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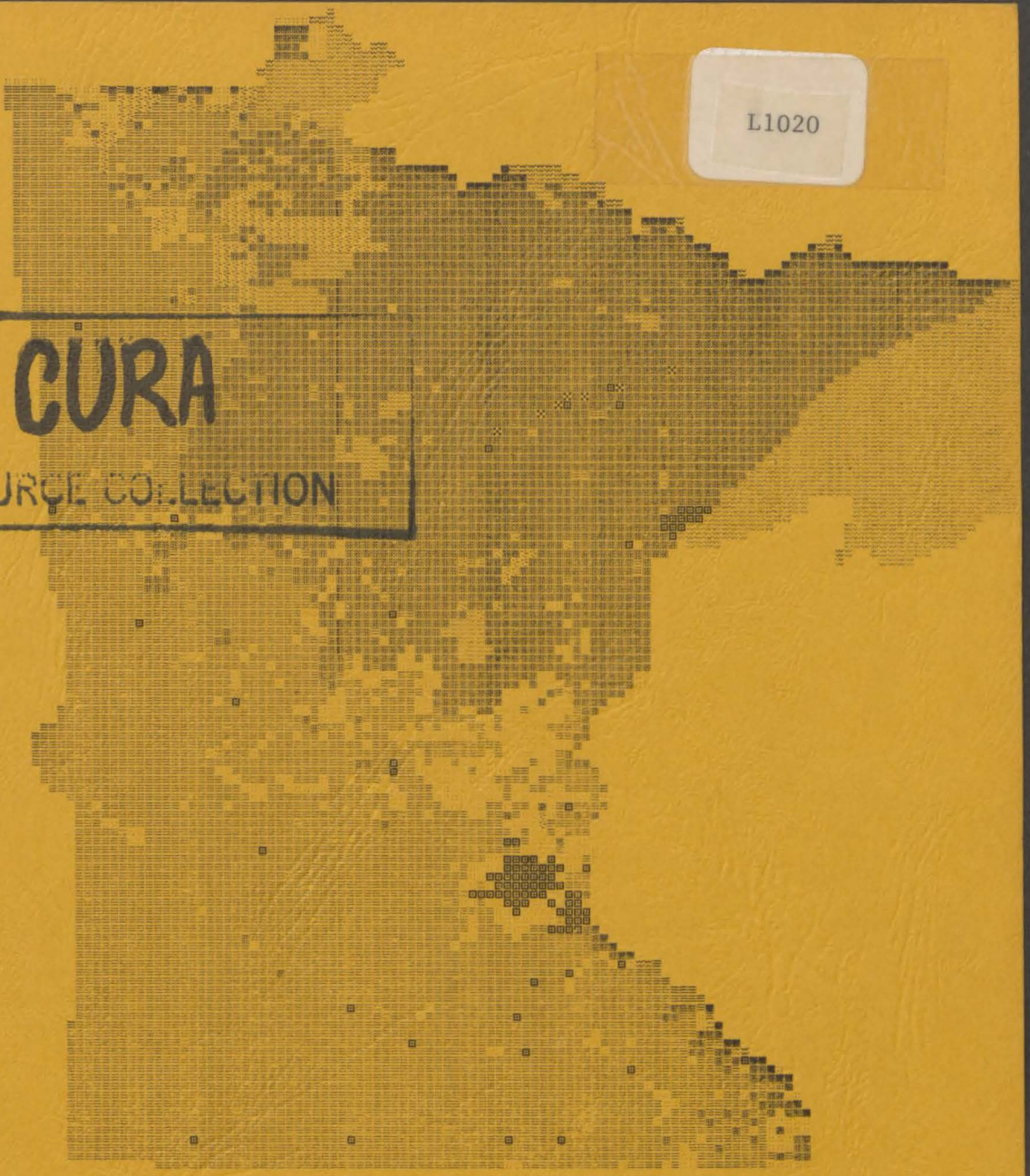

# MLMIS

## MINNESOTA LAND MANAGEMENT INFORMATION SYSTEM

CURA
RESOURCE COLLECTION

UNIVERSITY OF MINNESOTA
CENTER FOR URBAN AND
REGIONAL AFFAIRS

STATE PLANNING AGENCY

# A COMPARATIVE ANALYSIS OF THE LAND USE LAWS OF MINNESOTA AND SELECTED OTHER STATES

5017

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JUNE 1975

# THE MINNESOTA LAND MANAGEMENT INFORMATION SYSTEM STUDY

The Minnesota Land Management Information System (MLMIS) project is an endeavor of the Center for Urban and Regional Affairs (CURA) of the University of Minnesota and the State Planning Agency. Important contributions to the project have been made by other executive and legislative branches of state government, numerous University departments, and other institutions.

The primary goal of this project is to improve the quality of public-private sector land use decisions. The project is doing this by building a data bank containing information on physical resources, relative accessibility to market of these resources, and information on current land use, zoning, and ownership patterns.

Concurrent with the data collection effort is a research program that is using the collected data to simulate land use decisions and conflicts.

The present study was funded by Rockefeller Foundation Grant Number RF 72075, as part of the Lake Superior Project, Institute for Environmental Studies, University of Wisconsin.

ACKNOWLEDGEMENTS

The authors wish to thank the following individuals who contributed ideas and time to the preparation of this report:

Jock Robertson, Critical Areas Planner with the Minnesota State Planning Agency, formerly from Washington State, where his involvement with land use legislation makes him a valuable informant on the status and content of land use legislation there;

George Orning of MLMIS, who helped shape this inquiry at the outset;

Alan Freeman, University of Minnesota Professor of land use law, for his valuable perspectives;

Dennis Asmussen of MLMIS, who edited the final draft of the report;

Corinne Glader for expert copy editing and final typing; and

Joan Prochaska for maintaining the office environment.

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# INTRODUCTION

This report is the result of a study of various land use planning statutes of several selected states. Primary research emphasis was placed on the substantive areas regulated by the statutes and the procedural techniques used by the states to effect the regulation.

Part I begins the analysis with a summary of land use policies and goals expressed by the various state legislatures. It seems appropriate that before the substantive areas of regulation and procedures are examined, some consideration should be given to the legislatures' expressions of policy, no matter how rhetorical such statements may appear.

In preparing this report, the land use planning laws of Colorado, Florida, Hawaii, Maine, Oregon, Utah, Vermont, Washington, and the American Law Institute's Model Land Development Code were examined. These states were selected because their legislatures have fairly recently passed land use planning laws. Summaries of the laws reviewed are contained in the Appendix. Part II is a summary of legislative techniques and implementation procedures used in the laws studied.

Part III is a summary of existing land use law in Minnesota and an examination of the techniques used thus far in this state. Accompanying Part III is a pull-out chart showing the interrelationship of various state, regional, and local governmental units in land use matters.

Part IV is a reaction to the current Minnesota scheme, after having completed the study of other states' laws. Comparison of Minnesota to the other studied states suggests some problem areas which may merit further consideration by our legislature. One purpose of this study has been to encourage the reader to make his own comparisons and conclusions. If this report stimulates such thought, it is worth the effort of its preparation.

## PART I: LAND USE PLANNING GOALS AND JUSTIFICATIONS

To analyze the state's role in land use planning, one needs to consider the goals of land use planning, the state's role in achieving those goals, and the justification for such state action. Unless the state can establish that it has an interest in land use, its intervention in the process of land use planning cannot be justified. One must ask the threshold question: What is a state's justification for attempting to control the land use decision-making process?

Traditional land use planning legislation (zoning and subdivision enabling acts) has been justified under the "police powers" of the federal and state constitutions. Legislation, the purpose of which is to protect the health, safety, welfare, and morals of the citizenry, passes constitutional muster so long as it does not involve a "taking" of the regulated person's land, that is, so long as a valuable use still exists for a piece of land after the ordinance takes effect. The constitutional limits on land use control have been well analyzed in Bosselman, Callies, and Banta, The Taking Issue, Council on Environmental Quality, 1973.

How does a state legislature politically justify its intervention into the previously locally-regulated area of land development and use? To answer this question, the policy statements of various land use laws of several states, the American Law Institute's Model Land Development Code and the proposed 1974 Federal Land Use bills were examined.

Every land use statute analyzed recited (in one way or another) the police powers as one justification. Most land use laws recite legislative findings to the effect that: 1) the state has an interest in land use planning; 2) local planning hasn't been effective in regulating activities of greater than local scope; and 3) local regulation is sometimes motivated toward the interests of the local unit, to the detriment of regional, state, and national interests. Those states which have acted in the area of land use planning are generally environmentally minded states that have felt a threat to their environment and quality of life from development pressures. This explains why two common goals are: 1) to preserve and protect the state's natural resources, and 2) to preserve and protect the beauty of the landscape. Reflecting similar concerns, common purposes of this type of legislation have been to promote the use of land in a matter to which it is suited, promote the wise and efficient allocation of natural resources, and promote development which proceeds in an orderly manner. Finally, it has commonly been a goal to coordinate the activities of various governmental units in regulating pollution and developments that have greater than local scope.

Beyond the broad rhetoric, some states have valuable specific statements that narrow the general goals to more tangible objectives. Table 1 is a listing of these goals found in the various laws examined in this study. For the purpose of illustration, the goals have been grouped into categories. Table 2 is a listing of legislative findings viewed by law makers as indicative of the type of state assistance and direction needed to achieve the goals of Table 1. A list of factors to

be considered in the implementation and development of any land use plan is found in Table 3.

TABLE 1

KEY:
C = Colorado
F = Florida
M = Maine
W = Washington
H = House of Representatives
S = Senate
ALI = American Law Institute
O = Oregon
V = Vermont

State legislatures have found it desirable to preserve and protect the following resources:

1. Unique areas of natural, scientific, scenic, historic, cultural, and educational significance. (C,V,H)
2. The beauty of the landscape and aesthetic values. (C,W,V,H)
3. Ecological and natural values. (M,F,W , H)
4. Economic viability and productivity of agricultural units. (V)
5. Forest and forest productivity of agricultural units. (V)
6. Water resources. (C,H)
7. Soil resources. (C)
8. Quality of life. (F)
9. Environmental values and natural resources. (F,H,W)
10. Economic values. (H)
11. Energy. (V)

Another goal of these states was to eliminate the unwise abuse of these resources. Specifically, the objectives were to prevent:

1. Inappropriate uses that become detrimental. (M)
2. Intermixing of incompatible activities. (M)
3. Pollution of water. (M)

Table 1 continued.....

4. Waste of resources and destruction of inexplicable values. (V)

5. Decisions made by local units which have an impact beyond the local boundaries. (V)

6. Substantial structures near waters or roads. (M)

7. Uncontrolled or inadequate development of a "critical area." (F)

8. Diminishment of recreational values (or access by developments on land or water). (V)

9. Diminution or endangerment of private land by public developments. (V)

10. Delay in selection and development of sites for regional projects. (H)

11. Impairment of usefulness of public projects. (H)

12. Adverse environmental impact of large scale development. (H)

13. Deterioration of environmental, social, and economic viability in urban and suburban areas. (H)

14. Poor and unwise restrictions which create undesirable housing conditions, reduction of competition, higher prices, unemployment, poor business conditions, impaired tax revenues and lead to new federal programs. (H)

15. Deterioration of water quality. (F)

Other land use objectives are to promote:

1. General welfare [environmental, social, economical, recreational]. (H,S,O)

2. Orderly growth and well planned development. (C,F,O)

3. Efficient and economical use of public resources. (C)

4. Use of land in accordance with its suitability character and adaptability. (C,W,V)

5. Appropriate recreational use of land. (M)

6. Optimum use of water. (F)

7. Consideration of long-term consequences and the public interest. (W)

Table 1 continued.....

