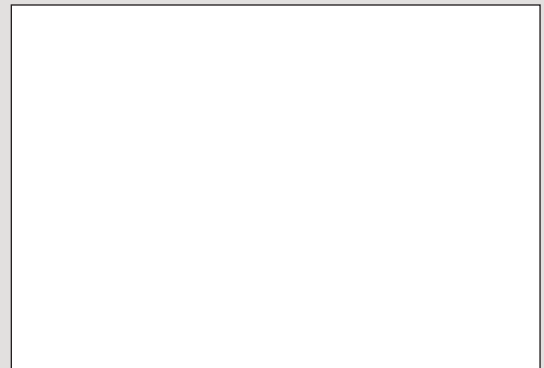
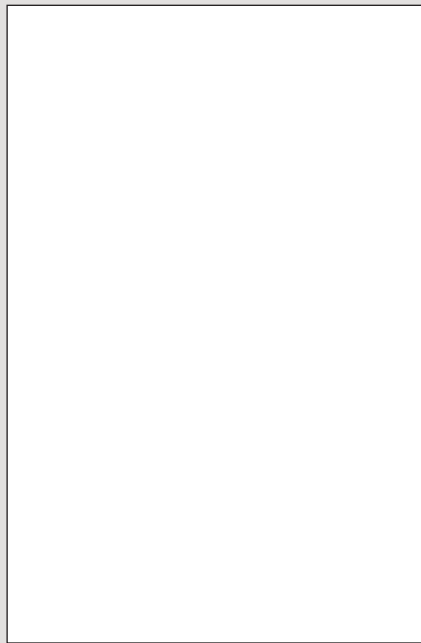




PLANNING FOR BIODIVERSITY

Authorities in State Land Use Laws



Cover images: New Orleans, LA, courtesy of NASA's Earth Observatory.
Species photos courtesy of Larry Masters, NatureServe.

PLANNING FOR BIODIVERSITY

Authorities in State Land Use Laws

Environmental Law Institute®
Defenders of Wildlife
Copyright©2003

RELATED RESEARCH REPORTS FROM ELI

IN THIS SERIES:

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

FROM ELI'S BIODIVERSITY AND LAND USE PLANNING PROGRAM:

Halting the Invasion: State Tools for Invasive Species Management
Banks and Fees: The Status of Off-site Wetland Mitigation in the United States
Smart Links: Turning Conservation Dollars into Smart Growth Opportunities

Copies of these reports can be ordered at www.elistore.org or by calling 1-800-433-5120.

Planning for Biodiversity: Authorities in State Land Use Laws

Copyright©2003 Environmental Law Institute®
Defenders of Wildlife
Washington D.C. All rights reserved.

ISBN# 1-58576-063-3, ELI project code 003106

An electronic retrievable copy (PDF file) of this report may be obtained for no cost from the Environmental Law Institute website <www.elistore.org>.

[Note: ELI Terms of Use will apply and are available on site.]

(Environmental Law Institute®, The Environmental Forum®, and ELR®—The Environmental Law Reporter® are registered trademarks of the Environmental Law Institute.)

ACKNOWLEDGMENTS

This report was prepared by the Environmental Law Institute (ELI) and Defenders of Wildlife with funding from the Doris Duke Charitable Foundation. The authors of this report are: Linda K. Breggin, ELI Senior Attorney and Director of Southeast Environmental Programs; Susan George, Field Council, Defenders of Wildlife; and Erica H. Pencak, ELI Research Associate. The authors would like to thank Jessica B. Wilkinson, ELI Science and Policy Analyst and Director, State Biodiversity Program and James M. McElfish, ELI Senior Attorney and Director, Sustainable Use of Land Program, for their guidance and comments. The authors also gratefully acknowledge the comments provided by Stuart Meck, Senior Research Fellow, American Planning Association. The content of this report is, nevertheless, solely the responsibility of the authors.

TABLE OF CONTENTS

Introduction	vii
Part One: Biodiversity and Land Use	1
The Importance of Biodiversity.....	1
Causes of Biodiversity Loss.....	2
Part Two: State Land Use Planning Enabling and Growth Management Laws	3
Land Use Planning Enabling Laws.....	3
Growth Management Laws.....	4
Biodiversity-Related Terms in Land Use Planning Enabling and Growth Management Laws	5
Part Three: Scope and Methodology	7
Part Four: Biodiversity Provisions in State Land Use Planning Enabling Laws	9
Local Planning Provisions Related to Biodiversity.....	9
Local Government Planning Authorities.....	9
Mandatory Local Plan Elements.....	9
Discretionary Local Plan Elements.....	11
State-Level Planning Authorities and Duties Related to Biodiversity.....	12
Part Five: Biodiversity Provisions in State Growth Management Laws	15
State-Level Planning Authorities and Duties Related to Biodiversity.....	15
Statewide Plans.....	15
Regulatory, Management, and Budgetary Duties.....	16
Goals and Standards for Local Plans.....	17
Direct Involvement in Land Use Decisions.....	17
Recommendations and Advice Related to Biodiversity.....	18
Assistance to Localities.....	18
Local Planning Provisions Related to Biodiversity.....	19
Local Government Planning Authorities.....	19
Mandatory Local Plan Elements.....	20
Discretionary Local Plan Elements.....	21
Additional Local Authorities.....	21
Incentive and Review Mechanisms.....	22
Funding Incentives and Restrictions.....	22
Local Plan Review.....	22
Part Six: Conclusion	23
Appendix A: State Narratives.....	1
Appendix B: Bibliography.....	1

INTRODUCTION

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

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

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

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

PART ONE: BIODIVERSITY AND LAND USE

THE IMPORTANCE OF BIODIVERSITY

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

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

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

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

are damaged, the cost of replacing them with mechanical and chemical treatment facilities would be in the billions of dollars.⁷

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

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

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

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

Biodiversity is the "variability among living organisms on the earth, including the variability within and between species and within and between ecosystems."

- American Heritage Dictionary
(4th Edition 2000)

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

CAUSES OF BIODIVERSITY LOSS

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

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

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

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

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

Given that land development contributes to all of the leading causes of biodiversity loss, including habitat destruction, degradation and fragmentation, and non-native invasive species, state and local land use planning can be a critical tool for protecting biological diversity. In particular, the pattern and location of land use is of vital importance. For example, typically, the less compact the pattern of development, the more land is fragmented and degraded. Of equal importance to the pattern of development is the location of development. Development decisions that consider biologically sensitive areas, such as wetlands, flood plains, and rare habitats, and foster large blocks of contiguous habitat and linkages between existing open space help protect biodiversity.

PART TWO: STATE LAND USE PLANNING ENABLING AND GROWTH MANAGEMENT LAWS

The role of state government in halting the loss of biodiversity is crucial for several reasons. State governments bear the responsibility for managing wildlife within their borders, own and manage lands of tremendous biological value, and exert considerable influence over economic development and private land use within their borders, which significantly impact wildlife and habitat.²²

Several types of state laws provide authority for states and local governments to protect biodiversity.²³ This report focuses on two types of state laws that affect land use and development decisions: land use planning enabling laws and growth management laws. These laws have received limited attention with respect to how they can be used to protect biodiversity, yet their provisions have a substantial influence on biodiversity protection.

LAND USE PLANNING ENABLING LAWS

Land use regulation primarily takes place at the local level through planning, zoning, and subdivision controls. The authority for local governments to make land use decisions typically comes from state enabling laws, although there are other sources of such authority.²⁴ Enabling laws define the scope and context of the authority of localities to plan and regulate land use. Many of these state enabling laws were first adopted in the 1920s, based on two model acts developed by a team of experts funded by the U.S. Department of Commerce.²⁵ The Standard City Planning Enabling Act²⁶ was published in 1927, and the Standard State Zoning Enabling Act²⁷ was published in 1926.

For many years, virtually all planning laws in the country were based on these two model laws. Over the years, states have modified their land use and zoning enabling laws. A 1999 American Planning Association study found that 24 states had not updated their planning laws and were still using the model planning enabling legislation, while 11 states had substantially updated their laws. The remaining states fell in either the “moderately” or “slightly” updated categories.²⁸ Several of the updated laws use concepts from the American Law Institute’s Model Land Development Code.²⁹

State land use planning enabling laws vary with respect to the legal authorities they provide to local governments to establish planning commissions and prepare comprehensive land use plans. Many land use planning enabling laws follow the traditional 1920s approach; they grant planning authority to local governments and require that if the local governments choose to establish planning commissions, they must issue comprehensive plans. This approach, which is referred to in this report as “conditionally mandatory” planning authority, is the most common approach used by the states. A second approach is for the land use planning enabling law to grant local governments the authority but not the duty to plan and regulate land use. In these states, planning is fully discretionary and comprehensive plans are not required. The third approach is to require planning and mandate that all or specified local governments adopt plans. A single state can take several approaches by, for example, mandating that municipalities prepare comprehensive plans but allowing counties to adopt plans at their discretion.

States use a variety of organizational structures for their local governments. For example, the terms “town,” “city,” and “municipality” may be used to refer to the same type of governmental entity, depending on the particular state. In addition, the use of the term “regional” may also vary from state to state. For example, “regional planning” may refer to planning among: counties and cities in the same state, regions within a single county, or states in specific geographic areas.

States also use a variety of terms for the plans that local governments are authorized or required to adopt, including “comprehensive,” “general,” and “master” plans. Although the specific meaning of each of these terms may vary from state to state, they are generally similar enough that for purposes of this report they are treated as indistinguishable. These plans typically cover all land within the planning and regulatory jurisdiction of the local governmental entity. They provide the context for regulation, capital investment, and other local decisions regarding the physical future of the community. Comprehensive plans vary in length and approach, but often include: future land use; transportation and circulation for major routes; public sewer and water service; park

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

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

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

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

GROWTH MANAGEMENT LAWS

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

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

The geographically diverse group of states that have enacted growth management laws have taken a wide range of approaches. In most cases, the state has taken a more active role in land use planning, either by planning directly at the state level or by providing clear directions and goals to localities to use in their land use planning efforts. Under growth management laws, however, localities typically continue to have primary responsibility for land use planning, but their planning tends to be subject to more specific state goals, requirements, or guidance than under traditional land use planning enabling laws. The following states are generally considered to have enacted growth management legislation: California, Delaware, Florida, Georgia, Hawaii, Maine, Maryland, New Jersey, Oregon, Rhode Island, Tennessee, Vermont, and Washington.

These states are considered to have growth management laws because they either set state goals for how growth should occur—which sometimes include a state land use plan—or establish mechanisms for adjoining jurisdictions to coordinate managing growth in some manner. There is no definitive line between growth management laws and more recent land use planning enabling laws, however, there may not be universal agreement about which state statutes constitute growth management laws. In this report, we focus on the two groups of states separately, because of the more prominent role played by state institutions in land use planning in the growth management states. It is important to remember that in both

BOX 1.**Growth Management
Law States**

California
Delaware
Florida
Georgia
Hawaii
Maine
Maryland
New Jersey
Oregon
Rhode Island
Tennessee
Vermont
Washington

Land Use Planning Enabling Law States

Alabama
Alaska
Arizona
Arkansas
Colorado
Connecticut
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
New York
North Carolina
North Dakota

Ohio
Oklahoma
Pennsylvania
South Carolina
South Dakota
Texas
Utah
Virginia
West Virginia
Wisconsin
Wyoming

sets of states, local governments exert the primary control over land use decisions.

BIODIVERSITY-RELATED CONCEPTS
AND TERMS IN LAND USE PLANNING
ENABLING AND GROWTH
MANAGEMENT LAWS

Land use planning enabling and growth management laws both provide state and local governments with authorities and responsibilities for making land use decisions. In many instances, these laws include the authority or duty to take actions or consider certain factors related to biodiversity protection. Although state enabling and growth management laws do not use the term “biodiversity,” they use several related concepts and terms.

For example, most growth management laws require that the state conduct certain activities, such as developing long range planning goals or state-level land use plans, that take into account factors such as conservation of natural resources, wildlife, fisheries habitat, forests, and critical natural areas. In some cases, the statutes may impose specific duties on the state, such as the requirement that a state comprehensive plan identify areas of environmental significance and establish strategies to protect them or that a state promote land acquisition programs to provide for natural resources protection, open space, and other needs. Most growth management laws also grant authorities or impose duties on local governments that could be used to protect biodiversity.

Many state land use planning enabling statutes also contain concepts and terms that can serve as authority for state and local governments to protect biodiversity. The most common references are to “open space,” “natural

resources,” “wildlife habitat,” and “critical and sensitive areas.” The enabling laws take a range of approaches with respect to the biodiversity-related authorities they grant and duties they impose. These provisions vary with respect to the substantive requirements, degree of specificity, and flexibility granted to local governments.

For example, in some cases, the state land use planning enabling laws simply require that local comprehensive plans consider or include certain biodiversity-related elements. In these states, the local governments are given considerable discretion as to how to take these factors into account. In other states, local governments are required to identify in their plans specific areas for open space, natural resources, wildlife habitat, and areas containing endangered or threatened species. In addition, some state enabling laws impose still more specific obligations on local governments with respect to biodiversity-related concepts in their plans. In these states, local governments may be required to include in their comprehensive plans specific recommendations, policies, methods, inventories, or plans related to the acquisition of open space, conservation of natural resources, preservation of wildlife habitat, and related factors. Depending on the specificity of the requirement, the provision may provide a greater or lesser degree of authority and duty on the part of the local government to protect biodiversity.

It is important to note that a state or local government may have the authority to address biodiversity even if a state land use planning enabling law or growth management law does not specifically include biodiversity-related concepts and terms. For example, a grant of authority to a local government to develop a comprehensive plan may be written broadly enough to include the

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

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

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

PART THREE: SCOPE AND METHODOLOGY

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

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

BOX 2. SEARCH TERMS

biodiversity	open space
critical areas	natural
environment	natural resources
forests	wetlands
green space	wildlife
habitat	woodlands

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

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

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

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

PART FOUR: BIODIVERSITY PROVISIONS IN STATE LAND USE PLANNING ENABLING LAWS

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

LOCAL PLANNING PROVISIONS RELATED TO BIODIVERSITY

Local governments typically have primary authority for making land use planning decisions in states with traditional land use planning enabling statutes. The state enabling laws vary with respect to the scope and approach taken in granting such authority. Many land use planning enabling statutes, however, contain specific provisions that address mandatory and discretionary elements of local master plans. These local master plan elements, in some cases, use terms and concepts related to biodiversity protection.

LOCAL GOVERNMENT PLANNING AUTHORITIES

The first and most common approach to providing land use planning enabling authorities to local governments is referred to in this report as the “conditionally mandatory” approach. Land use planning enabling laws that use this approach grant planning authority to local governments and require that if they choose to exercise the discretion to use that authority, typically by establishing planning commissions, they must issue master or comprehensive plans. The decision to plan is discretionary, but once that decision is made by a locality, the enabling statute requires the locality to adopt a master plan. The second approach is for the state law to grant local governments the authority but not the duty to plan, thereby making planning and the adoption of master plans “discretionary.” The third and least common approach in land use planning enabling statutes, as opposed to growth management laws, is to make planning “mandatory” and require that local governments adopt master plans.

Many states take a hybrid approach. These states vary the use of the conditionally mandatory, discretionary, or

mandatory approaches based on the various types of local governments in the state, such as municipalities, counties, or regional governments. Accordingly, planning may be discretionary at the county level but mandatory at the municipal level. Table 1 and the narratives in Appendix A provide detailed information about each state’s approach to local planning, including by type of local government entity.

MANDATORY LOCAL PLAN ELEMENTS

Many state land use planning enabling laws require certain elements to be included in local master plans. Some of these mandatory elements include biodiversity protection within their scope. The state laws differ considerably in overall structure and specific statutory language. Although several state enabling laws may require the same elements in local plans, such as conservation or open space, the scope and the substance of the requirements can vary widely from state to state. Certain elements may be required in all local government entities’ plans or only in the plans of certain types or sizes of local government.

For example, Colorado and New York both require that local plans take into account critical and sensitive areas. In New York, the requirement applies only to city master plans, which must include sensitive environmental areas.⁴¹ In contrast, the Colorado statute requires county, city, and regional master plans to consider designations of areas containing endangered or threatened species.⁴²

Similarly, Alabama and Arizona require an open space element in local plans. In Alabama, the requirement is general and provides that municipal planning commission master plans must include open space recommendations.⁴³ In Arizona, the land use planning enabling law further requires that cities of a certain size include an open space element with an inventory of open space needs and policies for protecting such areas.⁴⁴ Similar variations among state enabling laws exist with respect to each of the elements. These state variations are outlined in the state narratives in Appendix A.

The following are the most commonly referenced mandatory local plan elements related to biodiversity in state land use planning enabling laws:

TABLE 1. LOCAL PLANNING AUTHORITIES IN STATES WITH LAND USE PLANNING ENABLING LAWS

STATE	MANDATORY	CONDITIONALLY MANDATORY	DISCRETIONARY
Alabama		M	R
Alaska	B		
Arizona	CO	M	
Arkansas		R	M, CO
Colorado		C, CO ¹ , R ¹	
Connecticut		M, R	
Idaho	C, CO		
Illinois			M, TS, CO
Indiana		M, CO, R	
Iowa		C, CO, R	
Kansas		R	C, CO
Kentucky	C, CO		
Louisiana		M, P	
Massachusetts	T ²	C, T ² , R	
Michigan		M, CO	R
Minnesota			M, CO ³ , R
Mississippi			M, CO, R ⁴
Missouri		M, R	CO
Montana ⁵		C, T, CO	
Nebraska	M, CO ⁶	CO ⁶	
Nevada	C ⁷ , CO ⁷ , R ⁸	C ⁷ , CO ⁷	
New Hampshire		M, R	
New Mexico		M, R	CO
New York			C, V, T, R
North Carolina			M, CO, R
North Dakota		R	C, TS, CO
Ohio		M	CO, R
Oklahoma		C, MPC, CO ⁹ , R	CO ⁹
Pennsylvania		CO	M
South Carolina		M, CO	
South Dakota ¹⁰	M		
Texas		MJPC	M ¹¹ , R
Utah		M, CO ¹²	CO ¹²
Virginia	M, CO	R	
West Virginia		M, CO	R
Wisconsin		M, V, CO ¹³ , R	
Wyoming		M	CO

Definitions

Mandatory Planning: Planning is required, as is the adoption of master comprehensive plans.

Conditionally Mandatory Planning: Planning is authorized but not required; however, if a planning commission is established, the adoption of master or comprehensive plans is required.

Discretionary Planning: Planning is authorized, as is the adoption of master or comprehensive plans; neither is required.

Key to Abbreviations

Borough (B); City (C); County (CO); Municipality (M); Municipal Joint Planning Commission (MJPC); Region (R); Town (T); Township (TS); Village (V)

Notes

¹ County and regional master plans are required for the unincorporated areas in their jurisdictions.

² Planning for towns with populations over 10,000 is mandatory, whereas planning for towns with populations below 10,000 is conditionally mandatory.

³ Counties with specified populations are authorized to plan.

⁴ Regional planning is authorized, but the statute does not address the adoption of regional plans.

⁵ If established, planning boards are required to prepare a growth policy, not a comprehensive plan.

⁶ Planning is mandatory for counties which include municipalities with a certain population. Planning for all other counties is conditionally mandatory.

⁷ For cities with a population over 25,000 and counties with a population over 40,000, planning is mandatory; for all other cities and counties, planning is conditionally mandatory.

⁸ Regional planning commissions are established in counties with certain populations and development plans are required.

⁹ Counties are authorized to appoint a planning commission; plans are only mandatory for counties with certain populations.

¹⁰ Counties acting in either a planning or zoning capacity are required to establish county planning commissions; the adoption of comprehensive plans is authorized, but not required.

¹¹ Municipalities with a certain population are authorized to establish Municipal Boards of Planning. If established, Boards may adopt comprehensive plans but are not required to do so.

¹² Counties not included within a municipality are authorized to establish planning commissions. Such planning commissions are required to adopt general plans. Counties included within a municipality, however, are authorized, but not required to, adopt general plans.

¹³ If a county has not adopted a zoning ordinance, towns within that county are authorized to plan.

