all local governments, special districts, public utilities, whether publicly or privately owned, and other entities that provide, or declare an interest in providing, an urban service inside an urban growth area shown in an regional comprehensive plan. A [regional planning agency] may establish 2 or more subareas inside an urban growth area for the purpose of such agreements. A [regional planning agency] may provide or contract with others to provide technical assistance, mediation, or dispute resolution services in order to assist the parties in negotiating such agreements.
- (2) Local governments, special districts, and public utilities, whether publicly or privately owned, and other entities that provide an urban service to an area within an urban growth area with a population greater than [2,500] persons shall enter into urban service agreements that:
- (a) specify whether the urban service will be provided by one local government, special district, or public utility or by a combination of 2 or more local governments, special districts, or public utilities;
 - (b) set forth the functional role of each service provider in the future provision of the urban service;
 - (c) determine by map the future service areas for each provider of the urban service, provided, however, that no future urban service is to be provided to an area not within an urban growth boundary shown in the regional comprehensive plan;
 - (d) assign responsibilities for planning and coordinating the provision of the urban service with other urban services, for the planning, constructing, and maintaining of service facilities, and for the managing and administration of provision of services to urban users;

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- (e) define the terms of necessary transitions in the provision of urban services, ownership of facilities, annexation of service territory, transfer of monies or project responsibility between one urban service provider and another, and the merger of urban service providers or other measures for enhancing the cost efficiency of providing urban services; and
 - (f) establish a process for the review and modification of the urban service agreement. Each agreement shall be reviewed by parties to the agreement at least once every [5] years.
- (3) The parties to an urban service agreement shall consider the following factors in establishing the agreement:
- (a) the financial, operational, and managerial capacity to provide the service;
 - (b) the effect on the cost of the urban service to the users of the service, the quality and quantity of the service provided, and the ability of urban service users to identify and contact service providers for assistance;
 - (c) physical factors related to the provision of the urban service;
 - (d) the feasibility of creating a new entity for the provision of the urban service;
 - (e) the elimination or avoidance of unnecessary duplication of facilities;
 - (f) economic and demographic trends and projections relevant to the provision of the urban service;
 - (g) the allocation of charges among urban service users in a manner that reflects the difference in the costs of providing services to the users;
 - (h) the equitable and reasonable allocation of costs between new development and existing development; and
 - (i) economies of scale in providing the urban service.
- (4) Urban service agreements entered into pursuant to this Section shall provide for the continuation of an adequate level of urban services to the entire area that each provider services. If an urban service agreement calls for significant reductions in the territory or district in which services are provided, the urban service agreement shall specify how the remaining portion of the territory or district is to receive services in an affordable manner.
- (5) In entering into an urban service agreement, local governments, special districts, public utilities, and other entities that provide urban services shall consider the agreement's effect on the financial integrity and operational ability of each service provider and its protection

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of the solvency and commitments of affected service providers. When an urban service agreement provides for the elimination, consolidation, or reduction in size of a service provider, the urban service agreement shall address:

- (a) the capital debt of the provider and the provider's short- and long-term finances;
 - (b) rates; and
 - (c) employee compensation, benefits, and job security.
- (6) Whether the requirements of paragraphs (2) to (5) of this Section are met by a single urban service agreement among multiple providers of a service, by a series of agreements with individual providers, or by a combination of multiprovider and single-provider agreements shall be a matter of local discretion.
- (7) Local governments, special districts, public utilities, and other entities that provide urban services shall enter into urban service agreements by *[date]*. After that date, no local government, special district, public utility, or entity that provides an urban service shall extend that service to an area not previously served, unless it has become a party to an agreement entered into pursuant to this Section.

MISCELLANEOUS PROVISIONS

6-501 Withdrawal from [Regional Planning Agency]

- ◆ This section is inapplicable where membership by local government is mandated by statute.

Any participating unit of government may withdraw from membership in the [regional planning agency] at the end of any fiscal year, provided that the following conditions are met:

- (1) Adoption, at least [6] months prior to the end of the [regional planning agency]'s fiscal year, of a resolution by a majority of the membership of the governing body of the governmental unit requesting withdrawal from membership;
- (2) Provision of written notice to the [regional planning agency], accompanied by a certified copy of the resolution; and
- (3) Payment, or provision for payment, regarding any obligations of the governmental unit to the [agency] or its creditors, including its allocated share of the contractual obligations of the [agency] continuing beyond the effective date of its withdrawal.

6-502 Dissolution of [Regional Planning Agency]

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- ◆ This section is inapplicable where membership in the regional planning agency is mandated by statute and there is no local agreement establishing the agency.

The agreement establishing the [regional planning agency] shall provide for the manner of its dissolution, should it become necessary, provided that all outstanding indebtedness or obligations of the [agency] have been paid and all unexpended funds have been returned to the local governments, other governmental agencies, and private organizations or individuals that supplied them, or that adequate provision has been made therefore.

[or]

Upon receipt of certified copies of resolutions recommending the dissolution of a [regional planning agency] adopted by the legislative bodies of a majority of the local governments in the region, and upon a finding that all outstanding indebtedness or obligations of the [agency] have been paid and all unexpended funds have been returned to the local governments, other governmental agencies, and private organizations or individuals that supplied them, or that adequate provision has been made therefore, the governor shall issue a certificate of dissolution of the [agency] which shall thereupon cease to exist.

Commentary: State Aid to Regional Planning Agencies

A number of states, among them, Alabama, Florida, Georgia, Kentucky, North Carolina, and Texas, provide direct financial support to regional planning agencies.¹⁴⁵ Where the state mandates the creation of a regional planning agency and mandates the membership of local governments as well as representation by appointees of the governor, state financial support is especially appropriate. The following Section provides alternative formulas for state aid.

6-503 State Aid to [Regional Planning Agency]

- (1) Each [regional planning agency] shall be eligible for state financial assistance from funds appropriated by the [legislature] to the [state planning agency *or other appropriate state agency*] for this purpose. Financial assistance shall be an annual grant of [331/3 *or* 50]

¹⁴⁵The extent of state aid to areawide planning agencies in the early 1990s is discussed in a draft report prepared for the U.S. Advisory Commission on Intergovernmental Relations by Dr. Patricia Atkins of the National Association of Regional Councils, *Decade of Change* (unpublished manuscript, May 27, 1993).

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percent of local contributions to the annual budget of the [agency] but shall be subject to the availability of funds as appropriated by the [legislature].