8. Intelligent, fully informed, well reasoned decisions. (F)
9. General and uniform policies. (V)
10. Wise use of natural and non-renewable resources. (V,H)
11. Improved quality of water. (F)
12. Development in such a manner that the fiscal impact on the community can be controlled. (V)
13. Maximum economic benefits with minimum environmental costs. (V)
14. Location of housing convenient to commercial center and employment. (V)
15. Diversity of housing types and choice. (V)
16. Development of governmental services based on reasonable projections of growth. (V)
17. Use of resources in a socially and economically desirable manner. (H,ALI)
18. Fair resolution of land use disputes. (ALI)
19. The environment. (H)
20. Orderly development of key facilities (Airports and Highways). (H)
21. Implementation of pollution standards. (H)
22. Public involvement in land use decisions. (H)
23. Harmony between man and nature. (H)

Procedural goals are to coordinate private, local, and state interests with state wide policy planning. (C,O) Where development or land use may have an impact of more than local significance, the state should be able to exercise some control over it, if desired. (ALI,H)

TABLE 2

KEY:
C = Colorado
F = Florida
M = Maine
W = Washington
H = House of Representatives
S = Senate
ALI = American Law Institute
O = Oregon
V = Vermont

Legislatures have made the following findings in their existing or proposed statutes:

1. State wide land use system is the most effective means of attaining their objectives. (C)

2. Local government units should have the primary responsibility for land use planning. (ALI,S)

3. Townships are unorganized. (M)

4. State's future depends on its land use. (W)

5. Rapid growth and its resulting demands on land necessitate planning. (W)

6. Land is the nation's most valuable resource. (S)

7. A land use policy is necessary to maximize benefits to all people. (S)

8. State is the trustee of its waters. (M)

9. Local planning takes place on an uncoordinated and haphazard basis, often resulting in decisions,

   a. without consideration of long term consequences. (W)

   b. without consideration of the public interest. (W)

   c. based on expediency. (S)

   d. based on tradition. (S)

   e. based on politics. (S)

   f. based on short term economic goal. (S)

   g. unrelated and contradictory to sound economic and ecological conditions. (S)

10. There is a lack of available information for land use planning. (S)

11. Education in land use is necessary. (S)

Table 2 continued.....

12. There is not enough public participation in land use decision making.

13. No comprehensive policy leads to conflict among governmental units. (S)

14. State and local arrangements are inadequate. (H)

TABLE 3

KEY:
C = Colorado
F = Florida
M = Maine
W = Washington
H = House of Representatives
S = Senate
ALI = American Law Institute
O = Oregon
V = Vermont

In developing a plan to implement the goals and objectives of land use planning, consideration should be given to the following:

1. Balancing public and private capital investments (eg. increased tax base versus the cost of additional municipal improvements and services). (ALI)

2. Balancing the benefits against the detriments of development from both local and state viewpoints. (ALI)

3. Burden on transportation facilities. (C,ALI)

4. Pollution potential associated with the development. (C,ALI)

5. Burden on recreational facilities. (C,ALI)

6. Burden on educational facilities. (C,ALI)

7. Burden on water supply facilities. (C)

8. Burden on sewage disposal facilities. (C)

9. Problems of industrial and commercial development.

10. Problems of all growth. (C,ALI)

11. Potential of a use for encouraging additional development. (ALI)

12. Number of users or affected parties. (ALI)

13. Size of the development. (ALI)

Table 3 continued.....

14. Unique qualities. (ALI)

15. Available alternatives and alternative methods of development. (ALI)

16. Greater than ordinary adverse effects. (ALI)

17. Whether an area has more than its share of that particular type of development and the resulting tax burdens. (ALI)

18. Effect on the ability of people to find adequate housing reasonably accessible to their place of employment. (ALI)

19. Effect of government projects and planned government projects. (ALI)

20. The states' discretion regarding the location of development is better than the discretion of individuals. (M)

21. Local governments may not have the power or jurisdiction to deal with their land use problems. (M)

The listings of Tables 1, 2, and 3 are deceptive. At first they suggest a well thought out rationale for legislative intervention. A closer reading reveals that the reasons given must reflect more fundamental policies. Legislatures are hesitant to state these policies. The State of Maine Legislature in the Site Location of Development Act [M.S. T38 Article 6 481] hinted at the fundamental policy:

> The Legislature finds that the economic and social well being of the citizens of the State of Maine depend upon the location of state, municipal, quasi-municipal, educational, charitable, commercial and industrial developments with respect to the natural environment of the State; that many developments because of their size and nature are capable of causing irreparable damage to the people and the environment in their surroundings; that the location of such developments is too important to be left only to the determination of the owners of such developments; and that discretion must be vested in the state authority to regulate the location of developments which may substantially affect the environment. (emphasis added)

Common to all the statutes, but not necessarily explicitly stated, are the legislative recognitions that: 1) land is indeed a scarce resource, 2) the old approach to land use planning and control (little or no regulation by the state and a reliance on economic factors alone as the means of allocating land) will be no more successful as a device in the future than it has been in the past, 3) there is a need for devices that force recognition of the full costs of a proposed development including biological and sociological as well as monetary considerations, with the result that these costs are reflected in the final price of the development product whether that product be a residential building site, a kilowatt of electricity or copper water pipes.

Some of the states that have enacted land use planning legislation have, it is suspected, also been motivated by other factors, which are not mentioned and which cannot be justified. Generally, these states have been subjected to considerably more development pressure than the national norm, much of it in the form of large scale vacation home or second home developments. One must consider that one such unmentioned motivation for legislation has been to slow down the influx of "outsiders", a phenomenon the "locals" fear will ultimately destroy the character of the area and drastically affect their "quality of life."

It is very doubtful that state legislation with the purpose of, or which has the tendency to, limit the movement of permanent residents into a state is constitutionally acceptable under the commerce clause, regardless of how it is justified. However, a New Hampshire city has been successful in opposing its development as a second home resort community, Steel Hill Development Inc. v Sanbornton 338 F. Supp. 301 (1972). Much of the success this city achieved rests on the fact that the proposed develop-

ment was of second homes or vacation homes. Vermont has based portions of its statute on the logic of this case and the case is cited generally as legal precedent for the constitutionality of exclusionary zoning toward vacation and second home developments. States which have sought to regulate this type of development have recognized the recreational attributes of their geography as valuable economic resources that can be allocated and subjected to the same developmental control as mineral or other resources. Such an argument takes on additional validity when one recognizes the relative scarcity of areas with such amenity values as water access, scenic beauty, interesting topography, and so forth.

Another motivation for legislative action in land use has been to preserve certain state industries from unnecessary encroachment by development. The most evident example of this is the expressed goal of preserving agricultural land for agricultural use. Adherents to Malthusian theory argue that rising food prices and world hunger will worsen if the development of agricultural land for non-agricultural uses continues. Malthusian arguments aside, there are those of the opinion that the small farm is of value as a sociological unit and that land use policies should encourage its continued economic viability. If the immediately foreseeable limits of urban development are defined, tax rates can be more equitably established and speculative influences on land prices reduced.

Many legislatures are concerned that proposed development be considered in light of its fiscal effects on the community and the state. Based on past experience, there is concern that the development of a "bedroom community" often results in the creation of a fiscal disaster;

a community that consumes more value in municipal services and school expenses than it contributes in tax revenues. The threat of such an occurrence has prompted some legislatures to seek to regulate development, with the goal of insuring that a fiscally healthy mix of residential, commercial, and industrial land usage results.

While not a national trend setter, Minnesota is one of several states which have passed land use planning legislation in the last 5 or 6 years. While some states have brought sweeping state comprehensive planning laws into effect, Minnesota has chosen to follow the "quiet revolution" on a pick and choose basis.

What have other states done in land use planning? What events have prompted other states to act in this area? What goals do other states hope to accomplish through such legislation? How can Minnesota learn from the other states' experiences? How does Minnesota's land use planning legislation work? What needs exist for new laws in Minnesota? What problems can arise under the current scheme? What changes should be made to solve these problems? The purpose of this study is to stimulate one's thinking in these areas.

The substantive areas of concern and procedure for influencing the formation of policy in these areas will be presented.

Finally, Minnesota Statutes related to land use planning will be analyzed.

## PART II: LEGISLATIVE TECHNIQUES AND IMPLEMENTATION PROCEDURES OF STATES' LAND USE LAWS

In the appendix are summaries of state land use laws reviewed as part of this study. The summaries illustrate that various approaches have been utilized by these states and that little uniformity exists among them as to land use planning. Matrix 1 in the following pages has been compiled in an attempt to aid analysis of these approaches and to illustrate common features of the several statutes. It shows the substantive areas where states have recognized a state interest in land use planning, justification for this interest, government agencies involved in the planning process and procedural techniques implementing state policy. It should be noted that in preparing the matrix, each category listed does not represent a single uniform item wherever an "x" appears. Rather, broad discretion was exercised, and an "x" was indicated wherever it was felt that there was some provision within the statutes that justified a complete or partial recognition of a category.

It is clear from the matrix that all of the states surveyed recognize to some degree a state interest in land use planning where the location of an activity is of state-wide significance. More particularly, water and water related areas are locations which are most frequently subject to state land use regulation. Another near unanimous concern is development located within "critical areas". Although the concept of, and the criteria for, designation of critical areas varies greatly from state to state, the fact that all of these states have passed legislation to provide for defining, establishing, and regulating

critical areas is important. The only states without critical area legislation are Hawaii, Vermont, and Washington. Such legislation is proposed in Washington. Hawaii and Vermont both recognize a state interest in developments anywhere in the state without isolating a particular critical area. They exercise control through state-wide zoning and a state development permit system, respectively.

In addition to regulating developments according to their location, critical or otherwise, many states have passed legislation to govern developments or activities of a particular nature or type, such as the siting of power plants. Some states have even gone beyond this to regulate all activities or greater than local significance. That is, they govern activities or developments whose significant effects are not confined to the territorial boundaries of the communities where they are located. Florida and Oregon have such legislation, and the ALI Model Code recommends it.

Several states also have adopted the ALI's suggestion of regulating any activity with a size of such magnitude that it would create an impact of statewide significance.

MATRIX 1

COMPARISON OF LAND USE PLANNING LAWS OF SELECTED STATES

| | Minnesota | ALI | Colorado | Florida | Hawaii | Maine | Oregon | Utah | Vermont | Washington |
|---|---|---|---|---|---|---|---|---|---|---|
| I. Reasons states recognize a state interest in land use planning. | | | | | | | | | | |
| LOCATION of development is of statewide significance. | X | X | X | X | X | X | X | X | X | X |
| TYPE of development is of statewide significance. | X | X | X | X | | | X | X | X | X |
| SIZE of development is of statewide significance. | | X | | X | | X | | X | X | |
| Development is located within a critical area. | X | X | X | X | | X | X | X | | |
| Development is greater than local significance. | | X | | X | | | X | | | |
| Development has a regional benefit. | | X | | | | | | | | |
| Special area of legislation | | | | | | | | | | |
| Shorelands | X | | | | X | X | | | X | X |
| Floodplains/Flood Control | X | | X | X | | | | | X | |
| Wild and Scenic Rivers | X | | | | | | | | | |
| Coastal Zones | | | | | X | | X | | | |
| Great Ponds | | | | | | X | | | | |
| Subdivisions | X | | X | | | X | X | | X | |
| Power Plant Siting | X | | X | X | | X | | | X | X |
| II. Government agencies involved in land use planning. | | | | | | | | | | |
| State Land Planning Agency (eg. SPA, SPO, Division of Planning) | X | X | X | X | | X | X | | | |
| Land Use Commission | | | X | | X | X | X | X | | |
| Administrative Land Adjudicatory Board | | X | | X | | | | | X | |
| Environmental Board | | | | X | | X | | | X | |
| Advisory Committees | | | X | X | | X | | | | |
| Regional Planning Authority/District (Ad) | X | X | X | X | | X | | | X | X |
| District Planning Authority (land use) | | | | | X | X | | | X | |
| County Government | X | X | X | X | X | X | X | X | | X |
| Municipal Government | X | X | X | X | X | X | X | X | X | X |
| Temporary agency to study land use planning laws. | | | | X | | | | X | | |
| Other (EQC,DNR,Admin.Comm.,CAAB Advisory, etc.) | X | | | X | X | X | X | | | |