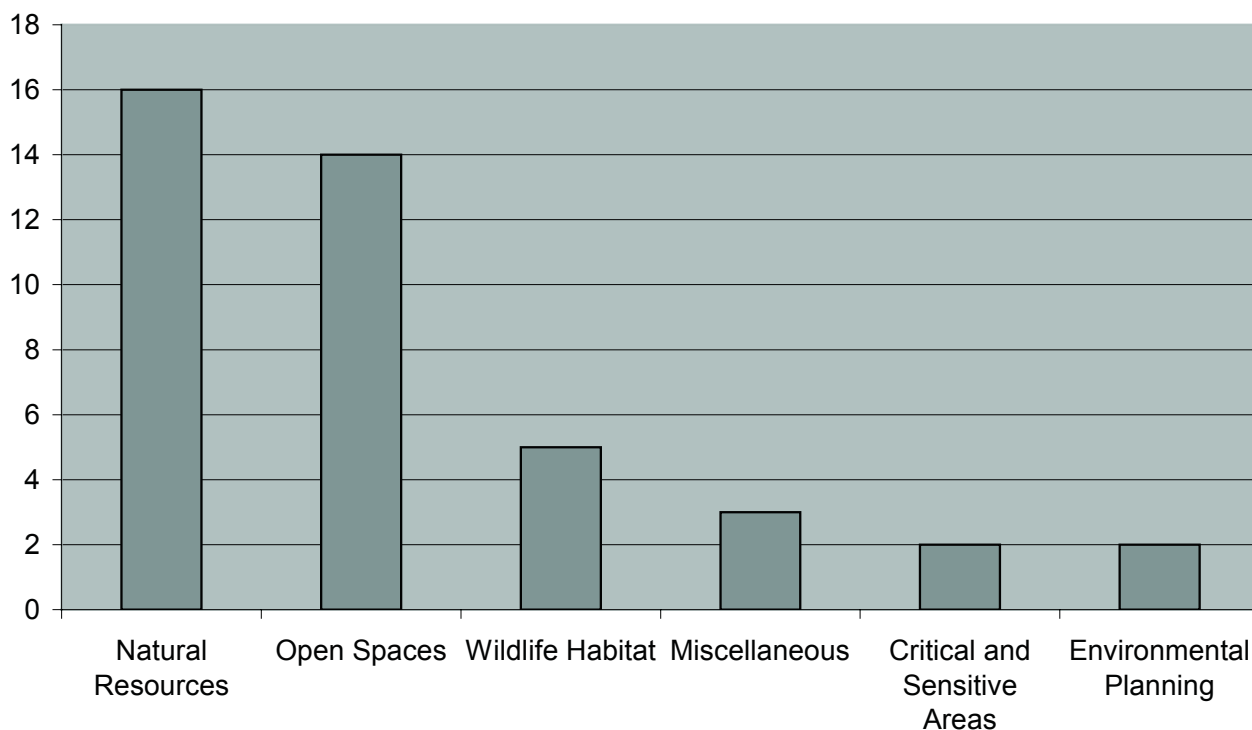
*Natural Resources:*⁴⁵ Land use planning enabling statutes in 16 states require that some or all local governmental entities take natural resources into account in their master plans. These include: Arizona,⁴⁶ Colorado,⁴⁷ Idaho,⁴⁸ Kansas,⁴⁹ Massachusetts,⁵⁰ Michigan,⁵¹ Montana,⁵² Nebraska,⁵³ Nevada,⁵⁴ New Hampshire,⁵⁵ New York,⁵⁶ Ohio,⁵⁷ Oklahoma,⁵⁸ Pennsylvania,⁵⁹ South Carolina,⁶⁰ and West Virginia.⁶¹

Open Space: Fourteen states' land use planning enabling statutes require that some or all local governmental entities include provisions related to the design

ation or protection of open space in their master plans. These include: Alabama,⁶² Arizona,⁶³ Colorado,⁶⁴ Connecticut,⁶⁵ Louisiana,⁶⁶ Massachusetts,⁶⁷ Michigan,⁶⁸ Minnesota,⁶⁹ Mississippi,⁷⁰ Nebraska,⁷¹ North Dakota,⁷² Ohio,⁷³ Oklahoma,⁷⁴ and South Carolina.⁷⁵

Wildlife Habitat: Five state land use planning enabling laws specifically require that the master plans of some or all local governmental entities consider wildlife habitat or related concepts. These include: Colorado,⁷⁶ Michigan,⁷⁷ Nevada,⁷⁸ South Carolina,⁷⁹ and Utah.⁸⁰

Mandatory Local Plan Elements: Land Use Planning Enabling States



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

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

Miscellaneous Mandatory Local Plan Elements Related to Biodiversity: Some states' land use planning enabling laws contain local master plan element provisions related to biodiversity protection that do not fall into the categories discussed above. For example, Nevada requires that regional comprehensive plans include conservation policies for air and water, and land use projections.⁸⁵ Additional such elements are discussed in the state narratives in Appendix A. See, e.g., Pennsylvania and Virginia.

DISCRETIONARY LOCAL PLAN ELEMENTS

Several states' land use planning enabling laws include discretionary local plan elements related to biodiversity. These laws specifically reference, but do not require, the consideration of biodiversity-related factors in local mas-

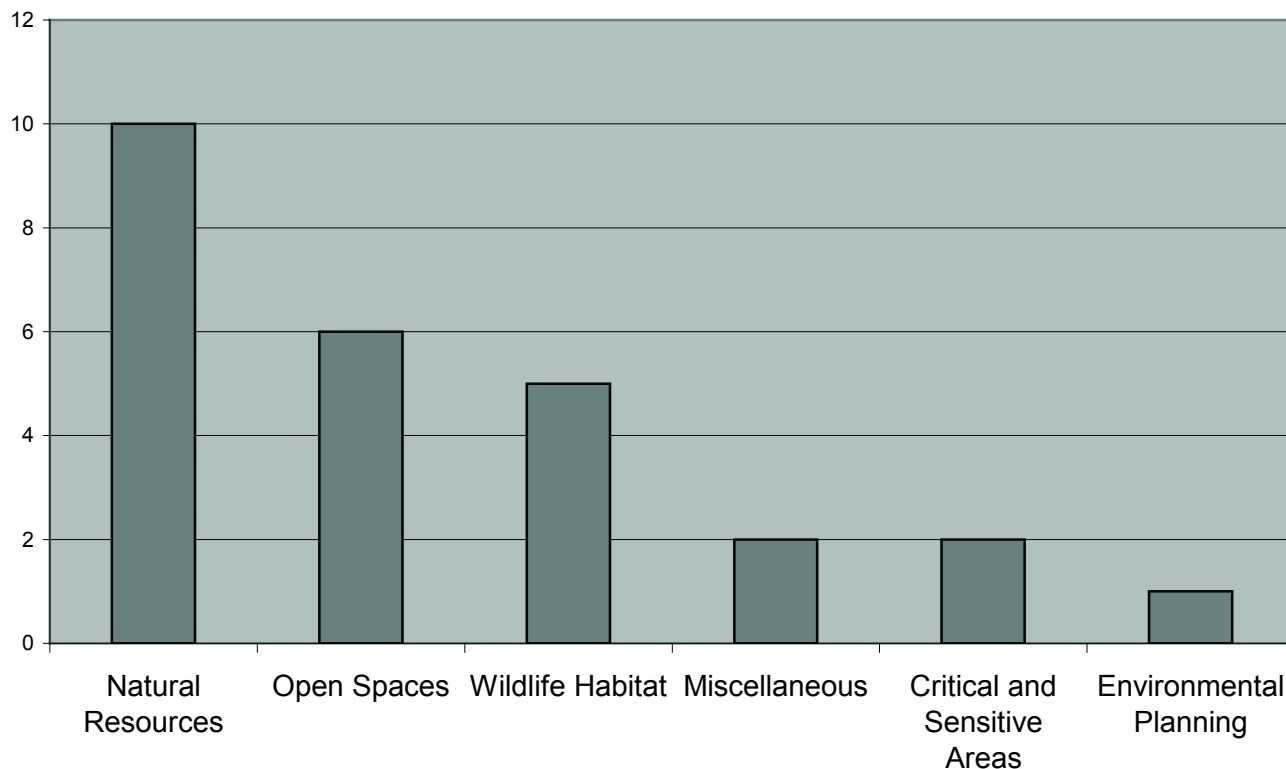
ter plans. Inclusion of these factors is left to the discretion of the local governments. The discretionary element requirements, like the mandatory element requirements, vary in their terms, scope, and substance.

In several states, the discretionary local plan elements mirror mandatory elements that apply only to a limited number of local governmental entities. For example, Arizona's land use planning enabling law requires that cities and towns of a certain size include a natural resources element in their comprehensive plans and also specifies that other cities and towns may include a natural resources element at their discretion.⁸⁶ The following are the most common discretionary plan elements:

Natural Resources: Ten states' land use planning enabling laws reference natural resources or closely related concepts as optional components of the master plans of some or all local governmental entities: Arizona,⁸⁷ Arkansas,⁸⁸ Indiana,⁸⁹ Kentucky,⁹⁰ New Hampshire,⁹¹ Oklahoma,⁹² Utah,⁹³ Virginia,⁹⁴ West Virginia,⁹⁵ and Wyoming.⁹⁶

Open Space: Six state land use planning enabling laws reference open space or closely related concepts as optional components of the master plans of some or all local governmental entities: Arizona,⁹⁷

Discretionary Local Plan Elements: Land Use Planning Enabling States



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

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

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

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

Miscellaneous Discretionary Local Plan Elements Related to Biodiversity: At least two states' land use planning enabling laws authorize, but do not require, local master plan elements related to biodiversity protection that do not fall into the categories discussed

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

STATE-LEVEL PLANNING AUTHORITIES AND DUTIES RELATED TO BIODIVERSITY

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

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

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

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

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

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

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

BOX 3: LAND USE PLANNING ENABLING LAWS WITH STATE LEVEL PLANNING DUTIES RELATED TO BIODIVERSITY PROTECTION

Alabama	Nevada
Arizona	New Hampshire
Colorado	North Carolina
Connecticut	Ohio
Illinois	South Dakota
Kentucky	Utah
Massachusetts	Wisconsin
Missouri	West Virginia
Nebraska	Wyoming

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

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

PART FIVE: BIODIVERSITY PROVISIONS IN STATE GROWTH MANAGEMENT LAWS

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

STATE-LEVEL PLANNING AUTHORITIES AND DUTIES RELATED TO BIODIVERSITY

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

The specific provisions in the growth management laws that relate to biodiversity protection at the state-level vary widely. Many of the provisions relate to the development of statewide plans and goals. These provisions range from general objectives to requirements for specific state action. Several of the growth management laws also contain biodiversity-related provisions that direct state-level entities, such as administrative agencies, to take specific actions independent of, or in lieu of, a statewide plan. In addition, several of the laws contain state-level goals or standards for local comprehensive plans that include biodiversity-related provisions.

The general framework or approach to growth management established in each statute influences the scope and potential effectiveness of the biodiversity-related pro-

visions. These general approaches vary considerably. For example, in some states, such as Hawaii, planning authority lies with the state and the state adopts a statewide land use plan.¹⁴² In other states, such as Florida,¹⁴³ Maryland,¹⁴⁴ New Jersey,¹⁴⁵ and Rhode Island,¹⁴⁶ the statutes require the states to develop some type of statewide plan, including planning goals, that directs state-level actions related to land use and serves as a guide for local planning efforts. Other state laws, such as those in California,¹⁴⁷ Delaware,¹⁴⁸ Maine,¹⁴⁹ Oregon,¹⁵⁰ Vermont,¹⁵¹ and Washington,¹⁵² do not require statewide plans but instead require statewide goals that guide local planning. In states such as Georgia¹⁵³ and Tennessee¹⁵⁴ the growth management laws do not require the development of a statewide plan or goals, but impose certain requirements on local

governments, particularly with respect to the content of their local comprehensive plans. The basic frameworks used by each state are discussed separately in the state narratives in Appendix A.

The following are highlights of the state-level biodiversity-related requirements

and provisions in the growth management laws.

STATEWIDE PLANS

Several state growth management laws require the development and adoption of statewide development plans that include biodiversity-related concepts and terms. The following are examples of some of these provisions. The state narratives in Appendix A include additional examples and details on the provisions highlighted here:

Florida: Required elements of the state comprehensive plan include, but are not limited to: identification of areas of state and regional environmental significance and establishment of strategies to protect them; promotion of land acquisition programs to provide for natural resources protection, open space

BOX 4: STATE-LEVEL PLANNING AUTHORITIES AND DUTIES RELATED TO BIODIVERSITY PROTECTION

- Statewide Plans
- Regulatory, Management, and Budgetary Duties
- Goals and Standards for Local Plans
- Direct Involvement in Land Use Decisions
- Recommendations and Advice Related to Biodiversity
- Assistance to Localities

needs, urban recreational opportunities and water access; and establishment of priorities regarding coastal planning and resources management.¹⁵⁵ In addition, the state plan, adopted by the legislature, includes goals, objectives, and policies related to natural resources and environmental management.¹⁵⁶ The plan includes myriad provisions detailing these goals, objectives, and policies. They include, for example, goals related to natural systems and recreational lands, such as protecting and acquiring natural habitats and ecological systems, including wetlands, tropical hardwood hammocks, palm hammocks, and virgin longleaf pine forests,¹⁵⁷ and policies, such as prohibition on the “destruction of endangered species” and protection of their habitats.¹⁵⁸ Similar goals and objectives are included for water, marine and coastal resources.¹⁵⁹

Hawaii: The Hawaii State Planning Act, which sets forth the Hawaii state plan, includes among state goals the achievement of a “desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of people.”¹⁶⁰ The Act also requires that the state’s policy for the economy include promotion of Hawaii as an “attractive market for environmentally . . . sound investment activities” and promotion and protection of intangible resources “such as scenic beauty.”¹⁶¹ Policies set forth to achieve the state’s transportation objectives include encouragement of transportation systems sensitive to the quality of Hawaii’s natural environment.¹⁶² The statute sets out objectives and policies for the physical environment that include prudent use of land-based, shoreline, and marine resources,¹⁶³ and protection of Hawaii’s unique and fragile environmental resources.¹⁶⁴ The state’s policy includes taking into account the physical attributes of areas when planning, designing and managing natural resources and environs to encourage their beneficial use “without generating costly or irreparable environmental damage.”¹⁶⁵ Planning objectives for land, air, and water quality include greater public awareness and appreciation of Hawaii’s environmental resources.¹⁶⁶ In order to achieve these objectives, it is the state’s policy to: “foster educational activities that promote a better understanding of Hawaii’s limited environmental resources, promote the proper management of Hawaii’s land and water resources, [and] promote effective measures to achieve desired quality in Hawaii’s surface, ground, and coastal waters.”¹⁶⁷

Maryland: The Maryland growth management law requires that the State Development Plan include identification of areas of critical state concern¹⁶⁸ and land use recommendations, which must be based on the best available information concerning a number of factors such as “environmental and natural factors.”¹⁶⁹

New Jersey: The New Jersey growth management law requires that the State Development and Redevelopment Plan “[p]rotect the natural resources and qualities of the State,” including fresh and saltwater wetlands, stream corridors, aquifer recharge areas, steep slopes, areas of unique flora and fauna, and areas with scenic, historic, cultural, and recreation values.¹⁷⁰

Rhode Island: The State Guide Plan, which includes goals, policies, and plans for development of the state, includes goals for the promotion and protection of natural resources and preservation of open space for each municipality and the state.¹⁷¹ The State Guide Plan must include, among other components, functional elements or plans dealing with land use, physical development and environmental concerns, and conservation.¹⁷²

REGULATORY, MANAGEMENT, AND BUDGETARY DUTIES

Several of the biodiversity-related provisions in the growth management laws require state-level action by entities such as administrative agencies, state offices, or commissions. These provisions impose a range of duties on the state, including for example, the following:

California: The growth management law requires the Office of Planning and Research to “coordinate the development of a statewide environmental monitoring system.”¹⁷³

Delaware: The growth management law requires the State to review its capital improvements program and facilities plans to determine whether they “arbitrarily affect local jurisdictions . . . environmentally.”¹⁷⁴ If such an arbitrary effect is found, the state agency whose plan or program is the cause must amend the plan or program to remedy the situation.¹⁷⁵ In addition, any state agency undertaking land use planning actions must notify the local jurisdiction that will be impacted by the action.¹⁷⁶ The local jurisdiction must review the proposed action and submit comments to the Office of State Planning Coordination. The comments must consider a number of items such as the “impact of the proposed action upon the physical

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

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

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

GOALS AND STANDARDS FOR LOCAL PLANS

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

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

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

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

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

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

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

DIRECT INVOLVEMENT IN LAND USE DECISIONS

In some states, the growth management law provides for direct state involvement in land use decisions. Examples include the following:

Delaware: State agencies are permitted to comment on land uses of greater than local concern.¹⁹⁸ Actions related to the establishment and amendment of com-

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

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

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

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

Oregon: The Land Conservation and Development Commission may recommend areas to be designated as “areas of state critical concern” to the Joint Legislative Committee on Land Use.²⁰⁷ In some cases, such recommendations may be based on the recommendation of a state agency or local government.²⁰⁸ The law provides for enforcement measures to enjoin activities that are not in accordance with the state’s regulations for areas of state critical concern.²⁰⁹

RECOMMENDATIONS AND ADVICE RELATED TO BIODIVERSITY

Several of the growth management laws establish or charge existing commissions and similar entities to provide advice and recommendations on biodiversity-related planning issues. Examples include the following:

Delaware: The Cabinet Committee makes recommendations on growth and development, including the most desirable general pattern of land use concerning water courses, water bodies, and natural or environmental factors.²¹⁰

Maine: The Land and Water Resources Council advises the governor and legislature on land and water policies, establishes priorities for managing water bodies, and evaluates the state’s growth management program.²¹¹

Maryland: The State Economic Growth, Resource Protection and Planning Commission advises and reports to the governor and General Assembly on several points, including progress in achieving protection of sensitive areas and progress of local governments in protecting natural resources.²¹²

New Jersey: The Office of State Planning submits to the State Planning Commission alternative growth and development strategies “which are likely to produce favorable economic, environmental and social results.”²¹³

ASSISTANCE TO LOCALITIES

Several state statutes include provisions that address state planning assistance to localities. This assistance could be used in some states to help localities include biodiversity-related elements in their comprehensive plans or take other measures to protect biodiversity. These provisions range from the designation of specific offices to provide technical planning assistance to the dedication of funding for local assistance. In total, eight state growth management laws include specific provisions that address state assistance to localities: California,²¹⁴ Delaware,²¹⁵ Maine,²¹⁶ Maryland,²¹⁷ New Jersey,²¹⁸ Rhode Island,²¹⁹ Vermont,²²⁰ and Washington.²²¹ Such assistance and support also may be provided in other states pursuant to policy or regulation, although not specifically addressed in the state’s growth management law.

LOCAL PLANNING PROVISIONS RELATED TO BIODIVERSITY

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

LOCAL GOVERNMENT PLANNING AUTHORITIES

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

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

Eleven of the states with growth management laws make planning mandatory for at least some cities, counties, or other local governments within the state, including regional entities: California,²²² Delaware,²²³ Florida,²²⁴ Georgia,²²⁵ Hawaii,²²⁶ Maine,²²⁷ Oregon,²²⁸ Rhode Island,²²⁹ Tennessee,²³⁰ Vermont,²³¹ and Washington.²³² In several states with growth management laws, including Maine,²³³ Maryland,²³⁴ New Jersey,²³⁵ Tennessee,²³⁶ and Washington,²³⁷ local planning is conditionally mandatory for at least certain types of local governments. In three states, Georgia,²³⁸ New Jersey,²³⁹ and Vermont,²⁴⁰ planning is discretionary for some types of local governments. The various types of land use planning authority granted to local governments are discussed in the state narratives in Appendix A and summarized in Table 2.

TABLE 2. LOCAL PLANNING AUTHORITIES IN STATES WITH GROWTH MANAGEMENT LAWS

STATE	MANDATORY	CONDITIONALLY MANDATORY	DISCRETIONARY
California	C, CO		
Delaware	CO		
Florida	M, CO		
Georgia	R		M, CO
Hawaii	CO		
Maine	R ¹	M, MMR	
Maryland		C, CO	
New Jersey		CO	M
Oregon	M, CO, MSD		
Rhode Island	C, T		
Tennessee	CO ²	M	
Vermont	R		M
Washington	C ³ , CO ³	C ³ , CO ³	

Notes

¹ The development of regional coordination programs is required to manage shared resources and provide consistency with comprehensive plans of other municipalities.

² All counties in the state are required to submit a growth plan, except those with metropolitan forms of government.

³ Planning is mandatory for certain counties (depending on size and population growth) and cities within those counties; in all other cities and counties, planning is conditionally mandatory.

Definitions

Mandatory Planning- Planning is required, as is the adoption of master comprehensive plans.

Conditionally Mandatory Planning- Planning is authorized but not required; however, if a planning commission is established, the adoption of master or comprehensive plans is required.

Discretionary Planning- Planning is authorized, as is the adoption of master or comprehensive plans; neither is required.

Key to Abbreviations

City (C); County (CO); Multimunicipal Region (MMR) Municipality (M); Metropolitan Service District (MSD); Region (R); Town (T)

MANDATORY LOCAL PLAN ELEMENTS

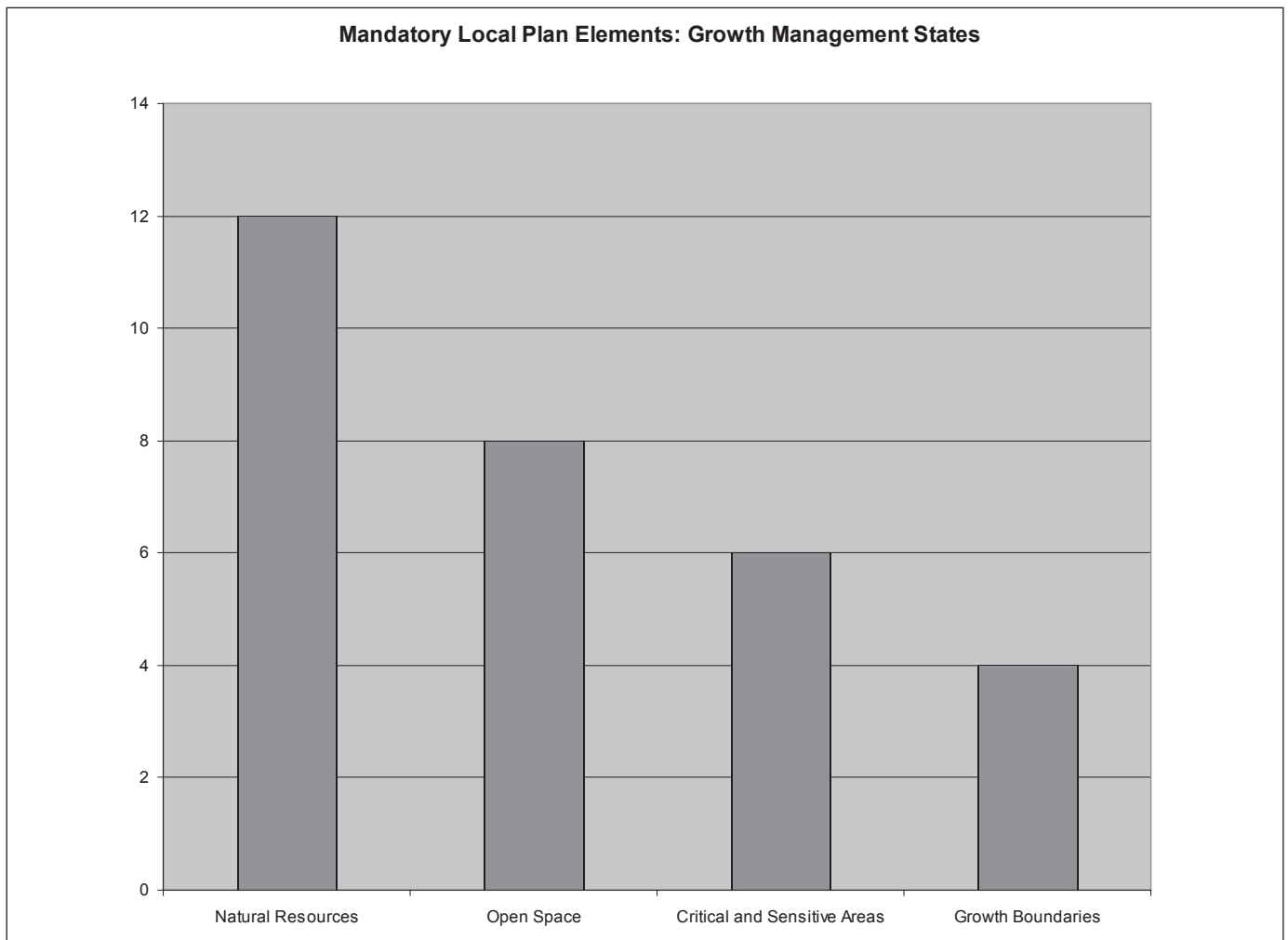
All of the growth management laws, even those that do not mandate local planning, include provisions governing the content of local master or comprehensive plans. In some cases, the elements referenced in the statutes are mandatory and in some cases they are discretionary. These elements relate to a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

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

servation, use and protection of natural resources in the area and which results in the identification of these resources.”²⁴¹ The element must include, at a minimum: “natural area classification as wetlands, wood uplands, habitat areas, geological areas, hydrological areas, flood plains, aquifer recharge areas, ocean beaches, soils and slopes.”²⁴² Maine’s growth management law takes another approach. It provides that local comprehensive plans must include an analysis of local and regional growth projections and the “vulnerability of and potential impacts on natural resources.”²⁴³ The Maine statute also requires that comprehensive plans contain implementation strategies to protect several specified natural resources. It requires, for example, strategies for ensuring that “water quality will be protected from long-term and cumulative increases in phosphorus from development in great pond watersheds.”²⁴⁴

The following categories represent the most common mandatory plan elements related to biodiversity in growth management laws:

Natural Resources: Almost all of the growth management laws require that some or all local governmental



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

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

Critical, Sensitive, and Irreplaceable Areas and Resources: Six state growth management laws specifically mention protection of critical, sensitive, or irreplaceable areas or resources as a required element in some or all local plans: Florida,²⁵⁴ Georgia,²⁵⁵ Maine,²⁵⁶ Maryland,²⁵⁷ Vermont,²⁵⁸ and Washington.²⁵⁹ In addition, local plan requirements related to conservation of natural resources in other growth management laws may serve to protect critical and sensitive areas, even though they do not specifically reference such areas in the statutes.

