



Part 3

* Synopsis of the *Legislative Guidebook*

Chapters I & Chapters 2:

Initiating Planning Statute Reform and Statements of Purpose in Planning Statutes



How Do We Approach Reform?

The views held by the public and legislative decision makers about the roles of governments will influence your state's approach to statutory reform, which will in turn determine which of the statutory alternatives you are likely to prefer. There is a continuum of four alternative approaches in existing statutory systems:

- Planning is voluntary only.
- Planning is encouraged, with incentives.
- Planning is mandated.
- A state-regional-local planning system is mandatory.

By presenting alternatives, the *Legislative Guidebook* helps you to determine and apply appropriate solutions to problems of growth and change. Planning statute reform sometimes occurs incrementally, sequentially, and in a progression from voluntary approaches to incentives to stronger mandates. The American Planning Association advocates planning as a requirement to underpin land-use regulation and public investment, but recognizes that states will take different approaches and will progress toward stronger statutes as circumstances dictate.

Which Approach Works Best?

The pros and cons of the four approaches to planning are provided in the *Legislative Guidebook* Table 2-I.

Statutes should account for the intergovernmental dimension of planning and development control.

—Growing SmartSM Statement of Philosophy No. 5

Statutes should anticipate the potential for abuse of planning tools and correct for it.

—Growing SmartSM Statement of Philosophy No. 7

Consider the Big Picture First:

Your immediate concern may be limited to a specific issue (e.g., affordable housing). The *User Manual* accommodates your needs by directing you to solutions based on the specific subject areas that concern you (see User Needs Checklist no. 4). Before you begin thinking about specific problems and issues, however, consider the big picture first.

Contemporary problems and issues are interrelated—what might appear to be a specific issue that can be addressed by one level of government or a single tool (e.g., a lack of affordable housing addressed by local affordable housing plans) may in reality be more complex and require a multitude of solutions by different levels of government. Problems of affordable housing are linked to other problems and issues, such as economic development strategies and local use (or misuse) of land-use regulations.

Rather than jumping into action immediately to pursue a goal or solve a particular problem, several states have taken a “big picture” approach to initiating planning statute reform by getting started with a study commission or task force to look at *all* or a number of goals, issues, or problems related to growth and the management of change.

The *Guidebook* provides five alternatives for initiating planning law reform in a “big picture” way. Statutory reform can be initiated by the governor, the legislature, or a private group. For 11 helpful hints on how to approach statutory reform, see “Ingredients of Successful Reform Efforts” in Chapter I.

Alternatives for Getting Started

- * *Study commission composed of state legislators*
- * *Independent study commission including citizen representatives (e.g., Delaware)*
- * *Permanent joint legislative study committee (e.g., Oregon)*
- * *Executive order establishing interagency planning and land-use task force*
- * *Executive order establishing independent study commission (Chapter 1)*

Chapter 3:

Definitions



Chapter 3 assembles in one location (3-30I) the definitions that are generally applicable to the *Legislative Guidebook's* model statutes. Specific definitions that are pertinent only to particular model statutes are located in their respective chapters.

▲ **Caution:** The user should be careful not to modify the definitions provided in a given Chapter of the *Legislative Guidebook* unless consideration is given to how the change of definition may change the meaning and applicability of the model statute itself. Understanding the particular context in which the definitions are meant to be applied is especially important.

Statutes should use familiar terminology.
—Growing SmartSM Statement of Philosophy No. 8

The following Sections of the *Legislative Guidebook* also contain definitions:

- 4-208.3 State Planning for Affordable Housing (Two Alternatives)
- 4-30I State Capital Budget and Capital Improvement Program
- 5-I02 Siting State Facilities
- 5-302 Developments of Regional Impact
- 7-I0I Local Planning: Organizational Structure
- 8-I0I Local Land Development Regulations: General Provisions
- I0-I0I Administrative and Judicial Review of Land-Use Decisions: General Provisions
- I4-I02 Regional [Metropolitan] Tax-Base Sharing

Definitions Are Important Because They:

- * *Establish precise meanings*
- * *Simplify the text*
- * *Translate technical terms for the user*

Chapter 4:

State Planning

Chapter 4 provides legislative alternatives for types of state planning agencies and their functions. It provides details of different types of state plans and procedures for their adoption and use by state agencies. Chapter 4 concludes with a model state capital budgeting and capital improvement programming statute.

Your approach to state planning can be characterized as either a “civic” or “management” model, summarized in the sidebar.

Your decision on which approach is needed depends on the type of state planning you choose to pursue. See the “State Plans” section in the *Legislative Guidebook*.

➔ **Note:** If you are only interested in a particular type of state planning (i.e., preparing a “functional” plan) such as transportation or housing, go to the next section of this *User Manual* on “functional planning,” then return to this section of the guide as appropriate.

Choosing the “civic” model means you are interested in initiating a state comprehensive plan or perhaps a state land development plan. On the other hand, choosing the “management” model suggests that you will likely be striving to produce and coordinate state agency strategic plans. A strategic futures plan might be appropriate under either the civic or management model. See the commentary in the *Legislative Guidebook* if you need help deciding which type of state planning you want to do. Note that multiple plans might be produced, as Florida has done.

After you choose either the civic or management approach (or perhaps you can do both) and consider what type of state planning you would like to do, those choices will begin to inform you about the most appropriate way to organize the administrative agency that will supervise and administer state planning functions.

Two State Planning Approaches:

1. *Civic: Long-range, citizen-based, oriented toward producing a comprehensive plan (e.g., land use)*
2. *Management: Short-range, governor-led, oriented toward state agency coordination (see “Two State Planning Models” and Table 4-1 in the Legislative Guidebook).*

Another important consideration is what the effect of the state plan should be on state agencies. For alternatives, see 4-212 and commentary in the *Legislative Guidebook*.

✦ **Interrelationships:** For any type of state plan, one must consider which entity will adopt the plan (see page 35 of this *User Manual* on “procedures related to state planning”). State planning will likely need to be coordinated with any “state functional plans” (see page 34 of this *User Manual*). The purposes of state plans and their relationships with regional planning and local planning must be considered (see later sections of this *User Manual*).

Types of State Plans:

- * *Civic approach means developing a state comprehensive plan (e.g., Florida, New Jersey) (see 4-203) or a state land development plan (e.g., Florida, Rhode Island, Connecticut) (see 4-204).*
- * *Management approach means developing a state agency strategic plan (e.g., Florida) (see 4-202).*
- * *A strategic futures plan (vision) (e.g., Florida) might be by either the civic or management approach (see 4-201).*
- * *See the Section on “State Plans” and Table 4-3*

State Goals

State goals may be a part of a statute, a state plan, or a state vision. Goals are also provided in any state functional plan. For a more detailed description of various state approaches to state planning goals, see Table 4-5 of the *Legislative Guidebook*. Following Table 4-5 is a menu of state goals.

For procedures on how to adopt state goals, see “Procedures for State Planning.”

Organizing for State Planning

The *Legislative Guidebook* (4-I01) provides commentary and five alternatives for organizing state planning functions. It describes functions (4-I02), rulemaking authority (4-I03), and reporting requirements of state planning agencies and councils (4-I04).

▲ **Caution:** Most states will not be starting from scratch in organizing state planning functions. The existing organizational structure of state planning might dictate what type of new planning can realistically be undertaken. In cases where existing state planning organizational structure does not match your newly emerging state planning goals a reorganization of existing state planning agency(ies) might be needed.

Statutes should build on the strengths of existing organizations that undertake and implement planning.

—Growing SmartSM Statement of Philosophy No. 3

State Functional Plans

Instead of, or in addition to, general state planning functions and general types of plans, state agencies undertake functional planning. For example, state departments of transportation produce statewide transportation plans. State functional plans are addressed separately because they are usually prepared by a department, agency, or commission other than the state planning office, department, or commission.

Options: Where Do State Goals Fit In?