Matrix 1 continued.....

| | Minnesota | ALI | Colorado | Florida | Hawaii | Maine | Oregon | Utah | Vermont | Washington |
|---|---|---|---|---|---|---|---|---|---|---|
| III. Techniques of controlling developments of statewide or regional impact. | | | | | | | | | | |
| Means of establishing what is state or regional impact: | | | | | | | | | | |
| Legislative | X | X | X | X | X | X | X | X | X | X |
| Administrative rule | X | X | X | X | X | | X | | | |
| Local participation | X | X | X | X | | | | X | X | |
| Means of establishing state standards | | | | | | | | | | |
| State zoning | | | | | X | X | | | | |
| State permits, specific activity | X | | | | X | X | X | | X | |
| State permits, overall compliance | | | | | | X | | | X | |
| State prescription to local units, required standards | X | X | X | X | X | X | X | | | |
| State prescription to local units, required considerations | | X | | X | | | | X | X | |
| State comment on local decisions | X | X | X | X | | | | | | |
| State assistance to local units | X | X | X | X | X | X | X | X | X | X |
| Means of keeping standards up to date | | | | | | | | | | |
| Periodic review | | X | | | X | X | | | | |
| Means of informing state of local decisions | | | | | | | | | | |
| Notice procedure | | X | X | X | | X | | | | |
| Means of enforcing state standards | | | | | | | | | | |
| Administrative review of local decisions | | X | X | X | | | | | X | |
| Judicial review | X | X | X | X | X | X | X | X | X | X |
| State participation at local hearings | | X | | X | | | | | | |

Matrix 1 also shows the various governmental agencies that are involved in Land Use Planning. Local governments at the county level and below continue to play a major role in land use planning.

However, agencies at a statewide level also have a significant role, although the amount of power delegated them varies considerably from state to state. These agencies usually take the form of an established administrative agency or a politically appointed commission. More specifically-oriented agencies such as a Department of Natural Resources or an Environmental Quality Council often complement the state's efforts of the more generalized planning agencies and land use commissions.

Between the state governments and the local units are regional and district planning authorities, which are also prevalent. Generally, these bodies serve a more administrative supervisory and coordinating function and possess no significant powers. However, in a few states they exercise control of the substantive use of land within their jurisdiction (eg. Vermont).

A recent innovation in land use planning is the creation of administrative land adjudicatory boards, which function to review disputed land use planning decisions of statewide significance. Florida and Vermont have the ALI recommended agencies.

Matrix 1 also shows the various techniques that states employ to implement their substantive law. Legislatures, of course, may always determine what is of a statewide or regional impact. However, several states provide that this decision can be made by an administrative ruling of one of the concerned state-level governmental agencies. Local

government participation in these decisions is usually permitted at initial and intermediate stages of this decision-making process.

Once the substantive areas have been recognized, a wide range of techniques is available to effect their application. A popular method is the minimum standards approach. This procedure works as follows: (1) The legislature enacts guidelines and usually directs an administrative agency to develop more specific minimum standards and perhaps a model ordinance. (2) Local governments are required to adopt ordinances which will meet the minimum standards. (3) The state administrative agency then reviews local ordinances for conformance with the minimum standards. (4) If the local ordinances do not comply, the state agency is empowered to adopt a conforming ordinance for that jurisdiction. (5) Local governments have the responsibility for enforcing the ordinance, thereby enforcing the state's minimum standards.

Six states and the ALI use the required minimum standards approach. Three states and the ALI offer a relaxed variation of this procedure by requiring only that the state's guidelines be considered in the decision making process.

Although the minimum standards approach is popular and involves participation at the local level, it has some drawbacks. This procedure is costly from a state point of view because the state must administratively review for conformance to the ordinances of all local governments. Secondly, even if the local ordinances do conform, there is no assurance that enforcement will not be relaxed if the locality desires a result different from that prescribed by state policy. This is a type of problem that is even difficult to detect. Even if detected, only

three states and the ALI provide for states to comment or appeal a local planning decision.

Another technique is the permit system. At one extreme is state zoning, where state permits are required for all activities in that jurisdiction. The entire state of Hawaii is subject to state zoning, and this technique is selectively used in unincorporated areas of Maine.

More common, however, is the state permit system which retains all of the local permits, but in addition requires a state-issued permit where a state interest is involved. For example, in Maine the location of most developments greater than 20 acres is considered to be too important to be left solely to the discretion of local planners. Therefore a permit must be obtained from the Environmental Protection Board. Oregon also requires a state site location permit for activities of state-wide significance. In Minnesota a Department of Natural Resources permit is required for the appropriation and use of water. Most of the states reviewed require state permits of specific activities.

Two states, Maine and Vermont, go even further and require that an additional certificate of compliance be obtained to assure that developers aren't violating any provisions of the law.

Some techniques used to implement the substantive interests of the state are less direct than the minimum standards approach or the permit system. All states offer some state assistance to local units in land use planning. However, Colorado has created a special local planning fund that can pay up to 2/3 of the cost of a local work program approved for funds by the state land use commission. The obvious intent of this financial carrot is to induce local compliance with state planning goals by easing the financial burden compliance placed on local government.

However, this method will only be as effective as the amount of financial aid available and could lead to piecemeal conformance with state policy.

Although almost every state reviewed provided for a state comprehensive plan, only two states and the ALI make provisions for a periodic review of such plans. Review is necessary to assure the adequacy of the plans to meet the changing needs and demands of society upon our limited resources. Apparently the other states feel their legislatures will update their plans when necessary without the requirement or benefits of automatic periodic review.

To enforce state standards, all states have provisions for judicial review of land use decisions. However, the ALI model code and three states provide for administrative review of local decisions. Either an administrative body or a specialized court, like the tax court, hears appeals from local land use decision makers where a state interest is involved. In the Florida and ALI versions the board may have the power to grant or deny a permit, modify a local decision, or remand it for further proceedings. It issues written decisions which establish a record for guiding future developments and can have the effect of fine tuning state policy. This technique would prevent a local government from unreasonably denying a permit for a well planned development of regional benefit and would ensure that local governments cannot frustrate state policy.

To effectively enforce its policies, a state must be aware of when decisions are being made and when activities are being contemplated in which the state has an interest. Three states and the ALI have

established procedures to inform the state when such activities are being planned. Both the ALI and Florida would also permit the state to participate in the local hearings of these activities where a state interest is involved.

The last technique considered is remedies for non-compliance with state policy. In many states injunctions, cease and desist orders, or restraining orders will halt an activity or development which is proceeding in violation of state policy. In some states, individuals or the state may obtain a writ of mandamus to compel local officials to perform their duty to enforce the law. Statutory fines act as a deterrent to non-compliance in some states. In Minnesota, criminal prosecution may be the remedy if circumstances warrant.

## PART III: LAND USE PLANNING IN MINNESOTA

The legal recognition that one can't do something on his land that is harmful to his neighbor's land originated long ago in England and has been part of American common law since our country's earliest beginnings. From this body of common law, known as nuisance law, can be traced the beginnings of land use planning as we know it today.

Early in the twentieth century there was growing awareness that some activities or land uses, because of their potential of becoming a nuisance, should be isolated from other land uses to minimize the potential harm. Minnesota's first statutory recognition of this occurred in 1913 when the legislature "authorize(d) cities of 50,000 inhabitants and over to designate residence and industrial districts in such cities and classify industries and buildings which may be erected and maintained therein."[1] In 1915, the legislature authorized cities of the first class to designate and establish restricted residence districts.[2] A restricted residence district is created upon petition of 50% of the residents of the affected area. The city council, by resolution, prohibits the erection, alteration, or repair of any building or structure for any of the purposes prohibited by the resolution. In addition, the council can use the power or eminent domain in the establishment of the districts. Property owners injured by the establishment of the district can petition the council for appraisal of the damages and compensation. The cost of the creation of the district is assessed upon the district property owners. A restricted residence district continues in existence until vacated in

the same manner in which it was created (This legislation, subsequently modified, is still effective in Minnesota. See Minnesota Statutes 462.12-.17). In the two decades following the 1915 legislation, land use planning theory became clearer. It was recognized that an activity or a structure could become a nuisance simply by being located in the wrong place, while if located elsewhere it would be acceptable. In 1921, cities of over 50,000 inhabitants were authorized, in addition to creating districts, to regulate the location, size, and use of buildings in the city and to prepare a comprehensive city plan.[3] In 1925 the Standard Zoning Enabling Act, drafted by the U.S. Department of Commerce, established valuable guidelines for states passing zoning legislation and gave zoning new legitimacy. In 1929 Minnesota first used the word "zoning" in its legislation. That enactment authorized cities of the second, third, and fourth class to enact and enforce zoning ordinances if a majority of the citizens approved the proposition in a general election. This law with modifications[5] governed municipal zoning in Minnesota until 1965.

From 1935 to 1959, there were very few developments in land use planning in Minnesota. In 1959, counties were given limited zoning powers.[6] In 1963, the county zoning enabling act was amended slightly.[7]

The year 1965 saw a brief flurry of recognition of the need for state land use planning. A state planning agency was created to coordinate the activities of state agencies and local units of government and to prepare long-range planning recommendations for the legislature.[8] Local units of government were authorized to cooperate and make regional plans.[9] Municipal zoning and enabling legislation was repealed and

replaced with the modern planning currently in effect (Minnesota Statutes 462.351 et. seq.).

In 1969, the legislature first enacted statutes recognizing that the state has an interest in establishing controls for certain areas of the state. Three major enactments were passed:

a. Regional Development Commissions[10]

b. The Shorelands Act[11]

c. Floodplain Management Act[12]

The 1969 enactments were the beginning of the renaissance of land use planning in Minnesota. In the subsequent five year period, the following land use planning statutes were enacted:

1971: Environmental Rights Act[13]

1973: Critical Areas Act[14]

Environmental Policy Act[15]

Wild and Scenic Rivers Act[16]

Power Plant Siting Act[17]

Environmental Quality Council Act[18]

Subdivided Land Sales Act[19]

Amended: Floodplain Management Act[20]

1974 Amended: County Planning, Development, and Zoning Act[21]

As one reviews the history of land use legislation in Minnesota, it is evident that the emphasis since 1969 has shifted from enabling legislation for local units of government to legislation relating to state-wide concerns. Also apparent is the legislature's awareness of Minnesota's unique and extensive water resources, and its concern to insure that the development of this state resource takes place in a

rational, non-destructive manner.

Structural Organization of Governmental Units and Agencies Responsible for Implementation of Land Use Laws

Accompanying this report is an organization chart of Minnesota land use laws to which reference will be made throughout this section.* At the top of the chart are the Governor and Legislature. Under the Governor and running horizontally across the chart are the state administrative (executive) agencies that have a relationship with land use planning. The Department of Natural Resources and the State Planning Agency perform the majority of the planning functions. Coordination of state agency activity is achieved through the use of the Environmental Quality Council. EQC members are the directors of those agencies shown connected to the EQC.

Local units of government are set out across the bottom of the chart. Local planning takes place in Minnesota in the county, town or municipal government. Two methods of planning coordination between local units are possible. The Governor has divided the state into 11 Regional Development Commissions. Coordination of local planning can be achieved through the commissions' review and advisory capacity. Two or more local units of government are given additional authority by Minnesota Statutes to enter into agreements for subregional planning.

The Minnesota Municipal Commission is a device unique to the state. How the commission rules on petitions for incorporation, annexation, or consolidation may have a profound effect on land use in the area. In addition, the commission's review powers allow it to solicit petitions from areas it considers "ripe" for incorporation.