- (2) The [regional planning agency] shall receive [3] percent of all state revenue-sharing funds distributed to local governments within the region pursuant to [citation to appropriate state law].¹⁴⁶

[or]

- (1) The [state planning agency] shall establish by rule a minimum funding level for [regional planning agencies], conditioned upon the amount of state funds appropriated, and a supplemental funding formula to be used for the distribution of available state funds in excess of the minimum funding amount. To be eligible for the minimum funding amount, each [regional planning agency] must assess and collect annual dues in the amount of [stipulate amount in dollars or cents] for each resident in each county within the region, based on the most recent estimate of county population from the U.S. Bureau of the Census.
- (2) To be eligible for any supplemental funding, each [regional planning agency] shall be required to match the amount of the supplemental funds on a dollar-for-dollar basis. For the purpose of computing matching funds, it shall use only its revenues in excess of the amount required for the minimum funding amount.¹⁴⁷

DESIGNATION OF REGIONAL PLANNING AGENCY AS SUBSTATE DISTRICT ORGANIZATION

Commentary: Designation of Regional Planning Agency as a Substate District Organization

¹⁴⁶This alternative is adapted from, “An Act Providing An Umbrella Multijurisdictional Organization for [Name] Region With Authority To Deliver Services Under Certain Circumstances,” appearing in U.S. Advisory Commission on Intergovernmental Relations, *ACIR State Legislative Program: Local Government Modernization*, M-93 (Washington, D.C.: U.S. GPO, November 1975), 148.

¹⁴⁷This alternative is adapted from Ga. Code. Ann. §50-8-33(2) (1994), which provides for state funding for regional development centers.

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A number of states delineate the boundaries of substate districts and designate substate districting organizations within them. For example, North Carolina accomplishes this through executive order.¹⁴⁸ Virginia, Kentucky, and Georgia are examples of states where the power to designate districts is authorized by statute.¹⁴⁹ These substate districts, in many cases, were established to respond to federal mandates in the 1970s for multijurisdictional planning that involved local governments and special purpose agencies and to undertake regional reviews of applications for federal assistance as an A-95 clearinghouse, a reference to the federal Office of Management and Budget Circular that set up the review process and has since been replaced by a Presidential executive order.¹⁵⁰ In addition, they are intended to provide a two-way conduit to the state for local government views – a single point of contact that state agencies may use in formulating programs with an intergovernmental dimension. In some states, the substate districts are economic development entities, a vehicle for assisting businesses in locating within the region through technical assistance and data collection and analysis.

The legislation below, based on a model originally developed by the U.S. Advisory Commission on Intergovernmental Relations,¹⁵¹ formalizes the process of substate districting by placing responsibility on the governor to delineate substate districts according to statutory criteria, designate or stimulate the creation of a substate district organization where one does not exist, and periodically consider revisions to district boundaries. State agencies would be required to use the district boundaries in administration, planning, environmental permitting, and other activities, to the extent possible. Designated organizations would be responsible for all federally assisted multi-jurisdictional planning in the district, review of applications for federal assistance, and review of proposed state capital improvements for consistency with regional plans. Existing regional planning agencies are therefore given, in the Sections below, a preference in the designation of substate district organizations.

¹⁴⁸State of North Carolina, Office of the Governor, Executive Order No. 25, “Regional Policy for North Carolina” (February 21, 1986).

¹⁴⁹Code of Va. §2.1-391 (1994) (Duties of state department of planning and budget relative to review and approval of all substate district systems boundaries), §§15.1-1403 to 15.1-1417 (Planning districts); Code of Ga. §5-8-32 (1994) (Establishment of regional development centers); Ky. Rev. Stat. §§147A.050-147A.125 (1994) (Area development districts).

¹⁵⁰The A-95 Circular has been replaced by Presidential Executive Order No. 12372 of July 14, 1982, Federal Register 47, no. 137, July 15, 1982.

¹⁵¹U.S. Advisory Commission on Intergovernmental Relations, “An Act Providing for Designation of Uniform Substate Districts and Coordination Thereof,” in *ACIR State Legislative Program: Local Government Modernization*, M-93 (Washington, D.C.: U.S.GPO, November, 1975), 122-132.

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6-601 Delineation of Substate Districts

- (1) The governor [may *or* shall] divide the state into substate districts for planning, administration, development, and other regional purposes [by [date]].
- (2) Prior to the delineation of any district boundary, the governor shall make any necessary studies and surveys, consult with appropriate state officials and agencies, and convene meetings of local elected officials. The governor shall hold at least [1] public hearing in each proposed substate district, notice of which shall be published in one or more newspapers of general circulation in the proposed substate district at least [30] days in advance of the hearings. [The governor may delegate the responsibilities of making studies and surveys, consulting with state officials and agencies, convening meetings of local elected officials, and holding hearings to the director of the state planning agency [and other appropriate state agencies].]
- (3) In defining the districts, the governor shall take into account the following criteria:
 - (a) patterns of urban and rural development;
 - (b) distribution of population;
 - (c) patterns of transportation, including regional commuting;
 - (d) interrelatedness of social, economic, and environmental problems;
 - (e) boundaries of existing [regional planning agencies] and state planning and administrative units;
 - (f) interstate relationships and metropolitan area boundaries (to the maximum extent possible, no county, metropolitan area, or local government may be divided when forming a district);
 - (g) geographic and topographic features
 - (h) historic, scenic, and natural resources, living and non-living; and
 - (i) preferences of affected local governments as expressed through resolutions adopted by legislative bodies.
- (4) Within [1 year] of the effective date of this Act, the governor shall report to the legislature and shall certify to the [secretary of state] the boundaries of each substate district. At the same time, the governor shall notify the governing body of each local government, appropriate special districts, and the [regional planning agency], should one exist.

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- (5) After each decennial census and when local governments representing at least 60 percent of a district's population so request through the adoption of resolutions by their legislative bodies, the governor shall reconsider the delineation of substate district boundaries and may make appropriate adjustments pursuant to the criteria and procedures set forth in paragraphs (2) through (4) of this Section.

6-602 Designation of Substate District Organization

- (1) The governor shall designate a single substate district organization in each substate district. [This designation shall follow completion of any necessary studies and surveys, and consultation and meetings with appropriate local elected officials and their respective state associations, and the holding of at least [1] public hearing in each substate district, notice of which shall be published in one or more newspapers of general circulation in the proposed substate district at least [30] days in advance].
- (2) The governor may designate existing regional planning agencies organized pursuant to Sections [6-101 *et seq.*], including those covering interstate areas, as substate district organizations. Where the governor intends to designate an interstate [regional planning agency] as a substate district, the governor shall notify the governor(s) of the affected states of that intention at least [60] days in advance of a decision on designation for comments and advice.
- (3) If the governor finds that:
 - (a) no [regional planning agency] exists in a substate district;
 - (b) the existing [agency] does not have the basic powers, functional responsibilities, membership, staff, geographic scope, or other factors necessary to accomplish the purposes of this Act; or
 - (c) the existing [agency] is not willing to serve as the substate district organization;then the governor may convene a meeting of elected officials representing each local government within the district to organize a new regional body or reconstitute and reorganize an existing regional body, which the governor shall then designate as the substate district organization.
- (4) If a single local government encompasses and is the major direct provider of services for [all or 90 percent] of the geographic area and population within a substate district, the governor shall designate the local government as a substate district organization.