- Statute (e.g., Florida, Hawaii, Vermont, Rhode Island, and Washington)
- State plan document or implementing administrative rule (e.g., Connecticut, New Jersey, Oregon, and Rhode Island)
- State vision (e.g., Maryland)

See “A Note on State Planning Goals” in Chapter 4

Functional Plans:

- * *Transportation* (4-205)
- * *Economic Development* (4-206)
- * *Telecommunications and Information Technology* (4-206.1)
- * *Housing*
 - *State Housing Plan; Housing Advisory Committee* (4-207)
 - *Alternatives for state affordable housing* (4-208)
 - A Model Balanced and Affordable Housing Act* (4-208.1)
 - Balanced and Affordable Housing Council* (4-208.4)
 - Council and regional planning agency* (4-208.6)
 - *Appeals board or court* (“Alternative 2, Application for Affordable Housing Development: Affordable Housing Appeals,” 4-208.1)

(Also see “A Note on State Planning Approaches to Promote Affordable Housing” at the end of Chapter 4).

Alternatives for State Planning Organization:

- * *State planning office*
- * *State planning department*
- * *State planning commission*
- * *Cabinet coordinating council*
- * *Department of development*
- * See Table 4-2 of the *Legislative Guidebook*

The *Legislative Guidebook* provides commentary and statutory models on four functional plans (see sidebar on page 34 of this *User Manual*). It also provides a model state biodiversity plan (4-204.I).

❖ **Interrelationships:** Functional plans are not the only types of state plans. You need to consider how state functional plans will be interrelated with, and complement, any state plans. The state is not the only level of government engaged in functional planning. Careful attention must be paid to how state functional plans will be interrelated with (and perhaps provide guidance to) any regional and local comprehensive plans.

Options: Who Should Adopt State Plans?

- Governor by executive order
- Governor and state legislature (adoption required)
- State board or commission
- State agency head

For pros and cons, see Table 4-4 and Section 4-210 in the *Legislative Guidebook*.

Transmitting Adopted Plans to State Agencies

For commentary and a model, see 4-211.

Public Review and Hearings

See “Procedures Related to State Plan Making, Adoption, and Implementation” in Chapter 4.

Procedures Related to State Planning

Who should adopt the state comprehensive plan or functional plan, and what process should be used?

The appropriate alternatives for which entity adopts a state plan, and the accompanying procedures, depend on the type of state plan (see “types of state plans” and “state functional plans” on pages 33 and 34 of this *User Manual*). For instance, a state functional plan is likely to be adopted by a state board or commission or a state agency head. State agency coordination plans are likely to be adopted by the governor via executive order. Other types of state plans might require some combination of approval by the governor and state legislature.

Adopted state plans need to be sent to state agencies for implementation. In addition, adopted state plans should be widely distributed to regions, localities, and libraries.

State Capital Budget and Capital Improvement Program

❖ **Interrelationships:** A state capital budget or capital improvement program should be carefully linked and coordinated with any state plans that exist. For commentary and a model, see “State Capital Budget and Capital Improvement Program” (4-301 et seq.) .

For a model “Smart Growth Act,” which is intended to guide state capital investments and is patterned after a well-regarded 1997 Maryland law, see 4-401.

State Examples

- * Texas
- * Maryland
- * New Jersey

Chapter 5:

State Land-Use Control

To further the public health, safety, and general welfare, states have authority to regulate land use. States delegate authority and authorize local governments to exercise local land-use controls as a police power. Certain aspects of development and community building cannot be achieved fully by local government actions. Some issues may be so important from a statewide standpoint that a state must exercise its land-use authority and assume a direct role in the regulation of land use.

Chapter 5 includes model legislation for three types of state land-use programs: (1) siting state facilities; (2) designating areas of critical state concern; and (3) regulating developments of regional impact (DRIs). Chapter 5 provides two alternatives to DRIs—one local and one regional.

Siting State Facilities

States construct, operate, and expand many different types of state facilities. These state facilities include courthouses, office buildings, museums, and other facilities, which are often welcomed into communities. Other state facilities, such as waste treatment plants, landfills, and group homes, are generally not welcomed.

State Land-Use Control

1. Siting state facilities (5-I01 – 5-II0)
2. Designating areas of critical state concern (5-201 – 5-214)
3. Regulating developments of regional impact (DRIs) (5-301 – 5-315)
 - Local
 - Regional



What is a State Facility?

For a definition, see “Types of State Facilities” in Chapter 5. State facilities can be:

- * noncontroversial,
- * sometimes controversial, or
- * controversial.

Why Are State Land-Use Controls Needed for State Facilities?

- * Locally Unwanted Land Uses (LULUs)
- * Not In My Backyard (NIMBY)
- * Environmental justice

Community opposition can frustrate the process of siting state facilities because of their unpleasant characteristics or potentially dangerous environmental effects. Undesirable and controversial state facilities are usually sited in communities where residents did not have the political power to stop their siting.

The state facility siting statute addresses the need to achieve an “equitable” distribution of undesirable state facilities, compensate those who have to coexist with them, and capture some of the economic windfall that is created by siting desirable state facilities. In short, the statute introduces several notions of “fairness” into state processes for siting facilities.

Chapter 5 discusses innovative approaches to the siting of state facilities. It provides a model state facilities siting act (5-101 – 5-110). The model legislation seeks to provide uniformity among decisions of state agencies with regard to siting, expanding, or closing state facilities. It seeks also to balance local considerations with regional and state needs, and it ensures public participation in the state facility siting process.

The model legislation is based on New York City’s fair-share siting process. For information on how New York’s fair-share program works, see the Note following discussion of developments of regional impact (DRIs) at the end of Chapter 4.

❖ **Interrelationships:** State agencies are involved in siting processes, through the establishment of rules. The state agency responsible for developing state facility siting rules may differ from state to state (see Table 4-2 and the section

“How to Organize for State Planning”). The criteria for decisions about state facility siting by state agencies may need

Approaches to Siting State Facilities:

- * *Point systems*
- * *Lotteries*
- * *Auctions*
- * *Fair-share processes*

to be included in or guided by state agency coordination plans (see the management model described in Table 4-I). As applicable, the state comprehensive plan, land development plan, or functional plans (see Chapter 4) should make reference to state facility siting criteria and processes as well as any adopted state facilities maps. Funding for state facilities should be done prior to their siting, rather than before them—states should formally adopt a state capital improvement program. For guidance on how to do that, see “State Capital Budget and Capital Improvement Program” (Chapter 4, 4-30I et seq.).

Areas of Critical State Concern

Each state has sensitive environmental areas that may require state regulation. Designating an area of critical state concern is a type of state land-use control that identifies public and private lands that are important to the environmental health of the state. Such controls seek to minimize the effects of development and public investment on environmentally sensitive lands or areas where natural, historic, or archaeological resources deserve protection. Local governments may not always have the technical capability or resources to control the complex consequences of development in critical areas.

Notions of Fairness

State facility siting should be:

- * *fair in the pattern of distribution;*
- * *fair in the efficiency of distribution;*
- * *fair in the procedures used to determine the distribution;*
- * *fair in the award of benefits and compensation; and*
- * *fair in implementing design standards.*

States may protect areas of critical state concern in one of two ways: statewide, or through ad hoc special programs directed at certain areas of the state. Several states have adopted critical area programs based on the American Law Institute's *Model Land Development Code* (1976). For a discussion of various approaches to areas of critical state concern, see Chapter 5.

Chapter 5 provides a model for the designation of areas of critical state concern (5-201 -5-214).

❖ **Interrelationships:** States that adopt an area of critical state concern program must first prepare and adopt a state land development plan (see “State Plans” in Chapter 4). For information on how to organize to regulate areas of critical state concern, see “Organizing for State Planning” (4-101). Regional planning agencies may also be provided with roles in the area of critical state concern designation process (see generally Chapter 6).

Developments of Regional Impact (DRIs)

Developments of regional impact statutes provide for or require a special review process for development proposals that have mutijurisdictional impacts. DRI processes are guided by review criteria established by rules of a state agency. Chapter 5 describes what a DRI is and how it has been implemented in Florida.

