A COMPREHENSIVE COMPARISON OF THE GROWTH-MANAGEMENT PROGRAMS OF OREGON AND FLORIDA, AND THE POSSIBLE IMPLICATIONS FOR TENNESSEE'S GROWTH-MANAGEMENT PROGRAMS

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I am submitting a thesis written by Steve Lampkins entitled "A Comprehensive Comparison of the Growth Management Programs of Oregon and Florida, and the Possible Implications for Tennessee's Growth Management Programs." I have examined the final copy of this thesis and recommend that it be accepted in partial fulfillment of the requirements for the degree of Master of Science with a major in Environmental Science.

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ABSTRACT

The state of Tennessee adopted The Comprehensive Growth plan in 1997 in an effort to coordinate and control growth. The state legislative assembly recognized that coordinated and controlled growth is essential to maintain the quality of life that Tennessee residents expect. The creation of growth-management legislation is a significant step in the right direction; the adoption of a bottom-up management method has seriously compromised the effectiveness of the growth-management program in the state. The state has failed to allocate the necessary funding and has not established an effective incentive program to facilitate compliance with a bottom-up growth-management method. The state has also placed an undue burden on local governments and communities in the development of local comprehensive growth plans and failed to adequately resource these agencies to ensure compliance with the statutory goals of the program. The growth-management statute fails to provide for a state agency with growth plan review authority and provides no statutory obligation to ensure that local comprehensive plans consider state or regional interests. Future evolution of growth-management legislation and subsequent growth program development in Tennessee should give serious consideration to the growth-management programs of Oregon and Florida. Oregon and Florida have developed evolving growth-management programs that provide for a state oversight agency, funding, and an administrative appeals process. The establishment of a state growth-management agency, an administrative appeals panel, and the allocation of funds by the state would help to create an effective and efficient mechanism for controlling growth in Tennessee.

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ABBREVIATIONS:

ACSC- Areas of Critical State Concern

DCA- Department of Community Affairs

DLCD- Department of Land Conservation Development

DOAH- Department of Administrative Hearings

DRI- Development of Regional Impact

FLUM- Future Land Use Map

GMA- Growth-management Act

LCDC- Land Conservation Development Commission

LGPAC- Local Government Planning Advisory Council

LUBA- Land Use Board of Appeals

ODOT- Oregon Department of Transportation

SRPP- Strategic Regional Plans and Policy

TACIR- Tennessee Advisory Commission on Intergovernmental Relations

UGB- Urban Growth Boundary

I. INTRODUCTION:

The fundamental guiding principle of early American settlers (developers) resembled that of the explorers who claimed these lands for their governments. The thought process of these early developers was to conquer the land and utilize the seemingly endless natural resources to enhance their quality of life. This thought process combined with "the expectation of individual property rights in land contributed to America's capitalist economy, private property system, republican government, and an exploitive attitude toward natural resources."[1] The exploitation of natural resources and the subsequent environmental problems associated with this exploitive attitude has led to significant legislation and federal, state, and local programs designed to protect our environment. The legislation and programs have attempted to address environmental areas of concern such as air and water quality, global warming, hazardous waste sites, and habitat fragmentation all of which threaten the health, welfare, and sustainability of our communities. An underlying common theme that manifests itself in each of these scenarios is urban sprawl.[2] While urban sprawl is not the only factor that impacts air, water, and entire ecosystems, it does play a significant role in the health of our communities and environment.

Urban sprawl is not a new term or problem. In fact, Oregon was one of the first states to adopt legislation that addresses the potential deleterious effect of unregulated development and associated land uses on the environment and the quality of life of its citizens. In 1973 Governor Tom McCall of Oregon championed the cause for Senate Bill 100 in response to his concerns regarding the loss of farmland in the Willamette River

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[1] Butler, Linda L., *The Pathology of Property Norms: Living Within Nature's Boundaries*, 73 S. CAL. L. REV. 927 (2000) 927.

[2] Sustainable Communities Network, About Smart Growth, Issues, http://www.smartgrowth.org/about/issues/issues.asp?iss=4, (21 February 2002).

Valley.[3] Oregon continues to develop growth management strategies, but after three decades of land-use regulation Oregonians are still wrestling with the same set of conflicting values faced by Oregonians in the 1970s. Oregon's citizens continue to evaluate their desire for controlling growth balanced with their own self-interests.[4]

The state of Florida adopted its own land-use legislation in the 1980s. The Florida Growth-management Act of 1985 addressed the state's concern regarding unbridled growth and development and its potentially adverse impacts on society and the environment. This growth plan requires local government to submit comprehensive land-use plans to the Florida Department of Community Affairs. The local comprehensive plan must establish value-based judgments, which regulate land-use decisions.[5]

The departure from an economically based decision making process continues, as the state of Tennessee has adopted one of the newest pieces of legislation regarding growth-management. The state of Tennessee has now enacted legislation to address urban sprawl and land-use issues. The Comprehensive Growth Plan was enacted in 1997 and is currently being implemented in each county. The plan requires counties and the municipalities in each county to submit a twenty-year growth plan to the state. Failure to comply may result in the withholding of state funds.[6]

There are other states that have enacted growth-management legislation, but the legislation in these three states may provide some interesting insight into the methods

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[3] Sullivan, Edward J., *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100,* 77 OR. L. REV. 813 (1998) 830.
[4] Sullivan, Edward J., *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100,* 77 OR. L. REV. 813 (1998) 844.
[5] Grosso, Richard, *Florida's Growth-management Act: How Far We Have Come, and How Far We Have Yet to Go*, 20 NOVA L. REV. 589 (1996) 596.
[6] Tenn. Code Ann. § 6-58-106 (a)(1)(A).

utilized to control growth and develop effective planning programs, as these statutes span nearly three decades.

The purpose of this study is to compare the effectiveness of the growth-management programs of Oregon and Florida and suggest possible implications for the development of Tennessee's growth-management programs. It is expected that societal values and scientific data will have played a significant role in the development of the growth programs and the subsequent level of protection afforded by the "environmental clauses" of the programs. There may also be regional specific issues that are unique to each state, but the focus of this analysis is to analyze the statutory language and the state and local agency's interpretation of that language in the development of a plan for growth and environmental protection. This analysis concentrates on four key areas. The first area of study will focus on the statutory provisions for growth-management. The second area concentrates on the management mechanisms developed in response to the statutory goals and objectives. The third area of study focuses on enforcement measures that are utilized to deal with noncompliant parties. The final area explores relevant challenges to the growth-management programs in the form of court challenges, administrative hearings, arbitration and other forms of litigation that are of significance in terms of statutory interpretation.

The methodology employed to complete the research concentrates on the statutory language of the respective growth-management legislation and the subsequent growth-management programs developed from the statutory intent. The degree of environmental protection that is afforded under the growth-management legislation is also examined. The policies and programs of state and local agencies are analyzed and compared as to their degree of environmental protection and their effectiveness in promoting effective

land-use policies within the framework of the legislation. This study also examines legal and planning literature to assist in the comparison process of the effectiveness of the statutes and programs of each respective state. A limited examination of case law is referenced to determine the effectiveness of the statutes and subsequent policies and programs of each state when subjected to litigation. The methodology in its essence is an exhaustive review of statutory language, policies and programs, and legal reviews that directly impact environmental protection and effective growth-management within the framework of state growth planning.

This study is constructed of four topical parts. The first part provides a brief introduction and history to the development of existing growth-management and environmental protection at the state level within the framework of the growth-management acts of Oregon, Florida, and Tennessee. The second part of the article describes the specific growth-management statutes of Oregon, Florida, and Tennessee, and the programs and policies developed in each respective state. The third part of the article analyzes and compares the statutory language of the growth-management acts and the subsequent programs and policies of the respective states developed in response to the legislation. The final part of the article presents the conclusions that are drawn from the analysis of the growth-management statutes, programs, and policies.

This study provides insight into the various methods of land-use management and environmental protection afforded at the state level through growth-management legislation. This analysis may be of assistance in developing statutes in future state growth-management acts, or it may be valuable to state and local agencies in developing plans and programs to protect and conserve the environment in response to statutory requirements. This analysis may also be beneficial in helping to reduce the number of

litigation responses to these acts, which attempt to regulate and at times possibly conflict with the traditional rights of property owners. Lynda L. Butler in the Southern California Law Review states, "The failure to give serious consideration to the connection, between land development, water use, and ecosystem health reflects a fundamental problem with American property law and current ecosystem and resource management practices... Though some legal restrictions exist, stringent restrictions are the exception rather than the rule. That is the property owner can, for the most part, do as she likes."[7] The effectiveness of present and future environmental protection in state mandated growth plans may very well lie in bridging the gap that exists between private land ownership rights and sustainable environmental practices.

The basis for providing environmental protection within the framework of growth-management programs relies heavily upon the nature of the statutory language. The states of Oregon[8] (Willamette Greenway) and Florida[9] (ACSC) make provisions for the protection of areas of environmental significance by specifically designating these areas in the growth-management statute. Tennessee's growth-management program does not make provisions for the protection of specifically named areas. This failure to afford protection to areas that are of environmental or aesthetic significance is one of the most distinguishing and significant characteristics between the growth-management programs of the respective states. It is also interesting to note that neither Oregon nor Florida has yet to designate and afford protection to any additional specific areas within the state since the original implementation of their growth-management programs. The study of

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[7] Butler, Linda L., *The Pathology of Property Norms: Living Within Nature's Boundaries*, 73 S. CAL. L. REV. 927 (2000) 928-930.
[8] Or. Admin. R. § 660-015-0005.
[9] Fla. Stat. § 380.05 (1)(a).

Tennessee's growth-management legislation indicates that the failure of the legislature to provide for the protection of areas of environmental significance, such as the Tennessee River, is one of its most glaring weaknesses. Analysis of Oregon and Florida's growth-management programs also indicates that the degree of environmental protection afforded is significantly enhanced by the specificity of the statutory language of the statute.

II. OVERVIEW OF STATE PROGRAMS:

A. Overview of Growth-management in Oregon:

In 1973 the state of Oregon developed what many people believe to be the preeminent growth-management program in the nation. Senate Bill 100 enacted by the Oregon legislature addressed the rapid population growth and development that Oregon was experiencing in the 1960s and 1970s. The principle issues underlying these concerns were the condition of the environment and the economy.[10] Oregon has traditionally relied upon agriculture and forestry as staples of its economy. The state identified the need for coordinated development to ensure that the resulting impact from unregulated growth on these two industries would be minimized.

