

*2005 Growth
Management Workshop*

*Florida Department of Community Affairs
Florida Regional Councils Association*

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*A 21st Century Path for Growth
Management in the State of Florida*

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About the Speaker

- Special land use counsel
Paul Hastings Janofsky & Walker
- Editor, *The Urban Lawyer*, the national journal on state and local government law of the American Bar Association
- Past Chair, Planning and Law Division, American Planning Ass'n
- Author, *From Sprawl to Smart Growth, Successful Legal, Planning and Environmental Systems* (2000)
- A.B. University of Chicago; J.D. Yale Law School; MRP, L.L.M., J.S.D. Columbia University
- Work in Florida:
Sarasota, Leon, Broward, Miami-Dade, Palm Beach, and Monroe Counties: comprehensive and growth management plans, and land development regulations
- Argued in Florida Supreme Court: *Palm Beach Co. v. Wright* and *Fla. Savings & Loan Ass'n v. State of Florida*



ZONING
AMERICA'S
COMMUNISM

Impending Growth Problems

- Decline in existing built-up areas
- Degradation of the environment
- Over utilization of energy sources
- Fiscal strains
- Deficiencies in public facilities
- Environmental degradation
- Housing affordability

Sprawl is a Conservative Fiscal Issue

Growth has helped fuel ... unparalleled economic and population boom and has enabled millions ... to realize the enduring dream of home ownership ... but sprawl has created enormous costs... Ironically, unchecked sprawl has shifted from an engine of ... growth to a force that now threatens to inhibit growth and degrade the quality of our life.

Beyond Sprawl, 1995

Bank of America

The Public Infrastructure Gap

National infrastructure deficiencies now exceed \$4 trillion and are growing at a rate of \$1.7 trillion every 5 years

\$4,000,000,000,000

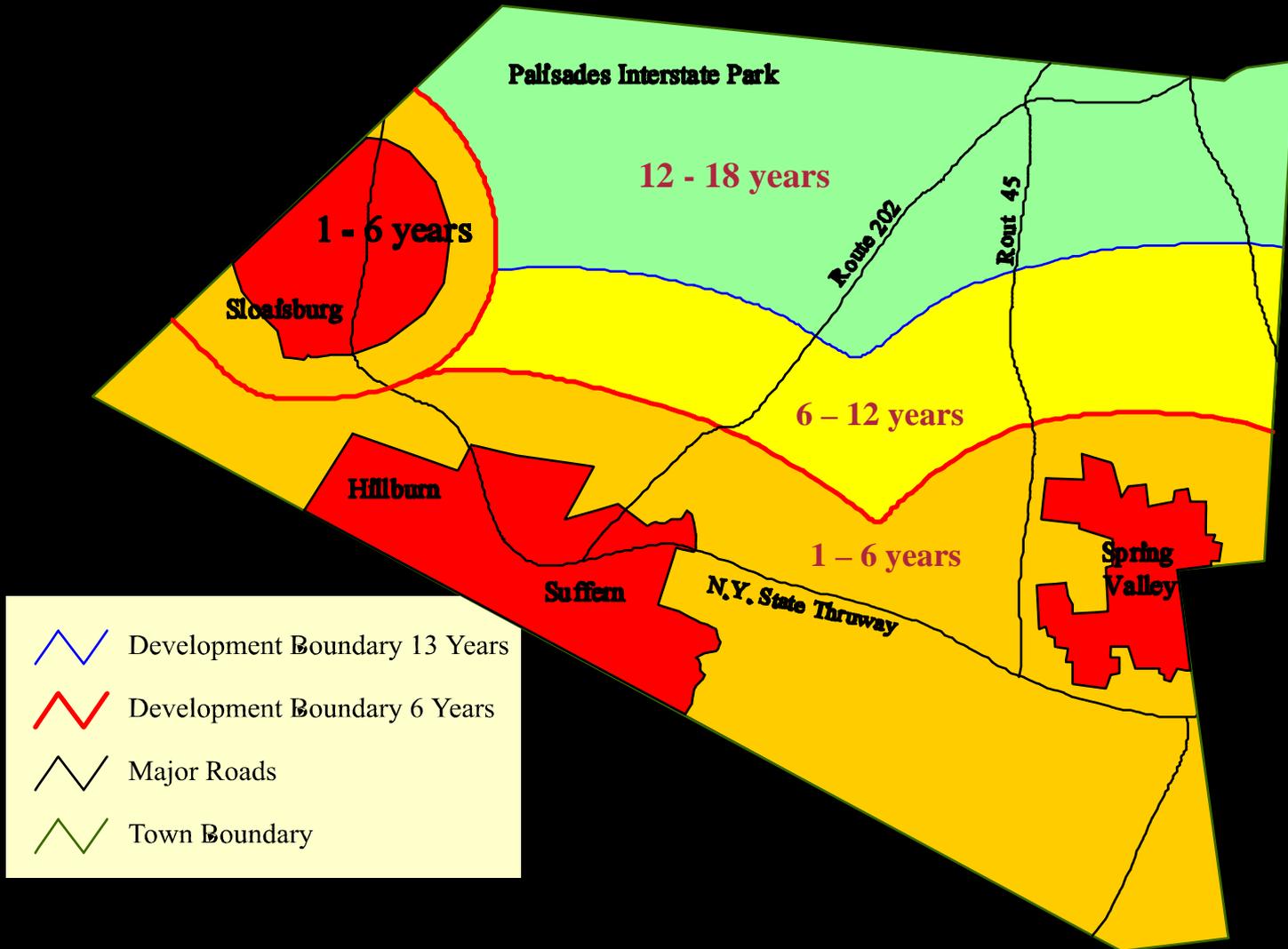
Capital Costs Shifted to Existing Development