The model act for DRIs (5-301 – 5-314) provides two alternatives for reviewing DRIs: local government and regional planning agency. The model statute also includes provisions for enforcement, amendments, development agreements, and appeals.

❖ **Interrelationships:** A state planning agency is needed to adopt rules regarding developments of regional impact (see “Organizing for State Planning” (4-101) in Chapter 4). Alternatively, a regional agency may be the primary reviewing and permitting authority for DRIs (see generally Chapter 6). DRI programs may be referenced in or guided by a state comprehensive plan, state land development plan, or state functional plans (see “State Plans” and Table 4-3 in Chapter 4).

Approaches to Critical Area Protection

Comprehensive statewide system (e.g., Florida)

“Ad hoc” approach (e.g., New Jersey Pinelands, or the Virginia and Maryland Chesapeake Bay programs)

Example Approaches:

- * *Florida*
- * *Cape Cod Commission (Massachusetts)*
- * *Vermont*
- * *Metropolitan Council of the Twin Cities*



Chapter 6:

Regional Planning

Regional planning is planning for an area larger than the boundary of an individual local governmental unit—an area that has common social, economic, political, natural resource, or transportation characteristics. States establish regional planning programs for several reasons, as noted in the sidebar.

Chapter 6 provides a full range of alternatives for forming and organizing regional planning agencies and preparing and adopting regional plans. A model statute for designating a substate regional planning agency is provided. A special feature of this chapter is model language for the designation of regional urban growth areas (also known as urban growth boundaries) for incorporation into local comprehensive plans. Chapter 6 also includes model legislation for agreements between regional planning agencies and other governmental units.

Chapter 6 covers six major topics as shown in the sidebar. In addition, it provides notes on “weighted voting procedures,” “urban growth areas and regional planning,” and “existing regional plans.”

Organizational Structure

There are at least five possible structures for regional planning agencies. There is no ideal form for a regional planning agency. The regional planning agency may be mandated or voluntary. The structure may be determined by member governments, appointees of the governor, and/or state agency representatives.

Alternative I of the model statute in Chapter 6 (6-I01) provides for the voluntary creation of a regional planning agency. Section 6-I01 also discusses interstate regional planning compacts. The model statute also provides alternatives for the composition of regional planning agencies (6-I02). Commentaries focus on voting (6-I03), rulemaking (6-I05), and powers and duties of regional planning agencies (6-I07).

Chapter Outline, Regional Planning

- *Organizational Structure (6-101 – 6-108)*
- *Plan Preparation (6-201 – 6-204)*
- *Procedures for Plan Review and Adoption (6-301 – 6-305)*
- *Relationships and Agreement with Other Levels of Government (6-401 – 6-403)*
- *Miscellaneous Provisions (6-501 – 6-503)*
- *Designation of Regional Planning Agency as Substate District Organization (6-601 – 6-604)*

Why Should Regional Planning Be Encouraged or Required?

- * *Develop regional plans to guide, direct, or coordinate local planning*
- * *Articulate local interests and perspectives to other governments*
- * *Maintain a forum for exploring and resolving intergovernmental issues*
- * *Provide technical assistance to local governments*

Five Possible Approaches:

1. *Regional planning commission*
2. *Council of governments*
3. *Regional advisory committee*
4. *Regional allocation agency*
5. *Special purpose regional agency*

Should Urban Growth Areas Be Established?

For pros and cons, see Table 6-I in the *Legislative Guidebook*.

Regional Plan Preparation

A regional comprehensive plan provides a framework for local comprehensive planning. There are two approaches to preparing regional comprehensive plans. See 6-201.

Beyond these two general alternatives, there are several variations of regional plans in practice, including examples provided in the sidebar. For more information, see “A Note on existing Regional Plans” at the end of Chapter 6.

In addition to comprehensive plans, regional planning agencies may also prepare regional functional plans for transportation, parks and open space, water supply, sanitary sewerage, and other facilities. Chapter 6 provides a generic statute (6-202) for all types of functional plans rather than drafting model legislation specific to each regional planning function, except for specific models and commentary for regional housing plans (6-203) and regional transportation plans (6-204).

❖ **Interrelationships:** The relationship of any regional comprehensive plans or regional functional plans to state plans (see, generally, Chapter 4) and local plans (see, generally, Chapter 7) should be clear.

Urban Growth Areas

Urban growth areas are a regional land-use planning tool used to influence the spatial structure or pattern of development within a region and communities within it. Urban growth areas exist in Oregon, Washington, Maine, and Tennessee, and in selected local jurisdictions and regions in other states.

Chapter 6 recognizes the debate over the costs and benefits of designating urban growth areas. An optional statute (6-201.I) is provided. In addition, Chapter 6 provides a detailed note on urban growth areas and regional planning. Both alternatives require that a regional comprehensive plan be prepared prior to designation of an urban growth area.

❖ **Interrelationships:** If established, a regional urban growth area boundary must provide and maintain a land market monitoring system (see Chapter 7) and be periodically reviewed to ensure an adequate supply of buildable land is provided within the regional urban growth area boundary. (See “A Note on Urban Growth Areas and Regional Planning” for an example of how to calculate future land

Alternatives for Regional Comprehensive Plans:

- * *Advisory document*
- * *Document to integrate state, regional and local interests*

Existing Types of Regional Plans:

- * *Strategic regional policy plan (e.g., Florida)*
- * *Framework plan (e.g., Portland, Oregon Metro)*
- * *Regional growth management strategy (e.g., San Diego Association of Governments)*
- * *Land master plan (e.g., New York’s Adirondack Park Agency Act)*

Regional Functional Plans:

- * *Generic model (6-202)*
- * *Housing (6-203)*
- * *Transportation (6-204)*

needs.) If a state land development plan exists (see 4-204) and it includes criteria for establishing an urban growth area, the regional comprehensive plan must incorporate those standards and criteria. State statutes that provide for urban growth area designations should see the model statutory language and commentary on “Appeal of Determination Regarding Urban Growth Area Designation” (7-402.3).

Procedures for Plan Review and Adoption

Chapter 6 provides commentary and alternatives for the review and adoption regional plans. Alternatives include a simple and a detailed procedure for workshops and public hearings (6-301). Unlike state plans, options for adopting regional plans are limited. The model statute provides for adoption by the regional planning agency (6-303), certification of regional plans (6-304), and adoption by other governments (6-305).

❖ **Interrelationships:** The guidance in this Chapter is a parallel to procedures for reviewing and adopting state plans (Section 4-209). Conflicts between state, regional, and local plans need resolution (Sections 7-402.1 to 7-402.5).

Types of Agreements:

- * *Planning and Coordination*
- * *Urban service (6-403)*

Relationships and Agreements with Other Units of Government

A regional comprehensive plan or regional functional plan must be clear regarding its status vis-à-vis local governments, special districts, and state agencies (6-401).

Model legislation provided in 6-402 authorizes regional planning agencies to enter into written agreements with other government units as a means of implementing regional comprehensive or functional plans.

Regional Plan Procedures:

- * *Workshops and Public Hearings (6-301)*
- * *Adoption by Regional Planning Agency (6-303)*
- * *Certification (6-304)*
- * *Adoption by Other Governments (6-305)*

Miscellaneous Provisions

Unless membership by a local government in a regional planning agency is mandatory, there will be a need to address withdrawal by a local government from the regional planning agency (6-501) and dissolution of the regional planning agency (6-503). The model statute also provides a provision for state aid to regional planning agencies (6-502).

Designation of Regional Planning Agency as Substate District Organization

This part provides a model statute that includes provisions on how to delineate districts (6-601), designation of substate district organizations (6-602), state agency use of substate district boundaries (6-603) and the effect of such substate district organization (6-604). Regional planning agencies are already established for purposes of regional transportation planning (i.e., “metropolitan planning organizations” or “MPOs”) (see Commentary, Preparation of Regional Transportation Plan.)

Chapter 7:

Local Planning

Statutes should prescribe the substantive contents of plans.