The 1973 Oregon legislature created the Land Conservation and Development Commission (LCDC) to assist the legislature in developing a statewide growth-management plan. The LCDC immediately went to the public and began asking what Oregonians value about their land and environment, where people should live and work as the state's population grew, and whether the environment could be protected while

[10] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/about_us.shtml, (30 May 2005).

maintaining a healthy economy.[11] The responses to those questions were incorporated into the nineteen original goals of The Oregon Land Use Act.[12]

The Oregon Land Use Act involves two levels of planning: state and local. The state's involvement in the planning process is that of administrator and regulator. The state is responsible for setting forth the standards and requirements for planning through statutes, statewide planning goals, and administrative rules. The state also reviews local comprehensive plans, amendments to the plans, and compliance of state agencies to ensure that the state growth-management requirements are met. The state regulates and administers the land-use planning requirements through the Department of Land Conservation and Development (DLCD). The DLCD is a state agency that is responsible for administering all land-use planning statutes and executive and commission policies that affect land-use and planning. The agency develops new policies, legislation, and rules in response to changes in laws and trends. The agency also administers several million dollars in grants each biennium and provides technical assistance in the planning process to the 240 cities and 36 counties of Oregon. The DLCD consists of a program director and 52 FTE members, operates on a biennial budget of approximately $15.2 million (2003-2005), and is overseen by the Land Conservation and Development Commission (LCDC).[13]

The LCDC is a seven-member citizen board appointed by the governor and confirmed by the senate for a term of four years, with a limit of two terms. There are geographical requirements for board selection to ensure statewide representation, and board members

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[11] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/about_us.shtml, (30 May 2005).
[12] Or. Admin. R. § 660-015-000, § 660-015-0005, § 660-015-0010.
[13] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/about_us.shtml, (30 May 2005).

receive no salary or employee benefits for their service. This board directs the Department of Land Conservation and Development, acting as a board of directors. The LCDC approves all local comprehensive growth plans, and is also responsible for issuing enforcement orders resulting from noncompliance issues. The board also grants DLCD, local government, and citizen requests for appeals of land-use decisions to a Land Use Board of Appeals (LUBA).[14]

The Land Use Board of Appeals is a three member special court that rules on land-use and planning issues. LUBA was created to simplify the appeal process, speed resolution of land-use disputes and provide consistent interpretation of state and local land-use laws. The board consists of three administrative law judges, who are members of the Oregon State Bar, appointed by the governor and confirmed by the senate. The board rules on appeals from citizens and state agencies regarding land-use decisions made by local governments and state agencies. LUBA decisions may be appealed directly to appellate court and subsequent appeals are heard before the Oregon Supreme Court.[15]

The requirement upon local governments to establish comprehensive plans and coordinate plan implementation is the cornerstone of the Oregon growth-management plan.[16] This requirement tends to encourage citizen involvement. In fact, goal number one of the statewide planning goals requires each city and county to have a citizen involvement program. The goal also requires local governments to establish a committee

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[14] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/about_us.shtml, (30 May 2005).
[15] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/about_us.shtml, (30 May 2005).
[16] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program*, 1979-1999, 36 WILLAMETTE L. REV. 441 (2000) 442.

for citizen involvement, which monitors and encourages public participation in the planning process.[17]

There are eleven other goals outlined in the Oregon Land Use Act that allow for some degree of environmental protection through land-use and development programs. Goal number three (agricultural lands) defines agricultural lands and requires counties to inventory, preserve and maintain agriculturally designated lands through farm zoning. Goal number four (forest lands) mimics goal number three by requiring counties to inventory forested lands and adopt policies and ordinances that will conserve forest lands for forest uses. Goal number five (open spaces, scenic and historic areas, and natural resources) includes natural and cultural resources such as wildlife habitats and wetlands. This goal establishes a process for each resource to be evaluated and inventoried. If a resource is found to be significant, then the local government has three policy choices. The local government may choose to 1) preserve the resource, 2) allow the resource to be used, and 3) or establish a balance between use and preservation of the resource. Goal number six (air, water, & land resources quality) requires the local comprehensive plans to be consistent with state and federal regulations on the protection of these resources. The purpose of goal number thirteen (energy) is to manage and control development in an effort to maximize the conservation of all forms of energy. Goal number fourteen (urbanization) establishes urban growth boundaries (UGBs) to identify and separate land that is to be developed and land that is to be maintained as rural land. This goal

[17] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/goals.shtml#The_Goals, (17 March 2002).

establishes factors for drawing up UGB's and lists criteria for allowing development to proceed on land previously designated as rural.[18]

Oregon also identified areas of statewide significance that deserved protection and should not be subjected to possible future developments. Goal number fifteen (Willamette Greenway) sets forth procedures for administering the 300 miles of greenway that protect the Willamette River. This goal is unique in that a specific area of that state is named and afforded protection by the state statute governing land-use and planning.[19]

The LCDC also recognized the importance of conserving Oregon's diverse aquatic resources. The conservation of estuary and coastal resources is accomplished through conserving estuaries, coastal shorelands, beaches and dunes, and ocean resources. Goal number sixteen (estuarine resources) classifies Oregon's twenty-two estuaries into four categories: 1) natural, 2) conservation, 3) shallow-draft development, and 4) deep-draft development. Goal number seventeen (coastal shorelands) addresses planning in areas bounded by ocean beaches and state route 101. This goal sets forth management guidelines for land and resources around the coastal shorelands. Goal number eighteen (beaches and dunes) controls planning and development on dunes, addresses dune grading and groundwater aquifer drawdown in dunal aquifers. Goal number nineteen (ocean resource) attempts to conserve the long-term values, benefits, and natural resources of the near-shore ocean and the continental shelf.[20]

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[18] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/goals.shtml#The_Goals, (17 March 2002).
[19] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/goals.shtml#The_Goals, (17 March 2002).
[20] State of Oregon, Land Conservation Development, http://www.lcd.state.or.us/LCD/goals.shtml#The_Goals, (17 March 2002).

Oregon has established a top-down approach to land-use planning and development. The state is merely the administrator and develops no statewide planning regulations, leaving all planning and development to the local governments. Although the state does not develop planning regulations, the LCDC ensures that the local comprehensive plan complies with state planning goals.[21] This planning philosophy is ultimately realized as Oregon's transportation, planning, and construction efforts, reinforce growth strategies by providing funding for highways, sewer systems, and economic development that encourages growth to occur in specific areas.[22] An article published by Orgeon Senator Jon Wyden and Joshua Sheinkman, counsel to Senator Wyden, in *Environmental Law* (a publication of the Northwestern School of Law of Lewis and Clark College) reinforced the legislature's commitment to organized and concurrent development in the following statement. "We also have to make the areas where we want growth to occur more attractive to developers by creating the essential infrastructure for development."[23] This growth-management philosophy establishes a sound framework for administering a growth-management plan. This philosophy, when combined with the goals that provide an outline for land-use planning regulations, provides local governments the guidance that is necessary to establish local comprehensive plans that are consistent with community values and state requirements. This program is dynamic in the sense that the LCDC is allowed to define vague terms in the state statutes and develop programs to support the statutory intent.[24] This process allows the original nineteen goals of the

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[21] Or. Rev. Stat. § 197.040 (e)(2)(a).
[22] Wyden, Ron and Sheinkman, Joshua, *A Road Map for Environmental Law in the Twenty-First Century: Follow the Oregon Trail,* 30 ENVTL. L. 35 (2000) 36.
[23] Wyden, Ron and Sheinkman, Joshua, *A Road Map for Environmental Law in the Twenty-First Century: Follow the Oregon Trail,* 30 ENVTL. L. 35 (2000) 36.
[24] Or. Rev. Stat. § 197.040 (b).

growth-management program to be amended in response to changing economic, social, and environmental concerns.

B. Overview of Growth-management in Florida:

The prolonged negative effects of unplanned growth and development prompted the state of Florida to adopt its own growth-management legislation. During the period from the 1960s through the 1980s, the state of Florida averaged about 1,000 new residents per day, and this growth was beginning to negatively impact the environment, infrastructure, and quality of life of Florida's residents. In response to the concerns of Florida's citizens the legislature drafted The Local Government Comprehensive Planning and Land Development Regulation Act of 1985, commonly referred to as the Growth-management Act (GMA).[25] This act attempts to address the state's concerns regarding unplanned growth and development. Florida's growth-management program is a departure from standard land-use planning as it bases land-use decisions on political processes rather than economic processes. This basis for the decision making process attempts to encourage active public participation in the land-use planning and development process as local governments are required to conduct at a minimum two public hearings before entering into, amending, or revoking a development agreement.[26] Although the complete separation of the political and economic processes may not be achievable, recognizing the importance of not merely basing land-use decisions on potential economic gain encourages development to proceed in a manner that gives serious consideration to the full spectrum of factors that contribute to urban sprawl. The statutory language indicates that the purpose of the growth-management act is to guide and control future land development, overcome present handicaps, and deal effectively with future problems,

[25] Fla. Stat. § 163.3161 (1).
[26] Fla. Stat. § 163.3225 (1).

which may result from the use and development of land. The statute also indicates that the growth-management program should also preserve, promote, protect, and improve the public health, safety, comfort, and good order, and protect human, environmental, social, and economic resources.[27] The statute's purpose statement is general in nature and does not afford any specific protection to any particular area, but instead provides a general framework and purpose for the creation of a growth-management program.

There are three key requirements of Florida's growth-management act. These requirements are consistency, compactness, and concurrency. The consistency requirement mandates that regional and local comprehensive plans must be consistent with the state growth-management guidelines.[28] The compactness requirement guides growth in an attempt to control urban sprawl, protect the environment and important natural resources, promote a healthy economy, and preserve farms and significant environmental land.[29] This requirement also provides for a planned cost efficient infrastructure. The concurrency requirement ensures that public infrastructure facilities such as roads, sewer, and water are available as development occurs and this attempts to coordinate and direct development and growth.[30] The Florida Growth-management Act involves three levels of planning, state, regional, and local. The state administers the growth-management programs through the Florida Department of Community Affairs (DCA). The DCA is primarily responsible for reviewing local comprehensive plans and amendments to the plans and ensuring that the goals, objectives, and policies of those plans are consistent with state growth-management requirements. The DCA also

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[27] Fla. Stat. § 163.3161 (2); § 163.3161 (3); § 163.3161 (7).
[28] University of Florida, Powell Center for Construction and Environment, http://www.dcp.ufl.edu/centers/sustainable/SAC/compplan.htm (19 March 2002).
[29] University of Florida, Powell Center for Construction and Environment, http://www.dcp.ufl.edu/centers/sustainable/SAC/compplan.htm (19 March 2002).
[30] *State-Sponsored Growth-management as a Remedy for Exclusionary Zoning,* 108 HARV. L. REV. 1127 (1995) 1140.

develops minimum criteria that must be addressed in local comprehensive plans. The state does not draft or implement comprehensive growth plans, but merely acts as the administrator of the local comprehensive growth plans. The DCA is also responsible for distributing grants to communities to assist in the planning process, as well as issuing enforcement orders for noncompliance in the form of economic sanctions. Eleven regional planning councils administer the regional level of planning. These eleven regional planning councils develop and adopt Strategic Regional Policy Plans (SRPP), which ensure that local comprehensive plans also consider regional interest.[31] The local governments are responsible for developing the comprehensive land-use plans and submitting those plans to the DCA for review and subsequent approval. These local plans focus on issues such as future land-use, transportation, conservation and natural resources, infrastructure, recreation, economic development, intergovernmental coordination, and housing.[32] The local comprehensive plans are updated every five years through a two-phase process. The first phase is an Evaluation and Appraisal Report (EAR). The second phase is the revision of the comprehensive plan based upon the EAR. Community involvement is a key element during both phases as public workshops and hearings afford citizens the opportunity to participate in the reevaluation process.[33] The Department of Administrative Hearings (DOAH) hears challenges to local comprehensive plans.

