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PLANNING FOR BIODIVERSITY



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Planning with Nature: Biodiversity Information in Action
Conservation Thresholds for Land Use Planners
Nature-Friendly Ordinances: Local Measures to Protect Biodiversity (July 2003)

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INTRODUCTION

State and local land use decisions have a critical effect on plants, animals, and other living resources. This report is the first to examine the land use planning enabling and growth management laws in each of the 50 states and identify provisions that may provide authority for land use regulators to consider biodiversity protection in making decisions. “Biodiversity” is “the variability among living organisms on the earth, including the variability within and between species and within and between ecosystems.”¹ The report identifies a wide range of currently underutilized and potentially powerful authorities related to biodiversity protection, including planning requirements for natural resources, open space, wildlife habitat, and critical and sensitive areas. Some of the provisions grant authorities to state governments that could be used to forward biodiversity protection, while others address the authorities and duties of local governments.

This report can be used by citizens and government officials to help protect biodiversity in the areas in and surrounding their communities. For example, a community group concerned about the effects of proposed changes to a local master plan on urban wildlife in a nearby river corridor can determine what elements of state planning law support a conservation-oriented approach. In this and many other cases, the report can help the reader determine whether the local government that is making the land use decision has the explicit authority or duty to take biodiversity concerns into account.

For example, the state growth management law may specifically provide that local governments must: identify river corridors and adopt river corridor protection plans as part of their planning process; address whether river corridors are unique or significant in the conservation and movement of flora and fauna including threatened, rare or endangered species; and address whether alteration of the river corridors would have a measurably adverse impact on adjacent sensitive natural areas.² A community group or resident could use the statutory language described in this report to start a dialogue with local government officials and other stakeholders in an effort to move toward a local master plan amendment that is protective of biodiversity in the river corridor.

Part One provides information on the importance of biodiversity and causes of biodiversity loss. Part Two describes the two types of laws that are examined in this report, state land use planning enabling laws and state growth management laws, and the aspects of these laws that relate to biodiversity protection. Part Three defines the scope of the report and its methodology. Parts Four and Five present the research findings. Part Four discusses land use planning enabling laws. Part Five discusses growth management laws. The appendices to the report include narratives that describe on a state-by-state basis the laws that were examined for this report. In addition, a bibliography of resources related to land use and biodiversity is included.

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PART ONE: BIODIVERSITY AND LAND USE

THE IMPORTANCE OF BIODIVERSITY

Across the country, the health of ecosystems and the species they sustain have declined dramatically since Europeans settled North America.³ From the destruction of ancient forests in the Pacific Northwest to the loss of long-leaf pine forests and savannas in the Southeast, no state is immune. States across the country are at risk of losing remaining ecosystems, which maintain the natural processes that make for fertile soils, breathable air, and clean water, and which are much loved by outdoor enthusiasts, hunters, fishers, and tourists.⁴

The eminent Harvard biologist E.O. Wilson in 1992 warned that one of every five species on Earth could become extinct by the year 2020. While extinction is neither a novel occurrence nor an unnatural one—humans have been altering the environment and triggering extinctions for thousands of years—the accelerated rate at which species and habitats are disappearing is a new and alarming phenomena. If current trends continue, the planet may suffer a massive wave of extinctions unparalleled since dinosaurs became extinct some 65 million years ago.⁵ The irrevocable loss of such a staggering number of species could dangerously weaken the rich web of biodiversity that sustains human life.

The Environmental Protection Agency's independent Science Advisory Board in 1990 identified species extinction and habitat loss as two of the highest risks to "natural ecology and human welfare." Although the degree of habitat loss and species decline varies, no state is unaffected. So widespread is the damage that entire ecosystems in the United States are threatened with extinction. According to a 1995 report issued by the Interior Department's National Biological Service (NBS), 27 ecosystems have declined by 98 percent or more since European settlement of North America. These ecosystems include native grasslands in California, prairies in Oregon, ungrazed sagebrush steppe in inter-mountain western states, oak savannas in Midwestern states, sedge meadows in Wisconsin, and lakes and beaches in Vermont.⁶

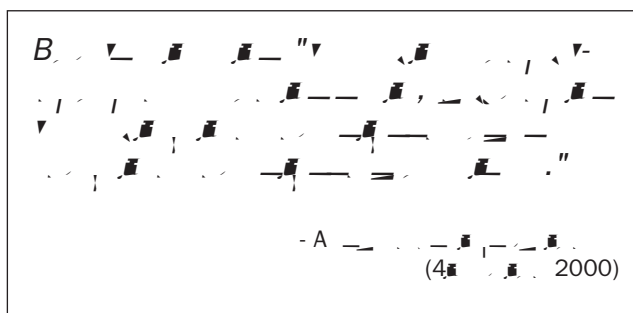
Inseparable from the ecosystems are the services they provide, including soil creation, erosion prevention, flood control, and oxygenation of water and air. Loss or disruption of these and other natural processes has significant, although often hidden, costs. For example, forests on mountain slopes absorb and retain water, helping to reduce runoff and erosion and prevent downstream flooding. Deforestation leads to increased erosion and flooding with economic and human losses. Another example is the natural water filtration functions provided by wetlands, estuaries, and aquatic systems. If these biological filters are damaged, the cost of replacing them with mechanical and chemical treatment facilities would be in the billions of dollars.⁷

Moreover, ecosystems sustain species. If ecosystems are degraded, then species are bound to suffer. And if species dwindle to critical

levels, they become eligible for listing as endangered or threatened under the federal Endangered Species Act. By waiting until ecosystems have deteriorated to the point that their component species are in danger of extinction, society may incur huge social and economic costs trying to restore them.⁸

Ecosystems also supply timber, fibers, and minerals that humans depend on for food, medicine, shelter, clothing, and transportation. Biodiversity loss can lead to food shortages when, for example, over-harvested ocean-fish populations crash or wild plants used to make domesticated crops more disease- or pest-resistant become extinct. Wild species are also a vital source of new curative drugs. Roughly half of all prescription medicines are derived from natural sources. Natural resource-dependent industries are important components of some state economies while others benefit from the multi-billion dollar U.S. agriculture and pharmaceutical industries.⁹

Biodiversity also has enormous recreational value. Americans are fascinated by wildlife and derive great pleasure from seeing animals and plants in their natural state as evidenced by the skyrocketing number of people who participate in wildlife-oriented recreation. According to a 2001 Survey, conducted by the U.S. Fish and Wildlife Service, 66.1 million people participated in at least one



(4) (2000)

type of wildlife-watching activity, including observing, feeding, or photographing wildlife.¹⁰ Wildlife watchers spent \$108 billion in 2001,¹¹ an amount equal to 1.1 percent of the gross domestic product. Small communities and local economies benefit most from this passion for wildlife. For residents of these areas, wildlife provides more than just attractive scenery. It is a vital economic resource that must be protected.¹²

CAUSES OF BIODIVERSITY LOSS

The primary causes of biodiversity loss in the United States are habitat destruction, degradation, and fragmentation followed by competition with or predation by non-native invasive species.¹³ Each of these causes of biodiversity loss is affected, in part, by state and local land use planning decisions.

The direct loss of native habitat, the more subtle effects of habitat degradation, and the fragmentation of habitat into smaller patches all have severe consequences for biodiversity.¹⁴ Key contributing factors are land conversion for development, road building, agriculture, water development, outdoor recreation, and resource extraction for mining and logging.¹⁵ Ecosystem degradation is far more subtle and difficult to measure than outright habitat loss. For example, modification of natural stream channels and drainage patterns for agriculture or to control flooding affects terrestrial ecosystems as well as aquatic habitat. The elimination or minimization of natural patterns of disturbance, such as fire or flooding, can also cause severe habitat degradation.¹⁶

Habitat fragmentation is also a significant threat to biological diversity wherever human activities dominate the landscape. Habitat fragmentation is a process whereby large continuous areas of habitat are reduced in size and separated into discrete parcels. As roads are built, houses erected, and agricultural land cleared, a patchwork of habitat fragments is left behind. The fragments are often isolated from one another by a highly modified landscape that is inhospitable to many native species. While frag-

mentation often results from a dramatic reduction in the area of the original habitat, it also occurs when habitat is divided by roads, drainage ditches, dams, power lines, fences, or other barriers to the free movement and migration of plant and animal species.¹⁷

Non-native invasive species, or exotics, also significantly contribute to the loss of biodiversity. The ability of a non-native species to invade a natural community may be further facilitated when landscapes become modified, degraded, and fragmented by development.¹⁸ Many species that have evolved in different regions of the world have been intentionally transported by humans or inadvertently introduced through trade and travel. Most introduced species do not become established in their new environments. Yet, because invasives are transplanted to areas where their natural predators do not exist, they may have a substantial advantage over native species. Those non-native species that do establish themselves can greatly influence the composition of native species through competition for resources, direct predation, or alteration of the existing habitat such that indigenous species can no longer survive.¹⁹ Non-native species now comprise approximately 5 percent of the total U.S. continental biota,²⁰ and in some states, almost 50 percent of the total flora.²¹

Given that land development contributes to all of the leading causes of biodiversity loss, including habitat destruction, degradation and fragmentation, and non-native invasive species, state and local land use planning can be a m

The role of state government in halting the loss of biodiversity is crucial for several reasons. State governments bear the responsibility for managing wildlife within their borders, own and manage lands of tremendous biological value, and exert considerable influence over economic development and private land use

GROWTH MANAGEMENT LAWS

and recreation areas; school sites; public facilities such as convention centers; and areas for public and semi-public institutions such as universities. Comprehensive plans typically cover a 20-year period. Most plans include maps showing projected future conditions. Some maps are parcel-specific and suggest how each piece of property in the jurisdiction will be used in the future. Other plans indicate only general patterns of uses without precise boundaries. In many areas, plans are now available on local government web sites.³⁰

Thus, comprehensive land use planning establishes guidelines for the land uses that are permissible in an area and provides a basis for guiding public and private development. Plans do not regulate activities but instead establish a framework within which land use decisions are made. Zoning is then used as the regulatory instrument for implementing comprehensive plans. Typically, a local governing body will divide a community into districts, or zones, based on the present and potential use of the properties. Regulations are then adopted to govern the buildings, structures, and lands within the districts. The regulations are usually uniform within each district but vary from district to district. Typical districting schemes divide communities by basic types, such as agricultural, residential, commercial and industrial, or mixed use. Within those types of communities, district regulations establish varying intensities. For example, for residential use, intensities may range from high rise multi-family buildings to single family detached homes.³¹

In most states the legal authority to develop a local comprehensive plan is granted to a local government planning commission that is made up of a body of citizens appointed by the local government.³² State land use planning enabling laws typically provide for public participation in the planning process, usually through a formal public hearing. In addition, communities may use other less formal means of involving the community, including public meetings, workshops, surveys, and web sites that facilitate public input. Some states require that planning boards consult with various specified organizations, such as community groups, prior to adoption of master plans.³³

In general, it is important to note that land use planning enabling statutes, although similar in many respects, vary with respect to the following: the extent to which planning is mandatory or discretionary; the elements that must or can be considered in the plan; the process by which plans are adopted; the extent to which plans are implemented; the amount of public participation required; and the requirements to update plans.

Thirteen states have adopted so-called “growth management” laws enacted within the last 25 years. The reasons for adoption vary, but most of the states appear to have been reacting in large part to rapid, and often sprawling, land development that was not being adequately guided under the traditional land use planning enabling act regime.