—Growing SmartSM Statement of Philosophy No. 5

The benefits of local planning are widely recognized (see sidebar). Some states provide guidance to local governments on how to organize local planning agencies and commissions. Some states find the need to improve the quality of local comprehensive plans by specifying elements that must be included. In addition, states may mandate local plans to ensure that statewide policies are carried out.

Chapter 7 provides model legislation for planning at the local level of government. The organization of Chapter 7 is similar to Chapter 6 on Regional Planning (see sidebar). It describes organizational structure for local government planning, preparation of plans, elements of local comprehensive plans, and implementation and monitoring efforts.

Chapter 7 also provides “notes” on neighborhood plans and comprehensive planning requirements in state statutes. Commentaries are provided for many different sections of this chapter.

Why Should Local Planning Be Required or Encouraged?

- * *Draws attention to local issues and opportunities*
- * *Provides a “big picture” view of the community*
- * *Provides a direct and efficient way to involve the public in determining the community’s future*
- * *Provides goals and policies that guide local regulations and public improvements*
- * *Provides information to guide private development proposals*
- * *Encourages predictability and consistency in governmental action*

Chapter Outline:

- ▶ *Organizational Structure (7-101 – 7-110)*
- ▶ *Plan Preparation (7-201 – 7-202)*
- ▶ *Local Comprehensive Plan Elements*
 - Required Local Plan Elements (7-203 – 7-211)*
 - Optional Elements (7-212 – 7-216)*
 - Subplans (7-301– 7-304)*
- ▶ *Procedures for Plan Review, Adoption, and Amendment (7-401 – 7-406)*
- ▶ *Implementation; Agreements with Other Government and Nonprofit Organizations (7-501 – 7-504)*

Organizational Structure

This section of Chapter 7 describes how to organize local planning functions and set forth the powers of local planning agencies and provides alternatives for structuring local planning commissions. It also provides guidance on how to organize for neighborhood planning.

Local governments should be given as much flexibility as possible in structuring local planning functions. There are at least four alternatives for voluntary local planning functions. Plan preparation, whether or not it is mandated by the state, may be overseen by a planning commission, a task force of the planning commission, or by an advisory group appointed by the legislative body. Instead of (or in addition to) jurisdictionwide planning functions, a state statute may provide for neighborhood planning councils (7-109) or the recognition of neighborhood or community organizations (7-110).

The most common organization for local planning is the local planning commission. Although the *Guidebook* presents the formation of a local planning commission as optional, the state statute should require that local planning commissions be created. The *Guidebook* provides alternative model language for establishment (7-105) and powers and duties (7-106) of local planning commissions.

To support the local planning commission or other appointed local planning organization, a local planning agency is needed to carry out local planning functions. The *Guidebook* provides model language describing powers and duties of local planning agencies (7-103) and giving them authority to adopt procedural rules (7-104). Annual reports may be required by either the local planning agency or commission (7-107).

Local Plan Preparation

This section of Chapter 7 describes local comprehensive plan contents; some elements are mandatory, and others are optional. It also describes subplans focused on specific areas like neighborhoods, transit stops, and redevelopment areas.

State statutes can provide for local comprehensive planning as an optional activity, or they can require that local comprehensive plans be prepared.

The Growing SmartSM Directorate prefers that state statutes require local planning commissions, but they are optional.

How Can Local Planning Be Organized?

- * Local Planning Commission (7-105 and 7-106)
- * Advisory Task Force
- * Neighborhood Planning Council (7-109)
- * Neighborhood and Community Organization Recognition (7-110)

Functions of Local Planning Agencies:

- * Staff support to appointed commission (7-103)
- * Rulemaking procedures (7-104)
- * Education and training of planning commission (or other appointed board members) (7-105)

Types of Local Plans:

- * Comprehensive plans (see “The Local Comprehensive Plan”)
- * Subarea plans (see “Subplans”)

For pros and cons on whether to mandate local comprehensive planning, see Table 7-4 in the *Legislative Guidebook*.

❖ **Interrelationships:** as an alternative to requiring local comprehensive planning, some states elect to induce local (or regional) planning by withholding grant funds from local governments that have not prepared plans. See “Commentary: Financial Incentive to Prepare New Plans” later in Chapter 7.

Local comprehensive plans can serve as advisory documents only, or they may be documents designed to integrate state, regional, and local interests (7-201). The state statute should provide guidance to the content of local comprehensive plans, and it may specify which elements are “mandatory” and which are “optional” (7-202).

➔ **Note:** See “A Note on Comprehensive Planning Requirements in State Statutes” at the end of Chapter 7 for an overview of state approaches.

The model local planning statute provides for the following local planning elements:

- Issues and opportunities (7-203)
- Land use (7-204)
- Transportation (7-205)
- Community facilities (7-206)
- Telecommunications (7-207)
- Housing (7-207)
- Economic development (7-208)
- Critical and sensitive areas (7-209)
- Natural hazards (7-210)
- Program of implementation (7-211)
- Agriculture, forest, and scenic preservation (7-212)
- Human services (7-213)
- Community design (7-214)
- Historic preservation (7-215)



❖ **Interrelationships:** This section also provides commentary on monitoring land markets (see 7-204.I, “Land Market Monitoring System”), which must be required if urban growth areas have been designated pursuant to Section 6-201.I.

Chapter 7 also provides commentary and statutory language for three types of subplans (see sidebar.)

➔ **Note:** For additional information on neighborhood planning, see “A Note on Neighborhood Plans” following the section in Chapter 7 titled “Implementation; Agreements with Other Government and Nonprofit Organizations.”

Types of Local Comprehensive Plan Elements:

- * *Mandatory (see “Required Elements”)*
- * *Optional (see “Optional Elements”)*

Subplans:

- * *Neighborhood (7-301)*
- * *Transit-oriented development (7-302)*
- * *Redevelopment area (7-303)*

Procedures for Local Plan Review, Adoption, and Amendment

This part of Chapter 7 sets forth procedures for plan review, adoption, and amendment. An optional process for state review and approval of local comprehensive plans is also provided. A public collaborative process in plan making is offered as an alternative to the “single public hearing” approach advocated in previous statutory models for local planning.

Planning statutes must do more to recognize and encourage, and perhaps even mandate, greater community involvement in local comprehensive planning. Several states require public participation in the development of local comprehensive plans (see sidebar). Techniques for public participation are left to the local government, but the model statute requires local governments to adopt written procedures for public participation (7-401).

The model statute provides for an appeal of a local adoption of a comprehensive plan to a comprehensive plan appeals board (7-402.I), which provides a means of hearing disputes over decisions made under planning statutes. State court systems are not the preferred appellate jurisdiction.

There are numerous reasons why a local government’s comprehensive plan should be reviewed at a broader level of government (see sidebar). Requiring state or regional review of a local comprehensive plan does not necessarily mean that a local comprehensive plan is required—that is, a statute can provide that if a local plan is prepared, it must be reviewed by a higher level (i.e., state or region). A bad plan can be worse than no plan at all under certain circumstances. For model language, see 7-402.2.

State statutes can provide guidance on procedural matters for adoption of local comprehensive plans and subsequent tasks. The model statute addresses the status and change of local comprehensive plans, once adopted (see sidebar).

Statutes should expressly provide for citizen involvement.

—Growing SmartSM Statement of Philosophy No. 5

States with Mandatory Public Participation in Local Comprehensive Planning:

- * *Maine*
- * *Florida*
- * *Oregon*
- * *Washington*

States with Comprehensive Plan Appeals Boards:

- * *Rhode Island*
- * *Florida*
- * *Washington*

Statutes should provide for planning that goes beyond the shaping and guidance of physical development.

—Growing SmartSM Statement of Philosophy No. 2

Implementation; Agreements with Other Government and Nonprofit Organizations

This portion of Chapter 7 describes measures to implement the comprehensive plan. Corridor mapping is offered as a more viable alternative than the old “official map” tool in avoiding problems of takings. Local capital budgeting is also described. This section also provides model agreements between local governments and other governments and nongovernmental organizations that have responsibilities for implementing local comprehensive plans. Finally, this section shows how benchmarking systems can be used to measure and track performance in achieving goals of local plans.

