REGULATING PLANS

This section provides an overview of the issues, techniques, and successful applications of regulating plans for development within growth management planning. The following three principles broadly encompass the range of issues that regulating plans for development address:

• **Environmental Quality**: To maintain and improve the quality of the natural and built environments; protect the existing natural aesthetic and resources.

• **Visual Quality**: To preserve neighborhood and architectural character, as well as the natural environment, thereby maintaining a socially- and environmentally-acceptable standard of living.

• **Economic Equity**: Encourage both proper and controlled economic development that distributes the benefits of growth equitably among urban, suburban, and rural communities over the short- and long-term.
REGULATING PLANS: GOALS AND PROCEDURES

The following goals for the three principles of Environmental Quality, Visual Quality, and Economic Equity were identified as follows:

Goals for Environmental Quality

- Protect Open Spaces - Maintain a reasonable amount of open space to preserve the environment and the character of the area.

- Minimize Disturbance to Rural Lands - Accommodate the needs of expanding communities while maintaining and improving existing environmental quality.

- Protect Natural Resources - Maintain a high standard of environmental quality by preserving existing natural resources.

Goal of Visual Quality

- Protect Aesthetic Resources - Preserve architectural and neighborhood characteristics that are prevalent in or unique to an area and pertain to the locally-valued quality of life.

Goals of Economic Equity

- Encourage Infill Development - Maintain appropriate urban densities that both enhance and support development for the long-term.

- Redevelop Urban Areas - Support the rejuvenation of urban centers to sustain a regionally diverse and interdependent economy.

The following sections present various procedures and techniques for regulation of development related to the principles and goals identified above.

Comprehensive Plans

Comprehensive plans most often are defined to be a long-range plan that includes a community inventory and analysis and recommendations to guide the growth of a community or region. Comprehensive plan elements are often complete plans in themselves and typically encompass: economic development, housing, recreation areas and open space, transportation, community facilities, and land use. All recommendations relate specifically to a community’s stated goals and objectives for each plan element.
By combining the information from the comprehensive plans regarding public facilities and projected growth, it is possible to integrate the phasing of new development into a simultaneous capital improvement planning process. (Hamill, 1989, p. 58.)

In Washington Valley, New Jersey, an open space plan was developed as an element of the community's comprehensive plan. The open space plan was done in response to encroaching suburbanization. The plan's goal was to protect the area's aesthetic resources. The planning process began by identifying ten publicly-owned parcels of land that could be connected with a second, 7.8 square-mile park plan.

The key to achieving connected open spaces was to create or reinforce linkages between all identified parcels. In addition to the open space network, environmentally-sensitive features were identified and a detailed plan was developed to show how each property should be developed to preserve these areas. Some of the design principles used to guide Washington Valley's development process and implement the open space plan included cluster residential zoning to protect forty percent of each property's open space, conservation easements to protect sensitive environmental areas, and a minor-road network to minimize traffic.

Developers favored the plan due to its well-defined expectations and because they could improve their plans by incorporating large open space areas. A typical new residential project in this area has fifty percent open space, with homes on half-acre lots. (Hamill, 1989, p. 90.)

**Cluster Development**

This approach to development design concentrates the layout of buildings on a designated portion of a site, while maintaining the remaining areas to be used for recreation, common open space, and the preservation of environmentally-sensitive features. This technique allows for the same number of lots as in conventional development, but open space is retained and maintenance and building costs are reduced by increasing the efficiency of infrastructure. Cluster developments are often implemented in conjunction with a system of nature trails, bike paths, or wildlife corridors to meet requirements for open space and natural-area preservation. A community early in the development process should first
identifying lands able to sustain cluster development and areas to preserve and include these designations in the community master plan.

Bridgewater Township, New Jersey makes use of cluster developments to achieve its goal to protect open space. Open space in this township have been retained in recent developments by clustering residential units around a common area or motor courts. Proposed sites are analyzed to determine which areas are suitable for cluster development and which areas should be retained as open space. Issues studied in this analysis include: natural features, surrounding neighborhoods, relationships with the community, and highway and sewer capabilities. Bridgewater Township protected 1,146 acres of open space through their planning and use of cluster developments. (Hamill, 1989)

Design Review

New development can be indirectly managed by use of mandatory design reviews. Such reviews require the submission of a site or building design to be reviewed by a special board designated for that purpose. The board’s role usually is to comment, make recommendations, or grant approval of the proposed development’s design. The review board should rely on regulation procedures to ensure a fair analysis of each project. Factors to consider when reviewing projects include: community objectives, environmental quality factors, infrastructure capacity, zoning and subdivision regulations, existing community and regional design, neighborhood and community values, and regional and intergovernmental relationships. The review board must observe legal implications of their decisions, while also balancing their decisions with local citizen interests and the community’s master plan.