Population	A	B	C	D
10,000	\$12,000			
20,000	6,000	6,000		
30,000	4,000	4,000	4,000	
40,000	3,000	3,000	3,000	3,000
Total	\$25,000	\$13,000	\$7,000	\$3,000

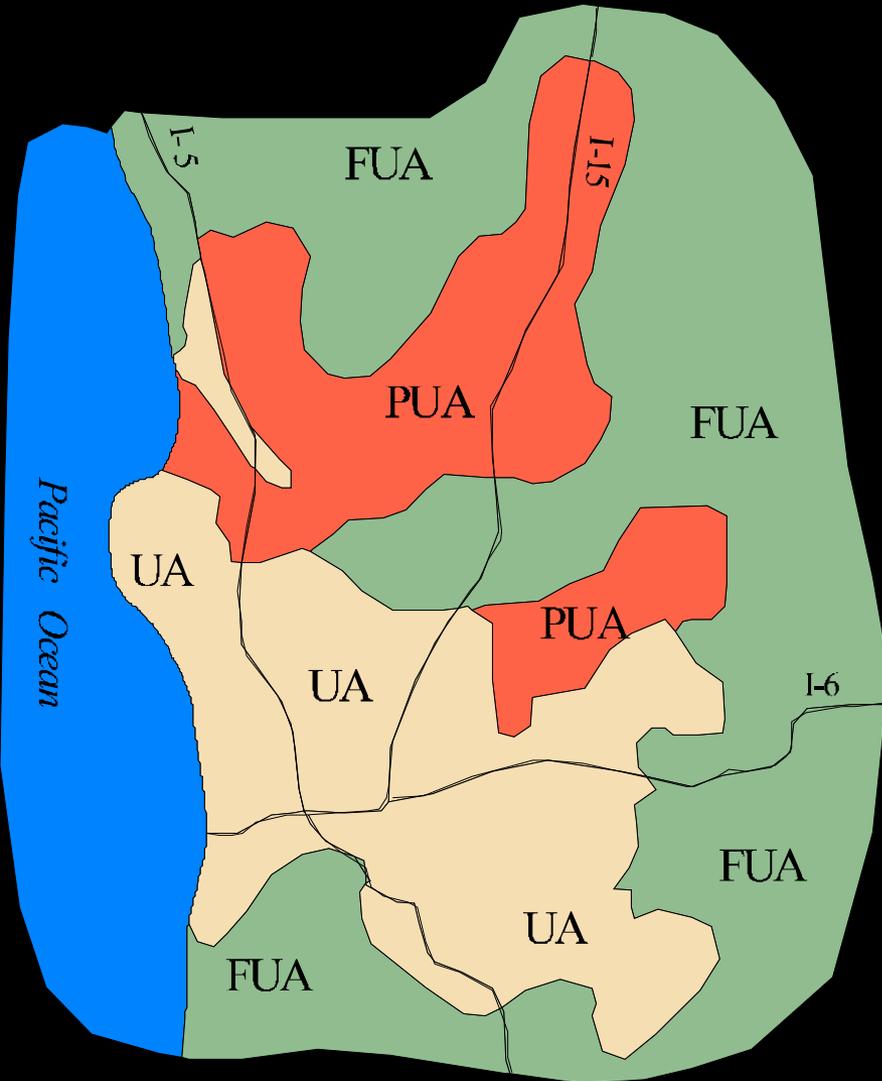
Relative Cost of Planned Development v. Sprawl

Facility	Sprawl		Planned Development		
	100%	Duncan	Burchell	Frank	Synthesis
Roads	100%	40%	76%	73%	75%
Schools	100%	93%	97%	99%	95%
Utilities	100%	60%	92%	66%	85%
Other	100%	102%	N/A	100%	N/A

