Pace Environmental Law Review

Volume 13
Issue 2 *Spring 1996*
Symposium Edition

Article 9

April 1996

State Framework Laws for Guiding Urban Growth and Conservation in the United States

Douglas R. Porter

State Framework Laws For Guiding Urban Growth and Conservation in the United States

DOUGLAS R. PORTER

Douglas R. Porter, President of The Growth Management Institute in Chevy Chase, Maryland, is a growth management advisor and planning development consultant to state and regional agencies, local governments, development organizations, and special interest groups. Mr. Porter first delivered this paper at a seminar held in White Plains at a conference sponsored by the Land Use Law Center of the Pace University School of Law in 1993.

During the past quarter-century, nine of the fifty states in the United States have adopted laws that establish policy and regulatory frameworks for governmental guidance of urban development and conservation. Enactment of these statutes came after many decades during which states generally authorized local governments to control the location and nature of development. In their ground-breaking attempts to reassert greater state direction over community development, the states have erected new legal and institutional structures that integrate state, regional, and local guidance of urban development and conservation of natural resources. The laws establish comprehensive state goals and policy priorities for community development and institute new intergovernmental procedures for achieving those goals and priorities.

Assertion of State Interests in Urban Development

In the United States, local governments traditionally have controlled land use and development. State enabling statutes in the 1920s authorized cities, towns, and counties to adopt comprehensive plans, zoning ordinances, and other

regulations to guide the location and characteristics of development. Beginning in the 1960s, however, the rapid spread of urban growth in many regions raised concerns about the sustainability of development in general and the long-term viability of urban infrastructure systems, natural resources, and community quality of life in particular. Grassroots political action generated state legislation that produced comprehensive growth management laws in nine states.

Three states, Oregon, Florida, and Rhode Island, have administered comprehensive, statewide growth management programs for at least two decades.[1] Other states, including Vermont, Maine, New Jersey, Georgia, Washington, and Maryland, have less experience in implementing their more recent laws.[2] Together, they illustrate a spectrum of approaches to state leadership and intergovernmental coordination in managing urban development.

Major Components of Statewide Growth Management

Although the nine state statutes vary in detail, they commonly require or encourage local government and state agencies to prepare plans that conform with state goals and

---

1. These growth management statutes are as follows:
Florida: FLA. STAT. ANN. §§ 163.3161-.3243 (West 1990 & Supp. 1996); FLA. STAT. ANN. §§ 186.001-.911 (West 1987 & Supp. 1996); FLA. STAT. ANN. §§ 187.101-.201 (West 1987 & Supp. 1996); FLA. STAT. ANN. §§ 380.012-.515 (West 1988 & Supp. 1996).
Oregon: OR. REV. STAT. §§ 197.005-.860 (1995).
Rhode Island: R.I. GEN. LAWS §§ 45.22.2-1 to -14 (1991 & Supp. 1995).

2. These growth management statutes are as follows:
Georgia: GA. CODE ANN. §§ 36-70-1 to -5 (1993); GA. CODE ANN. §§ 50-8-1 to -222 (1994 & Supp. 1996).
Maine: ME. REV. STAT. ANN. tit. 30-A, §§ 4311-4349 (West 1996) (amending and repealing the Comprehensive Planning and Land Use Regulation Act, 1989 Me. Laws 104).
Maryland: MD. ANN. CODE art. 66B, §§ 3.05, 3.06, 4.09, 7.03 (Supp. 1994); MD. CODE ANN., STATE FIN. & PROC. §§ 5-402, 5-701 to 5-7A-032, 8-403 (1995 & Supp. 1995).
New Jersey: N.J. STAT. ANN. §§ 52:18A-196 to -207 (West Supp. 1996).
Vermont: VT. STAT. ANN. tit. 24, §§ 4301-4495 (1992 & Supp. 1995); VT. STAT. ANN. tit. 10, §§ 6001-6108 (1992 & Supp. 1995).
Washington: WASH. REV. CODE ANN. §§ 36.70A.010 - .902 (West 1991 & Supp. 1996).