❖ **Interrelationships:** The *Legislative Guidebook* has explicitly included neighborhood organizations as potential parties to implementation agreements because of their quasi-governmental nature and their potential for bringing grass-roots perspectives and action to plan implementation.



Local Comprehensive Plans Should Be Reviewed By Higher Authority Because They Must:

- * *comply with all legal requirements;*
- * *be consistent with themselves internally;*
- * *be consistent with other local, regional, or state plans;*
- * *provide substantive direction; and*
- * *be “good” (i.e., sound and feasible, not ill-advised and faulty.)*

Additional Provisions Regarding Local Comprehensive Plans:

- * *Adoption (7-403)*
- * *Certification and filing (7-404)*
- * *Amendment (7-405)*
- * *Periodic review (7-406)*

Local Comprehensive Plan Implementation and Monitoring Tools:

- * *Corridor map (7-501)*
- * *Capital improvement program and budget (7-502)*
- * *Implementation agreements (7-503)*
- * *Benchmarks (7-504)*

Chapter 8:

Local Land Development Regulation

Statutes should allow flexibility in administration.

—Growing SmartSM Statement of Philosophy No. 10

State statutes should provide broad authorization for a wide variety of local land development regulations because local land-use regulation needs to be based on adequate enabling legislation. For model language that authorizes a broad array of local development regulations, see 8-102. For relevant definitions, see 8-101.

Topics covered in this chapter include zoning, subdivision, planned unit development (PUD), uniform development standards, exactions, development impact fees, vesting, nonconforming uses, and development agreements, among others.

❖ **Interrelationships:** Chapter 8 is intended to be used in conjunction with Chapter 9, 10, and 11.

General Provisions

Local land development regulations must be adopted and amended in accordance with procedures that ensure due process. Recommended procedures are shown in the sidebar.

The model statute is based on the principle that local comprehensive plans should be implemented through the local regulatory framework. This is known as the consistency doctrine—zoning and land-use regulations must be consistent with and implement the comprehensive plan. Numerous state statutes require consistency between local regulations and local comprehensive plans.

Why Consistency?

The local comprehensive plan is not simply a rhetorical expression of a community's desires. It is instead a document that describes public policies a local government actually intends to carry out. If it were otherwise, why bother to complete and adopt one? (8-104)

Purposes of Land Development Regulations:

- * *Implement comprehensive plans*
- * *Have regard for state interests*
- * *Promote public health, safety, morals, and general welfare (8-102)*

Aspects of the Model Statute Regarding Due Process:

- * *Allow property owners to initiate amendments*
- * *Review and recommendation by a local planning commission (if one exists)*
- * *At least one public hearing*
- * *Notice of public hearing via advertisement, mail to adjacent property owners, and a sign on the property affected (8-103)*

Local governments share land-use authority with other levels of government. In some cases, local governments cannot exercise certain land-use controls because the state or federal government already regulates that activity (i.e., “preemption” of local action by the state or federal government). State statutes need to address the relationships of local land development regulations with state and federal programs, rules, and laws. The model statute provides commentary and language for specifying those relationships.

One issue that should be addressed by state statutes is whether the state and its agencies are required to follow local land development regulations. Similarly, questions will arise as to whether counties and special districts must follow the regulations of cities, and whether public utilities are subject to local land-use regulations. Most state statutes are silent on these topics. The model statute provides four alternatives, as shown in the sidebar (8-106).

Local land-use regulations should be periodically and systematically updated. The model statute proposes that local governments conduct a general review of their land development regulations at least once every five to ten years (8-107).

Zoning Ordinance

The model statute provides that local governments “may” adopt and amend zoning ordinances, but it does not require a zoning ordinance. If a zoning ordinance is adopted, it should have a statement of consistency with the local comprehensive plan. State statutes should specify the basic structure of local zoning ordinances. Local governments may elect to add other special provisions, such as transfer of development rights, as their needs change (8-201).

What is Site Plan Review?

“Site plan review” refers to the local examination of certain land development proposals by the local government to see if the proposal fits with the characteristics of the site itself.

Why Should the Statute Address State and Federal Land Use Laws?

- * *Other programs and plans should be taken into consideration locally*
- * *Local actions may be prohibited by state or federal law (i.e., preemption)*
- * *Likelihood of poor coordination (8-105)*

Alternatives for Addressing Application of Local Land-Use Regulations to Federal and State Actions:

- 1. Federal government lands are exempt, state and other public agencies not exempt if a local plan is certified by the state*
- 2. Federal government lands are exempt, but there are no exemptions for state lands*
- 3. Federal and state lands are exempt entirely from local regulation, but special districts and school districts must comply*
- 4. Federal and state lands are exempt, but certain development proposals are subject to a non-binding public hearing (8-106)*

Why Should the State Require Local Land Use Regulations to Be Periodically Updated?

- * *Patchwork amendments make the regulations hard to understand*
- * *Parts don't fit together very well*
- * *Process becomes unpredictable*
- * *Federal and state case law can change (7-406)*

Review of Plats and Plans

A subdivision ordinance is a land development regulation that governs the division of land into two or more lots. Because a subdivision ordinance affects the lot configuration and street pattern, it is often thought to have more influence on urban form and is more permanent (or less easily changed) than zoning. The model statute requires local adoption of subdivision ordinances as a basic regulatory tool (8-301).

A number of states have statutes that expressly authorize site plan review. The model statute gives local governments authority to allow site plan review for nonresidential and multifamily residential uses that are permitted as of right, whether or not they require subdivision (8-302).

Planned unit developments (PUDs) are an innovative and flexible response to the rigid nature of conventional zoning regulations. State statutes should provide a legal basis for local governments to adopt PUDs. The model statute authorizes local governments to adopt PUD ordinances, but only if a local comprehensive plan is adopted first (8-303). Traditional neighborhood development standards may also be incorporated into a PUD ordinance.

Uniform Development Standards

Development standards are the provisions in various local land development regulations that prescribe the engineering and technical specifications for improvements, such as streets, sidewalks, sewer, and water lines, drainage, and placement of utilities. The model statute provides alternative procedures for preparing, adopting, and implementing uniform standards (8-401).

Why Are Uniform Development Standards Needed?

- * Small local governments don't have resources to prepare them.
- * Standards may be excessive or burdensome in their cost and application; uniform standards can relieve such burdens.
- * Public participation in preparing them may be limited. (Commentary, 8-401)

Who Reviews and Approves Subdivisions of Land?

The model statute does not specify who should review and approve subdivisions of land. Possible alternatives include:

- * the planning commission
- * the legislative body
- * the regional planning commission

(see "Who Reviews Subdivisions" in Chapter 8)

Purposes of Planned Unit Development Ordinances:

- * Allow traditional neighborhood development and cluster development
- * Permit flexibility and innovation in design
- * Mix land uses, housing types, and densities
- * Provide for efficient use of public facilities



Development Rights and Privileges

At some point in the development process, a developer secures the legal right to proceed under existing local land development regulations, and the local government cannot require that particular development to comply with any new regulations. Exactly when in the process a developer's rights become "vested" (i.e., at what time a permit or process triggers the entitlement) varies from state to state. Section 8-50I provides two alternative model vested rights statutes.

Most state statutes extend some degree of protection to nonconforming uses. See "Commentary: Regulation of Nonconforming Uses" following Section 8-50I. Eight states expressly allow for the amortization or phasing out of nonconforming uses. See 8-502 for model statutory language for the regulation of nonconformities and amortization.

Which States Have Vested Rights Statutes?

Arizona, California, Colorado, Florida, Kansas, Massachusetts, New Jersey, North Carolina, Oregon, Pennsylvania, Texas, and Virginia (8-50I).

What Are Nonconforming Uses, and Can They Be "Amortized"?

A nonconforming use is any land use that lawfully existed before a local regulation and does not meet that local regulation but is allowed to continue. In popular terms, this is called a "grandfather" clause. "Amortization," or the required phasing out of a use over time, is difficult in practice (8-502).