Ramapo



San Diego



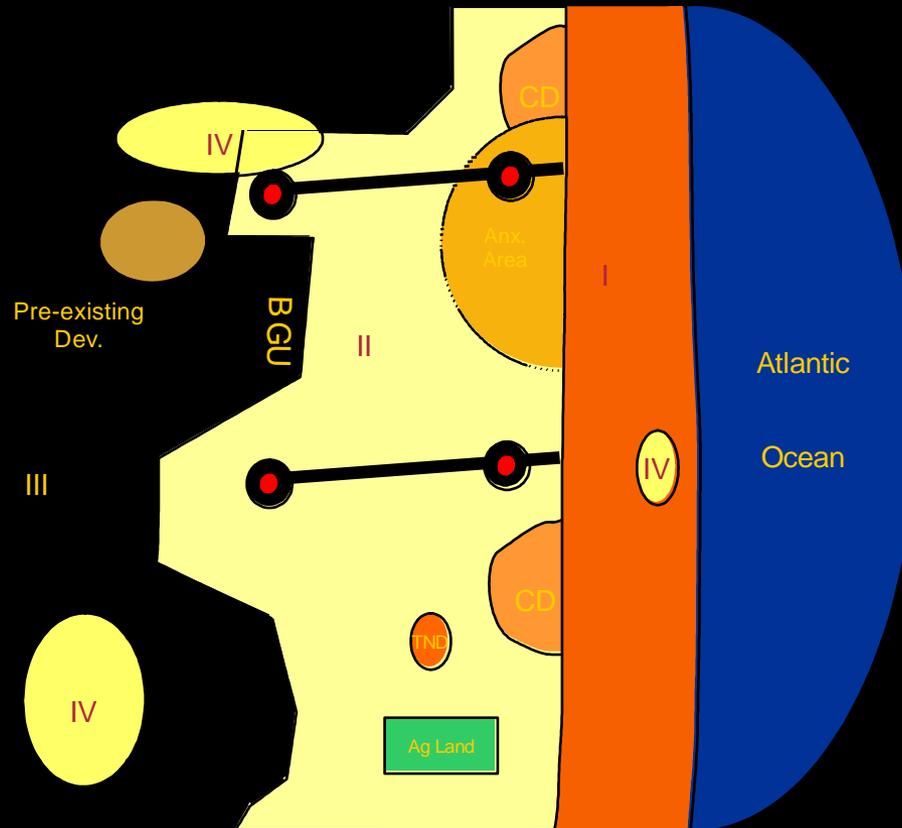
Legend

- Urbanized Area
- Planned Urbanized Area
- Future Urbanized Area

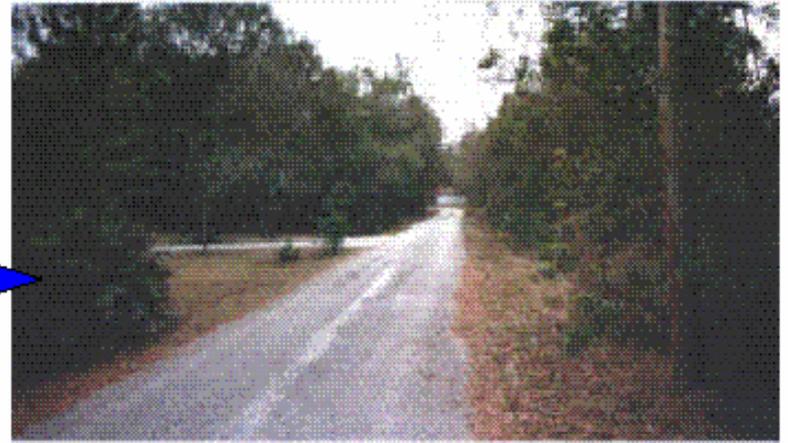
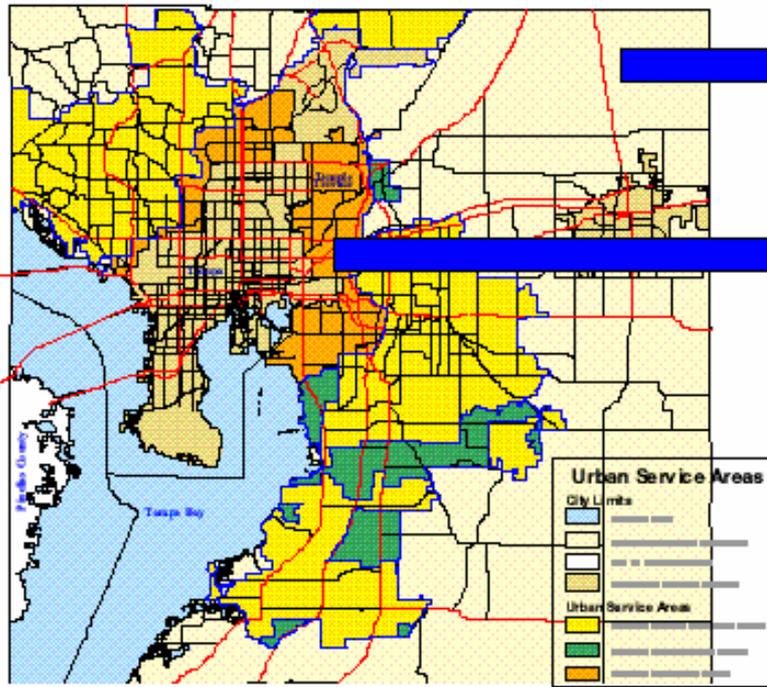
Building Permits Issued