Tempe, Arizona, a rapidly growing neighbor of Phoenix, has established a design review board to ensure that development follows specific design, construction, and landscaping standards. Given the relative youth of cities in the Southwest, this technique is used to create—not preserve—an aesthetic built environment. (Einsweiler, 1992, p. 88.)

Fort Collins, Colorado attempts to protect its aesthetic resources by incorporating a point system and performance controls in an existing development review process. Instead of restricting the quantity of growth permitting, the City focused on the quality of growth. The definition of “quality” was determined by ninety-seven land-use policies that limit fringe
growth, encourage concentrated development, coordinate the juxtaposition of uses, and promote alternate transportation modes. The City also adopted a performance-zoning system called the Land Development Guidance System (LDGS). Under this system of quality "control," all development projects must be reviewed before approval is granted. The LDGS relies on two categories of review criteria: forty-six absolute, mandatory criteria for approval and a minimum number of points awarded to a development with regard to variable criteria. Developers can receive points for concentrating development, opting for mixed-use or infill development, achieving transportation objectives, and increasing densities in residential development. Thus, developers are rewarded for their contribution to a quality environment. (Hamill, 1989, pp. 92-93.)

Resource Conservation (Air, Water, Wildlife, Wetlands)

Clean Air Act Provisions

The Clean Air Act (CAA), initially passed over twenty years ago, is part of a large-scale federal effort to improve regional air qualities. The most recent changes, made in a series of amendments ratified by Congress in 1990, strengthen regulations and pollution reduction standards. Large urban centers and their surrounding metropolitan areas will be particularly affected by the amendments, as these are the areas of poorest air qualities and will, therefore have the most stringent requirements for emissions reductions.

The standards set by the 1990 Clean Air Act require tremendous change in our cities' transportation patterns and industrial activity. Many private sector enterprises and individuals resist the changes the Act mandates. Therefore, a dilemma faces planners as they prepare air quality improvement programs, namely how to balance economic growth and emissions reduction without depleting urban centers of economic vitality of the activities targeted for their destructive impacts.

At present, programs target both the public and private sectors, firms and individuals and recommend significant changes in transportation and industry. If deadlines for improved regional air qualities are not met, sanctions will be imposed. Penalties could be the withholding of government highway funds or significant fines.
The Gary-Chicago-Milwaukee region has been classified as a severe nonattainment zone under the 1990 Clean Air Act. This classification requires extraordinary changes in transportation patterns for the area to reduce its annual levels of harmful emissions. One private-sector response to the legislation is to trade emissions “credits” on the free market. This solution has been implemented with some criticism, but has effectively enabled companies to expand their activities despite more stringent emissions standards. Emissions trading essentially allows a firm to “sell” credits for emissions when it has lowered its emissions below minimum standards. Firms interested in expanding but restricted by their current emissions standards can “buy” the credits from the selling firm. While the trading of emissions standards does not reduce the overall emissions in a region, it allows firms that achieve lower emissions than are required to profit and other firms that are constrained by emissions requirements to grow.

Water Resource Conservation

Water conservation ordinances protect areas that contain vital sources of water. These ordinances can protect a specific water resource and areas immediately adjacent to it; they can pertain to small bodies of water within rural areas or to urban waterways or lakes that are polluted by industry or other dumping. Water resource management encompasses the research and prevention of stormwater and agricultural runoff, which often contributes to the pollution of water sources.

An important step in effective resource management is a local master plan, which can delineate those sites that are of significant value and essential to the public health and safety. Zoning can also protect particular natural resources, as well as increase the public’s access to them. Finally, state Departments of Natural Resources (DNR) typically regulate development along water resources in an attempt to clean up or preserve areas of regional or state-wide concern.