Exactions, Impact Fees, and Sequencing of Development

"Improvements" are on-site facilities that a developer installs to serve residents of the development itself. Improvement requirements are integral to subdivision, site plan review, and planned unit development ordinances. An "exaction" is a requirement that a developer provide certain improvements or pay a fee to cover the expense of a local government providing off-site infrastructure improvements. Section 8-60I authorizes local governments to require developers to provide certain necessary on-site improvements.

An impact fee statute authorizes local governments to assess fees on new development to defray or compensate for local government expenditures for new infrastructure that serves that development. Impact fees are authorized under 8-602. The commentary on development impact fees addresses the pros and cons and legal considerations. It also summarizes development impact fee statutes in 16 states and derives several "elements of a good impact fee statute" (see sidebar for examples).

A concurrency management or adequate public facilities ordinance conditions development approval on the availability of public facilities being available and adequacy at the time (or shortly after) development is approved. The *Legislative Guidebook* provides a model statute authorizing concurrency (8-603).

A moratorium is an authorized delay in the provision of government services or development approval. The *Legislative Guidebook* summarizes statutes on moratoria and relevant court cases, and provides a model statute (8-604) that can be adopted for alternative purposes.

Subsection Outline:

- * *Development Improvements and Exactions (8-601)*
- * *Development Impact Fees (8-602)*
- * *Concurrency or Adequate Public Facilities; Development Timing (8-603)*
- * *Moratorium on Issuance of Development Permits for a Definite Term (8-604)*

Selected Elements of a Good Impact Fee Statute:

- * *A local comprehensive plan and a capital improvement program is required.*
- * *Fee charged has rational nexus to impact and to developer benefits.*
- * *Fees cannot be imposed to address existing infrastructure deficiencies.*

(For others, see “Elements of a Good Impact Fee Statute” preceding 8-602)

Why Should States Authorize Local Moratoria?

- * *Avoid a rush of development applications before a local government can adopt or amend its comprehensive plan or development regulations*
- * *Inadequacy or lack of capacity in public facilities needed to serve new development*
- * *Other compelling health and safety reasons (8-604)*

Development Agreements

A development agreement is a statutorily authorized, negotiated agreement between a local government and a private developer. It provides some flexibility from existing development regulations and provides the developer with assurance of the right to develop a complex project over a long period of time, in exchange for providing additional infrastructure or agreeing to complete other actions. For commentary and a model statute, see 8-701.

Which States Authorize Development Agreements?

- * *Arizona*
- * *California*
- * *Florida*
- * *Hawaii*
- * *Idaho*
- * *Maryland*
- * *Nevada*
- * *South Carolina (8-701)*

What States Require or Authorize Concurrency?

Required: Florida and Washington

Authorized: Maryland and New Hampshire

Chapter 9:

Special and Environmental Land Development Regulations and Land-Use Incentives

Chapter 9 moves beyond the basic toolkit of local land development regulations to provide models of more specialized techniques, particularly those involving management of natural resources and the environment.

The first three sections of the model statutes are intended to implement particular elements of local comprehensive plans. The second group of statutes provide flexible tools for balancing the need to protect the environment with rights of property owners. The third part of this Chapter provides density and intensity incentives for affordable housing, good community design, and open space donation.

Regulation of Areas Constituting Natural Hazards and Critical and Sensitive Areas

Local governments need authorization to regulate critical, sensitive, and natural hazards areas. For commentary and a model statute, see 9-101.

▲ **Caution:** Local government regulations cannot conflict with, and may be preempted by, state or federal laws. Authorizations for local regulations of development within critical, sensitive, and natural hazards areas must therefore take into account federal and state statutes.

❖ **Interrelationships:** Local governments need to adopt comprehensive plan elements that provide the analytical support needed to regulate development within critical, sensitive, and natural hazards areas. See Chapter 7 for relevant

definitions (7-101) and local plan elements (7-209 and 7-210) that support these types of local land development regulations.

Trip Reduction/Transportation Demand Management Regulation

Transportation demand management (TDM) is a term used to describe a set of measures, which may include both incentives and regulations, designed to influence individual travel behavior. There are numerous benefits that can accrue from implementing TDM programs (see sidebar). TDM helps to reduce the number of vehicle trips taken, especially during peak time periods, and the numbers of persons that drive alone. For commentary and a model statute, see 9-201.

Chapter Outline:

- ▶ *Regulation of Areas Constituting Natural Hazards and Critical and Sensitive Areas (9-101)*
- ▶ *Trip Reduction/Transportation Demand Management Regulation (9-201)*
- ▶ *Historic Districts and Landmarks; Design Review (9-301)*
- ▶ *Transfer of Development Rights (9-401)*
- ▶ *Purchase of Development Rights (9-402)*
- ▶ *Conservation Easements (9-402.1)*
- ▶ *Mitigation (9-403)*
- ▶ *Land-Use Incentives for Affordable Housing, Community Design, and Open Space Dedication; Unified Incentives Ordinance (9-501)*

Critical, Sensitive, and Natural Hazard Areas:

- * *Watersheds*
- * *Drinking water wells*
- * *Wetlands*
- * *Floodplains*

Transfer of Development Rights is Used to Protect:

- * *open space or ecologically sensitive areas;*
- * *agricultural or forest uses; and*
- * *historic landmarks.*

Historic Districts and Landmarks; Design Review

Historic preservation and design review ordinances seek to preserve the existing character of structures, sites, or districts in a community. Design review ordinances promote community character by ensuring that a certain architectural style or styles are used. Aesthetics alone may, in some states, be considered sufficient grounds to justify such local regulations. For commentary and a model statute, see 9-30I.

Transfer of Development Rights

Transfer of development rights (TDR) is a local regulation designed to preserve land in an undeveloped or less-developed state in exchange for higher densities or more intensive uses elsewhere. At least ten states have adopted TDR enabling statutes. TDR is most often used for one of three major public purposes (see sidebar). For commentary and a model statute, see 9-40I.

Why Do States Need to Authorize Conservation Easements?

Conservation easements do not necessarily require a state enabling statute. In many states, however, there is uncertainty about the formation, enforceability, and assignability of conservation easements. Therefore, many states have addressed these issues with a statute authorizing conservation easements.

Purchase of Development Rights; Conservation Easements

Local governments with resources to do so may decide to buy certain development rights rather than limit or transfer them. Several states have statutes that expressly authorize the purchase of development rights for purposes of preserving resources (see sidebar for TDR, above). The tool by which a local government (and others) can purchase just the development rights it wishes, while leaving title in the owner's private hands, is the conservation easement. A conservation easement can prohibit all future development, or it can specify particular development activities that are prohibited. It can also include positive duties, such as maintaining a building in good repair. For commentary and models, see 9-402 and 9-402.I.

Benefits of Transportation Demand Management:

- * *Relieve traffic congestion*
- * *Diminish air pollution*
- * *Reduce fossil fuel consumption*
- * *Reduce injuries, fatalities, and property damage*

Why Should Mitigation Be Authorized by States?

There may be no practicable alternative to developing in wetlands. When mitigation requires equal quality and quantity of habitat, it can give developers options that would not otherwise exist.



Mitigation

As an alternative to prohibiting development within critical and sensitive areas, such as wetlands, local governments may require the developer to “mitigate” losses of critical and sensitive areas. This is often done through requirements to create, restore, or set aside equal amounts of critical and sensitive areas on site or off site. The development and mitigation of wetlands is already regulated by federal statutes and regulations. Almost half of the states have their own statutes requiring a permit for development in wetlands. Section 9-403 of the model statute authorizes local governments to enact ordinances creating mitigation programs.

❖ **Interrelationships:** A critical and sensitive areas element of a local comprehensive plan must be in place before a mitigation ordinance may be adopted. See 7-209.

Land-Use Incentives

Incentive zoning is a system by which specific incentives or bonuses are granted to a developer on condition that certain physical, social, or cultural benefits or amenities will be provided to the community.