Before	9,000 BPs
	8,000 Outside
	1,000 Inside
After	16,000 BPs
	8,000 Outside
	8,000 Inside

Palm Beach County Tiers



Rural Design – the “New Ruralism”



Urban Design – the “New Urbanism”

Joint Planning - Bridging the State-City-County Gap

- Comprehensive Plan as Constitution
- Mutual definition of growth tiers
- Targets State funding to priority growth areas
- Linkage between CIP, development and annexation
- Adequate public facilities required
- Promotes creative, efficient development
- Limitations on sprawl

Transportation



- Patterns
 - Corridors - linear land use patterns that form around regional transportation connectors
 - Centers - the nuclei of the region, with a concentration of the land use activity and transportation improvements; the commercial, residential, entertainment and employment hubs for a region
 - Nodes - concentrations of land use activities that form at the intersection of corridors or other transportation routes

Local Government Roles in Joint Development of Transit Centers

- assemble property
- provide flexible zoning / incentives
- secure low cost financing
- construct infrastructure
- coordinate gov't agencies
- expedite development process
- designate transit corridor
- establish transit service / centers

Joint Development: Regulatory Incentives

- Parking reductions
- Impact fee reductions
- Concurrency waivers (TCMA)
- Density bonuses
- TDR
- Expedited processing

Joint Development: Techniques

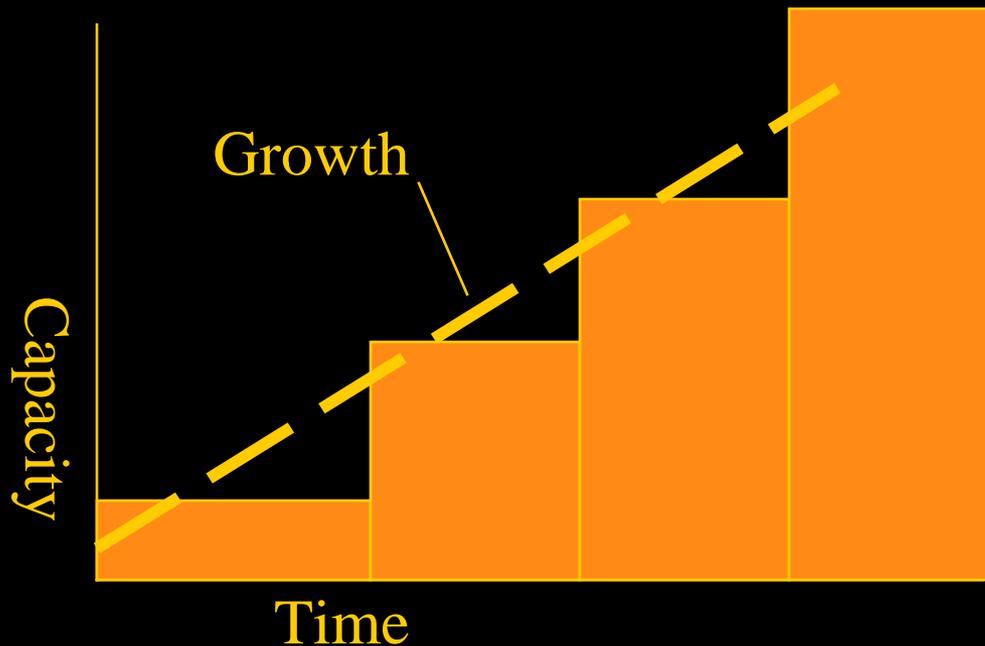
- Excess Condemnation
- Long term leasing/value capture
- Negotiated private sector investments
- Connection fees
- Concessions