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*See the Organizational Chart at the end of this report.

Special districts have powers of greater than local scope, but restricted to specific functions rather than the general ambit of local governmental powers. In providing its specific function, some special districts (for example, a watershed district) may exercise limited powers over land usage.

The judicial branch of government appears in the lower right corner of the chart. District courts are the courts of original jurisdiction in all land use planning actions. The Minnesota Supreme Court hears appeals from lower courts in these matters.

Substantive Areas of Legislative Attention

The Minnesota Legislature has enacted state laws regulating certain substantive areas of land or certain types of land usage. The legislature felt a need for state regulation of these areas: shorelands[22], floodplains[23], wild and scenic river areas[24], and critical areas[25]. The first three areas are self-defining and point out again the legislature's awareness of the importance of water-related areas as a state resource. A critical area is: (1) "An area significantly affected by, or having a significant effect upon, an existing or proposed major government development which is intended to serve substantial numbers of persons beyond the vicinity in which the development is located and which tends to generate substantial development or urbanization. (2) An area containing or having a significant impact upon historical, natural, scientific, or cultural resources of regional or statewide importance."[26]

The legislature has found only two usages of land to be of such a type that state regulation is appropriate; selection of sites for major energy generation facilities[27] and siting of health care facilities[28]

are subjected to state approval.

Procedural Techniques of Minnesota Legislation

Statewide Procedures:

The Shorelands Act, Floodplain Management Act, and Wild and Scenic Rivers Act are managed by the Department of Natural Resources. Procedurally, the three acts are administered in the same basic manner. The legislature delegated to the Department the responsibility for establishing and publishing minimum standards and criteria to accomplish the state goals set forth in the legislation. Each local unit of government is responsible for adopting or amending existing ordinances to meet the minimum standards and criteria. If the local governmental unit fails to adopt an ordinance or the ordinance adopted is unacceptable, the Department can enact an acceptable ordinance for the locality after holding at least one public hearing. Thus the Department of Natural Resources has three responsibilities: (1) establish minimum standards, (2) review local ordinances for compliance with the established standards, (3) enact legislation for localities which have failed to meet their legislative responsibilities.

The Critical Areas Act is administered by the Environmental Quality Council. The Council establishes regulations setting forth the criteria under which critical areas are selected. Recommendations of areas for designation as critical areas are made by regional or local governmental units to the Council in accordance with its regulations. After holding public hearings on the recommendation, the Council recommends, to the Governor, the establishment of a critical area and standards and guidelines to be followed in the preparation of plans and

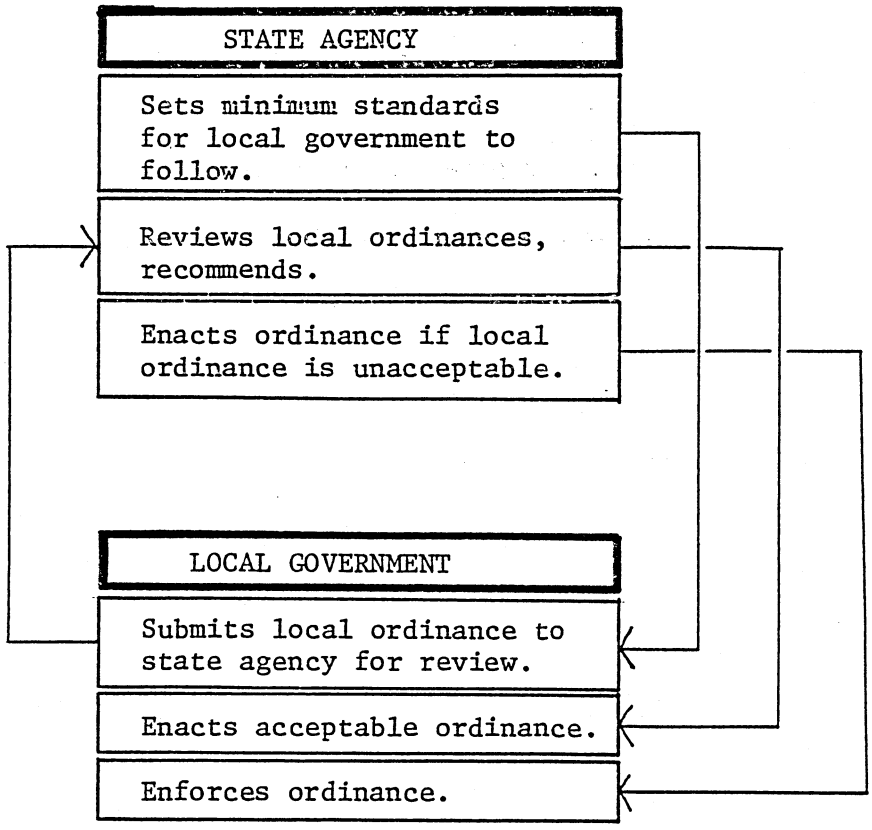
regulations for the area. The Governor designates an area a critical area by executive order. Local governmental units are required to prepare plans and regulations for the critical area to meet the state standards and guidelines specified in the designation order. The Council reviews the plans and regulations of the local units and makes recommendations for revision if needed. If the local governmental unit fails to prepare acceptable plans within one year, the Council may prepare and adopt plans for the area after holding a public hearing.

The Power Plant Siting Act is also administered by the Environmental Quality Council. The Council prepared criteria for the selection process with the assistance of a citizens' advisory board and public hearings. The Council's current task is to prepare an inventory of potential sites for energy generation facilities and transmission corridors. Specific proposed corridors and sites are evaluated by evaluation committees. A certificate of site compatibility issued by the Council is required before a power generating plant or high voltage line can be constructed.

The technique of regulation from the state level adopted by the Minnesota Legislature has consistently been to adopt state minimum standards and require the local governments to adopt zoning ordinances which implement at least the minimum requirements. State participation in the local legislative process occurs only when the local government fails to meet the minimum standards. The state agency which administers the enactment is responsible for reviewing the activity of local units to insure that they have enacted and are enforcing the ordinances. Figure 1 is a flow chart of the Minnesota procedure. Note that once the local

government enacts an acceptable ordinance, the only additional activity of the state agency is to try to insure that the ordinance is enforced, either through court action or via indirect compulsion. Citizens of the local government can compel enforcement of the ordinance by seeking a writ of mandamus.

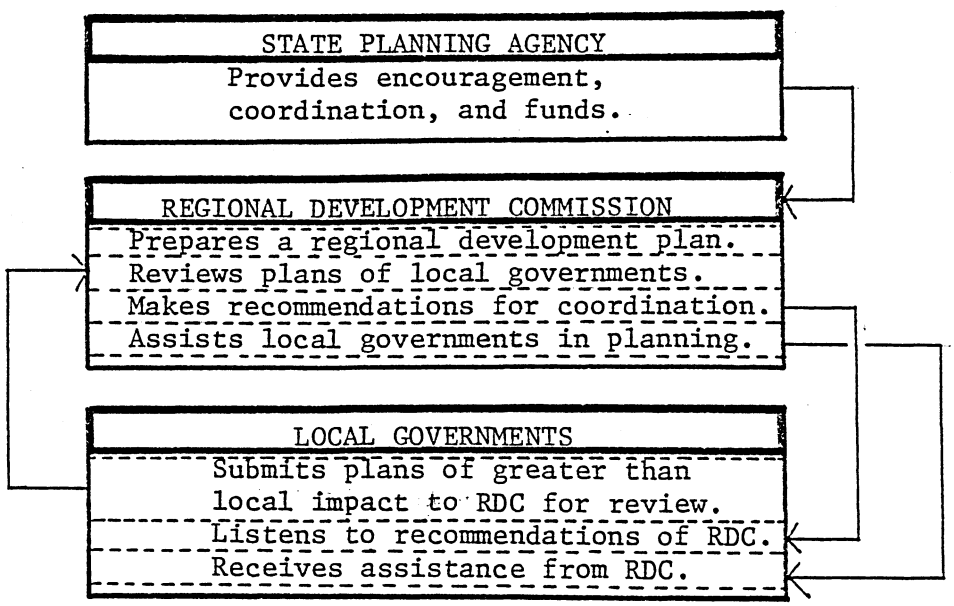
Figure 1



Regional Procedures:

Regional Development Commissions influence land use planning via coordination rather than compulsion. Once a Regional Development Commission has been established, its power and influence depends upon the extent to which the local governments value the services and recommendations it offers. The Commission prepares a regional development plan and reviews the plans of local units, but with advisory powers only. The plans of independent agencies are also subject to Commission review and the Commission has the power to suspend such plans. With financial resources provided by the state, the Commission is in a position to propose and sponsor studies which individual localities would not be able to. The Commission also seeks to coordinate the plans of local units to insure their harmony. Figure 2 is a diagrammatic representation of the Regional Development Commission's relationship to other governmental units.

Figure 2



Local Procedures:

Minnesota local units of government (counties, municipalities, and urban towns) have been granted zoning and subdivision regulation powers by the legislature. Procedures to be followed by counties, municipalities, and urban towns are similar although granted by different legislation. The local governing body can create a planning body which prepares a recommended comprehensive plan and suggested procedures for its implementation. The local governing body adopts a comprehensive plan based upon the recommendations, and can enact zoning ordinances, subdivision regulations, and an official map as means of implementing the plan. Figure 3 is a diagram of the zoning ordinance adoption and appeal process. If a zoning ordinance is adopted, a board of adjustment serves two functions: (1) hears and decides appeals where there is alleged to be an error in any order, requirement, decision, or determination made by a zoning administration officer; (2) hears requests for variances from the literal provisions of the ordinance. Further appeals are taken from the board of adjustment to the governing body and district court.

Amendments to zoning ordinances can be proposed by the governing body, by the planning body, or by property owner's petition. A proposed amendment must be submitted to the planning body for its recommendations prior to action on it by the governing body. In cities of the first class, there is an additional requirement that consent of owners of contiguous property be acquired.

