

Whither the Wilderness County?

The “Wildness City” is an oxymoron. An urban place cannot be a wilderness. The wilderness that surrounds many western cities and greatly enhances their quality of life is land in the surrounding counties. Thus, to not despoil a wilderness, it is counties that must plan to preserve the wilderness. The term “Wilderness” is too narrow. The vast majority of private land in western counties is used for ranching, crops, other agricultural uses or for timber production and is not a wilderness. Most true wilderness is found on federal lands. What this paper addresses is providing rural counties with the tools needed to protect the rural economy and character. I have worked for counties across the nation seeking to protect rural values for the last 40 years, first as a staff planner and then as a consultant. There are three observations that have emerged from that experience. The first is that rural county governments are ill equipped to deal with growth and development. The second is that county plans and zoning ordinances are little different from a municipal plans and ordinances. Most county plans are first and foremost plans for growth proposing a number of residential, commercial, and industrial types of uses. How do these land uses contribute to protecting the rural economy or character? They do not. Most of these districts are destructive replacing rural uses with urban ones. Thirdly, the legislation for county planning and zoning is a major impediment to protecting the rural economy or character because it focuses on growth.

In rural counties, there is little ability to handle growth. These counties rarely have staff or departments prepared to provide the infrastructure needed to support growth. All too often a significant portion of the roads are unpaved, and those that are paved do not meet modern standards of right-of-way, pavement width, drainage, and safety. Rural residents on farms or ranches need little in governmental service other than road plowing and minimal sheriff’s services. They would like to be left alone. The tax base cannot support the provision of this infrastructure needed to support new residents without tax increases. The rural residents do not need the more extensive services. County government thus often fails to provide services or service levels to support the growth. To provide services requires the raising of taxes and hiring of staff which is not supported by the county’s rural residents. Rural residents do not support the provision of new services and tax increase. Unfortunately landowners often see the growth as good.

In my experience even counties planning to preserve rural or wilderness character are deluding themselves to a greater or lesser extent. A number of others lack zoning and are not even trying. In many cases the agricultural zoning district is a failure because they permit single-family development on lots ranging from ½ acre to 20 acres. In reality these districts are residential districts that permit agriculture. They do not preserve wilderness, agriculture, or essential resources. A second problem is inherent in the way comprehensive plans are developed. Standard planning practice is to develop 20 year plan based on a growth projection. The majority of the chapters in the plan are for accommodating that growth, at best there is a policy and section or chapter on protecting the rural economy and character. This is a very small part of the plan most of which places pressure of the rural economy. The 20 year planning horizon is

an inadequate base for planning to preserve rural areas. Worse yet “good planning practice” indicates that the plan should be revised every five years. If you look at a 20 year old plan that proposed to preserve rural areas and then look at the remaining rural area in the current plan, it is a shrunk husk of the original preservation objective. Unless the county is currently losing population, the future of planning to preserve the rural economy and character is bleak. In Colorado and perhaps other states the statutes exempt very large lots (35 acres) from the subdivision requirements. The result is a cheap mechanism to convert large areas from rural to exurban, and the loss of land to support the rural economy.

The sad state of affairs is that over the last 40 years the profession has made little progress in actually preserving the rural economy and character. We have known since at least the mid 1960’s that real rural zoning would need to be exclusive agricultural zoning. Yet rural zoning that is a residential zone permitting agriculture is still prevalent. Even those counties with good starts have failed. In that same time frame we have gone through “growth management”, “smart growth”, and “sustainable development”. All of these had the same strategy of concentration growth in municipalities which would have encouraged the county to protect rural character and its economy. Yet, until the housing bust, sprawl remained rampant. As an example of the failure of good intentions I will go back to the mid 1970’s. A plan that excited planners in the mid-west, was McHenry County, Illinois, a county in the northwestern part of the Chicago metropolitan area adopting a 160 acre minimum lot size for its agricultural district. This was a radical departure from the agricultural zoning in other counties. It was of course challenged and to the surprise of many fearful of a “taking” it was upheld in the state’s courts which accepted that agriculture was a reasonable use of rural land. The success was short lived. Within a decade, the 160 acres was reduced to 40 acres. McHenry County provided for residential zoning for 10 to quarter acre lots. Each year the county board has approved rezonings and PUD’s of land from agriculture to residential use. Further municipalities have annex land rural land. Agriculture is shrinking as suburbanization continues and the original promise has been lost. Further, the County has failed to address the water supply issue even though in the 1970’s there was an emergency that should have made this a major planning issue.