policies. The statutes attempt to weave local decision-making into a larger framework of intergovernmental responsibilities for managing growth and development. The state statutes also assert that states have legitimate statewide interests that justify state oversight of local actions. In essence, the nine states have fundamentally reconfigured their approaches for dealing with urban development issues in order to emphasize intergovernmental responsibilities and actions.[3]

The state acts encourage consistency and coordination among state, regional, and local planning and regulatory programs. Six components of intergovernmental responsibilities can be discerned. First, the states adopt their own plans recognizing state interests in community development and conservation, generally in the form of land use and development goals. Second, states require that the activities of state agencies conform with the statewide goals. Third, the statutes establish requirements for local land use planning, often defining the elements that plans must contain such as housing, economic development, and preservation of natural resources. Fourth, states usually designate roles and responsibilities for regional planning agencies. Fifth, the statutes provide an administrative mechanism to ensure a level of consistency in implementing regulations and between state goals and regional and local plans. Sixth, states establish an appeals or conflict-resolution process for resolving inconsistencies among goals and plans.

3. Prior to Oregon's path-breaking act in 1973, several states adopted some form of growth management legislation that was either less comprehensive in its concerns or less inclusive of the governmental structure than the legislation since 1973. Beginning in 1955, California enacted a series of individual requirements mandating that local governments plan and include defined elements in their plans. Hawaii's legislation in 1961, for example, put the state firmly in control of major aspects of development, leaving its county governments with a relatively meager role. Vermont's Act 250 in 1970 created state and district environmental commissions to deal with proposals for large-scale developments, however, they were not well connected to regional or local planning processes. For more information about these precursors of comprehensive state acts, *see* JOHN M. DEGROVE, LAND, GROWTH, AND POLITICS (1984).

State Plans

All nine state growth management acts incorporate or provide for preparation of statewide plans to express state interests in growth and development. In every state except New Jersey and Rhode Island, the plans are expressed as statements of goals and policies to guide planning activities throughout the state. Oregon's act contains nineteen goals.[4] Florida's Comprehensive Planning Act of 1985 incorporates an extensive statement of goals and policies covering twenty-five topic areas.[5] Maryland's statute, by contrast, incorporates seven "visions" as the prime policies to be implemented by local plans.[6]

These state goal and policy statements define state interests that must be addressed by plans and regulations of local governments, regional agencies, and state agencies. Typically the topics include land use, economic development, housing, infrastructure development, natural resource protection, and agricultural land preservation. In each of these topic areas, detailed goals and policies may cover a multitude of specific subjects of state interest.

The growth management acts in New Jersey and Rhode Island have gone beyond policy statements to establish geographic determinations of urban growth policies. Rhode Island's "Land Use 2010," published in 1989, includes a computer-generated land capability map identifying four categories of land use intensity, from high-intensity development potential to positive conservation potential.[7] The map is to be used by cities and towns in determining allocations of land for development and conservation. New Jersey's State Development and Redevelopment Plan, adopted in 1992, provides dozens of definitive policies and blends state and local

4. OR. REV. STAT. § 197.225-.283 (1995).

5. FLA. STAT. ANN. § 163.3177 (West 1990 & Supp. 1996).

6. MD. ANN. CODE art. 66B, § 3.06(b) (Supp. 1994).

7. The original goals are set forth in the Comprehensive Planning and Land Use Regulation Act. R.I. GEN. LAWS § 45-22.2-3(C) (1991). For expanded goals, policies, and the land capability map, *see* DIVISION OF PLANNING, RHODE ISLAND DEPARTMENT OF ADMINISTRATION, REP. NO. 64, LAND USE 2010, STATE LAND USE POLICIES AND PLAN (1989).

plans into a statewide map depicting growth centers and preservation areas.[8]