Easement restrictions included in local zoning ordinances are a common mechanism to manage the character of development along water resources. Coastal management programs and floodplain development restrictions intend to preserve natural water resources, in particular, and the public’s health and safety, in general. In state and national parks,
unintentional human destruction of water resources is controlled by the regulation of the consumption and use of river and stream water, particularly for bathing and cooking.

_Wetlands Preservation_

Wetlands preservation intends to protect lands vital to the cleansing and volume-control of local groundwater. These areas are generally identified by a state’s Department of Natural resources or a regional planning commission. Lands in low-lying areas that may have navigable waters or ponding year-round or during flood periods are included in wetlands designations. While regulated locally, additional restrictions can be imposed on the use or destruction of wetlands by federal or state agencies. At the federal level, the Army Corps of Engineers reviews applications and must approve a 404-permit for any development to occur in designated wetland areas. Locally, a branch of the state’s Department of Natural Resources must review, calculate interference, and inspect sites that have been proposed for development and have wetlands. Counties may also have some jurisdiction and may review applications for development and wetlands impacts. Wetland preservation often appears in local zoning ordinances through the establishment of either a principal wetland zone or conservancy areas that overlap with a principal use zone.

In New Berlin, Wisconsin, wetlands preservation is managed in standard fashion and serves as a useful example. In proposed sales of property with partial wetland designation, the offer to purchase is necessarily conditional. For approval of the sale, special treatment and preservation of the wetlands must be planned before approval is granted by the local divisions of the Army Corps of Engineers and Department of Natural Resources. This process usually takes four to six weeks to accomplish, as public notice is given and hearings are held by both the DNR and local municipality prior to approval.

_Wildlife Preservation_

Interventions in the approval process for proposed developments aim to preserve local ecological communities, or both the wildlife and their natural habitats.

Discussions about wetland preservation and growth management raise another broader topic, that of the natural habitats of near-endangered species. As sprawl occurs and more lands are
turned over to development, native species are threatened. The protection of these species relies on the careful identification of how severely an environment can be altered before it is destroyed to such a degree that species cannot maintain their life-sustaining networks. The difficulty in wildlife preservation comes in determining the appropriate size of natural habitats for the survival of species. Continued research in the impacts of development on landscape ecology and wildlife can only improve the methods available to governments and planners for balancing growth and environmental preservation.

Local zoning ordinances often include a conservancy zone either as a primary use zone or an overlay zone. These areas consist of sites within a municipality that are to be preserved for natural habitat or wildlife reasons. The zoning restricts developments that can occur within these conservancy areas. Additionally, the Endangered Species Act of 1973 and the Coastal Management Act of 1972 both specifically protect areas containing endangered species or coastlines from development. This Wildlife Management Plan is used to control development projects of 100 acres or more. Open space easements are required on proposed developments of this size in order to protect vital habitats. If a proposed site for development is found to have estuaries or other vital resources for certain wildlife, these areas are restricted in terms of the growth that can occur on the site, particularly adjacent to these areas.

Within Florida's mandated comprehensive planning process, county-wide growth management plans are required to include criteria to assess development's impacts on natural habitats. Lands identified to be natural habitats are also preserved through land dedication requirements and through purchases funded by a property-tax charge. (Einsweiler, 1992, p. 82.)

In Falmouth, Massachusetts, zoning overlay districts were adopted in an attempt to protect wildlife threatened by rapid growth. Districts included lands within 300 feet of existing animal migration corridors and were protected from development. (Einsweiler, 1992, p. 83.)

An urban service boundary, a coastal management program, and a comprehensive plan all contribute to the efforts of the City of Santa Cruz to save existing aquatic habitats from destruction. The City's efforts are largely a result of heavy residential construction close to the water's edge. (Einsweiler, 1992, p. 83.)
Conservation Easements

Conservation easements involve the granting of a property right with the stipulation that specified lands will remain in their natural state, thereby limiting future or additional development. This technique is often used to preserve open space, environmentally-sensitive areas, scenic views, or wetland buffers. Conservation easements can also be defined as a restriction against further development on a portion of a certain site. This sort of easement is used for critical areas located outside building envelopes, such as slopes in excess of thirty-five percent, flood plains, and water bodies.