The DOAH is a special administrative court, which reviews challenges to local comprehensive plans and issues orders concerning noncompliance issues. The board

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[31] University of Florida, Powell Center for Construction and Environment, http://www.dcp.ufl.edu/centers/sustainable/SAC/compplan.htm (19 March 2002).
[32] University of Florida, Powell Center for Construction and Environment, http://www.dcp.ufl.edu/centers/sustainable/SAC/compplan.htm (19 March 2002).
[33] Grosso, Richard, *Florida's Growth-management Act: How Far We Have Come, and How Far We Have Yet to Go,* 20 NOVA L. REV. 589 (1996) 611.

rules on appeals from citizens and state agencies regarding land-use decisions made by local governments and state agencies. The DOAH findings are reviewed by the DCA and sent to the governor or cabinet, acting as the Administration Commission, for issuance of a final compliance order.[34]

The growth-management program of Florida is unique as it also supports prior legislation in the state's growth-management programs. Florida's Environmental Land and Water Management Act of 1972 makes provisions for the protection of four areas of critical state concern (ACSC) and establishing a development of regional impact (DRI) process.[35] The areas of critical state concern are areas that are deemed by the Administration Commission (upon recommendation of the state planning agency) to be of a statewide significance and are designated as such to ensure preservation and control growth in those areas. There are four areas that have been designated as ACSC, namely 1) The Big Cypress Swamp (1973), 2) the Green Swamp (1974), 3) the Florida Keys (1976), and 4) Apalachicola Bay (1979).

The DRI process allows the state to classify certain types of developments as Developments of Regional Impact. "A DRI is defined as a development that, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county."[36] The DRI process requires the developer to file an application for development with the local government, the Regional Planning Council, and a number of state, regional, and local agencies. This process can be lengthy and expensive, taking approximately two years for the application to be

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[34] Grosso, Richard, *Florida's Growth-management Act: How Far We Have Come, and How Far We Have Yet to Go,* 20 NOVA L. REV. 589 (1996) 610.
[35] Fla. Stat. § 380.05; Fla. Stat. § 380.06
[36] Nicholas, James C., *State and Regional Land Use Planning: The Evolving Role of the State*, 73 ST. JOHN'S L. REV. 1069 (1999) 1082.

processed. Ultimately 84% of DRI's are approved with conditions and 9% are approved without conditions[37] and 7% are rejected.

Florida's growth-management program allows local communities to designate areas of significance and importance through the comprehensive planning process. The growth-management legislation merely functions as a guide in the planning process, by creating a framework for planning considerations and identifying a common purpose for the growth-management program. The program also is unique as it mandates that areas of regional impact or significance be considered through the SRPP. The regional planning provision recognizes that many of the detrimental impacts associated with unregulated growth cross political and geographical boundaries. The lack of specificity of the growth-management legislation, if administered appropriately, provides a dynamic tool for a management program that is concerned about the welfare of its environment and citizens.

C. Overview of Growth-management in Tennessee:

In 1998 the state of Tennessee entered the growth-management program arena with The Comprehensive Growth Plan. Tennessee Code Annotated § 6-58 is an attempt by the legislature to address the issues of urban sprawl and land-use. The growth-management law is actually an offshoot of the 1997 "tiny town" law that attempted to address the concerns of small communities regarding annexation by larger municipalities.[38] The legislature's intention was to allow the small communities to preserve their integrity through incorporation, but the Tennessee State Supreme Court

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[37] Nicholas, James C., *State and Regional Land Use Planning: The Evolving Role of the State*, 73 ST. JOHN'S L. REV. 1069 (1999) 1084.

[38] Stewart, Michael J. *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan,* 67 TENN. L. REV. 983 (2000) 987.

ruled the law unconstitutional.[39] The basis for the ruling was attributed to "the restrictive caption (of the statute) failed to adequately inform the members of the General Assembly and the citizens of (the) state about the nature and scope of the legislation that eventually passed."[40] The purpose of the growth plan is outlined in the statutory language "… to direct the coordinated efficient and orderly development of the local government and its environs based on an analysis of present and future needs, best promote the public health, safety, morals, and general welfare."[41] The Comprehensive Growth Plan requires the 300 plus city and 93 county governments in Tennessee to establish urban growth areas, planned growth areas (commercial, industrial, and residential), and rural areas for the next twenty years.[42]

The growth-management plan in Tennessee provides for two levels of planning, state and local. The state's function in the planning process is that of facilitator. The state has established the legislation and guidance within the framework of the legislation necessary to implement a growth-management program. The intent of the legislation is seemingly to address annexation, education, supporting infrastructure requirements, and urban sprawl.[43] The five original goals of the growth-management legislation are:

1. Eliminates annexation or incorporation out of fear;
2. Establishes incentives to annex or incorporate where appropriate;
3. More closely matches the timing of development and provision of public services;

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[39] Stewart, Michael J. *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan,* 67 TENN. L. REV. 983 (2000) 987.
[40] Stewart, Michael J. *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan,* 67 TENN. L. REV. 983 (2000) 987.
[41] Tenn. Code Ann. § 6-58-107.
[42] Stewart, Michael J. *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan,* 67 TENN. L. REV. 983 (2000) 986.
[43] Tenn. Code Ann. § 6-58-102 (1-5).

4. Stabilizes each county's education funding base and establishes an incentive for each county legislative body to be interested in education matters; and
5. Minimizes urban sprawl.[44]

The lack of specificity of the five original goals and objectives provides local governments the latitude of adopting comprehensive growth plans that are consistent with local values and expectations, but are required to give little or no serious consideration to areas of statewide significance. The legislature is seemingly content to place the full responsibility of developing comprehensive growth-management programs on local governments with little or not state oversight. The failure of the legislature to provide any provision for adoption of detailed growth policy goals and objectives severely limits the ability of the state to effectively manage the growth program with any degree of consistency at the state level.

The eight goals and objectives of the county growth plan are intended to support the original five goals of the general assembly's comprehensive growth policy, but the legislation fails to provide any specific state level guidance regarding the conservation or protection of any areas of statewide significance. The statute mandates that the growth plan must:

1. Provide a unified physical design for the development of the local community;
2. Encourage a pattern of compact and contiguous high density development to be guided into urban areas or planned growth areas;
3. Establish an acceptable and consistent level of public services and community facilities and ensure timely provision of those services and facilities;

[44] Tenn. Code Ann. § 6-58-102 (5).

4. Promote the adequate provision of employment opportunities and the economic health of the region;
5. Conserve features of significant statewide or regional architectural, cultural, historical, or archaeological interest;
6. Protect life and property from the effects of natural hazards, such as flooding, winds, and wildfires;
7. Take into consideration such other matters that may be logically related to or form an integral part of a plan for the coordinated, efficient and orderly development of the local community; and
8. Provide for a variety of housing choices and assure affordable housing for future population growth.[45]

The planning and implementation process in Tennessee is in its infancy, and the administrative responsibilities associated with plan approval and compliance are the responsibility of the local governments. Tennessee currently does not have a state agency that administers the growth-management plan at the state level. Local governments were responsible for ratifying the proposed twenty-year growth plan and submitting it to the state for approval by July 2001. Failure to comply with this provision of the legislation could result in the forfeiture of state funding.[46]

The local government is responsible for developing and implementing a growth plan. The planning process is a three-phase process including oversight, information gathering, and plan development.[47] The legislation mandates that the coordinating committee directs the oversight phase. The membership of the coordinating committee must be

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[45] Tenn. Code Ann. § 6-58-107 (1-8).
[46] Tenn. Code Ann. § 6-58-110 (1-6).
[47] Chattanooga and Hamilton County Regional Planning Agency, 2020 Growth Plan, http://www.chcrpa.org/Plans/2020_UGB/202develop.htm, (09 April 2003).

representative of local government, education, business, utilities, agricultural interests, homeowners, construction, and environmentally concerned parties.[48] The coordinating committee's major responsibility is the development of the countywide growth boundary and land-use plan.

Information gathering activity is essential to the planning process, and while the responsibility rests with the coordination committee, many municipalities and counties have established task forces to gather information for plan development. The coordinating committee for Hamilton County and the ten municipalities within the county established five task forces to assist in the information gathering process. The purpose of the task forces is to provide public input into the information gathering and the analysis processes.[49] An essential element of the information gathering process is the requirement to conduct public forum sessions. The growth-management legislation mandates that at a minimum two public hearing sessions will be conducted by each county before rural areas are proposed to the legislative body.[50] This public forum requirement is an integral part of plan development and encourages public participation in plan development.[51]

The last phase of the planning process involves the actual development of the plan. The counties and municipalities within each county are responsible for developing their own growth boundary plan, and many of these governments have relied heavily upon the expertise of local planning commissions. Individual growth boundary and land-use plans are then combined into one comprehensive growth plan. The legislative bodies of the

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[48] Tenn. Code Ann. § 6-58-104 (a)(1)(A-H).
[49] Chattanooga and Hamilton County Regional Planning Agency, 2020 Growth Plan, http://www.chcrpa.org/Plans/2020_UGB/202develop.htm, (15 May 2005).
[50] Tenn. Code Ann. § 6-58-104 (a) (3).
[51] Tenn. Code Ann. § 6-58-106.

county and all municipalities within the county must ratify the comprehensive growth plan.[52] The ratified plan is then forwarded to the state for approval. The failure of the county to develop and ratify a comprehensive plan may result in the forfeiture of state funding and an administrative panel decision regarding the plan at the state level.[53] The growth boundary plan may be amended every three years and the land-use plan may be amended as needed.[54]

Responsibilities associated with plan development and implementation are governed by the legislation. Local municipalities are responsible for identifying and reporting the following criteria regarding their urban growth boundaries:

1. Population growth projections;
2. Infrastructure capacities and costs (to promote full development for current boundaries and for future development in planned growth areas);
3. Need for additional land (annexation);
4. Effect on natural resources (agricultural lands, forests, recreational and wildlife management areas).[55]

The county is responsible for observing the same criteria in the development of its planned growth areas. The county is also responsible for identifying rural areas that are to be preserved as agricultural lands, forests, recreational areas, wildlife management areas, and rural areas that are not utilized as high density commercial, residential, or

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[52] Tenn. Code Ann. § 6-58-104 (a) (4).
[53] Tenn. Code Ann. § 6-58-110; Tenn. Code Ann. § 6-58-104(b)(2).
[54] Chattanooga and Hamilton County Regional Planning Agency, 2020 Growth Plan, http://www.chcrpa.org/Plans/2020_UGB/202develop.htm, (09April 2003).
[55] Tenn. Code Ann. § 6-58-106 (a)(2).

industrial development. Rural areas also include any areas that are not included in the urban growth boundaries or the planned growth area.[56]

The state of Tennessee's growth-management legislation creates an effective framework for a growth-management program allowing communities to discern their own best interests in the development of their planning and land-use programs. The state is merely the facilitator and develops no statewide planning regulations, leaving all planning and development to the local governments. The legislation serves only to mandate that local governments are to plan for future growth and, while the legislation provides specific criteria that must be addressed in the future plans, communities are given broad latitude in the plan development and implementation process. This latitude allows communities to essentially develop their own community standard of living, but also places an extremely important responsibility on its governing bodies.