Growth Boundaries: Several state growth management laws specifically require certain localities to establish growth boundaries. The terms and scope of the requirements vary considerably. These states include: Maine,²⁶⁰ Maryland,²⁶¹ Tennessee,²⁶² and Washington.²⁶³ In addition, some states, such as Oregon,²⁶⁴ may require such boundaries by policy or regulation, even though not required by statute.

DISCRETIONARY LOCAL PLAN ELEMENTS

In addition to the mandatory local master plan elements, some states' growth management laws also specifically reference factors or elements that are not required but may be included in local master plans at the discretion of the local government. The following state growth management laws reference discretionary local plan elements: California,²⁶⁵ Florida,²⁶⁶ Georgia,²⁶⁷ Maine,²⁶⁸ Maryland,²⁶⁹ New Jersey,²⁷⁰ and Washington.²⁷¹ Each element is unique and, therefore, it is not possible to group them in general categories. The discretionary plan elements are outlined in the state narratives in Appendix A. Examples of these discretionary elements include:

Florida: Local comprehensive plans may contain a recommended community design element consisting of recommendations for open space locations.²⁷² In

BOX 5: GROWTH MANAGEMENT LAWS WITH DISCRETIONARY LOCAL PLAN ELEMENTS FOR PROTECTING BIODIVERSITY

California	Maryland
Florida	New Jersey
Georgia	Washington
Maine	

addition, rural land stewardship areas may be authorized in up to five local governments.²⁷³ These areas are used to further the restoration and maintenance of the economic value of rural lands, control urban sprawl, and identify and protect ecosystems, habitats, and natural resources.²⁷⁴

New Jersey: County master plans may include the general location and extent of forests and areas for conservation.²⁷⁵

Washington: Comprehensive plans required of certain counties under the growth management law may cover additional elements including, but not limited to, conservation.²⁷⁶ Such counties may also authorize "fully contained communities" and "major industrial developments" located outside of initial urban growth areas, if environmental protection has been addressed and provided for and provisions made to "mitigate impacts on designated agricultural and forests lands." The fully contained community or major industrial development must also be consistent with protection of critical areas.²⁷⁷

ADDITIONAL LOCAL AUTHORITIES

In addition to addressing local plan elements related to biodiversity, some growth management laws grant additional authorities or impose duties on local governments that could be used to forward biodiversity protection. Growth management laws in at least eight states include such provisions: Delaware,²⁷⁸ Florida,²⁷⁹ Georgia,²⁸⁰ Maine,²⁸¹ New Jersey,²⁸² Oregon,²⁸³ Vermont,²⁸⁴ and Washington.²⁸⁵ These authorities vary from state to state and are discussed in the state narratives in Appendix A. In several states, these authorities are granted to

BOX 6: GROWTH MANAGEMENT LAWS WITH ADDITIONAL LOCAL AUTHORITIES FOR PROTECTING BIODIVERSITY

Delaware	New Jersey
Florida	Oregon
Georgia	Vermont
Maine	Washington

regional entities. Examples of these authorities and responsibilities include:

Delaware: Local jurisdictions have several duties and responsibilities with respect to notifying the state of land use planning actions that are of “greater than local concern” and subject to the comment requirements of the State Land Use Planning Law.²⁸⁶ Local jurisdictions must also review certain State agency land use planning actions for impact on the environment.²⁸⁷ Municipalities must review their comprehensive development plans to determine if those plans arbitrarily exclude land uses of more than “local benefit.”²⁸⁸ This means any use or combination of uses of land or water whose economic social or environmental benefits extend beyond the local jurisdiction in which the use or uses take place.²⁸⁹

New Jersey: Whenever the Environmental Commission, a municipal advisory committee,²⁹⁰ has prepared and submitted to the planning board of a municipality an index of the natural resources of the municipality, the planning board must make every application for development submitted to it available to the Environmental Commission. Failure to do so does not, however, invalidate any hearing or proceeding.²⁹¹

Oregon: Metropolitan service districts must report performance measures to the Department of Land Conservation and Development every two years that analyze the amount of environmentally sensitive land that is protected and the amount of such land developed.²⁹²

Vermont: Regional planning commissions are authorized to undertake studies and make recommendations on scenic preservation and wetlands protection.²⁹³

INCENTIVES AND REVIEW MECHANISMS

As discussed, many of the growth management laws require that local master plans contain certain elements or that local governments perform certain planning functions that could be used to forward biodiversity protection. State growth management laws vary with respect to the extent that they provide incentives to localities or review mechanisms to states to ensure compliance with these requirements.

Funding Incentives and Restrictions: Several states use funding restrictions and incentives as a means of

encouraging localities to adhere to planning requirements, including those related to biodiversity. The growth management laws adopted in Georgia,²⁹⁴ Maine,²⁹⁵ and Tennessee,²⁹⁶ for example, include such funding incentives. In addition, in two states, Hawaii²⁹⁷ and Maryland,²⁹⁸ state funding is limited to areas that have been designated by the state for growth. Examples of funding incentives include:

Maine: Municipalities with comprehensive plans that are consistent with state goals and guidelines are given preference for state grants and investments.²⁹⁹

Tennessee: Counties and municipalities with approved growth plans may receive an increase in evaluation points in formulas used to determine the allocation of certain funds³⁰⁰ and certain grants are unavailable if a locality does not have an approved growth plan.³⁰¹

Local Plan Review: Several states’ growth management laws provide mechanisms for reviewing local plans for consistency with state goals or requirements. These include the following eight states: Delaware,³⁰² Florida,³⁰³ New Jersey,³⁰⁴ Oregon,³⁰⁵ Rhode Island,³⁰⁶ Tennessee,³⁰⁷ Vermont,³⁰⁸ and Washington.³⁰⁹ Examples include:

Florida: If a local government fails to prepare a comprehensive plan or elements are lacking, the regional planning entity for the area must adopt the missing elements.³¹⁰

New Jersey: The State Planning Commission reviews State and local planning procedures.³¹¹

Oregon: The Land Conservation and Development Commission certifies local comprehensive plans and can order actions by local governments to bring comprehensive plans into compliance.³¹²

Additional states may use these and similar approaches pursuant to regulation or policy, although not specifically addressed in the growth management laws.

BOX 7: GROWTH MANAGEMENT LAWS WITH MECHANISMS FOR LOCAL PLAN REVIEW

Delaware	Rhode Island
Florida	Tennessee
New Jersey	Vermont
Oregon	Washington

PART 6. CONCLUSION

Growth management and land use planning enabling laws adopted in states across the country provide authority for local governments and states to protect biodiversity. In general, terms and concepts related to biodiversity protection are more common and tend to be more detailed in growth management laws than in state land use planning enabling laws. A large number of land use planning enabling laws, however, also contain authorities that could be used to support biodiversity protection.

All of the growth management laws and many of the land use enabling laws contain provisions that provide localities with the authority or duty to consider biodiversity-related factors and concepts. Such factors include, but are not limited to, local comprehensive plan requirements for natural resources, open space, wildlife habitat, and critical and sensitive areas. In some states, local governmental entities also may have

authorities or duties in addition to those associated with developing comprehensive plans that could be used to sustain biodiversity protection, including reporting, review, and study requirements.

Furthermore, all of the growth management laws and some of the land use planning enabling laws provide authorities or impose duties directly on state governments that could support biodiversity protection. These authorities vary from state to state but include consideration of biodiversity-related factors in developing statewide development plans, goals and programs.

Given the critical effect that land use decisions have on biodiversity, the authorities identified in this report represent potentially powerful conservation tools. These authorities can be used as a starting point for protecting biodiversity at the state and local level in communities across the nation.

ENDNOTES

1. AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000).
2. Ga. Stat. Ann. § 12-2-8 (g)
3. JOHN HEINZ III CENTER FOR SCIENCE, ECONOMICS AND THE ENVIRONMENT, THE STATE OF THE NATION'S ECOSYSTEMS: MEASURING THE LANDS, WATERS, AND LIVING RESOURCES OF THE UNITED STATES (Cambridge University Press 2002) (hereinafter cited as "STATE OF THE NATION'S ECOSYSTEMS").
4. DEFENDERS OF WILDLIFE, CENTER FOR WILDLIFE LAW, SAVING BIODIVERSITY: A STATUS REPORT ON STATE LAWS, POLICIES AND PROGRAMS, at 1 (July 1996) (hereinafter cited as "SAVING BIODIVERSITY").
5. *Id.* at 2, 3
6. *Id.*
7. *Id.*
8. *Id.* at 3, 4
9. *Id.* at 4
10. *Id.* at 4
11. U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE AND U.S. DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, 2001 NATIONAL SURVEY OF FISHING, HUNTING, AND WILDLIFE-ASSOCIATED RECREATION (2001) (\$28 billion for trips, \$64 billion for equipment, and \$16 billion for other items).
12. SAVING BIODIVERSITY, at 4.
13. David S. Wilcove *et al.*, Leading Threats to Biodiversity, in PRECIOUS HERITAGE, at 242 (Bruce A. Stein, *et al.*, eds., 2000) (hereinafter cited as "Leading Threats").
14. Gary K. Meffe *et al.*, *Global Biodiversity II: Losses and Threats*, in PRINCIPLES OF CONSERVATION BIOLOGY, 2ND EDITION, at 148 (Sinauer Associates, Inc. 1997).
15. *Leading Threats*, at 245.
16. REED F. NOSS & ROBERT L. PETERS, ENDANGERED ECOSYSTEMS: A STATUS REPORT ON AMERICA'S VANISHING HABITAT AND WILDLIFE, at 48-49 (Defenders of Wildlife, 1995).
17. RICHARD B. PRIMACK, ESSENTIALS OF CONSERVATION BIOLOGY (Sinauer Associates, Inc. 1993) (hereinafter cited as "ESSENTIALS OF CONSERVATION BIOLOGY"); Scott K. Robinson, *The Case of the Missing Songbirds*, CONSEQUENCES, 3(1):3-15 (1997).
18. Peter M. Vitousek *et al.*, *Biological invasions as global environmental change*, AMERICAN SCIENTIST, 84:468-478 (1996).
19. ESSENTIALS OF CONSERVATION BIOLOGY.
20. GEORGE W. COX, ALIEN SPECIES IN NORTH AMERICA AND HAWAII: IMPACTS ON NATURAL ECOSYSTEMS (Island Press 1999).
21. Marcel Rejmanek, *Invasive Alien Plants in California: 1993 Summary and Comparison with Other Areas in North America*, MADRONO 41(3):161-177 (1996).
22. *Id.* at 1
23. State environmental laws, for example, may provide authority for biodiversity protection. Such laws may include, but are not limited to, laws affecting air quality, water quality, and solid and hazardous waste disposal sites, as well as state environmental policy and endangered species acts. See, e.g., PATRICK, J. ROHAN, ZONING AND LAND USE CONTROLS, at 1-116 (Matthew Bender & Co. 1996-present) (Hereinafter cited as "ZONING AND LAND USE CONTROLS"); see also *infra* note 38 and 39.
24. For example, authority for comprehensive planning may be based on home rule powers of the municipality rather than enabling laws. This home rule power can be based on state constitutional provisions or specific legislation authorizing home rule. Municipal charters adopted to carry out home rule specify the municipalities' powers and responsibilities, such as the powers of planning. ZONING AND LAND USE CONTROLS at 37-55, 57.
25. ZONING AND LAND USE CONTROLS, at 53A-15-19, 37-5.
26. ADVISORY COMMITTEE ON PLANNING AND ZONING, U.S. DEPARTMENT OF COMMERCE, STANDARD CITY PLANNING ENABLING ACT (U.S. Government Printing Office 1927).
27. ADVISORY COMMITTEE ON ZONING, U.S. DEPARTMENT OF COMMERCE, STANDARD STATE ZONING ENABLING ACT (U.S. Government Printing Office 1926).
28. AMERICAN PLANNING ASSOCIATION, PLANNING COMMUNITIES FOR THE 21ST CENTURY, at 9 (December 1999).
29. AMERICAN LAW INSTITUTE, A MODEL LAND DEVELOPMENT CODE, PART II (1976); see also, GROWING SMART LEGISLATIVE GUIDEBOOK, at 5-24 - 5-27 (Stuart Meck ed.) (American Planning Association 2002) (noting that several states, including Colorado, Florida, Minnesota, Nevada, Oregon, and Wyoming, have based their critical areas programs on ALI's model).
30. ZONING AND LAND USE CONTROLS, at 1-18, 20; 37-8.
31. See, e.g., JESSICA B. WILKINSON, PROTECTING DELAWARE'S NATURAL HERITAGE: TOOLS FOR BIODIVERSITY CONSERVATION, at 39 (Environmental Law Institute 1999); Peter W. Salsich & Timothy J. Tryniecki, *Land Use Regulation: A Legal Analysis & Practical Application of Land Use Law*, in REAL PROPERTY, PROBATE AND TRUST LAW, at 136-37 (American Bar Association 1997).
32. See ZONING AND LAND USE CONTROLS, at 1-18, 20; 37-8.
33. ZONING AND LAND USE CONTROLS, at 1-24; 37-17.
34. Tenn. Code Ann. § 13-4-101 *et seq.* (Municipal Planning)
35. Wash. Rev. Code § 35.63 *et seq.* (Planning Commission Act); Wash. Rev. Code § 36.70 *et seq.* (Planning Enabling Act)
36. JESSE J. RICHARDSON *ET AL.*, IS HOME RULE THE ANSWER? CLARIFYING THE INFLUENCE OF DILLON'S RULE ON GROWTH MANAGEMENT (The Brookings Institution Center on Urban and Metropolitan Policy 2003).
37. See, e.g., SAVING BIODIVERSITY, at 31-33 (State environmental policy acts); ZONING AND LAND USE CONTROLS, at 1-116 (state environmental protection laws).
38. JOHN R. NOLON, WELL GROUNDED: USING LOCAL LAND USE AUTHORITY TO ACHIEVE SMART GROWTH, at 281-354 (Environmental Law Institute 2001) (listing flood plain control, wetlands protection, watershed management, viewshed protection, soil erosion and sedimentation prevention, aesthetic assets, scenic road protection, tree protection, stream and watercourse protection, steep slope protection, vegetation removal).
39. The police power is generally described as the general governmental power to protect the health, safety, morals, and general welfare of its citizens. The police power rests with state governments but virtually all states have delegated the power to impose land use regulations to cities and counties. The delegation of power has been accomplished in two ways: the general delegation of police power through constitutional or legislative authority to enact home rule charters and broad enabling statutes authorizing zoning, subdivision regulations and other forms of regulations. See, e.g., ZONING AND LAND USE CONTROLS, at Chapters 1 & 53; Peter W. Salsich & Timothy J. Tryniecki, *Land Use Regulation: A Legal Analysis & Practical Application of Land Use Law*, in REAL PROPERTY, PROBATE AND TRUST LAW, at 3-5 (American Bar Association 1997).
40. Rutherford H. Platt, LAND USE AND SOCIETY: GEOGRAPHY, LAW AND PUBLIC POLICY at 350-358 (Island Press 1996).
41. N.Y. Gen. City Law § 28-a(4)(b)
42. Colo. Rev. Stat. §§ 30-28-106(3)(a)(xi), 31-23-206(1)(k)
43. Ala. Code § 11-52-8
44. Ariz. Rev. Stat. Ann. § 9-461.05 D(1)
45. Provisions identified with the search terms, "forests," "wetlands," and "woodlands" are generally included in the discussion of "natural resources," "critical and sensitive areas," and "wildlife habitat."
46. Ariz. Rev. Stat. Ann. §§ 9-461.05(E)(1), 11-806 B
47. Colo. Rev. Stat. §§ 30-28-106(3)(a)(ii), 31-23-206(1)(b)
48. Idaho Code § 67-6508 (f)
49. Kan. Stat. Ann. §§ 12-744, 747(b)
50. Mass. Gen. Laws Ann. ch. 41, § 81D(5)
51. Mich. Comp. Laws Ann. § 125.36
52. Mont. Code Ann. § 76-1-601(2)(b)(vii)
53. Neb. Rev. Stat. §§ 15-1102, 23-174.05
54. Nev. Rev. Stat. § 278.160(1)(b)
55. N.H. Rev. Stat. Ann. § 674:2(II)
56. N.Y. Gen. City Law § 28-a(4)(b)
57. Ohio Rev. Code Ann. §§ 713.22, .23

58. Okla. Stat. Ann. tit. 19 §§ 863.7, 866.10
59. Pa. Stat. Ann. §§ 10301(a)(6), 10301(a)(7)(i)
60. S.C. Code Ann. § 6-29-510(D)(3)
61. W.Va. Code § 8-24-16
62. Ala. Code § 11-52-8
63. Ariz. Rev. Stat. Ann. § 9-461.05 D(1)
64. Colo. Rev. Stat. §§ 30-28-106(3)(a)(ii), 31-23-206(1)(b)
65. Conn. Gen. Stat. § 8-23
66. La. Rev. Stat. Ann. § 33:106
67. Mass. Gen. Laws Ann. ch. 41, § 81D(6)
68. Mich. Comp. Laws Ann. §§ 125.36, 125.104
69. Minn. Stat. Ann. §§ 462.351, 473.145
70. Miss. Code Ann. §§ 17-1-1, -11
71. Neb. Rev. Stat. §§ 15-1102, 23-174.05 (2)
72. N.D. Cent. Code §§ 40-48-01, -02
73. Ohio Rev. Code Ann. § 713.02
74. Okla. Stat. Ann. tit. 11 §§ 47-101, -106
75. S.C. Code Ann. § 6-29-510(D)(7)
76. Colo. Rev. Stat. §§ 30-28-106(3)(a)(xi), 31-23-206(1)(k)
77. Mich. Comp. Laws Ann. § 125.3678
78. Nev. Rev. Stat. § 2160(1)(b)
79. S.C. Code Ann. § 6-29-510(D)(3)
80. Utah Code Ann. §§ 17-27-301(1)(b)
81. Colo. Rev. Stat. §§ 30-28-106(3)(a)(xi), 31-23-206(1)(k)
82. N.Y. Gen. City Law § 28-a(4)(b)
83. Ariz. Rev. Stat. Ann. § 9-461.05 D(3)
84. W.Va. Code §§ 8-25-5, -8
85. Nev. Rev. Stat. § 278.0274(2)
86. Ariz. Rev. Stat. Ann. § 9-461.05 E(1)
87. *Id.*
88. Ark. Code Ann. §§ 14-17-206(b)(1), -414(b)(1)(B)
89. Ind. Code § 36-7-4-503(2)(M)
90. Ky. Rev. Stat. Ann. §§ 100.187, 147.670(1)
91. N.H. Rev. Stat. Ann. § 674:2 II(b)
92. Okla. Stat. Ann. tit. 19 § 868.6
93. Utah Code Ann. § 10-9-301 *et seq.*, § 17-27-302(2)(c)(i)
94. Va. Code Ann. § 15.2-2223
95. W.Va. Code § 8-24-17
96. Wyo. Stat. § 15-1-503
97. Ariz. Rev. Stat. Ann. §§ 9-461.05 D(1), 11-806 B
98. Ark. Code Ann. § 14-56-414(b)(1)(A)
99. Idaho Code § 67-6517
100. Iowa Code tit. 1 § 281.4 (applies to regional plans only)
101. Pa. Stat. Ann. tit. 53 § 10918 (Counties and municipalities are authorized to create "locally designated growth areas" in their comprehensive plans and promote the use of transferable development rights as a method of preserving open space and farmland).
102. Wyo. Stat. § 15-1-503
103. Ariz. Rev. Stat. Ann. § 11-806 B
104. Ind. Code § 36-7-4-503(2)(M)
105. Minn. Stat. Ann. § 394.25
106. Okla. Stat. Ann. tit. 19 § 868.6
107. W.Va. Code § 8-24-17
108. Ark. Code Ann. § 14-17-206(b)(2), (c)(1)
109. N.H. Rev. Stat. Ann. § 674:2 III(d)
110. Ariz. Rev. Stat. Ann. § 9-461.05 D(3)
111. Pa. Stat. Ann. tit. 53 § 10301(a)(2)
112. S.D. Codified Laws Ann. § 11-2-1
113. Ariz. Rev. Stat. Ann. § 37-331 *et seq.*
114. Conn. Gen. Stat. § 16a-1 *et seq.*
115. Mo. Rev. Stat. §§ 251.170, .190
116. N.H. Rev. Stat. Ann. § 9-A:1
117. Ohio Rev. Code Ann. § 122.06
118. S.D. Codified Laws Ann. § 11-1-9
119. W.Va. Code § 8-25-3
120. Wyo. Stat. §§ 9-8-102, -202
121. Colo. Rev. Stat. §§ 24-65-103(1)(a), -104(2)(a)
122. Ky. Rev. Stat. Ann. § 147.075, .090
123. N.C. Gen. Stat. § 113A-150, -153(c); N.C. Gen. Stat. § 143-506.6 *et seq.*
124. Colo. Rev. Stat. §§ 24-65.1-101, -201(1)
125. Pa. Stat. Ann. tit. 53 § 10105
126. Wis. Stat. Ann. § 1.13(2)(c)
127. Colo. Rev. Stat. § 24-66-103(1), (4)b
128. Ala. Code §§ 41-9-208, 41-9-208
129. Colo. Rev. Stat. § 24-66-103(1), (4)b
130. 20 Ill. Rev. Stat. §§ 605/605-200, -205
131. Mass. Gen. Laws Ann. ch. 23B, § 3
132. Mo. Rev. Stat. § 251.170 *et seq.*
133. Neb. Rev. Stat. § 84-133
134. Nev. Rev. Stat. §§ 321.700, .740, .750, .755
135. N.H. Rev. Stat. Ann. § 4-C:1 *et seq.*
136. N.C. Gen. Stat. §§ 113A-150, -153(c)
137. Ohio Rev. Code Ann. § 122.06
138. S.D. Codified Laws Ann. § 11-1-11