Falmouth, Massachusetts has set the goal of preserving its rural character in its future growth. Due to rapid development and its consequences on wildlife and natural resources, the County implemented a zoning ordinance that requires a 300-foot set aside across properties. This area is subject to conservation easements for animal-migration corridors. This provision is applied to all sites greater than one-quarter acre in size and that are contiguous to existing corridors.

Lancaster County, Pennsylvania protects its open space through a county-commissioner developed Agricultural Land Preservation Conservation Easement Program in 1980. A special board was appointed to administer the program by following several regulations, including the definition, purchase, and use of land that is to be conserved. Areas to be purchased need to be a minimum of 500 acres and contain mostly prime agricultural soil. Landowners who voluntarily restrict their property deeds to agricultural uses may receive possible tax benefits.

The State of Maryland is currently seeking to protect its open spaces through the use of conservation easements. The Maryland Environmental Trust is working to create a permanent greenbelt around eight of the State's villages. The land would be a donation or an acquisition of easement on agricultural land, open space, or historic properties. This use of the technique is as an alternative to zoning as a control of land use. The Trust uses several techniques to acquire the land: voluntary donations of easements, purchase of development rights on farmland, and the creation of local land trusts in select villages. The Rural Historic
Village Protection Program helps fund the Trust and aids in educating the public about the importance and procedures of preserving the land. (Sutro, 1990, p. 29.)

**Farmland and Open Land Development Bylaws**

The purpose of development bylaws are to maintain the rural, natural, and scenic qualities of a given area. This goal is achieved by preserving farmland and significant open lands, but the bylaws do not detract from allowing land owners a reasonable return on a sale of their property and holdings. Within this bylaw, the county, town, or city will establish protection districts that overlay existing districts. The bylaw also will define use regulations, permitted uses, special permit uses, prohibited uses, special deadlines, design guidelines, approval criteria, and, finally, the procedural requirements for reviewing special permits. (Yaro, 1993, pp. 169-172.)

The farmland or open space development bylaws are a very important component in preserving rural and natural characteristics of an area, as they set the guidelines for developing topographical and environmentally-sensitive projects. Projects that conform to the bylaws' guidelines are likely to receive prompt approval. (Porter, 1993, p. 43.)

In the Connecticut River Valley, the State of Massachusetts uses two techniques to preserve its rural character through farmland preservation. The first strategy is the State's Agriculture Preservation Restriction (APR) program, and the second is the identification and protection of agricultural and open land districts. Agricultural districts are identified as areas in which farming is dominant, while open space districts include areas that are not farmed intensively but do have scenic or natural resources worth protecting. The identified districts are mapped and include a written explanation of the boundaries' selection and the reason neighboring lands were included or excluded. This process allows for a stronger implementation of the Farmland-Open Space Conservation and Development Bylaw. Section five of the bylaw incorporates an extensive list of design guidelines for development that does occur in the designated districts. (Yaro, 1993, pp. 169-172.)

Hadley, Connecticut has established agricultural and open space "zones" within which farmers or other large land owners can extract the maximum financial value from their land yet still comply with preservation requirements. The established bylaws mandate that new
residential developments must retain one-half of the land as open space. The remaining portion of land can be divided to produce a yield equal to that of the entire parcel. Residents or the developers are required to enter into a land contract that guarantees the preservation of current open space conditions. (Yaro, 1993)

Finally, the State of North Carolina has adopted special assessments in its Preferential Statute by classifying rural land into a number of different categories based on specific criteria for each. The land is then appraised at two separate values: the present use and the potential use. The difference between the two values is recorded and accumulated as a lien against the property. This cumulative differential is due upon development of the land or if the property becomes ineligible for a rural reclassification.

Site Renewal Programs

Site renewal programs deal with sites that have been exposed to a variety of pollutants and contaminants over time. These sites typically are in urban areas, but suburban and rural communities are not exempt from contamination and the clean up standards required for development. The underlying goal of site renewal is to create land that is viable for development in the future. Industrial sites are not the only areas targeted for renewal; many businesses, particularly gas stations, have leaking underground storage tanks (LUSTs) that are the source of site contamination.

Typically, local divisions of a state’s Department of Natural Resources has an inventory of contaminated sites, identified either as LUSTs or Environmental Clean Up Sites, for other contamination.