In most of the growth management states, the growth management laws are the primary statutes that address land use planning authority. In some states, however, the growth management law or laws may serve to regulate land use planning at the state and local level, together with other laws. For example, in some states, the growth management law may only apply to certain local governmental entities and other laws, such as traditional land use planning enabling laws, govern the rest of the localities. See, e.g., Tennessee³⁴ and Washington.³⁵ For those states that have a growth management law in addition to other land use planning laws, this report addresses the biodiversity-related provisions of all of the state land use planning laws together in the discussion on growth management laws.

authority to protect biodiversity, although terms such as “wildlife habitat” or “critical natural areas” are not used.

Furthermore, the scope of local authority under similarly worded statutes can vary, depending on how strictly a particular state construes grants of statutory authority. In states that strictly follow the so-called “Dillon Rule,”

the authority of local governments is narrowly construed to be the authority expressly granted by statute or necessarily implied by an express grant of authority. In other states, the authority granted to local governments in enabling laws may be viewed more broadly and powers not explicitly granted may be viewed as implied.³⁶

PART THREE: SCOPE AND METHODOLOGY

This report is the first 50-state review of the statutory language in growth management and land use planning enabling laws relating to biodiversity conservation. To date, efforts to protect biodiversity at the state level have largely ignored these potentially powerful authorities. This report identifies and highlights these provisions in an accessible manner. In so doing, it is intended to provide a guide to currently underutilized, but important conservation tools.

The research for this report was conducted by developing a list of key terms related to biodiversity protection and searching for those terms in all of the 50 states' growth management and land use planning enabling laws. See Box 2. The scope of this report is limited to addressing the actual language used in the laws. The report does not examine court decisions that interpret the statutory language, executive orders, or state and local government policies or regulations. Accordingly, it is possible that certain statutory language, while appearing to provide some authority for biodiversity protection, has been determined not to provide such authority by a state court interpreting the statute. It is also possible that a government policy or regulation may have interpreted or applied a provision that is outlined in this report, thereby limiting its potential as a tool for protecting biodiversity. Furthermore, this report does not examine whether state and local governments are currently using the authorities identified. Accordingly, this report should be used only as

a starting point for determining whether a state or local government has authorities or duties related to biodiversity protection in its growth management or land use planning enabling laws.

In addition to growth management and land use planning enabling laws, numerous other types of state and federal statutes, regulations and policies, executive orders, and local ordinances provide authority for protecting biodiversity. Although these authorities are not covered in this report, they provide critical tools for protecting biodiversity. For example, at the federal level, the Endangered Species Act provides such authority. At the state level, environmental protection laws, environmental policy acts and wildlife laws can

provide for such authority.³⁷ Local ordinances issued pursuant to various types of state laws also may provide such authority.³⁸ Finally, the general police power of the states may provide local governments with authority to preserve and protect biodiversity.³⁹

A number of states have enacted statutes that establish special commissions to regulate land use in critical and sensitive areas. These commissions include wetlands and coastal commissions and specialized commissions with authority over specific geographic areas, such as the New Jersey Pinelands.⁴⁰ These commissions and their authorities are not addressed in this report, but are important for purposes of protecting biodiversity at the state and regional levels.

BOX 2. SEARCH TERMS

biodiversity	biodiversity
wildlife	wildlife
endangered species	endangered species
habitat	habitat
ecosystem	ecosystem
natural resources	natural resources
conservation	conservation
environmental protection	environmental protection
land use	land use
growth management	growth management
planning	planning
enabling laws	enabling laws
statutory language	statutory language
executive orders	executive orders
policies	policies
regulations	regulations
local ordinances	local ordinances
state laws	state laws
federal statutes	federal statutes
wildlife laws	wildlife laws
environmental policy acts	environmental policy acts
wetlands	wetlands
coastal commissions	coastal commissions
specialized commissions	specialized commissions
geographic areas	geographic areas
New Jersey Pinelands	New Jersey Pinelands
commissions	commissions
authorities	authorities
state and regional levels	state and regional levels

This part discusses the biodiversity-related provisions of the land use planning enabling statutes in 37 states. These provisions fall into two general categories: local government level planning authorities and duties, and state-level authorities and duties. These categories are discussed separately below.

LOCAL PLANNING PROVISIONS

⁴⁵ Land use planning enabling statutes in 16 states require that some or all local governmental entities take natural resources into account in their master plans. These include: Arizona,⁴⁶ Colorado,⁴⁷ Idaho,⁴⁸ Kansas,⁴⁹ Massachusetts,⁵⁰ Michigan,⁵¹ Montana,⁵²

C *A* : Two states, Colorado⁸¹ and New York,⁸² require that the master plans of some or all local governmental entities consider critical and sensitive areas.

E : Two states, Arizona⁸³ and West Virginia,⁸⁴ require some type of environmental planning as part of the master plans of some local governmental entities.

E
B : Some states' land use planning enabling laws contain local master plan element provisions related to biodiversity protection that do



Arkansas,⁹⁸ Idaho,⁹⁹ Iowa,¹⁰⁰ Pennsylvania,¹⁰¹ and Wyoming.¹⁰²

H : Five state land use planning enabling laws reference the protection of wildlife habitat as a discretionary element of master plans of some or all local governmental entities: Arizona,¹⁰³ Indiana,¹⁰⁴ Minnesota,¹⁰⁵ Oklahoma,¹⁰⁶ and West Virginia.¹⁰⁷

C *A* : Two states' land use planning enabling laws, Arkansas,¹⁰⁸ and New Hampshire,¹⁰⁹ reference a critical and sensitive areas element as an optional component of master plans of some local governmental entities.

E : One state's land use planning enabling law, Arizona, provides that cities and towns not otherwise required to do so may include an "environmental planning element" in their plans.¹¹⁰

D *E* *B* : At least two states' land use planning enabling laws authorize, but do not require, local master plan elements related to biodiversity protection that do not fall into the categories discussed

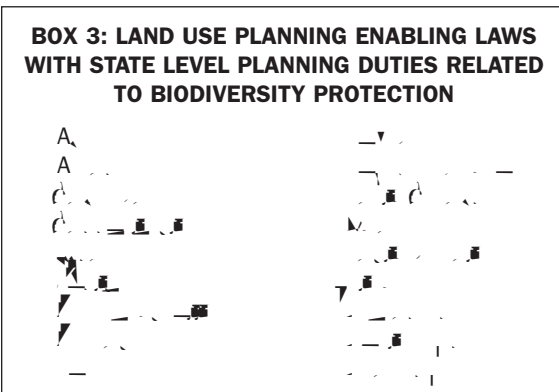
above. For example, in Pennsylvania, the land use element of municipal, multimunicipal, or county comprehensive plans may include provisions for the "amount, intensity, character and timing" of land use proposed for "parks and recreation" and "preservation of prime agricultural lands."¹¹¹ In South Dakota, a county comprehensive plan is defined as a document that describes the goals, policies, and objectives of a planning board "to interrelate all functional and natural systems and activities relating to the development" of the territory within the board's jurisdiction.¹¹²

STATE-LEVEL PLANNING AUTHORITIES AND DUTIES RELATED TO BIODIVERSITY

Although land use planning enabling laws typically grant primary authority to local entities for land use decisions, including those related to biodiversity protection, some state-level involvement is still common. The type of state-level involvement varies considerably. Typically, states with standard land use planning enabling laws are less involved in land use planning than in states with growth management laws. Approximately 18 state land use planning enabling laws, however, have specific provisions that address the state's role in land use planning and provide either specific authority or general authority that

is broad enough to allow for consideration of biodiversity-related concerns. Appendix A outlines on a state-by-state basis these statutory provisions. Highlights include:

: The following land use planning enabling laws require states to develop some type of statewide plan, although the specifics vary from state to state: Arizona,¹¹³ Connecticut,¹¹⁴ Missouri,¹¹⁵ New Hampshire,¹¹⁶ Ohio,¹¹⁷ South Dakota,¹¹⁸ West Virginia,¹¹⁹ and Wyoming.¹²⁰



: Land use planning enabling laws in Colorado,¹²¹ Kentucky,¹²² and North Carolina¹²³ require the development of a statewide program for land use planning or a comprehensive land policy.

I D: In at least one state, Colorado, the state is given authority, in limited circumstances, to make land use decisions that would otherwise be made by local governments. Specifically, local governments may designate certain areas of activities as those of “state interest” and subject to state control. Eligible areas include mineral resource areas and areas with significant natural resources. Eligible activities include site selection of water and sewage treatment plants, highways, airports and public utilities.¹²⁴

In some cases, state statutes include measures designed to ensure that certain industries are not unduly burdened by local governments’ use of environmentally protective provisions in the land use planning enabling laws. In Pennsylvania, for example, the State Municipalities Planning Code provides that “wherever the provisions of this act promote, encourage, require, or authorize governing bodies to protect, preserve, or con-

serve open land, consisting of natural resources, forests and woodlands, any actions taken to protect, preserve, or conserve such land shall not be for the purposes of precluding access for forestry.”¹²⁵

G: In at least one state, Wisconsin, state statutes set forth goals for local comprehensive planning. These goals include “protection of natural areas, such as wetlands, wildlife habitats, lakes, woodlands, open space and groundwater resources.”¹²⁶

A: Many of the state land use planning enabling laws include specific provisions for planning-related assistance to local governments. Some statutes specify a state entity, such as an office of state planning, to perform this function. In most cases, the statutes do not specifically reference assistance to localities on matters related to biodiversity but are drafted in a manner that is broad enough to include such assistance. In some cases, the statute specifically provides for financial assistance. In Colorado, for example, the land use planning enabling law establishes a Planning Aid Fund to provide money to cities and counties in need of emergency assistance when development may have an adverse effect on natural resources.¹²⁷ The following state land use planning enabling laws provide for the state to offer some type of planning assistance: Alabama,¹²⁸ Colorado,¹²⁹ Illinois,¹³⁰ Massachusetts,¹³¹ Missouri,¹³² Nebraska,¹³³ Nevada,¹³⁴ New Hampshire,¹³⁵ North Carolina,¹³⁶ Ohio,¹³⁷ South Dakota,¹³⁸ Utah,¹³⁹ and Wyoming.¹⁴⁰ Additional states may provide assistance pursuant to policies or regulations, even though such assistance is not specifically provided for by statute. See, e.g., Pennsylvania.¹⁴¹

This section considers the biodiversity-related provisions of the growth management laws in the 13 states that have enacted such legislation. As discussed, these states are considered to have growth management laws because they either set state goals for how growth should occur—sometimes including a state land use plan—or establish mechanisms for adjoining jurisdictions to coordinate managing growth in some manner. The biodiversity-related provisions fall into two general categories: state-level planning authorities and duties and local government-level authorities and duties. These categories are discussed separately below.

STATE-LEVEL PLANNING AUTHORITIES AND DUTIES RELATED TO BIODIVERSITY

All of the state growth management laws include provisions that direct or authorize state government actions related to land use. Some of these provisions specifically address biodiversity-related terms and concepts. This section provides an overview of the biodiversity-related provisions. Appendix A outlines in more detail, information about the biodiversity-related provisions in each law on a state-by-state basis.