6-603 State Agency Use of Substate District Boundaries

- (1) Each state agency that divides the state for purposes of planning, administration, service delivery, environmental permitting and control, economic development, and emergency

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management shall conform its boundaries to those of the substate districts, except as provided in paragraph (3) of this Section.

- (2) The governor shall monitor the boundary conformance process and shall allow the agencies involved sufficient time to comply. In all cases, agencies shall conform within [2] years of the effective date of this Act.
- (3) If a state agency, due to the unique nature of its clientele or functional responsibilities, cannot efficiently and effectively conform to the substate district boundaries, the chief executive officer of the agency may petition the governor for permission to maintain separate boundaries. Such a petition shall be accompanied by appropriate studies and surveys. The governor may grant the exception only if compliance would be clearly detrimental to the achievement of the agency's purposes as balanced against the desirability of uniform district boundaries for state-supported services and activities. Where exceptions are granted, the governor may require that the state agency compile all data for research, analysis, budgeting, and reporting purposes on the geographic patterns of the official substate districts where these districts are basic statistical units in a statewide information system.

6-604 Effect of Designation on Substate District Organization

- (1) The substate district organization shall be the authorized agency in each district to receive federal grants-in-aid for areawide planning, coordination, and development purposes.
- (2) All state agencies shall use the substate district organization in each region for any areawide planning, coordination, and districting activities in which they engage, except those state agencies exempted from conforming to substate district boundaries under Section [6-603(3)] above. Where this Act provides for substate district review of state agency projects, state agencies shall develop, by administrative rule, procedures for such review.
- (3) The substate district organization shall review all applications submitted by local governments, special districts, and private nonprofit organizations within its boundaries for a loan or grant from a federal department or agency for programs and purposes required by federal law or regulation so as to determine whether the application is consistent with its regional comprehensive plan or regional functional plan.
- (4)¹⁵² The substate district organization shall review any proposed state major capital facilities project to be located within its boundaries. The organization shall advise the state agency within [30] days from the date of submission as to whether the project is consistent with the regional comprehensive plan or any regional functional plan and whether it is properly coordinated with other existing or proposed projects in the region. If the organization finds that the proposed project is inconsistent with the regional comprehensive plan or regional

¹⁵²This paragraph duplicates, in part, Section 6-401(4), which deals with regional planning agency review of major publicly funded capital projects of extra-jurisdictional or regional significance.

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functional plan or lacks proper coordination, it shall so notify the state agency in writing as to the basis of the conflict and lack of coordination. The state agency shall resolve all inconsistencies and problems of coordination to the organization's satisfaction before it initiates the project.

NOTE 6A – A NOTE ON WEIGHTED VOTING PROCEDURES

This Note provides three examples of regional planning agency bylaws or constitutions that have mandatory or optional weighted voting procedures. Where the procedures are optional, representatives may activate the procedure simply by calling for it. These procedures and the weighting will vary depending on whether the agency has representation from jurisdictions that are not general purpose units of local government (e.g., special districts like metropolitan transportation authorities or school districts) or representation either by members of the state legislature or appointees of the governor. For instance, the nongovernmental representatives of the Miami Valley Regional Planning Commission have a vote, as do the governor's appointees to the Tampa Bay Regional Planning Council in Florida. For the Metropolitan Washington Council of Governments, members of the Virginia and Maryland legislatures have a vote; however, if a weighted vote is called, they cannot participate.

Miami Valley Regional Planning Commission (Dayton, Ohio) Constitution and Bylaws

Voting

1. Members of the Commission shall be entitled to cast the following number of votes on matters coming before the Commission at meetings thereof:
 - Members appointed by a city: one vote for each 50,000 residents or fraction thereof
 - Members appointed by a village: one vote
 - Members appointed by a township: one vote for each 50,000 residents or fraction thereof located in the unincorporated area
 - Members appointed by a county: one vote, plus one vote for each 50,000 residents or fraction thereof located in unincorporated areas of nonparticipating townships
 - Each nongovernmental member: one vote
2. Except where otherwise specified herein, at any meeting of the Commission at which a quorum shall be present, the action of members casting a majority of all votes cast shall constitute official action by the Commission.
3. A roll call vote will be taken upon the request of any commission member.

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4. On issues for which the Chair, acting in consultation with the Executive Director, shall deem that it is desirable to obtain a vote of the full Commission membership, a vote by mail may be conducted, using a mailing list which exactly corresponds to the current official roll of voting members.

Tampa Bay Regional Planning Council (Tampa, Florida)

2H-1.004 – Membership and Voting

- (4)(a) For the general conduct of business, each member government shall have an equal vote which shall be one for each representative, except as provided below.
 - (b) Prior to a vote and upon the call of three representatives, a weighted vote shall be taken by role call. The total weighted vote shall consist of the member governments' vote and the Governor's appointees' vote. The member governments' vote shall be two-thirds of the total vote and shall be apportioned among the member governments' representatives in the same proportion as the member governments' population bears to the total population of the region, provided, however, that no portion of the population shall be represented by more than one member government.
 - (c) The Governor's appointees' vote shall be one-third of the total vote and shall be apportioned among the Governor's appointed representatives in the same proportion as the appointed representative's county of residence's population bears to the total population of the region.

Metropolitan Washington Council of Governments (Washington, D.C.) Bylaws

- 5.06 When a quorum of the board is present at any meeting, the vote of a majority of the Board members shall decide any question before the meeting, except when a weighted vote is invoked as follows.
 - (a) On a vote on any matter before the Board of Directors, weighted voting may be called for by any two (2) members present and representing two or more participating local governments represented on the Board.
 - (b) Any question for which weighted voting has been called shall be determined by the majority of the weighted votes allocated to the members of the participant governments present and voting. For this purpose, each participating government shall have one vote for each 25,000 population, and the next major succeeding portion thereof in the jurisdiction of the participating government, except that any participating government which has a population of less than 25,000 shall have one vote. For the purpose of weighted voting, the population assigned to each participating local government shall be the population used for fee assessment purposes under Section 11.03 [of the bylaws].
 - (c) Representatives of any participating local government having two or more members on the Board of Directors may divide their aggregate votes between or among them.

