

Finding Opportunity across Political Boundaries: Balanced Growth Watershed Plans and Cross-Jurisdictional Agreements

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1.0 INTRODUCTION

Balanced Growth: a voluntary, incentive-based strategy to protect and restore Lake Erie, the Ohio River, and Ohio's watersheds to assure long-term economic competitiveness, ecological health, and quality of life.¹

The goal of this policy report is to provide communities guidance on watershed-based, cross-jurisdictional land use agreements that implement watershed-based balanced growth plans. In particular, we focus on coordinating implementation of development areas and conservation areas already identified by balanced growth planning partners.

Population dynamics and land use change in Ohio do not strictly adhere to political boundaries, and neither do the movement of water resources. Ohioans across watersheds have a shared fate when critical resources (water and otherwise) are in jeopardy as a result of development or when unplanned development results in inefficient use of infrastructure. In other words, what happens in one area of a watershed is inextricably linked to what is occurring in other areas of the same watershed.

The Ohio Lake Erie Commission's Balanced Growth Initiative (BGI) (www.balancedgrowth.ohio.gov/) was instituted to provide a voluntary, long-term planning strategy to address these cross-jurisdictional issues of urban sprawl, resource protection and economic development. To take these plans to the next stage, the Center for Farmland Policy Innovation has researched ways that neighboring communities can co-implement the balanced growth strategy across jurisdictions and co-benefit from the results (<http://cffpi.osu.edu>). Therefore, this report only focuses on those implementation strategies that are cross-jurisdictional or multi-jurisdictional in nature, not focusing on those strategies that would be used solely within one governmental jurisdiction. Using an evaluation framework, we examine opportunities for communities to collaboratively link land use and economic planning with the health of watersheds and without being bound to small-box government boundaries.

In 2006, the Ohio Lake Erie Commission funded four pilot planning partnerships to develop balanced growth plans across the Lake Erie basin. Building on the success of these partnerships, the Ohio Water Resources Council took these partnerships statewide in the summer of 2009. Using the experience of the first pilot partnerships and in anticipation of increased need for flexible tools designed to implement resultant balanced growth plans, this policy brief aims to aid in the conversation between jurisdictions on how to move forward from the planning stage.

We have written this report on the assumption that the communities that utilize this information have been through the balanced growth planning process and intend to implement the balanced growth plan. While communities within the BGI planning watershed have already identified the location of growth and conservation areas, the method used to implement the plan covering these areas was not identified. Therefore, this report provides examples of the types of agreements that could be used in implementation. Further, we assume that any cross-jurisdictional activities

¹ <http://www.balancedgrowth.ohio.gov/>

will complement best local land use practices, which include other tools for facilitating the implementation of a balanced growth plan². Finally, we are making the assumption that communities which have participated in the balanced growth planning process have an interest in cross-jurisdictional plan implementation. In other words, this policy report is focused on the strategies to coordinate PDAs and PCAs/PAAAs, not the process of developing consensus or garnering local political leadership.

This report is presented as follows: Section 2.0, “The Guiding Principles,” outlines the policy framework used to analyze approaches to cross-jurisdictional growth and resource protection. Next, Section 3.0 provides some issues relate to the process of plan implementation. While the process of implementation is not the focus in this report, we felt it important to raise process issues before reviewing actual mechanisms used in implementation. Section 4.0 briefly reviews existing agreements and other tools that are currently available in Ohio, using the framework in Section 2.0. Section 5.0 provides a summary of existing approaches and resulting gaps. Implementation strategies are discussed in Section and new models are provided in Section 6.0. Finally, we conclude with Section 7.0. It is assumed that the reader is familiar with the Ohio Balanced Growth Program (<http://www.balancedgrowth.ohio.gov/>). Some terms and concepts are taken directly from this program; three important references are “balanced growth,” “priority development areas,” “priority agricultural areas” and “priority conservation areas.”

2.0 THE GUIDING PRINCIPLES

We begin with a broad vision to frame our analysis of existing tools and the development of new opportunities in the State of Ohio. We developed the following “Guiding Principles” as a framework to evaluate how well PDAs and PCAs/PAAAs, as identified in balanced growth plans, can be coordinated across jurisdictional boundaries:

- *Addresses PDAs.* An ideal approach enables a community to guide growth to priority development areas (PDA).
- *Addresses PCAs and PAAAs.* Likewise, an ideal approach enables a community to conserve or protect priority conservation areas (PCA) and/or Priority Agricultural Areas (PAA).
- *Coordinates PDAs and PCAs/PAAAs.* Perhaps more importantly, implementation of a balanced growth plan should address ways to coordinate and balance the redirection of growth with resource protection.
- *Can address landowner equity.* Landowners within PCAs/PAAAs may have concerns about loss of development potential and associated losses in land values. In these cases, the ability for communities to use an approach that addresses landowner land value concerns will be critical to plan implementation success.
- *Can address community equity.* If revenue generated through new development in PDAs and/or costs of resource protection in PCAs and PAAAs is uneven across communities, an approach that can address these differences is needed.
- *Can be easily and effectively implemented.* If an approach to implementing a balanced growth plan cannot be easily implemented, then the likelihood of it being used or being effectively implemented is low.

² <http://www.lakeerie.ohio.gov/BalancedGrowth/BestLocalLandUsePractices.aspx>

- *Can be limited to, or organized at, the watershed-scale.* The scale of the balanced growth plans is the watershed. Therefore, it is ideal that the scale of which the tools used to implement the plan is flexible to operate between jurisdictions, all the way up to the watershed-scale.