26 | PLANNING FOR BIODIVERSITY

139. Utah Code Ann. §§ 11-38-201, 202
140. Wyo. Stat. § 9-8-201
141. Pennsylvania Department of Community and Economic Development, "Land Use Planning and Technical Assistance Program: Program Guidelines" (April 2002) (<http://www.inventpa.com/docs/LUPTAGuide.pdf>).
142. Haw. Rev. Stat. § 226-52
143. Fla. Stat. Ann. §§ 163.3161 et seq., 163.3177 (9)(c)
144. Md. Code Ann., State Fin. & Proc. §§ 5-402, -403, 5-602(a), (b)
145. N.J. Stat. Ann. § 52:18A-199
146. R.I. Gen. Laws § 45-22.2-9
147. Cal. Gov't Code § 65040 et seq.
148. Del. Code Ann. tit. 9, §§ 2657(b), 4957(b), 6957(b)
149. Me. Rev. Stat. Ann. tit. 30-A, § 4312.3.
150. Or. Rev. Stat. §§ 197.005-197.860
151. VT Stat. Ann. tit. 24 §§ 4302(b)(1)-(4), 4345a(5), 4381
152. Wash. Rev. Code §§ 36.70A.010, .103
153. Ga. Code Ann. §§ 36-70-1, -3
154. Tenn. Code Ann. § 6-58-101 et seq.
155. Fla. Stat. Ann. § 186.009(2)(c), (g), (i), (l)
156. Fla. Stat. Ann. § 186.007(3)
157. Fla. Stat. Ann. § 187.201(9)(a)
158. Fla. Stat. Ann. § 187.201(9)(b)(3)
159. Fla. Stat. Ann. § 187.201(7), (8)
160. Haw. Rev. Stat. § 226-4(4)
161. Haw. Rev. Stat. § 226-6(b)(2), (14)
162. Haw. Rev. Stat. § 226-17(b)(10)
163. Haw. Rev. Stat. § 226-11
164. Haw. Rev. Stat. § 226-11(a)(2)
165. Haw. Rev. Stat. § 226-11(b)(3)
166. Haw. Rev. Stat. § 226-13(a)(1), (2)
167. Haw. Rev. Stat. § 226-13(b)(1), (2), (3)
168. Md. Code Ann., State Fin. & Proc. § 5-611(a)
169. Md. Code Ann., State Fin. & Proc. § 5-612
170. N.J. Stat. Ann. § 52:18A-200
171. R.I. Gen. Laws § 45-22.2-3(c)(4)-(6)
172. R.I. Gen. Laws § 42-11-10(d)
173. Cal. Gov't Code § 65040(f)
174. Del. Code Ann. tit. 29, § 9226(a)
175. Del. Code Ann. tit. 29, § 9226(b)
176. Del. Code Ann. tit. 29, § 9227
177. Del. Code Ann. tit. 29, §§ 9228(b)(4), 9229
178. Fla. Stat. Ann. § 186.008(4), (5)
179. Fla. Stat. Ann. §§ 186.801(1), (2)(a)-(f)
180. Me. Rev. Stat. Ann. tit. 12, § 544-B
181. Me. Rev. Stat. Ann. tit. 38, § 1804
182. Me. Rev. Stat. Ann. tit. 5, § 3341
183. Ga. Stat. Ann. § 50-8-7.1(b)
184. Ga. Stat. Ann. § 12-2-8(b)
185. Me. Rev. Stat. Ann. tit. 30-A, §§ 4312.3, 4326
186. Me. Rev. Stat. Ann. tit. 30-A, § 4312.3.A, E, F
187. Me. Rev. Stat. Ann. tit. 30-A, § 4312.3.H, J
188. Or. Rev. Stat. § 197.230(1)(c)
189. Vt. Stat. Ann. tit. 24 § 4282
190. Vt. Stat. Ann. tit. 24 §§ 4345a(5), 4302(e)(2)(A)
191. Vt. Stat. Ann. tit. 24, § 4302(b)(3)
192. Vt. Stat. Ann. tit. 24, § 4302(c)(1)
193. Vt. Stat. Ann. tit. 24, § 4302(c)(2), (4)
194. Vt. Stat. Ann. tit. 24, § 4302(c)(5)(A)-(C)
195. Vt. Stat. Ann. tit. 24, § 4302(c)(6)
196. Wash. Rev. Code §§ 36.70A.010, .020, .040
197. Wash. Rev. Code § 36.70A.020(5), (8)-(10)
198. Del. Code Ann. tit. 29, § 9219
199. Del. Code Ann. tit. 29, § 9202(4)
200. Del. Code Ann. tit. 29, § 9216(b), (d)(3)
201. Fla. Stat. Ann. 380.05(2)(a)
202. Me. Rev. Stat. Ann. tit. 12, § 685C
203. Me. Rev. Stat. Ann. tit. 38, § 1804
204. Md. Code Ann., State Fin. & Proc. § 5-709(a)(1)
205. Md. Code Ann., State Fin. & Proc. § 5-709(a)(2)
206. Md. Code Ann., State Fin. & Proc. § 5-709(c)
207. Or. Rev. Stat. § 197.405(1)
208. Or. Rev. Stat. § 197.405(2)
209. Or. Rev. Stat. § 197.410
210. Del. Code Ann. tit. 29, § 9101(a), (c)(1)
211. Me. Rev. Stat. Ann. tit. 5, § 3331.2.
212. Md. Code Ann., State Fin. & Proc. § 5-708(1), (5), (11)
213. N.J. Stat. Ann. § 52:18A-201(b)
214. Cal. Gov't Code § 65040 et seq.
215. Del. HB 255 (2001)
216. Me. Rev. Stat. Ann. tit. 30-A, § 4346
217. Md. Code Ann., State Fin. & Proc. §§ 5-402, -403, 5-602(a), (b)
218. N.J. Stat. Ann. § 52:18A-201(b)
219. R.I. Gen. Laws § 45-22.2-11(a)

220. Vt. Stat. Ann. tit. 24, § 4305 (Regional entities provide assistance to localities).
221. Wash. Rev. Code § 36.70A.190
222. Cal. Gov't Code § 65300
223. Del. Code Ann. tit. 9, §§ 2655(a), 4955(a), 6955(a)
224. Fla. Stat. Ann. §§ 163.3167(1)(b), .3177(9)(c)
225. Ga. Code Ann. §§ 5-8-32, -35(c)(6)
226. Haw. Rev. Stat. § 226-52
227. Me. Rev. Stat. Ann. tit. 30-A, § 4326 4.
228. Or. Rev. Stat. §§ 197.010, .015(5)
229. R.I. Gen. Laws § 45-22.2-2
230. Tenn. Code Ann. § 6-58-107
231. Vt. Stat. Ann. tit. 24 § 4345a(5)
232. Wash. Rev. Code §§ 36.70A.040, .210
233. Me. Rev. Stat. Ann. tit. §30-A, 4323
234. Md. Ann. Code art. 66B, §§ 3.01(a), 3.05
235. N.J. Stat. Ann. §§ 40:27-1, -2
236. Tenn. Code Ann. §§ 13-4-101, 201
237. Wash. Rev. Code §§ 35.63.020, .090, 36.70.010, .030, .040, .050, .320
238. Ga. Stat. Ann. §§ 36-70-1, 3
239. N.J. Stat. Ann. § 40:55D-23
240. Vt. Stat. Ann. tit. 24, § 4381
241. Del. Code Ann. tit. 9, §§ 2656(g)(4), 4956(g)(4), 6956(g)(4)
242. *Id.*
243. Me. Rev. Stat. Ann. tit. 30-A, § 4326 1.
244. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A, C
245. In Washington, the requirement is found in the Planning Commission Act, Wash. Rev. Code § 35.63 *et seq.*
246. Cal. Gov't Code § 65302(a), (d), (e)
247. Del. Code Ann. tit. 9, §§ 2656(g)(5), 4956(g)(5), 6956(g)(5)
248. Fla. Stat. Ann. § 163.3171(6)(e)
249. Me. Rev. Stat. Ann. tit. 30-A, § 4326 1, F
250. N.J. Stat. Ann. § 40:55D-28(b)(8)
251. R.I. Gen. Laws § 45-22.2-6(2)
252. Vt. Stat. Ann. tit. 24, § 4348a(a)(2)(A)
253. Wash. Rev. Code § 36.70A.160
254. In Florida, the requirement is in Title XXVIII, Fla. Stat. Ann. § 380.05.
255. Ga. Code Ann. § 12-2-8(g)(3)(G)
256. Me. Rev. Stat. Ann. tit.30-A, § 4326 1, B, C
257. Md. Ann. Code art. 66B, §§ 1.03(a)(1)(iv), 3.05(a)(4)(vii)
258. Vt. Stat. Ann. tit. 24, § 4348(a)1-10
259. Wash. Rev. Code § 36.70A.170
260. Md. Code Ann., State Fin. & Proc. § 5-7B-01 *et seq.*
261. Md. Ann. Code art. 66B, § 1.01
262. Tenn. Code Ann. § 6-58-104(a)(1), (2)
263. Wash. Rev. Code §§ 36.70A.040(3), .110
264. Oregon Administrative Rule 660-015-0000(14)
265. Cal. Gov't Code §§ 65303, 65450
266. Fla. Stat. Ann. § 163.3177(7)(f), (11)(d)
267. Ga. Stat. Ann. § 12-2-8(f)
268. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A, A(4)
269. Md. Ann. Code art. 66B, § 3.05(a)(6)(ii)5, 6
270. N.J. Stat. Ann. § 40:27-2
271. Wash. Rev. Code §§ 36.70A.080(1)(a), 36.70A.350(1)(f), (h), (i), 36.70A.365(2)(d), (f), (g), 36.70A.360(1), (4)(d)
272. Fla. Stat. Ann. § 163.3177(7)(f)
273. Fla. Stat. Ann. § 163.3177(11)(d)(1)
274. Fla. Stat. Ann. § 163.3177(11)(d)(2)
275. N.J. Stat. Ann. § 40:27-2
276. Wash. Rev. Code § 36.70A.080(1)(a)
277. Wash. Rev. Code §§ 36.70A.350(1)(f), (h), (i), 36.70A.365(2)(d), (f), (g)
278. Del. Code Ann. tit. 29, §§ 9202, 9211, 9213(a), 9228(b)(4), 9229
279. Fla. Stat. Ann. § 163.3167(3); § 186.501 *et seq.*
280. Ga. Stat. Ann. § 12-5-440 *et seq.*
281. Me. Rev. Stat. Ann. tit. 30-A, § 4326 4.
282. N.J. Stat. Ann. §§ 40:55D-4, -27(b)
283. Or. Rev. Stat. §§ 197.065, .186, .298, .301, .445, .455, .460, .467
284. Vt. Stat. Ann. tit. 24, §§ 4305(a)-(d), 4345(6), 4345a(1)-(3)
285. Wash. Rev. Code §§ 36.70A.250, .280
286. Del. Code Ann. tit. 29, §§ 9211, 9219
287. Del. Code Ann. tit. 29, §§ 9228(b)(4), 9229
288. Del. Code Ann. tit. 29, § 9213(a)
289. Del. Code Ann. tit. 29, § 9202(6)
290. N.J. Stat. Ann. § 40:55D-4
291. N.J. Stat. Ann. § 40:55D-27(b)
292. Or. Rev. Stat. § 197.301
293. Vt. Stat. Ann. tit. 24, § 4345(6)
294. Ga. Stat. Ann. § 50-8-2(a)(18)
295. Me. Rev. Stat. Ann. tit. 30-A, § 4349-A 3
296. Tenn. Code Ann. §§ 6-58-109 (a)(1)-(3), 6-58-110
297. Haw. Rev. Stat. § 226-104(b)(5)
298. Md. Code Ann., State Fin. & Proc. §§5-7B-01 *et seq.*, 5-7B-04; see also §§5-7B-05, 5-7B-06 & 5-7B-07(b)(citing exceptions)
299. Me. Rev. Stat. Ann. tit. 30-A, § 4349-A 3
300. Tenn. Code Ann. § 6-58-109 (a)(1)-(3)
301. Tenn. Code Ann. § 6-58-110

28 | PLANNING FOR BIODIVERSITY

- 302. Del. Code Ann. tit. 9, §§ 2658(a), 4958(a), 6958(a)
- 303. Fla. Stat. Ann. § 163.3167(3)
- 304. N.J. Stat. Ann. § 52:18A-199 (c), (d)
- 305. Or. Rev. Stat. §§ 197.175, .320
- 306. R.I. Gen. Laws § 45-22.2-9(d)
- 307. Tenn. Code Ann. § 4-3-727, § 6-58-107
- 308. Vt. Stat. Ann. tit. 24, § 4305(c), (d)
- 309. Wash. Rev. Code §§ 36.70A.250, .280
- 310. Fla. Stat. Ann. § 163.3167(3)
- 311. N.J. Stat. Ann. § 52:18A-199 (c), (d)
- 312. Or. Rev. Stat. § 197.320

APPENDIX A : STATE NARRATIVES

ALABAMA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

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

ALASKA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

ARIZONA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

Natural Resources—The long range general plan of cities with a population over 50,000 must include a conservation element “for the conservation, development and utilization of natural resources, including forests, soils, rivers and other waters, harbors, fisheries, wildlife, and minerals and other natural resources.”⁹ County comprehensive plans must also include a conservation element.¹⁰

Open Space—Municipalities’ long range plans must include a land use element designating open space areas. For cities with a population between 2,500 and 10,000 with a certain population growth rate and all other cities over 10,000, the plan must include an open space element with an inventory of open space needs and policies for protecting these areas.¹¹

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Environmental Planning—Cities and towns that are not required to include an environmental planning element, due to their population growth rate, may opt to do so.¹²

Natural Resources—Cities and towns which, based on their population, are not required to include a conservation element may opt to do so.¹³

Open Space—Cities and towns which, based on their population and population growth rate, are not required to include an open space element may opt to do so.¹⁴ County comprehensive plans may include “studies and recommendations relative to the location, character and extent of . . . parks [and] open space.”¹⁵

Wildlife Habitat—County comprehensive plans may include “studies and recommendations relative to the location, character and extent of . . . wildlife areas.”¹⁶

OTHER INFORMATION

The Commissioner of the Department of State Lands is required to classify those state lands that are suitable for urban planning. These lands are then included in a state development plan, from which site-specific development plans are prepared.¹⁷

ARKANSAS

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

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

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

OTHER INFORMATION

Not Applicable

CALIFORNIA

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

Cities and counties have primary land use planning authority in California, but the state requires that each city and county develop both general and specific plans, which must include certain biodiversity-related elements. The Office of Planning and Research is the state comprehensive planning agency.²⁵ The office is charged with developing long range planning goals, including those related to land use, open space, resource preservation, and air and water quality.²⁶ The office is also responsible for creating a statewide environmental monitoring system, and for assisting local governments with planning issues.²⁷

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

Cities and counties are required to adopt comprehensive, long-term general growth plans.²⁸ Local land use decisions must be consistent with general and specific plans.²⁹

Mandatory Local Plan Elements Related to Biodiversity

Mandatory elements of the required city and county general comprehensive, long-term growth plans include land use, conservation, and open space.³⁰ In 2001, the legislature added environmental justice to its general plan guidelines.³¹ The land use element must designate the proposed general location of public and private uses, including the location of natural resources and places for the “enjoyment of scenic beauty.”³² The conservation element is for the “conservation, utilization and development of natural resources,” including rivers, fisheries, and wildlife.³³ The open space element is composed of a local open space plan, which designates open space for the “preservation of natural resources including . . . areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for economic and other scientific study purposes; rivers, streams, bays, and estuaries; and coastal beaches, lake shores, banks of rivers and streams, and watershed lands.”³⁴ All land use decisions must be consistent with the general and specific plans.³⁵

Discretionary Local Plan Elements Related To Biodiversity

In addition to the mandatory elements in the comprehensive long-term growth plan, cities and counties may include other elements, which “relate to the physical development of the county or city.”³⁶ Cities and counties are also authorized to adopt a specific plan for implementation of the general plan in specific areas.³⁷

Additional Local Authorities and Responsibilities Related to Biodiversity

Not Applicable

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Not Applicable

Review of Local Plans

Not Applicable

State Assistance to Localities

The California Office of Planning and Research is designated to serve a local assistance function.³⁸

COLORADO

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

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

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

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

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

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

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

CONNECTICUT

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

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

DELAWARE

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

Counties and municipalities in Delaware have primary land use planning authority over local planning actions. All Delaware counties plan for development and growth by adopting mandatory comprehensive growth plans,⁵³ which must contain certain biodiversity-related elements.⁵⁴

The Delaware Planning Act creates three entities including the Cabinet Committee on State Planning Issues (Cabinet Committee), the Governor's Advisory Council on Planning Coordination (Advisory Council), and the Office of State Planning Coordination (OSPC). The Cabinet Committee considers "matters relating to the orderly growth and development of the State."⁵⁵ These matters include "recommendations for the most desirable general pattern of land use" concerning watercourses, water bodies, and "other natural or environmental factors."⁵⁶ The Cabinet Committee reports to the governor and the General Assembly annually with recommendations for changes.⁵⁷ The Cabinet Committee also reviews the comprehensive plans required by the Quality of Life Act.⁵⁸ In addition, the governor, through the Cabinet Committee, must provide counties with state land use and development goals and policies, for use in the comprehensive planning process.⁵⁹ The Advisory Council⁶⁰ works with the Cabinet Committee in its function as advisor to the governor.⁶¹ The Advisory Council is comprised of representatives of several constituency groups, including environmental interests, as well as other general and specific appointments.⁶² In addition, the Advisory Council assists the governor on issues related to development and land use in the state and recommends legislative and administrative solutions.⁶³ The OSPC, assists in statewide planning matters in an advisory, consultative and coordinating capacity,⁶⁴ and represents the state on land use matters.⁶⁵

The State Land Use Planning Law governs land use planning decisions of more than local concern by requiring opportunity for notice and comment by state, regional, and federal agencies.⁶⁶ Actions relating to adoption or amendment of comprehensive development plans and critical areas are among those enumerated as being of more than local concern. A "critical area" is defined as "an area wherein the establishment or maintenance of a viable physical, economic or social environment is of more than local concern; or the physical, economic or social characteristics of said area are of primary importance or uniquely sensitive, including, but not limited to, wetlands, major port facilities, and historic areas."⁶⁷ Local jurisdictions must provide the OSPC with "timely written notice" of any proposed local land use planning actions that are of greater than local concern and, therefore subject to the Delaware Planning Act.⁶⁸ Upon receiving this notification, OSPC must provide notice of these actions to interested regional and federal agencies and to all state agencies.⁶⁹ State agencies must provide written comments to the OSPC on the proposed land use planning action and expressly consider several items, including the impact of the proposed action upon the physical environment, including air, water quality, and natural resources.⁷⁰

In addition, any state, regional, or federal agency is permitted to comment on any proposed local land use planning action subject to the Delaware Planning Act at any public hearing provided by the local jurisdiction that has final local decision-making authority over the proposed action.⁷¹ When no such hearing is provided, the OSPC may require the local jurisdiction to provide one only if the proposed land use planning action "significantly affects the interests of more than local concern."⁷² Local jurisdictions have final decision-making authority over proposed land use planning actions provided the jurisdictions presently possess that authority, but no final decisions may be made until the state has an opportunity to comment.⁷³