III. ANALYSIS OF STATE PROGRAMS:

The statutory language of growth-management legislation has a significant impact on the effectiveness of the legislation and development of growth-management programs at the state and local levels. The growth-management statutes of Oregon, Florida, and Tennessee share many commonalties in their statutory intent, although the subsequent management programs developed by the respective states are significantly different. The present analysis of state growth statutes and subsequent growth-management programs considers four key areas, namely 1) statutory authority and program development, 2) citizen-participation, 3) appeals process, and 4) judicial review.

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[56] Chattanooga and Hamilton County Regional Planning Agency, 2020 Growth Plan, http://www.chcrpa.org/Plans/2020_UGB/202develop.htm, (09 April 2003).

A. Statutory Authority and Program Development

1. Environmental Conservation and Preservation

Oregon's growth-management legislation established a top-down approach to land-use planning and development. The state functions as an administrator and develops no statewide planning regulations, leaving all planning and development to the local governments, provided the local plans are consistent with the nineteen original goals established by the LCDC.[57] The statutory language of Oregon's growth-management statute is broad in nature essentially creating a dynamic evolving statute that may be adapted to changing environs. According to an article published in the Oregon Law Review by Edward J. Sullivan "... the basic structure has remained intact since 1973. The inclination has been to add to, rather than to revise, the existing planning legislation."[58] While the Oregon growth-management program's original nineteen goals provide for general consideration of estuaries, beaches and dunes, forests, and ocean resources it also specifically address the procedures for administering approximately 300 miles of greenway that protect the Willamette River.[59] This generalized and specific identification of areas of state significance are not limited to the Oregonian plan, as the state of Florida mandated that similar elements be considered in the conservation element of its comprehensive growth plan.

Florida has also adopted a top-down approach to land-use planning and development. As stated previously, Florida's growth-management legislation incorporated Florida's Environmental Land and Water Management Act of 1972, which

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[57] Or. Rev. Stat. § 197.175 (1).
[58] Sullivan, Edward J., *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100,* 77 OR. L. REV. 813 (1998) 819.
[59] Or. Rev. Stat. § 390.314 (1); § 380.314 (2)(a-e).

provides for the protection of four areas of state critical concern (ACSC) and establishes a development of regional impact (DRI) process.[60] This process permits the designation of areas of statewide significance in an effort to ensure preservation and to control growth in those areas. The Florida growth-management statute also mandates that beaches, shorelines, estuaries, rivers, bays, lakes, wetlands, minerals, soils, etc. be considered in terms of conservation, and use and protection of natural resources.[61] An interesting feature of both Florida's and Oregon's growth-management program is that neither state has since designated a specific area of regional or statewide significance since the original designations. This fact alone would suggest that states seeking to develop growth-management programs should devote considerable resources and careful consideration to identifying areas of regional or statewide significance.

Unlike Oregon and Florida, Tennessee's growth-management legislation does not identify any areas of state or regional significance and provides no statutory requirements for the conservation or protection of environmental (natural) resources that are of regional or statewide significance. This might be viewed as a weakness of Tennessee's growth-management legislation.

The only provisions for the conservation or protection of areas of environmental importance are included in the planning phase of the growth-management program. Each city and county legislative body is required to examine and report on agricultural lands, forests, recreational areas, and wildlife management areas that lie within the area designated for planned growth.[62] The growth-management plan is required to reflect the city/county's duty to manage natural resources, control urban growth, and consider the

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[60] Fla. Stat. § 380.06 (2)(a).
[61] Fla. Stat. § 163.3177 (6)(a).
[62] Tenn. Code Ann. § 6-58-106 (a)(1)(E); Tenn. Code Ann. § 6-58-106 (b)(2).

long-term impact of growth on these areas. The county is also required to manage growth and the natural resources in rural areas in a manner, which minimizes the impact to agricultural lands, forests, recreational areas, and wildlife management areas.[63]

The requirements to establish an urban growth boundary and to effectively manage natural resources are potential methods to conserve natural resources and reduce urban sprawl. Oregon's growth-management program utilized similar language in the original nineteen planning goals, and has realized some success in preserving resources.[64] The catalyst for Oregon's growth-management program development was the concern for the deterioration of agricultural land in the Willamette River valley.[65] Subsequent program development addressed the deterioration of farmland by setting minimum lot sizes, restricting development near stream banks, and implementing testing standards to assist in the identification of farmland value.[66] Oregon also attempted to control urban sprawl in the development of goal fourteen (urbanization), which attempts to control urban sprawl through the delineation of urban and rural lands. Goal fourteen sets the requirements for designating projected urban land needs and the subsequent designation of urban, urbanizable, and rural land.[67] The development of urban growth boundaries and delineation of rural areas significantly limited development outside of UGB's and resulted in the preservation of agricultural and forest land.[68] Although there is a process that allows rural land to be converted to urbanizable land, development is not allowed to

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[63] Tenn. Code Ann. § 6-58-106 (c)(1)(D).
[64] Sullivan, Edward J., *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100,* 77 OR. L. REV. 813 (1998) 829.
[65] Sullivan, Edward J., *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100,* 77 OR. L. REV. 813 (1998) 830.
[66] Sullivan, Edward J., *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100,* 77 OR. L. REV. 813 (1998) 831.
[67] Sullivan, Edward J., *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100,* 77 OR. L. REV. 813 (1998) 834.
[68] Soules, Michael C., *Constitutional Limitations of State Growth-management Programs*, 18 J. LAND USE & ENVTL. LAW 145 (2002) 152.

proceed on the newly designated land unless the necessary urban services are available.[69] This concurrency requirement allows some mechanism for effective control of urban sprawl.

There are many areas throughout the state that deserve careful consideration for areas of regional or statewide significance within the context of Tennessee's growth-management legislation. Areas such as the Mississippi and Tennessee Rivers, and The Great Smoky Mountains National Park are areas of significance to most Tennessee residents. Recent reports suggest that pollution attributed to fossil fuel emissions have had a significant detrimental impact on the flora and fauna of the Great Smoky Mountains National Park.[70] The source of these pollutants has been attributed to automobile emissions and coal fueled power generation facilities[71] that are located outside of park boundaries. The failure of the Tennessee legislative assembly to provide for the protection of areas of regional or statewide significance may have serious future ramifications for these areas.

Environmental conservation and protection continue to be debated at local levels. The state growth-management legislation mandates that municipal governments must consider the government's duty to effectively manage urban growth and consider the impact to agricultural lands, forests, recreational areas, and wildlife management areas that are located within the proposed urban growth boundary.[72] The statute further

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[69] Schell, Steven R., *Land Use Meets Populism: Citizen Control of Growth in Oregon*, 77 OR. L. REV. 893 (1998) 893.

[70] United States Department of the Interior, National Park Service, Great Smoky Mountains National Park, Nature & Science, Air Quality, http://www.nps.gov/grsm/pphtml/subenvironmentalfactors23.html, (14 October 2004).

[71] United States Department of the Interior, National Park Service, Great Smoky Mountains National Park, Nature & Science, Air Quality, http://www.nps.gov/grsm/pphtml/subenvironmentalfactors23.html, (14 October 2004).

[72] Tenn. Code Ann. § 6-58-106 (a)(1)(E).

indicates that county governments must identify territory that is to be preserved as agricultural lands, wildlife management areas, forests and recreational.[73] The plan must also reflect the county's duty to manage growth and natural resources in order to minimize the impact to natural resources.[74] This environmental conservation and preservation element suggests that the legislature intended that each comprehensive growth plan must evaluate the potential adverse impacts to natural resources and implement control measures to mitigate those impacts. Subsequent examination of the growth-management statute indicates that the legislature merely intended that natural resources be considered, but there is no requirement for municipal or county governments to actually include planned growth areas or rural areas in the comprehensive plan. The comprehensive growth plan must include urban growth boundaries, but does not mandate the inclusion of planned growth areas and rural areas in the comprehensive plan.[75]

A report released by the Tennessee Advisory Commission on Intergovernmental Relations indicated that counties must give due consideration to their responsibility to "demonstrate a comprehensive awareness of both the status of natural assets within their rural areas and the trends that could affect these resources."[76] The study further indicated that the county should function as a stewardship leader and coordinator.[77] The report included analyses of two counties in Tennessee that had made efforts to satisfy growth-management statutory requirements. It was found that these counties in their subsequent plan development gave very little consideration to rural area designation. The report indicated that rural areas were identified as the land that remained after the identification

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[73] Tenn. Code Ann. § 6-58-106 (b)(3)(C).
[74] Tenn. Code Ann. § 6-58-106 (b) (3) (D).
[75] Tenn. Code Ann. § 6-58-107.
[76] English, Mary B., and Hoffman James R., *Planning for Rural Areas in Tennessee Under PC 1101:* The Tennessee Advisory Commission on Intergovernmental Relations: Staff Information Report, (2001) 15.
[77] English, Mary B., and Hoffman James R., *Planning for Rural Areas in Tennessee Under PC 1101:* The Tennessee Advisory Commission on Intergovernmental Relations: Staff Information Report, (2001) 15.

of urban growth boundaries and planned growth areas.[78] The Hamilton County future land-use map (FLUM) substantiates this assertion. The Hamilton County FLUM identified urban growth boundaries and planned growth areas, but failed to designate any rural areas within the entire county.[79] This is an apparent effort to eliminate the conservation element from the growth-management act and to remove the conservation element from the FLUM. This has potentially serious implications for the quality of life for future residents, as there are no designated conservation areas and all areas outside of urban growth boundaries are subject to potential development. The failure of local comprehensive plans to identify and designate rural areas effectively subjects those areas to development and the potential loss of farming activities, natural resources, and open spaces.