Figure 3

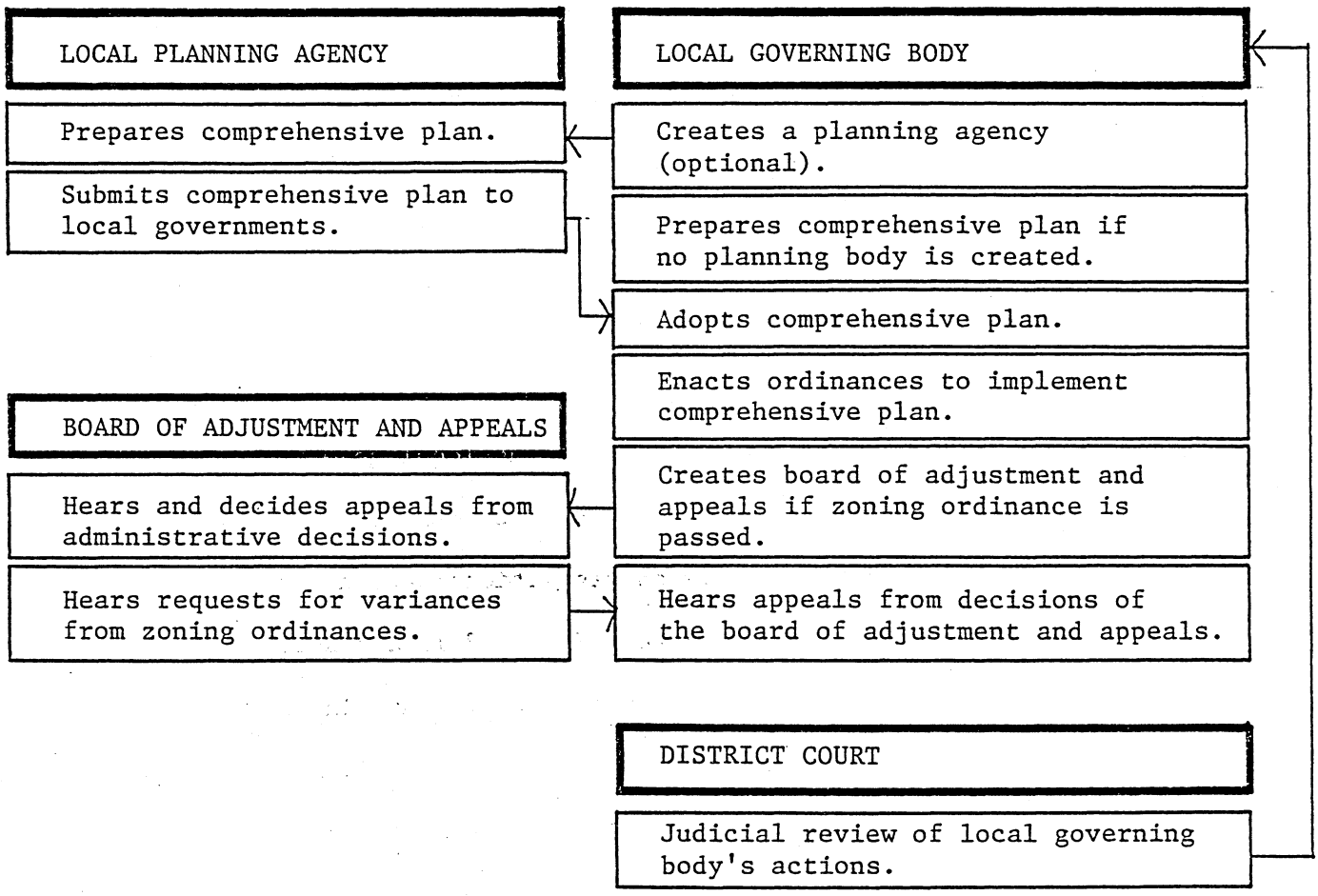
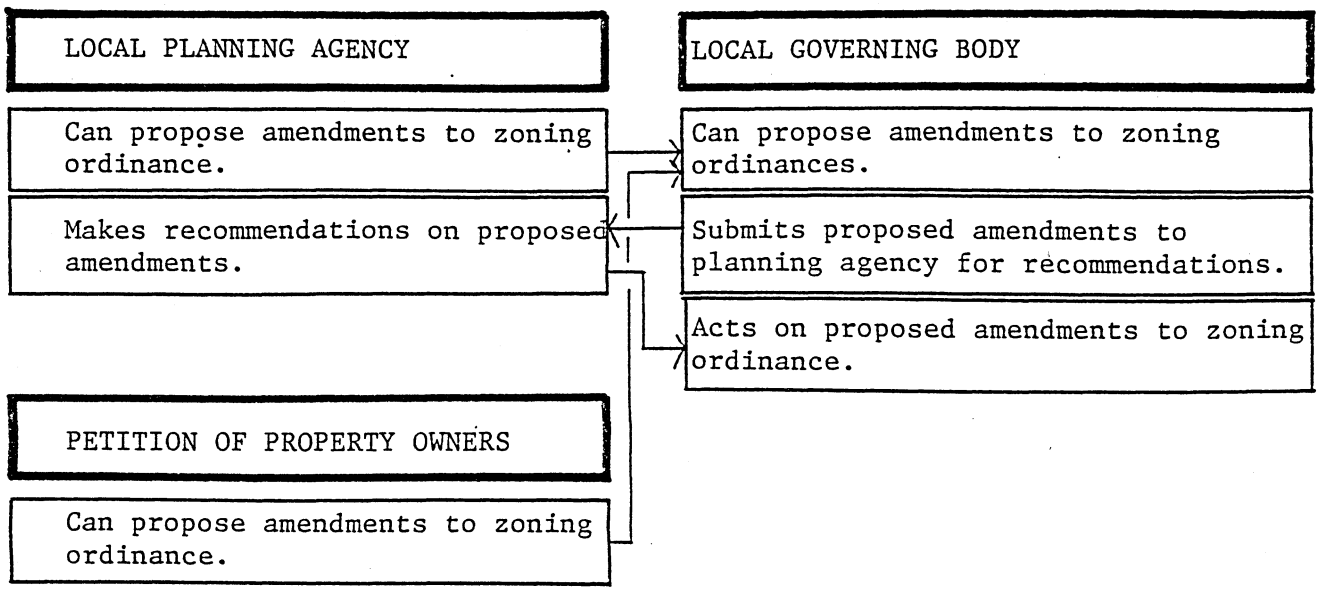



Figure 4 is a flow diagram of the amendment process:

Figure 4



In addition to zoning powers, local units of government have been granted permission to adopt subdivision regulations. Subdivision regulations enable the local unit of government to establish requirements for the provision of streets, public utilities, parks, playgrounds, control of drainage, erosion, and so forth. No subdivision plat is approved by the local unit of government unless it complies with the subdivision regulations. Without plat approval, no conveyance of land to which the regulations are applicable can be filed or recorded.

Subdivision regulations are adopted by ordinance when the platting authority is the governing body and by resolution when the platting authority is other than the governing body. In each case, a public hearing on the proposed regulations must be held prior to adoption. The subdivision regulations may provide a procedure for the granting of variances thereto.

Local units of government are authorized to adopt an official map. An official map designates and identifies land planned for future use for streets and as sites for public facilities. Before an official map can be adopted, the planning body must adopt a major thoroughfare and community facilities plan, and prepare and recommend to the governing body a proposed official map. The governing body after holding a public hearing on the proposal may adopt the official map by ordinance. Once an official map has been adopted and filed, the local governmental unit will not issue permits for buildings to be located on land designated for future public use on the official map. Compensation for the value of any building on such land erected without a permit or in violation of a permit need not be paid by the local governing unit. The board of adjustments and appeals hears appeals from disputes involving the issuance of permits.

[1]Minnesota Laws, 1913, Chapter 420, Land Use.

[2]Minnesota Laws, 1915, Chapter 128.

[3]Minnesota Laws, 1921, Chapter 217.

[4]Minnesota Laws, 1929, Chapter 176.

[5]Amended by Laws 1935, Chapters 235, 376 and Laws 1935 extra session, Chapter 35.

[6]Minnesota Laws, 1959, Chapter 559.

[7]Minnesota Laws, 1963, Chapter 692.

[8]Minnesota Laws, 1965, Chapter 685.

[9]Minnesota Laws, 1965, Chapter 694.

[10]Minnesota Laws, 1969, Chapter 1122, M.S. 462.381.

[11]Minnesota Laws, 1969, Chapters 777, 1129.

[12]Minnesota Laws, 1969, Chapter 590.

[13]Minnesota Laws, 1971, Chapter 952.

[14]Minnesota Laws, 1973, Chapter 752, M.S. 116G.01.

[15]Minnesota Laws, 1973, Chapter 412, M.S. 116D.01.

[16]Minnesota Laws, 1973, Chapter 271, M.S. 104.32.

[17]Minnesota Laws, 1973, Chapter 591, M.S. 116C.51.

[18]Minnesota Laws, 1973, Chapter 591, M.S. 116C.01.

[19]Minnesota Laws, 1973, Chapter 413, M.S. 83.20.

[20]Minnesota Laws, 1973, Chapter 351, M.S. 104.01.

[21]Minnesota Laws, 1974, Chapter 571, M.S. 394.22.

[22]Minnesota Statutes 105.485.

[23]Minnesota Statutes 104.01.

[24]Minnesota Statutes 104.32.

[25]Minnesota Statutes 116G.01 et.seq.

[26]Minnesota Statutes 116G.05.

[27]Minnesota Statutes 116C.51.

[28]Minnesota Statutes 145.71.

## PART IV: MINNESOTA LAND USE PLANNING, A CRITIQUE

Minnesotans can be proud of the foresightedness of a legislature which has recognized the need for land use planning while many other states have continued to muddle forward, placing little if any emphasis on the sequencing and quality of development and the preservation of unique land assets. As Figure 5 shows, Minnesota's land use planning scheme already has features which are comparable to many significant aspects of the ALI Model Land Development Code. There are, however, some areas in which Minnesota has not legislated and in which there may be a need for more thorough legislation.

One of these areas is evaluating the size of developments. As the analysis of Part II and Table 1 point out, three areas of substantive concerns -- critical locations, critical types of development, and developments beyond a critical size -- are recognized by the ALI Code and many of the surveyed states. Minnesota has recognized location of development and type of development as meritorious of state concern. However, only through the regulations of the Environmental Quality Act does Minnesota recognize development <u>size</u> as a factor creating a state interest. Legislatively, there has been no such recognition. Perhaps the reason for this is that of the three substantive concerns, size is the most difficult to control. Critical location and critical type of development are fairly obvious concerns of the regulator. But the point at which the size of a given development becomes objectionable may not be so obvious. In addition, while the legislature could pass legislation that would limit the size of a given development, the control of the

collective size of many small developments would be much more difficult to regulate at the state level. Conceivably, several small developments, unregulated because of their individually insignificant size, can be more burdensome on the region and state than one well-planned, well-executed large development.

Another area needing review is the question of the role of the regional commission in the administration of land use goals and objectives. One question is whether the regional scheme, as adopted in Minnesota, will be effective. States which have had success with regional development commissions, particularly Vermont, give regions the power to make land use decisions rather than merely to advise. The Metropolitan Council is the only Minnesota "region" that has been given significant land use related powers. Minnesota should give consideration to delegation of land use powers to the other regions as a method of solving the problem of inconsistent regulations among smaller jurisdictions.

One known disadvantage associated with delegating regulatory powers to regional commissions is the potential to develop conflicts with overall state policy. One means of providing consistency with state policy when using a regional approach to decision making is to provide that the original review of regional decisions be made at the state level rather than by local courts. Review at the state level can be performed by a judicial body or by an administrative body acting in a quasi-judicial capacity. The land adjudicatory board of the ALI Model Land Development Code is an example of such a body that would be experienced in land use matters. In addition to encouraging consistency in land use decision making, the review body's decisions provide guidance and interpretation for the regional commisions, and in time, the body's decisions should come

from a "common law" of interpretation under which governmental units and private parties can confidently plan their affairs.