State Agency Planning and Coordination

State agencies are notoriously independent and reluctant to act cooperatively with each other or with local governments. Yet most state growth management statutes promise to do just that. Vermont's Act 200 is typical: "State agencies that have programs or take actions affecting land use . . . shall engage in a continuing planning process to assure those programs are consistent with [state] goals . . . and compatible with regional and approved municipal plans . . . ."[9] Vermont is one of the few states that has actually responded to this mandate. After two years of discussions, Vermont's agencies pulled together a draft agreement for interagency cooperation and coordination. Now plans have been adopted for seventeen agencies and departments.[10]

Requirements for Local Planning

The state growth management statutes have mandated or provided incentives for local governments to plan according to defined standards of purpose and content and to implement plans through consistent regulatory programs.[11] The Oregon model, also used by Florida, Rhode Island, Maine, Washington, and Maryland, requires local governments to prepare or revise comprehensive plans to conform to state goals and to state requirements for plan elements. In addition, Washington requires counties over a certain population threshold, and cities within them, to plan; counties below the threshold may volunteer to plan. In Vermont, Georgia, and New Jersey, planning by local governments is voluntary,

8. For a detailed discussion of the procedures for delineating growth centers, *see* NEW JERSEY OFFICE OF STATE PLANNING, DOC. NO. 99, THE CENTERS DESIGNATION PROCESS (1993).

9. VT. STAT. ANN. tit. 3., § 4020(a) (Supp. 1995).

10. *See* Jeffrey F. Squires, *Growth Management Redux: Vermont's Act 250 and Act 200, in* STATE AND REGIONAL INITIATIVES FOR MANAGING DEVELOPMENT: POLICY ISSUES AND PRACTICAL CONCERNS 31 (Douglas R. Porter ed. 1992).

11. *See supra* notes 2-3.

although in each case incentives are provided to encourage planning. The statutes in Vermont and Georgia also provide that local governments deciding to plan must meet the act's planning requirements.

Typically, the statutes spell out the elements of local comprehensive plans. Rhode Island's statute, for example, provides that local comprehensive plans "shall be a statement (in text, maps, illustrations, or other media of communication) that is designed to provide a basis for rational decision-making regarding the long-term physical development of the municipality."[12] A local plan should include a statement of goals and policies consistent with the state guide plan, as well as elements for land use, housing, economic development, natural and cultural resources, services and facilities, open space and recreation, and circulation. Rhode Island also mandates preparation of an implementation program, including a capital improvement program and other public actions necessary to carry out the plan.[13]

The state requirements have resulted in more planning by local governments. As a result, public officials have been introduced to planning concepts and more have been pressed to use them in their regulatory programs and other decision-making on urban development issues. The state requirements have been used to curb planning abuses through appeals procedures or in the courts. The requirements also may have produced better plans, although the results are not conclusive in most states. State requirements clearly have set new standards for planning content and procedures.

The Regional Role

Several states have also defined a regional role in growth management systems. Regional agencies in Florida, Vermont, and Georgia are required to plan and to coordinate local plans. In those states, regional agencies review developments that have regional impacts, thus linking the

12. R.I. GEN. LAWS § 45-22.2-6 (1991).
13. *Id.*

agencies directly with the development process.[14] In addition, Maine's regional councils are required to comment on plans of local governments within their areas.[15] New Jersey's statute requires counties to coordinate local plans and participate in negotiating compatibility of these local plans with state plans.[16] Washington's statute requires counties to delineate urban growth areas in consultation with cities, natural resource lands and critical areas, and open space corridors.[17] Oregon's legislation requires regional planning by Metro, the regional organization in Portland. The Land Conservation and Development Department has worked with Metro to establish special standards and procedures for coordinating metropolitan development in accordance with state goals.[18]

Enforcing Consistency — An Intergovernmental Challenge

One measure of the success of state growth management programs is their effectiveness at achieving consistency of local, regional, and state agency plans with state goals. All nine states have set up some type of review process to encourage consistency between levels of government, compatibility among plans of adjoining jurisdictions, and consistency between plans and implementing programs and regulations within jurisdictions. These procedures provide the ultimate test of intergovernmental relationships in growth management.