Concurrency and Adequate Public Facilities Planning

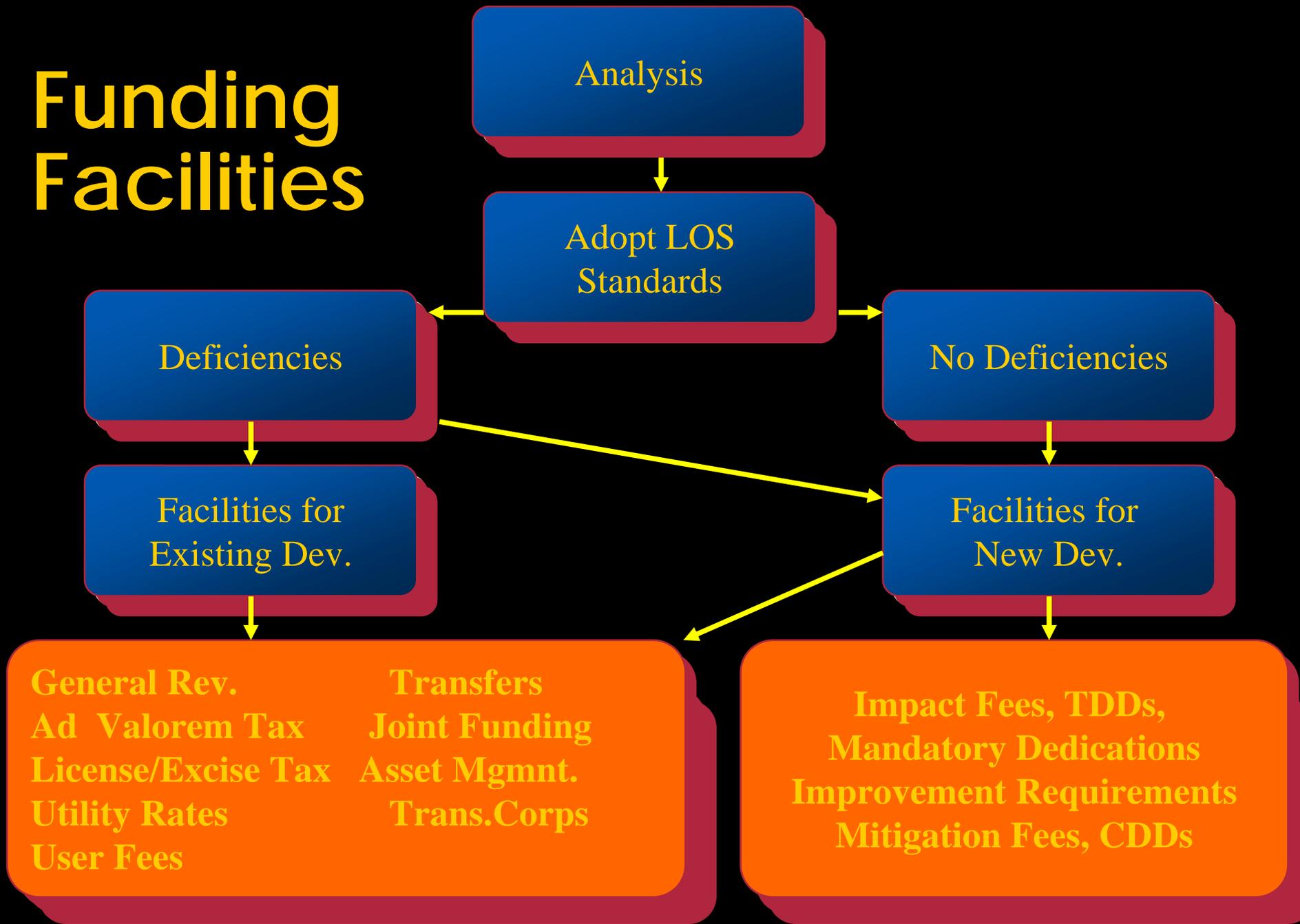
Concurrency

- Timing and Sequencing (police powers)
- CIP (fiscal powers)
- Carrying Capacity

Timing of Development & Public Facilities



Funding Facilities



Dolan/Ehrlich Analysis of Concurrency

New Growth Related Facilities

Impact Fees

Concurrency

Good Faith Test

Rough Proportionality
Dolan v. City of Tigard

Deny Approval

Deficiencies in
public services

Florida Rationally
Related Test

Development
Agreement

CIP will solve deficiencies
within reasonable period of time

Leveraged Negotiation
(*Ehrlich v. Culver City*)

Developer gains vested
rights, local gov't gains
facilities in greater
capacity than rough
proportionality

*Golden v. Planning
Board, Town of
Ramapo*: applies to
school facilities

Development Agreements

- Concurrency management
- Serve new demand
- Solve existing deficiencies
- Growth management
- Litigation defense