Figure 5

State recognizes that it has an interest in land use planning because development:

| | ALI | | MINNESOTA |
|---|---|---|---|
| 1. | Is located within a critical area | 1. | Is located within a critical area. |
| 2. | Has regional impact | 2. | |
| 3. | Has regional benefit | 3. | |
| 4. | Location has state significance | 4. | Located near shorelands, flood-plains, wild and scenic rivers. |
| 5. | Type has state significance | 5. | Power plant siting has state significance. |
| 6. | Size has state significance | 6. | EIS regulations recognize the size of development may make it of state significance. |

Government agency involved in land use planning:

| | | | |
|---|---|---|---|
| 7. | State Land Planning Agency (SLPA) | 7. | SPA, office of Land Use Planning |
| 7A. | | 7A. | Environmental Quality Council (EQC) |
| 8. | Land Development Agency (LDA)<br>Municipal Governing Body | 8. | Municipal Planning Agency<br>Municipal Board of Adjustment & Appeals<br>Municipal Governing Body<br>County Government |
| 9. | State Land Adjudicatory Board (SLAB) | 9. | No state level administrative review board of land planning decisions |
| 10. | Regional Planning Division | 10. | Regional Development Commission |

| ALI | MINNESOTA |
|---|---|
| Techniques used: | |
| 11. State Comprehensive Plan, prepared by State Land Planning Agency | 11. State makes comprehensive recommendations |
| 12. Periodic review of state plan | 12. |
| 13. Critical areas: State (SLPA) sets minimum standards in designated critical areas, locals must adopt satisfactory regulations or state may adopt regulations for area, local regulations not effective without state approval | 13. Critical areas: State (EQC) sets minimum standards in designated critical areas, locals must adopt satisfactory regulations or state may adopt regulations for area, local regulations not effective without state (EQC) approval |
| 14. State Impact: SLPA by rule defines categories of development that are of state impact | 14. State Impact: Legislature enacts legislation for areas of state significance (eg. floodplains, power plant siting, etc.) Appropriate agency (DNR,EQC) establishes state minimum standards, that local ordinance must comply with. Local governments are required to adopt an ordinance. |
| 15. Local governments (LDA) make initial decisions regarding development permits for all developments. If development is of regional impact, the LDA's decision must consider regional beneficial and detrimental impacts as well as local impacts. | 15. Local governments (municipalities and counties) apply the local ordinance to all proposed developments. To grant permit, ordinance's minimum standards indirectly require consideration of regional/state detrimental impacts. To deny permit, there is no requirement for local decision makers to consider regional/state beneficial impacts. |
| 16. If development is of regional impact, the state (SLPA) (developer other than interested parties) may appeal from an adverse local (LDA) decision to an administrative review board, based on record made at LDA hearing. | 16. No administrative review process. Developer may seek judicial review in district court, others may have difficulty establishing standing. |
| 17. State (SLPA) given notice by local government (LDA) of all proposed developments of regional impact. | 17. No early notice system. |

The minimum standards approach has been utilized in Minnesota in a number of situations, as pointed out in Part III. One problem inherent in the minimum standards approach is enforcement. Minimum standards have no effect unless they are adopted and implemented at the local level. To assure that the standards are adopted at the local level, the state must review the ordinances of each of the local units of government. In addition, the state has no guarantee that once the standards are adopted they will be enforced with any enthusiasm by the local government. Thus, in order to be truly effective, the minimum standards approach must be accompanied by some sort of continuous review process, both of the enactment and amendment of the required standards and their enforcement. This responsibility could be given to the regional commissions as part of their administrative program.

One of the greatest problems facing the developers of land in Minnesota is the great diversity and number of permits which must be obtained in order to proceed with a planned development. A developer may be forced to obtain permits from local, state, and regional governmental units. The developer may find that he is never certain he has obtained the last permit, but he proceeds in the hope that he has. None of the states reviewed has successfully solved this problem. One possible solution to the problem is the promulgation of a list of permits required for developments. A better solution, however, is to place the burden of deciding which permits are required on the government, either local, regional, or state, or all three. One further step in this improvement would be to create some sort of one-stop permit system. Under a one-stop permit system, a developer would have to contact only one governmental official for approval of his project. The official would be burdened with the duty of ascertaining which permits are required for the project at the various levels of state government. He would then forward to the appropriate units of government a copy of the request; they would be required to act on the proposal within a set period of time.

A one-stop permit system also has benefits for those concerned with keeping tabs on development in the state. All permit applications could be published in a weekly, semi-weekly, or monthly public information bulletin. By subscribing to and making proper use of the bulletin, environmental groups could select those projects they feel pose special dangers to the environment. State agencies could use the permit

information to project development trends.

Minnesota might be criticized in its regulation of development for failing to adopt one course of action and not following it through to its ultimate conclusion. Regional development commissions have only the power to recommend, established minimum standards are not likely to be continuously monitored, and no procedure has been established for the appeal of matters of state concern to a state review body experienced in land use matters. Review of local actions takes place in the local courts, and no review is accomplished at the state level until an appeal is taken to the State Supreme Court.

The purpose of this paper is not to poke holes in Minnesota state land use planning policy. Its intent is to encourage the reader to consider the existing condition of state involvement in land use decisions in Minnesota and hopefully to encourage him to evaluate the achievements of other states, in the hope that we in Minnesota may more fully appreciate the strengths and weaknesses of our state policies.

# APPENDIX

This appendix contains a general description of the land use planning schemes of each of the states studied. It illustrates how procedural techniques can be worked into various overall land use planning frameworks. For those interested in specific statutory language, the citations have been provided. For an additional discussion of various land use planning laws, see: "State Land Use Regulation, A Survey of Recent Legislative Approaches," 56 Minn. L. Rev. 869 (1971-72).

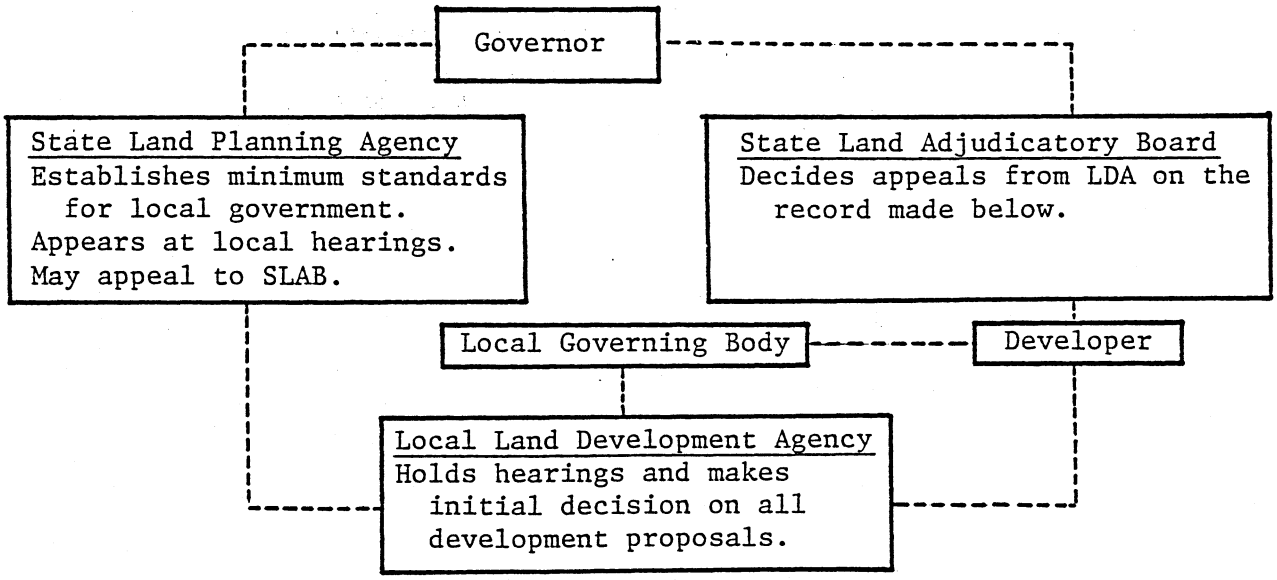
ALI MODEL LAND DEVELOPMENT CODE (MLDC)

As the American Law Institute developed its model code it worked from two basic premises: 1) that land use regulation should be left to local units, except where the decision imposes external costs, and 2) that the state is the appropriate authority to speak as the voice of a constituency of more than one municipality.[1] About ninety percent of the land use decisions that are made have only a local significance. Therefore, under the MLDC, these decisions would be left solely to the local authorities. Only where the activity will have state or regional impact should the state become involved in the decision making process. The MLDC recognizes three areas in which a development may have a greater than local significance, thereby justifying state involvement because of the development's 1) location, 2) type, or 3) magnitude.[2] For example, the peculiar characteristics of floodplains and shorelands would warrant state involvement in developments <u>located</u> within these areas. The site of a new power plant or an airport is a <u>type</u> of development that will have a state or regional impact regardless of where it is located, because the nature of its activity has an impact beyond the territorial limits of the local government. Finally, large scale developments, such as a residential development of 100 or more units, commercial developments of more than 50,000 square feet, or an activity that will create more than 100 jobs, may be of such <u>size</u> that state or regional interests should be weighed along with the local interests.

To give proper consideration to state and regional interests, the ALI system proposes that where the state has an interest in land use decision

through one of the above three criteria, the State Land Planning Agency (SLPA) establishes minimum standards with which local agencies must comply. When a developer applies to a local Land Development Agency (LDA) the SLPA may appear at the hearing when there is a state interest. The local unit makes the initial decision, but since there is a state interest involved, SLPA, the developer, or any party at the local hearing may appeal an adverse decision to the State Land Adjudicatory Board (SLAB), which will review the decision of the LDA based on the record made below.[3] It has the power to affirm, reverse, modify, or remand the decision of the LDA, and it will issue a written statement of its reasons for the decision.[4]

Land use decisions under the MLDC are made under the following organization:[5]




The MLDC provides that the SLPA may prepare a State Land Development Plan for approval by the Governor or legislature.[6] It shall set forth objective policies and standards to guide public and private development of land.[7] The plan shall include a short term program and the SLPA shall

review the plan and issue a report every 2-5 years.[8] During the preparation of the plan consideration shall be given to local land development plans to allow local government to pursue their development policies to the maximum extent feasibly consistent with the general welfare of the state.[9] The SLPA also reviews proposed local development plans which are to be submitted to it for its comment and recommendation.[10] If any local plan adopted is inconsistent with the state plan the SLPA may specify the inconsistent portions by order, thereby rendering them invalid in any action by the local government under the MLDC.

Under the ALI model, local governments retain a great deal of control, but several changes are made. Zoning and subdivision regulations are combined into a single development ordinance for adoption by the local government.[11] The development ordinance is administered by the local Land Development Agency (LDA), which is designated by the local government from becoming involved any further in an individual development permit.[13] The LDA holds authority to grant or deny development permits.

A long-range planning institute is also created under the MLDC.[14] It is to be affiliated with the State University or to be an independent entity within the SLPA. Its function is to do research and analysis for the examination of long range policies for land development.

Under the MLDC there are two procedures in which the state can become directly involved in the local development decisions - where the development occurs in a critical area or where the development is one of state or regional impact. More specifically, the model code provides that after holding a hearing the SLPA may by rule designate a geographic area as an area of critical state concern. The SLPA must set forth the reasons why

the area is being so designated, the dangers of development, advantages of coordinated development, general guidelines for development in the area, and the type of development that should be permitted. Critical areas may be designated only for: (a) an area significantly affected by or affecting an existing or proposed major public facility (of regional significance), (b) historic, natural, or environmental resources of regional or statewide importance, (c) a proposed site of a new community, or (d) any land under the jurisdiction of a local government that has no development ordinance in effect.[15] Development within a critical area is controlled by permits. No permits may be issued by local governments while the rule is pending adoption. After adoption local governments are to develop land regulations consistent with the principles of the rule. They become effective when approved by order of the SLPA.[16] If a local government fails to adopt satisfactory regulations within six months of the approval of a rule designating the critical area, the SLPA may adopt rules for the local government's jurisdiction.[17] After the adoption of regulations, permission for development may only be granted in accordance with those regulations.[18] Failure of land development regulations to be adopted within fifteen months terminates the designation of the critical area.[19]

In addition to critical areas, the ALI model code would also give the state a voice in developments of statewide or regional concern. Under the MLDC, the SLPA by rule defines categories of development which, because of the nature or magnitude of the development or its effect on the environment, is likely in the judgement of the agency to present issues of state or

regional significance. In adopting its rules the SLPA shall consider: (a) the development's effect in creating or alleviating environmental problems, (b) amount of traffic generated, (c) the number of persons present, residents or employees, (d) the size of the site, (e) the likelihood of additional development, and (f) the unique qualities of particular areas of the state. The rules adopted may vary for different areas of the state in response to differing conditions.[20] A developer of regional benefit may also elect to proceed as a development of regional impact. A development of regional benefit is one which is undertaken by a government agency other than the one that created the local LDA: a charitable, religious, or educational development; a public utility; or a low or moderate income housing development.[21]

A development of regional impact may proceed only with a special permit from the LDA.[22] The LDA gives four weeks public notice and notice to the SLPA. The SLPA includes notice in its weekly land development notice and also informs the developer within 60 days of his request whether or not his development is one of regional impact. In reviewing an application for a permit, the LDA's authority is limited.[23] If the local government authority approves the development, the LDA can deny it only if it finds that the net detriments outweigh the net benefits. Also, if the local unit denies the permit, the LDA can grant the permit only if the net benefits outweigh the net detriments and the development doesn't interfere with a local or state development plan and the development departs from the local ordinance no more than is reasonably necessary. Furthermore, no LDA shall grant a permit to a development that will create more than 100 full time jobs, unless adequate and reasonably accessible housing is or will be available within a reasonable time

or the State Land Development Plan shows the proposed location is desirable for the proposed employment source.[24]

The LDA must consider the impact on the regional area, not just the locality, and effects are not to be ignored because they are indirect, intangible, or not readily quantifiable. The factors[25] considered by the LDA include: 1) whether or not the development at that proposed location is essential, 2) the development's impact on the environment in comparison to other alternatives, 3) how the development will favorably or adversely affect other persons or property, 4) if the development imposes immediate cost burdens on the local government, whether or not that locality already has its equitable share of that type of development, 5) its affect on the ability to find adequate housing reasonably accessible to their employment, 6) the burden the development will create on municipal services and the local taxpayers, 7) the burden it will create on public transportation facilities, 8) its affect on objectives of development built by the government within the past five years or to be developed in the next five years, 9) the development's furtherance or contradiction to objectives and policies of the State Land Development Plan for the area, and 10) whether or not the development will aid or interfere with the ability of the local government to achieve objectives set forth in any Land Development Plan or current short-term program.