State agencies in all nine states except Vermont review local plans for consistency with state goals. Oregon, Florida, Georgia, Rhode Island, and Maine retain ultimate authority

14. Vermont's regional councils were given approval powers over local plans under Act 200, but subsequent legislation postponed these powers to 1996. VT. STAT. ANN. tit. 24, § 4350 (1992). Vermont's district environmental commissions retain their authority to review and approve large-scale developments. VT. STAT. ANN. tit.10, § 6081 (1993 & Supp. 1995).

15. ME. REV. STAT. ANN. tit. 30, § 4347 (Supp. 1996).

16. N.J. STAT. ANN. § 52:18A-202 (West Supp. 1996).

17. WASH. REV. CODE ANN. § 36.70A.110 (West Supp. 1996).

18. Interview with John Kelly, Program Manager for the Oregon Land Conservation and Development Commission (Mar. 8, 1993).

to approve local plans. Washington and Maryland review and comment on plans.[19] New Jersey negotiates agreements with local governments on plan consistency but does not mandate consistency. In Florida and Georgia, regional agencies also review and approve local plans for consistency with regional plans and state goals. In Vermont and Rhode Island, state agency plans must be made compatible with local plans after local plans are approved.

The different approaches taken by these states in reviewing local plans have led to characterizing some as "bottom up" and others as "top down." In "bottom up" states,[20] the state or regional reviewing agencies have relatively little leverage to determine the substance of local plans. In "top down" states,[21] state planning agencies have exerted a considerable amount of leadership in determining the appropriate content of local plans.

Appeals and Conflict Resolution

Most state statutes provide procedures to negotiate agreements or appeal to higher authorities to reconcile conflicts over plan consistency. The earlier acts tended to set up administrative procedures that include litigation; the later statutes emphasize conflict resolution techniques.

The 1973 statute in Oregon provided a Land Use Board of Appeals, with three judges who decide nothing but land use cases.[22] Their decisions may be appealed to state courts.

---

19. Maryland's 1992 law does not expressly call for local governments to submit plans for review and comment by the state agency. Instead, local governments are required to submit a schedule showing when they expect to achieve conformance with state requirements, which include the inclusion of state "vision" goals in local plans. MD. ANN. CODE art. 66B, § 3.06(e) (Supp. 1994). The state agency is required to submit an annual report assessing the progress of state and local governments in achieving the goals and recommending appropriate actions to overcome any problems identified. MD. CODE ANN., STATE FIN. & PROC. § 5-708 (1995). Clearly, in order to prepare the report, it is necessary for the agency to review local plans.

20. Examples of such states are: Vermont, Georgia, Rhode Island, Maine, and Washington.

21. Examples of such states are: Florida, New Jersey, and Oregon.

22. *See* OR. REV. STAT. § 197.540 (1995).

Rhode Island has a similar process.[23] Florida has an elaborate system that allows regional bodies to mediate local conflicts, provides hearing officers at the state agency level, and establishes final authority in the governor and cabinet sitting as an appeals board.[24]

The 1988 act in Georgia, by contrast, emphasizes dispute resolution, directing the state Department of Community Affairs to establish a mediation or other conflict resolution process for resolving state, regional, and local differences over plans.[25] The 1990 Washington statute set up three hearing boards to hear disputes over urban growth boundaries and other matters.[26]

State Policies for Shaping Urban Development

All of the state growth management acts are premised on needs to guide urban development more effectively than local governments can achieve through their individual actions. Legislative findings introducing the statutes refer to needs for greater cooperation and coordination between governments, more efficient land development patterns, less costly infrastructure systems, and more effective protection of natural resources and environmental qualities. Statements of goals commonly include strictures to prevent urban sprawl, protect rural and natural areas from undesirable development, and develop efficient systems of public facilities and services to support anticipated growth and economic development.