Federal funding, often in the form of grants, may be available for the clean up of contaminated sites. Funding is also available at the state level and sometimes the local level. The federal Superfund program is the largest site renewal project, but currently is undergoing change to reestablish clean up standards.

The process of cleaning up a contaminated site requires tremendous funding and often discourages redevelopment of these sites. Sometimes funds are available directly to developers, thus providing them with an incentive to buy contaminated property and begin
clean up. Locally, tax credits are sometimes available to the purchaser of these lands as additional incentive to redevelop the site.

Growth Boundaries

Growth boundaries are a means to prevent development in existing areas of natural resources, agricultural land, or open spaces. Growth boundaries encourage higher density development, infill development, and redevelopment within developed areas. The boundary sets specified geographic limits within which future growth for set period of time will occur. These boundaries are established by an individual town, city, or village, but can be jointly established by several—usually adjacent—municipalities, thus resulting in consistent “regional” growth boundaries. The most strict growth boundary regulations exist at the state level.

Growth boundaries are often used to indicate where sewer and water will not be extended or where restrictions on septic or mound systems exist. The growth boundary can be established and maintained for an indefinite time or can be reviewed every one to five years if adjustments should be made.

Another similar method of physically limiting growth is to pass legislation or ordinances that restrict the square footage of development for the year. This approach can be applied to both residential and commercial activity. (Einsweiler, 1992, p. 68.)

In the Minneapolis-St. Paul Metropolitan Area, several communities established a coordinated growth boundary plan. The Metropolitan Council, a formal regional government, guides and regulates the growth boundary plan. Other responsibilities of the Council are to develop long-range metropolitan service plans for the area’s highway and transit, sewers and water, solid waste management, parks, airport, housing, and health systems. (Lassar, 1990, p. 20.) This effort has preserved prime agricultural land, saved money on service extensions to outlying areas, and returned money to the participating communities. The Council operates and administers its programs through a system of shared revenues. As local tax-bases grow, communities contribute to the Council according to their growth. In this system of shared planning, all communities benefit from the entire region’s services and growth, but pay according to their own circumstances. This aspect of the Council is referred to as the “fiscal disparities program.” (Lassar, 1990, p. 21.)
To cope with rapid, uncontrolled growth, the City of San Diego implemented a “progress guide” for growth management. This plan contained three broad growth areas: the urbanized area, the planned urbanized area, and the future urbanizing area. Operating similar to both land banking and urban growth boundaries techniques, the guide seeks to restrict development on all city-owned lands, while gradually releasing land within the future urbanized area. (Coopersmith, 1993, pp. 116-124.)

In Cannon Beach, Oregon, growth regulations retain intensive uses to a single area to prevent further loss of threatened lands, community character, cultural resources, and the local economic base. The growth boundary has been successful in keeping the area’s development compact, and state law now requires a boundary-setting process between cities and counties. (Einsweiler, 1992, p. 52.) The law establishes that the cooperatively established urban growth boundaries contain a twenty-year supply of land, zoned to accommodate urban growth requirements. These requirements include residential, commercial, and industrial developments. Outside of the growth boundary, municipalities must zone for prime agricultural, forest, and open land preservation.

The City of Salem, Oregon and its county determined their boundary for twenty-year growth and has established a minimum lot size of 4,000 square feet, excepting rural, non-farming residential areas that have two-acre minimum lots. These limitations are intended to preserve open space and the community’s environmental quality. (Hamill, 1989, pp. 86-87.)

A less formal application of setting urban growth boundaries was done in Arlington County, Virginia. The County first prepared a growth management plan in order to preempt any undesirable growth patterns in the area. A district office was created and a rigorous site plan review process for new projects developed. The review process intends to be most rigorous for the urbanized area of the County, Rosslyn, thus simulating control of growth within a specific area. (Ward, 1991, pp. 2-5.)

Similarly, the City and County of San Francisco have made use of Proposition H, a voter-approved Waterfront Land Use Plan, to limit and set a pattern for growth along the waterfront. The proposition is applied to the San Francisco waterfront, including lands under the control of the Port of San Francisco, through the designation of three distinct land uses:
maritime uses, which covers uses related to the fishing and shipping industries; acceptable non-maritime uses, such as parks; and unacceptable non-maritime uses, such as hotels. This process of land designation is to stem unacceptable waterfront development from occurring while the Waterfront Plan is being created and after its completion. (Crocker, 1993, p. 145.)