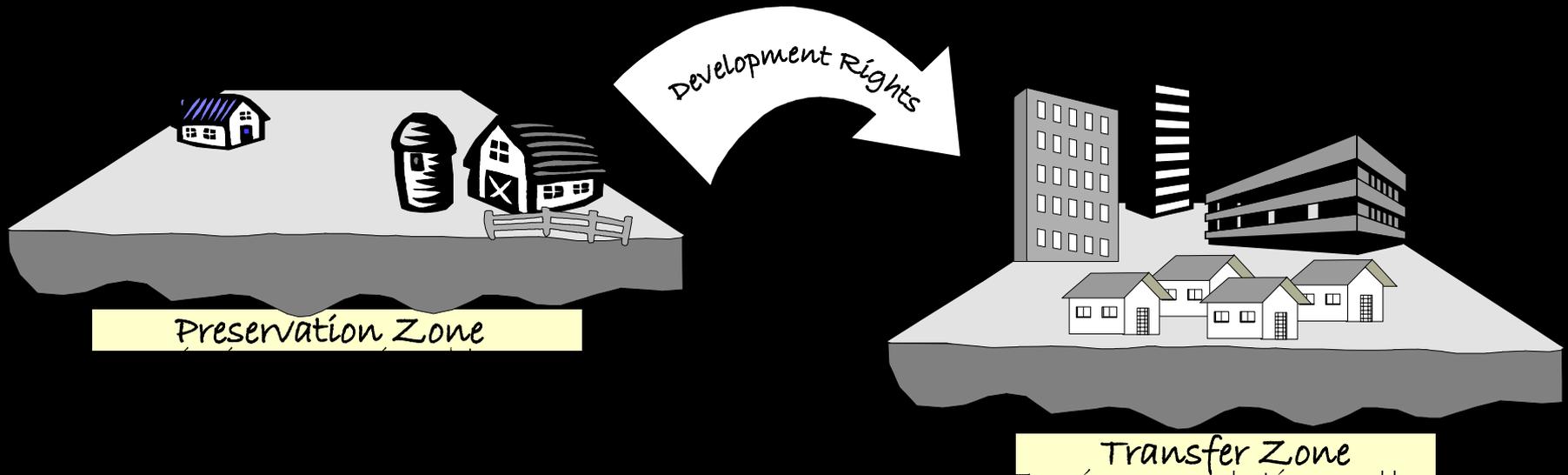
Regulatory Implementation Tools

- Ag Zoning Districts / Ag Preservation Strategies
- Open Space and Environmentally Sensitive Land
- Right-of-Way Preservation Ordinances / Future Acquisitions Map
- Transportation Corridor Overlays
- Transit-Oriented Development (TOD)
- Transportation Districts
- Joint Development
- Traditional Neighborhood Development (TND)
- Negotiated Areas of Urban Impact