In many cases, the statutes have promoted these goals by directing local governments and regional agencies to adopt specific growth management mechanisms. The most common are some form of urban/rural demarcation to induce more compact development patterns and protect rural areas, requirements for programming and financing infrastructure to

23. *See* R.I. GEN. LAWS §§ 45.22.3-1 to -8 (1991).

24. FLA. STAT. ANN. § 163.3191 (West 1990 & Supp. 1996).

25. GA. CODE ANN. § 50-8-7.1(d) (1994).

26. WASH. REV. CODE ANN. § 36.70A.250 (West Supp. 1996).

support development, and special provisions for dealing with large-scale development and critical areas.

Urban/Rural Demarcation

In 1973, Oregon required all cities to define urban growth boundaries to contain urban development and natural resource areas to promote agriculture and forestry. Several other states have required or promoted similar provisions. For example, New Jersey's plan calls for urban development to occur within compact centers designated on local and state plans. Maine's law requires municipalities to identify and designate growth areas and rural areas.[27] Washington's statute requires counties to designate urban growth areas and counties and cities to designate natural resource lands and critical areas.[28]

Other state statutes include goals that, while less specific, suggest the demarcation of urban from rural lands. Maryland provides that local plans and regulations must implement goals to concentrate development in suitable areas and protect sensitive lands. Florida discourages urban sprawl by insisting that local plans promote compact patterns of development, including adoption of mechanisms such as urban growth boundaries and urban service limits.[29]

Infrastructure Planning and Financing

Another purpose of most state growth management acts is to address infrastructure needs and costs. State statutes refer to the inefficiencies of extending public facilities to serve sprawl development, the advantages of promoting better use of existing facilities, and the need to provide adequate capacities of facilities concomitant with development. At least

27. ME. REV. STAT. ANN. tit. 30-A, § 4326(3) (West 1996).

28. WASH. REV. CODE ANN. §§ 36.70A.110, .170-.172 (West 1991 & Supp. 1996).

29. The Florida Department of Community Affairs has set forth aspects of the Florida statute that supports compact development, describes the legal basis for its position, defines a number of indicators of sprawl found in local plans, and suggests a variety of techniques for avoiding sprawl. *See* FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS, TECHNICAL MEMORANDUM, Vol. 4, No. 4 (1989).

three approaches to achieving these goals have been incorporated in state acts: encouraging more attention to capital facilities programs; requiring "concurrency" of facility capacities with development; and linking infrastructure funding sources to completion of plans that conform to state goals.

Most state statutes have prompted local governments to strengthen the connections between comprehensive plans and implementing regulations and programs, including capital improvement programs. Such provisions not only promote consistency between plans and subsequent actions, but also emphasize the necessity of formulating realistic implementation efforts. Rhode Island's statute, for example, incorporates an implementation program in the requirements for local comprehensive plans, including the definition and scheduling of "expansion or replacement of public facilities and the anticipated costs and revenue sources proposed to meet those costs . . . ."[30] Similar requirements are found in all other state acts except Georgia's and Maryland's, although the latter statute requires that funding to achieve state goals must be addressed.[31]

Perhaps the best known state requirement that connects public facilities to development plans is the "concurrency" provision of Florida's statute, later followed in Washington's act.[32] Although many local governments have enacted provisions requiring that development approvals will be contingent on the availability of facilities required by the developments, Florida was the first to raise the requirement to the state level. Florida's act provides that no local government shall issue a development permit unless adequate public facilities are available to serve it.[33]

---

30. R.I. GEN. LAWS § 45-22.2-6(I) (1991).

31. MD. ANN. CODE art. 66B, § 3.06(b)(7) (Supp. 1994).

32. *See* FLA. STAT. ANN. §§ 163.3177(10)(h), 3202(2)(g) (West 1990 & Supp.1996); WASH. REV. CODE ANN. § 36.70A.070(6)(e) (West 1991).