The specific provisions in the growth management laws that relate to biodiversity protection at the state-level vary widely. Many of the provisions relate to the development of statewide plans and goals. These provisions range from general objectives to requirements for specific state action. Several of the growth management laws also

environment, including but not limited to air and water quality and natural resources.”¹⁷⁷

F : The growth management law provides that state agencies must enforce the state comprehensive plan and all agency budgets and programs must be consistent with the adopted plan and support and further its goals and policies, including those related to biodiversity.¹⁷⁸ In addition, the statute requires that the State Public Service Commission study site plans submitted by each electric utility that estimate power generating needs and general locations of proposed power plant sites. The Public Service Commission’s review must cover several issues, including assessment of the environmental impact of each proposed electric power site and possible alternatives.¹⁷⁹

: The State Commissioner of Conservation is required to develop a Register of Critical Areas containing significant or unique features and recommend protection of these areas to the appropriate state agencies.¹⁸⁰ In addition, the State Planning Office is required to establish resource management plans for the state’s principal rivers and coastal management policies.¹⁸¹ Furthermore, the state has a land use mediation program for private landowners that provides a forum for mediation of governmental land use actions. Mediators must be knowledgeable in environmental law and regulatory issues.¹⁸²



Several of the growth management laws establish state-level biodiversity-related goals and standards for local planning efforts. Examples include, but are not limited to:

G : The growth management law requires the establishment of minimum standards and procedures for the preparation of local comprehensive plans.¹⁸³ These include standards related to natural resources and the environment, such as the protection of mountains, river corridors, and public water supply watersheds of streams, reservoirs, groundwater, and wetlands.¹⁸⁴

: State goals must be included in local comprehensive plans.¹⁸⁵ These state goals include: protecting the state’s rural character, the quality of the state’s water resources, and protecting the state’s other critical natural resources, including wetlands, wildlife and fisheries habitat, sand dunes, shorelines, scenic vistas,

and unique natural areas.¹⁸⁶ Other state goals include safeguarding the state’s agricultural and forest resources from development and promoting and protecting the availability of outdoor recreation opportunities.¹⁸⁷

: Local entities must comply with state goals. In developing state goals the Department of Land Conservation and Development must consider tide, marsh and wetland areas, lakes and lakeshore areas, wilderness and scenic areas, wild and scenic rivers, unique wildlife habitats, and agricultural lands.¹⁸⁸

: Municipal plans may be consistent with the goals established in the growth management law,¹⁸⁹ and regional plans must be consistent with those goals.¹⁹⁰ The goals set out in the Act include consideration of the use of resources and consequences of growth.¹⁹¹ Growth plans must plan development so that compact villages and urban centers are separated by rural countryside.¹⁹² Plans must provide a strong and diverse economy that maintains high environmental standards, and provide transportation systems that respect the integrity of the natural environment, including paths for pedestrians and bicyclists.¹⁹³ Plans must identify, protect, and preserve important natural features of the landscape including: significant natural and fragile areas; outstanding water resources including lakes, rivers, aquifers, shorelands, and wetlands; and significant scenic roads, waterways, and views.¹⁹⁴ Plans must also maintain and improve the quality of air, water, wildlife, and land resources.¹⁹⁵

: Certain counties and cities that have experienced increased growth are required to adopt comprehensive plans and regulations in accordance with state goals.¹⁹⁶ State goals under the growth management law include encouraging economic development within the capacities of the state’s natural resources, maintaining and enhancing natural resources-based industries, retaining open space, conserving fish and wildlife habitat, and protecting the environment.¹⁹⁷



prehensive development plans and critical areas, such as wetlands, are among those enumerated as being of more than local concern.¹⁹⁹ State agencies must provide written comments and consider several items, such as the impact of action on the physical environment, including air, water quality, and natural resources.²⁰⁰

F : “Areas of critical state concern” may be designated for certain types of lands in the state, including areas “containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance.” This includes, but is not limited to, forests, wildlife refuges, and major rivers and estuaries, which would be substantially deteriorated by “uncontrolled private or public development.”²⁰¹ The Administration Commission is charged under the statute with designating areas of critical state concern. The rules adopted by the commission and the principles guiding development in areas of critical state concern must be submitted by the commission to the legislature for review.

: The state has planning authority over all unincorporated areas through the Land Use Regulatory Commission.²⁰² In addition, the State develops resource management plans for state rivers and coastal management areas.²⁰³

: The state sets forth a standard for sensitive areas that applies to local jurisdictions that exercise planning and zoning authority but fail to adopt a sensitive areas element.²⁰⁴ In such cases, streams and buffers, 100-year floodplains, habitats of threatened and endangered species, and steep slopes within those local jurisdictions are deemed to be sensitive areas.²⁰⁵ The State Economic Growth, Resource Protection and Planning Commission establishes standards to govern activities in those sensitive areas until the local jurisdiction adopts a sensitive areas element as required under the land use statute.²⁰⁶

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LOCAL PLANNING PROVISIONS RELATED TO BIODIVERSITY

Local governments are typically granted considerable authority for making land use decisions in states with growth management laws. As noted above, however, local authority is usually more narrow or managed more closely at the state level than in states that do not have growth management laws. Several of the state growth management laws specifically provide that local governments must adhere to statewide plans and goals in their local planning efforts, as discussed earlier. In addition, all of the growth management laws include some type of additional provisions related to local planning, some of which relate to biodiversity protection.



Growth management laws take a variety of approaches to granting planning authorities to localities. Similar to many of the land use planning enabling laws, several growth management laws take a hybrid approach and vary the use of the mandatory, conditionally mandatory, and discretionary approaches to local land use planning authority based on the various types of local governments in the state. Accordingly, planning may be discretionary

for municipalities and counties but mandatory for regional entities. Most growth management laws, however, mandate that at least some local governmental entities adopt comprehensive plans. As noted, in some states the growth management law is not the only law that governs local planning authority. For example, in Tennessee and Washington, where the growth management laws apply only to certain local governmental entities, other laws, such as traditional land use planning enabling statutes, apply to the localities not covered by the growth management laws.

Eleven of the states with growth management laws make planning mandatory for at least some cities, counties, or other local governments within the state, including regional entities: California,²²² Delaware,²²³ Florida,²²⁴ Georgia,²²⁵ Hawaii,²²⁶ Maine,²²⁷ Oregon,²²⁸

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All of the growth management laws, even those that do not mandate local planning, include provisions governing the content of local master or comprehensive plans. In some cases, the elements referenced in the statutes are mandatory and in some cases they are discretionary. These elements relate to a wide variety of topics. Virtually all states with growth management laws have at least some mandatory local plan requirements related to biodiversity. Each state law's specific provisions for local plans are outlined in Appendix A. In addition to a land use element, which is the most common mandatory local plan element, open space and conservation elements are required by the majority of growth management laws. There are also several other types of local plan elements unique to specific states that are related to biodiversity protection.

Furthermore, although several state growth management laws require similar elements in local plans, such as conservation of natural resources or open space, the terms used and the scope and the substance of the requirements vary from state to state. For example, in Delaware, a conservation element is required for local plans "for the con-

servation, use and protection of natural resources in the area and which results in the identification of these resources."²⁴¹ The element must include, at a minimum: "natural area classification as wetlands, wood uplands, habitat areas, geological areas, hydrological areas, flood plains, aquifer recharge areas, ocean beaches, soils and slopes."²⁴² Maine's growth management law takes another

entities' plans consider conservation of natural resources,²⁴⁵ although the terms and substance of the requirements vary considerably. Only Hawaii's law does not specify this as a required element in local plans; however, in general, Hawaii's statute grants greater authority to the state than to local governments for conservation of natural resources.

: An open space element of some type is required in some or all local plans in the following eight states: California,²⁴⁶ Delaware,²⁴⁷ Florida,²⁴⁸ Maine,²⁴⁹ New Jersey,²⁵⁰ Rhode Island,²⁵¹ Vermont,²⁵² and Washington.²⁵³

C , , *I* *A*

: Six state growth management laws specifically mention protection of critical, sensitive, or irreplaceable areas or resources as a required element in

regional entities. Examples of these authorities and responsibilities include:

1. AMERICAN HERITAGE D

- 220. Vt. Stat. Ann. tit. 24, § 4305 (Regional entities provide assistance to localities).
- 221. Wash. Rev. Code § 36.70A.190
- 222. Cal. Gov't Code § 65300
- 223. Del. Code Ann. tit. 9, §§ 2655(a), 4955(a), 6955(a)
- 224. Fla. Stat. Ann. §§ 163.3167(1)(b), .3177(9)(c)
- 225. Ga. Code Ann. §§ 5-8-32, -35(c)(6)
- 226. Haw. Rev. Stat. § 226-52
- 227. Me. Rev. Stat. Ann. tit. 30-A, § 4326 4.
- 228. Or. Rev. Stat. §§ 197.010, .015(5)
- 229. R.I. Gen. Laws § 45-22.2-2
- 230. Tenn. Code Ann. § 6-58-107
- 231. Vt. Stat. Ann. tit. 24 § 4345a(5)
- 232. Wash. Rev. Code §§ 36.70A.040, .210
- 233. Me. Rev. Stat. Ann. tit. §30-A, 4323
- 234. Md. Ann. Code art. 66B, §§ 3.01(a), 3.05
- 235. N.J. Stat. Ann. §§ 40:27-1, -2
- 236. Tenn. Code Ann. §§ 13-4-101, 201
- 237. Wash. Rev. Code §§ 35.63.020, .090, 36.70.010, .030, .040, .050, .320
- 238. Ga. Stat. Ann. §§ 36-70-1, 3
- 239. N.J. Stat. Ann. § 40:55D-23
- 240. Vt. Stat. Ann. tit. 24, § 4381
- 241. Del. Code Ann. tit. 9, §§ 2656(g)(4), 4956(g)(4), 6956(g)(4)
- 242. *Id.*

302. Del. Code Ann. tit. 9, §§ 2658(a), 4958(a), 6958(a)

303. Fla. Stat. Ann. § 163.3167(3)

304. N.J. Stat. Ann. § 52:18A-199 (c), (d)

305. Or. Rev. Stat. §§ 197.175)

305.d)

(Dw63N[4-6V3 § 45D0nV3 § 45063N[4-6V33]9.nLTAnn. Code Ann §4-3-727,Code Ann 6-58-1075063N[4-6V3002n-0 -1.29.nLV225.6(6l.)-225.9(St2t.)-166.16n. 24,25.96(3 §]Tl:18A-199 (3 § 45063N[4-

APPENDIX A : STATE NARRATIVES

ALABAMA

Alabama

Municipal planning commissions are authorized, and, if established, master plans are required.¹ In contrast, regional planning commissions are authorized, and master plans are authorized but not required.²

Alabama

Open Space—Municipal planning commission master plans must include open space recommendations.³

Alabama

Not Applicable

Alabama

The Office of State Planning and Federal Programs provides planning information and support to local governments.⁴

ALASKA

A A A

First and second class boroughs are required to establish planning commissions. Each commission is required to develop a comprehensive plan.⁵

A A A A A B

Not Applicable

A A A A A B

Not Applicable

A A

Not Applicable

ARIZONA

ARIZONA

Municipal planning is authorized, and, if planning agencies are established, general plans are required.⁶ Counties are required to plan and to prepare a comprehensive plan.⁷

ARIZONA

Environmental Planning—The long range municipal plans of cities with a population between 2,500 and 10,000 with a certain population growth and all other cities over 10,000 must include an environmental planning element to “address anticipated effects, if any, of plan elements on air quality, water quality, and natural resources.”⁸

ARKANSAS

A A A

County¹⁸ and municipal¹⁹ planning are authorized. County planning boards and municipal planning commissions are authorized, but not required. County and municipal plans are also authorized, but not required.²⁰ In contrast, regional planning is authorized, and, if regional planning commissions are established, master plans are required.²¹

A A A A A B

Not Applicable

A A A A A B

Critical and Sensitive Areas—County plans may make recommendations regarding the protection of areas of environmental concern, including wetlands, forest lands, natural habitat of rare or endangered species, and areas with unique ecosystems.²²