3.0 THE PROCESS OF IMPLEMENTING CROSS-JURISDICTIONAL APPROACHES

While this report does not focus on the process of implementing cross-jurisdictional approaches, we understand that process is as, or even more, important than the legal mechanism used for implementation. Therefore, we raise a few issues related to the process of implementation. As communities explore different approaches to cross-jurisdictional collaboration, it is important to consider implementation issues and strategies. In this case, we refer to implementation as simply the realization of the BGI plan. Political will and trust are perhaps the most *critical components* for implementation of any cross-jurisdictional approach. Mutual trust is required when two or more local governments allow for joint decision-making over resources, especially when resources are unbalanced between communities. Trust requires relationship building, open dialogue and a willingness to recognize the needs and interdependency of all residents and communities within the watershed. Established trust could determine whether jurisdictions are even willing to consider a particular cross-jurisdictional approach.

Ideally, any cross-jurisdictional approach would have a formal connection to area comprehensive, economic development and land use plans. Also, any approach would leverage existing incentives and programs, recognize the power of public-private partnerships, complement “Best Local Land Use Practices” and address the needs and desires of residents and business owners. Direct interaction with those in PCAs, PAAs and PDAs will help determine community and landowner expectations, willingness and equity concerns.

Scale is also a relevant implementation issue. Implementation could occur on a watershed-scale or within sub-areas of the watershed. A strategy could involve one tool or a set of tools. An implementation approach might include all jurisdictions, multiple jurisdictions or just two jurisdictions.

A formal implementation framework may be necessary—an agreement or structure that addresses implementation issues and enables communication among the jurisdictions. Cross-jurisdictional mechanisms could be negotiated and included within the implementation framework. An implementation framework could be developed through the use of an “accord.” An accord is not a tool explicitly authorized in Ohio revised code. An “accord” process is a flexible and informal approach that can involve multiple jurisdictions, acting as an “umbrella” for BGI implementation. The accord has been used recently, and successfully, in several Ohio regions to address growth, development and resource protection plans. Read more about accords in Section 4.9. On a smaller scale, an annexation agreement could serve as a formal implementation structure (addressed in Section 4.3).

Because a balanced growth plan is intended to be a living document, a formal governmental structure could facilitate continued planning and long-term implementation of the balanced

growth plan. Two types of entities to consider are regional council of governments (ORC Chapter 167) and regional planning commission (ORC 713.21).

4.0 REVIEW OF EXISTING APPROACHES

The following is a review of mechanisms currently available to Ohio communities. First we provide a brief explanation for each technique or tool. This is not intended to replace a full reading of the Ohio Revised Code and other supporting materials, which are referred to in each section. Then we use the guiding principles framework to discuss how well the strategy fits with cross-jurisdictional implementation of the balanced growth plans. Because the guiding principles are a broad frame of analysis, we do not step through each principle with each strategy). Finally we offer pertinent examples and available resources.

Ohio law enables local governments to enter into mutual agreements regarding matters such as economic development, provision of public services, land use and revenue sharing. Political subdivisions frequently utilize these agreements, but not typically in the context of balanced growth and conservation. Below, we describe several types of agreements that could play a role in cross-jurisdictional implementation of a balanced growth plan.

A new governmental authority or political subdivision that has the power to act across borders may be an attractive option for guiding growth and protecting resources cross-jurisdictionally. Some may consider a new authority to be yet another layer of government, but the benefits of decision-making at the level of concern may outweigh the bureaucracy. The following section describes several types of governing bodies that may in part or in whole address the priorities outlined in Section 2.0.

4.1 Joint Economic Development District

A Joint Economic Development District (JEDD) (ORC 715.70-83) is a special purpose district created by one or more townships and one or more municipalities to facilitate economic development in a targeted area without modifications to jurisdictional boundaries. A JEDD enables jurisdictions to agree to a development plan for the identified area, allows for the levying of income taxes within the district, and permits the sharing of tax revenues. Townships and municipalities can thus utilize a JEDD to identify and plan a business growth area, provide economically efficient services to the area, and share local revenues resulting from development.

JEDD jurisdictions must be in the same or adjacent counties and in some instances there are requirements that they be contiguous. The parties create an economic development plan for the area and enter into an agreement that addresses issues such as provision of police, fire and road services; zoning, land use and planning; agreements on tax abatements; and division of the JEDD income tax. The law requires public hearings, notification to the county or counties, and petitions signed by a majority of property and business owners in the area. Unless the JEDD formation meets certain statutory conditions, electors in the township must approve the JEDD as a ballot measure.

A JEDD is managed by a Board of Directors that includes a representative from participating municipalities and townships, business owners and persons working in the JEDD area and one member selected by the representatives of the above groups. Ohio law gives the board authority to levy income taxes at a rate up to the municipality's rate. The JEDD parties share the income tax revenues based on a formula identified in the contract, with an amount being set aside for the long term maintenance of the JEDD. Revenues may be used for JEDD purposes or each party may use the revenues for other purposes. The parties may also negotiate the sharing of other tax revenues.

A final note: If the common area of interest contains residential development, a Joint Economic Development Zone (ORC 715.691) may be more appropriate, because it allows for existing residential development at the time of JEDZ creation. However, the electors that are part of the residential development vote on both creation of the JEDZ and imposition of the income tax. Therefore, support from residents would be required to move forward. The JEDZ option under ORC 715.691 is available only if one of the contracting parties to the JEDZ does not levy a municipal income tax under ORC Chapter 718.

Evaluation of Principles and Application: A JEDD meets many of our guiding principles. A municipality and township could use a JEDD to direct economic development to a PDA, assuming the area satisfies the statutory criteria for JEDD establishment. The JEDD's revenue generation authority offers a funding mechanism for land protection or conservation measures in a PCA/PAA, which the JEDD parties could pursue individually or collaboratively. Revenue authority thus allows for coordination of PDAs and PCAs/PAAAs, addresses community equity concerns, and can provide a financial basis for addressing landowner equity issues. On the negative side, the JEDD statute is tedious and the process can be slow moving, reducing JEDD's desirability in regards to easy and efficient implementation of a BGI plan. This characteristic, combined with requirements for agreement by a majority of landowners and business owners in the JEDD area and ballot approval, may also affect JEDD's political feasibility.