The state must review its capital improvements program and facilities plans to determine whether they, among other factors, "arbitrarily affect local jurisdictions . . . environmentally."⁷⁴ If such an arbitrary effect is found, the State agency whose plan or program is the cause must amend the plan or program to remedy the situation.⁷⁵ Similarly, if a local jurisdiction discovers that a state plan or program arbitrarily affects it environmentally, it must notify the OSPC and notify the appropriate state agency of its determination and reasons supporting it.⁷⁶ If the state agency agrees, it must amend its plan or program. If it disagrees, the decision to retain the plan or program constitutes a land use planning decision.⁷⁷

Finally, any state agency undertaking a land use planning action must notify the local jurisdiction that will be impacted by the action.⁷⁸ Upon receiving such notification, a local jurisdiction must review the proposed action and submit comments to the OSPC that expressly consider a number of items including the "impact of the proposed action upon the physical environment, including but not limited to air and water quality and natural resources."⁷⁹ The OSPC transmits

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

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

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

Mandatory Local Plan Elements Related to Biodiversity

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

Discretionary Local Plan Elements Related To Biodiversity

Not Applicable

Additional Local Authorities and Responsibilities Related to Biodiversity

As discussed above, under the State Land Use Planning Law, local jurisdictions have several duties and responsibilities with respect to notifying the state of land use planning actions that are of “greater than local concern” and subject to the comment requirements of the State Land Use Planning Law.⁹³ Local jurisdictions must also review certain state agency land use planning actions for impact on the environment.⁹⁴ In addition, under the State Land Use Planning Law, municipalities must review their existing comprehensive development plans to determine if those plans arbitrarily exclude land uses of more than local benefit.⁹⁵ “Land use of more than local benefit” means “any use or combination of uses of land or water whose economic, social or environmental benefits extend beyond the local jurisdiction in which the use or uses take place.”⁹⁶ Plans must be amended to remedy any arbitrary exclusions.⁹⁷ Furthermore, as discussed, regional agencies, along with state and federal agencies, are permitted to comment on any proposed local land use planning action subject to the State Land Use Planning Law at any public hearing provided by the local jurisdiction.⁹⁸

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Not Applicable

Review of Local Plans

Comprehensive plans must be presented to the Cabinet Committee on State Planning Issues when they are made available for public review.⁹⁹ Local planning agencies must also report on comprehensive plans annually to the cabinet.¹⁰⁰ In addition, land use planning decisions of “more than local concern” are subject to the Delaware Planning Act, which requires opportunity for notice and comment by the affected political subdivisions or state agencies, including actions relating to the adoption or amendment of comprehensive development plans, as discussed in detail above.¹⁰¹

State Assistance to Localities

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

FLORIDA

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

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

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

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

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

Regional planning councils exist in each of the comprehensive planning districts of the state.¹¹⁵ These councils are responsible for the planning and coordination of intergovernmental responses to those growth management problems of a non-local nature. The state land planning agency must evaluate statutory provisions relating to the intergovernmental coordination element and consider changes to its intergovernmental element rules in consultation with a technical committee of 15 members. These members must represent local governments, regional planning councils, the private sector, and environmental organizations.¹¹⁶

Legislative findings and declarations in the Planning Act include a statement that “no single unit of government can plan or implement policies” related to “protection and conservation of natural . . . resources” because they “transcend the boundaries and responsibilities of individual units of government.”¹¹⁷

The growth management portion of the state comprehensive plan must contain several elements. Required elements related to biodiversity include identification of “areas of State and regional environmental significance and establish[ment of] strategies to protect them;” promotion of “land acquisition programs to provide for natural resource protection, open space needs, urban recreational opportunities and water access;” establishment of “priorities regarding coastal planning and resource management;” and objectives and policies “related to the State’s natural and built environment that are necessary to effectuate those portions of the State comprehensive plan which are related to physical growth and development.”¹¹⁸

The Planning Act specifies that the state comprehensive plan may include goals, objectives, and policies related to “natural resources and environmental management.”¹¹⁹ The comprehensive plan adopted by the legislature does contain specific goals and policies related to water resources, coastal and marine resources, natural systems, and recreational lands.¹²⁰ Policies relating to water resources include: protecting and using natural water systems in lieu of structural alternatives and restoration of modified systems; establishing minimum seasonal flows and levels for surface watercourses with primary consideration given “to the protection of natural resources, especially marine, estuarine, and aquatic ecosystems;” and discouraging “the channelization, diversion or damming of natural riverine systems.”¹²¹ Strict flood plain manage-

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

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

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

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

Areas of critical state concern may be designated for certain types of areas in the state, including areas “containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance.” This includes, but is not limited to, forests, wildlife refuges, and major rivers and estuaries, which would be substantially deteriorated by “uncontrolled private or public development.”¹³⁴ Specific criteria that must be considered in designating an area of critical state concern include: “whether the ecological value of the area, as determined by the physical and biological components of the environmental system, is of substantial regional or statewide importance;” “whether the area is a designated critical habitat of any state or federally designated threatened or endangered plant or animal species;” and “whether any existing or planned substantial development within the area will directly, significantly, and deleteriously affect any or all of the environmental or natural resources of the area which are of regional or statewide importance.”¹³⁵ The Administration Commission is charged under the statute with designating areas of critical state concern. The rules issued to designate such areas must include, among other things, principles for guiding development. The rules adopted by the commission and the principles guiding development must be submitted by the commission to the legislature for review. The legislature may reject, modify, or take no action on the adopted rule.¹³⁶ The Department of Community Affairs may recommend to the commission specific areas of critical state concern.¹³⁷ In addition, each regional planning agency may recommend to the department areas within its jurisdiction that meet the criteria for areas of critical state concern and must solicit from the local government within its jurisdiction suggestions as to areas to be recommended.¹³⁸ In designated areas, the local government must adopt the Administration Commission’s rules guiding development, or the department must approve the local regulations for the area.¹³⁹

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

Municipalities and counties are required to prepare comprehensive plans that are consistent with the requirements of the state comprehensive plan.¹⁴⁰

Mandatory Local Plan Elements Related to Biodiversity

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

Discretionary Local Plan Elements Related To Biodiversity

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

Additional Local Authorities and Responsibilities Related to Biodiversity

As noted, regional planning councils exist in each of the comprehensive planning districts of the state. These councils are responsible for the planning and coordination of intergovernmental responses to those growth management problems of a non-local nature.¹⁵⁴ In addition, if a local government fails to prepare a comprehensive plan, or elements are lacking, the regional planning entity for the area must adopt the missing elements.¹⁵⁵

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Not Applicable

Review of Local Plans

As noted, if a local government fails to prepare a comprehensive plan, or elements are lacking, the regional planning entity for the area must adopt the missing elements.¹⁵⁶

State Assistance to Localities

Not Applicable

GEORGIA

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

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

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

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

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

Mandatory Local Plan Elements Related to Biodiversity

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

Discretionary Local Plan Elements Related To Biodiversity

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

Additional Local Authorities and Responsibilities Related to Biodiversity

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

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

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

Government is statutorily defined, in part, as a county or municipality that “has a comprehensive plan in conformity with the minimum standards and procedures” and “has established regulations consistent with its comprehensive plan and with the minimum standards and procedures.”¹⁷⁶

Review of Local Plans

Not Applicable

State Assistance to Localities

Not Applicable

HAWAII

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

A statewide planning system was established in 1961 and a state plan was adopted in 1978. The statewide planning system consists of state functional plans and county general plans.¹⁷⁷ Functional plans set forth “policies, statewide guidelines, and priorities within a specific field of [State agency] activity.”¹⁷⁸ These plans address such areas as agriculture, conservation, education, health, and transportation.¹⁷⁹ County general plans are comprehensive long-range plans adopted by the county council indicating the “desired population and physical development patterns for each county.”¹⁸⁰ The state plan coordinates and integrates the state functional and county general plans.¹⁸¹

The purpose of Hawaii’s state plan,¹⁸² which is set forth in the Hawaii State Planning Act,¹⁸³ is to establish overall priority guidelines to address areas of statewide concern.¹⁸⁴ Five major areas of statewide concern are identified in the statute as meriting priority attention: “economic development, population growth and land resource management, affordable housing, crime and criminal justice and quality education.”¹⁸⁵

The Office of State Planning, within the governor’s office, guides the overall planning framework for the state. This office is responsible for the development and management of the state’s growth policy.¹⁸⁶ The State Land Use Commission manages land use under the four state land use districts—Urban, Rural, Agricultural, and Conservation.¹⁸⁷

The Hawaii state plan includes among its state goals the achievement of “a desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people.”¹⁸⁸ The state plan sets forth various policies and goals for specific areas of state concern. Some of these relate to environmental objectives. For example, its policies for the economy include promotion of Hawaii “as an attractive market for environmentally . . . sound investment activities” and promotion and protection of intangible resources such as “scenic beauty.”¹⁸⁹ Additional policies for the economy specifically relating to federal expenditures include promotion of federally supported activities that “minimize adverse impacts on Hawaii’s environment.”¹⁹⁰ Support and promotion of Hawaii’s environmental objectives are included among potential growth activity policies.¹⁹¹ Similarly, policies set forth to achieve the state’s transportation objectives include encouragement of transportation systems sensitive to the quality of Hawaii’s natural environment.¹⁹² Policies set forth to achieve the objective for socio-cultural advancement and leisure include promotion of “recreational and educational potential of natural resources having scenic, open space, cultural, historical, geological, or biological values while ensuring that their inherent values are preserved.”¹⁹³

The state plan specifically sets out objectives and policies for the physical environment.¹⁹⁴ These objectives and policies relate to land-based, shoreline, and marine resources;¹⁹⁵ scenic, natural beauty and historic resources;¹⁹⁶ and land, air, and water quality.¹⁹⁷ These objectives include prudent use of those resources and “protection of Hawaii’s unique and fragile environmental resources.”¹⁹⁸ To obtain its objectives, the state’s policy includes exercising an overall conservation ethic,¹⁹⁹ and ensuring compatibility between land- and water-based activities and natural resource and ecological systems.²⁰⁰ It includes taking into account the physical attributes of areas when planning and designing,²⁰¹ and managing natural resources and environs to encourage their beneficial use “without generating costly or irreparable environmental damage.”²⁰² The state’s policy also includes encouraging the protection of rare or endangered plant and animal species and habitats native to Hawaii,²⁰³ and providing public incentives to “encourage private actions to protect significant natural resources from degradation.”²⁰⁴ Compatible relationships among activities, facilities, and natural resources should also be pursued as a matter of policy.²⁰⁵

Planning for the physical environment must be “directed toward achievement of the objective of enhancement of Hawaii’s scenic assets [and] natural beauty.”²⁰⁶ To achieve this objective the state’s policies include promotion of preservation of significant natural resources,²⁰⁷ and providing incentives to maintain scenic amenities.²⁰⁸ Promoting the preservation of views and vistas “to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features” is also included.²⁰⁹ Protection of special areas and elements that are part of Hawaii’s ethnic and cultural heritage and encouraging designs that complement the natural beauty of the islands are also included.²¹⁰

Planning objectives for land, air, and water quality include greater public awareness and appreciation of Hawaii’s environmental resources.²¹¹ The state’s policies to achieve its objectives include fostering education activities to promote understanding of Hawaii’s limited resources;²¹² proper management of land and water resources;²¹³ and achievement of quality surface, ground, and coastal waters.²¹⁴

Priority guidelines for stimulating economic growth and encouraging business expansion include attracting industries that have minimum adverse effects on the environment.²¹⁵ Priority guidelines to promote the visitor industry include developing resorts that provide adequate shoreline setbacks and visitor industries which “respect, preserve, and enhance Hawaii’s significant natural, scenic, historic, and cultural resources.”²¹⁶

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

County plans are required and must contain certain elements.²¹⁷

Mandatory Local Plan Elements Related to Biodiversity

County general plans “shall indicate desired population and physical development patterns for each county and regions within each county.” These plans shall also “address the unique problems and needs of each county and regions within each county.” In addition, county general plans or development plans “shall further define the overall theme, goals, objectives, policies, and priority guidelines” contained within the statewide planning system, several of which are biodiversity-related, as discussed above.²¹⁸

Discretionary Local Plan Elements Related To Biodiversity

Not Applicable

Additional Local Authorities and Responsibilities Related to Biodiversity

Not Applicable

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Unless the public interest dictates otherwise, priority must be given to state capital improvement funds to encourage urban development within existing urban boundaries, in order to preserve green belts.²¹⁹

Review of Local Plans

Not Applicable

State Assistance to Localities

Not Applicable

IDAHO

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

OTHER INFORMATION

Not Applicable

ILLINOIS

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Municipalities and counties may establish Local Land Resource Management Plans under the Local Land Resources Management Planning Act. These plans can conserve forest lands, natural resources, and open spaces.²²⁷ Townships may also create an open space program to promote, “the conservation of nature, flora and fauna, natural environment and natural resources of the township.”²²⁸

The state’s official planning agency, the Department of Commerce and Community Affairs, funds statewide comprehensive planning and regional and local planning assistance.²²⁹

INDIANA

LAND USE PLANNING AUTHORITIES

Counties and municipalities may establish planning commissions. If established, commissions are required to adopt comprehensive plans.²³⁰ Regional planning is also authorized and the adoption of comprehensive plans is required.²³¹

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—Municipal and county comprehensive plans may contain maps and information about such subjects as forests.²³²

Wildlife Habitat—Municipal and county comprehensive plans may contain maps and information about such subjects as forests and wildlife refuges.²³³

OTHER INFORMATION

Not Applicable

IOWA

LAND USE PLANNING AUTHORITIES

City and county planning and zoning are authorized and comprehensive plans are required.²³⁴ Similarly, regional planning is authorized and comprehensive plans are required.²³⁵

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Open Space—Regional plans may include planning for open spaces.²³⁶

OTHER INFORMATION

In addition to local comprehensive plans, county land preservation and use commissions may adopt plans with methods for promoting the creation and maintenance of wildlife habitat²³⁷ and methods for preserving forests, wetlands, streams, lakes, and aquifers.²³⁸

KANSAS

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

KENTUCKY

LAND USE PLANNING AUTHORITIES

Cities and counties are required to plan and are required to adopt comprehensive plans.²⁴² Counties with certain populations may meet the planning requirements by establishing area planning commissions for consolidated planning.²⁴³

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—City and county comprehensive plans may include elements addressing conservation and natural resources.²⁴⁴ Area plans may also include a natural resources element.²⁴⁵

OTHER INFORMATION

A State Planning Committee provides information on planning to the legislature and prepares a long-term development program of major state improvement projects.²⁴⁶ The Board of the Long Term Policy Research Center coordinates long-term planning by state agencies.²⁴⁷

LOUISIANA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

MAINE

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

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

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

The Maine State Planning Act²⁵³ establishes the Land and Water Resources Council (Council) which ensures interagency coordination of the state's activities regarding natural resource and land use management.²⁵⁴ The council advises the governor, the legislature and state agencies on the formulation of policies for management of land and water resources to achieve state environmental goals and recommends coordinated state policy regarding proposals affecting the natural environment.²⁵⁵ The council also evaluates the growth management program.²⁵⁶ In addition, the council establishes priorities for managing water bodies based on an assessment of the aquatic habitat due to nonpoint source pollution, among other considerations.²⁵⁷

The Local Growth Management Programs are designed to provide for "continued direct State regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital State interests."²⁵⁸ Established state goals must be included in local comprehensive plans to "provide overall direction and consistency to the planning and regulatory action of all State and municipal agencies affecting natural resource management."²⁵⁹ The Local Growth Management Programs statute²⁶⁰ contains the standards by which local comprehensive plans must be developed. Plans must include certain state goals that address growth.²⁶¹ These state goals include protecting the state's rural character, protecting the quality of the state's water resources, protecting the state's "other critical natural resources, including . . . wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas."²⁶² Other state goals include safeguarding the state's agricultural and forest resources "from development which threatens those resources," and "promoting and protecting the availability of outdoor recreation opportunities."²⁶³

Growth-related state capital investments are restricted by statute. For example, investments are specifically authorized in several situations, including investments in projects that include a building or improvement that is related to and required to be proximate to land acquired for a park, conservation, open space, or public access or to an agricultural, conservation, or historic easement.²⁶⁴

The state has a land use mediation program for private landowners that provides a forum for mediation of governmental land use actions. Mediators must be knowledgeable in environmental law and regulatory issues.²⁶⁵

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

Municipalities are authorized to adopt local growth management programs, which must include comprehensive plans. State goals must be included in local comprehensive plans.²⁶⁶ Two or more municipalities may conduct their growth management programs jointly, as a multimunicipal region, if they have adopted a written comprehensive planning and enforcement agreement.²⁶⁷

Mandatory Local Plan Elements Related to Biodiversity

Local comprehensive plans (which include municipal and multimunicipal plans) must address state goals concerning growth, as discussed above.²⁶⁸ In addition, plans must analyze the "vulnerability of and potential impacts on natural resources."²⁶⁹ Comprehensive plans must also address significant water resources and "their vulnerability to degradation," as well as "significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas . . . and unique natural resources."²⁷⁰

Commercial forestry and agricultural land must also be addressed.²⁷¹ Furthermore, the analysis section must include existing recreation, park, and open space areas.²⁷² Comprehensive plans must also include a policy development section that promotes the state's goals and addresses the state's coastal policies.²⁷³ Comprehensive plans must also contain an implementation strategy that identifies growth areas and rural areas.²⁷⁴ A rural area is defined as "an area that is deserving of some level of regulatory protection . . . to support agriculture, forestry, mining, open space, wildlife habitat, fisheries habitat and scenic land."²⁷⁵ The implementation strategy must also ensure that "water quality will be protected from long-term and cumulative increases in phosphorus from development in great pond watersheds."²⁷⁶ Additionally, the strategy must ensure the protection of agricultural and forest resources and discourage incompatible development.²⁷⁷ It must encourage the "creation of greenbelts, public parks, trails and conservation easements."²⁷⁸ Each municipality and multimunicipal region must identify and encourage the protection of undeveloped shoreland "and other areas identified in the local planning process as meriting that protection."²⁷⁹ The strategy must also develop goals for "great ponds pertaining to . . . protection of resources of State significance . . ."²⁸⁰

Discretionary Local Plan Elements Related To Biodiversity

Municipalities are not required to identify growth areas for residential, commercial, or industrial growth, if such growth is not possible because limitations imposed by protected natural resources exist.²⁸¹

Additional Local Authorities and Responsibilities Related to Biodiversity

The development of regional coordination programs is required to manage shared resources, such as rivers, and to provide consistency with comprehensive plans of other municipalities.²⁸²

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Municipalities that have adopted a comprehensive plan consistent with the state's goals and guidelines are given preference for state grants and investments.²⁸³

Review of Local Plans

Not Applicable

State Assistance to Localities

The state provides technical and financial assistance programs for municipalities to encourage adoption of local growth management programs.²⁸⁴ Regional council assistance may be offered by the State Planning Office to assess open space needs.²⁸⁵

MARYLAND

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

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

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

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

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

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

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

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

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

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

Mandatory Local Plan Elements Related to Biodiversity

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

The required visions of local comprehensive plans include concentrating development in "suitable areas," protection of sensitive areas, preservation of rural areas, protection of the Chesapeake Bay, and conservation of resources, including a reduction in resource consumption.³⁰⁹ All local comprehensive plans must include measures for protecting the Chesapeake Bay.³¹⁰

Discretionary Local Plan Elements Related To Biodiversity

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

Additional Local Authorities and Responsibilities Related to Biodiversity

Not Applicable

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

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

Review of Local Plans

Not Applicable

State Assistance to Localities

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

MASSACHUSETTS

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

The Department of Housing and Community Development is “authorized, empowered, and directed to: provide assistance to communities in solving local problems, including, but not limited to, problems in planning, zoning, housing and development.”³²¹

MICHIGAN

LAND USE PLANNING AUTHORITIES

Municipalities³²² and counties³²³ are authorized to plan and establish planning commissions. If established, commissions are required to adopt master plans. In contrast, regional planning is authorized and master plans are authorized but not required.³²⁴

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Open Space—Municipal and county master plans must include recommendations for the location of open space.³²⁵

Natural Resources—If pertinent to the future development of the municipality, master plans must include a land use plan and program consisting in part of a classification and allocation of land for forests and woodlots.³²⁶

Wildlife Habitat—If pertinent to the future development of the municipality, master plans must include a land use plan and program consisting in part of a classification and allocation of land for wildlife refuges.³²⁷

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

MINNESOTA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

OTHER INFORMATION

Not Applicable

MISSISSIPPI

LAND USE PLANNING AUTHORITIES

Municipalities and counties are authorized to plan and establish comprehensive plans.³³² Similarly, regional planning is authorized.³³³

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Open Space—Municipal and county comprehensive plans must include provisions for open space and recreation.³³⁴

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

MISSOURI

LAND USE PLANNING AUTHORITIES

Municipal³³⁵ and regional³³⁶ planning is authorized and comprehensive plans are required. County planning is also authorized, but plans are not required.³³⁷

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

The Office of Administration is the official state planning agency. It provides assistance to local governments³³⁸ and coordinates state and regional comprehensive planning on several topics, including open space.³³⁹ The Department of Community Affairs also assists with the administration of planning programs.³⁴⁰

MONTANA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

NEBRASKA

LAND USE PLANNING AUTHORITIES

Municipalities of a certain size are required to establish planning commissions and adopt comprehensive plans.³⁴⁴ Other municipalities are authorized but not required to establish planning commissions. If established, such commissions are required to adopt comprehensive plans.³⁴⁵ Counties that include cities with a population of a certain size are required to establish planning commissions and adopt comprehensive plans.³⁴⁶ Other counties are authorized but not required to establish planning commissions and adopt comprehensive plans.³⁴⁷

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—Cities and counties that include cities with a population of a certain size must take into account “the need for conserving land and other irreplaceable natural resources” when developing comprehensive plans.³⁴⁸

Open Space—Cities and counties that include cities with a population of a certain size must include in their comprehensive plans current and proposed parks, grounds, and open spaces.³⁴⁹

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

A Policy Research Office assists local governments with planning and development of functional plans.³⁵⁰