Natural Resources—County plans may include recommendations for conservation of natural resources. Municipal plans may be adopted for the “preservation of natural and historic features.”²³

Open Space—Municipal plans may include “reservation of open spaces.”²⁴

A A A

Not Applicable

COLORADO

A A B

Regional and county planning commissions are authorized. Master plans are required for the unincorporated areas in their regions, although the plans are advisory only.³⁹ City commissions are also authorized, and if established, required to adopt master plans for the physical development of areas, although the plans are also advisory.⁴⁰

A A A A B

Critical and Sensitive Areas—City, county, and regional master plans must include designation of areas containing endangered or threatened species.⁴¹

Natural Resources—City, county, and regional master plans must include the location of local wildlife areas and forests.⁴²

Open Space—Master city, county, and regional plans must include location of open space.⁴³

Wildlife Habitat—Master city, county, and regional plans must include the location of wildlife areas and areas containing endangered or threatened species must be identified.⁴⁴

A A A A B

Not Applicable

A A

The Colorado Land Use Act allows local governments to designate certain areas of activities as those of “State interest” and, therefore, subject to state control. Eligible areas include mineral resources areas, natural hazard areas, areas with significant historical, natural, or archaeological resources, and areas with important facilities. Eligible activities include site selection of water and sewage treatment plants, highways, airport, and public utilities.⁴⁵

The Department of Local Affairs assists local governments with planning and in designating areas of state interest.⁴⁶ A Planning Aid Fund gives money to cities and counties in need of emergency assistance when development may have an adverse effect on natural resources.⁴⁷

The State Land Use Commission develops a state land use planning program, which is designed to include an environmental matrix, a management matrix, an impact model, and growth monitoring system. The commission can halt any development activity that is dangerous to public health, safety, and welfare.⁴⁸

CONNECTICUT

¶ A ¶ A ¶ A

Municipal⁴⁹ and regional⁵⁰ planning are authorized. If planning commissions are established, master plans or development plans are required.

¶ A ¶ A ¶ A ¶ A ¶ A ¶ A ¶ B

Open Space—Municipal master plans must include recommendations for open space acquisition.⁵¹

¶ A ¶ A ¶ A ¶ A ¶ A ¶ A ¶ B

Not Applicable

¶ A ¶ A

The Office of Policy and Management, Planning and Energy Policy is required to develop a statewide or regional plan for development of the state, which can include water and land use and environmental considerations.⁵²

DELAWARE

~ A ~ ~ A ~ ~ A ~

comments made by local jurisdictions relating to the proposed action to all other state agencies.⁸⁰ The state agency must provide local jurisdictions with timely notice of any hearings regarding proposed state land use planning actions.⁸¹ Any local, regional, or federal agency is permitted to comment on any proposed state land use planning action at any public hearing provided by the state agency, and to compel such a hearing if the state agency does not provide one.⁸² State agencies have the final decision-making authority over proposed state land use planning actions, if that authority is presently in their possession, but may not make any final decisions until the local jurisdictions have had an opportunity to comment.⁸³



Local Planning Requirements

County governments are required to establish local planning agencies to prepare comprehensive plans.⁸⁴ Local planning agencies must report on their plans annually to the Cabinet Committee on State Planning Issues.⁸⁵

Mandatory Local Plan Elements Related to Biodiversity

County comprehensive plans must include materials appropriate “to the prescription of principles, guidelines and standards for the orderly and balanced future economic, social, physical, environmental and fiscal development of the area.”⁸⁶ Plans must include a future land use plan element for conservation activities.⁸⁷ Environmental data and projections used to determine present conditions, future land use and public facility requirements must be developed in conjunction with the state and municipalities and be consistent with projections officially adopted by the Delaware Population Consortium.⁸⁸ A conservation element must be included “for the conservation, use and protection of natural resources in the area and which results in the identification of these resources.”⁸⁹ It must “consist of natural area classifications as wetlands, wood uplands, habitat areas, geological areas, hydrological areas, flood plains, aquifer recharge areas, ocean beaches, soils and slopes.”⁹⁰ Plans must also contain a recreation and open space element indicating a “comprehensive system of public and private sites for recreation including . . . nature preserves, parks . . . , parkways, water bodies including beaches . . . [and] open spaces.”⁹¹ It is intended that county councils and county governments will “conserve, develop, utilize and protect natural resources within their jurisdictions.”⁹²

Discretionary Local Plan Elements Related To Biodiversity Not Applicable

Additional Local Authorities and Responsibilities Related to Biodiversity

As discussed above, under the State Land Use Planning Law, local jurisdictions have several duties and responsibilities with respect to notifying the state of land use planning actions that are of “greater than local concern” and subject to the comment requirements of the State Land Use Planning Law.⁹³ Local jurisdictions must also review certain state agency land use planning actions for impact on the environment.⁹⁴ In addition, under the State Land Use Planning Law, municipalities must review their existing comprehensive development plans to determine if those plans arbitrarily exclude land uses of more than local benefit.⁹⁵ “Land use of more than local benefit” means “any use or combination of uses of land or water whose economic, social or environmental benefits extend beyond the local jurisdiction in which the use or uses take place.”⁹⁶ Plans must be amended to remedy any arbitrary exclusions.⁹⁷ Furthermore, as discussed, regional agencies, along with state and federal agencies, are permitted to comment on any proposed local land use planning action subject to the State Land Use Planning Law at any public hearing aroaussedsou

State Assistance to Localities

The growth management law specifically provides funding for local assistance efforts, including a 2001 allocation of funding for technical assistance to municipalities to develop comprehensive plans.¹⁰²

FLORIDA

The overall planning structure in Florida is based upon local and regional comprehensive planning guided by a state plan. The Local Government Comprehensive Planning and Land Development Act¹⁰³ mandates that Florida counties and municipalities adopt comprehensive plans that must be consistent with the requirements of the state comprehensive plan.¹⁰⁴ Local comprehensive plans must contain certain biodiversity-related elements.¹⁰⁵

The Florida State Comprehensive Planning Act (Planning Act)¹⁰⁶ specifies that the purpose of the state plan is to provide overall policy direction and guidance to local and regional entities making land use decisions. The state comprehensive plan governs state and regional agencies and local governments by providing policy direction and long range guidance for the growth of the state.¹⁰⁷ All state agencies must enforce the state comprehensive plan and all agency budgets and programs must be “consistent with the adopted State comprehensive plan and support and further its goals and policies.”¹⁰⁸

The governor is the chief planning officer of the state and must conduct a biennial review and revision of the state comprehensive plan.¹⁰⁹ The Executive Office of the Governor, which is defined to include the Office of Planning and Budgeting of the Executive Office of the Governor, has a number of responsibilities designed to ensure “consistency and uniformity in the State and regional planning process.”¹¹⁰

The statewide goals, objectives, and policies related to the opportunities, problems, and needs associated with growth and development in the state comprise the growth management portion of the plan.¹¹¹ The statute specifies that the purpose of the growth management portion of the state comprehensive plan is to “establish clear, concise, and direct goals, objectives, and policies related to land development, water resources, transportation, and related topics.”¹¹² The Executive Office of the Governor prepares this portion of the plan in coordination with the legislature, appropriate state agencies, regional entities, local governments, and citizens. It must not be based upon the comprehensive format of the State comprehensive plan, but rather, must be strategic in nature.¹¹³ Once adopted by the legislature, the growth management portion of the state comprehensive plan becomes law. The legislature must indicate which plans, activities, and permits must be consistent with the growth management portion of the state comprehensive plan.¹¹⁴

Regional planning councils exist in each of the comprehensive planning districts of the state.¹¹⁵ These councils are responsible for the planning and coordination of intergovernmental responses to those growth management problems of

ment by the state and local governments is encouraged “to preserve hydrologically significant wetlands.”¹²² Water necessary to protect fish and wildlife is reserved from use.¹²³

Goals relating to coastal and marine resources include ensuring that developments and improvements “do not endanger . . . important natural resources.”¹²⁴ Policies relating to coastal and marine resources include acceleration of public acquisition of coastal and beachfront land “to protect coastal and marine resources.”¹²⁵ Other policies include protection of coastal resources, marine resources, and dune systems from the effects of development and protection of dune systems from disturbance.¹²⁶ Also included is the protection of marine fisheries habitats and other aquatic resources, protection of sensitive coastal areas, and avoidance of exploration and development of mineral resources that threaten marine, aquatic, and estuarine resources.¹²⁷

Goals relating to natural systems and recreational lands include protecting and acquiring “natural habitats and ecological systems, such as wetlands, tropical hardwood hammocks, palm hammocks, and virgin longleaf pine forests” and restoring “degraded natural systems.”¹²⁸ Policies relating to natural systems and recreational lands include conservation of “forests, wetlands, fish, marine life, and wildlife to maintain their environmental, economic, aesthetic and recreational values.”¹²⁹ Acquisition and retention of public lands for conservation is also mentioned.¹³⁰ Other policies include: prohibition of the “destruction of endangered species and protect[ion] of their habitats;”¹³¹ establishment of an integrated regulatory program to assure the survival of endangered and threatened species; promotion of agricultural practices that are compatible with wildlife and natural systems; encouragement of multiple use of forest resources, including wildlife habitat, protection and restoration of wetlands; promotion of the restoration of the Everglades; development of a program to ensure the integrity of Florida’s water systems; emphasis on acquisition and maintenance of ecologically intact systems in all land and water planning; and protection and expansion of the park systems in the state.¹³²

The state comprehensive plan requires each electric utility to submit a 10-year site plan estimating its power generating needs and general locations of its proposed power plant sites. The Public Service Commission must study the plan and classify it as suitable or unsuitable. The commission must consider the plan as a planning document and review several issues. These issues include the need for electrical power in the area to be served, the environmental impact of each proposed electrical power site, possible alternatives to the plan, viewpoints of agencies, the extent to which the plan is consistent with the state comprehensive plan and information on energy availability and consumption.¹³³

Areas of critical state concern may be designated for certain types of areas in the state, including areas “containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance.” This includes, but is not limited to, forests, wildlife refuges, and major rivers and estuaries, which would be substantially deteriorated by “uncontrolled private or public development.”¹³⁴ Specific criteria that must be considered in designating an area of critical state concern include: “whether the ecological value of the area, as determined by the physical and biological components of the environmental system, is of substantial regional or statewide importance;” “whether the area is a designated critical habitat of any state or federally designated threatened or endangered plant or animal species;” and “whether any existing or planned substantial development within the area will directly, significantly, and deleteriously affect any or all of the environmental or natural resources of the area which are of regional or statewide importance.”¹³⁵ The

Mandatory Local Plan Elements Related to Biodiversity

Mandatory elements of local comprehensive plans include a future land use element designating future land uses for conservation purposes.¹⁴¹ A conservation element is also required for the “conservation, use, and protection of natural resources in the area,” including “air, water, water recharge areas, wetlands, waterwells, estuarine marshes, soils, beaches, shores, flood plains, rivers, bays, lakes, harbors, forests, fisheries and wildlife, marine habitat, minerals, and other natural and environmental resources.”¹⁴² A recreation and open space element is also required.¹⁴³ This element should indicate “a comprehensive system of public and private sites for recreation” including “natural reservations, parks . . . , parkways, beaches . . . , [and] open spaces.”¹⁴⁴ Those local governmental units required to include a coastal management element must set forth policies relating to the “continued existence of viable populations of all species of wildlife and marine life.”¹⁴⁵ The coastal management element must also set forth policies addressing the “utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.”¹⁴⁶ The coastal management element must include a land use and inventory map of existing wildlife habitat and wetlands. It must contain an analysis of the environmental impact of development proposed in the future land use plan on the natural resources of the coast, and the plans to eliminate or mitigate the adverse impacts on coastal wetlands, living marine resources, and unique wildlife habitat. Within one year of submission of a local comprehensive plan to the state planning agency, the local government must adopt land development regulations. These regulations must provide for open space.¹⁴⁷