Existing Examples: In Lorain County, Ohio, Pittsfield Township and the City of Oberlin created a JEDD to support each other in a plan for local development. Under the terms of the contract, 20 percent of the township outside of the city limits has been designated as a development zone for expansion of the city. The township has agreed not to oppose annexation in the development zone and will also discourage development on farmland in the township. In exchange, the township will receive a share of Oberlin's tax receipts for 50 years, including 18 percent of the city's withholding from commercial payrolls and 2.35 mills of property tax on non-residential areas. The JEDD negotiations also spurred a land use development plan for the township that features smart growth principles.

Resources:

- Ohio Department of Development's summary of JEDDs, available at <http://www.odod.state.oh.us/JEDDSUMMARY.pdf>
- Gregory R. Daniels and Catherine D. Tompkins, Squire, Sanders & Dempsey L.L.P., *Economic Development for Small Governments*, available at <http://www.auditor.state.oh.us/conferences/LGOC/2008PostConference/>

- Price D. Finley, *Cooperative Economic Development Made Easy with JEDDs and CEDAs*, Bricker & Eckler L.L.P., available at <http://www.bricker.com/publications/articles/774.pdf>
- Ohio State Bar Association, *Joint Economic Development Districts Aid Local Development*, available at <http://www.ohiobar.org/members/pages/lawyocanusedetail.aspx?itemID=460>
- Peggy Kirk Hall and Jill K. Clark, OSU Center for Farmland Policy Innovation, *Local Funding Options for Ohio Farmland Protection: A Summary of Existing and Potential Options under Ohio Law for Funding a Local Farmland Protection Program*, available at <http://cffpi.osu.edu/docs/FundingOptions.pdf>

4.2 Cooperative Economic Development Agreement

Description: A CEDA is a contract that one or more townships enters into with one or more municipalities for the purpose of supporting and encouraging economic development in an identified area. Within the CEDA, the parties may address provision of services and permanent improvements to the area, payment of service fees, issuance of industrial bonds and bonds for public purposes, allocation of debt service on bonds, limitations on annexation of unincorporated property in the CEDA, and identification of land in the CEDA that will be annexed. Counties, private parties and state government agencies may also become parties to the CEDA with permission of the original contracting parties. A CEDA must indicate the territory it covers, but other requirements for the agreement are permissive, allowing for local considerations, concerns, policies, and goals to be reflected in the agreement. Before each jurisdiction approves the agreement, residents in the proposed territory must receive notice of the CEDA, the agreement must be made available to the public, and the communities must hold a joint public hearing.

A CEDA can be a source of revenue for conservation efforts due to its potential to generate economic development while allowing for economically efficient provision of public services in growth areas and for its revenue sharing capabilities (although the CEDA does not create a new mechanism for direct revenue generation, municipalities may take tax revenue and make payments to a township). The CEDA could include PCA/PAA protection as a component of the agreement, and land within the CEDA may be designated and planned for agricultural development that focuses on agriculturally based businesses and industries.

Evaluation of Principles and Application: A CEDA could address both development needs and conservation needs by identifying areas for targeted growth (PDAs) and conservation (PCAs/PAAAs) and therefore be used to coordinate PDAs and PCAs/PAAAs between any number of municipalities and townships. However, because CEDAs can only address commercial or industrial development, development in PDAs under this tool could not include residential development. Revenue raised in the PDAs in the CEDA can be used for public purposes, such as land protection or best management practices in the PCAs or PAAAs. This type of activity could address community inequity if economic growth was occurring in one community and conservation in another. A CEDA addressing growth and conservation in a district does lend some certainty to the future of the area and may be based on the balanced growth plan, but the CEDA mechanism does not allow for formal inclusion of land use planning into the district. Like JEDDs, CEDAs can be tedious and time consuming to organize.

Existing Examples: In central Ohio, Violet Township and the Village of Canal Winchester broke new ground by establishing a CEDA district comprised of more than 800 acres of industrial and commercial property. After years of negotiation, the agreement took effect in November of 2005. The agreement addresses infrastructure and services in the area and provides for mutual benefits. Key provisions of the CEDA include annexation guidelines, joint infrastructure planning and improvements, joint provision of road, fire protection, rescue, water, and sewer services, and incorporation of agreed upon development standards. Additionally, Violet Township receives 20% of Canal Winchester’s income tax revenues generated in the CEDA district.

Resources:

- David Civittolo, Ohio State University Extension, *Cooperative Economic Development Agreements* Fact Sheet: <http://ohioline.osu.edu/cd-fact/pdf/1561.pdf>
- John Albers and Eric Luckage, firm Albers & Albers, *Comparative Analysis: Cooperative Economic Development Agreement (CEDA), Joint Economic Development Districts (JEDD), Senate Bill 5 Annexation Agreements*, available at: <http://www.alberslaw.com/articles/Comparative%20Analysis%20CEDA%20%20JEDD,%20Annex%20comparison.pdf> Note: This document explains the basic differences between JEDDs, CEDAs and Interjurisdictional Agreements under Ohio’s Annexation Law.

4.3 Interjurisdictional Agreements under Ohio’s Annexation Law

Description: Reform of Ohio’s annexation law in 2001 included authority for municipalities and townships to enter into annexation agreements (ORC 709.162). This type of agreement is a guiding document for cooperation between jurisdictions to promote economic development and provide services for new development. Annexation agreements can address planning goals and tax sharing, economic development priorities, territory to be annexed, who provides and pays for services, reallocation of inside millage between jurisdictions and payments in lieu of taxes to be paid to the township by the municipality, boundary changes, periods of time during which no annexations will occur and any areas that will not be annexed. Unlike JEDDs and CEDAs, annexation agreements can address land use planning. Ohio’s annexation law authorizes a number of services, functions, and activities that any one of the parties may undertake to facilitate the purpose of an agreement. The law also includes a “catch all” provision which allows the parties to contract on “any other matter” generally concerning annexation or development, and states that the terms of an agreement are to be given a liberal construction to allow the governments maximum flexibility in accomplishing the goals they intended by entering into an agreement.