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- (d) Board members from the Virginia General Assembly and the Maryland General Assembly shall be excluded from any weighted vote. On a vote for which weighted voting has not been called, they shall each be entitled to one vote, and it shall be counted to determine if a majority vote has been attained on the question before the membership.

NOTE 6B – A NOTE ON URBAN GROWTH AREAS AND REGIONAL PLANNING

This Chapter, in Section 6-201, Alternative 2, and in Section 6-201.1, introduces the concept of the **urban growth area** as a device for determining the spatial structure of the region and overall land-use density or intensity. It is an instrument for “urban containment planning” intended to promote compact and contiguous development patterns that can be efficiently served by public services and to preserve or protect open space, agricultural land, and environmentally sensitive areas.

An urban containment program:

consists of a perimeter drawn around an urban area, within which urban development is encouraged and outside of which urban development is discouraged. Urban containment lines are generally designed to accommodate projected growth over a specified time period, typically 10 to 20 years.

Land outside urban containment boundaries is generally restricted to resource uses and to very-low-density residential development ranging from one unit per 10 acres to one unit per 20 acres or more in prescribed and carefully restricted areas. The extension of utilities, especially wastewater service, is generally prohibited outside the boundary. Within urban containment boundaries, development is generally encouraged, often with density bonuses and, occasionally, with minimum density requirements. Land within an urban containment boundary, but outside the city limits, is often subject to contractual city/county agreements governing development standards and timing of annexation and utility extension.¹⁵³

This note addresses only the technical issues of urban growth boundaries, and presumes that policy issues of the appropriate scale and location of growth have already been addressed in the public process.

Definitions

¹⁵³ Arthur C. Nelson, James B. Duncan, with Clancy J. Mullen and Kirk Bishop, *Growth Management Principles and Practices* (Chicago, Ill.: APA Planners Press, 1995), 73-74; see also Gerrit Knaap and Arthur C. Nelson, *The Regulated Landscape: Lessons on State Land Use Planning from Oregon* (Cambridge, Mass: Lincoln Institute of Land Policy, 1992), Ch. 2; V. Gail Easley, *Staying Inside the Lines: Urban Growth Boundaries*, Planning Advisory Service Report No. 440 (Chicago: American Planning Association November 1992); ECO Northwest with David J. Newton Associates and MLP Associates, *Urban Growth Management Study: Case Studies Report*, prepared for the Oregon Department of Land Conservation and Development (Salem, Ore: ECO Northwest, January 1991).

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The Washington statutes provide a good contemporary definition of what constitutes an urban growth area. In Washington, all counties that are either required or choose to plan under the state statutes must designate urban growth areas within their comprehensive plans.¹⁵⁴ Under the statute, an urban growth area is one

within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included in an urban growth area. An urban growth area may include more than a single city. . . .

. . . [T]he urban growth areas in the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county for the succeeding 20-year period. Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. . . .

Urban growth should be located first in areas already characterized by urban growth that have public facility and service characteristics to serve such development, and second in areas that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources. Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas.¹⁵⁵

Urban Growth Area Boundaries as Regional Planning Instruments

To serve as an effective device for containing urban growth, urban growth boundaries must play a central role in the development of regional plans.¹⁵⁶ The construction of an urban growth area boundary, for example, helps regional planning agencies and local governments form consistent expectations about the rate and character of future urban growth; helps to establish a consensus among regional and local governments about where future urban growth will take place; and facilitates regional agencies and local governments in coordinating their efforts to manage and accommodate such growth. These important benefits can be realized by completing the following steps:

¹⁵⁴Wash. Rev. Code Ann. §§36.70A.106(1) and 36.70A.040 (1995 Supp).

¹⁵⁵Id., §36.70A.106(1)-(3) (1995 Supp).

¹⁵⁶See generally Gerrit J. Knapp and Lewis D. Hopkins, “The Inventory Approach to Urban Growth Boundaries,” *Journal of the American Planning Association* 67, no. 3 (Summer 2001): 314-326.

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(1) **Develop a population and employment forecast for the urban area or region.** The process of delineating urban growth area boundaries begins by developing a population and employment forecast for the entire urban area. At a minimum, population forecasts must be disaggregated by household size, and employment forecasts must be disaggregated into commercial and industrial sectors. The regional planning agency can develop the forecasts itself or may obtain them from state agencies or national forecasting firms. In preparing or obtaining the forecasts, the agency should ensure that they are consistent with larger supra-regional economic and demographic forecasts.

(2) **Develop regional density targets or minimums and public service standards.** The regional urban growth boundary must be based on carefully chosen targets or minimums for residential and employment densities and standards for public service. Regional residential density targets or minimums (measured in terms of dwelling units per acre), for example, must be based on housing plans or assumptions about housing development that provide for a range of housing alternatives. Commercial and industrial employment density targets (measured in terms of the number of employees per acre) must reflect carefully considered plans for regional economic development. Public service standards may be expressed through such measures as acres of parks and open space per capita, minimum sizes for or acreage per capita of schools, fire and police stations, and health care facilities, and miles of road network per acre. Alternately, they may also be expressed as a percentage of total urban land.

(3) **Estimate residential and nonresidential land required to accommodate future urban growth.** A series of calculations – greatly simplified here for the purposes of illustration – shows how land requirements can be calculated using regional population and employment density targets and infrastructure service standards.¹⁵⁷

Calculations for residential land. Assume that, over a period of 20 years, the population of a hypothetical region is projected to rise from 200,000 to 225,000 persons, an increase of 25,000 or 12.5 percent. Projected occupancy is 2.5 persons per dwelling unit on the average for the period.

If the density target or minimum for the urban growth area in the regional comprehensive plan is set at six dwelling units per net acre, the land for residential purposes that would need to be set aside would be calculated as follows:

$$(25,000 \text{ persons projected population growth}) / (2.5 \text{ persons per dwelling unit}) / (6 \text{ dwelling units per net acre}) = 1,667 \text{ net residential acres}$$

¹⁵⁷For an additional discussion of these steps and others related to the methodology of designating boundaries, see V. Gail Easley, *Staying Inside the Lines*, 6-9. In addition to analyses based on land area, growth capacity analysis should include analyses of infrastructure capacity. See also Eric Damian Kelly, *Planning, Growth, and Public Facilities: A Primer for Local Officials*, Planning Advisory Service Report No. 447 (Chicago: American Planning Association, September 1993).