2. Infrastructure Requirements:

A commonality shared among the three state growth-management programs is the mandate for directed and supported growth. This is best described by the Florida Growth-management Program concurrency requirement, which attempts to ensure that any private development is supported by the necessary public infrastructure.[80] This concurrency requirement attempts to control growth and ensure that adequate public facilities accompany private development projects.[81] The concurrency requirement actually requires that all funding (public or private) be available at the time of

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[78] English, Mary B., and Hoffman James R., *Planning for Rural Areas in Tennessee Under PC 1101:* The Tennessee Advisory Commission on Intergovernmental Relations: Staff Information Report, (2001) 5.
[79] Chattanooga and Hamilton County Regional Planning Agency, Hamilton County Future Land Use Map, http://www.chcrpa.org/maps/Urban_Growth_Boundaries/Urban%20Growth%20Boundaries%20Key%20Map. (23 March 2005).
[80] Apgar, Robert C., *Comprehensive Plans in the Twenty-First Century: Suggestion to Improve a Valuable Process*, 30 STETSON L. REV. 965 (2001) 967.
[81] Fla. Stat. § 163.3177 (3)(a)(3).

construction for all supporting infrastructure required to support development in the future.[82]

This concurrency requirement is also addressed in Oregon's Growth-management Program, requiring that public services be present in order for development to proceed.[83] Oregon's Comprehensive Land-use Planning Program goal eleven (public facilities and services) attempts to take a proactive rather than reactive approach to development by directing efficient planning for all public facilities and services. This growth-management goal also directs the local governing body to coordinate directly with involved state agencies for funding and support.[84]

There are two major issues that have a significant impact on local governments as they attempt to comply with statutory requirements. The establishment of urban growth boundaries (UGB) and the "concurrency" requirement have in some cases been a contributing factor in inflated property values, and have not fully supported high-density development, thus making housing unaffordable for many families and defeating the purpose of land-use planning. A 1996 study of Portland's urban growth boundary (UGB) indicated that one-acre parcels inside the UGB were priced at $120,000, while one-acre lots outside the UGB were priced at $18,000.[85] The affordability of housing has the potential to significantly impact the effectiveness of growth-management programs. An evaluation of housing prices from 1990-1995 in southeast, northeast, and northern inner-city Portland increased by 85%, 78% and 103% respectively. During the same time

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[82] *State-Sponsored Growth-management as a Remedy for Exclusionary Zoning,* 108 HARV. L. REV. 1127 (1995) 1140.
[83] Schell, Steven R., *Land Use Meets Populism: Citizen Control of Growth in Oregon*, 77 OR. L. REV. 893 (1998) 893.
[84] Or. Rev. Stat. § 197.712 (2)(e-f).
[85] Siegan, Bernard H., *Smart Growth and Other Infirmities of Land Use Controls*, 38 SAN DIEGO L. REV. 693 (2001) 714.

period housing prices in the suburbs increased by 45%.[86] While the intent of establishing the UGB is to encourage and direct high-density development within the UGB, there is the potential for creating artificially inflated property values with the establishment of the urban growth boundary. The increase in property values does not support high-density development and encourages suburban development contrary to the intent of the establishment of the urban growth boundary.

Growth-management programs have also realized the significance of coordinating transportation elements in land-use planning development. Oregon coordinated effective transportation regulations through the Transportation Planning Rule (TPR), a regulatory program created by the Department of Land Conservation and Development (DLCD).[87] The program is designed to encourage local governments to develop transportation systems in conjunction with land-use plans that offer alternatives to the automobile. The program requires proposed plan amendments to consider transportation alternatives or fund improvements if transportation facilities will be significantly affected.[88] The Oregon Department of Transportation (ODOT) and the Department of Land Conservation and Development (DLCD) have formed a partnership, and ODOT has expounded its traditional role by creating and managing programs that complement land-use planning objectives. In theory, concurrency transportation elements would seemingly support the goals and objectives of the land-use programs, but the effectiveness of transportation requirements deserves serious consideration.[89] Florida's transportation concurrency

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[86] Siegan, Bernard H., *Smart Growth and Other Infirmities of Land Use Controls*, 38 SAN DIEGO L. REV. 693 (2001) 718-719.
[87] Ramis, Timothy V., and Stamp, Andrew H., A *Critical Look at the Oregon Department of Transportation's Role as a Growth-management Agency,* 77 OR. L. REV. 845 (1998) 854.
[88] Ramis, Timothy V., and Stamp, Andrew H., A *Critical Look at the Oregon Department of Transportation's Role as a Growth-management Agency,* 77 OR. L. REV. 845 (1998) 855.
[89] Ramis, Timothy V., and Stamp, Andrew H., *A Critical Look at the Oregon Department of Transportation's Role as a Growth-management Agency,* 77 OR. L. REV. 845 (1998) 854-855.

requirements have not realized the statutory intent. Growth-management programs have not evaluated land-use development in conjunction with alternative modes of transportation.[90] The result is an increased reliance on automobile transportation, instead of developing transportation alternatives. Concurrency requirements are designed to discourage development in areas that do not have the road structure to support anticipated transportation requirements. Due to the lack of effective planning the result has been an expansion into rural areas resulting in fragmented (leapfrog) development.[91] Interagency coordination is essential to managing growth and developing comprehensive growth plans that complement local, regional, and state goals. The ability of local and state governments to integrate transportation into comprehensive land-use plans has the potential to contribute significantly to the overall success of growth-management programs.

The effect of planned growth has also had a significant impact on local governmental budgets. The statutory requirements for the local government planning process have not been accompanied by additional funding. The lack of funding at the local level has placed an undue burden on local governments as they attempt to comply with statutory requirements and state regulations regarding the development and modification of comprehensive growth planning. Florida's growth-management program provides local governments no additional funding other than funds available in the form of technical assistance planning grants. In 2001, the Florida Legislature allocated $222,500 to the Division of Community Planning to be distributed to local governments in their planning

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[90] Apgar, Robert C., *Comprehensive Plans in the Twenty-First Century: Suggestion to Improve a Valuable Process*, 30 STETSON L. REV. 965 (2001) 973.

[91] Apgar, Robert C., *Comprehensive Plans in the Twenty-First Century: Suggestion to Improve a Valuable Process*, 30 STETSON L. REV. 965 (2001) 974.

efforts. The Division of Community Planning received 229 grant proposals and only 19 local government grants were distributed.[92]

Oregon has experienced similar budget constraints with its local planning efforts. Remarks made at a symposium marking the 25th anniversary of Senate Bill 100 indicate a recurring theme throughout six governors and thirteen legislative sessions was the lack of funding provided to local governments to comply with the statutory requirements.[93]

Oregon's growth-management program initially envisioned completing local comprehensive plans within one-year, yet the realization of that vision occurred approximately fifteen years later.[94] Similarly, Florida's 1985 Local Government Comprehensive Planning and Land Development Regulation Act required local governments to complete and adopt comprehensive local growth-management plans over a three-year period,[95] yet the final comprehensive plans were completed approximately seven years later.[96]

Tennessee's growth-management statute does not make any provisions for state funding to assist with the local planning process. The lack of additional funding for a labor-intensive process may contribute to poorly planned and subsequently executed growth-management programs. The lack of funding combined with an aggressive plan submission requirement only serves to exacerbate a fundamental flaw in the program. Tennessee's growth-management statute requires that all comprehensive growth plans to

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[92] State of Florida, Department of Community Affairs, Division of Community Planning, Technical Assistance Grants, http://www. dca.state.fl.us/fdcp/DCP/programs/techgran.htm, (14 January 2004).
[93] Sullivan, Edward J., *Remarks to University of Oregon Symposium Marking the Twenty-Fifth Anniversary of S.B. 100*, 77 OR. L. REV. 813 (1998) 816.
[94] Schell, Steven R., Symposium: *Land Use Meets Populism: Citizen Control of Growth in Oregon*, 77 OR. L. REV. 893 (1998) 894.
[95] Fla. Stat. § 163.3167 (4).
[96] Grosso, Richard, *Florida's Growth-management Act: How Far We Have Come, and How Far We Have Yet to Go*, 20 NOVA L. REV. 589 (1996) 596.

be approved and submitted no later than July 1, 2001.[97] This aggressive approach allocated approximately three years for resource-challenged local governments to adopt local comprehensive growth plans. The growth-management statute also provides for preferential grant consideration and additional allocation of certain funds for counties and municipalities with approved growth plans prior to July 1, 2001.[98] The statute suspends the availability of housing development and industrial grants, transportation funds, and other government funds to local governments that fail to approve local comprehensive plans prior to July 1, 2001.[99] This approach, in view of Oregon and Florida's difficulty in completing local comprehensive plans with little or no funding, illustrates the legislature's failure to fully consider the scope of the comprehensive planning effort. By failing to provide local governments with the resources necessary to fulfill the statutory requirements, the legislative leadership severely limits the ability of local governments to satisfy their statutory obligations.

The Tennessee legislature should allocate funding and provide technical planning assistance for the development and modification of future comprehensive growth plans. The Tennessee growth-management statute currently recommends that the local coordinating committees utilize existing planning resources in developing their local comprehensive growth plans. The limitation of this recommendation is that many rural counties and municipalities do not have the planning resources or expertise to develop an adequate growth plan.[100] The current structure of Tennessee's growth-management program does not provide for a state level agency that coordinates and has oversight

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[97] Tenn. Code Ann. § 6-58-104 (c)(1).
[98] Tenn. Code Ann. § 6-58-109 (a-c).
[99] Tenn. Code Ann. § 6-58-110 (1-6).
[100] Stewart, Michael J., *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan*, 67 TENN. L. REV. 983 (2000) 1012.

responsibility for ensuring that local comprehensive plans meet statutory requirements. The growth-management statute instructs county governments to submit the growth-management plan to a local government planning advisory committee (LGPAC).[101] The local government planning advisory committee's responsibility is to review the growth plans and ensure that those plans conform with the provisions of Tennessee Code Annotated § 6-58-106,[102] although the agency's review authority is limited.[103] A state level agency could ensure that local comprehensive growth plans achieve some degree of uniformity and support the legislative intent of the growth-management statute. The formation of a state review and approval agency could provide valuable technical assistance to local governments in plan development and implementation.

3. State Oversight:

The need for a state agency for oversight of growth-management programs is noted above. State level agencies possess the ability to assist local governments with the development and management of comprehensive planning and afford the state the opportunity to ensure that the statutory intent is applied in local comprehensive planning efforts. Oregon's original State Land Use Act of 1973 established the Land Conservation and Development Commission (LCDC),[104] a state agency responsible for reviewing local comprehensive plans and ensuring that local plans are in compliance with established state planning standards.[105] The LCDC is also responsible for ensuring citizen involvement,[106] and for providing recommendations to the state legislature concerning

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[101] Tenn. Code Ann. § 6-58-104 (c)(1).
[102] Tenn. Code Ann. § 6-58-104 (c)(1).
[103] Green, Harry A., *Tennessee's Growth Policy in 2001: Promises and Progress:* The Tennessee Advisory Commission on Intergovernmental Relations: A Commission Report to the 102nd General Assembly, (2002) 19.
[104] Or. Rev. Stat. § 197.030 (1).
[105] Or. Rev. Stat. § 197.040 (2)(d).
[106] Or. Rev. Stat. § 197.040 (2)(f).

areas that may be of statewide significance.[107] The LCDC has the authority to reject local comprehensive plans and regulations that do support the goals of the growth-management program.[108] The LCDC is also authorized to levy sanctions, such as withholding grant funds and issuing injunctions for noncompliance with the local comprehensive plan.[109] The formation of a state agency with oversight responsibility for identifying state goals and reviewing local comprehensive growth plans generates a knowledge base that is accessible to local governments throughout the state. A state level planning agency could potentially evolve into an advisory panel that not only reviews local plans and ensures compliance with statutory and regulatory requirements, but has the capacity to function as a technical advisor on local planning efforts.