Differential Property Taxation

Through alternative taxation, direct fiscal relief can be given to resource-based activities. These relief programs reduce the property taxes that farmers pay, thus allowing for the retention of open space by taxing these lands at a lower rate than if developed. The reduced taxes are based on the current use of land rather than on present market values. Such taxes clearly are an anti-speculation strategy. (Einsweiler, 1992, p. 69.)

A land-gains tax is a special form of a real-estate transfer tax on land. This tax diminishes with the length of holding but increases with the rate of capital gain. This combination favors investment in preservation and penalizes speculation.

An alternate method of this technique is often referred to as Density Transfer-Special Assessments. This method involves a special assessment for agricultural land in an effort to channel redevelopment to urban areas. The directing of growth is achieved by including fees into the land value if a proposed development is other than its designated preferential use. The special assessment is used to reverse development pressures put on rural land owners. The "highest-and-best-use" valuation scheme is altered to allow assessments to reflect the land's potential value at the current use. The possibility for land speculators to hold rural land at reduced rates and later sell at large profits is eliminated by clauses written into the ordinance. These clauses state that a change in land use will require adjusted tax payment—with increased accrued—from the reduced rates during the preferential assessment period. (Burrows, 1978)

The State of Vermont has instituted a system of preferential tax assessment to preserve its rural character and to provide its dairy farmers direct subsidies. In 1973, Vermont adopted the land-gains tax whereby the tax rates varied depending on the length of time the owner held the land and the amount of the sales gain. The legislature adopted the tax as part of a tax-reform package that included agricultural property-tax credits and a new assessment
process for agricultural property. Building and other improvements, as well as the site of a principal residence, are exempt from the preferential rate.

The State of North Carolina has also established a preferential-tax system in order to preserve rural character. The State’s Preferential Statute classifies rural land in different categories with specific classification criteria for each. Land is then appraised at two values, the present use and the potential use. The difference between the two values is recorded and accumulated as lien against the property. In other words, this differential is due upon development or if the property becomes ineligible for reclassification. (Rogers, 1976)

Land Banking

Land banking refers to the government purchase of land in order to preserve those spaces for future development or retention as open space.

In Nantucket, Massachusetts, a $160 million land bank fund was developed and approved by the state legislature to preserve a minimum of fifteen percent of undeveloped areas on the island. The bill established a local land bank that pays for the acquisition of selected parcels through a real-estate transfer fee. A city-elected commission oversees the program, acquires land, and determines the use of land during holding.

Land Dedication

Land dedications involve the transfer of property by the owner to the local public sector. The dedication typically is for a specific use, such as roads, utilities, schools, parks, or scenic highway routes. When the cost of dedication is unreasonable and could be contested as a taking of private property, an easement should be considered. The most common land dedications required of developers are park dedications included in local subdivision regulations.

In Austin, Texas, the City enacted special regulations for roadside land within 200 feet of selected “scenic” roadways. No off-premise or flashing signage is allowed within the 200-foot zone. Site design for developments along the scenic roadways must preserve scenic
views, meet landscaping requirements, and provide limited-access points. (Einsweiler, 1992, p. 88.)

Charleston and Hilton Head Island, South Carolina have identified a scenic highway route for which an overlay district is applied in order to protect views from the roadway. A development and design review committee are responsible for selecting which highways and roads should be included in the system of scenic roads. The island also requires visual impact analyses for any new development; the analyses consider the changes in visual character a development would have on all near-by roads and highways. (Einsweiler, 1992, pp. 85-88.)

In Boulder, Colorado, land dedications are an element of their planned unit development (PUD) review, thus encouraging more flexible siting of development and retaining more open space on lots. (Einsweiler, 1992, pp. 85-87.)

Incentive Zoning/Bonus Zoning

This alternative to traditional zoning operates by granting additional development capacity to developers in exchange for the provision of a public amenity. In downtown areas, for example, incentive zoning is frequently used by granting developers additional floor area or height in exchange for a developer-built public open space or plaza adjacent to the building. Many cities rely on incentive zoning as a technique to provide public facilities that are in great need and to pursue a variety of other goals, including strengthening pedestrian networks in congested downtowns, improving building design, and limiting street-level shadows. This technique is often referred to as “sanctioned bribery” by cynics who believe that an injustice is being committed by tampering with zoning regulations.