It is now clear that planning and zoning legislation is a major part of the problem. Planning is not geared to protecting rural interests. Instead of a mandate to protect the rural economy, the legislation largely promotes growth and even when the legislation calls for a rural element, it is weakened by the focus on growth. Chapters on land use, transportation, infrastructure, economic development encourage counties to plan to eliminate the rural economy and character in favor of an urban or suburban economy and character. If a rural county is to have a future, then drastically different legislation is required. The legislation needs to mandate the county planning role is to protect the rural economy and character. Growth is to be planned for by municipalities. The planning horizon must be 100 years not 20 years. In fairness, rural landowners much have some benefit from growth. A county wide transferable development rights (TDR) system where municipalities must participate is needed to allow rural landowners to benefit from the growth.

Model Rural County Planning and Zoning Legislation

INTRODUCTION

Rural counties or areas have very different challenges from other local governments. First, they typically provide few services other than road maintenance and the sheriff. They do not provide fire, water, or sewer services to their residents nor do rural residents need these services. The keeping of records, collecting taxes, courts, and jail are concentrated in the county seat and customers come to town for them. Rural county governments do not have the tools or fiscal resources to deal with the growth which requires services to be extended to new residents. Most get into serious growth management problems. While county elected officials often are very in tune with rural property owners, ranchers and farmers, they rarely see as their logical role the promoting of sustainable agriculture. Too often elected officials look at growth as good and controls as bad so they end up creating many problems. Most counties when they begin to face development have no land use controls or if they have zoning it is not designed to protect the rural economy or character. Instead the county zoning usually permits a full range of uses and intensities. They typically have as many or more zoning district than small rural towns offer. Most have a district called "agriculture" allows rural land to be subdivided for single-family homes on lot sizes from one half acre to ten acres and is thus a single family residential district where agriculture is permitted but where homes can displace the rural uses. The zoning sows the seeds for planting houses and forcing agriculture into decline as residential subdivisions replace farm fields. The wide range of uses and intensities means that instead of encouraging development to be concentrated in the towns the county offers development opportunities similar to those available in the towns. In essence the county is in competition with local town for growth. This greatly contributes to sprawl. Unincorporated land offers lower tax rates than the towns, where the landowner pays both county and municipal taxes. As a result the edge of many rural freestanding communities attracts low quality commercial and industrial uses which in addition to sprawling and using substandard waste treatment facilities are ugly. The counties offer low density residential districts resulting in scattered individual homes and small subdivisions often miles beyond the municipal boundary.

The rural or agricultural resident demands little in services. Farm to market roads need not be of modern design and can be gravel and still adequately serve agricultural uses. The sheriff has relatively few demands and deputies can patrol large areas. Farmers are independent and do not seek the activities and services that suburban or urban residents demand. The tax base of these communities is low because farmers in nearly all states receive an agricultural assessment on the land. Thus, when faced with the prospect of growth, these governments fall behind in providing services and in providing plans or regulations that protect the farm economy and industry.

From the inception of growth management in the late 1960's through to smart growth and sustainability it has been a maxim that growth should be outward from existing municipalities.

Controlling growth with a logical extension of services from existing centers, and higher densities is common sense. Municipal government is far better equipped than counties to service development because they currently provide a full range of services. Yet, counties with two exceptions have similar zoning and planning legislation to municipalities. The exceptions are Texas where counties do not have zoning power and the north-eastern states where towns or townships have the zoning power and there is no unincorporated county land. County zoning ordinances while often less stringent typically offer similar zoning districts to the municipalities. These districts detract from the ability of towns to manage growth. Instead of freestanding towns having clearly defined boundaries, the sprawl of development in the county eliminates the sharp edge, and prematurely displaces rural land uses. This sprawl often lowers the perceived character of the town with low quality buildings. The state enabling legislation can be blamed for this, because it does not set up county planning and zoning to protect the county's rural constituency.