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As illustrated in the above equation, residential land requirements depend critically on the target or minimum for residential density. If the net density target is increased to 10 units per net acre, the amount of residential land necessary for the 20-year period would drop to 1,000 acres, a reduction of about 40 percent.

Calculations for industrial land. Calculations of industrial employment requirements can be based on targets for industrial employment density. Such targets should be based on employment densities in the types of industries the region seeks or expects to attract. For example, assume that industrial employment growth projected for the community equals 1,000 employees over the forecast period (primarily in electronics) and that the industrial employment density in the (electronics) industry equals 20 employees per net acre. Using this information, industrial land requirements can be calculated as follows:

$$(1,000 \text{ employees in projected industrial employment growth}) / (20 \text{ industrial employees per net acre}) = 50 \text{ industrial acres}$$

Calculations for commercial land. Calculations for commercial land requirements can be based on target employment densities, just as industrial land requirements. Commercial employment densities may, however, vary extensively by location and type of commercial land use. Office employment densities in central cities, for example, are likely to exceed retail employment densities in suburban malls. Therefore, it may be preferable to calculate requirements for commercial land based on employment forecasts for and employment densities in specific commercial sectors and urban locations.

Calculations for public and institutional land. Public and institutional land requirements can be based on national or regional public service standards. A national service standard for neighborhood parks, for example, is approximately one to two acres per 1,000 population. If the regional agency chooses the higher service standard of two acres per 1,000 population, the land required for public parks can be calculated as follows:

$$(25,000 \text{ persons in projected population growth}) \times (.002 \text{ acres of park per person}) = 50 \text{ acres of parkland}$$

Alternate approaches. There are alternate ways to project nonresidential land-use needs, although they do not have the precision of projections based on forecasts of economic activity or assumptions about standards for public and institutional land. Under such approaches, nonresidential land absorption is calculated by conducting a historical analysis of the relationship between population and nonresidential land absorbed or nonresidential land use as a proportion of total land use in the region. The resulting ratios – either per capita or a percentage – are used to determine additional nonresidential land.

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For example, assume that, historically, nonresidential land uses, including commercial, industrial, institutional, park and recreation, and other public uses, including rights-of-way, accounted for between 48 and 58 percent of the land uses in the region, with the remainder for residential land uses.¹⁵⁸ Using 52 percent for residential land uses and 48 percent for nonresidential land uses, and applying it to projected residential land uses at six dwelling units per net acre, total nonresidential acreage for the urban service area can be computed as follows:

$$\frac{(\text{Projected residential land use})/(\text{percentage of residential land use to total land uses}) \times (\text{Percentage of nonresidential land use to total land use})}{1} = \text{Nonresidential land use in acres}$$

Substituting the figures used in the example in “Calculations for residential land” (above), the formula yields:

$$(1,667 \text{ acres} / 52 \text{ percent}) \times (48 \text{ percent}) = 1,539 \text{ acres}$$

In this alternate approach, a market factor is also applied to ensure there is a sufficient supply of vacant land inside the urban growth area boundary to allow the efficient and competitive functioning of the real estate market and to prevent landowners from monopolizing large parcels of vacant land, thereby driving up land prices.¹⁵⁹ Applying this factor results in the calculation of an additional amount of developable land beyond what residential and nonresidential land-use projections yield. For example, assume that the market factor is 16 percent.¹⁶⁰ If land absorbed for residential and nonresidential uses totals 3,206 acres (1,667 acres for residential and 1,539 acres for nonresidential), application of the 16 percent market factor would require an additional 513 acres, for a total of 3,719 acres over the forecast period.

(4) Identify potential for infill and redevelopment within existing urbanized areas. Encouraging infill and redevelopment is critical for successful urban containment planning. Identifying potential for infill and redevelopment within existing urbanized areas requires a detailed analysis of land use and land-use potential within each jurisdiction in the region. At a minimum, such analysis requires the identification of vacant developable land. The potential of such land can be determined by examining the proposed use of the land in local comprehensive plans. Vacant land

¹⁵⁸See Christopher Harris, “Bringing Land-Use Ratios Into the ‘90s,” *PAS Memo* (August 1992).

¹⁵⁹For a discussion of the market factor and considerations in determining what percentage it should be in the calculation, see V. Gail Easley, *Staying Inside the Lines*, 10.

¹⁶⁰Note that there can be a considerable degree of debate about what percentage the market factor is. Depending on the pace of economic growth, the market factor may vary considerably. In a fast-growing regional economy, the factor may need to be larger than in a slow-growing economy. In any case and regardless of the methodology used to forecast land use needs, constant monitoring of the amount of developable or redevelopable land within the urban growth area boundary is necessary to ensure the success of the program.

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zoned for residential use, for example, should be considered as potential for accommodating future residential growth. The assessment of potential for redevelopment requires a similar but more difficult process. Specifically, it requires identifying land that is currently in one use but planned for a more intensive use. Land currently in single-family use but zoned for multiple-family use, for example, should also be considered as suitable for accommodating future residential growth.

(5) Identify environmentally sensitive and undevelopable land outside existing urbanized areas. Before demarcating areas for future urban growth, the regional planning agency must identify those areas outside existing urban areas that should not be designated for urban use or intensive development. These lands include environmentally sensitive areas, such as wetlands, threatened and endangered species habitats, and shorelands, and resource areas, such as prime agricultural land. These also include areas that are difficult to develop due to physical attributes, such as steep slope or natural hazards (e.g., potential for landslides or flooding). (These areas, however, could be used to satisfy park and open space requirements).

(6) Identify areas for future urban growth. Once the technical tasks of estimating land necessary to accommodate future urban growth and identifying areas where growth can be accommodated are done, the potentially difficult task of selecting areas for future urban growth begins. Three outcomes are possible:

- (a) In the unlikely event that estimated land requirements equal land available for development and redevelopment within existing urban areas, and that planned densities in local comprehensive plans meet regional density targets or minimums, the urban growth area boundary can simply be drawn around the area contained in the local comprehensive plans.
- (b) If land available for development or redevelopment exceeds estimated land requirements, local governments can designate less land for urban use or experience idle land use within the planning period.
- (c) In the most likely event that estimated land requirements exceed land available for development or redevelopment, then growth will have to be accommodated by increasing planned densities or intensities, by expanding the area of urban development, or by some combination of both.

Participants in the process – regional agencies, local governments, special districts, and lay citizens, among them – should be prepared to undergo several iterations of discussions on where and how growth should be accommodated before arriving at a firm location for urban growth area expansion. It is through these discussions, however, that the major benefits of growth management and regional planning are realized.