Florida's growth-management statute also provides for a state level agency responsible for reviewing and approving local comprehensive growth plans. The program also readily acknowledges the need for interagency review and the statute makes provisions for multiple agency review with the Department of Community Affairs (DCA) being ultimately responsible for administration of the growth-management program.[110] Although the DCA has approval authority regarding to ensure local comprehensive plans meet established criteria, the agency does not have the authority to impose economic sanctions. Enforcement of the growth-management program is reserved for the governor and his cabinet, commonly referred to as the "Administration Commission." The commission has the authority to impose economic sanctions against local governments for failing to comply with state planning goals.[111] Eleven regional planning districts are

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[107] Or. Rev. Stat. § 197.040 (2)(g).
[108] Or. Rev. Stat. § 197.040 (2)(d-e).
[109] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program*, 1979-1999, 36 WILLAMETTE L. REV. 441 (2000) 445.
[110] Fla. Stat. § 163.3184 (3)(a).
[111] Grosso, Richard, *Florida's Growth-management Act: How Far We Have Come, and How Far We Have Yet to Go,* 20 NOVA L. REV. 589 (1996) 604.

responsible for the review of regional specific planning issues and further augment the interagency review process. The Division of Community Planning consists of two bureaus, the Bureau of Local Planning and the Bureau of State Planning. The Bureau of Local Planning consists of thirty-three planners who are responsible for reviewing comprehensive plans. The Bureau of State Planning administers the Areas of Critical State Concern Program (ACSC).[112] This multi-echelon review process provides local governments with technical resources and an appropriate monitoring and feedback mechanism,[113] and a technical review process that ensures local comprehensive plans are consistent with state plans and regulations. This review process also addresses regional planning considerations and ensures that local comprehensive plans are consistent with state and regional land-use regulations and policies.

Tennessee's growth-management statute makes no provision for a state agency with oversight authority. The comprehensive growth plan for each county is submitted to the local government planning and advisory committee for approval[114] and is subsequently forwarded to the state for review. Local comprehensive plan developers are not required to coordinate with state governmental plans, programs, or policies.[115] Any unresolved disputes regarding the adoption of a local comprehensive growth plan are resolved at the state level by a panel of three administrative law judges.[116] An inherent problem with the dispute resolution process is the lack of experience of the administrative panel. The Secretary of State attempted to address the lack of planning experience of the panel by

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[112] State of Florida, Department of Community Affairs, Division of Community Planning, Developments of Regional Impact, http://www.dca.state.fl.us/fdcp/DCP/programs/dris.htm, (23 January 2004).
[113] Fla. Stat. § 163.3184 (6)(a); § 163.3184 (6)(b).
[114] Tenn. Code Ann. § 6-58-107.
[115] Green, Harry A., *Tennessee's Growth Policy in 2001: Promises and Progress:* The Tennessee Advisory Commission on Intergovernmental Relations: A Commission Report to the 102nd General Assembly, (2002) 19.
[116] Tenn. Code Ann. § 6-58-104 (b)(2-3).

conducting a training session for the administrative review panel.[117] The effectiveness of such training in view of the daunting task of growth-management plan adoption is at best questionable. The growth-management statute does not provide for the creation of a state agency with any review authority of local growth plans. While the statute does encourage local governments to consider land-use, transportation, public infrastructure, housing, and economic development requirements in the development of the plan,[118] there are no provisions for technical assistance and oversight at the state level. This bottom-up approach to state growth-management relies upon incentives rather than regulatory mechanisms to ensure support of state growth goals.[119] Bottom-up growth-management affords local governments the latitude to develop comprehensive growth plans that are consistent with community values, but also provides incentives to the local governments to promulgate effective land-use plans and environmental protection.[120] The statute fails to make provisions for designating areas of regional or state significance, offers no compliance incentives, and fails to provide a regulatory agency or a forum for addressing compliance issues. The statute also fails to require that subsequent land-use decisions are consistent with the local growth plan.[121] The Tennessee legislature failed to provide local governments with an effective management program, and appears content to rely upon local comprehensive plans to consider statewide interests, but offers no incentives to support obscure state goals and objectives. A state-level planning agency

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[117] Green, Harry A., *Tennessee's Growth Policy Act: A Vision for the Future:* The Tennessee Advisory Commission on Intergovernmental Relations: Staff Information Report, (2000) 29.
[118] Tenn. Code Ann. § 6-58-107.
[119] Pollard, Oliver A. III, *Smart Growth: The Promise, Politics, and Potential Pitfalls, of Emerging Growth-management Strategies*, 19 VA. ENVTL. L. J. 247 (2000) 257.
[120] Salkin, Patricia E., *From Euclid to Growing Smart: The Transformation of the American Local Land Use Ethic Into Local Land Use and Environmental Controls*, 20 PACE ENVTL. L. REV. 109 (2002) 117.
[121] Green, Harry A., *Tennessee's Growth Policy in 2001: Promises and Progress:* The Tennessee Advisory Commission on Intergovernmental Relations: A Commission Report to the 102nd General Assembly, (2002) 18.

would have the capacity to ensure that local growth plans across the state are consistent and support the intent of the growth-management statute. Such an agency could function as facilitator and coordinator for interagency collaboration and provide assistance with the continued development of local growth planning efforts. This would essentially mimic the state level review policies of Oregon and Florida. The establishment of a state agency with oversight responsibility and authority is vitally important to establishing an effective growth-management program.

The process that formulates agency policy is also significant to program development and regulation. Oregon's growth-management program addresses the development of state policy by attempting to separate its land-use decision-making process from political decisions.[122] This is achieved by reserving the political decision until the land-use designation decision is made.[123] The separation of the political process from policy development attempts to relieve potential political pressures in the decision-making process, and avert potential mismanagement practices. This decision-making process is consistent with Tennessee's growth-management program,[124] although the effectiveness of the process is questionable. The departure from politically based decision making to a strictly land-use based process is the cornerstone of modern growth-management programs.[125] Oregon's Growth-management Program only recently embraced this philosophy with the adoption of House Bill 2709,[126] which mandates that

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[122] Schell, Steven R., *Land Use Meets Populism: Citizen Control of Growth in Oregon*, 77 OR. L. REV. 893 (1998) 894.
[123] Schell, Steven R., *Land Use Meets Populism: Citizen Control of Growth in Oregon*, 77 OR. L. REV. 893 (1998) 893.
[124] Stewart, Michael J., *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan*, 67 TENN. L. REV. 983 (2000) 991.
[125] Salkin, Patricia E., *From Euclid to Growing Smart: The Transformation of the American Local Land Use Ethic Into Local Land Use and Environmental Controls*, 20 PACE ENVTL. L. REV. 109 (2002) 116-117.
[126] Schell, Steven R., *Land Use Meets Populism: Citizen Control of Growth in Oregon*, 77 OR. L. REV. 893 (1998) 893.

municipalities must identify a twenty-year supply of buildable land within their urban growth boundaries. This twenty-year urban growth boundary is consistent with Tennessee's Growth-management Program, which mandates that each municipality must identify twenty-year urban growth boundaries for projected residential and non-residential urban growth.[127]

Oregon and Tennessee's Growth Programs also exhibit similarities concerning the establishment and classification of land utilization within the framework of the growth program. Oregon first established urban, urbanizable, and rural lands in Goal 14 of the LCDC's original nineteen goals.[128] Tennessee also provided for the classification of land into urban growth areas, planned growth areas (commercial, industrial, and residential), and rural areas for the next twenty years.[129] This is also consistent with Florida's growth-management program, which bases its land-use decisions on political rather than economic processes. Florida's growth-management program also deviates from the Oregon and Tennessee programs by only allocating for the identification of five-year and ten-year land-use designations in the form of a Future Land Use Map (FLUM).[130]

There are potential pitfalls with a politically based decision-making process and these were recently evidenced in a study, which indicated that the Florida state review process was seriously flawed.[131] A review of state approved local comprehensive growth plans of eighteen coastal communities indicated that approximately half of the state's sixty goals and policies concerning coastal storm hazard elements were not addressed.

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[127] Tenn. Code Ann. § 6-58-106 (a)(1)(A).
[128] Schell, Steven R., *Land Use Meets Populism: Citizen Control of Growth in Oregon*, 77 OR. L. REV. 893 (1998) 893.
[129] Stewart, Michael J., *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan*, 67 TENN. L. REV. 983 (2000) 997-998.
[130] Fla. Stat. § 163.3177 (5)(a).
[131] Porter, Douglas, R., *Reforming Growth-management in the 21st Century: The Metropolitan Imperative*, 12 J. LAW & PUB. POL'Y 335 (2001) 348.

Approximately half of the plans did not utilize growth plans and developmental controls in support of growth-management.[132] The study attributed the flawed review and approval process to "political pressures and the administrative capabilities" of the state review process.[133] A compromised review process has the potential to seriously undermine the effectiveness of a statewide permitting system,[134] and may be vulnerable to changing administrations that do not fully embrace the intent of the legislation and growth-management programs.

The vulnerability to administrative policy is further evidenced by Florida's consistency requirements, which do not apply to state agencies.[135] State agencies are authorized to review local comprehensive plans to ensure compliance with agency policy, but are not required to consider local plans for agency sponsored programs or policy. This policy differs significantly from Oregon's growth-management statute. Oregon's growth-management program directs state agencies to comply with local comprehensive growth plans, and the state grants very few exceptions to policy.[136] The Tennessee growth-management legislation resembles that of Florida, as state agencies are not required to adopt land-use policies that are consistent with comprehensive growth plans. The failure of the Tennessee legislature to address state agency land-use policy in the growth-management legislation seriously undermines the effectiveness of the program.

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[132] Porter, Douglas, R., *Reforming Growth-management in the 21st Century: The Metropolitan Imperative*, 12 J. LAW & PUB. POL'Y 335 (2001) 348.
[133] Porter, Douglas, R., *Reforming Growth-management in the 21st Century: The Metropolitan Imperative*, 12 J. LAW & PUB. POL'Y 335 (2001) 348.
[134] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program*, 1979-1999, 36 WILLAMETTE L. REV. 441 (2000) 451.
[135] Grosso, Richard, *Florida's Growth-management Act: How Far We Have Come, and How Far We Have Yet to Go*, 20 NOVA L. REV. 589 (1996) 652.
[136] Or. Rev. Stat. § 197.180 (2).