NEVADA

LAND USE PLANNING AUTHORITIES

City and county governmental units with certain populations are required to create planning commissions. These planning commissions are required to adopt comprehensive, long term general plans.³⁵¹ In contrast, for the rest of the state's governmental units, commissions are authorized but not required. If commissions are established, they are required to adopt plans. Regional planning commissions are established in counties with certain populations and are required to adopt development plans.³⁵²

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—Comprehensive plans that are required for cities and counties with certain populations must include an element for “conservation, development and utilization of natural resources,” including forests, rivers, fisheries, wildlife, and an inventory of natural land uses.³⁵³

Wildlife Habitat—City and county comprehensive long term general plans must contain a conservation plan that includes fisheries and wildlife.³⁵⁴

Miscellaneous—Regional comprehensive plans must include conservation policies for air, water, and land use projections.³⁵⁵

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

The Division of State Lands of the Department of Conservation and Natural Resources is the land use planning agency for state. A Planning Advisory Council appointed by the governor advises the department on the development and distribution of land use planning information. At the request of local government units, or the governor, the council also makes recommendations for planning issues in areas of critical environmental concern where irreversible degradation could occur and on issues regarding inconsistencies in land use plans of local governmental units.³⁵⁶

NEW HAMPSHIRE

LAND USE PLANNING AUTHORITIES

Municipal planning boards are authorized. If established, municipal boards are required to prepare master plans.³⁵⁷ Similarly, regional planning entities are authorized. If established, regional planning entities are required to adopt master plans.³⁵⁸

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—Municipal master plans must contain a conservation and preservation section to protect natural and man-made resources.³⁵⁹

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—Municipal master plans may include a natural resources section, which identifies and inventories any critical or sensitive areas or resources, not only those in the local communities, but those shared with abutting communities. The natural resources section is intended to provide a factual basis for any land development regulations that are enacted to protect natural areas. The natural resources section of the master plan should include a local water resources management and protection plan.³⁶⁰

Critical and Sensitive Areas—The natural resources section of municipal master plans, if adopted, should identify and inventory any critical and sensitive areas or resources, not only those in the local communities, but also those shared with abutting communities.³⁶¹

OTHER INFORMATION

The State provides assistance to local governments through the Office of State Planning.³⁶² The Office of State Planning is required to develop a comprehensive development plan for the state.³⁶³ After 2002, regional plans must be, “to the extent practical,” consistent with the state development plan.³⁶⁴ The state plan must include a natural resources section which identifies trends in land protection, open space, and farmland preservation and protection.³⁶⁵

NEW JERSEY

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

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

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

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

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

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

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

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

Mandatory Local Plan Elements Related to Biodiversity

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

Discretionary Local Plan Elements Related To Biodiversity

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

Additional Local Authorities and Responsibilities Related to Biodiversity

Whenever the environmental commission (a municipal advisory committee)³⁹⁴ has prepared and submitted to the planning board of the municipality an index of the natural resources of the municipality, the planning board must make every application for development submitted to it available to the environmental commission.³⁹⁵ Failure of the planning board to do so does not invalidate any hearing or proceeding.³⁹⁶

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Not Applicable

Review of Local Plans

The State Planning Commission reviews State and local planning procedures.³⁹⁷

State Assistance to Localities

The Office of State Planning provides advice and assistance to county and local planning units.³⁹⁸

NEW MEXICO

LAND USE PLANNING AUTHORITIES

Municipalities are authorized to establish planning commissions. If established, planning commissions are required to adopt master plans.³⁹⁹ Regional planning commissions are also authorized and if established, regional planning commissions are required to adopt master plans.⁴⁰⁰ In contrast, counties are authorized to establish commissions, which are authorized, but not required, to adopt master plans.⁴⁰¹

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

An Office of Policy and Planning coordinates planning activities among state agencies.⁴⁰²

NEW YORK

LAND USE PLANNING AUTHORITIES

Cities, villages, towns, and counties are authorized to plan and create master plans; plans are authorized but not required.⁴⁰³ Similarly, regional planning boards are authorized and adoption of comprehensive plans is authorized but not required.⁴⁰⁴

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Critical and Sensitive Areas—City master plans must include sensitive environmental areas.⁴⁰⁵

Natural Resources—City master plans must include the consideration of coastal and natural resources.⁴⁰⁶

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

NORTH CAROLINA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

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

NORTH DAKOTA

LAND USE PLANNING AUTHORITIES

Cities,⁴¹³ townships,⁴¹⁴ and counties⁴¹⁵ are authorized to plan; comprehensive plans are authorized but not required. Regional planning councils are also authorized but, if established, are required to adopt comprehensive plans.⁴¹⁶

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Open Space—City master plans must include the location of open spaces.⁴¹⁷

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

OHIO

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

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

OKLAHOMA

LAND USE PLANNING AUTHORITIES

Cities are authorized to appoint municipal planning commissions. If established, municipal planning commissions are required to adopt master plans.⁴²⁴ Counties are authorized to appoint planning commissions. Plans are required for counties with large populations.⁴²⁵ Metropolitan planning commissions (cooperative commissions between cities and counties) are authorized. If established, they are required to adopt master plans. Regional planning is authorized and master plans are required.⁴²⁶

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—Metropolitan area planning commissions must develop their master plans to “conserve the natural resources of the area.”⁴²⁷

Open Space—Master plans of municipalities with a population over 200,000 must include the location of open spaces.⁴²⁸

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—County master plans may include location of forests, wildlife refuges, and “projects affecting conservation of natural resources.”⁴²⁹

Wildlife Habitat—County master plans may include the location of forests and wildlife refuges.⁴³⁰

OTHER INFORMATION

Not Applicable

OREGON

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

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

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

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

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

Mandatory Local Plan Elements Related to Biodiversity

In addition to reflecting statewide planning goals, local comprehensive plans must contain policy statements concerning the natural systems and activities relating to land use, as well as natural resources management programs.⁴⁴² Each plan must also contain a set of implementing measures, such as zoning and subdivision ordinances.

Discretionary Local Plan Elements Related To Biodiversity

Not Applicable

Additional Local Authorities and Responsibilities Related to Biodiversity

Counties must report to the Department of Land Conservation and Development (Department) on their actions involving land zoned for forest use.⁴⁴³ Counties must also prioritize land to be included with urban growth boundaries, with consideration given to certain resource lands.⁴⁴⁴ In addition, land subject to open space tax assessment must be removed from the buildable lands inventory maintained by local governments.⁴⁴⁵

Metropolitan service districts must report performance measures to the Department every two years. The measures must analyze the amount of environmentally sensitive land that is protected and the amount of such land developed.⁴⁴⁶

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

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Not Applicable

Review of Local Plans

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

State Assistance to Localities

Not Applicable

PENNSYLVANIA

LAND USE PLANNING AUTHORITIES

Municipal and county planning is authorized. Municipal comprehensive plans are authorized but not required.⁴⁵³ County comprehensive plans are required.⁴⁵⁴

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—Municipal, multi-municipal, and county comprehensive plans must include a plan to protect natural resources, including wetlands and aquifer recharge zones, woodlands, steep slopes, prime agricultural land, flood plains, unique natural areas, and historic sites.⁴⁵⁵ The plans must also be consistent with several state statutes including the Clean Streams Law and Agricultural Area Security Law.⁴⁵⁶ In addition, county plans must identify land uses as they relate to important natural resources.⁴⁵⁷

Miscellaneous—Plans must also include a “statement of the interrelationship among the various plan components, which may include an estimate of the environmental . . . consequences on the municipality.”⁴⁵⁸

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Open Space—Counties and municipalities are authorized to create “locally designated growth areas” in their comprehensive plans and promote the use of transferable development rights as a method of preserving open space and farmland.⁴⁵⁹

Miscellaneous—The land use element of local comprehensive plans may include provisions for the “amount, intensity, character and timing of land use proposed for . . . parks and recreation [and] preservation of prime agricultural lands.”⁴⁶⁰

OTHER INFORMATION

The municipal planning code provides that “wherever the provisions of this act promote, encourage, require or authorize governing bodies to protect, preserve or conserve open land, consisting of natural resources, forests and woodlands, any actions taken to protect, preserve or conserve such land shall not be for the purposes of precluding access for forestry.”⁴⁶¹

The Governor’s Center for Local Government Services awards grant funding on a competitive basis to municipalities seeking to prepare or update comprehensive plans, with preference to municipalities engaging in cooperative planning with adjacent municipalities.⁴⁶²

RHODE ISLAND

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

Comprehensive planning occurs at both the state and local levels of government in Rhode Island. Rhode Island's Comprehensive Planning and Land Use Regulation Act (Act)⁴⁶³ requires cities and towns to plan for their long-term physical development.⁴⁶⁴ Municipalities exercise planning authority over total land and inland water area within their jurisdictions.⁴⁶⁵ State agencies' programs and projects must conform to approved municipal plans.⁴⁶⁶

All local plans must comply with the guidelines in the Act and the State Guide Plan (Plan).⁴⁶⁷ The plan includes goals, policies, and plans or plan elements for the physical, economic, and social development of the state, including natural resources, and recreation and open space elements.⁴⁶⁸ State goals include promotion and protection of the natural resources and preservation of the open space of each municipality and the state.⁴⁶⁹ Plans for future use must protect natural resources and preserve and protect open space.⁴⁷⁰ In addition, the plan must contain functional elements dealing with environmental concerns.⁴⁷¹

The Office of Statewide Planning prepares and monitors long-range plans of the state. The State Planning Council adopts components of these plans as elements in the plan.⁴⁷² It also adopts a state strategic plan and coordinates state agency planning activities. The State Planning Council consists of several members including two representatives of private, nonprofit environmental advocacy organizations. The Speaker of the House appoints one and the Senate Majority Leader appoints the other.⁴⁷³

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

Cities and towns are required to plan for long term physical development.⁴⁷⁴ Their plans must comply with the guidelines in the Act and the plan.⁴⁷⁵

Mandatory Local Plan Elements Related to Biodiversity

Required elements of local comprehensive plans include a land use plan element that must designate the proposed distribution, location and interrelationship of land use for several different uses including open space.⁴⁷⁶ A natural and cultural resources element must also be contained in the plan. This element "provides an inventory of the significant natural resources areas" including water, soils, prime agricultural lands, natural vegetation systems, wildlife, watersheds, wetlands, aquifers, coastal features, flood plains, and other natural resources.⁴⁷⁷ Plans must also include an open space and recreation element. This element contains an inventory of open space areas and an analysis of forecasted needs and policies for the management and protection of open space areas.⁴⁷⁸

Discretionary Local Plan Elements Related To Biodiversity

Not Applicable

Additional Local Authorities and Responsibilities Related to Biodiversity

Not Applicable

Mechanisms for Monitoring and Enforcing Local Compliance*Funding Restrictions on Localities*

Not Applicable

Review of Local Plans

The state has the authority to review local plans to insure consistency with state goals and policies and the State Guide Plan.⁴⁷⁹

State Assistance to Localities

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

SOUTH CAROLINA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

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

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

SOUTH DAKOTA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Miscellaneous—County comprehensive plans are defined as documents that describe the goals, policies, and objectives of a planning board “to interrelate all functional and natural systems and activities relating to the development” of the territory in a board’s jurisdiction.⁴⁸⁷

OTHER INFORMATION

The Bureau of Intergovernmental Relations provides planning assistance to local governments,⁴⁸⁸ and is required to develop a comprehensive development plan for the state with the cooperation of local governments.⁴⁸⁹

TENNESSEE

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

Local entities are responsible for land use planning in Tennessee, subject to state requirements for comprehensive planning. Tennessee's growth management law⁴⁹⁰ requires each county to file a growth plan based upon specific requirements established by statute.⁴⁹¹ Counties with metropolitan forms of government are exempt; however, municipalities that lie within such counties and another county must establish an urban growth boundary in conjunction with the county not having a metropolitan form of government.⁴⁹² The state's growth policy is, in part, to minimize urban sprawl.⁴⁹³

The stated purpose of the plans is to "direct the coordinated, efficient, and orderly development of the local government and its environs that will . . . best promote the public health, safety, morals and general welfare."⁴⁹⁴ The growth plan must set forth "municipal corporate limits, as well as urban growth boundaries, planned growth areas, if any, and rural areas, if any."⁴⁹⁵ Growth boundaries, planned growth areas, and rural areas are defined terms, each requiring conformance with certain statutory provisions and approval pursuant to statutory requirements.⁴⁹⁶ Eight planning goals must be included in growth plans.⁴⁹⁷

Each plan must be ratified by the county and each municipality within the county. The plan is then sent to the Local Government Planning Advisory Committee, which receives and approves the local growth plans.⁴⁹⁸

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

Most counties in the state are required to submit a growth plan⁴⁹⁹ with mandatory elements.⁵⁰⁰ In addition, municipal planning commissions are authorized and must adopt a general plan for the physical development of the municipality.⁵⁰¹

Mandatory Local Plan Elements Related to Biodiversity

Coordinating committees in most counties must develop a recommended growth plan that includes municipal corporate limits, as well as urban growth boundaries, and any planned growth or rural areas.⁵⁰² The statute requires that urban growth boundaries reflect the duty of municipalities to facilitate full development of resources within their current boundaries and manage and control urban expansion outside current boundaries, taking into account the "impact to agricultural lands, forests, recreational areas and wildlife management areas."⁵⁰³ Before proposing an urban growth boundary, a municipality must examine and report on the agricultural lands, forests, recreational areas, and wildlife management areas within the territory under consideration for inclusion within the boundary regarding "the likely long-term effects of urban expansion" on those areas.⁵⁰⁴

Planned growth areas must reflect the county's duty to "manage natural resources and to manage and control urban growth, taking into account the impact to the agricultural lands, forests, recreational areas and wildlife management areas."⁵⁰⁵ Before making a formal proposal of any planned growth area to the coordinating committee, the county must address a number of issues, including the likely long-term effects of urban expansion on agricultural lands, forests, recreational areas, and wildlife management areas within the territory under consideration for inclusion.⁵⁰⁶ Rural areas must identify territory "to be preserved as agricultural lands, forests, recreational areas, wildlife management areas or uses other than high density commercial, industrial or residential,"⁵⁰⁷ and "reflect the county's duty to manage growth and natural resources in a manner which reasonably minimizes detrimental impact to agricultural lands, forests, recreational areas, and wildlife management areas."⁵⁰⁸

Discretionary Local Plan Elements Related To Biodiversity

Not Applicable

Additional Local Authorities and Responsibilities Related to Biodiversity

Not Applicable

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Counties and municipalities with approved growth plans may receive an increase in evaluation points in formulas used to determine allocation of certain funds.⁵⁰⁹ In addition, certain grants are unavailable if a locality does not have an approved growth plan.⁵¹⁰

Review of Local Plans

Each plan is sent to the Local Government Planning Advisory Committee, which approves the local growth plans.⁵¹¹ This committee is appointed by the governor, and is composed of seven officers of local governments.⁵¹²

State Assistance to Localities

Not Applicable

TEXAS

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

Not Applicable

UTAH

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

OTHER INFORMATION

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

VERMONT

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

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

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

The goals set out in the Act include consideration of the use of resources and consequences of growth.⁵²⁹ Growth plans must plan development so that compact villages and urban centers are separated by rural countryside.⁵³⁰ Plans must provide a strong and diverse economy that maintains high environmental standards, and provide transportation systems that respect the integrity of the natural environment, including paths for pedestrians and bicyclists.⁵³¹ Plans must identify, protect, and preserve important natural features of the landscape including: significant natural and fragile areas; outstanding water resources including lakes, rivers, aquifers, shorelands, and wetlands; and significant scenic roads, waterways, and views.⁵³² Plans must also maintain and improve the quality of air, water, wildlife, and land resources.⁵³³ Requirements also include facilitating the appropriate extraction of earth resources and properly restoring and preserving the aesthetic qualities of such areas.⁵³⁴ Public access to noncommercial outdoor recreational opportunities, such as lake and hiking trails should be identified, provided, and protected wherever appropriate.⁵³⁵

The State Environmental Review Board is required to adopt a “capability and development plan consistent with the interim land capability plan.” The purpose of the plan is to guide and accomplish development of the state in a manner that will, among other things, best promote the health of the inhabitants, as well as efficiency and economy in the process of development. This includes, but is not limited to, the distribution of populations and uses of land for urbanization, recreation, agriculture, and forestry and other uses in a manner that will, among other things, tend to reduce “the wastes of financial and human resources which result from either excessive congestion or excessive scattering of populations” and also tend toward “conservation and production of the supply of food, water and minerals.” In addition, the plan “may accomplish” the goals set out in the Act.⁵³⁶ The plan must be approved by the Governor and adopted by the General Assembly.⁵³⁷

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

Municipal plans are authorized but not required.⁵³⁸ Regional planning commissions are established by statute and are required to develop plans.⁵³⁹

Mandatory Local Plan Elements Related to Biodiversity

Any municipality which adopts a plan may ensure that the plan is consistent with certain goals established by statute, as discussed above, and that the plan is compatible with other municipal plans which have been approved, as well as with the regional plan.⁵⁴⁰ The municipal plan must contain, among other elements: a statement of objectives, policies, and programs to “guide future growth and development . . . and to protect the environment;” a land use plan indicating those areas proposed for open spaces reserved for flood plain, wetland protection, or other conservation purposes; a transportation plan; and a “statement of policies on the preservation of rare and irreplaceable natural areas, and scenic and historic features and resources.”⁵⁴¹ When considering an amendment to the municipal plan that alters the designation of any land area, the planning commission must address, among other things, the amount of vacant land already subject to the proposed new designation and actually available for that purpose, as well as the suitability of the area in question as related to appropriate alternative locations.⁵⁴²

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

Discretionary Local Plan Elements Related To Biodiversity

Not Applicable

Additional Local Authorities and Responsibilities Related to Biodiversity

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

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

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Not Applicable

Review of Local Plans

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

State Assistance to Localities

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

VIRGINIA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

OTHER INFORMATION

Not Applicable

WASHINGTON

STATE-LEVEL AUTHORITIES AND RESPONSIBILITIES

The State of Washington provides oversight and coordination of regional and local planning. The purpose of the Growth Management Act (Act) is to establish common goals and coordinate and plan growth. Certain counties and cities that have experienced increased growth are subject to the Act, and are required to adopt comprehensive plans and regulations in accordance with state goals.⁵⁶³ State goals under the Act include encouraging economic development within the capacities of the state's natural resources, maintaining and enhancing natural resource-based industries, retention of open space, conservation of fish and wildlife habitat, and protection of the environment.⁵⁶⁴ State agencies are required to comply with local comprehensive plans and development regulations.⁵⁶⁵

In addition, localities are also governed by the Planning Enabling Act⁵⁶⁶ and Planning Commission Act,⁵⁶⁷ which contain local comprehensive planning requirements, some of which are related to biodiversity protection.

LOCAL PLANNING PROVISIONS IN GROWTH MANAGEMENT LAWS

Local Planning Requirements

Under the Act, certain counties (depending on size and population growth rate) and cities within those counties must adopt a planning policy, comprehensive plan, and designate critical areas, agricultural lands, forests and mineral resource lands, and urban growth areas. Counties and cities that are not bound by the Act may opt into it.⁵⁶⁸

The Planning Enabling Act, authorizes counties to plan and requires preparation of a comprehensive plan.⁵⁶⁹ The Planning Commission Act authorizes cities and counties to create planning commissions,⁵⁷⁰ and requires that each commission prepare a comprehensive plan to facilitate coordinated development.⁵⁷¹

Mandatory Local Plan Elements Related to Biodiversity

Counties covered by the Act are required to: adopt a planning policy that designates critical areas, agricultural lands, forest lands, and mineral resource lands; designate urban growth areas; and adopt a comprehensive plan.⁵⁷² The comprehensive plan must contain a land use element, a capital facilities plan, a utilities element, a rural element, and a transportation element, among other elements.⁵⁷³ In March, 2002, the State Legislature added two additional mandatory elements: economic development and parks.⁵⁷⁴ The land use element designates proposed land uses, population densities, building densities, and population growth estimates.⁵⁷⁵ The rural element includes lands "not designated for urban growth, agriculture, forest or mineral resources,"⁵⁷⁶ and must include measures to "protect the rural character of the area."⁵⁷⁷ It must do this by protecting critical areas, among other considerations.⁵⁷⁸ Critical areas include certain areas and ecosystems such as wetlands and fish and wildlife habitat conservation areas.⁵⁷⁹ The best available science must be used to designate and protect critical areas and "special consideration" must be given to preserve or enhance anadromous fisheries.⁵⁸⁰

Counties and cities located within the counties' borders must adopt regulations conserving agricultural and forest lands and protecting designated critical areas.⁵⁸¹ To assist cities and counties in designating agricultural, forest, and mineral resource lands and critical areas, the state must consult "representatives of environmental organizations."⁵⁸² Every comprehensive plan must also designate urban growth areas to mitigate impacts on agriculture, forest, and mineral resource lands,⁵⁸³ and must identify open space corridors within and between urban growth areas. These corridors include lands for recreation, wildlife habitat, trails, and critical area connections. These lands can be acquired by a government entity by donation or purchase. The use of these lands is not restricted by their identification as open space corridors.⁵⁸⁴ The goals and policies of the Shoreline Management Act⁵⁸⁵ are considered an element of county and city comprehensive plan. The other portions of the shoreline master program⁵⁸⁵ are considered a part of county and city development regulations.⁵⁸⁶ Even counties, and the cities within them, that are not covered by the Act are required to designate resource lands and critical areas pursuant to the statute and to adopt development regulations to conserve resource lands and protect critical areas.⁵⁸⁷

The Planning Enabling Act,⁵⁸⁸ requires that county comprehensive plans include a land use element and circulation element.⁵⁸⁹ The Planning Commission Act requires that each city and county comprehensive plan include conservation of natural resources.⁵⁹⁰

Discretionary Local Plan Elements Related To Biodiversity

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

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

Additional Local Authorities and Responsibilities Related to Biodiversity

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

Mechanisms for Monitoring and Enforcing Local Compliance

Funding Restrictions on Localities

Not Applicable

Review of Local Plans

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

State Assistance to Localities

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

WEST VIRGINIA

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

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

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Natural Resources—Municipal and county comprehensive plans may include studies on forests.⁶⁰³