In any proceeding requiring a balance of the benefits and detriments, the SLPA may, on its own initiative or at the request of the LDA, intervene and submit a report containing its views on the issue.[26] Any order of the LDA may be appealed to the State Land Adjudicatory Board it it involves a substantial issue of state or regional significance arising under article 7

of the MLDC.[27] The SLAB shall consist of five members appointed by the governor or supreme court. The SLAB shall be an independent board within the department responsible for overall planning.[28] The SLAB may grant or deny a permit, modify an LDA order, or remand it based upon the record before the LDA, stating the reasons for its decision.[29]

FOOTNOTES

[1]Babcock, Richard F., "Comments on the Model Land Development Code," Urban Law Annual 59, 60.

[2]Ibid, p. 63.

[3]Ibid, p. 62.

[4]ALI Model Land Development Code (Tent. Draft No. 3, 1971), (MLDC) 7-502, 7-503.

[5]Babcock, p. 62.

[6]MLDC, 8-405.

[7]MLDC, 8-402.

[8]MLDC, 8-404.

[9]MLDC, 8-403.

[10]MLDC, 8-502.

[11]MLDC, 2-101.

[12]MLDC, 2-102, 2-301.

[13]MLDC, 2-312.

[14]MLDC, 8-601, 8-602.

[15]MLDC, 7-201.

[16]MLDC, 7-203.

[17]MLDC, 7-204.

[18]MLDC, 7-207.

[19]MLDC, 7-205.

[20]MLDC, 7-301 (1) (2) (3).

[21]MLDC, 7-301 (4).

[22]MLDC, 7-303.

[23]MLDC, 7-304.

[24]MLDC, 7-305.

[25]MLDC, 7-402.

[26]MLDC, 7-403.

[27]MLDC, 7-502.

[28]MLDC, 7-501.

[29]MLDC, 7-503.

COLORADO

Colorado has been the Mecca of a recent influx of tourists and skiers accompanied by recreational and second-home developers. The threatened selection of Denver as a site for the 1976 Winter Olympics placed additional pressure on Colorado to increase its planning effectiveness.

Colorado revised its state planning laws by passing the Colorado Land Use Act of 1971. This act gave the Colorado Land Use Commission (LUC) the responsibility for preparing a land use planning program for the legislature by December 1, 1973.[1] The nine members of the LUC, appointed by the governor, were to appoint, with the governor's approval, an advisory committee comprised of legislators and representatives of industry, commerce, agriculture, national resources, local governments, and minority groups. The LUC was to consult with the advisory committee in preparation of the land use planning program.

Current duties of the LUC include establishing standards and guidelines for various government units. The LUC is to establish a model subdivision and improvement notice regulation for the counties.[2] The LUC is required to develop a system for monitoring growth in the state, a means of evaluating the impact of the proposed development, a system for identifying environmental concerns and relating them to development, and a system for documenting the state's existing land use control policies and planning."[3] Additionally, the LUC shall aid state agencies and local governments in designating flood-plains as critical areas. It shall also designate critical conservation and recreation areas. It shall recommend state involvement in land use decisions for all of these areas.

Upon an order from the governor, the LUC may issue a cease and desist

order to immediately discontinue proposed or on-going land development activity which constitutes a danger of irreparable injury, loss, or damage of serious and major proportions to the public health, welfare, or safety. The LUC may go to district court to enforce its order with a temporary restraining order or injunction, and such action is given precedence over all other matters pending in such district courts, which have exclusive jurisdiction to finally determine the matter.

In accordance with its strong home-rule constitution, it is Colorado policy that decision making as to the character and use of land shall be made at the lowest level of government possible. Consequently, counties are given a large share of land use control powers. Counties are to create county planning commissions and adopt and enforce subdivision regulations and improvement notice regulations for all land within the unincorporated areas of the county. The subdivision regulations must include standards and technical procedures applicable to drainage, sewage disposal, and water systems, and requirements for suitable areas of necessary public services. Before adoption, the regulations must first be submitted to LUC for approval. If a county fails to adopt satisfactory regulations within a specified period, the LUC may promulgate regulations for the county until the county complies.[4] Also, before a regional, county, or district planning commission adopts a master or zoning plan, the plan must be submitted to the division of planning for advice and recommendations only. Approval by Division of Planning is presumed if no advice is forthcoming within 30 days of submission.[5] The Division of Planning (DP) was created within the Department of Local Affairs to function as an advisory and coordinating agency.[6] It is to prepare an inventory of natural resource and land use, to advise

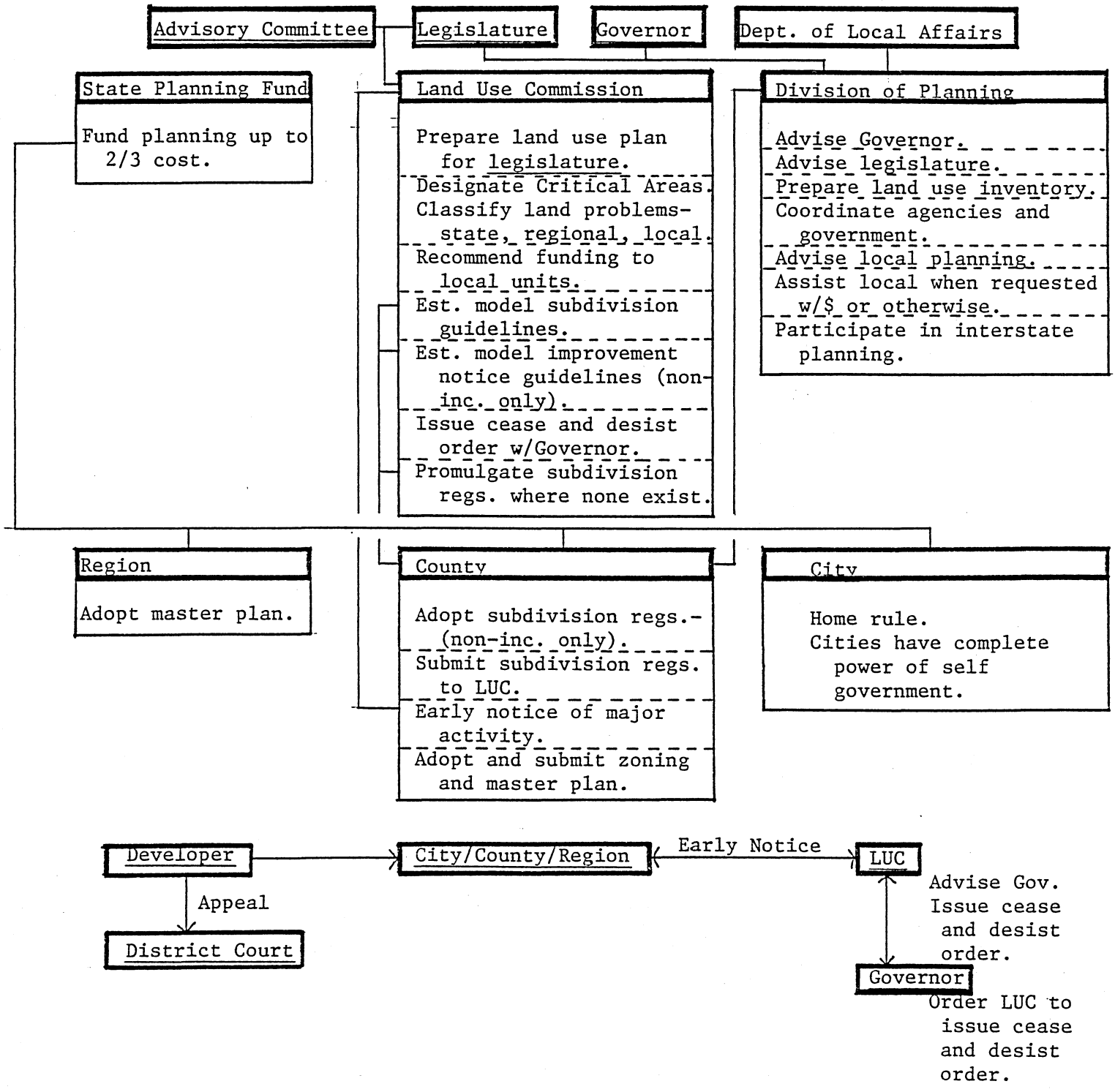
and assist local governments in their planning and to coordinate the planning of state agencies and local government,[7] and to advise the governor and the legislators on all matters of statewide planning.[8] It is also to participate in inter-state planning.[9]

Finally the act enabled a state-local government planning aid fund.[10] The funds are available to local governments in areas designated by the LUC in need of funding or for LUC specifically approved work programs. Local governments may receive up to 2/3 of the cost of a work program. The Colorado land use organization is illustrated in Figure 1.

Some similarities and differences between Minnesota and Colorado should be recognized. Both are concerned with pressure exerted by developers of recreational facilities and second homes. However, the thrust of Minnesota's laws has been concerned with protecting its lakes, rivers, and shorelands, while Colorado is concerned with protecting its mountain areas. Colorado is a very strong home rule state. The home rule provision, by prohibiting state involvement in city matters, limits state activity to financial support, advice, and recommendations.

COLORADO LAND USE ORGANIZATION

Figure 1




LUC = 9 members appointed by Governor.

FOOTNOTES

[1]Colorado Revised Statutes 1963 (CRS), Vol. 5 106-4-3 (1)

[2]CRS 106-4-4 (1)

[3]Bosselman and Callies, Quiet Revolution in Land Use Planning, Council on Environmental Quality, 1971, p. 300.