B. Citizen Involvement:

The importance of citizen involvement and participation in the development and adoption of growth-management programs cannot be underestimated. Oregon's growth-management legislation provides for citizen involvement within the framework of the growth-management statute.[137] Citizen participation is the first of the nineteen goals established by the LCDC and mandates that the state will establish a State Citizen Involvement Advisory Committee in an effort to promote and enhance public participation in the adoption and amendment of the goals and guidelines. Each city and county government is also required to submit to the LCDC a program for citizen involvement in the land-use planning process. The Oregon Growth-management statute also provides for local government involvement in the implementation of Oregon's Growth-management Program in the form of a Local Officials Advisory Committee. The purpose of the program is to promote a "mutual understanding and cooperation between the Land Conservation and Development Commission and local government in the implementation of ORS chapters 195, 196, 197 and the goals, the commission shall appoint a Local Officials Advisory Committee. The committee shall be comprised of persons serving as city or county elected officials and its membership shall reflect the city, county and geographic diversity of the state."[138] The citizen participation provision[139] of the Oregon growth-management program is also consistent with the citizen participation requirements in Florida's growth-management legislation.[140]

Florida's growth-management legislation provides for public participation in the comprehensive planning process as indicated in the Florida statute, "It is the intent of the

[137] Or. Rev. Stat. § 197.160 (1)(a-c).
[138] Or. Rev. Stat. § 197.165.
[139] Or. Rev. Stat. § 197.235 (1)(a-b); § 197.235 (1); § 197.235 (3).
[140] Fla. Stat. § 163.3184 (15)(b).

Legislature that the public participate in the comprehensive planning process to the fullest extent possible."[141] Tennessee's growth-management statute also encourages public participation in the planning process and mandates that at least two public hearings are to be conducted before a county legislative body may propose planned growth or rural areas to the coordinating committee.[142]

The inclusion of participatory clauses is essential to growth program development. Public participation assists with identification of areas of public interest (aesthetic and environmental value), creates a general level of awareness within the public sector, and attempts to generate public "buy-in" of the proposed growth plan. Effective public participation may also serve to reduce the number of litigation responses to proposed growth-management programs, but it is reasonable to assume that there will be challenges to proposed regulatory programs. Thus, an effective forum for challenges to growth-management programs is required.

C. Appeals Process:

The implementation of state-mandated growth plans necessitates the requirement for a formal appeal process for persons that feel that they have been egregiously affected by adopted comprehensive growth plans or resulting development orders. The appeals process for land-use challenges to local comprehensive growth plans may be addressed through traditional judicial relief utilizing current state judicial systems or, as in the case of Oregon, an appointed administrative council reviews all land-use challenges to comprehensive growth plans.

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[141] Fla. Stat. § 163.3181 (1).
[142] Tenn. Code Ann. § 6-58-106 (b)(3); Tenn. Code Ann. § 6-58-106 (c)(2).

Oregon's legislature created the Land Use Board of Appeals (LUBA) in 1979[143] in an effort to relieve the resource strain that land-use challenges were placing on the trial court system.[144] The Oregon growth-management statute grants LUBA exclusive jurisdiction over all land-use decisions,[145] although LUBA decisions may be appealed to the Oregon Court of Appeals.[146] The standing criteria for affected persons to appeal local land-use plans are quite broad, only requiring "participation in the local proceeding."[147] While the statutory standing requirements are extremely broad the statute does attempt to limit the number of litigation responses by establishing a 21-day time limit,[148] which has resulted in LUBA entertaining approximately 250 case filings annually with roughly two-thirds of those reaching the opinion stage.[149]

Florida's growth-management statute provides dispute resolution for issues of non-compliance by directing the Department of Administrative Hearings (DOAH) to appoint an administrative judge to conduct formal proceedings in an effort to resolve the compliance issue.[150] The statute mimics the Oregon statute by attempting to reduce the number of compliance hearings by establishing a 21-day filing notice threshold.[151] All egregiously affected parties must file notice within 21 days after publication of the comprehensive plan or amendment. Florida's growth-management program also provides broad standing provisions that are consistent with Oregon's statutory

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[143] Soules, Michael C., *Constitutional Limitations of State Growth-management Programs*, 18 J. LAND USE & ENVTL. LAW 145 (2002) 142.
[144] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program*, 1979-1999, 36 WILLAMETTE L. REV. 441 (2000) 447.
[145] Or. Rev. Stat. § 197.825 (1).
[146] Or. Rev. Stat. § 197.850 (3).
[147] Or. Rev. Stat. § 197.253.
[148] Or. Rev. Stat. § 197.830 (9).
[148] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program, 1979-1999,* 36 WILLAMETTE L. REV. 441 (2000) 447.
[149] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program, 1979-1999,* 36 WILLAMETTE L. REV. 441 (2000) 447.
[150] Florida Statute § 163.3184 (10)(b).
[151] Florida Statute § 163.3184 (10)(a).

requirements, but create more stringent requirements than merely participating in the local process. The Florida statute provides for three degrees of standing dependent upon the type of local government action.[152] Administrative appeals reflect the most liberal standing requirement indicated in Florida Statute § 163.3184(1)(a).

> "Affected person" includes the local government; person owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or a plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comment, recommendation, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

Florida's statute provides more stringent standing requirements concerning rebuttal of land development regulations developed as a result of the local comprehensive planning process. The statute refers to these individuals as a "substantially affected person."[153] The standing requirements are most stringent for challenges to local

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[152] Soules, Michael C., *Constitutional Limitations of State Growth-management Programs,* 18 J. LAND USE & ENVTL. LAW 145 (2002) 165.
[153] Florida Statute § 163.3213 (5)(a).

development orders, limiting challenges to local comprehensive growth plans.[154] The standing provision is outlined in Florida Statute § 163.3215(2).

> As used in this section, the term "aggrieved or adversely affected party" means any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government comprehensive plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment, or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons. The term includes the owner, developer, or applicant for a development order.

The development of broad-based standing provisions encourages public participation and establishes opportunities for administrative judicial review of growth-management plans.[155] The most restrictive degree of standing is reserved for judicial and not administrative review and serves to reduce the probability of exceeding constitutional standing limitations.[156] While the state of Tennessee also has broad standing provisions, the absence of an administrative state review panel may place an undue burden on the state judicial system.

Tennessee's growth-management statute adopted a broad standing provision, but does provide more limited criteria for establishing standing than Florida's statutory

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[154] Soules, Michael C., *Constitutional Limitations of State Growth-management Programs,* 18 J. LAND USE & ENVTL. LAW 145 (2002) 166.
[155] Soules, Michael C., *Constitutional Limitations of State Growth-management Programs,* 18 J. LAND USE & ENVTL. LAW 145 (2002) 166.
[156] Soules, Michael C., *Article: Constitutional Limitations of State Growth-management Programs,* 18 J. LAND USE & ENVTL. LAW 145 (2002) 166.

provisions. The standing provision is illustrated in Tennessee Code Annotated § 6-58-105(a).

> The affected county, an affected municipality, a resident of such county of an owner of real property located within such county is entitled to judicial review under this section, which shall be the exclusive method for judicial review of the growth plan and its urban growth boundaries, planned growth areas and rural areas. Proceedings for review shall be instituted by filing a petition for review in the chancery court of the affected county. Such petition shall be filed during the sixty-day period after the final approval of such urban growth boundaries, planned growth areas and rural areas by the local government planning advisory committee…

It is anticipated that the lack of an administrative review and appeals process has the potential to inundate the chancery court system and may prove to be cost ineffective. The formation of an administrative review and appeal panel would allow for even broader standing provisions, and it could serve as a source for technical expertise regarding land-use decisions. The panel would also assist in developing consistent rulings throughout the state on land-use issues. The current system does not provide for consistency and it is questionable if chancery court judges possess the technical expertise to effectively rule on land-use planning and development regulations.

There are opposing arguments to consider when forming an administrative law panel to review and rule on growth-management disputes. A recent review of Florida's Planning Act suggests that the administrative proceedings are too cumbersome and require an inordinate amount of resources, which include time, expert planning witnesses, pre-hearing discovery, evidentiary hearings, post-hearing submissions, and scheduling

conflicts.[157] The study also suggests that typical growth plan amendment challenges often last up to one -year.[158] The recommendation is to construct a three-person review panel that operates on a reduced time schedule and eliminates the DCA's reviewing requirement and limits all review to the appellate courts.[159] Theoretically this approach would streamline the review and dispute resolution process, but it has the potential to create growth-management programs that are not consistent with state goals, eliminate a system of governmental checks and balances, and may place an undue burden on the appellate court system. The reality of Tennessee's current dispute resolution process dictates that it be reevaluated and that careful consideration be given to developing an effective administrative law panel that is technically competent to deal with land-use planning challenges.

D. Judicial Review:

The implementation of land-use planning decisions in response to growth-management programs inevitably will lead to judicial challenges regarding the legality of the adopted statutes and subsequent growth program development. Perhaps one of the most significant and expected challenges to growth-management is the deprivation of individual private property rights, commonly referred to as a "takings claim." The government's authority to regulate land-use is laid out in a landmark 1926 Supreme Court Case. In *Village of Euclid v Ambler Realty Co.*[160] the Supreme Court determined that a zoning ordinance was unconstitutional only if it is "clearly arbitrary and unreasonable" and has "no substantial relation to the public health, safety, morals, or

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[157] Apgar, Robert C., *Comprehensive Plans in the Twenty-First Century: Suggestion to Improve a Valuable Process,* 30 STETSON L. REV. 965 (2001) 970.
[158] Apgar, Robert C., *Comprehensive Plans in the Twenty-First Century: Suggestion to Improve a Valuable Process,* 30 STETSON L. REV. 965 (2001) 970.
[159] Apgar, Robert C., *Comprehensive Plans in the Twenty-First Century: Suggestion to Improve a Valuable Process,* 30 STETSON L. REV. 965 (2001) 971.
[160] Village of Euclid Et. Al. v Ambler Realty Company, 272 U.S. 365,395 (US Supreme Court, 1926).

general welfare." In a prior ruling *(Pennsylvania Coal C. v Mahon)* the court determined that the taking of private property without just compensation was unconstitutional, this ruling was also applied to land-use regulation.[161] The Court further expounded on the takings provision in *Penn Central Transportation Co. v. City of New York,* where the Court applied the takings provision to "situations in which government regulations severely affect private property," classifying it as a regulatory taking. The precedents set forth in these and other landmark Supreme Court decisions have been applied to regulatory taking challenges of land-use policies in growth-management programs.