There are a variety of incentives (see sidebar) that can be used to achieve community objectives such as smart growth, efficient use of land, infill development, and compact building forms. For commentary and a model statute, see 9-501.

Land-Use Incentives May Be Provided for:

- * *good urban design,*
- * *affordable housing, and*
- * *open space dedication.*

Illustrative Incentives:

- * *Added density or intensity (bonuses)*
- * *Modification of height, setback, and other controls*
- * *Waivers of requirements or fees*

Chapter 10:

Administrative and Judicial Review of Land-Use Decisions

Local land development regulations are applied through an administrative process that has (or should have) a beginning, middle, and end. State statutes should guide the procedures for review of development permit applications by local governments because local development permitting procedures might otherwise be fundamentally unfair or cause undue delays. States should use Chapter 10 to improve the fairness and timing of local development permitting processes. The model statute provides procedures for all types of land-use decisions that should be used by all review boards, including the local legislative body, planning commission, or any other review or appeals board.

Conditional uses (10-502) and variances (10-503) are two local processes that were not discussed in Chapter 8, but that need to be guided by state statute. A third process unique to the model code is a “mediated agreement” (10-504).

Disputes can and will arise between developers and local governments over development decisions. Judicial review of land-use decisions (i.e., provision for appeals) must be provided to address disputes about treatment and outcomes during administrative permitting processes. Review of decisions may take the form of a Hearing Examiner or a Land-Use Review Board.

General Provisions

For definitions of terms used in Chapter 10, see 10-101. The purposes of the various model statutes provided in Chapter 10 are described in 10-102.

Chapter Outline:

- ▶ *General Provisions (10-101 – 10-103)*
- ▶ *Unified Development Permit Review Process for Land-Use Decisions (10-201 – 10-211)*
- ▶ *Hearing Examiners (10-301 – 10-307)*
- ▶ *Land-use Review Board (10-401 – 10-405)*
- ▶ *Administrative Actions and Remedies (10-501 – 10-507)*
- ▶ *Judicial Review of Land-use Decisions (10-601 – 10-618)*

Unified Development Permit Review Process for Land-Use Decisions

For a model statute on development permits and a unified development permit review process, see Section 10-201. To be fair, development permit application processes must specify all information needed and criteria to determine when an application is complete (10-202; also see Commentary). A determination of completeness of the application must be made (10-203).

Processes Addressed in Chapter 10

- * *Development permit (10-201-10-211)*
- * *Conditional uses (10-502)*
- * *Variances (10-503)*
- * *Mediated agreement (10-504)*

The model statute is flexible in that it provides for the following options for development permitting processes (10-201) and appeals (10-209):

- Administrative review without a record hearing (10-204)
- Record hearing (for variances and quasi-judicial land-use decisions) (10-207).
- Record hearings require notice (10-205) according to specified methods (10-206).

The model statute does not make recommendations on which body should be responsible for record hearings, record appeals, and administrative reviews. The local government may choose any structure it prefers.

Local governments should be authorized to consolidate all permit review processes (rezoning, variance, conditional use, etc.) into one unified procedure (10-208). Combining procedures can be tricky, however, as some may be considered legislative while other processes are quasi-judicial; in such cases, combining the process would not be possible or advisable. To ensure that land-use decisions are not unduly delayed, time limits are specified, although the model statute provides an option in which a local government may set its own time limits (10-210). Local governments are authorized to charge a fee to recover the costs of reviewing and processing development permit applications and appeals (10-211).

Hearing Examiners

The model statute authorizes a local government to establish by ordinance a hearing examiner function (10-301). Local governments can choose the types of applications and duties assigned to the hearing examiner. The hearing examiner might be assigned functions that were previously assigned to the legislative body, planning commission, or administrative officer—the jurisdiction of the hearing examiner must be clearly specified (10-302). A hearing examiner must recuse himself from certain matters (10-303). Hearing examiners hold “record hearings” and make their decisions based on them (10-304), except in cases where a record hearing was already held by another board. In such cases, the hearing examiner’s decision must be based on that prior record (10-305). Decisions of the hearing examiner should be accessible to the public (10-308).

Who or What Body Approves Administrative Actions and Remedies? (Options)

- * *Legislative body*
- * *Planning commission*
- * *Hearing officer (10-301 – 10-308)*
- * *Land-use review board (10-401 – 10-404)*

Land-Use Review Board

Most zoning enabling statutes provide for a zoning board of adjustment or zoning board of appeals. As an option to such boards, the model statute (10-401) authorizes a Land-Use Review Board and provides for its organization and procedures (10-402) and powers (10-405). A local government may decide not to create a Land-Use Review Board. If it does, members may be compensated for their time and/or expenses (10-403). The model statute calls for mandatory training of review board members (10-404).

Administrative Actions and Remedies

This part of Chapter 10 addresses procedures (10-507) and requirements for variances and conditional uses. The model code is flexible in allowing choice of which officer or body has authority to approve administrative actions and remedies. Specific authority is granted by the model code (10-501) to whichever officer or body is designated.

The model statute authorizes the officer or designated body to approve conditional uses (10-502) and grant variances (10-503). The code authorizes an officer or body to refer a matter to the planning commission for review and recommendation (10-505). The model statute provides authority to make land-use decisions with conditions (10-506).

The model statute is more flexible than its predecessors because it does not assign specific functions to certain boards. A Land-Use Review Board is optional.

A Hearing Examiner's Action May Be:

- * *A recommendation only to another body, which has final decision*
- * *A final decision*

Judicial Review of Land-Use Decisions

The legal structure for the judicial review of land-use decisions varies widely from state to state. Past model statutes are incomplete and unclear in matters of judicial review. Important land-use disputes often cannot get to court. Chapter 10 provides extensive commentary on the methods, timing, scope, and approaches to judicial review.

The purposes of judicial review are set forth in Section 10-601 of the model statute. The statute is the exclusive method of judicial review for land-use decisions (10-602). Provisions for judicial review are provided in Section 10-603. A development applicant must exhaust all administrative remedies before proceeding to judicial review (10-604). There may still be an independent remedy via federal court jurisdiction, and the model code provides for that possibility (10-606). Petitions for judicial review must be filed and served in a timely manner (10-607) and contain the proper record (10-612).

The issue of who has standing to seek judicial review is a matter of choice for states, and the model statute provides alternatives for standing and intervention (10-607). Judicial review procedures should specify what is required in a land-use petition (10-608) and how hearings will proceed (10-609). The model statute requires “expedited” review, which is considered essential to avoid delays. A “stay of action” may be granted pending judicial review (10-611). Supplementing the record is an issue that is addressed in Section 10-613 of the model statute. “Discovery”—that is, the introduction of new information—when the record is supplemented should be strictly limited (10-614). The standards for granting relief to a petitioner should be clearly identified (10-615). Decision-making authority and the various options available during judicial review should be specified clearly (10-616). Judicial review may result in “definitive relief” (10-617) and should be clear on whether compensation for damages can be given (10-618).

Chapter II:

Enforcement of Land Development Regulations

Land development regulations, no matter how carefully crafted, are only as good as their enforcement. A local government rarely has to resort to enforcement. Nonetheless, local governments must be able to ensure compliance with land development regulations. There must be an enforcement procedure with remedies and penalties that will obtain compliance from violators. Local government should be expressly granted the general authority to enforce land development regulations (II-101).

Chapter II provides model statutes for enforcing local land development regulations. There are two types of procedures—administrative and judicial. The model statute stresses pursuing administrative remedies before resorting to judicial measures. It is unique in that it specifically provides for informal enforcement as an initial option. In cases where formal enforcement measures are required, the model language provides for official notice to alleged violators, procedures for issuing preliminary orders and conducting enforcement hearings, and methods for enforcing final orders. If administrative action is not successful, the local government can pursue judicial relief through civil and criminal proceedings that ensure compliance.