Wildlife Habitat—Municipal and county comprehensive plans may include studies on forests and wildlife refuges.⁶⁰⁴

OTHER INFORMATION

The governor is required to prepare statewide plans identifying state goals and considering local and regional plans. Regional planning commissions may be established by the governor. The governor may approve or reject plans prepared by commissions.⁶⁰⁵

WISCONSIN

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

OTHER INFORMATION

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

WYOMING

LAND USE PLANNING AUTHORITIES

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

MANDATORY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

Not Applicable

DISCRETIONARY LOCAL PLAN ELEMENTS RELATED TO BIODIVERSITY

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

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

OTHER INFORMATION

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

ENDNOTES

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

66 | PLANNING FOR BIODIVERSITY

74. Del. Code Ann. tit. 29, § 9226(a)
75. Del. Code Ann. tit. 29, § 9226(b)
76. Del. Code Ann. tit. 29, § 9226(c)
77. Del. Code Ann. tit. 29, § 9226(d)
78. Del. Code Ann. tit. 29, § 9227
79. Del. Code Ann. tit. 29, §§ 9228(b)(4), 9229
80. Del. Code Ann. tit. 29, § 9229
81. Del. Code Ann. tit. 29, § 9230(a)
82. Del. Code Ann. tit. 29, § 9230 (does not apply to certain state agency capital improvement budget and program requests).
83. Del. Code Ann. tit. 29, § 9231(a), (b)
84. Del. Code Ann. tit. 9, §§ 2655(a), 4955(a), 6955(a)
85. Del. Code Ann. tit. 9, §§ 2658(c), 4958(c), 6958(c)
86. Del. Code Ann. tit. 9, §§ 2656(a), 4956(a), 6956(a)
87. Del. Code Ann. tit. 9, §§ 2656(g)(1), 4956(g)(1), 6956(g)(1)
88. *Id.*
89. Del. Code Ann. tit. 9, §§ 2656(g)(4), 4956(g)(4), 6956(g)(4)
90. *Id.*
91. Del. Code Ann. tit. 9, §§ 2656(g)(5), 4956(g)(5), 6956(g)(5)
92. Del. Code Ann. tit. 9, §§ 2651(a), 4951(a), 6951(a)
93. Del. Code Ann. tit. 29, §§ 9211, 9219
94. Del. Code Ann. tit. 29, §§ 9228(b)(4), 9229
95. Del. Code Ann. tit. 29, § 9213(a)
96. Del. Code Ann. tit. 29, § 9202(6)
97. Del. Code Ann. tit. 29, § 9213(b)
98. Del. Code Ann. tit. 29, § 9219(a)
99. Del. Code Ann. tit. 9, §§ 2658(a), 4958(a), 6958(a), tit. 29, §§ 9101, 9211
100. Del. Code Ann. tit. 9, §§ 2658(c), 4958(c), 6958(c)
101. Del. Code Ann. tit. 29, § 9211
102. Delaware HB 255 (2001)
103. Fla. Stat. Ann. § 163.3161 *et seq.*
104. Fla. Stat. Ann. §§ 163.3167(1)(b), .3177 (9)(c)
105. Fla. Stat. Ann. § 163.3177(6)(a), (d), (e)
106. Fla. Stat. Ann. § 186.001 *et seq.*
107. Fla. Stat. Ann. §§ 186.002(2)(b), 186.007(1)
108. Fla. Stat. Ann. § 186.008(4), (5)
109. Fla. Stat. Ann. § 186.004
110. Fla. Stat. Ann. §§ 186.003, .006
111. Fla. Stat. Ann. § 186.007(4)(a)
112. Fla. Stat. Ann. § 186.007(4)(b)
113. Fla. Stat. Ann. § 186.009(1)
114. Fla. Stat. Ann. § 186.009(3)
115. Fla. Stat. Ann. § 186.504(1)
116. Fla. Stat. Ann. § 163.3191 (13)
117. Fla. Stat. Ann. § 186.002(1)(a)
118. Fla. Stat. Ann. § 186.009(2)(c), (g), (j), (l)
119. Fla. Stat. Ann. § 186.007(3)
120. Fla. Stat. Ann. § 187.201(7)-(9)
121. Fla. Stat. Ann. § 187.201(7)(b)(4), (7)(b)(6), 7(b)(8)
122. Fla. Stat. Ann. § 187.201(7)(b)(8)
123. Fla. Stat. Ann. § 187.201(7)(b)(14)
124. Fla. Stat. Ann. § 187.201(8)(a)
125. Fla. Stat. Ann. § 187.201(8)(b)(1)
126. Fla. Stat. Ann. § 187.201(8)(b)(4), (b)(9)
127. Fla. Stat. Ann. § 187.201(8)(b)(6)-(8)
128. Fla. Stat. Ann. § 187.201(9)(a)
129. Fla. Stat. Ann. § 187.201(9)(b)(1)
130. Fla. Stat. Ann. § 187.201(9)(b)(2)
131. Fla. Stat. Ann. § 187.201(9)(b)(3)
132. Fla. Stat. Ann. § 187.201(9)(b)(3)-(10), (12)
133. Fla. Stat. Ann. § 186.801(1), (2)(a)-(f)
134. Fla. Stat. Ann. § 380.05(2)(a)
135. Fla. Stat. Ann. § 380.05(2)(a)
136. Fla. Stat. Ann. § 380.05(l)(b)-(c)
137. Fla. Stat. Ann. §§ 380.05(l)(a), 380.031(18)
138. Fla. Stat. Ann. § 380.05(3)
139. Fla. Stat. Ann. § 380.05(5)-(8)
140. Fla. Stat. Ann. §§ 163.3167(1)(b), .3177(9)(c)
141. Fla. Stat. Ann. § 163.3177(6)(a)
142. Fla. Stat. Ann. § 163.3177(6)(d)
143. Fla. Stat. Ann. § 163.3177(6)(e)
144. *Id.*
145. Fla. Stat. Ann. § 163.3177(6)(g)(2)
146. Fla. Stat. Ann. § 163.3177(6)(g)(3)
147. Fla. Stat. Ann. § 163.3202(1), (2)(b)
148. Fla. Stat. Ann. § 163.3177(7)(f)
149. Fla. Stat. Ann. § 163.3177(11)(d)(1)
150. Fla. Stat. Ann. § 163.3177(11)(d)(2)
151. Fla. Stat. Ann. § 163.3177(11)(d)6.a.
152. Fla. Stat. Ann. § 163.3177(11)(d)(5)
153. Fla. Stat. Ann. § 163.3177(11)(d)8.j.
154. Fla. Stat. Ann. § 186.501 *et seq.*
155. Fla. Stat. Ann. § 163.3167(3)

156. *Id.*
157. Ga. Code Ann. § 50-8-1 *et seq.*
158. Ga. Code Ann. § 50-8-7.1(b)(2)
159. Ga. Code Ann. § 50-8-7.1(b)(2)(citing Ga. Code Ann. § 12-2-8)
160. Ga. Code Ann. § 36-70-2(1)
161. Ga. Code Ann. § 12-2-8(b)
162. Ga. Code Ann. § 12-2-8
163. Ga. Code Ann. §§ 12-7-4, 12-5-237(a)
164. Ga. Code Ann. §§ 36-70-1, 50-8-3(a)
165. Ga. Code Ann. §§ 36-70-1, -3
166. *Id.*
167. Ga. Code Ann. §§ 5-8-32, -35(c)(6)
168. Ga. Code Ann. § 50-8-35(c)(6)
169. Ga. Code Ann. § 50-8-7.1(b)(1)
170. Ga. Code Ann. § 12-2-8(g)(2)
171. Ga. Code Ann. § 12-2-8(g)(3)(B)
172. Ga. Code Ann. § 12-2-8(g)(3)(G)
173. Ga. Code Ann. § 12-2-8(g)(1)(A)
174. Ga. Code Ann. § 12-2-8(f)
175. Ga. Code Ann. § 12-5-440 *et seq.*
176. Ga. Code Ann. § 50-8-2(a)(18)
177. Haw. Rev. Stat. § 226-52(a)(3), (4)
178. Haw. Rev. Stat. § 226-2
179. Haw. Rev. Stat. § 226-52(a)(3)
180. Haw. Rev. Stat. § 226-52(a)(4)
181. Haw. Rev. Stat. § 226-1
182. Haw. Rev. Stat. § 226-101 *et seq.*
183. Haw. Rev. Stat. § 226-1 *et seq.*
184. Haw. Rev. Stat. § 226-101
185. Haw. Rev. Stat. § 226-102
186. Haw. Rev. Stat. § 223-2
187. Haw. Rev. Stat. § 205-2
188. Haw. Rev. Stat. § 226-4(2)
189. Haw. Rev. Stat. § 226-6(b)(2), (14)
190. Haw. Rev. Stat. § 226-9(b)(3)
191. Haw. Rev. Stat. § 226-10(b)(6), (10)
192. Haw. Rev. Stat. § 226-17(b)(10)
193. Haw. Rev. Stat. § 226-23(b)(4)
194. Haw. Rev. Stat. §§ 226-11, -12, -13
195. Haw. Rev. Stat. § 226-11
196. Haw. Rev. Stat. § 226-12
197. Haw. Rev. Stat. § 226-13
198. Haw. Rev. Stat. § 226-11(a)(2)
199. Haw. Rev. Stat. § 226-11(b)(1)
200. Haw. Rev. Stat. § 226-11(b)(2)
201. Haw. Rev. Stat. § 226-11(b)(3)
202. Haw. Rev. Stat. § 226-11(b)(4)
203. Haw. Rev. Stat. § 226-11(b)(6)
204. Haw. Rev. Stat. § 226-11(b)(7)
205. Haw. Rev. Stat. § 226-11(b)(8)
206. Haw. Rev. Stat. § 226-12(a)
207. Haw. Rev. Stat. § 226-12(b)(1)
208. Haw. Rev. Stat. § 226-12(b)(2)
209. Haw. Rev. Stat. § 226-12(b)(3)
210. Haw. Rev. Stat. § 226-12(b)(4), (5)
211. Haw. Rev. Stat. § 226-13(a)(1)
212. Haw. Rev. Stat. § 226-13(b)(1)
213. Haw. Rev. Stat. § 226-13(b)(2)
214. Haw. Rev. Stat. § 226-13(b)(3)
215. Haw. Rev. Stat. § 226-103(a)(8)(B)
216. Haw. Rev. Stat. § 226-103(b)(2), (4)
217. Haw. Rev. Stat. § 226-52
218. Haw. Rev. Stat. § 226-52(a)(4)
219. Haw. Rev. Stat. § 226-104(b)(5)
220. Idaho Code §§ 67-6504, 67-6508
221. Idaho Code § 67-6508(f)
222. Idaho Code § 67-6517
223. 65 Ill. Rev. Stat. §§ 5/11-12-4, 11-12-5(1)
224. 60 Ill. Rev. Stat. § 1/105-35
225. 55 Ill. Rev. Stat. § 5/5-14001 (County boards are authorized to create “regional planning commissions” that may adopt “regional plans” for all or a portion of the county).
226. 50 Ill. Rev. Stat. § 15/1
227. 50 Ill. Rev. Stat. § 805/4
228. 60 Ill. Rev. Stat. §§ 1/115-10, -15
229. 20 Ill. Rev. Stat. §§ 605/605-200, -205
230. Ind. Code §§ 36-7-4-202, -205, -501
231. Ind. Code § 36-7-7-1 *et seq.*
232. Ind. Code § 36-7-4-503(2)(M)
233. *Id.*
234. Iowa Code §§ 335.1, 335.5, 414.1, 414.3
235. Iowa Code §§ 281.1, 281.4
236. Iowa Code § 281.4
237. Iowa Code § 352.1

238. *Id.*
239. Kan. Stat. Ann. §§ 12-744, 747
240. Kan. Stat. Ann. § 12-744
241. Kan. Stat. Ann. §§ 12-744, 12-747(b)
242. Ky. Rev. Stat. Ann. §§ 100.113, 113, 183
243. Ky. Rev. Stat. Ann. § 147.610, 670(1)
244. Ky. Rev. Stat. Ann. § 100.187
245. Ky. Rev. Stat. Ann. § 147.670(1)
246. Ky. Rev. Stat. Ann. § 147.075, .090
247. Ky. Rev. Stat. Ann. § 7B.070
248. La. Rev. Stat. Ann. §§ 33:102, :106
249. La. Rev. Stat. Ann. § 33:106
250. Me. Rev. Stat. Ann. tit. 30-A, §§ 4301- 4457
251. Me. Rev. Stat. Ann. tit. 12, § 544-B
252. Me. Rev. Stat. Ann. tit. 38, § 1804
253. Me. Rev. Stat. Ann. tit. 5, § 3301 *et seq.*
254. Me. Rev. Stat. Ann. tit. 5, § 3331 I
255. Me. Rev. Stat. Ann. tit. 5, § 3331 2, 2 A
256. Me. Rev. Stat. Ann. tit. 5, § 3331 2 D
257. Me. Rev. Stat. Ann. tit. 5, § 3331 7 E
258. Me. Rev. Stat. Ann. tit. 30-A, § 4312 2 F
259. Me. Rev. Stat. Ann. tit. 30-A, § 4312 3
260. Me. Rev. Stat. Ann. tit. 30-A, § 4321 *et seq.*
261. Me. Rev. Stat. Ann. tit. 30-A, § 4326
262. Me. Rev. Stat. Ann. tit. 30-A, § 4312 3 A, E, F
263. Me. Rev. Stat. Ann. tit. 30-A, § 4312 3 H, J
264. Me. Rev. Stat. Ann. tit. 30-A, § 4349-A I C(5)
265. Me. Rev. Stat. Ann. tit. 5, § 3341
266. Me. Rev. Stat. Ann. tit. 30-A, § 4323
267. Me. Rev. Stat. Ann. tit. 30-A, § 4325
268. Me. Rev. Stat. Ann. tit. 30-A, § 4326
269. Me. Rev. Stat. Ann. tit. 30-A, § 4326 I
270. Me. Rev. Stat. Ann. tit. 30-A, § 4326 I B, C
271. Me. Rev. Stat. Ann. tit. 30-A, § 4326 I E
272. Me. Rev. Stat. Ann. tit. 30-A, § 4326 I F
273. Me. Rev. Stat. Ann. tit. 30-A, § 4326 2 A, D
274. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A A(1), (2)
275. Me. Rev. Stat. Ann. tit. 30-A, § 4301
276. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A C
277. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A F
278. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A I
279. *Id.*
280. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A J
281. Me. Rev. Stat. Ann. tit. 30-A, § 4326 3-A A(4)
282. Me. Rev. Stat. Ann. tit. 30-A, § 4326 4
283. Me. Rev. Stat. Ann. tit. 30-A, § 4349-A 3
284. Me. Rev. Stat. Ann. tit. 30-A, § 4346
285. Me. Rev. Stat. Ann. tit. 30-A, § 4346 4
286. Md. S.B. 204 (2001)
287. Md. Code Ann., State Fin. & Proc. §§ 5-402, -403, -602(a), (b)
288. Md. S.B. 204 (2001)
289. Md. Code Ann., State Fin. & Proc. § 5-7A-01
290. Md. Code Ann., State Fin. & Proc. § 5-7A-01 (1)-(5)
291. Md. Code Ann., State Fin. & Proc. § 5-7A-01 (4)
292. Md. Code Ann., State Fin. & Proc. §§ 5-611(a), 5-612
293. Md. Code Ann., State Fin. & Proc. § 5-7B-01 *et seq.*
294. Md. Code Ann., State Fin. & Proc. § 5-7B-04
295. Md. Code Ann., State Fin. & Proc. § 5-7B-09(a)(3)
296. Md. Code Ann., State Fin. & Proc. § 5-708 (1), (5), (11)
297. Md. Code Ann., State Fin. & Proc. § 5-709(a)(1)
298. Md. Code Ann., State Fin. & Proc. § 5-709(a)(2)
299. Md. Code Ann., State Fin. & Proc. § 5-709(c)
300. Md. Ann. Code art. 66B §§ 3.01(a), 3.05
301. Md. Ann. Code art. 66B § 1.03(a)(1),(b)(1), §3.05(a)(4)
302. Md. Ann. Code art. 66B § 3.01(a)
303. Md. Ann. Code art. 66B §§ 1.03(a)(1),(b)(1), 3.05(a)(4)
304. Md. Ann. Code art. 66B § 3.05(a)(4)(vii)
305. Md. Ann. Code art. 66B §§ 1.03(a)(1)(iv), 3.05(a)(4)(viii); see also Md. Ann. Code art. 66B §§ 1.03(a)(1)(i)-(iii), 3.05(a)(4) (other required plan elements include: transportation, mineral resources, land use, and community facilities).
306. Md. Ann. Code art. 66B § 1.03(a)(1)(iv)
307. Md. Ann. Code art. 66B § 1.00(j)
308. Md. Ann. Code art. 66B § 3.05(c)(4)(iv)
309. Md. Ann. Code Art. 66B § 1.01; see also Md. Ann. Code art. 66B § 1.01 (6)-(8) (other visions include encouragement of economic growth, streamlining regulatory mechanisms, provision for adequate public facilities and infrastructure, and funding mechanisms).
310. Md. Ann. Code Art. 66B § 305(b)(1)
311. Md. Ann. Code Art. 66B § 3.05(a)(6)(ii) 5, 6
312. Md. Code Ann., State Fin. & Proc. § 5-7B-01 *et seq.*
313. Md. Code Ann., State Fin. & Proc. §§ 5-7B-02, -03
314. Md. Code Ann., State Fin. & Proc. § 5-7B-04; see also Md. Code Ann., State Fin. & Proc. §§ 5-7B-05, 06, 07(b) (citing exceptions).
315. Md. Code Ann., State Fin. & Proc. § 5-7B-06 (a)(3)(iv)
316. Md. Code Ann., State Fin. & Proc. §§ 5-402, -403, -602(a), (b)
317. Mass. Gen. Laws Ann. ch. 41, §§ 81A, 81D

318. Mass. Gen. Laws Ann. ch. 40B, §§ 2, 5
319. Mass. Gen. Laws Ann. ch. 41, § 81D(5)
320. Mass. Gen. Laws Ann. ch. 41, § 81D(6)
321. Mass. Gen. Laws Ann. ch. 23B, § 3
322. Mich. Comp. Laws Ann. §§ 125.32, .36
323. Mich. Comp. Laws Ann. §§ 125.101, .104
324. Mich. Comp. Laws Ann. §§ 125.12, .19
325. Mich. Comp. Laws Ann. §§ 125.36, 125.104
326. Mich. Comp. Laws Ann. § 125.36
327. *Id.*
328. Minn. Stat. Ann. §§ 394.21, .23, .232, §462.351 *et seq.*
329. Minn. Stat. Ann. § 462.371, .373
330. Minn. Stat. Ann. §§ 462.351, 473.145
331. Minn. Stat. Ann. § 394.25
332. Miss. Code Ann. §§ 17-1-11, -21
333. Miss. Code Ann. § 17-1-29 *et seq.*
334. Miss. Code Ann. §§ 17-1-1, -11
335. Mo. Rev. Stat. §§ 89.310, .340
336. Mo. Rev. Stat. §§ 251.160, .180, .320
337. Mo. Rev. Stat. §§ 64.010, .040
338. Mo. Rev. Stat. § 251.170 *et seq.*
339. Mo. Rev. Stat. § 251.170 *et seq.*
340. Mo. Rev. Stat. § 251.030
341. Mont. Code Ann. §§ 76-1-101, -106
342. Mont. Code Ann. § 76-1-601(2)(b)(vii)
343. Mont. Code Ann. § 76-1-113
344. Neb. Rev. Stat. §§ 15-1101, -1102
345. Neb. Rev. Stat. §§ 19-925, -929
346. Neb. Rev. Stat. §§ 23-174.04, .05
347. Neb. Rev. Stat. § 23-114
348. Neb. Rev. Stat. §§ 15-1102, 23-174.05
349. Neb. Rev. Stat. §§ 15-1102, 23-174.05 (2)
350. Neb. Rev. Stat. § 84-133
351. Nev. Rev. Stat. §§ 278.030, .150
352. Nev. Rev. Stat. §§ 278.0262, .0272
353. Nev. Rev. Stat. § 278.160(1)(b)
354. *Id.*
355. Nev. Rev. Stat. § 278.0274(2)
356. Nev. Rev. Stat. §§ 321.700, .740, .750, .755
357. N.H. Rev. Stat. Ann. §§ 673:1, 674:1
358. N.H. Rev. Stat. Ann. §§ 36:45- 36:47
359. N.H. Rev. Stat. Ann. § 674:2
360. N.H. Rev. Stat. Ann. § 674:2 II(b)
361. N.H. Rev. Stat. Ann. § 674:2 III(d)
362. N.H. Rev. Stat. Ann. § 4-C:1
363. N.H. Rev. Stat. Ann. § 9-A:1
364. N.H. Rev. Stat. Ann. § 4-C:2, I(d)
365. N.H. Rev. Stat. Ann. § 9A-:1, III(b)(7)
366. N.J. Stat. Ann. § 52:18A-196 *et seq.*
367. N.J. Stat. Ann. § 52:18A-199 (c),(d)
368. N.J. Stat. Ann. § 52:18A-199(a)
369. N.J. Stat. Ann. § 52:18A-199(b)
370. N.J. Stat. Ann. § 52:18A-199(c)
371. N.J. Stat. Ann. § 52:18A-201(b)
372. N.J. Stat. Ann. § 52:18A-201(b)(6)
373. N.J. Stat. Ann. § 52:18A-199(a)
374. N.J. Stat. Ann. § 52:18A-196(a)
375. N.J. Stat. Ann. § 52:18A-196(e)
376. N.J. Stat. Ann. § 52:18A-196(d)
377. N.J. Stat. Ann. § 52:18A-196(h)
378. N.J. Stat. Ann. § 52:18A-200, -202.1(a)-(c)
379. N.J. Stat. Ann. § 52:18A-200(a)
380. N.J. Stat. Ann. § 52:18A-200(c)
381. N.J. Stat. Ann. § 52:18A-200(d)
382. N.J. Stat. Ann. § 52:18A-200(f)
383. N.J. Stat. Ann. § 52:18A-200(a)
384. *Id.*
385. N.J. Stat. Ann. § 40:55D-23
386. N.J. Stat. Ann. § 40:27-1, -2
387. N.J. Stat. Ann. § 40:55D-1 *et seq.*
388. N.J. Stat. Ann. § 40:55D-2(a)
389. N.J. Stat. Ann. § 40:55D-2 (c), (e), (g) & (j)
390. N.J. Stat. Ann. § 40:55D-28(b)(8)
391. *Id.*
392. N.J. Stat. Ann. § 40:55D-28(b)(2)
393. N.J. Stat. Ann. § 40:27-2
394. N.J. Stat. Ann. § 40:55D-4
395. N.J. Stat. Ann. § 40:55D-27(b)
396. *Id.*
397. N.J. Stat. Ann. § 52:18A-199 (c), (d)
398. N.J. Stat. Ann. § 52:18A-201 (b)(1)-(6)
399. N.M. Stat. Ann. §§ 3-19-1, -9