Evaluation of Principles and Application: Annexation agreements provide a level of flexibility not found in JEDDs or CEDAs, which makes their application to balanced growth plans even more appropriate. Annexation, at its core, is about growth and development and the allocation of resources. This process includes service provisions for new development, and

defines where that new development will be located (such as PDAs). Annexation agreements can also define areas for conservation and non-development. Because annexation agreements can include land use planning, they can coordinate PDAs and PCAs/PAAAs. Annexation agreements, by definition, are cross-jurisdictional. What makes annexation agreements attractive is the negotiated process between jurisdictions. Annexation agreements can cover long periods of time, which can make them living documents like the balanced growth plan versus a one-time project. These agreements do not allow for revenue sharing, but can address equity through payments of city taxes to townships. One major drawback of annexation agreements is the historic baggage that they carry as being detrimental to the health of townships.

Example: On September 18, 2006, pursuant to Ordinance No. 06-71AC CMS, the City of Oberlin and Pittsfield Township entered into an Annexation Agreement. The Agreement provides for both growth in a development zone and protection of farmland in the township. The intent of the parties is to provide for consistent and planned land use in an area subject to increasing and intense development pressures. A copy of the Agreement is on file with the City Clerk. (Ord. 06-72AC. Passed 9-18-06.)

Resources:

- County Commissioner Association of Ohio, *Commissioners Annexation Manual*, available at <http://www.ccao.org>

4.4 Port Authority

The State of Ohio allows its municipalities, townships and counties to establish port authorities pursuant to ORC 4582, either independently or collaboratively, to accomplish economic development objectives. A port authority is a separate body governed by a Board of Directors and its jurisdiction includes all areas of the political subdivision(s) creating it. Port authorities are given broad statutory powers to participate in economic development projects, both within and outside of the port authority's geographic territory. Those powers include the ability to acquire, construct, enlarge, maintain, sell, lease, operate port authority facilities and hold property, including interests in land. A port authority can offer economic development revenue generation and financing products that counties, cities, townships, or special districts cannot. Revenue generation can include issuing revenue and general obligation bonds, loan money and guarantee obligations. A port authority can also receive state and federal loans and grants.

Evaluation of Principles and Application: Port authorities are enabled to accomplish many of the guiding principles through their very broad authority. This is particularly true if a port authority is watershed-wide and has the mission of assisting in the implementation of a balanced growth plan. For example, funds resulting from development in one area under the port authority could be raised to protect land under another area under the authority. Or the port authority could orchestrate a private-market transfer of development from one area (sending zone) to another (receiving zone) to coordinate PCAs/PAAAs and PDAs across jurisdictions. Port authorities can be organized at the watershed-level. While the broad ranging authority afforded to port authorities is attractive, one drawback (if a port authority already exists) may be that the current leadership may not be aware of local land use planning efforts or balanced growth

strategies. Because port authorities historically have taken on very different roles, it may not be politically feasible to alter the direction of a currently established port authority. But the creation of a new authority that is designed to implement balanced growth may be an option under Ohio law.

Existing Examples: Ohio has many port authorities, but none were designed to address BGI plan implementation, or more specifically, coordination of PCAs and PDAs. See this web site for a map from the Ohio Department of Development: <http://www.odod.state.oh.us/research/FILES/G807.pdf>. One example that demonstrates revenue generation for public works is the Portage County Port Authority. This port authority uses tax increment financing to provide public improvements for developments (<http://www.co.portage.oh.us/port/index.html>).

Resources:

- Port of Greater Cincinnati Development Authority, available at http://www.cincinnatiport.org/files/uploaded/Why_a_Port_Authority.pdf
- David A. Rogers, Bricker & Eckler L.L.P., *Port Authorities: How Can they add Value to a Municipality?*, available at <http://www.bricker.com/publications/articles/767.pdf>.

4.5 Conservancy District

Conservancy districts are political subdivisions of the State of Ohio created to address water management problems (ORC Chapter 6101). These districts are initiated locally and require resident approval. In addition to controlling floods, other authorized purposes of a conservancy district includes changing, widening, and deepening stream channels; reclaiming or filling wet and overflowed lands; providing for irrigation where it may be needed; regulating the flow of streams and conserving their waters; diverting or in whole or in part eliminating watercourses; providing a water supply for domestic, industrial, and public use; providing for the collection and disposal of sewage and other liquid wastes produced within the district; and arresting erosion along the Ohio shoreline of Lake Erie (ORC 6101.04). The conservancy district is guided by a court sanctioned work plan, which may include exercising eminent domain, charging user fees, issuing bonds and levying special assessments.

Evaluation of Principles and Application: Conservancy districts are an authority designed to address water conservation and quality issues at the watershed level. They do this by generating revenue and implementing remediation plans, which is a unique authority in Ohio. Conservancy districts act as political subdivisions. These qualities make conservancy districts an attractive option for implementation of balanced growth plans, at least in the way of addressing PCAs and PAAs – both through land protection and installing conservation measures. However, in some places in Ohio, conservancy districts are very unpopular because the governing board has the power to raise taxes, yet the board members are not elected. Political feasibility could be a challenge. Further, it is unclear how conservancy districts would target land and economic development in PDAs.

Existing Examples: According to the Ohio Department of Natural Resources, the Miami Conservancy District is one of the most effective at achieving their conservation goals in the state. The district originated in 1915 to deal with flood protection, and now includes five dry dams, 60 miles of levees and 37 stream channels. The district has a watershed protection program that partners with communities to formulate watershed protection plans and applies for grant money to implement plans. Recently, the district instituted an innovative water quality trading program that has gained national attention.³

Resources:

- Ohio Department of Natural Resources, *Ohio's Conservancy Districts*, available at http://www.dnr.state.oh.us/WaterTestPage/pubs/fs_div/fctsht25OFFLINE/tabid/4110/Default.aspx

4.6 New Community Authority

The New Community Authority (NCA) (ORC Chapter 349) is a legal mechanism for creating well-planned development in an area. It is designed to provide assurance on how future development not only will be planned, but financed. This tool promotes collaboration between government and development interests to ensure that new development is economically sound and can meet its own community needs.