Discretionary Local Plan Elements Related To Biodiversity

The comprehensive plan may contain a recommended community design element consisting of recommendations for open space locations.¹⁴⁸ Rural land stewardship areas, involving economic and planning incentives, may be authorized in up to five local governments. Rural land stewardships occur when local governments designate all or portions of lands classified in the future land use element as predominantly agricultural, rural, open, open-rural, or a substantively equivalent land use.¹⁴⁹ Rural land stewardship areas are used to further the restoration and maintenance of the economic value of rural land, control urban sprawl, and identify and protect ecosystems, habitats, and natural resources.¹⁵⁰ Criteria for the designation of rural areas include providing for adequate suitable land to accommodate development so as to avoid conflict with environmentally sensitive areas, resources, and habitats.¹⁵¹ Written agreements for rural land stewardship areas must include criteria for protecting the natural environment.¹⁵² Upon adoption of a rural land stewardship area, the local government must assign transferable rural land use credits to the area. These transferable rural land use credits may be assigned at different ratios of credits per acre, with the highest number of credits per acre assigned to preserve environmentally valuable land and lesser number of credits assigned to open space land.¹⁵³

Additional Local Authorities and Responsibilities Related to Biodiversity

As noted, regional planning councils exist in each of the comprehensive planning districts of the state. These councils are responsible for the planning and coordination of intergovernmental responses to those growth management problems of a non-local nature.¹⁵⁴ In addition, if a local government fails to prepare a comprehensive plan, or elements are lacking, the develo

GEORGIA

Counties and municipalities have general planning authority in Georgia, subject to state requirements. The structure of the Georgia Planning Act of 1989¹⁵⁷ forwards comprehensive and coordinated planning at the local and state levels by requiring local governments to use certain minimum standards and procedures in their local plans.¹⁵⁸

The minimum standards and procedures for preparing local comprehensive plans, including those related to natural resources and the environment,¹⁵⁹ are established by the Department of Community Affairs.¹⁶⁰ The standards and procedures must address the protection of mountains, river corridors, public water supply watersheds of streams and reservoirs, ground water, and wetlands.¹⁶¹ The environmental planning criteria required for comprehensive plans are rules promulgated by the Department of Natural Resources. The Department of Natural Resources has established minimum standards and procedures to prevent erosion by “land-disturbing activities,” to protect mountain ridges over 2,200 feet, wetlands, and river corridors.¹⁶² Permits are required for land-disturbing activities and for any “land alteration which alters the natural topography or vegetation” of a shoreline area.¹⁶³ Protecting and preserving the natural resources of the state and the environment is “an essential public interest” and of “vital importance.”¹⁶⁴

Local Planning Requirements

Local governments are authorized to establish comprehensive plans that contain mandatory elements and follow mandatory procedures.¹⁶⁵ Specifically, state statutes authorize local governments, including both municipalities and counties, to adopt coordinated and comprehensive planning schemes.¹⁶⁶ Regional development centers are also established by statute, and are required to develop a regional plan.¹⁶⁷ Regional plans must take into account the local plans in their areas.¹⁶⁸

Mandatory Local Plan Elements Related to Biodiversity

Elements addressing both natural resources and the environment are required in comprehensive plans of local governments.¹⁶⁹ Local governments must identify existing river corridors and adopt river corridor protection plans as part of their planning process.¹⁷⁰ Land use plans must address whether river corridors are “unique or significant in the conservation and movement of flora and fauna including threatened, rare, or endangered species.”¹⁷¹ The plans must also address “whether alteration of river corridors would have a measurably adverse impact on adjacent sensitive natural areas.”¹⁷² Land use plans must provide certain uses of river corridors including wildlife and fisheries management. The minimum standards and procedures for watershed protection must include buffer areas along streams and reservoirs. A natural vegetative buffer area must protect perennial river corridors.¹⁷³ Other specific minimum standards and procedures are included in rules promulgated by the Department of Natural Resources.

Discretionary Local Plan Elements Related To Biodiversity

Wetland protection may include different minimum standards and procedures based on the “need to protect endangered or protected species or other unusual resources.”¹⁷⁴

Additional Local Authorities and Responsibilities Related to Biodiversity

Each regional center must develop a comprehensive plan for those rivers located in metropolitan areas and for the adjoining land. No structures may be built or maintained in the flood plain.¹⁷⁵

Mechanisms for Monitoring and Enforcing Local Compliance

To maintain eligibility for certain state grants, loans, and permits, local comprehensive plans must meet these minimum standards and criteria and local governments must maintain the status of “Qualified Local Government.” Each county and city was granted this status with the passage of the Georgia Planning Act of 1989. A Qualified Local

Government is statutorily defined, in part, as a county or municipality that “has a comprehensive plan in conformity with

HAWAII

A A

Priority guidelines for stimulating economic growth and encouraging business expansion include attracting industries that have minimum adverse affects on the environment.²¹⁵ Priority guidelines to promote the visitor industry include developing resorts that provide adequate shoreline setbacks and visitor industries which “respect, preserve, and enhance Hawaii’s significant natural, scenic, historic, and cultural resources.”

IDAHO

A A B

Cities and counties are required to plan and must adopt comprehensive plans.²²⁰

A A A A A B

Natural Resources—City and county comprehensive plans must include a natural resource component analyzing uses of rivers, forests, fisheries, and wildlife.²²¹

A A A A A B

Open Space—City and county planning commissions can recommend the adoption of a “future acquisitions map,” which identifies land to be acquired over a 20 year period, including land for open space. Proposed development on these lands can be halted while the government is given the opportunity to purchase or condemn the land.²²²

A A

Not Applicable

ILLINOIS

☒ A ☒ A ☒ A

Municipal²²³ and township²²⁴ planning is authorized and planning commissions are authorized to adopt comprehensive plans, but plans are not required. The plans are advisory only. Similarly, counties are authorized to plan and planning commissions are authorized, but not required to adopt “regional” plans for all or a portion of the county.²²⁵ In addition, counties, cities, and other local governmental units are authorized, in certain circumstances, to create joint planning commissions with the governing bodies of adjoining states. Such joint planning commissions may be designated as regional or metropolitan planning commissions.²²⁶

☒ A ☒ A ☒ A ☒ A ☒ A ☒ B

Not Applicable

☒ A ☒ A ☒ A ☒ A ☒ A ☒ B

Not Applicable

☒

INDIANA



IOWA



City and county planning and zoning are authorized and comprehensive plans are required.^{234A}

KANSAS

A A

Cities and counties are authorized to plan and may establish planning commissions. The adoption of comprehensive plans is authorized but not required.²³⁹ In contrast, regional planning is authorized and comprehensive plans are required.²⁴⁰

A A A A A B

Natural Resources—City, county, and regional comprehensive plans must include recommendations for the “utilization and conservation of natural resources.”²⁴¹

A A A A A B

Not Applicable

A A

Not Applicable

KENTUCKY

◀ A ▶ ◀ A ▶ A ▶ ▶ ▶ ▶

LOUISIANA

A A

Municipal and parish planning is authorized. If established, planning commissions must adopt master plans.²⁴⁸

A A A A A A B

Open Space—Municipal and parish master plans must include recommendations for the location of open space.²⁴⁹

A A A A A A B

Not Applicable

A A

Not Applicable

MAINE

A A B

Significant state and regional planning powers exist in Maine. The state has planning authority over all unincorporated areas through the Land Use Regulatory Commission. The state also creates resource management plans for the state's rivers and coastal management areas and has a growth management program. Municipalities are encouraged to adopt plans and growth management programs.²⁵⁰

The State Commissioner of Conservation develops a Register of Critical Areas containing significant or unique natural features, and recommends protection of these areas to the appropriate state agencies.²⁵¹ In addition, the State Planning Office also creates resource management plans for the state's principal rivers and coastal management policies.²⁵²

The Maine State Planning Act²⁵³ establishes the Land and Water Resources Council (Council) which ensures inter-agency coordination of the state's activities regarding natural resource and land use management.²⁵⁴ The council advises the governor, the legislature and state agencies on the formulation of policies for management of land and water resources to achieve state environmental goals and recommends coordinated state policy regarding proposals affecting the natural environment.²⁵⁵ The council also evaluates the growth management program and provides information to the state on the planning and development of water bodies based on an assessment of the aquatic resource use management plans among (adopt plans and a

MARYLAND

Planning authority in Maryland is given to counties and cities, with encouragement of voluntary and infrastructure-based smart growth practices.²⁸⁶ Growth management occurs through a State Development Plan and local comprehensive plans. Local comprehensive plans, required by the Economic Growth, Resource Protection and Planning Act, must include certain elements.

The Department of Planning is responsible for planning matters at the state level. The department assists local units of government with planning, and prepares the State Development Plan.²⁸⁷ An Office of Smart Growth was established in 2001, which acts as a clearinghouse for information on growth management in the state. It is also designed to ensure that state entities are pursuing smart growth principles.²⁸⁸

Maryland's comprehensive state planning policy consists of eight points or "visions."²⁸⁹ Five of these policy points or visions include concentrating development in "suitable areas," protection of sensitive areas, preservation of rural areas, protection of the Chesapeake Bay, and conservation of resources, including a reduction in resource consumption.²⁹⁰ Stewardship of the Chesapeake Bay is considered a "universal ethic."²⁹¹

The State Development Plan must contain several items including identification of areas of critical state concern and land use recommendations. Each county must make recommendations to the Department of Planning concerning those areas in the county that should be designated as areas of critical state concern. Land use recommendations must be based on the best available information concerning a number of factors including "environmental and natural factors."²⁹²

Under the Smart Growth Areas Act, "Priority Funding Areas" designate certain areas for funding for growth related projects.²⁹³ The state generally prohibits funding for growth related projects outside of the priority funding areas.²⁹⁴ Smart neighborhood development is defined as a comprehensively planned, compact mixed use development within a Priority Funding Area that integrates residential, commercial, open space, and public uses.²⁹⁵

A State Economic Growth, Resource Protection and Planning Commission (Commission) advises and reports to the governor, the General Assembly and local governments on issues including the State Development Plan, progress implementing the sensitive area element and achieving protection of sensitive areas, progress implementing the required visions, and progress of local governments in protecting natural resources.²⁹⁶

Maryland sets forth a standard for sensitive areas which applies to local jurisdictions that exercise planning and zoning authority but fail to adopt a sensitive areas element.²⁹⁷ In such cases, streams and buffers, 100-year floodplains, habitats of threatened and endangered species, and steep slopes within those local jurisdictions are deemed to be sensitive areas.²⁹⁸ The commission establishes standards to govern activities in those sensitive areas until the local jurisdiction adopts a sensitive areas element as required under the land use statute.²⁹⁹

Local Planning Requirements

Counties and cities are authorized to create planning commissions. If commissions are created, they are required to enact local comprehensive plans³⁰⁰ that contain certain elements and "visions."³⁰¹