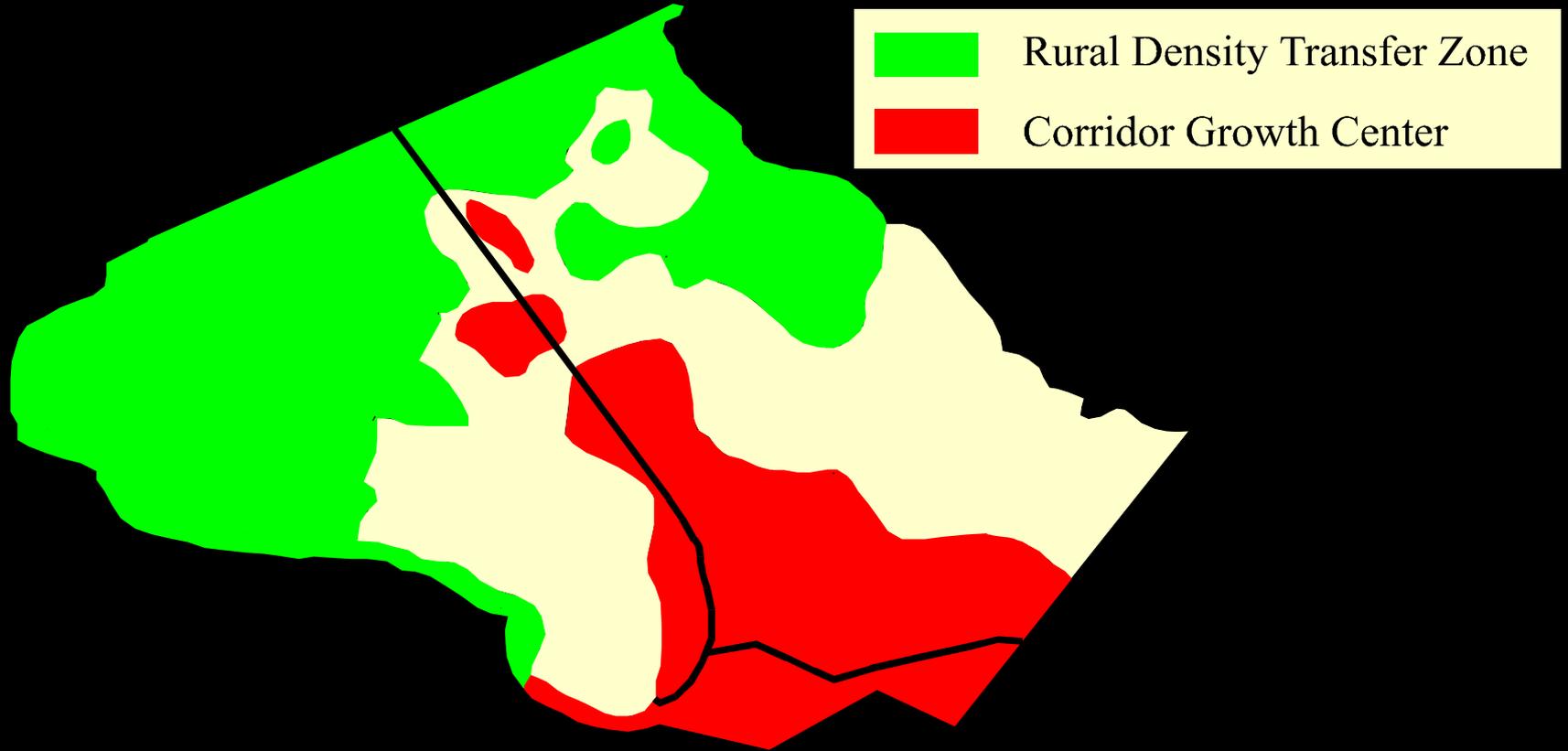
Agricultural Land Retention Strategies

- Governmental purchase (fee or development rights)
- Dedication or reservation of conservation easements
- Federal and state tax deductions
- TDRs and PDRs tied to open space mitigation fees
- Large lot agricultural zoning
- Clustering and average density
- LESA standards for classification of agricultural lands
- Agricultural districting
- Tiering and rate of growth
- Rural design standards