An NCA is a separate public body governed by a board of trustees that may oversee, coordinate, construct and finance public infrastructure improvements and community facilities. The initial board of trustees is appointed and later members are elected. NCAs have broad statutory powers to implement a community development program. These powers include the ability to acquire and dispose of property; enter into agreements with governments, developers or other parties (without competitive bidding, but subject to prevailing wage) for land development activities; construct community facilities such as community and recreation centers, auditoriums, parks, open space, day care centers, schools, streets, bikeways, hospitals and utilities; levy and enforce community development charges; hire employees; and issue bonds. NCAs do not have zoning or subdivision regulation powers or the power to provide fire or police protection, and NCAs may only supply water or sewage treatment and disposal services if they cannot be obtained from existing political subdivisions.

NCAs can be initiated cross-jurisdictionally. An NCA outside of a municipality must include at least 1,000 acres, and an NCA wholly within a municipality has no minimum acreage requirement. The NCA “developer” must petition the county for creation of a New Community district. The “developer” is the owner of the land encompassed by the district and can be a private person, municipality, port authority or county. The petition must include a community development plan that addresses land acquisition, land development, community facilities, infrastructure, services, and the proposed method for financing the development plan. The county, after public hearing and with approval of the largest city in the county, authorizes the NCA by resolution if it finds that the NCA will accomplish the proposed development and will

³ http://www.miamiconservancy.org/water/quality_credit.asp

be conducive to the public health, safety, convenience and welfare. The NCA is governed by its own board of trustees.

The ability to predetermine the needs of the district and generate the revenue necessary to meet those needs is an appealing feature of the NCA. To finance the planned development of the district, the NCA has the power to levy a community development charge on new owners, which runs with the land and may be assessed on valuation, area, or income. The NCA may issue bonds and notes and may also charge user fees, rental and other charges to cover the costs of leasing, purchasing, and maintaining community facilities in the district. Those who buy property in the district do so with full knowledge of the community development charge and other fees, and with assurance that there is a plan in place for addressing and financing the community's needs.

Evaluation of Principles and Application: New community authorities, like port authorities, are attractive because of their broad capabilities. As long as the NCA has jurisdiction over a PDA, the NCA can direct development into a PDA. Revenue generated by new development in a PDA can be used to fund conservation or permanent easement purchases in PCAs/PAAAs, thereby coordinating PDAs and PCAs/PAAAs and addressing landowner equity. Because NCAs are planned communities from both land use and fiscal perspectives, they address community equity upfront. New landowners that buy into the NCA have certainty about land use and services. However, develop pressure in the area, or desirably of the area, must be high, giving these new landowners buying in to the NCA the incentive to agree to additional taxation. The NCA approach may work best in green fields that contain community edge areas that have PDAs and green field areas meant for protection or conservation through PCAs/PAAAs. Or this approach may work well at large sites like old industrial complexes or old uses (such as Geauga Lake in Aurora, Ohio) that have a single owner and need to be revitalized for new uses. One drawback might be that they are only able to address new development and require a minimum of 1,000 acres when established outside a municipality.

Existing Examples: New community authorities have been used in central Ohio for over a decade. Most recently, a NCA is suggested to guide development and contribute to resource protection in the Big Darby Watershed. The NCA discussion can be found in Chapter 5 "Implementation" of the Big Darby Accord, available at:

<http://www.franklincountyohio.gov/BigDarbyAccord/updates/DarbyE1.cfm>

Resources:

- Gregory R. Daniels and Catherine D. Tompkins, Squire, Sanders & Dempsey L.L.P., *Economic Development for Small Governments*, available at <http://www.auditor.state.oh.us/conferences/LGOC/2008PostConference/>
- Squires Sanders Ohio Public Law Update, Spring 2009, *New Community Authorities*, available at http://www.ssd.com/ohio_public_law_update_spring_2009/

4.7 Watershed District

Watershed Districts were established by Ohio Revised Code Chapters 6105 and 6111. These districts are initiated by counties. Upon its organization, the watershed district constitutes a political subdivision of the state and may enter into contracts in furtherance of its powers and duties. Such powers are generally limited to assisting governmental agencies and private interests in the planning and development of water resources within the district.

Evaluation of Principles and Application: A watershed district would provide multiple jurisdictions to join together to create a political subdivision that could address joint decision-making. However, this joint decision-making would need to be centered on conservation of water resources. Further, watershed districts are designed to provide advice and assistance on planning and plan implementation, but a lack of power to act limits their ability to implement cross-jurisdictional projects for preservation and development. At present time, no watershed districts exist.

Existing Examples: No examples currently exist. The Three Rivers Watershed District in the Cleveland area is one historic example. This district was formed in to the Northeast Ohio Regional Sewer District.

Resources:

- Loftus, Timothy T. and Henry G. Rennie, Heidelberg College, *Analysis of Enabling Legislation from a Multi-jurisdictional Watershed Perspective*, submitted to: Ohio Storm Water Task Force, available at <http://www.ohioswa.com/documents/FinalReport-OSTF-319-Grant-StormWater-MGT-Watershed-Basis.pdf>

4.8 Joint Recreation District

Municipalities, townships, township park districts, counties and school districts may enter into an agreement establishing a joint recreation district that encompasses the geographic territory of each political subdivision (ORC 755.12-18). Each jurisdiction must approve the agreement legislatively. A board of trustees governs the district and consists of at least one appointed representative from each political subdivision. The board possesses the authority to acquire property for, construct, operate and maintain parks, recreation facilities and community centers in the district. While each jurisdiction may provide funds to the joint recreation district, the law also gives the joint recreation board financing options—the board has bonding authority and the ability to seek a tax levy, with approval of voters within the multiple jurisdictions.