Mandatory Local Plan Elements Related to Biodiversity

Under the Economic Growth, Resource Protection and Planning Act,³⁰² each city and county plan must contain certain elements and "visions."³⁰³ Elements required in local comprehensive plans include a recommendation for the determination, identification, and designation of areas within the county that are of critical state concern,³⁰⁴ and a sensitive areas element.³⁰⁵ The sensitive areas element must contain the goals, objectives, principles, policies, and standards "designed to protect sensitive areas from the adverse effects of development."³⁰⁶ Sensitive areas are defined as streams and their buffers, 100-year floodplains, threatened and endangered species habitat, and steep slopes.³⁰⁷ Plans must also provide for the conservation of natural resources.³⁰⁸

The required visions of local comprehensive plans include concentrating development in "suitable areas," protection of sensitive areas, preservation of rural areas, protection of the Chesapeake Bay, and conservation of resources, including

Discretionary Local Plan Elements Related To Biodiversity

Local comprehensive plans in effect on July 1, 1985, which are amended after July 1, 1986, may incorporate certain optional elements, including conservation and natural resources elements.³¹¹

Additional Local Authorities and Responsibilities Related to Biodiversity

Not Applicable

Mechanisms for Monitoring and Enforcing Local Compliance

State support for growth related projects is largely limited to priority funding areas and there is no private right of action to challenge state decisions to fund projects. Under the Smart Growth Areas Act, "Priority Funding Areas" designate certain areas for funding for growth-related projects.³¹² These areas include: municipalities, Baltimore City (except certain areas), designated neighborhoods, enterprise zones, and heritage areas within county-designated growth areas. Areas with industrial zoning or rural character also are eligible for county designation.³¹³ The state generally prohibits funding for growth-related projects outside of the priority funding areas.³¹⁴ An exemption exists for tourism facilities required to be located away from other development due to necessary proximity to specific natural resources.³¹⁵

Not Applicable

State Assistance to Localities

The Department of Planning assists local units of government with planning.³¹⁶

MASSACHUSETTS

☒ A ☒ A ☒ A ☒ A ☒ A

Planning boards and master plans are required for towns of a certain population size. Planning boards are authorized but not required for the rest of the towns and cities but, if established, are required to adopt master plans.³¹⁷ Regional planning is authorized and, if established, comprehensive plans are required.³¹⁸

☒ A ☒ A ☒ A ☒ A ☒ A ☒ A ☒ B ☒ A ☒ A

Natural Resources—Master plans must include a natural resources element.³¹⁹

Open Space—Master plans must include an open space and recreation element.³²⁰

☒ A ☒ A ☒ A ☒ A ☒ A ☒ A ☒ B ☒ A ☒ A

Not Applicable

☒ A ☒ A ☒ A ☒ A

The Department of Housing and Community Development is “authorized, empowered, and directed to: provide

MICHIGAN



Municipalities³²² and counties³²³

MINNESOTA

¶ A . . . ¶ A . . . ¶ A . . .

Counties with specified populations and municipalities are authorized to plan and appoint commissions; comprehensive plans are authorized, but not required.³²⁸ Similarly, regional planning is authorized and preparation of a development plan is authorized, but not required.³²⁹

¶ A . . . A . . . ¶ A . . . A . . . ¶ A . . . B . . .

Open Space—Municipal comprehensive plans must consider open space values.³³⁰

¶ A . . . A . . . ¶ A . . . A . . . ¶ A . . . B . . .

Wildlife Habitat—Municipal comprehensive plans may consider wildlife habitat values.³³¹

¶ A . . . ¶ A . . .

MONTANA

A A A

Cities, towns, and counties are authorized to establish planning boards. If established, planning boards are required to prepare a growth policy.³⁴¹

A A A A A A B

Natural Resources—City and county growth policies must consider natural resources.³⁴² Additionally, planning boards cannot “prevent the complete use, development or recovery of any mineral, forest, or agricultural resources by the owner thereof.”³⁴³

A A A A A B

Not Applicable

A A A

Not Applicable

NEBRASKA



Municipalities of a certain size are required to establish planning commissions and adopt comprehensive plans.³⁴⁴ Other municipalities are authorized but not required to establish planning commissions. If established, such commissions are required to adopt comprehensive plans.³⁴⁵ Counties that include cities with a population of a certain size are required to establish planning commissions and adopt comprehensive plans.

NEW HAMPSHIRE

◀ A ▶ ◀ A ▶ A ▶ ▶ ▶ ▶ ▶

NEW JERSEY

A B

Land use planning in New Jersey is primarily a local responsibility, although the state has a role in developing and coordinating strategy. The State Planning Act³⁶⁶ creates the State Planning Commission (Commission) composed of 17 members from both the public and state agencies. The commission reviews state and local planning procedures.³⁶⁷ The commission is also charged with preparing and adopting the State Development and Redevelopment Plan (State Plan), which provides “a coordinated, integrated, and comprehensive plan for the growth, development, renewal and conservation of the state and its regions and which shall identify areas for growth, agriculture, open space conservation and other appropriate designations . . .”³⁶⁸ The commission prepares, as part of the State Plan, a long-term Infrastructure Needs Assessment that provides information relating to the conditions, needs, and costs of capital facilities, including shore protection.³⁶⁹ The commission also facilitates cooperation among state agencies and local governments for the “development of plans, programs and policies which affect land use, environmental, capital and economic development issues.”³⁷⁰

The Office of State Planning, also created by the State Planning Act, assists the commission in the performance of its duties.³⁷¹ Among the duties of the Office of State Planning is the duty to submit to the Commission alternative growth and development strategies “which are likely to produce favorable economic, environmental and social results.”³⁷²

The State Plan is comprehensive and exists for the “growth, development, renewal and conservation of the State and its regions” and identifies “areas for growth, agriculture, open space conservation” and other areas.³⁷³ The New Jersey Legislature mandated the State Plan as a guide to coordinate planning among state, local, and regional entities to conserve the natural resources of the state and protect the quality of its environment.³⁷⁴ The legislature also found that cooperation among these groups enhances conservation policies.³⁷⁵ The legislature specifically found that discouragement of development “where it may impair or destroy natural resources or environmental qualities that are vital to the health and well-being” of New Jersey citizens is in the public interest.³⁷⁶ The State Plan is intended to prevent sprawl.³⁷⁷

The State Plan is intended to represent a balance between development and conservation objectives.³⁷⁸ Natural resources of the state must be protected in the plan’s design.³⁷⁹ The plan must consider input from state, county, and municipal entities concerning their land use, environmental, capital, and economic development plans, including any state plans concerning natural resources.³⁸⁰ The plan must identify areas for growth, limited growth, agriculture, and open space conservation.³⁸¹ Planning activities must be coordinated and statewide planning objectives must be established in the area of natural resource conservation.³⁸²

The State Plan must “[p]rotect the natural resources and qualities of the State. . .”³⁸³ These include “agricultural development areas, fresh and saltwater wetlands, flood plains, stream corridors, aquifer recharge areas, steep slopes, areas of unique flora and fauna, and areas with scenic, historic, cultural and recreational values.”³⁸⁴

A A A

Local Planning Requirements

Municipal planning boards are authorized but not required to adopt master plans.³⁸⁵ County planning boards are also authorized but are required to prepare and adopt master plans.³⁸⁶

Mandatory Local Plan Elements Related to Biodiversity

The Municipal Land Use Law³⁸⁷ encourages municipalities to develop and use land appropriately.³⁸⁸ Among the statute’s purposes are the preservation of the environment, provision of adequate open space, and prevention of urban sprawl and degradation of the environment.³⁸⁹ If a master plan is enacted, it must contain certain elements, including a conservation element “where appropriate.” This conservation element must provide for the “preservation, conservation, and utilization of natural resources.”³⁹⁰ Natural resources include “energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, [and] endangered or threatened species wildlife.”³⁹¹ A land use plan element must also be included in the master plan, which must take into account marshes and woodlands.³⁹²

Discretionary Local Plan Elements Related To Biodiversity

County master plans may include “the general location and extent of forests . . . and areas for conservation. . .”³⁹³

Additional Local Authorities and Responsibilities Related to Biodiversity

NEW MEXICO



NORTH CAROLINA

A A

Municipalities,⁴⁰⁷ counties,⁴⁰⁸ and regions are authorized to plan.⁴⁰⁹ Comprehensive plans are authorized but not required.

A A A A A B

Not Applicable

A A A A A B

Not Applicable

A A

The Land Policy Act requires enactment of a comprehensive state land policy. The Act creates a Land Policy Council to assist local governments with planning issues and to coordinate land use policies in the state.⁴¹⁰ In addition, the Balanced Growth Policy Act⁴¹¹ requires the development of a policy to balance growth in conjunction with the use of natural resources.⁴¹²

OHIO

A A A

Municipal planning commissions are authorized. If established, municipal planning commissions are required to adopt comprehensive plans.⁴¹⁸ In contrast, county planning commissions are authorized and comprehensive plans are authorized but not required.⁴¹⁹ Similarly, regional planning commissions are authorized and plans are authorized but not required.⁴²⁰

A A A A A B

Natural Resources—County and regional comprehensive plans must contain information regarding “general location and extent of areas for conservation and development of natural resources and the control of the environment.”⁴²¹

Open Space—Municipal comprehensive plans must include the location of open spaces.⁴²²

A A A A A B

Not Applicable

A A

The Development Department provides planning assistance to local planning authorities, and is required to prepare comprehensive plans for the growth and development of state resources.⁴²³

OKLAHOMA

◀ A ▶ ◀ A ▶ A

OREGON

Oregon's statewide planning statute, the Land Use Planning Act (Act), requires cities and counties to prepare comprehensive land use plans that must comply with state established goals.⁴³¹ In preparing statewide goals and guidelines, the Department of Land Conservation and Development (Department) must consider, among others, tide, marsh, and wetland areas; lakes and lakeshore areas; wilderness and scenic areas; wild and scenic rivers; unique wildlife habitats; and agricultural lands.⁴³² Pursuant to the statute, Oregon has adopted 19 goals, several of which are related to biodiversity that are set out in the Oregon Administrative Rules. One of these goals is to "conserve open space and protect natural and scenic resources." Other goals include protection of air and water quality, estuary and coastal management and ocean resources, and establishment of urban growth boundaries. Each goal contains a description of the resource to be protected, guidelines for planning and guidelines for implementation.⁴³³ Lands administered under the Oregon Forest Practices Act⁴³⁴ and wetland conservation plans approved by the director of the Division of State Lands⁴³⁵ are exempt from the Act.