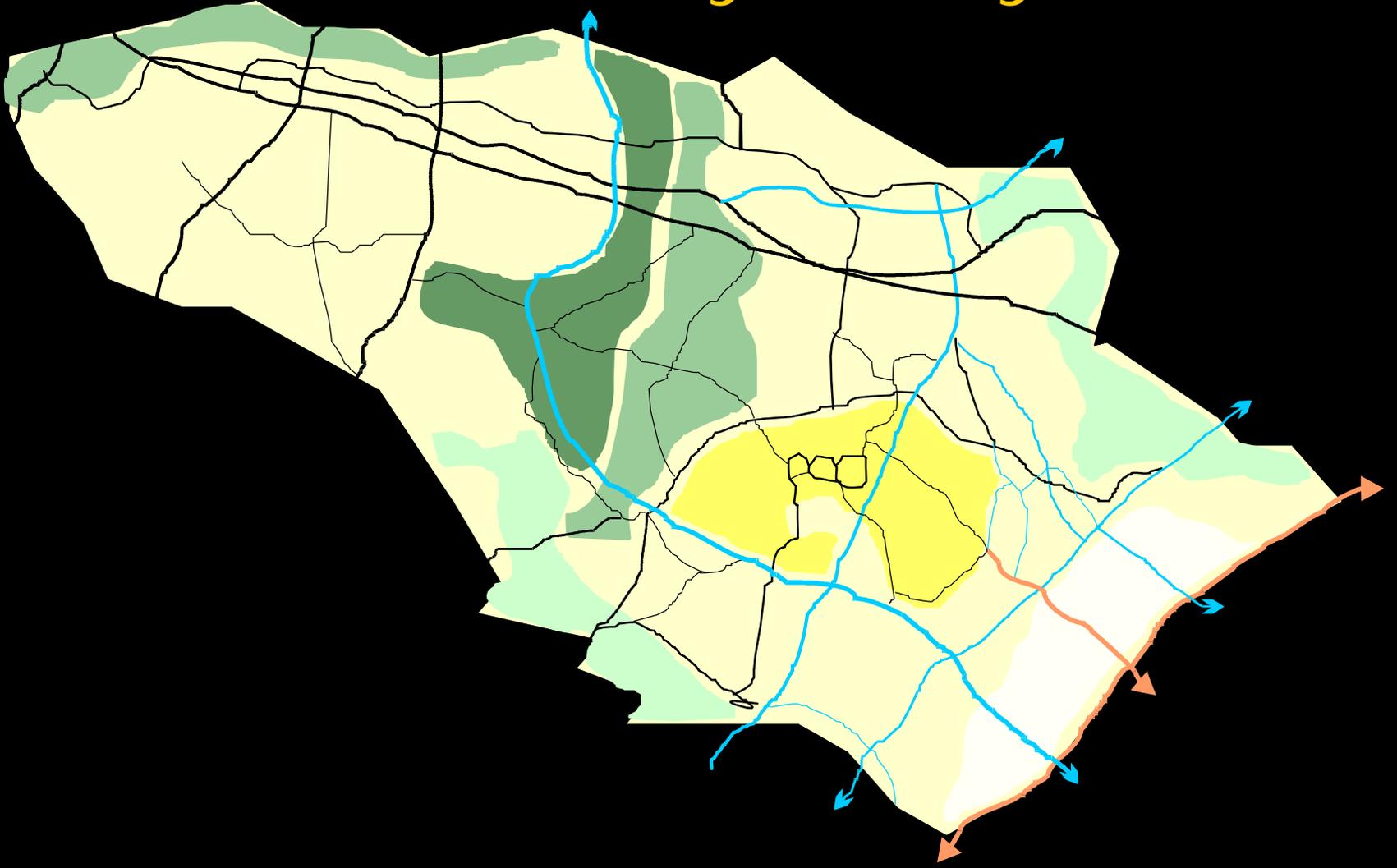
Transfers of Development Rights



Montgomery County, MD



Howard County, Maryland



Farm Retention vs. Sale

A Hypothetical Comparison

	Retention		Sale
Cost 50 acres \$3,000/ac.	\$150,000	\$15,000/ac	\$750,000
Cluster 10 lots on 5 acres	\$150,000		
TDR 10 lots	\$150,000		
Capital Gains Tax (18%)	0		-\$135,000.
IRC s.170(h) tax deduc.	+\$200,000		0
Subtotal:	\$650,000		\$615,000
Other Potential Costs or Savings:			
Replacement Housing	0		-\$150,000
Real Value	\$650,000		\$465,000
Per Acre	\$13,000		\$9,300

Mitigation Fees

- Intended to permanently protect the resource that is being depleted
- Distinguishable from impact fees
- Fees are designed to make whole or replace the depleted resource
- Provide a basis for creating value for the farmer or holder of environmental land equal to the value that would be obtained from sale for development
- Not taxes, but police power exactions

Examples of Mitigation Fee Programs

- Average density of County: 4 units per acre
- Development of 1 unit per acre pays for 3 development units at \$5,000 per unit (consuming 4 times as much land per capita as County average)
- \$15,000 transferred to purchase agricultural development easements
- Tampa/Hillsborough County; Prince George's County, Md., Monterey County, Cal.

Environmental Uses of Mitigation Fees

- Wetland protection, Sec. 404, Clean Water Act
- Endangered species habitat, 16 U.S.C. Sec. 1539
- Open space (Miami-Dade County, FL.)
- Agricultural mitigation fees (Yolo County, CA; City of Davis, CA; King County, WA; Brentwood, CA; Monterey County, CA)

Takings Challenges

- Physical and total takings – *Loretto v. Manhattan Teleprompter Co.* (U.S. 1984); *Lucas v. South Carolina Coastal Commission* (U.S. 1992)
- Title takings – *Nollan v. California Coastal Commission* (U.S. 1987); *Dolan v. City of Tigard* (U.S. 1994)
- Substantial advancement of legitimate state purpose – *Agins v. City of Tiburon*, 447 U.S. 255 (1980); *Lingle v. Chevron* (pending U.S. Sup. Ct. 2005)
- Economic regulatory takings – *Penn Central Transp. Co. v. City of New York* (1978)
- Timing and sequencing of development – *Tahoe Sierra v. TRPA*, 535 U.S. 302 (2002); *Golden v. Town of Ramapo*, 285 N.E.2d 291 (N.Y. 1972) app. dismissed 409 U.S. 1003 (1972)

Conclusion

Fiscal Conservatism Will Solve What Went Wrong with Growth Management in Florida

- 2005 Florida Growth Management Act Initiatives
- Utilization of economic techniques and incentives to solve takings problems for agricultural, open space, and environmentally sensitive lands
- Use of tiered management systems for urbanized, urbanizing, and future urbanizing areas
- Expansion of concurrency management in lieu of impact fees and assessments
- Promotion of joint public-private development for corridors, centers, and downtown development