Evaluation of Principles and Application: A joint recreation district provides a structure for collaborative multi-jurisdictional implementation of the conservation components of a balanced growth plan and parks and recreation plans for the area. Jurisdictions could protect important regional resources identified within PCAs and PAAs while also meeting park and recreation needs for the region—addressing both active and passive resource uses in a regional context. The opportunity for publicly supported funding mechanisms on a regional scale could address both community and individual equity issues, but requires political support in all jurisdictions. Funding for the park district is not limited to bonding or levy sources; the joint park district

agreement could address respective shares for each jurisdiction composing the district, which would permit the jurisdictions to proportion contributions based on population, growth, PDAs and other factors. A joint recreation district does not directly involve PDAs or coordinate PDAs with PCA/PAAAs, but perhaps could be used as a greenbelt to encourage growth in other areas.

Existing Examples: The Granville Joint Recreation District in Licking County, Ohio, consists of the Village of Granville, Granville Township and Granville Exempted School District. The joint recreation district provides programs in recreation, team sports and the arts and operates three parks that include recreational facilities as well as woodlands, trails and community gardens. Electors recently passed a levy to provide continued funding for the district.

Resources:

- Emmett M. Kelley, Bricker & Eckler, L.L.P., *Financing and Operating Community, Recreational and Park Facilities through Joint Recreation Districts*, available at <http://www.bricker.com/publications/articles/918.pdf>.

4.9 Accord

Description: BGI plans provide the basis for decision-making related to growth and conservation, but do not speak directly to the course of implementation. To this end, an “accord” is a formal agreement between political jurisdictions to take action on the BGI plan. An accord can establish an agreed upon set of principles and plans for the future regarding issues and resources of mutual concern to the jurisdictions. An accord is ideal when the timing of all growth and development is not known, but communities want certainty on how decisions about growth and development will occur in shared areas of interest. An accord can act as a broad umbrella, spelling out party intentions and providing a framework for any future action. Ideally, accords are developed by the jurisdictions involved through an extensive public process. Because accords are not enforceable by law, they rely on trust and reciprocity.

Evaluation of Principles and Application: Accords are flexible agreements that can include multiple jurisdictions at the watershed-scale (see the Big Darby Accord example below) and address multiple economic planning and land resource protection issues. Where real value can be found for balanced growth communities is in using the accord to develop a process for plan implementation. Current balanced growth plans include a process for updating the plan’s maps, but do not address plan implementation, particularly in regards to growth and resources that spillover and reach across other communities. An accord can establish the guiding principles for working cross-jurisdictionally, addressing landowner and community equity and coordinating development and protection strategies. But an accord is not legally enforceable and the parties cannot force one another to comply with the accord. As a consequence, accords may work between some jurisdictions and not between others, and implementation is dependent on those involved.

Existing Examples: The first accord pertaining to land use and economic development in Ohio, the Rocky Fork-Blacklick Accord, was developed by a joint planning initiative of the village of

New Albany and the City of Columbus. The process arose out of recognition that the area would be distinctly different in the future and that a cooperative, collaborative planning process was in the best interest of both municipalities. The word “accord” was chosen to represent the consensus that the planning process sought. This process is unique in that it involves two municipalities who, by voluntary agreement, have planned equally for each other’s future within the planning area. The accord includes growth and protection goals, objectives and non-negotiable principles, developed not just by the municipalities themselves, but through an extensive public comment process. To implement the accord, an Implementation Panel was created that serves as a voluntary advisory body to mayors, administrative agencies, and the Village and City Councils, with the charge of keeping development in line with the accord. Another example is the Big Darby Accord, which contains a coordinated PDA and PCA/PAA-like approach. In the Big Darby, not all jurisdictions within the watershed have decided to participate and implementation has been slow.

Resources:

- *Rocky Fork-Blacklick Accord*, available at http://development.columbus.gov/Bizdevelopment/PlanList/PL_12.asp
- EDAW Inc, *Big Darby Accord*, available at <http://www.franklincountyohio.gov/BigDarbyAccord/index.cfm>

5.0 SUMMARY OF EXISTING APPROACHES AND RESULTING GAPS

After reviewing all the approaches in Section 3.0, it is clear that there are opportunities to work within existing Ohio law. However, we do note two important issues. First, none of these approaches were originally designed for the flexibility of cross-jurisdictional coordination of PDAs and PCAs/PAAAs. Some of these approaches were developed for specific situations, such as conservancy districts after the floods in the early 1900s. Other approaches are single-project oriented, like CEDAs and JEDDs, and as have been used to date, do not encompass the totality of the balanced growth concept.

Second, many of the approaches in Section 3.0 clearly provide opportunities for creative implementation, despite the fact that none of these approaches were designed specifically for BG plans. For example, approaches proposed earlier can be designed to implement PDAs and PCAs/PAAAs, and even can coordinate the two (i.e., Interjurisdictional Agreements through Ohio’s Annexation Law, CEDAs and Port Authorities). Further, strategies can address community equity and landowner equity, such as was described in the JEDD and New Community Authority sections. Notice the word “can” in each of these statements. The important note is that while these strategies were not designed for BG plan implementation, they “can” be designed to achieve certain resource protection and economic development goals.

But none of these approaches come without disadvantages. In reference to other guiding principles, some of these approaches may not be politically feasible or easily implemented. In the Evaluation of Principles sections, Interjurisdictional Agreements through Ohio’s Annexation Law may simply carry too much historical baggage given how contentious annexation has been for some municipalities and townships. JEDDs and CEDAs, it was noted, can be tedious and time consuming to organize and therefore not easily implemented. Moreover, retrofitting any of

these approaches in Section 3.0 to address the new BG strategies may uncover procedural barriers.