Seattle, Washington made use of incentive zoning in its downtown when the Washington Mutual Tower was proposed. The developer was granted an additional 500,000 square feet beyond zoning code limits in exchange for the various public amenities included in the building, including a tunnel entrance for bus transit, a public atrium, retail space, and a daycare center. (Lassar, 1990, pp. 12-13.)
Similarly, Santa Cruz, California incorporated development incentives in its Urban Service Limits policy. The incentives were to facilitate the construction of greater-than-mandated levels of affordable housing. Technical assistance and transfer credits are offered as incentives to developers that exceed the fifteen-percent required affordable units in all new construction. The effects of Santa Cruz’s incentive program have been a 700% increase in the level of affordable housing developments and a 140% increase in approved urban-area building permits. (Einsweiler, 1992, p. 57.)

Purchase of Development Rights (PDR)

In order to limit extensive use of select lands, local governments and nonprofit agencies working to direct the location of development have established the purchase of development rights (PDR) technique. PDRs can be used in conjunction with other development regulations—such as cluster developments—to manage the density of development in specific locations, particularly rural areas. Land acquired via PDR can protect rural character in a number of ways: greenbelts held by the public or nonprofit sector can contain urban sprawl, tracts of acquired lands can be dedicated to be scenic easements or passive recreation areas, and environmentally-sensitive or agricultural lands can be preserved.

In King County, Washington, a Purchase of Development Rights (PDR) program was approved with the passing of a $50 million property-tax bond issue. The PDR program is governed by an ordinance that classifies farmlands according to the extent that the lands are threatened by development. The County acquires development rights to lands through a series of purchasing rounds, initially targeting those lands considered to be most threatened. The value of the development right is equal to the difference between the land’s value as farmland and its market value for the “highest and best use.”

In the City of Boulder, Colorado, a portion of the sales tax collected is dedicated to a fund that finances the acquisition of a open space. The goal is to create a contiguous green space to surround the City. The City also funds the acquisition of lands for passive recreation use. (Einsweiler, 1992, p. 84.)

In Lincoln, Massachusetts, a local land trust purchases land to preserve town’s character, environmentally-sensitive lands, agricultural land, and other natural resources. One approach
used to preserve the acquired lands is to apply easements over most of the land and resell the remaining portions for development. The funds received from these sales are then used to finance the next acquisition. (Einsweiler, 1992, p. 84.)

Marin County, California residents initiated a movement to purchase open space. The program intends to preserve the County's land and the quality of the local environment. Eighty-eight percent of the County's land is protected as open space, farmland, or recreation areas, but these restrictions have contributed to a shortage of housing and traffic congestion. The program's objective is to concentrate urban development within or adjacent to existing cities and preserve undeveloped lands for rural or recreational uses. Two policies are used to preserve the open spaces: 1) the County encourages annexation of land by cities in areas where existing services can support growth, and 2) the County works with a local, tax-supported public agency to obtain 8,000 acres of land to provide green spaces between developments in less urbanized areas. (Einsweiler, 1992, pp. 55-56.)

Transfer of Development Rights (TDR)

In areas where open space or farmlands are protected from future development, the owners of these properties are afforded the opportunity to profit from their land through the transfer of development rights (TDRs). TDR programs typically identify local transfer zones and preservation zones. The development rights for lands in preservation zones are made available to developers in transfer zones and can be used to increase the densities of proposed developments. Few successful examples of TDR programs exist, since the complexity of the program makes local-level application difficult. TDRs require careful analysis of regional market forces and the demand for varying lot sizes in order to establish a fair system of exchange. (Sutro, 1990)

Chesterfield Township, New Jersey is in the process of developing a pilot TDR program with the hopes of preserving agricultural lands and open space. The program would require the preservation of land by transfer of development rights to a 1,400-acre "receiving zone" in one corner of the township. New development in this designated area will be consistent with village patterns by creating a central "downtown district." (Sutro, 1990, p. 28.)
In the Pinelands Protection Act of 1979, the Pine Barrens in central New Jersey were preserved. The Pine Barrens consist of 1.1 million acres of pine forests and one of the state's largest natural water supplies. Land owners within the preservation area can sell the development rights of their property to landowners in lower-density transfer zones. (Hamill, 1989, p. 88.) Additionally, New Jersey imposes a real-estate transfer tax on the conversion of land from rural to urban use. This tax is added to the cost of land at varying rates: $1.50 per $500, up to $100,000, and $2.50 per $500 for land values over $150,000. (Hamill, 1989, p. 103.)