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While urban growth areas could conceivably be implemented individually by local governments, the existence of a regional framework will ensure that the effort will be more effective and equitable. Absent a regional framework, as proposed here, the consequence of single or scattered urban containment programs by one or several local governments means that: (a) growth will simply be shifted from one part of one community in the urban area to another community in the area; or (b) growth may bypass the enacting community and jump outward to the next tier of vacant but developable land.¹⁶¹ Further, a regional urban growth area framework spreads the benefit of the system among central cities, the inner ring of developed and mature suburbs, developing suburbs, and the rural areas beyond.

Relationship to State Land Development Plan

If the state has adopted a state land development plan that provides standards and criteria for the establishment of urban growth area (see Section 4-204), the regional comprehensive plan must incorporate those standards and criteria.¹⁶² For example, the state could describe standards for locating the boundary lines. It might provide either a range of minimum densities (in terms of net dwellings units per acre) or land-use intensities to be provided within the growth area. The urban growth area, as delineated in the regional comprehensive plan, would follow the state locational standards and incorporate the density range. In turn, if there is a system in place where the regional planning agency reviews local comprehensive plans for consistency with the regional comprehensive plan, the regional agency would look to determine: (a) whether the local plan's urban growth area corresponds with that of the regional comprehensive plan; and (b) whether the local plan has provided densities and land-use intensities consistent with those in the regional comprehensive plan.

Adjustment of Urban Growth Area

Periodically, the regional planning agency may need to adjust the urban growth area. In 1995, Oregon amended its planning statutes to provide for a formal procedure, including specific analytical techniques, to do so. Ore. Rev. Stat. §197.295, which addresses buildable land available in an urban growth boundary,¹⁶³ provides in part:

- (3) As part of its next periodic review pursuant to [state statutes] . . . or any other legislative review of the urban growth boundary, a local government shall.

¹⁶¹ See, e.g., Emily Narvaes, "Boulder Decides to Go Even Slower than Usual," *Planning* 61, no. 12 (December 1995): 22-23. According to Narvaes, in Boulder, Colorado, a town that imposed urban growth area boundaries in the 1970s, "More people are coming into the city than out to work each day, according to city planners, partly because long-time limits on residential growth have driven up housing prices – and pushed many Boulder workers to live in outlying communities." *Id.*

¹⁶² An example of detailed guidelines for delineating urban growth area boundaries is found in Wash. Admin. Code §365-195-335. These rules implement the state's Growth Management Act.

¹⁶³ This statute provided the basis for Section 7-204.1 (Land Market Monitoring System).

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- (a) Inventory the supply of buildable lands within the urban growth boundary;
 - (b) Determine the actual density and the actual average mix of housing types of residential development that have occurred since the last periodic review or five years, whichever is greater; and
 - (c) Conduct an analysis of housing need by type and density ranges, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the amount of land needed for each needed housing type for the next 20 years.
- (4) If the determination required by subsection (3) [above] of this section indicates that the urban growth boundary does not contain sufficient buildable lands [which are defined in the statute as “lands in urban and urbanizable areas that are suitable, available and necessary for residential uses” and include “both vacant land and developed land likely to be redeveloped”] to accommodate housing needs for 20 years at the actual developed density that has occurred since the last periodic review, the local government shall take one of the following actions:
- (a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for 20 years at the actual developed density during the period since the last periodic review or within the last five years, whichever is greater. As part of this process, the amendment shall include land reasonably necessary to accommodate the site of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;
 - (b) Amend its comprehensive plan, functional plan, or land-use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or
 - (c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.

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- (5) Using the analysis conducted under subsections (3)(c) of this section [of the statute], the local government shall determine the overall average density and overall mix of housing types at which residential development of needed housing types must occur in order to meet housing needs over the next 20 years. If that density is greater than the actual density of development determined under subsection (3)(b) of this section, or if that mix is different from the actual mix of housing types determined under subsection (3)(b) of this section, the local government, as part of its periodic review, shall adopt measures that demonstrably increase the likelihood that residential development will occur at the housing types and densities and at the mix of housing types required to meet housing needs over the next 20 years.
- (7) . . . Actions or measures [under subsections (4) or (5)], or both, may include but are not limited to:
- (a) Increases in the permitted density on existing residential land;
 - (b) Financial incentives for higher density housing;
 - (c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;
 - (d) Removal or easing of approval standards or procedures;
 - (e) Minimum density ranges;
 - (f) Redevelopment and infill strategies;
 - (g) Authorization of housing types not previously allowed by the plan or regulations; and
 - (h) Adoption of an average residential density standard.

The approach taken in these amendments is useful for any state or regional planning agency intending to identify urban growth areas in plans or to periodically revise the location of the boundaries and the extent of the land area within them, and to compare the nature of the development that is actually occurring with what was proposed.

NOTE 6C – A NOTE ON EXISTING REGIONAL PLANS

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This Note outlines six recent regional plans and the legislation that prescribes their contents.¹⁶⁴ It is intended to offer a snapshot of regional planning practices in various states. Table 6-2 summarizes what the legislation authorizing the plan calls for and indicates whether the legislative requirements were fulfilled in that plan.

Florida: South Florida Regional Planning Council

Florida has established regional planning councils for the entire geographic area of the state. In essence, this is a form of substate districting. State statutes requires each council to prepare a “strategic regional policy plan.” Florida Statutes §186.507 and Chapter 27E-5.004 of the Florida Administrative Code require strategic regional policy plans to address a number of subject areas, including affordable housing, regional transportation, economic development, natural resources, emergency preparedness, and significant regional resources and facilities. Regional planning agencies in Florida provide technical assistance and information, provide information, and review developments of regional impact.

The South Florida Regional Planning Council, in Hollywood, covers a region consisting of Broward, Dade, and Monroe Counties. The Council is made up of 13 local government officials, six gubernatorial appointees, and four ex officio members. It has prepared a plan centered around the required subject areas in the statute. The plan also contains a section describing implementation strategies for the plan. The heart of the plan lies in its series of strategic regional goals, benchmarks /indicators, and regional policies.

The state statutes do not require absolute consistency between the state comprehensive plan and the strategic regional policy plan. The executive office of the governor, under Florida Statutes §186.508, reviews the proposed regional plan and recommends revisions to the regional council. However, under this section, “nothing . . . shall preclude . . . a council from adopting or rejecting any or all of the revisions as part of its plan prior to the effective date of the plan.” Whether or not the council agrees with them, the governor’s recommended revisions must appear in a comment section in the plan.