With the world facing global warming and an urgent need for planning more sustainable communities, a new legislative basis for county planning and zoning is needed. County legislation ought to build on the strengths of rural government, serving rural residents and planning and zoning for the rural economy and character. Counties should have as a mission protecting the rural economy including agriculture, forestry, and natural resources instead of forcing them to mimic cities and towns in providing sub-urban and urban development. The new legislation needs to set requirements for rural planning, regional planning, and zoning designed to make counties responsible for protecting rural values and the environment. This would require distinct rural planning goals for counties and leave urbanization to the towns and cities. This also requires corresponding changes to municipal zoning legislation. For this to work, the counties or regional agencies need to have some control on the growth of municipalities so they cannot sprawl out and negate the protection of rural economy being provided by the counties.

There are three types of regional environments, rural regions, independent regions, and metropolitan regions¹. Rural legislation needs to recognize these types. The rural regions consist of counties with little growth or even population losses where most municipalities are totally freestanding as in most of Wyoming, Montana, and Colorado. Independent regions have predominantly rural counties and free standing communities with a few smaller metropolitan areas such as south eastern Wyoming with Laramie and Cheyenne, or the area of Washington and Idaho where Spokane creates a small metropolitan area of many jurisdictions. Metropolitan areas, Denver and Salt Lake City have rural counties that are under urbanization pressure. In all of these regions it is better for the counties to serve the rural population and economy, and better for growth to occur in municipalities. To achieve this enabling legislation must recognize the differences in growth pressure and need for regional coordination. There are also some counties in metropolitan areas where there is insufficient rural land for this type of planning and zoning to be relevant.

¹ **Community Character**, Lane Kendig and Bret Keast , Island Press, 2010

Rural Planning

The basis for rural zoning needs to be county plans that protect the rural economy and character. Several plan chapters or elements are essential; natural resources, agricultural and forestry, extractive resources, rural settlements, growth, rural economy, and rural and statutory service. These are the critical elements for rural planning. The natural resources and agricultural element takes stock of the rural resources. Agriculture requires certain types of land to be productive. Forest or woodlands, wetlands, riparian buffers, slopes, or other physical conditions are important as they are constraints for agriculture, silviculture, or should be protected from development. Protecting the water quality of streams and lakes also needs to be part of the natural resources element. In nearly every part of the country there are extractive resources that are mined and used. These can range from sand and stone for local needs to major mining of rock, minerals, or pumping of oil, gas, or water. There will be in most parts of the country existing unincorporated settlements, hamlets or cross roads that historically provided some rural services. These need to be identified and their current provision of services and housing reviewed. Some growth of these areas may be warranted². Some may have lost their service value as economics have changed. The potential for growth differs dramatically between regions and this is the area where county and municipal planning must be coordinated. The rural economy needs to be reviewed in light of the area's ability to sustain agriculture. In some parts of the country, there may be little real agriculture value left but the value of natural lands for carbon sinks and cleaning air are important values. Silviculture is more important than agriculture in some areas. Tourism is important in a number of rural areas and the plan will need to address this in a way that creates the best control and provision of services. This information would be produced in a rural economics element. The rural economy chapter would evaluate the economics of, agriculture, forestry, resource extraction or mining, tourism, vacation destinations, and historic resources. Deciding on the type of rural economy and existing settlement patterns will dictate the services needed. Most of these are police and fire. In regions with rural water districts, counties need to gain the authority to control of the water districts ability to service that residential growth in unincorporated areas³. Providing for suburban or urban development should be ruled out. The cost of County government providing rural services is quite different than providing urban or suburban services, the obvious differences are water, sewer, police, and fire where rural costs are far lower. This element also needs to review the statutory demands of providing courts and other mandatory services to incorporated and unincorporated residents.

Growth: The growth element needs to quantify the growth pressure on the County. While the counties role is to preserve the rural economy, growth potential describes the need for provision of urban and sub-urban land for growth. This must be a long term assessment of growth for a 100 year period. It cannot be the 20 year plan that is standard across the nation. The 20 year plan updated every 5 to 10 years results in a continual erosion of the rural land and economy. There

² The freezing of growth in these rural settlements was a mistake in Oregon's former growth management act.