Montgomery County, Maryland developed a program to protect farmland by designating a "preferential agricultural zone" in which development was severely restricted; the area was substantially "downzoned" from five-acre minimum lot size to 25-acre minimum lots. The 89,000-acre district became a "rural density zone" from which development rights could be purchased for use in undeveloped sites within designated "growth centers." The Montgomery County TDR program has saved over 20,000 acres of agricultural land since 1985.

The San Francisco TDR program was established to preserve buildings with historic architectural value. The City is divided into floor area ratio (FAR) districts, each with maximum ratio allowances. In the low FAR districts, a mid- to high-FAR office development could not be built without the purchase of TDRs to increase the allowable floor area ratio. The transfer of development rights permanently reduces the buildable density on the site transferring its rights and does not exempt the receiving site from further zoning restrictions. (Coopersmith, 1993, p. 144.)

Transfer of Development Credits (TDC)

The development options available to landowners could expand beyond TDRs in the near future. With the transfer of development credits, a property owner can develop under current zoning ordinances with the stipulation that appropriate acreage has been allocated to open space. The purchase of development credits is necessary before any development activities can occur, however. (Hamill, 1989, p. 66.)
The legality of TDCs have yet to be determined in state supreme courts across the country. Examples of development controls similar to TDCs have been implemented in the New Jersey towns of Hillsborough, Chesterfield, East, and Lawrence. (Hamill, 1989, p. 67.)

**Tax Increment Financing (TIF)**

Tax increment financing is a redevelopment tool that enables cities to initiate redevelopment or industrial expansion. TIFs employ a cost-sharing scheme whereby all taxable enterprises within a specified district contribute a portion of their annual taxes for reinvestment in the district. (Owens, 1978, p. 123.)

A tax increment district is established by a municipality to fund local redevelopment. A base taxable value on all property within the tax district is established at the time of designation. This value is considered the tax increment base and remains the same for the life of the district. Taxes based on the increment base are general tax revenues to the municipality, while taxes on valuation above the increment base is the source of reinvestment funds that are earmarked for the TIF district. (Owens, 1978, p. 123.)

In the State of New Jersey, many cities created tax increment financing districts to finance the purchase of land for redevelopment and urban infrastructure development. Financing districts were established around rail stations and highways to promote higher levels of development adjacent to these areas. (Hamill, 1989, p. 103.)

In the City of Milwaukee, tax districts were established to pay for major urban development projects. The Grand Avenue Mall, the Milwaukee Center, and industrial development in Menomonee Valley are some of the largest TIF projects in the City of Milwaukee.

**Impact Fees**

Often a community will attempt to minimize the fiscal burden of development by charging a fee to the developer to help finance the cost of needed improvements or services. Impact fees are an extension of the "user pays" principle. In other words, developers are considered fiscally liable for the infrastructure and services their growth will require. These fees apply to improvements or impacts that are off- and on-site. Improvements typically covered by
impact fees include access roadways, utilities, and stormwater management facilities. All impact fees must be approved by state legislation and local ordinance, based on the legal tests of rational nexus and uniform application. Impact fees may be imposed on development for public facilities, such as roads, schools, parks, police and fire stations, as permitted by local law.

In Colorado Springs, Colorado, the development of infill sites is encouraged by shifting the burden of infrastructure provision entirely on the developer. The comprehensive system of impact fees and services charges intends to be a powerful incentive for developers to locate and plan their projects in ways that will limit their front-end facilities' and infrastructure costs. In this way, it is hoped the reuse of sites within urbanized areas will be more attractive, since many facilities already exist. (Einsweiler, 1992, pp. 60-61.)

The State of New Jersey also employs a system of impact fees. The state Municipal Land Use Law (MLUL) empowers local governments to adopt ordinances that require developers to pay a pro-rated share of the costs of reasonable and necessary off-site needs, including street improvements, water and sewer system expansions. (Hamill, 1989, p. 69.)
REGULATING PLANS BIBLIOGRAPHY