Oregon: Portland Metro

Voters in the three-county region (Washington, Multnomah, and Clackamas Counties) surrounding Portland, Oregon, authorized by referendum in 1979 a metropolitan service district. Metro, as the district is called, is governed by 12 officials directly elected from districts in the metropolitan area. Metro provides technical assistance and information, has binding review authority over local plans, and operates certain regional services such as the zoo, the Oregon convention center, and solid waste management activities. Oregon statutes also permit the voters

¹⁶⁴See generally Frank S. So, Irving Hand, and Bruce D. McDowell, *The Practice of State and Regional Planning* (Washington, D.C.: American Planning Association, 1986), Chs. 6 and 7 (discussion of preparation and implementation of regional plans). For a good review of contemporary regional plans with both national examples and examples from the four-county area around Portland, Oregon, see Architectural Foundation of Oregon, *An Inventory of Regional Plans* (Portland, Ore.: The Foundation, December, 1992).

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of such a district to frame a charter. Adopted on November 3, 1992, the current charter calls for the Metro to adopt a regional framework plan.

Under the charter, the framework plan is to: (1) describe its relationship to a “future vision” statement for the region, to be drafted by a special commission appointed by the Metro board (that statement is a “conceptual statement that indicates population levels and settlement patterns that the region can accommodate within the carrying capacity of the land, water and air resources [of the Portland area], and its educational and economic resources, and that achieves a desired quality of life”); (2) comply with applicable Oregon statewide planning goals; (3) be subject to compliance acknowledgment – a form of state certification – by the Oregon Land Conservation and Development Commission or its successor; and (4) be the basis for coordination of local comprehensive plans and implementing regulations.¹⁶⁵

The regional framework plan was adopted in 1997, providing detailed goals and policies on land use, transportation, parks and open space, water management, and natural hazards, as well as implementation measures including but not limited to an urban growth boundary and regional review of local comprehensive plans. The 2040 Framework Plan was preceded by the 2040 Growth Concept, establishing a general policy direction for managing growth in the next 50 years – through the year 2040, as the name implies. The growth concept was adopted by the Metro in December 1994 and served as a guide for developing the regional framework plan, an updated regional transportation plan, and changes to local comprehensive plans. While the concept did not delineate the specifics of exactly when, how, or where growth may occur in the region, it applied the policy groundwork laid out in previously developed regional urban growth goals and objectives to explain or discuss several “concepts” (e.g., green corridors, intermodal facilities, transportation demand management and pricing strategies, etc.) that should be pursued. It also recognized that additional planning is needed to test the growth concept and determine implementation actions.

California: San Diego Association of Governments

In California, regional planning exists through one of two mechanisms, both of which derive from state statutes: (1) the creation of a regional planning district, whereby the preparation of a regional plan is required;¹⁶⁶ and (2) the use of a joint powers agreement to create an independent planning agency and subsequent plan.¹⁶⁷

In the San Diego metropolitan area, the joint powers agreement was used to form the San Diego Association of Governments (SANDAG) that represents 18 cities and one county. The board consists of representatives of those governmental units. The current joint powers agreement lists the issues that SANDAG’s regional planning must address (see Table 6-1). SANDAG’s authority includes technical assistance, information management, and administration of a self-certification

¹⁶⁵1992 Metro Charter, §5.

¹⁶⁶Cal. Gov’t. Code, §65060 *et seq.* (Regional planning districts) (1995).

¹⁶⁷*Id.*, §6400 *et seq.* (Joint powers agreements) (1995).

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process by local governments for compliance with the regional plan (see the discussion in the commentary to Section 6-402 of the *Legislative Guidebook*).

SANDAG's main document, the *Regional Growth Management Strategy* (1993), establishes a framework for managing growth in the region. As discussed earlier in the commentary to Section 6-402, a distinguishing component of the strategy is a self-certification process for determining consistency between local and regional agencies. The checklist is to be used by local governments to monitor implementation of the recommended actions and the achievement of the standards and objectives. Governmental units complete the checklist each year and return it to SANDAG.

Massachusetts: Cape Cod Commission

In 1990, the Commonwealth of Massachusetts passed “An Act Establishing the Cape Cod Commission.”¹⁶⁸ The legislation is a special act applying only to Barnstable County. The Commission, headquartered in Barnstable, is to serve as the regional planning and land-use commission for the county. The Commission consists of 15 representatives of the county’s towns, one county commissioner, one Native American, one minority member appointed by the board of county commissioners, and one minority member appointed by the governor. It has authority to prepare and oversee the implementation of a regional land-use policy plan for all Cape Cod, to recommend for designation specific areas of critical planning concern, to review and regulate developments of regional impact, and to review local plans for consistency with the regional land-use policy plan.

The Act details the contents of the regional policy plan. The plan establishes review and regulatory policies for developments of regional impact and a framework for the preparation and review of local town comprehensive plans. Additionally, it identifies key resources of regional concern – such as aquifer recharge areas, shellfish habitat areas, and historic village centers – that may deserve special recognition and protection.

Minnesota: Twin Cities Metropolitan Council

The Metropolitan Council for the seven-county Twin Cities area in Minnesota was established in 1967 by the state legislature. The Council membership consists of representatives of 16 districts appointed by the governor. Its authority includes preparation of regional plans, binding review of local plans and developments of regional significance, technical assistance, and regional services management, including transit, solid waste, airports, and regional sports facilities. In contrast to

¹⁶⁸Commonwealth of Massachusetts, Cape Cod Commission Act, Chapter 716 of the Acts of 1989 and Chapter 2 of the Acts of 1990, §7.

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states where regional plans are generally specified as part of separate legislation or a charter, Minnesota statutes prescribe the specific contents of regional plans for the Metropolitan Council, the regional planning agency for the Twin Cities area. In perhaps the most comprehensive legislation addressing the content of regional plans, the Minnesota statutes require the Metro Council to:

prepare and adopt . . . a comprehensive development guide for the metropolitan area. It shall consist 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.¹⁶⁹

The Metro Council's current edition of the development guide is called the *Regional Blueprint*. The *Blueprint* identifies the Urban Service Area, representing the area where a full range of metropolitan systems (sewers, highways and transit, parks and airports) are to be provided along with local service systems. The *Blueprint* also designates a series of seven communities as freestanding growth centers that are physically separated from the larger urban service area of undeveloped land. In addition to the development guide, the Minnesota statutes describe a variety of functional plans dealing with water, solid waste, airports, and other metropolitan systems. The statutes require Metro Council regional policy plans (including various functional plans) to include statements that address topics described in Table 6-2.¹⁷⁰

New York: Adirondack Park Agency

In 1971, the New York state legislature passed the Adirondack Park Agency Act to “insure optimum overall conservation, protection, preservation, development, and use of . . . the Adirondack Park.”¹⁷¹ In contrast to the other regional entities discussed above, it is a state agency with authority over a specific region of New York. The legislation defines the makeup and functions of the agency. The governing board consists of five park residents and three other private citizens appointed by the governor. It authorizes the agency, based in Ray Brook, to develop two plans for the lands within the park: (1) the State Land Master Plan for the park's publicly owned lands, and (2) the Land Use and Development Plan for the park's privately owned lands.