³ Rural water districts often expand to provide services to development areas and counties and the federal government need to work together to insure that this does not encourage sprawl or allow substandard services.

is value in preserving rural lands and the rural economy in rural and independent regions. The grand metropolitan plans of the 1950's and 1960's that contained close in rural lands that are essential to growing food near consumers have disappeared in a tide of fringe development. Thus even metropolitan regions should be preserving some rural lands for the long term. A 100 year plan is the shortest that would provide a realistic period over which farmers can make investments and be protected from increasing land values from sprawling urbanization. The plan would provide municipalities with spheres of influence and 100 year growth boundaries. This provides security for municipalities to plan without fearing that the county or another municipality would compete with them for growth. This is easiest done in the rural regions where nearly all communities will be freestanding and widely separated. Growth in such areas can range from negative to moderate. In general the 100 year growth areas would still result in a region of freestanding communities. In the independent regions there will be metropolitan areas and growth areas where composite communities are forming. The 100 year growth boundaries of communities will overlap and in some cases cross county lines. In these areas regional planning will need to provide an additional level to adjudicate disputes and finalize the rural and growth area boundaries. Having tax sharing systems mandated in composite areas will greatly facilitate this because greed for ratables is mitigated. In metropolitan regions the rural area delineation will require regional assistance to coordinate it across a larger growth area and between counties.

Making 100 year projections is clearly more speculative, than 20 year projections. However, with a 100 year projection the need for accuracy is not as critical as it is for a 20 year projection that is revised every five years. With a 100 year plan, a county gets census data every ten years, and serious review would be needed only every twenty years. For the first two monitoring periods this provides a 80 and 60 year cushion for significant changes in growth rates. An estimate that too high simply means it is a 200 year plan. Another perspective is that in the vast majority of rural counties, the amount of growth is very small so the growth areas are small. For example Dane County, Wisconsin has an area of 1,238 square miles. In working on a land use and transportation plan in 1995, we were contracted prepare a series of alternative plans. The 25 year projections were for a growth of about 90,000 new people or 30,000 dwelling units. When these were presented, citizens found it impossible to differentiate between the plans because so little land was consumed. As a result 50 year projections were made which enhanced the differences yet still consumed less than five percent of the County's land. Dane County's growth is that of a small metropolitan region, and is dramatically higher than most rural counties. In contrast Albany County, Wyoming has an area of 4,309 square miles with nearly all growth in and around Laramie. Even doubling the county's population would consume only 0.002 percent of the County's land so even liberal forecasts do not create problems. In rapidly growing metropolitan areas 100 year projections would be most difficult. There are major advantages of long range plans for transit or transportation to guide growth. While there is in all regions a tremendous advantage of setting rational growth boundaries for municipalities in metropolitan areas where municipalities grow together it is most advantageous.

Lastly five year updates make planning a continual process with new goals established long before a 20 year plan has any chance to be seriously implemented. Between the five year updates there will be plan and zoning amendments that further erode the recently adopted plan. In reality the plan is totally in flux⁴. This makes planning a charade. Great effort is put into involving citizens in the planning process and visioning the future of the county. A vision subject to amendment yearly with major revisions in five years does not qualify as a vision. Visioning for a 100 year rural plan makes this a meaningful exercise. A 100 year plan horizon is essential; for planning for a rural economy and character. Families investing in farms or ranches also need to plan for the succession of ownership to the next generation and a very long term plan provides stability on which to do this planning. This is essential to preserving agriculture, forestry, and the environment. In metropolitan areas it is essential to provide for creating a metropolitan form and transportation planning. For the municipalities the identification of either a 100 year growth, or ultimate boundaries means that the municipality can better set its character goals as well. Because their growth boundaries are effectively fixed, their short term planning would continue to be needed. Municipal plans would be required to meet the density needed to achieve the 100 year growth projection without further annexation.