The Land Conservation and Development Commission may recommend areas to be designated as "areas of state critical concern" to the Joint Legislative Committee on Land Use.⁴³⁶ In some cases, such recommendations may be based on the recommendation of a state agency or local government.⁴³⁷ The commission's recommendations must include the reasons for the implementation of additional state regulations for the area. The recommendations also may include the following: a management plan for the area indicating the programs and regulations of state and local agencies, if any, unaffected by the proposed state regulations for the area; permissible use limitations for all or part of the area; permissible use standards for all or part of the lands within the area; and standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area.⁴³⁸ Upon receiving a recommendation from the commission, the Joint Legislative Committee is required to review and make a recommendation to the Legislative Assembly, which may adopt, amend, or reject the proposed designation.⁴³⁹ The law also provides for enforcement measures to enjoin activities that are not in accordance with the state's regulations for areas of state critical concern.⁴⁴⁰

Local Planning Requirements

Local governments and special districts are required to adopt comprehensive plans that are considered a "generalized co-ordinated land use map and policy statement" that interrelate all "functional and natural systems and activities" related to land use. Land use includes water, both surface and subsurface, and air.⁴⁴¹

Mandatory Local Plan Elements Related to Biodiversity

In addition to reflecting statewide planning goals, local comprehensive plans must contain policy statements concern-

In addition, destination resort sites must designate at least 50 percent of their land as open space or land preserved in its natural condition.⁴⁴⁷ Destination resorts may not be sited in unique or prime farmland, predominantly forest land, in the Columbia River Gorge National Scenic Areas, or in “especially sensitive big game habitat.”⁴⁴⁸ They must be compatible with the site and adjacent land uses and retain important natural features, including habitat of threatened or endangered species, and wetlands.⁴⁴⁹ If a tract to be used as a destination resort contains a site designated for protection in a comprehensive plan, the tract must be preserved with a conservation easement.⁴⁵⁰

Mechanisms for Monitoring and Enforcing Local Compliance

Not Applicable

The Commission reviews local comprehensive plans to ensure compliance.⁴⁵¹ The commission adopts the goals created by the Department, certifies or “acknowledges” local comprehensive plans, and can order actions by local governments to bring comprehensive plans into compliance.⁴⁵²

State Assistance to Localities

Not Applicable

State Assistance to Localities

The Act establishes a program of technical and financial assistance to municipalities to encourage and facilitate the adoption and implementation of comprehensive planning throughout the state.⁴⁸⁰

SOUTH CAROLINA

Code symbols

Counties, municipalities, and cooperative units are authorized to establish planning commissions. If established, planning commissions are required to adopt comprehensive plans.⁴⁸¹

Code symbols

Natural Resources—Municipal, county, and cooperative unit comprehensive plans must include a natural resources element that includes coastal resources, scenic views and sites, and wetlands. The plans must also contain a land use element that includes consideration of forest lands.⁴⁸²

Open Space—County, municipal, and cooperative unit comprehensive plans must contain a land use element that includes consideration of open space lands.⁴⁸³

Wildlife Habitat—County, municipal, and cooperative unit comprehensive plans must contain a natural resources element that includes plant and animal habitats.⁴⁸⁴

Code symbols

Not Applicable

Code symbols

Not Applicable

SOUTH DAKOTA

⌘ A ⌘ A ⌘ A

Municipalities are required to establish planning commissions which must adopt comprehensive plans before zoning ordinances can apply.⁴⁸⁵ In contrast, counties acting in either a planning or zoning capacity must establish county planning commissions, but the adoption of comprehensive plans is authorized, not required.⁴⁸⁶

⌘ A ⌘ A ⌘ A ⌘ A ⌘ A ⌘ A ⌘ B

Not Applicable

⌘ A ⌘ A ⌘ A ⌘ A ⌘ A ⌘ B

TEXAS

☒ A ☒ A ☒ A

Municipalities with certain populations are authorized to establish Municipal Boards of Development, which are authorized but not required to adopt comprehensive plans.⁵¹³ Similarly, regional planning commissions are authorized and master plans are authorized but not required.⁵¹⁴ In contrast, joint planning commissions between municipalities are authorized and, if established, are required to adopt master plans.⁵¹⁵

☒ A ☒ A ☒ A ☒ A ☒ A ☒ B

Not Applicable

☒ A ☒ A ☒ A ☒ A ☒ A ☒ B

Not Applicable

☒ A

Not Applicable

UTAH

A A B

Municipalities are authorized to establish planning commissions. If established, planning commissions are required to adopt general plans.⁵¹⁶ Counties not included within a municipality are authorized to establish planning commissions. Such planning commissions are required to adopt general plans. Counties included within a municipality, however, are authorized, but not required, to adopt general plans.⁵¹⁷

A A A A B

Wildlife Habitat—Municipal and county general plans must identify land for wildlife habitat.⁵¹⁸

A A A A B

Natural Resources—Municipal⁵¹⁹ and county⁵²⁰ general plans may include an element addressing “the protection, conservation, development, and use of natural resources” including forests, rivers, fisheries, and wildlife.

A A

The Quality Growth Act establishes a commission to advise the legislature and local governments on planning issues.⁵²¹ A State Planning Coordinator is appointed by the governor to advise the governor on land use issues and review plans from local governments.⁵²²

VERMONT

A A A B

The Vermont Planning and Development Act (Act)⁵²³ authorizes municipal plans, requires regional plans, and requires certain state agencies to plan continually. It encourages appropriate development of all lands in the state through its municipalities and regions, with the state's aid and assistance.⁵²⁴

Specifically, any municipality may undertake a comprehensive planning program and adopt plans that may be consistent with the goals established in the Act.⁵²⁵ Regional planning commissions created by the statute must prepare regional plans, in accordance with these goals.⁵²⁶ State agencies with programs or actions affecting land use must engage in a continuing planning process.⁵²⁷ These state agencies programs and actions must be consistent with the goals of the Act and must be "compatible with regional and approved municipal plans."⁵²⁸

The goals set out in the Act include consideration of the use of resources and consequences of growth.⁵²⁹ Growth plans must plan development so that compact villages and urban centers are separated by rural countryside.⁵³⁰ Plans must

Regional plans must be consistent with the goals established in the Act. In addition, regional plans must contain a statement of basic policies of the region “to guide the future growth and development of land . . . and to protect the environment.”⁵⁴³ Plans must also contain a land use element indicating areas proposed for “forests, recreation, agriculture . . ., residence, commerce, industry, public and semi-public uses, open spaces and areas . . . which require special consideration for aquifer protection, wetland protection, or for other conservation purposes.”⁵⁴⁴ In addition, when preparing a regional plan, regional planning commissions must include identification of areas of regional significance, which may include rare and irreplaceable natural areas and scenic areas.⁵⁴⁵

Discretionary Local Plan Elements Related To Biodiversity Not Applicable

Additional Local Authorities and Responsibilities Related to Biodiversity

Any regional planning commission may undertake studies and make recommendations on scenic preservation and wetland protection.⁵⁴⁶ It may carry out, with the cooperation of municipalities within the region, economic development programs for the protection and preservation of the region’s physical resources.⁵⁴⁷ In addition, regional planning commissions advise and assist municipalities within their regions in the various facets of plan development.⁵⁴⁸ The Council of Regional Commissions⁵⁴⁹ provides a number of services to municipalities, regional planning commissions, and state agencies. The council mediates between municipalities or state agencies, and regional planning commissions to resolve disagreements,⁵⁵⁰ and reviews proposed regional plans and state agency plans.⁵⁵¹

In addition, although not part of the growth management law, Vermont’s so-called “Act 250” includes several biodiversity-related provisions. Act 250 dictates that before granting a permit for a subdivision or development, the environmental board or district environmental commission must demonstrate that the project will not have an undue adverse effect on 10 criteria. Criteria 8 states that the proposed activity “[w]ill not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.”⁵⁵² A related criteria, addresses the proposed project’s effect on “necessary wildlife habitat and endangered species,”⁵⁵³ defined as “concentrated habitat which is identifiable and is demonstrated as being decisive to the survival of a species of wildlife at any period in its life including breeding and migratory periods.”⁵⁵⁴

Mechanisms for Monitoring and Enforcing Local Compliance

Not Applicable

The Council of Regional Commissions reviews proposed regional plans and state agency plans to determine whether the plans contain the elements required by law, are consistent with the goals of the planning statute, and are compatible with other authorized plans.⁵⁵⁵

State Assistance to Localities

The Act does not provide for the state to assist directly localities, but as discussed, regional planning commissions advise and assist municipalities within their regions on the various facets of plan development.⁵⁵⁶ In addition, the Council of Regional Commissions⁵⁵⁷ provides services to municipalities and regional planning commissions.

VIRGINIA

☒ A ☒ A ☒ A

Counties and municipalities (separately or jointly) are required to establish planning commissions.⁵⁵⁸ Planning commissions are required to adopt comprehensive plans.⁵⁵⁹ In contrast, regional planning district commissions are authorized and, if established, are required to adopt regional strategic plans.⁵⁶⁰

☒ A ☒ A ☒ A ☒ A ☒ A ☒ A ☒ B

Miscellaneous—Regional strategic plans prepared by regional planning district commissions must contain “environmental management” elements.⁵⁶¹

☒ A ☒ A ☒ A ☒ A ☒ A ☒ A ☒ B

Natural Resources—Municipal and county comprehensive plans may include areas designated for conservation and identification of forests.⁵⁶²

☒ A

Not Applicable

WASHINGTON

Discretionary Local Plan Elements Related To Biodiversity

Comprehensive plans under the Act may include additional elements including, but not limited to, conservation.⁵⁹¹ Counties may authorize “fully contained communities” and “major industrial developments” located outside the initial urban growth areas if: environmental protection has been addressed and provided for; provisions made to “mitigate impacts on designated agricultural and forest lands;” and the fully contained community or major industrial development is consistent with protection of critical areas.⁵⁹² Similarly, counties may authorize “master planned resorts,” if the resort plan is consistent with the development regulations established for critical areas.⁵⁹³

As noted, counties that are not subject to the planning requirements of the Act can choose to operate under those provisions, including provisions related to local plan elements. In addition, the Planning Enabling Act allows for 11 comprehensive elements in county plans, including conservation and recreation elements.⁵⁹⁴

Additional Local Authorities and Responsibilities Related to Biodiversity

Resolution of disputes regarding compliance with the goals and requirements of the Act are adjudicated by three regional growth management hearing boards.⁵⁹⁵

Mechanisms for Monitoring and Enforcing Local Compliance

Not Applicable

A Growth Strategies Commission, created by the Act, ensured that comprehensive plans were consistent with the goals of the Act.⁵⁹⁶ As noted, resolution of disputes regarding compliance with the goals and requirements of the Act are adjudicated by three regional growth management hearing boards.⁵⁹⁷

State Assistance to Localities

The Department of Community, Trade, and Economic Development provides local comprehensive planning technical and financial assistance to cities and counties.⁵⁹⁸

WEST VIRGINIA

▲ A ↘ ↙ ▲ A ↘ ↙ ▲ ↘ ↙ ↘ ↙

Municipalities and counties are authorized to establish local planning commissions. If established, local planning commissions are required to adopt comprehensive plans.⁵⁹⁹ Regional planning commissions may be established by the governor and, if established, are authorized, but not required, to adopt comprehensive plans.⁶⁰⁰

▲ A ↘ ↙ ▲ A ↘ ↙ ▲ ↘ ↙ ↘ ↙ B ↘ ↙ ↘ ↙

Environmental Planning—Regional plans must contain environmental protection plans.⁶⁰¹

Natural Resources—Municipal and county comprehensive plans must include information on forests and “open-development areas for purposes of conservation.”⁶⁰²

↘ ↙ ↘ ↙ A ↘ ↙

WISCONSIN

¶ A ¶ A ¶ A

Cities are authorized to plan and establish City Plan Commissions. If established, City Plan Commissions are required to adopt master plans.⁶⁰⁶ Similarly, counties are authorized to plan and establish planning commissions. If established, county planning commissions are required to adopt development plans.⁶⁰⁷ Towns are authorized to plan if the county has not adopted a zoning ordinance.⁶⁰⁸ Regional planning commissions are authorized and, if established, must adopt master plans.⁶⁰⁹

¶ A ¶ A ¶ A ¶ A ¶ A ¶ A ¶ B

Not Applicable

¶ A ¶ A ¶ A ¶ A ¶ A ¶ A ¶ B

Not Applicable

¶ A ¶ A

State statutes set forth goals for local comprehensive planning. These goals include “protection of natural areas, such as wetlands, wildlife habitats, lakes, woodlands, open space and groundwater resources.”⁶¹⁰