Two of the approaches covered seem quite limited in their value here given that they do not fulfill more than a couple of the guiding principles. Conservancy and Watershed Districts, while attractive because they are designed to operate at the watershed-scale, are limited in their use for implementing BG plans across boundaries.

Further, none of these approaches achieve all of our principles, but this is not seen as problematic, because it is possible to pull together multiple approaches (such as one to address community equity and one to address landowner equity) and bring them under a flexible agreement (such as an accord or annexation agreement) or under a flexible authority (such as a port authority). We address this overall strategy in the next section, Section 5.0 “Implementation.”

6.0 NEW OPTIONS FOR MULTI-JURISDICTIONAL IMPLEMENTATION OF BALANCED GROWTH PLANS

As our evaluation suggests, new approaches may address the gaps in Ohio law for mechanisms that enable watershed-based balanced growth plan implementation. In this section, we present several ideas for new approaches and applications of existing tools that allow multiple jurisdictions to collaboratively accomplish the goals of a BGI plan.

6.1 Market-based Transfers from PCAs to PDAs

With its identified development and conservation areas, a BGI plan creates an ideal situation for a voluntary transfer mechanism that coordinates development and resource protection. Added development benefits in a PDA in one jurisdiction (a municipality) can provide the financial basis for long-term protection of resources in a PCA or PAA in another jurisdiction (a township), if the jurisdictions enable an exchange between the two areas.⁴ The publicly-enabled exchange would allow private parties to negotiate values for the transferred benefits without great public expense.⁵

Development density is an obvious benefit parties could exchange in a transfer program. A landowner in a PCA or PAA could commit to long-term non-development of a parcel and transfer the forfeited density to a parcel in a PDA that is better suited for development. The PDA developer pays the PCA/PAA landowner a value for the benefit of additional density in the PDA, and the landowner agrees to place a conservation or agricultural easement on the protected parcel in the PCA/PAA. This exchange requires the jurisdictions to agree to the extent of density that could be transferred, and the private parties would determine the market value of the transfer.

⁴ A single jurisdiction could also use this approach for PDAs and PCA/PAA's entirely within its jurisdiction.

⁵ We note that some believe Ohio law does not authorize townships and counties to create this type of transfer program. For this reason, clear enabling authority for transfer programs would relieve BGI plan communities of legal uncertainty.

A transfer program could include benefits other than density that provide value for a developer of a PDA parcel, such as sewer capacity, exemptions from impact fees or more flexible development standards. In addition to the easement option, landowners in PCA/PAAAs could commit to other soil and water conservation measures and land practices, such as installation of buffer strips, conservation-based drainage improvements, or the use of Best Management Practices. The BGI plan provides the basis for jurisdictions to examine their PDAs and PCA/PAAAs and identify benefits and measures to include in a transfer program. This approach would fit well where a township has political support to protect its PCA/PAAAs and is near a municipality that values and benefits from protection of the township PCA/PAAAs.

For those jurisdictions wary of whether Ohio law allows townships and counties to offer a transfer program, one alternative is to include off-site open space credits in Planned Unit Development regulations, a mechanism currently utilized by some jurisdictions in Ohio. In this case, if a PUD requires an open space set aside, the developer could satisfy this requirement by obtaining off-site open space. Alternatively, legal authority concerns could be addressed by having a municipally-driven Market-based Transfers from PCAs to PDAs with landowners in townships participating (not the township itself).

Existing Examples: Hiram Township and the Village of Hiram, Ohio, recently completed a feasibility study and developed policy and program recommendations for a transfer of development rights program between the two jurisdictions, with the goal of protecting the township's farmland and maintaining development within the village. Their approach is similar to a transfer of development rights program, but proposed within the confines of current Ohio law.

Resources:

- Center for Farmland Policy Innovation, *Partnering to Preserve Farmland in Hiram Township with Transfer of Development Rights*, available at <http://cffpi.osu.edu/Hiram.htm>.
- American Farmland Trust, *Fact Sheet: Transfer of Development Rights*, available at www.farmlandinfo.org/documents/27746/FS_TDR_1-01.pdf.
- Rick and Erica Pruetz, *Transfer of Development Rights Turns 40*, by available at http://www.beyondtakingsandgivings.com/images/TDR_Commentary.pdf

6.2 Planned Exchange Banks

The creation of a voluntary “exchange bank” would allow for new development in a PDA to fund land conservation and/or new land stewardship practices in PCAs/PAAAs. This is different from the previous example, because no rights are “transferred.” Simply, the bank is the mechanism so that funds can be collected from PDAs and dispersed to a Joint Recreation District or directly to landowners in PCAs/PAAAs for commonly identified conservation priorities. These commonly identified conservation priorities would be defined by a cross-jurisdictional governing board. Funds could go either to permanent or term easements on farms, permanent or term easements on buffer zones around critical streams or other critical lands, or fee simple purchase

of land for public use. Alternatively, funds could go to landowners for implementing conservation strategies on site or for voluntarily opting for more restrictive zoning their property.

Administration and obligations are managed by a cross-jurisdictional governing board, making it easier for the developer and the landowner to participate (than in a market-based rights transfer scenario where developers and landowners often need to deal directly with one another). The balanced growth plan provides the rationale for development activity in PDAs and protection in PCAs/PAAAs. Further, the plan concretely provides a mechanism to target activities. The governing board would determine what developers receive for fee in the PDAs and what the fees (including the value of the fees) would “purchase” in the PCAs/PAAAs. Because funds are pooled cross-jurisdictional, presumably more funds could be pooled to better leverage state and federal funds for land protection, conservation or stewardship in PCAs/PAAAs.

A conservation dedication ordinance could be created as a Planned Unit Development (PUD) overlay of the PDA. The dedication could be in the form of a payment of a fee in lieu of conservation on site. The bank administrative board could also assign some sort of benefits to developers who build in the PDA in exchange for paying a fee to the bank. Incentives could be an allowed increase in development activity on the site, additional services to the site, or simply flexibility in development standards.