33. FLA. STAT. ANN. §§ 163.3177(10)(h), 3202(2)(g) (West 1990 & Supp.1996).

Special Development and Area Concerns

Several state statutes pay special attention to large-scale developments. Vermont's Act 250 is focused directly on such projects.[34] Florida set up special review procedures for developments of regional impact many years ago.[35] Georgia's statute builds on the Atlanta Regional Commission's past experience with reviewing developments of regional impact by giving all regions that responsibility.[36] Washington's act provides for recognition of large-scale resort developments in delineations of growth areas.[37] These states are concerned with addressing the regional and statewide impacts that major projects may engender.

Similar attention is given to critical natural areas such as wetlands, aquifer recharge areas, wildlife habitats, and flood plains. Washington required an immediate delineation of critical areas to be followed by recognition of such areas within local comprehensive plans.[38] Maryland's act singles out "sensitive" and critical areas for attention in state and local plans.[39]

Conclusions

Nine states have embarked on programs for managing future development that establish new relationships among state and local governments and, in some cases, regional agencies. Although only two states, Oregon and Florida, have gained a substantial amount of experience, other states are making great strides in implementing their laws. In the process, the programs have accomplished some important objectives.

The states have succeeded in promoting increased attention to state and regional interests in development and conservation issues without displacing local governments'

34. VT. STAT. ANN. tit. 10, § 6081 (1993 & Supp. 1995).
35. FLA. STAT. ANN. § 380.06 (1988 & Supp. 1996).
36. *See* GA. CODE ANN. § 36-70-1 (1993).
37. WASH. REV. CODE ANN. § 36.70A.360 (West Supp. 1996).
38. *Id.* §§ 36.70A.050, .060, .170, .172.
39. MD. ANN. CODE art. 66B, § 3.05(a)(1) (Supp. 1994).

central role in the development process. In all nine states with growth management statutes, local governments still maintain a considerable amount of autonomy in determining the character of future community development. In addition, the state programs have stimulated a greater understanding of the planning process among local officials, encouraging municipalities, regional agencies, and state agencies to define development trends, identify future needs, and plan and program public actions to meet those needs.

Also, the state programs have created a framework for coordinating the growth management efforts of all jurisdictions and levels of government and have encouraged negotiated agreements among them regarding development issues. State agencies have been prompted to recognize the programs and plans of other agencies and local governments in their own planning for future projects. The private sector has gained certainty and predictability from the state requirements that set standards for local governmental planning, implementing programs, and regulations that provide procedures for ensuring consistency among jurisdictions. Experience in Oregon, Vermont, and Florida indicates that state programs take time to mature and require continuous fine-tuning and re-evaluation to maintain effective, creative intergovernmental relationships for managing growth and development.

Questions and Issues

As frameworks for intergovernmental coordination in guiding development and conservation, state growth management programs have raised some questions and issues that should be considered in formulating programs in other states and nations.

In general, state programs have not recognized differences in local governments' planning needs or abilities to respond to state mandates. Although some states, such as Washington and Vermont, have provided for optional participation by local governments, planning requirements in all programs have not distinguished between community size,

growth rate, or other characteristics that might affect the nature of planning.

State agencies administering growth management statutes have found that statements of state goals and policies require further definition to provide sufficient guidance for determining consistency of state and local plans. The exercise of interpreting broad goals often entails formulation of detailed guidelines and administrative rules to guide preparation of plans and plan reviews.

The long-term nature of state growth management programs demands continuity of administration in the political arena. Oregon's and Florida's programs have benefitted from strong constituent support that has maintained staff and budget priorities for growth management programs through several state administrations. However, several states, having issued mandates for more planning or specific mechanisms for managing growth, have failed to provide adequate financial assistance to assist local governments in meeting requirements.

The experiments in these nine states provide useful lessons for a governmental process that will be essential to meet the challenges of the twenty-first century. It is becoming increasingly clear that the hard choices of reconciling economic development with environmental preservation - an imperative for sustainability - require broad policy consensus and consistency throughout government. The advantage of a statewide land-use planning system is that it provides a mechanism for intergovernmental coordination and cooperation in guiding development and conservation.