70 | PLANNING FOR BIODIVERSITY

400. N.M. Stat. Ann. §§ 3 -56-1, -2, -5
401. N.M. Stat. Ann. §§ 4-57-1 to -3
402. N.M. Stat. Ann. §§ 9-14-1, -3
403. N.Y. Gen. City Law §§ 19-28; N.Y. Village Law § 7; N.Y. County Law § 220; N.Y. Town Law §§ 260-285
404. N.Y. Gen. Mun. Law § 239-h
405. N.Y. Gen. City Law § 28-a(4)(b)
406. *Id.*
407. N.C. Gen. Stat. § 160A-361
408. N.C. Gen. Stat. § 153A-321
409. N.C. Gen. Stat. §§ 153A-391, -395(6)
410. N.C. Gen. Stat. §§ 113A-150, -153(c)
411. N.C. Gen. Stat. § 143-506.6 et seq.
412. N.C. Gen. Stat. §§ 143-506.6, 506.7
413. N.D. Cent. Code § 40-48-03
414. N.D. Cent. Code § 58-03-12
415. N.D. Cent. Code § 11-33-07
416. N.D. Cent. Code § 54-40.1-04(6)
417. N.D. Cent. Code § 40-48-02
418. Ohio Rev. Code Ann. §§ 713.01, .02
419. Ohio Rev. Code Ann. §§ 713.22, .23
420. *Id.*
421. Ohio Rev. Code Ann. § 713.23(B)(1)(f)
422. Ohio Rev. Code Ann. § 713.02
423. Ohio Rev. Code Ann. § 122.06
424. Okla. Stat. Ann. tit. 11 §§ 45-101, -103
425. Okla. Stat. Ann. tit. 19 §§ 865.51, .57, 868.6
426. Okla. Stat. Ann. tit. 19 §§ 863.1, .7, § 866.10
427. Okla. Stat. Ann. tit. 19 §§ 863.7, 866.10
428. Okla. Stat. Ann. tit. 11 §§ 47-101, -106
429. Okla. Stat. Ann. tit. 19 § 868.6
430. *Id.*
431. Or. Rev. Stat. § 197.005(2)
432. Or. Rev. Stat. § 197.230(1)(c)
433. Oregon Administrative Rules 660-015-0000(5)
434. Or. Rev. Stat. § 197.277
435. Or. Rev. Stat. § 197.279
436. Or. Rev. Stat. § 197.405(1)
437. Or. Rev. Stat. § 197.405(2)
438. Or. Rev. Stat. § 197.405(1)
439. Or. Rev. Stat. §§ 197.135(2), .405(1), .405(4)
440. Or. Rev. Stat. § 197.410
441. Or. Rev. Stat. §§ 197.010, .015(5)
442. Or. Rev. Stat. § 197.015(5)
443. Or. Rev. Stat. § 197.065
444. Or. Rev. Stat. § 197.298
445. Or. Rev. Stat. § 197.186
446. Or. Rev. Stat. § 197.301
447. Or. Rev. Stat. § 197.445(2)
448. Or. Rev. Stat. § 197.455(1)(b)-(e)
449. Or. Rev. Stat. § 197.460(1)
450. Or. Rev. Stat. § 197.467(1)
451. Or. Rev. Stat. § 197.175
452. Or. Rev. Stat. § 197.320
453. Pa. Stat. Ann. tit. 53 §§ 10201, 10209.1
454. Pa. Stat. Ann. tit. 53 § 10301.4
455. Pa. Stat. Ann. tit. 53 § 10301(a)(6)
456. *Id.*
457. Pa. Stat. Ann. tit. 53 § 10301(a)(7)(i)
458. Pa. Stat. Ann. tit. 53 § 10301(a)(4.1)
459. Pa. Stat. Ann. tit. 53 § 10918
460. Pa. Stat. Ann. tit. 53 § 10301(a)(2)
461. Pa. Stat. Ann. tit. 53 § 10105
462. Pennsylvania Department of Community and Economic Development, "Land Use Planning and Technical Assistance Program: Program Guidelines" (April 2002), <http://www.inventpa.com/docs/Document/application/pdf/3c5b9d2c-6379-4b7a-9976-1c9b26f633c4/LUPTAGuide.pdf>.
463. R.I. Gen. Laws § 45-22.2 et seq.
464. R.I. Gen. Laws § 45-22.2-2
465. R.I. Gen. Laws § 45-22.2-7(a)
466. R.I. Gen. Laws § 45-22.2-10(e)
467. R.I. Gen. Laws § 45-22.2-5(b)
468. R.I. Gen. Laws § 45-22.2-4(26)
469. R.I. Gen. Laws § 45-22.2-3(c)(4)-(6)
470. R.I. Gen. Laws § 45-22.2-5(a)(1)
471. R.I. Gen. Laws § 42-11-10(d)
472. R.I. Gen. Laws § 42-11-10
473. R.I. Gen. Laws § 42-11-10(e)(12)
474. R.I. Gen. Laws § 45-22.2-2
475. R.I. Gen. Laws § 45-22.2-9
476. R.I. Gen. Laws § 45-22.2-6(2)
477. R.I. Gen. Laws § 45-22.2-6(5)
478. R.I. Gen. Laws § 45-22.2-6(7)
479. R.I. Gen. Laws § 45-22.2-9(d)
480. R.I. Gen. Laws § 45-22.2-11(a)

481. S.C. Code Ann. §§ 6-29-320, -510
482. S.C. Code Ann. § 6-29-510(D)(3)
483. S.C. Code Ann. § 6-29-510(D)(7)
484. S.C. Code Ann. § 6-29-510(D)(3)
485. S.D. Codified Laws Ann. § 11-6-2
486. S.D. Codified Laws Ann. §§ 11-2-2, -11
487. S.D. Codified Laws Ann. § 11-2-1
488. S.D. Codified Laws Ann. § 11-1-11
489. S.D. Codified Laws Ann. § 11-1-9
490. Tenn. Code Ann. § 6-58-101 *et seq.*
491. Tenn. Code Ann. § 6-58-101(3)
492. Tenn. Code Ann. § 6-58-103
493. Tenn. Code Ann. § 6-58-102(5)
494. Tenn. Code Ann. § 6-58-107
495. *Id.*
496. Tenn. Code Ann. § 6-58-101
497. Tenn. Code Ann. § 6-58-107(1)-(8)
498. Tenn. Code Ann. §§ 4-3-727, 6-58-107
499. Tenn. Code Ann. §§ 6-58-101(3), -103(a)
500. Tenn. Code Ann. § 6-58-107
501. Tenn. Code Ann. §§ 13-4-101, 201
502. Tenn. Code Ann. § 6-58-104(a)(1), (2) (four committee members appointed by political leaders assure "broad representation of environmental, construction and homeowner interests").
503. Tenn. Code Ann. § 6-58-106(a)(1)(E)
504. Tenn. Code Ann. § 6-58-106(a)(2)
505. Tenn. Code Ann. §§ 6-58-101(4), -106(b)(1)(E)
506. Tenn. Code Ann. § 6-58-106(b)(2)
507. Tenn. Code Ann. § 6-58-106(c)(1)(C)
508. Tenn. Code Ann. § 6-58-106(c)(1)(D)
509. Tenn. Code Ann. § 6-58-109 (a)(1)-(3)
510. Tenn. Code Ann. § 6-58-110
511. Tenn. Code Ann. § 6-58-107
512. Tenn. Code Ann. § 4-3-727
513. Tex. Local Gov't Code §§ 371.001, .041
514. Tex. Local Gov't Code §§ 391.001, .003, .004
515. Tex. Local Gov't Code §§ 371.042, .043
516. Utah Code Ann. §§ 10-9-201(1)(a), -204(1), -301
517. Utah Code Ann. §§ 17-27-201, -204
518. Utah Code Ann. § 17-27-301(1)(b)
519. Utah Code Ann. § 10-9-301 *et seq.*
520. Utah Code Ann. § 17-27-302(2)(c)(i)
521. Utah Code Ann. §§ 11-38-201, -202
522. Utah Code Ann. §§ 63-28-1, -4
523. Vt. Stat. Ann. tit. 24, § 4301 *et seq.*
524. Vt. Stat. Ann. tit. 24, § 4302(a)
525. Vt. Stat. Ann. tit. 24, §§ 4381, 4382
526. Vt. Stat. Ann. tit. 24, §§ 4302(e)(2)(A), 4345a(5)
527. Vt. Stat. Ann. tit. 3, § 4020(a)
528. Vt. Stat. Ann. tit. 3, §§ 4020, 4021
529. Vt. Stat. Ann. tit. 24, § 4302(b)(3)
530. Vt. Stat. Ann. tit. 24, § 4302(c)(1)
531. Vt. Stat. Ann. tit. 24, § 4302(c)(2), (4)
532. Vt. Stat. Ann. tit. 24, § 4302(c)(5)(A)-(C)
533. Vt. Stat. Ann. tit. 24, § 4302(c)(6)
534. Vt. Stat. Ann. tit. 24, § 4302(c)(10)
535. Vt. Stat. Ann. tit. 24, § 4302(c)(8)(B)
536. Vt. Stat. Ann. tit. 10, § 6042
537. Vt. Stat. Ann. tit. 10, § 6046
538. Vt. Stat. Ann. tit. 24, § 4381
539. Vt. Stat. Ann. tit. 24, § 4345a(5)
540. Vt. Stat. Ann. tit. 24, § 4382(a)
541. Vt. Stat. Ann. tit. 24, § 4382(a)1-10
542. Vt. Stat. Ann. tit. 24, § 4384(c)(3), (4)
543. Vt. Stat. Ann. tit. 24, § 4348a(a)(1)
544. Vt. Stat. Ann. tit. 24, § 4348a(a)(2)(A)
545. Vt. Stat. Ann. tit. 24, § 4345a(5)(D)
546. Vt. Stat. Ann. tit. 24, § 4345(6)
547. Vt. Stat. Ann. tit. 24, § 4345(12)
548. Vt. Stat. Ann. tit. 24, § 4345a(1)-(3)
549. Vt. Stat. Ann. tit. 24, § 4305(a)
550. Vt. Stat. Ann. tit. 24, § 4305(b)
551. Vt. Stat. Ann. tit. 24, § 4305(c), (d)
552. Vt. Stat. Ann. tit. 10, § 6086(a)(8)
553. Vt. Stat. Ann. tit. 10, § 6086(a)(8)(A)
554. Vt. Stat. Ann. tit. 10, § 6001(12)
555. Vt. Stat. Ann. tit. 24, § 4305(c), (d)
556. Vt. Stat. Ann. tit. 24, § 4345a(1)-(3)
557. Vt. Stat. Ann. tit. 24, § 4305
558. Va. Code Ann. §§ 15.2-2210, -2211
559. Va. Code Ann. § 15.2-2223
560. Va. Code Ann. §§ 15.2-4200 *et seq.*, -4208
561. Va. Code Ann. §§ 15.2-4200 *et seq.*, -4209

72 | PLANNING FOR BIODIVERSITY

- 562. Va. Code Ann. § 15.2-2223
- 563. Wash. Rev. Code §§ 36.70A.010, .020, .040
- 564. Wash. Rev. Code § 36.70A.020(5), (8)-(10)
- 565. Wash. Rev. Code § 36.70A.103
- 566. Wash. Rev. Code § 36.70.010 et seq.
- 567. Wash. Rev. Code § 35.63.010 et seq.
- 568. Wash. Rev. Code §§ 36.70A.040, .210
- 569. Wash. Rev. Code §§ 36.70.010, .030, .040, .050, .320
- 570. Wash. Rev. Code § 35.63.020
- 571. Wash. Rev. Code § 35.63.090
- 572. Wash. Rev. Code §§ 36.70A.040(3), 36.70A.170, 36.70A.210
- 573. Wash. Rev. Code § 36.70A.070(1)
- 574. Wash. Rev. Code § 36.70A.070(7), (8)
- 575. Wash. Rev. Code § 36.70A.070(1)
- 576. Wash. Rev. Code § 36.70A.070(5)
- 577. Wash. Rev. Code § 36.70A.070(5)(c)
- 578. Wash. Rev. Code § 36.70A.070(5)(c)(iv)
- 579. Wash. Rev. Code § 36.70A.030(5)
- 580. Wash. Rev. Code § 36.70A.172(1)
- 581. Wash. Rev. Code § 36.70A.060
- 582. Wash. Rev. Code § 36.70A.050(1)(a), (2)(g)
- 583. Wash. Rev. Code §§ 36.70A.040(3), .110
- 584. Wash. Rev. Code § 36.70A.160
- 585. Wash. Rev. Code § 90.58 et seq.
- 586. Wash. Rev. Code § 36.70A.480(1)
- 587. Wash. Rev. Code § 36.70A.060(2)
- 588. Wash. Rev. Code § 36.70 et seq.
- 589. Wash. Rev. Code § 36.70.330(1), (2)
- 590. Wash. Rev. Code § 35.63.090
- 591. Wash. Rev. Code § 36.70A.080(1)(a)
- 592. Wash. Rev. Code §§ 36.70A.350(1)(f), (h), (i), 36.70A.365(2)(d), (f), (g)
- 593. Wash. Rev. Code § 36.70A.360(1), (4)(d)
- 594. Wash. Rev. Code § 36.70.350
- 595. Wash. Rev. Code §§ 36.70A.250, .280
- 596. Wash. Rev. Code § 36.70A.800
- 597. Wash. Rev. Code §§ 36.70A.250, .280
- 598. Wash. Rev. Code § 36.70A.190
- 599. W.Va. Code §§ 8-24-1, -16
- 600. W.Va. Code §§ 8-25-5, -8
- 601. *Id.*
- 602. W.Va. Code § 8-24-16
- 603. W.Va. Code § 8-24-17
- 604. W.Va. Code § 8-24-17
- 605. W.Va. Code § 8-25-3
- 606. Wis. Stat. Ann. § 62.23(1), (2)
- 607. Wis. Stat. Ann. §§ 59.69, 59.97-1
- 608. Wis. Stat. Ann. § 60.61
- 609. Wis. Stat. Ann. § 66.0309(2)(a)
- 610. Wis. Stat. Ann. § 1.13(2)(c)
- 611. Wyo. Stat. §§ 15-1-502, 503
- 612. Wyo. Stat. § 18-5-103
- 613. Wyo. Stat. § 15-1-503
- 614. Wyo. Stat. § 15-1-503
- 615. Wyo. Stat. §§ 9-8-102, 202
- 616. Wyo. Stat. § 9-8-201

APPENDIX B: SELECTED BIBLIOGRAPHY OF RELEVANT SOURCES

AMERICAN PLANNING ASSOCIATION, *PLANNING FOR SMART GROWTH 2002: STATE OF THE STATES: A SURVEY OF STATE PLANNING REFORMS AND SMART GROWTH MEASURES IN ORDER TO MANAGE GROWTH AND DEVELOPMENT* (2002). Full report available at: <http://www.planning.org/growingsmart/states2002.htm>.

Beatley, *Preserving Biodiversity: Challenges for Planners*, 66(1) JOURNAL OF THE AMERICAN PLANNING ASSOCIATION 5-20 (Winter 2000). Abstract available at: <http://pqasb.pqarchiver.com/planning/>.

BENFIELD *ET AL.*, *ONCE THERE WERE GREENFIELDS: HOW URBAN SPRAWL IS UNDERMINING AMERICA'S ENVIRONMENT, ECONOMY AND SOCIAL FABRIC* (Natural Resources Defense Council 1999). Summary available at: <http://www.nrdc.org/cities/smartGrowth/nnews.asp>.

BENFIELD *ET AL.*, *SOLVING SPRAWL: MODELS OF SMART GROWTH IN COMMUNITIES ACROSS AMERICA* (Natural Resources Defense Council 2001). Summary available at: <http://www.nrdc.org/cities/smartGrowth/nsolve.asp>.

Butler, *Balancing Growth and Habitat Preservation*, ENVIRONMENT AND DEVELOPMENT (May 1993). Abstract available at: <http://www.planning.org/abstracts/details.asp?Num=35>.

COHN AND LERNER, *INTEGRATING LAND USE PLANNING AND BIODIVERSITY* (Defenders of Wildlife 2003). Full report available at: <http://www.biodiversitypartners.org/Pubs/landuse/001.html>.

Cort, *A Survey of the Use of Natural Heritage Data in Local Land-Use Planning*, 10(2) CONSERVATION BIOLOGY 632-637 (1996).

Dale *et al.*, *Ecological Principles and Guidelines for Managing the Use of Land*, 10(3) ECOLOGICAL APPLICATIONS 639-670 (Ecological Society of America 2000). Full article available through search engine at: http://www.esapubs.org/esapubs/journals/applications_main.htm.

DUERKSEN *ET AL.*, *HABITAT PROTECTION PLANNING: WHERE THE WILD THINGS ARE*, PLANNING ADVISORY SERVICE REPORT NO.470/471 (American Planning Association 1997). Abstract and Table of Contents available at: <http://www.planning.org/bookservice/description.htm?BCODE=P470>.

COMMITTEE ON LAND USE, ECOLOGICAL SOCIETY OF AMERICA, *ECOLOGICAL PRINCIPLES FOR MANAGING LAND USE* (Ecological Society of America April 2000). Full brochure available at: <http://esa.sdsc.edu/landuseb.pdf>.

GROVES *ET AL.*, *DRAFTING A CONSERVATION BLUEPRINT: A PRACTITIONER'S GUIDE TO PLANNING FOR BIODIVERSITY* (Island Press 2003).

HONACHEFSKY, *ECOLOGICALLY BASED MUNICIPAL LAND USE PLANNING* (CRC Press 2000).

LEEDY *ET AL.*, *PLANNING FOR WILDLIFE IN CITIES AND SUBURBS*, PLANNING ADVISORY SERVICE REPORT NO. 331 (American Society of Planning Officials 1978).

MARYLAND OFFICE OF PLANNING, MANAGING MARYLAND'S GROWTH, MODELS AND GUIDELINES: ACHIEVING ENVIRONMENTALLY SENSITIVE DESIGN IN GROWTH AREAS THROUGH FLEXIBLE AND INNOVATIVE REGULATIONS (1995). Full report available at <http://www.mdp.state.md.us/smartgrowth/pdf/Mmg11.PDF>.

MARYLAND OFFICE OF PLANNING AND MARYLAND DEPARTMENT OF NATURAL RESOURCES, MANAGING MARYLAND'S GROWTH, MODELS AND GUIDELINES: SENSITIVE AREAS VOLUME II (1998). Table of Contents available at: <http://www.mdp.state.md.us/mgs/98-18.htm>.

NOLON, WELL GROUNDED: USING LOCAL LAND USE AUTHORITY TO ACHIEVE SMART GROWTH (Environmental Law Institute 2001). Abstract available at: http://www.elistore.org/books_detail.asp?ID=24.

PECK, PLANNING FOR BIODIVERSITY: ISSUES AND EXAMPLES (Island Press 1998).

MARYLAND OFFICE OF PLANNING, MARYLAND DEPARTMENT OF NATURAL RESOURCES, PREPARING A SENSITIVE AREAS ELEMENT FOR THE COMPREHENSIVE PLAN (May 1993).

Schwab, *Planning for Wildlife Mitigation Corridors*, ENVIRONMENT AND DEVELOPMENT (May 1994). Abstract available at: <http://www.planning.org/abstracts/details.asp?Num=518>.

Schwab, *The Biology of Wildlife Mitigation Corridors*, ENVIRONMENT AND DEVELOPMENT (April 1994). Abstract available at: <http://www.planning.org/abstracts/details.asp?Num=519>.

SMART GROWTH NETWORK AND INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, GETTING TO SMART GROWTH: 100 POLICIES FOR IMPLEMENTATION (2002). Full report available at: <http://www.smartgrowth.org/pdf/get-tosg.pdf>.

WILEY, NO PLACE FOR NATURE: THE LIMITS OF OREGON'S LAND USE PROGRAM IN PROTECTING FISH AND WILDLIFE HABITAT IN THE WILLAMETTE VALLEY (Defenders of Wildlife 2001). Full report available at: <http://www.biodiversitypartners.org/Wiley/foreword.html>.

THE ENVIRONMENTAL LAW INSTITUTE

For more than three decades, the Environmental Law Institute has played a pivotal role in shaping the fields of environmental law, management, and policy domestically and abroad. Today, ELI is an internationally recognized, independent research and education center.

Through its information services, training courses and seminars, research programs, and policy recommendations, the Institute activates a broad constituency of environmental professionals in government, industry, the private bar, public interest groups, and academia. Central to ELI's mission is convening this diverse constituency to work cooperatively in developing effective solutions to pressing environmental problems.

The Institute is governed by a board of directors who represent a balanced mix of leaders within the environmental profession. Support for the Institute comes from individuals, foundations, government, corporations, law firms, and other sources.



1616 P Street, N.W., Suite 200
Washington, D.C. 20036
Telephone: (202) 939-3800
Fax: (202) 939-3868
www.eli.org