An interesting twist to a bank could be the use of the funds for voluntary use of “stewardship zoning” in PCAs/PAAAs. A voluntary stewardship zoning overlay could be made available in PAAAs and PCAs. Fees collected in PDAs could be used as an incentive for landowners (with a one-time monetary payment or annual installments) to voluntarily rezone their property into the steward zoning overlay. This new zoning district could address not only restrictions on future development, but land management practices and best management practices. Voluntarily adopting this zoning is much less cumbersome (and much less expensive) than creating and holding a permanent easement on the property.

To create a bank, ordinances would need to be drawn in all communities that set the bank, the rules in the PDAs (including fees and any incentives) and the rules in the PCAs/PAAAs.

Existing Examples: Chapter 5 “Implementation” of the Big Darby Accord, including sections “Parkland Dedication Ordinance” and “Density Transfer Charge,” provide some examples how funds can be banked for collective use by all jurisdictions, available at: <http://www.franklincountyohio.gov/BigDarbyAccord/updates/DarbyE1.cfm>. Darby Township, Union County created a voluntary zoning district that limited development on farmland. Within the first sign-up period, over 7,400 acres of land was enrolled. Read more about this strategy in a Center for Farmland Policy Innovation policy brief: http://cffpi.osu.edu/docs/Brief2007_3.pdf

6.3 JEDD Protection Areas

Because a JEDD (discussed above in section 3.1.1) is the only development tool that creates income tax revenue, it offers an opportunity to establish a funding source for resource protection in tandem with planning for services and development in a PDA. A municipality and township could agree to create a JEDD and allocate JEDD income tax revenue to PCA/PAAAs in either or

both jurisdictions. A specified amount of the income tax revenue could be set aside by the JEDD parties, similar to the agreed upon set aside for JEDD maintenance. Alternatively, each jurisdiction could independently utilize the funds within the jurisdiction. The revenue could fund resource protection needs in PCA/PAA, such as conservation or agricultural easements, fee simple land purchases or conservation practices and improvements.

6.4 Industry Growth with Green Payments

This approach uses Ohio’s water quality trading regulations (OAC Chapter 3745-5) to encourage voluntary “green payments” from new or expanded development in a PDA to landowners in a PCA/PAA who institute water pollution abatement practices. For example, an industry or development desiring to locate or expand in a PDA could be impacted by the pollutant limitations established through the NPDES permit process. However, a landowner in a PCA or PAA could institute abatement measures—such as conservation tillage, bank stabilization or installation of buffer strips—that would offset the emissions of the development in the PDA. An agreement between the PDA facility and the PCA/PAA landowner would provide for green payments in exchange for land practices that ensure NPDES compliance, with the intent that the green payments are less costly than reduction measures taken at the facility and may allow for expansion or establishment of a facility. A second example involves public facilities, in which a public wastewater treatment facility could fund green payments to PCA/PAA landowners in exchange for pollution reductions required for NPDES permit compliance. In addition to funding new conservation practices that reduce pollution, green payments could also generate revenue for easements in a PCA/PAA.

Existing Examples: The Miami Conservancy District has established the Great Miami River Watershed Water Quality Trading Program, which provides financial rewards to agricultural landowners who reduce phosphorous and nitrogen runoff through management practices. The Ohio State University’s Sugar Creek Alpine Cheese Nutrient Trading Program resulted in conservation practices by area farmers to offset the amount of phosphorous emitted by the Alpine Cheese facility, and created an opportunity to expand the facility.

Resources:

- Miami Conservancy District Great Miami River Watershed, *Water Quality Trading Program*, available at http://www.miamiconservancy.org/water/quality_credit.asp

7.0 CONCLUSIONS

Contained in this policy report is a discussion of how PDAs and PCAs/PAA can be coordinated across jurisdictions and at the watershed-scale utilizing strategies that Ohio communities currently use and suggested new approaches. All of these approaches could be used simply between two jurisdictions, or they could go as far as being used across a watershed. Some currently used tools hold a lot of promise, such as port authorities, new community authorities, JEDDs, and interjurisdictional agreements through Ohio’s annexation law. The four new models offered are flexible and can address many different scenarios of coordinating PDAs and

PCAs/PAAAs by using trading, transferring, banking and coordinating through a revenue-driven approach. These models can be combined with other tools and strategies, but are best instituted with a broad guiding agreement like an accord.

The Ohio Lake Erie Commission's Balanced Growth Initiative provides a fresh, innovative and flexible framework for planning the future of watershed development and conservation. Moreover, it provides an opportunity to rethink how communities address and implement plans across a watershed in coordination and cooperation with one another. As the BGI is initiated statewide, it may be useful for communities to develop their balanced growth plans with implementation in mind. We hope this policy report provides a basis to start conversations between jurisdictional neighbors on how to best implement BGI plans.

It bears repeating that this report was written with the assumption that the communities that utilize this information have been through the balanced growth planning process and intend to implement the balanced growth plan, coordinating with their neighbors within the watershed. Further, we assume that any cross-jurisdictional activities will complement best local land use practices, which include other tools for facilitating the implementation of a balanced growth plan.

Finally, this policy report is focused on the strategies to coordinate PDAs and PCAs/PAAAs, not the process of developing consensus or garnering local political leadership. However, we recognize that developing consensus and trust between jurisdictions and the presence of local leadership are critical first steps to any cooperation and coordination used to implement the PDAs and PCAs/PAAAs of a balanced growth plan. Communities may consider developing relationships across jurisdictions by starting "small." This could include something as straightforward as agreeing with neighboring jurisdictions to use best practices or correlating local zoning to match the balanced growth plan. Also important are discussions across jurisdictions regarding goals and expectations for PDAs and PCAs/PAAAs. Finally, any kind of catalyst that might incentivize cooperation should be pursued. This could include federal grant dollars available or other state-level incentives detailed by the BGI.

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