A recent study of the relationship between growth-management and regulatory takings challenges in the southeastern United States from 1993-2002, revealed that out of ninety-eight regulatory takings challenges a total of forty-five cases originated in Florida.[162] The study also indicates that developers initiated the majority of the challenges in Florida,[163] and that growth-management programs should give serious consideration to developmental interests in an effort to limit the number of legal challenges to comprehensive growth plans.[164]

A recent Florida Court of Appeals decision, *Leon County, LF v G.J. Glusenkamp, Jr.*, examined the relationship between development and local governmental authority to temporarily limit development in an effort to comply with the comprehensive plan.[165] The court specifically recognized that Goal Eight (stormwater control) of the

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[161] Nicholas, James C., *State and Regional Land Use Planning: The Evolving Role of the State*, 73 ST. JOHN'S L. REV. 1069 (1999) 1071.
[162] Williams, Chris J., *Do Smart Growth Policies Invite Regulatory Takings Challenges? A Survey of Smart Growth and Regulatory Takings in the Southeastern United States,* 55 ALA. L. REV. 895 (2004) 911-912.
[163] Williams, Chris J., *Do Smart Growth Policies Invite Regulatory Takings Challenges? A Survey of Smart Growth and Regulatory Takings in the Southeastern United States,* 55 ALA. L. REV. 895 (2004) 912.
[164] Williams, Chris J., *Do Smart Growth Policies Invite Regulatory Takings Challenges? A Survey of Smart Growth and Regulatory Takings in the Southeastern United States,* 55 ALA. L. REV. 895 (2004) 912.
[165] Leon County, Florida v. G.J. Gluesenkamp, Jr., 873 So. 2d 460, 468 (Fla. Dist. Ct. App. 2004).

comprehensive plan may be compromised by future development and further studies are required in consideration of the "furtherance of public interest."[166] The court determined that a temporary taking had not occurred, reversed the lower court ruling, and remanded the case for further review.[167] This case demonstrates the state judicial review process recognizes that private property rights, public interest, and comprehensive growth plans concerns are to be evaluated and given careful consideration. The court determined that in this case temporarily depriving an individual of his or her private property rights does not satisfy the "takings clause." The decision also supports the consistency and concurrency requirement of the Florida's growth-management program, by attempting to ensure that development plans are consistent with the comprehensive growth plans and that future development is adequately supported by the appropriate infrastructure.[168] Tennessee's growth-management statute has similar infrastructure support requirements, creating a quasi-concurrency requirement. However, unlike Florida the Tennessee statute does not require the funding necessary for infrastructure support to be present at the time of development.[169] The ability of local government to effectively implement growth-management programs may very well lie in the judicial system's interpretation of "takings" claims in relation to public interests. The state has also addressed "takings" challenges regarding the development of property purchased prior to comprehensive growth planning.

The Florida Court of Appeals examined this situation in the *State of Florida, Department of Environmental Protection v. Foster F. Burgess.*[170] The Department of

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[166] Leon County, Florida v. G.J. Gluesenkamp, Jr., 873 So. 2d 460, 468 (Fla. Dist. Ct. App. 2004).
[167] Leon County, Florida v. G.J. Gluesenkamp, Jr., 873 So. 2d 460, 468 (Fla. Dist. Ct. App. 2004).
[168] Florida Statute § 163.3177 (3)(a)(3).
[169] Tenn. Code Ann. § 6-58-106 (a)(2).
[170] State of Florida, Department of Environmental Protection v. Foster F. Burgess, 772 So. 2d 540, 541 (Fla. St. Ct. App. 2000).

Environmental Protection had denied Burgess a dredge and fill permit on the Choctawhatchee River. The court determined that although Burgess had purchased approximately 160 acres of the undeveloped wetlands in 1956, the wetland had since been designated an "Outstanding Florida Waterway, and the Department had long since assumed jurisdiction over Florida's wetlands."[171] The court determined that Burgess had failed to demonstrate that "the permit denial interfered with this reasonable, distinct investment-backed expectation, held at the time he purchased the property, to the extent that the government should compensate him."[172] This case has a significant impact on the protection of areas of regional or state significance because, although the case does not specifically address comprehensive growth programs, the case reflects Florida's commitment to interagency involvement in land-use management decisions and conservation and preservation efforts. The case also demonstrates the Florida judicial system's decision making process regarding the application of an individual's right to economic gain from his or her property balanced with public interests regarding environmental quality.

The Oregon Land Use Board of Appeals also addressed the issue of economic gain and public interests concerning the protection of forested lands (Goal Four of the LCDC original Nineteen Goals).[173] In *Lamb v. Lane County*, the petitioner alleged that the county failed to comply with goal four by enacting a temporary zoning ordinance that permitted airplanes, helipads, and balloon bedding areas on forested land.[174] LUBA further ruled the county had failed to adequately inventory the forested land as directed

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[171] State of Florida, Department of Environmental Protection v. Foster F. Burgess, 772 So. 2d 540, 541 (Fla. St. Ct. App. 2000).
[172] State of Florida, Department of Environmental Protection v. Foster F. Burgess, 772 So. 2d 543 (Fla. St. Ct. App. 2000).
[173] Or. Admin. R. § 660-006-0000 (1-2).
[174] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program, 1979-1999,* 36 WILLAMETTE L. REV. 441 (2000) 476.

by goal four of the state growth plan,[175] and therefore could not establish that the temporary zoning ordinance would have no significant impact on the forested land.[176]

The development of effective growth-management programs relies heavily upon establishing effective procedural techniques to follow statutory guidance. The failure to effectively adhere to statutory requirements may have significant impacts on the effectiveness of the programs and has the potential to increase the number of judicial challenges. Tennessee's growth-management legislation[177] emulates goal four[178] of Oregon's original nineteen planning goals by specifically requiring the examination of forests and wildlife management areas and directing the county to effectively manage those areas.[179] The failure to adequately examine and report on areas designated by statutory requirements before developing and adopting a comprehensive growth plan creates a distinct possibility for future litigation responses.[180]

IV. CONCLUSION:

The Growing Smart Legislative Guidebook released by the American Planning Association notes that model growth-management statutes should provide for citizen involvement in the decision-making processes.[181] One response to the call for greater citizen involvement in the decision-making processes has been a recent trend of some

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[175] Or. Admin. R. § 660-006-0000 (1-2).
[176] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program, 1979-1999,* 36 WILLAMETTE L. REV. 441 (2000) 476.
[177] Tenn. Code Ann. § 6-58-106 (a)(2).
[178] Or. Admin. R. § 660-006-0015 (1).
[179] Tenn. Code Ann. § 6-58-106 (b)(3)(D).
[180] Sullivan, Edward J., *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program, 1979-1999,* 36 WILLAMETTE L. REV. 441 (2000) 477.
[181] Salkin, Patricia E., *From Euclid to Growing Smart: The Transformation of the American Local Land Use Ethic Into Local Land Use and Environmental Controls,* 20 PACE ENVTL. L. REV. 109 (2002) 130.

Oregonian cities to conduct public votes before annexation,[182] which has met staunch opposition from The Oregon State Homebuilders Association and the Land Conservation Development Commission.[183] The Department of Land Conservation and Development opposed a 1997 bill introduced by these cities on the grounds that development should be supported by public infrastructure and should consider state conservation goals. The Oregon State Homebuilders opposition to public involvement in growth-management and annexation procedures is a stark departure from the Tennessee Home Builders Association position. Although the Tennessee Home Builders Association has not resisted public participation in the planning process the association has strongly resisted the implementation of the growth-management legislation in Tennessee and is expected to continue to oppose city and county growth programs.[184] The present trend in growth-management program development supports greater citizen involvement in the decision-making process. Present trends in growth program development also favor a bottom-up management method[185] to growth-management rather than the traditional top-down approach utilized by Oregon and Florida.[186]

The structure and organization of Tennessee's growth-management program differs significantly from the growth-management programs developed by Oregon and Florida. The relatively weak structure of Tennessee's growth-management program has the potential to compromise the effectiveness of local comprehensive planning efforts. The

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[182] Schell, Steven R., *Land Use Meets Populism: Citizen Control of Growth in Oregon,* 77 OR. L. REV. 893 (1998) 897.
[183] Schell, Steven R., *Land Use Meets Populism: Citizen Control of Growth in Oregon,* 77 OR. L. REV. 893 (1998) 897.
[184] Stewart, Michael J. *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan,* 67 TENN. L. REV. 983 (2000) 1002.
[185] Salkin, Patricia E., *From Euclid to Growing Smart: The Transformation of the American Local Land Use Ethic Into Local Land Use and Environmental Controls,* 20 PACE ENVTL. L. REV. 109 (2002) 117.
[186] Stewart, Michael J. *Growth and Its Implications: An Evaluation of Tennessee's Growth Plan,* 67 TENN. L. REV. 983 (2000) 1008.

following chart captures the significant limitations in the growth-management program of Tennessee compared to the programs developed in Oregon and Florida.

A Comparison of the Planning Statutes in Relation to Growth Management Programs

	Oregon	Florida	Tennessee
Levels of planning	2	3	2
Explicit/implied environmental considerations	●	●	●
Top-down approach	●	●	
Specific areas conserved or protected	●	●	
Dispute resolution process	●	●	
Local plan development	●	●	●
Enforcement measures	●	●	●
Review process	●	●	

The failure of the Tennessee legislature to adequately resource and structure the current growth-management legislation has severely limited the effectiveness of comprehensive growth plans in controlling growth and developing effective land-use planning methods. The following five limitations of Tennessee's growth-management legislation have significantly reduced the effectiveness of Tennessee's growth-management program development.

Tennessee's current growth-management program is best characterized by its bottom-up development and management approach. This bottom-up management approach seriously compromises the effectiveness of such a program in Tennessee with respect to the current growth-management statute. (1) The state has not allocated the necessary funding (incentives) to facilitate compliance with a bottom-up development and management program, and (2) the time allocated to complete comprehensive growth plans compromises the quality of subsequent plan development.

(3) The state's failure to provide for the identification of regional or state level areas of interest in the growth-management legislation is a glaring weakness in a bottom-up management program. There is no statutory obligation to ensure that local comprehensive plans consider regional or state level interests and the state's current bottom-up management program offers no method to encourage inter-governmental coordination in the development of comprehensive plans.

(4) The established comprehensive growth plan review process is not sufficient to address a potentially burdensome challenge process from local government, communities, and citizens. The absence of a state review panel prevents the state from ensuring that all local comprehensive plans meet the statutory intent of the legislation. The formation of a state review agency would ensure that local growth plans across the state are consistent and would assist in growth program development by offering technical assistance in plan development. A state review agency could also assist in interagency review and coordination efforts that may be required in the development of local comprehensive plans.

(5) The absence of a state administrative appeals board has the potential to inundate the chancery court system with appeals to plan implementation and development orders. Currently the state's administrative panel is only responsible for mediating disputes regarding the initial adoption of local comprehensive plans. While the panel's authority and responsibility could be expounded the current panel lacks the technical expertise to address complicated land-use planning regulations and growth-management plans. A state appeals board could potentially rule on administrative issues and enforce plan compliance; thereby relieving some burden on the chancery court system.

While there are several fundamental flaws in Tennessee's growth-management legislation, the legislature has recognized that coordinating and controlling growth are essential to maintaining the quality of life that the residents of Tennessee expect. Although the catalyst for adopting growth-management legislation was significantly different in Tennessee (annexation concerns) than in Oregon and Florida (population impacts), the resulting program development in Oregon and Florida offer an effective mechanism to control growth and guide the local comprehensive planning process. The evolution of growth-management legislation and subsequent growth program development in Tennessee should give serious consideration to the growth-management programs of Oregon and Florida in order to create an effective and efficient mechanism for controlling growth.

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