WYOMING

A A

Municipalities are authorized to establish planning commissions. If established, planning commissions are required to adopt master plans.⁶¹¹ In contrast, counties are authorized to establish planning commissions, and master plans are authorized but not required.⁶¹²

A A A A A B

Not Applicable

A A A A A B

Open Space—Municipal master plans may include the location of public grounds, places, and spaces.⁶¹³

Natural Resources—Municipal master plans may include the location of waterways.⁶¹⁴

A A

The Wyoming State Land Use Commission is responsible for overseeing land use planning. The commission, which is appointed by the governor, is required to develop a state land use plan. The plan can include designation of “areas of critical or more than local concern” where significant damage to the environment could occur.⁶¹⁵ The commission also is required to assist local governments with land use planning.⁶¹⁶

ENDNOTES

1. Ala. Code §§ 11-52-2, 11-52-8
2. Ala. Code §§ 11-85-1, 11-85-4
3. Ala. Code § 11-52-8
4. Ala. Code §§ 41-9-208, 41-9-211
5. Alaska Stat. §§ 29.35.180, 29.35.220, 29.40.020(a), (b)(1)
6. Ariz. Rev. Stat. Ann. §§ 9-461.01 A, B(1), 9-461.05
7. Ariz. Rev. Stat. Ann. §§ 11-802, 806 B
8. Ariz. Rev. Stat. Ann. § 9-461.05 D(3)
9. Ariz. Rev. Stat. Ann. § 9-461.05 E(1)
10. Ariz. Rev. Stat. Ann. § 11-806 B
11. Ariz. Rev. Stat. Ann. § 9-461.05 D(1)
12. Ariz. Rev. Stat. Ann. § 9-461.05 D(3)
13. Ariz. Rev. Stat. Ann. § 9-461.05 E(1)
14. Ariz. Rev. Stat. Ann. § 9-461.05 D(1)
15. Ariz. Rev. Stat. Ann. § 11-806 B
16. Ariz. Rev. Stat. Ann. § 11-806 B
17. Ariz. Rev. Stat. Ann. § 37-331 *et seq.*
18. Ark. Code Ann. §§ 14-17-201, -203
19. Ark. Code Ann. §§ 14-56-401, -404
20. Ark. Code Ann. §§ 14-17-206(b), -402
21. Ark. Code Ann. §§ 14-56-501, -507(a)(1)
22. Ark. Code Ann. § 14-17-206(b)(2), (c)(1)
23. Ark. Code Ann. §§ 14-17-206(b)(1), -414(b)(1)(B)
24. Ark. Code Ann. § 14-56-414(b)(1)(A)
25. Cal. Gov't Code § 65040 *et seq.*
26. Cal. Gov't Code § 65040(a)
27. Cal. Gov't Code § 65040(f)(m)
28. Cal. Gov't Code § 65300
29. Cal. Gov't Code § 65100 *et seq.*
30. Cal. Gov't Code § 65302(a), (d), (e)
31. Cal. Gov't Code § 65040.12(c)
32. Cal. Gov't Code § 65302(a)
33. Cal. Gov't Code § 65302(d)
34. Cal. Gov't Code §§ 65302(e), 65560
35. Cal. Gov't Code § 65100 *et seq.*
36. Cal. Gov't Code § 65303
37. Cal. Gov't Code § 65450
38. Cal. Gov't Code § 65040 *et seq.*
39. Colo. Rev. Stat. §§ 30-28-103, -105, -106(1), (2)
40. Colo. Rev. Stat. § 31-23-206 (1), (3)
41. Colo. Rev. Stat. §§ 30-28-106(3)(a)(xi), 31-23-206(1)(k)
42. Colo. Rev. Stat. §§ 30-28-106(3)(a)(ii), 31-23-106(1)(b)
43. *Id.*
44. Colo. Rev. Stat. § 30-28-106(3)(a)(xi), 31-23-206(1)(k)
45. Colo. Rev. Stat. §§ 24-65.1-101, -201(1)
46. Colo. Rev. Stat. §§ 24-32-104, -111
47. Colo. Rev. Stat. § 24-66-103(1), (4)
48. Colo. Rev. Stat. §§ 24-65-103(1)(a), -104(2)(a)
49. Conn. Gen. Stat. § 8-23
50. Conn. Gen. Stat. § 8-31A *et seq.*
51. Conn. Gen. Stat. § 8-23
52. Conn. Gen. Stat. § 16a-1 *et seq.*
53. Quality of Life Act, Del. Code Ann. tit. 9 §§ 2651(a)(2), 4951(a)(2), 6951(a)(2)
54. Del. Code Ann. tit. 9 § 2656(g)(1), (4), (5), § 4956(g)(1), (4), (5), § 6956(g)(1), (4), (5)
55. Del. Code Ann. tit. 29, § 9101(a), (c)
56. Del. Code Ann. tit. 29, § 9101(c)(1)
57. Del. Code Ann. tit. 29, § 9101(d)
58. Del. Code Ann. tit. 29 §§ 9101, 9211
59. Del. Code Ann. tit. 29 §§ 2657(b), 4957(b), 6957(b)
60. Del. Code Ann. tit. 29, § 9102(a)
61. Del. Code Ann. tit. 29, §§ 9101(a), 9102(a)
62. Del. Code Ann. tit. 29, § 9102(c)(7)
63. Del. Code Ann. tit. 29, § 9102
64. Del. Code Ann. tit. 29, § 9101(h)
65. Del. Code Ann. tit. 29, § 9101(g)(3)
66. Del. Code Ann. tit. 29, §§ 9211, 9219
67. Del. Code Ann. tit. 29, § 9202(4)
68. Del. Code Ann. tit. 29, § 9214
69. Del. Code Ann. tit. 29, §§ 9215, 9216(a)
70. Del. Code Ann. tit. 29, § 9216(b), (d)(3)
71. Del. Code Ann. tit. 29, § 9219(a)
72. Del. Code Ann. tit. 29, § 9219(b)
73. Del. Code Ann. tit. 29, § 9220(a), (b)

156. *Id.*
157. Ga. Code Ann. § 50-8-1 *et seq.*
158. Ga. Code Ann. § 50-8-7.1(b)(2)
159. Ga. Code Ann. § 50-8-7.1(b)(2)(citing Ga. Code Ann. § 12-2-8)
160. Ga. Code Ann. § 36-70-2(1)
161. Ga. Code Ann. § 12-2-8(b)
162. Ga. Code Ann. § 12-2-8
163. Ga. Code Ann. §§ 12-7-4, 12-5-237(a)
164. Ga. Code Ann. §§ 36-70-1, 50-8-3(a)
165. Ga. Code Ann. §§ 36-70-1, -3
166. *Id.*
167. Ga. Code Ann. §§ 5-8-32, -35(c)(6)
168. Ga. Code Ann. § 50-8-35(c)(6)
169. Ga. Code Ann. § 50-8-7.1(b)(1)
170. Ga. Code Ann. § 12-2-8(g)(2)
171. Ga. Code Ann. § 12-2-8(g)(3)(B)
172. Ga. Code Ann. § 12-2-8(g)(3)(G)
173. Ga. Code Ann. § 12-2-8(g)(1)(A)
174. Ga. Code Ann. § 12-2-8(f)
175. Ga. Code Ann. § 12-5-440 *et seq.*
176. Ga. Code Ann. § 50-8-2(a)(18)
177. Haw. Rev. Stat. § 226-52(a)(3), (4)
178. Haw. Rev. Stat. § 226-2
179. Haw. Rev. Stat. § 226-52(a)(3)
180. Haw. Rev. Stat. § 226-52(a)(4)
181. Haw. Rev. Stat. § 226-1
182. Haw. Rev. Stat. § 226-101 *et seq.*
183. Haw. Rev. Stat. § 226-1 *et seq.*
184. Haw. Rev. Stat. § 226-101
185. Haw. Rev. Stat. § 226-102
186. Haw. Rev. Stat. § 223-2
187. Haw. Rev. Stat. § 205-2
188. Haw. Rev. Stat. § 226-4(2)
189. Haw. Rev. Stat. § 226-6(b)(2), (14)
190. Haw. Rev. Stat. § 226-9(b)(3)
191. Haw. Rev. Stat. § 226-10(b)(6), (10)
192. Haw. Rev. Stat. § 226-17(b)(10)
193. Haw. Rev. Stat. § 226-23(b)(4)
194. Haw. Rev. Stat. §§ 226-11, -12, -13
195. Haw. Rev. Stat. § 226-11
196. Haw. Rev. Stat. § 226-12
197. Haw. Rev. Stat. § 226-13
198. Haw. Rev. Stat. § 226-11(a)(2)
199. Haw. Rev. Stat. § 226-11(b)(1)
200. Haw. Rev. Stat. § 226-11(b)(2)
201. Haw. Rev. Stat. § 226-11(b)(3)
202. Haw. Rev. Stat. § 226-11(b)(4)
203. Haw. Rev. Stat. § 226-11(b)(6)
204. Haw. Rev. Stat. § 226-11(b)(7)
205. Haw. Rev. Stat. § 226-11(b)(8)
206. Haw. Rev. Stat. § 226-12(a)
207. Haw. Rev. Stat. § 226-12(b)(1)
208. Haw. Rev. Stat. § 226-12(b)(2)
209. Haw. Rev. Stat. § 226-12(b)(3)
210. Haw. Rev. Stat. § 226-12(b)(4), (5)
211. Haw. Rev. Stat. § 226-13(a)(1)
212. Haw. Rev. Stat. § 226-13(b)(1)
213. Haw. Rev. Stat. § 226-13(b)(2)
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221. Idaho Code § 67-6508(f)
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223. 65 Ill. Rev. Stat. §§ 5/11-12-4, 11-12-5(1)
224. 60 Ill. Rev. Stat. § 1/105-35
225. 55 Ill. Rev. Stat. § 5/5-14001 (County boards are authorized to create "regional planning commissions" that may adopt "regional plans" for all or a portion of the county).
226. 50 Ill. Rev. Stat. §15/1
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228. 60 Ill. Rev. Stat. §§ 1/115-10, -15
229. 20 Ill. Rev. Stat. §§ 605/605-200, -205
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254. Me. Rev. Stat. Ann. tit. 5, § 3331 1
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263. Me. Rev. Stat. Ann. tit. 30-A, § 4312 3 H, J
264. Me. Rev. Stat. Ann. tit. 30-A, § 4349-A 1 C(5)
265. Me. Rev. Stat. Ann. tit. 5, § 3341
266. Me. Rev. Stat. Ann. tit. 30-A, § 4323
267. Me. Rev. Stat. Ann. tit. 30-A, § 4325
268. Me. Rev. Stat. Ann. tit. 30-A, § 4326
269. Me. Rev. Stat. Ann. tit. 30-A, § 4326 1
270. Me. Rev. Stat. Ann. tit. 30-A, § 4326 1 B, C
271. Me. Rev. Stat. Ann. tit. 30-A, § 4326 1 E
272. Me. Rev. Stat. Ann. tit. 30-A, § 4326 1 F
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274. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A A(1), (2)
275. Me. Rev. Stat. Ann. tit. 30-A, § 4301
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327. *Id.*
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354. *Id.*
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384. *Id.*
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502. Tenn. Code Ann. § 6-58-104(a)(1), (2) (four committee members appointed by political leaders assure "broad representation of environmental, construction and homeowner interests").
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506. Tenn. Code Ann. § 6-58-106(b)(2)
507. Tenn. Code Ann. § 6-58-106(c)(1)(C)
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510. Tenn. Code Ann. § 6-58-110
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529. Vt. Stat. Ann. tit. 24, § 4302(b)(3)
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