Rural Plan: The county plan should identify all natural resources, agricultural areas, natural areas, existing residential and unincorporated places, spheres of influence for municipalities to permit their long term growth. The natural resources element must identify all natural resources that are present in the county and provide clear descriptions of how natural cycles relate to each of these resources. It should also link different types of development to impacts that benefit or damage these cycles. The plan should designate resources that need physical protection and set policies that will eliminate or reduce damage to the balance of natural cycles. As part of the natural resources inventory, area of resources that produce economically viable sources of raw materials should be identified. The plan needs to identify areas that are to be preserved for agriculture or forestry as viable economic units for the 100 year period. Likewise areas suitable for natural area that are unavailable to timbering to be preserved as wildlife areas or carbon sinks need to be identified. The economic and environmental value of the natural resources should be evaluated and quantified.

All counties will have some municipalities within their boundaries. The county with the assistance of regional or state agencies needs to make a 100 year growth projection for the population of these municipalities. In doing so, growth that has historically occurred within unincorporated areas should be largely be allocated to the municipalities unless it is needed to support rural industries. The 100 year plan in the case of freestanding municipalities would not limit their growth beyond the planning period. In areas of composite growth in metropolitan and some independent regions the 100 year plans would represent ultimate boundaries where growth reaches other communities growth boundaries. If ultimate boundaries are used

⁴ Maryland's change or mistake rule indicating that plans can only be changed between updates if an error or mistake can be demonstrated or if there is real change in the fundamental assumptions as to growth provides some increased stability.

conjunction with tax sharing⁵ the legislation would make for more rational urban development. The municipal plans should have to meet minimum natural resources protection standards. The boundaries would respect the need to protect the rural economy by preserving the best farm lands and especially sensitive natural areas. Major mining is best left in rural areas to buffer urban or sub-urban residents.

There will be some unincorporated or crossroads communities as well as scattered residential within counties that cannot rationally be placed within the municipal growth boundary. The plan needs to identify and map all these area. The rural plan should not prohibit development in unincorporated places but provide reasonable area for the growth of housing to support rural industry. In addition there will be areas where there is scattered development that infill makes sense and would allow the county to more effectively provide the services to the residents of these areas by lowering the per household cost of delivery. The legislations should identify thresholds where an unincorporated place is sufficiently large to require incorporation.

Planning legislation is slightly different for counties and municipalities in many states. A significant reform creating a major difference is essential to preserving a rural economy and character. The objective is to get the counties to focus on rural character and economy and provide a framework for municipalities to provide for growth. This has several benefits for the municipalities. It eliminates the competition for growth and zoning between the counties and municipalities creating more of a partnership. The long term nature of the County plan will allow municipalities to look way into the future on growth and determine logical boundaries. This also would provide fixed growth areas so that developers could not play municipalities off against each other. The legislations should specifically authorize the County to transfer zoning control of the growth areas to the municipalities. This would eliminate conflict between cities and county. It is also a major benefit to the municipal government because it would allow them to adopt more effective growth management plans without worrying that the developer could shop for weaker controls in the County or a neighboring community. It may allow municipalities to do a better job of setting logical boundaries with each other.

This changes the normal hierarchy of municipal government being superior to county government. Preserving the rural economy, productive farm land, natural areas, water resources, setting long term growth, and limiting annexation are things where the Counties would be gain superiority. The 100 year growth areas, gives the municipalities full long term control within their growth area. Freestanding communities would be protected, sprawl in unincorporated areas and competition from neighboring communities would be eliminated. Setting the growth areas would require the County to work with municipalities, but be in the lead. In some cases limiting the sprawl of towns to maintain free standing communities will be important. Where there is conflict between municipalities the county should make the decision, but this suggests a role for regional planning to assist counties by verifying growth projections and providing a review or appeal possibility for municipalities.

⁵ One problem that faces municipalities is the need to compete with their neighbors for highly desirable uses and avoid uses that raise costs. Tax sharing is a means to reduce or eliminate the greed to improve the municipal tax base.

Rural County Zoning

As discussed above the role of counties should be to zone to protect natural resources, agriculture, forestry, or other rural uses. While there will be some communities that exist and must be protected in the rural area this is minor role of rural zoning and must be tightly controlled.

Base Rural Zoning. It is recommended that all counties that plan be required to have zoning. The statutes should provide for a base level of zoning that involves a single district zoning ordinance. One major problem with adopting the first zoning ordinance is the division of the county into multiple zoning districts. Landowners in rural districts object that they are on the wrong side of the line. A single district zoning ordinance is feasible⁶. Such a zone would mandate the rural density throughout the county and have performance standards to address existing lots, and unincorporated places. It would also include the TDR program with the municipalities. This should make it easier for rural counties to address the preservation of rural economy and character without having to divide the county into districts.