¹⁶⁹Minn. Stat. Ann, § 473.145 (1994).

¹⁷⁰Id., §473.146 (1994).

¹⁷¹Adirondack Park Agency Act, New York Executive Law, Art. 27, §801 (1990).

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The State Land Master Plan categorizes sections of the State Forest Preserve (the public lands) according to their resource characteristics, patterns of use, and abilities to withstand additional recreation activity. This plan guides the direct management of state lands within the park. The Land Use and Development Plan for the private lands classifies private lands into six intensity classes according to their ability to withstand development without significant adverse environmental impacts. Through this latter plan, the agency engages in direct regulation of private land, including issuance of building permits outside of areas designated as “hamlets.”

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Table 6-2: Regional Plans and Their Contents

Regional Planning Agency/Plan	Authority	Contents of Plan as Described in Legislation
		<input type="checkbox"/> Indicates description is provided for in legislation <input checked="" type="checkbox"/> Indicates legislative requirement is satisfied in the plan <input checked="" type="checkbox"/> Indicates provision is not called for in legislation, but is included in plan
Strategic Regional Policy Plan for South Florida (1995)	Florida Statutes, §186.507 (1995) and Florida Administrative Code, 27E-5.004 (1995)	<input checked="" type="checkbox"/> executive summary <input checked="" type="checkbox"/> vision statement <input checked="" type="checkbox"/> trends and conditions statement <input checked="" type="checkbox"/> discussion of strategic regional subject areas (land use and public facilities, natural resources of regional significance, economic development, regional transportation, affordable housing, emergency preparedness) <input checked="" type="checkbox"/> goals <input checked="" type="checkbox"/> policies <input checked="" type="checkbox"/> coordination outline <input checked="" type="checkbox"/> regionally significant resources and facilities <input checked="" type="checkbox"/> glossary
Cape Cod (Mass.) Commission Regional Policy Plan (1991)	Cape Cod Commission Act, Ch. 716 of the Acts of 1989 and Ch. 2 of the Acts of 1990	<input checked="" type="checkbox"/> growth policy for the county <input checked="" type="checkbox"/> regional goals for each issue area (land use /growth management, natural resources, economic development, community facilities and services, affordable housing, open space and recreation, historic preservation/community character) <input checked="" type="checkbox"/> policy for coordinating regional and local planning efforts <input checked="" type="checkbox"/> identification of the county's critical resources and management needs (including coastal, historical resources, available open space, etc)
Metro (Oregon) 2040 Framework (1997)	1992 Metro Council Charter	<input type="checkbox"/> regional transportation and mass transit systems <input type="checkbox"/> management and amendment of the urban growth boundary <input type="checkbox"/> protection of lands outside the urban growth boundary for natural resource future urban or other uses <input type="checkbox"/> housing densities <input type="checkbox"/> urban design and settlement patterns <input type="checkbox"/> parks, open spaces, and recreational facilities <input type="checkbox"/> water sources and storage <input type="checkbox"/> coordination of policies <input type="checkbox"/> planning responsibilities mandated by state law

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Regional Planning Agency/Plan	Authority	Contents of Plan as Described in Legislation
Metro Council (Minnesota) Regional Blueprint (1994)	Minnesota Statutes, §§ 473.145 to 473.146	<p><i>Development guide shall include:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> Indicates description is provided for in legislation <input checked="" type="checkbox"/> Indicates legislative requirement is satisfied in the plan <input checked="" type="checkbox"/> Indicates provision is not called for in legislation, but is included in plan <p><i>Development guide shall include:</i></p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> compilation of policy statements <input checked="" type="checkbox"/> goals <input checked="" type="checkbox"/> standards <input checked="" type="checkbox"/> programs <input checked="" type="checkbox"/> maps <input checked="" type="checkbox"/> action steps divided into five strategy areas (economic, reinvestment, building stronger communities, environmental, guiding growth) <p><i>Specific/functional regional plans shall include:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> forecasts of changes <input type="checkbox"/> issues, problems, and needs <input type="checkbox"/> goals, objectives, and priorities <input type="checkbox"/> policies <input type="checkbox"/> fiscal implications <input type="checkbox"/> standards, criteria, and procedures <input type="checkbox"/> matters that must be addressed in implementation of the plan <input type="checkbox"/> relationship of the policy plan to other policy plans <input type="checkbox"/> relationships to other plans <input type="checkbox"/> additional general information as necessary

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Regional Planning Agency/Plan	Authority	Contents of Plan as Described in Legislation <input type="checkbox"/> Indicates description is provided for in legislation <input checked="" type="checkbox"/> Indicates legislative requirement is satisfied in the plan <input checked="" type="checkbox"/> Indicates provision is not called for in legislation, but is included in plan
San Diego Association of Governments (California) Regional Growth Management Strategy (1993)	Joint Powers Agreement (1990)	<p><i>SANDAG must address the following planning issues:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> quality-of-life standards and objectives <input type="checkbox"/> holding capacities <input type="checkbox"/> growth rate policies <input type="checkbox"/> growth phasing <input type="checkbox"/> regional land-use distribution <input type="checkbox"/> growth monitoring <input type="checkbox"/> open space preservation <input type="checkbox"/> regional arterials <input type="checkbox"/> transportation system and demand management <input type="checkbox"/> siting and financing regional facilities <input type="checkbox"/> fiscal abilities and responsibilities <input type="checkbox"/> consistency of regional and local plans <input type="checkbox"/> regional growth management strategy <p><i>Regional Growth Management Strategy includes:</i></p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> standards, objectives, and recommended actions for air quality, transportation/congestion management, water, sewage disposal, sensitive lands and open space preservation and protection, solid and hazardous waste management, housing, and economic prosperity <input checked="" type="checkbox"/> local and regional consistency checklist
Adirondack Park (New York) State Land Master Plan (1991)	Adirondack Park Agency Act, §§ 805 and 816, New York Executive Law, Art. 27 (1990)	<p><i>State Land Master Plan:</i></p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> classifies state lands and provides general guidelines and criteria for the management and use of lands within such classifications <p><i>Land Use and Development Plan:</i></p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> describes land use areas by intensity classes and includes a map applying these classifications to private properties