Most violations of local land development regulations occur more out of ignorance or negligence than intent. An informal enforcement method is the type procedure most often applied. Showing the violator that the enforcement agency is aware of the violation and then informing the violator of the alleged violation might attain compliance. If an informal enforcement procedure does not work, a formal administrative enforcement procedure may suffice (II-201 – II-204). Some violations of land development regulations may be so egregious or cumulative that immediate action is necessary. When violations—and violators—continue in the face of notices and warnings, formal enforcement procedures, administrative or judicial, must be commenced.

Chapter Outline:

General

- ▶ *Enforcement Generally (11-101)*
- ▶ *Adoption of Administrative Enforcement (11-102)*
- ▶ *Election of Procedures (11-103)*

Administrative Procedure

- ▶ *Enforcement Notice (11-201)*
- ▶ *Preliminary Order (11-202)*
- ▶ *Enforcement Hearing (11-203)*
- ▶ *Enforcement Order; Remedies and Penalties (11-204)*

Judicial Procedure

- ▶ *Civil Proceeding (11-301)*
- ▶ *Criminal Proceeding (11-302)*

Local governments are not required to establish an administrative enforcement process (II-201 – II-204), but the model statute provides for administrative proceedings as a first, formal step in enforcement procedures. It involves issuing an enforcement notice (II-201) and a preliminary order (II-202), followed by enforcement hearings (II-203) and issuance of an enforcement order (II-204).

Administrative proceedings will not always result in compliance. Even where administrative procedures are used, it may be necessary to enforce a resulting order in civil court using civil proceedings (II-301). Even if an administrative enforcement order is issued, it might be disobeyed by the person who has disobeyed local land development regulations. The model statute authorizes local governments to proceed directly with civil enforcement proceedings. Criminal proceedings (II-302) are a last resort, but yet they may be necessary in the most egregious enforcement cases.

Chapter 12:

Integrating State Environmental Policy Acts with Local Planning

Several states have environmental policy acts (SEPAs) that require an environmental review of certain types of proposed developments. Where state environmental policy acts exist, it is a challenge to integrate and coordinate their provisions with local comprehensive planning activities. Chapter 12 provides three approaches (see Table 12-1) and statutory alternatives (12-101) for evaluating the environmental effects of local comprehensive planning and problems of integrating SEPAs, where they exist, into local planning. Appendix B of this chapter provides a summary of SEPAs.



Alternatives for Melding Environmental and Local Planning Statutes:

- 1. Nonbinding evaluation of environmental impacts of the comprehensive plan by the local planning agency*
- 2. Binding environmental impact statement of the local comprehensive plan under SEPA*
- 3. Review of environmental impacts of individual land-use actions under SEPA*

Chapter 13:

Financing Required Planning

There are multiple activities involved in local planning, and they all cost money. State policy makers must consider whether state financial resources can be given to local governments. State funding is more important when local planning is required, rather than just encouraged. It may be desirable for the state to authorize a separate, dedicated, revenue stream for planning. Chapter 13 contains various model statutes that authorize methods of financing planning activities.

Sections 13-101 through 13-103 authorize local governments to adopt and impose taxes to finance planning (see sidebar). The model statute provides for depositing tax revenues into a special account and places limits on its expenditures (13-104).

This chapter also provides a Smart Growth Technical Assistance Act. The act (13-201) creates a state program under which grants may be made to regional planning agencies and local governments to support their “smart growth” planning activities. The state planning agency is directed to gather and distribute model plans and ordinances that encourage smart growth and to provide educational resources, training, and other technical assistance regarding the principles and methods of smart growth.



Financing Planning:

- * *Property tax (13-101)*
- * *Real property transfer tax (13-102)*
- * *Development excise tax (13-303)*

Chapter 14:

Tax Equity Devices and Tax Relief Programs

Chapter 14 discusses two alternative approaches used to address fiscal disparity, meaning the differences in revenue-raising capacity among local governments that are a product of the type of development that occurs. The two alternatives are regional tax-base sharing and interlocal agreements to create joint economic development zones. Redevelopment areas and agricultural districts are also addressed in this chapter. Chapter 14 concludes with summary of research on the relationship of elementary and secondary school finance to local planning and property taxation.

Section 14-301 provides a uniform but flexible framework for the redevelopment of areas that require financial assistance. For a model statute on tax increment financing (see explanation below), see 14-302. For a statute on tax abatement, see 14-303.

Redevelopment (14-301) involves development or improvement of an area that has at some time (recently or in the distant past) undergone development but has since deteriorated socially or physically. Every state has at least one statutory system for creating, financing, and operating redevelopment areas. Many states have overlapping redevelopment laws that need reform.

There is a need to replace the confusing multiplicity of redevelopment enabling legislation with a single, flexible redevelopment statute.

Chapter Overview

- ▶ *Regional [Metropolitan] Tax-Base Sharing (14-101 – 14-114)*
- ▶ *Intergovernmental Agreements (14-201)*
- ▶ *Redevelopment and Tax Relief (14-301 – 14-303)*
- ▶ *Agricultural Districts (14-401)*

Two Model Statutes for Reducing Local Fiscal Disparities

- * *Regional Tax-Base Sharing (14-101 – 14-114)*
- * *Voluntary Intergovernmental Agreement to Create Joint Economic Development Zone (14-201)*

Tax Relief Programs

- * *Redevelopment Areas (14-301)*
- * *Tax Increment Financing (14-302)*
- * *Tax Abatement (14-303)*

Nearly every state has adopted statutes authorizing tax increment financing programs to raise funds for redevelopment.

❖ **Interrelationships:** Redevelopment areas should be established only after a local government has adopted a redevelopment area plan or redevelopment element of its comprehensive plan (see 7-302).

Tax increment financing (I4-302) is a method of financing redevelopment activities that is directly tied to the success of those activities. Essentially, the local government borrows money and uses it to improve development prospects in the areas. As development occurs, tax revenues increase. The increase in tax revenue that results from redevelopment activities is used to pay off bonds used to finance improvements that helped make redevelopment occur in the first place.

The ability to reduce taxes in a redevelopment area may be useful in bringing about the economic resurgence of a depressed area. Several states authorize cities to employ tax abatement for various reasons, including low- and moderate-income housing. The model statute on tax abatement (I4-303) is intended to work integrally with the redevelopment area statute (see I4-303).

If rising land values can be avoided, chances are that agricultural land will stay in active production longer. Agricultural district statutes allow landowners to voluntarily establish special areas where commercial agriculture is encouraged and protected. Land within such areas is assessed at its “use” value rather than its “market” or “speculative” value. This action—called differential assessment (see sidebar)—can reduce pressure on landowners to sell or develop farmlands for nonagricultural uses. A model statute for the establishment of agricultural districts and use valuation is provided in I4-501.

❖ **Interrelationships:** Local ordinances establishing agricultural districts should be preceded by an agricultural, forest, and scenic preservation element of the local comprehensive plan. See 7-212.



According to the American Farmland Trust, every state provides property relief in some form or another to farmland, and 49 states specifically use “differential assessment.”

Methods of Tax Abatement

- * Lower property and/or sales taxes in a redevelopment area
- * Freeze property taxes

Chapter 15: State-Level Geographic Information Systems and Public Records of Plans, Land Development Regulations, and Development Permits



A geographic information system (GIS) is a computerized system that stores and links spatially defined data in a way that allows information display and processing and production of maps and models. GIS is one of the most powerful and technologically sophisticated planning and analysis tools.

Chapter 15 provides a model statute that establishes GIS functions within a Division of Geographic Information (15-101) of a state agency and provides for a Geographic Information Advisory Board (15-102).

Citizens need access to land development regulations and public records regarding land development permits. Most state statutes do not provide any guidance or requirements on making such information publicly available. State statutes should require the filing of development permits and land development regulations so that individual property owners can have easy access to public records and requirements. Section 15-201 of the model statute helps to meet this objective, and Section 15-202 requires recording of various public planning and regulatory documents. Section 15-203 provides for state approval of local tract-indexing systems.

Many states have adopted plans, policies, and standards to improve GIS technology availability and sharing among public and private organizations.