Rural Density: An exclusive rural use density is set to provide a house for the owner operator of a rural use, farm, ranch, etc. It is effective because the density is so low as to rule out exurban residential. While this density must be locally determined based on the size or economically viable rural uses, the following set some ranges. With today's agriculture, the farmstead is likely to be between a quarter-section to a section of land (160 to 640 acres of land). The parcel size must be related to actual uses, the smallest parcel sizes would be in areas of multi crop truck farming where 20-40 acres can be a viable unit. In western ranch areas a section of land to five sections (640 to 3,200 acres) can be expected. Converting the farmstead size into density creates a range from 0.05 to 0.0003 dwelling units per acre that provides for owner operators. It is predictable that a single home for owner or operation creates problems for the transition from generation to generation for the farm or ranch family. Another issue that must be faced is worker housing which is essential to maintaining these rural industries.

Providing for family succession is difficult as it requires housing for at least two generations. In making this accommodation it is important to avoid the family exemption found in many states where lots can be freely created for family members. In those states, the vast majority of lots, end up as homes to exurbanites having no connection to the rural economy. There are several possibilities to solve this. The first is permitting additional units that are leased or rented to family members but do not involve the creation of a lot that can be separated from the rural economic unit. A second alternative allows the creation of lots that can be sold or given to family members but are located in a compound so sale to exurbanites is more difficult. Under either approach the number of lots would be limited by the ownership succession plan. Farm worker housing is easier to address as it can be related to the type of agricultural operations in

⁶ There is insufficient room here to discuss how such a code works. See; One-District Zoning, Lane H Kendig, Zoning Practice, June 2011, American Planning Association.

the county. It should be flexible to allow housing on site, in group sites, or at specific locations. The county plan should have sections that have worked with the rural community to identify the appropriate options for the types of agriculture in the county.

If the rural densities are mandated there will likely be intense opposition because it allows no opportunity for farm families to sell lots for development. Experience in rural areas has shown that landowners will object to being left out of the possible profit of selling for development. This is true even though the owners recognize that exurban development is always disruptive creating conflict between exurbanites and agricultural operations from the noise, dust and hours of agricultural operations. Commuter travel on the roads also creates friction with farm operations. Rural landholders have come to expect a share of, any development potential, even if they currently have no desire for it. It is not uncommon for landowners to object to the possibility of exurban development next door while insisting on the right to develop their land when they want. While the state legislation can mandate these rural intensities, I recommend some recognition of this with a mandated transferable development right program (TDR) program.

Other Rural Zoning: Rural counties will generally want or need several other types of districts in addition to the base rural district. In some cases several rural districts may be needed because of large differences in agricultural uses ranching and dairies for example. There will be unincorporated places that are not located so that they can be in municipal growth areas. Similarly, there are likely to be existing subdivisions similarly located outside growth areas. This suggests an unincorporated place district and a neighborhood conservation district that makes all existing subdivisions conforming but providing for no growth. Where ever possible the existing subdivisions should be in growth areas. Large scale mining may make a mining district appropriate. There are several other specialized districts that may be needed in a few rural counties. Some counties have resources that are highly attractive to recreational, vacation, or second homes where no municipality exists, a ski area is an example of this. A district for this is likely to be needed. It should be a temporary district which is accompanied by rules for the phase out and conversion to a municipality. The legislation should permit special taxing to provide for the provision of urban facilities, a fund to build the reserves needed for the creation of a municipality when population reaches a specific threshold. The master plan should have identified these types of areas the 100 year growth area for such places. Another type of district would be used when there is a major transportation node, such as a intersection of two interstates that are beyond the growth areas of municipalities or where they would create a major inequity between municipalities if it were in one. Here the county would create an employment district and a special taxing district that would share the revenues with all the municipalities.

It is common in existing agriculture districts to permit a wide range of uses as conditional uses often making them the dumping ground for a host of nuisance uses. It also has encouraged institutional uses to seek rural sites because rural land assessed for agriculture is much less expensive than land in municipalities and this encourages sprawl. In general all such uses

would be prohibited. Rural areas are currently served by institutional uses, so there is no need for new ones. They should only be permitted as conditional uses in existing rural settlements where it can be shown that the use serve only the rural area's residents. If it serves municipal residents it should be located in the municipal growth areas.

Transferable Development Rights (TDR): The logical tool to allow rural landowners to share in development is TDR. I acknowledge that TDR has not generally been successful. For the most part this is simply because of the inability of counties to create a big enough market for development rights to protect rural areas and a failure to create a willing buy willing seller market. Typically there is a very large rural area to be preserved and a relatively small population growth that could purchase the rights over a 20 year period. The result has been the majority of TDR programs have failed. The 20 year time frame is part of the problem. Another serious problem with county programs is that every annexation takes TDR potential away from the county. Sewer and water services are needed to get density which is essential to creating a market for TDR something that is politically difficult and costly for counties. The municipalities have water and sewer and attract the highest density development and thus have the most of the development potential. Creating a single unified development program with the rural county and municipalities provides an opportunity for rural land owners to participate in any growth in the county. All development potential is concentrated in municipalities and thus all development would have to purchase TDRs. The legislation must require that all re-zonings in the municipalities involve the purchase of development rights. Land owners in the municipal growth area would have a minimum by right density. They and all others seeking increased density would have to purchase development rights. This insures the entire growth market is available for the purchase of TDR and eliminates the arbitrary 20 year time frame. This form of TDR works on a really large scale.

In most rural areas growth is going to be very low. This creates an allocation problem for a private TDR program. How can the owners of a very large acreage share in the small increment of growth? One possibility is a county TDR program where the County sells the TDR's and pays the all the land owners their share of annual sales based on the total outstanding number of rights. This means that all rural landowners share in the minimal development. A private market with a large supply of rights might mean only one landowner makes all sales. Further the sale would be at the lowest price, because buyers would seek the owner willing to accept the lowest price because of financial difficulties. The result is that most landowners could not participate. The county market avoids the lowest value because a fair value of a TDR can established by involving professional marketing and assessors who would establish a value that works for developers and returns a fair value to landowners rather than the lowest value. The other option requires a very low initial allocation so that over a twenty year period all development rights would be needed forcing developer to obtain rights from many landowners. The allocation of rights in this case are matched to growth and thus very low on a per acre basis. In this system reallocations would be made so as to retain a market over the 100 plan life. It is far more difficult to make this system work. While the public market may be opposed by opponents of government, requiring the value of TDRs to be set by professionals in

market value is superior in most rural markets. In developing any TDR approach it is essential to create a market where most developers can pay more than most landowners expect. This is very difficult in areas of low demand, thus the recommendation for a publicly managed TDR system for rural counties

Zoning Transfer

The standard state enabling legislation is of no help in creating cooperative planning an often encourages conflict. Municipalities may annex unincorporated land, with the counties having little or no ability to stop it. At the same time County zoning can frustrate long term municipal growth plans by allowing premature or substandard development. The rural enabling legislation proposed here would give the Counties authority to hand over the zoning in a municipal growth area to the municipality. There are a few conditions that municipalities would have to accept. The first is the 100 year growth projection. Municipalities would have to accommodate all the projected growth, and if they lowered the planned densities would not be able to annex more land but increase densities in other areas. They would also need to accept resource protection standards of the County for water quality and flood protection and reasonable efforts to protect carbon sinks. The municipality would then be able to freely plan and zone within the growth boundary. Its planning would focus on the expansion of services. There should be a mechanism that allows for phased development so that landowners within the growth area are not prohibited from development for decades.

Regional Role

There is a logical role for regional planning particularly in mediating differences between counties and municipalities in projecting growth, and between municipalities competing for the same growth This need will be greatest in intermediate and metropolitan growth areas because the potential for municipalities growing together is greater. The regional planning agency can be given several roles. It can assist in reaching municipal and county agreements. In metropolitan areas it may have a role in developing a metropolitan area plan that protects within it planning boundaries a metropolitan form that creates a true regional character. The regional agencies will also have a role in creating the 100 year growth forecasts.