[4]CRS 106-2-34

[5]CRS 106-2-21

[6]GRS 106-3-2

[7]CRS 106-3-3 (f) (h)

[8]CRS 106-3-2 (d)

[9]CRS 106-3-3 (f) (h)

[10]CRS 106-5-3

FLORIDA

For many years Florida has felt the pressure of land development and has probably encouraged it by promoting its sunny shoreline as a vacation paradise. Realizing that its present laws were resulting in a deterioration in the quality of its water resources the Florida legislature passed the Florida Environmental Land and Water Management Act of 1972.[1]

Under this act the State Land Planning Agency submits its recommendations for specific areas of critical state concern to the administration commission, which is comprised of the governor and his cabinet. Within 45 days the commission shall reject or accept them, with or without modification. By rule the commission designates the critical areas and the principles for guiding development of the area.[2] Critical areas may only be designated for: 1) areas having or containing significant impact upon environmental, historical, natural, or archaeological resources of regional or statewide importance, 2) areas significantly affecting or affected by an existing or proposed major public facility or area of major public investment, or 3) an area of development potential.[3]

Local government regulations approved by the SLPA regulate development within the critical area.[4] Development under this act means any building or mining operation, any change in use or appearance of any structure or land, or the dividing of land into three or more parcels.[5] If the local government fails to adopt acceptable regulations within six months of designation of a critical area within its jurisdiction, the SPLA shall recommend land development regulation to the administration commission

which shall accept, reject, or modify them and indicate to what extent they supersede local regulations.[6] The SLPA can compel local enforcement of these regulations through judicial proceedings,[7] and local governments must also give the SLPA notice of application for any development permit within an area of critical state concern.[7A]

Florida is also concerned with developments of regional impact. More specifically, these are developments which, because of their character, magnitude, or location, have a substantial effect upon the health, safety, or welfare of citizens of more than one county.[9] The SLPA is to recommend standards for determining developments of regional impact to the administration commission by June of 1973, considering: 1) the extent to which a development creates or alleviates environmental problems, 2) the amount of traffic generated, 3) the number of persons likely to be residents, employees, or otherwise present, 4) the size of the site to be occupied, 5) the likelihood that additional development will be generated, and 6) the unique qualities of particular areas of the state.[10]

In addition to soliciting the local government's input regarding critical areas, the Regional Planning Agencies (RPA) also seek their advice with respect to developments of regional impact and forward those recommendations along with their own to the SLPA.[11] If a developer is in doubt as to whether his proposed development is one of regional impact he can request a determination by the RPA.[12] A development of regional impact may be undertaken only if approved under the requirements of Section 380.06 Florida Statutes.[13] When a local government receives an application for development approval it must publish notice and give notice to the SLPA and RPA before its hearing.[14] The RPA is to submit a report to the local

government within 30 days. The SLPA will give to any interested persons a list of all notices of applications for a development of regional impact filed with them.[15] The development must meet the requirements of the regulations for a critical area if located within such an area; otherwise, the local government is to consider the proposal in light of the state land development plan, the local plan, and the report of the RPA.[16]

The 1972 law also created the Florida Land and Water Adjudicatory Commission (FLWAC) to resolve disputes regarding developments where the state has an interest. The FLWAC is the administration commission.[17] Where any local government approves a development of regional impact or within a critical area, it must send a copy of its order to SLPA. Such an order may be appealed within 30 days to the FLWAC by either the owner, developer, RPA, SLPA, or materially affected parties. The filing of notice of appeal stays the order until the appeal process is completed. The FLWAC shall hold a hearing and issue a decision with its reasons for granting, denying, or attaching conditions or restrictions to permission to develop. The decision is subject to judicial review.

A two-year, fifteen member Environmental Land Management Study Committee (ELMSC) was established by the 1972 law.[18] Nine members are appointed by the governor and three each by the head of each body of the state legislature. The duties of the ELMSC include studying all facets of land management, reviewing the land use laws of other states, federal laws, the ALI model land development code, and the general pattern of court decisions in the land use area, consulting with local governments, the RPA, and state agencies. It was to prepare a report to the governor and legislature containing any proposed changes in legislation, drafts of model ordinances,

an analysis of its studies, a review on the status and effectiveness of the RPA, and any other findings and recommendations it chooses to make.

It should be further noted that all standards and guidelines adopted by the administration commission under this law are subject to approval by the legislature.[19]

Florida's land use powers are organized as shown in Figure 2:

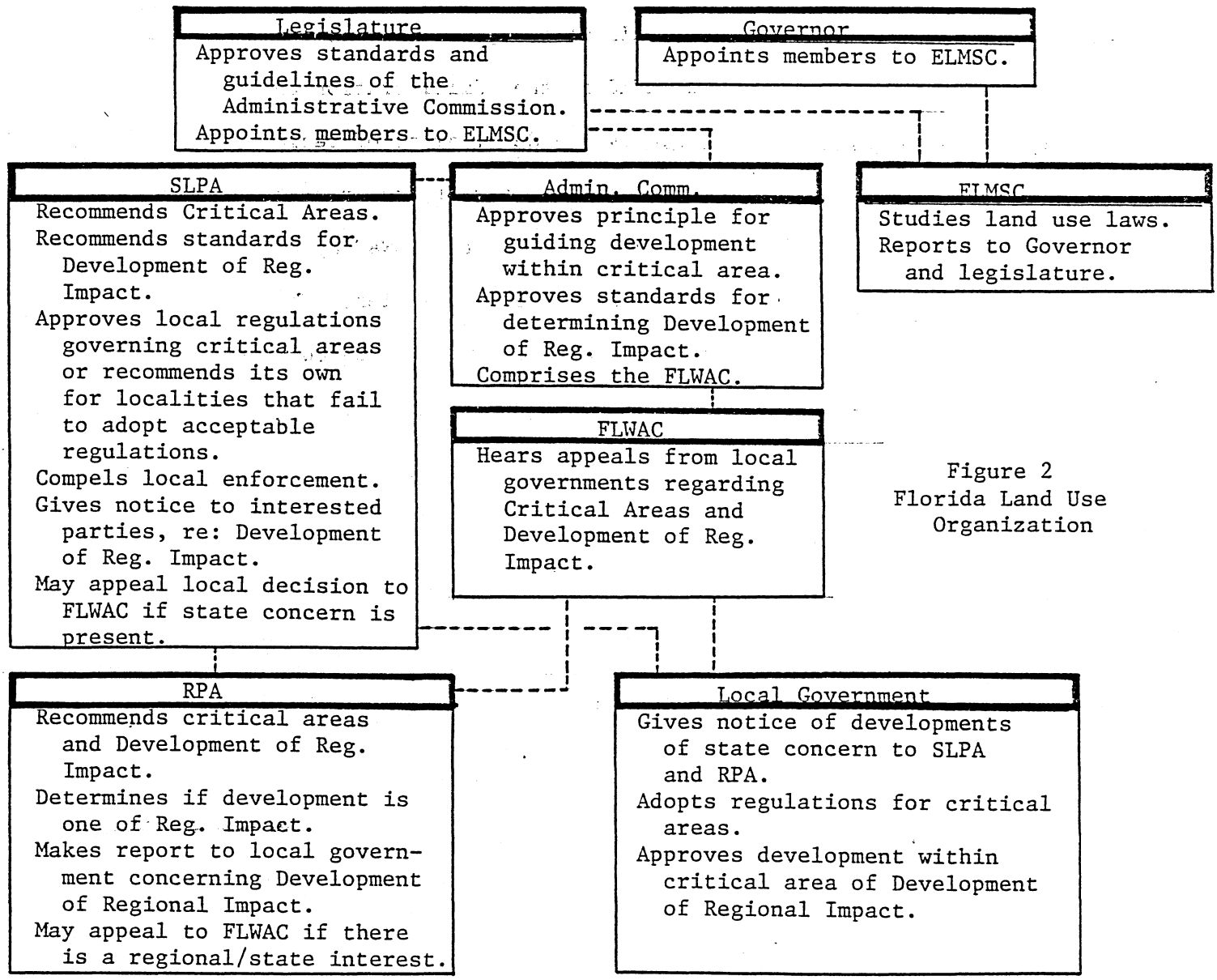



Figure 2
Florida Land Use
Organization

## Footnotes

1. Section 380.012, et. seq., Florida Statutes
2. Section 380.05 (1), Florida Statutes
3. Section 380.05 (2), Florida Statutes
4. Section 380.056, Florida Statutes
5. Section 380.04 (1), Florida Statutes
6. Section 380.05 (8), Florida Statutes
7. Section 380.05 (9), Florida Statutes

7A. Section 380.05 (16), Florida Statutes

8. Section 380.05 (15), Florida Statutes
9. Section 380.06 (1), Florida Statutes
10. Section 380.06 (2), Florida Statutes
11. Section 380.06 (3), Florida Statutes
12. Section 380.06 (4), Florida Statutes
13. Section 380.08 (5), Florida Statutes
14. Section 380.06 (7), Florida Statutes
15. Section 380.06 (9), Florida Statutes
16. Section 380.06 (10), (11), Florida Statutes
17. Section 380.07, Florida Statutes
18. Section 380.09, Florida Statutes
19. Section 380.10, Florida Statutes

HAWAII

Our youngest state deserves much of the credit for the recent upsurge in concern for land use planning. In some ways, Hawaii is similar to Vermont. Both states are quite small in land area, have mountainous areas of celebrated beauty, and benefit economically from a substantial tourist business. But, in addition, Hawaii has the large and booming city of Honolulu, miles of ocean beaches, and being a chain of islands, is divided into natural geographic regions.

Hawaii's land use law[1] was passed in 1961. The Hawaiian Planning and Economic Development Act creates a state land use commission which includes appointed private citizens, the chairman of the board of land and natural resources, and the director of the department of planning and economic development. The state land use commission divided all the land of the state into four districts: urban, rural, agricultural, and conservation. The land use commission reviews the classification every 5 years.

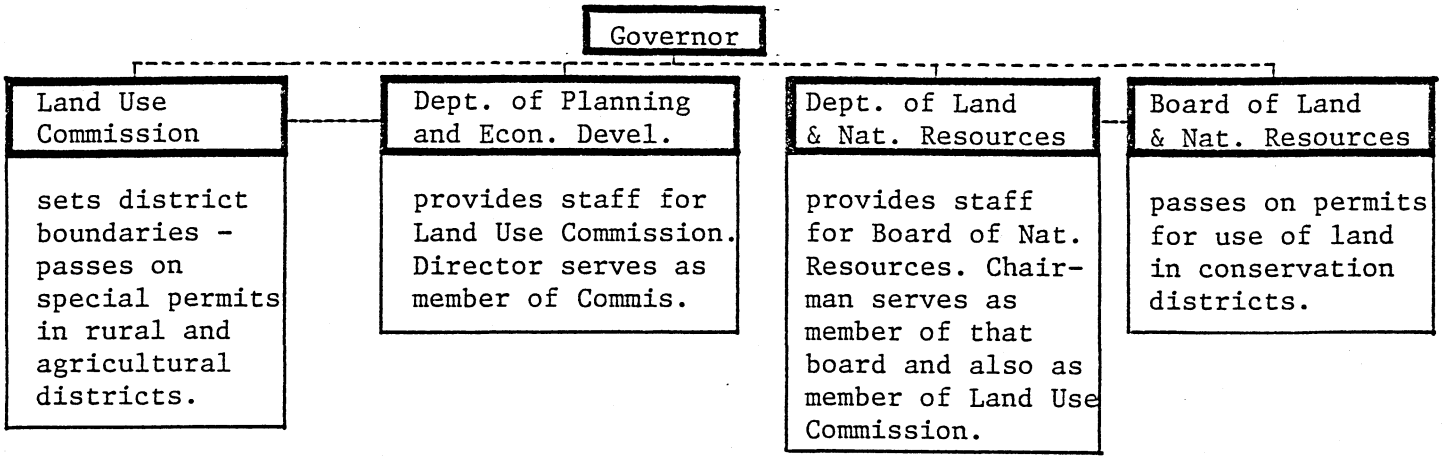
The commission was assisted in this task by statutory guidelines which specified the type of land to be included in each district as well as permitted uses for each district. Any department or agency of the state or county or any property owner or lessee may petition the land use commission for a change in the boundary of any district. In addition, the commission itself may initiate changes in a district boundary. In either case, the commission holds public hearings on the proposed change and then acts upon the petition.

Zoning regulations for urban districts are passed and enforced by the counties. Land use in rural and agricultural districts is also

regulated by county zoning regulations, but these regulations must restrict land usage to usages which are compatible with the statutory guidelines; low density housing and agricultural uses. In agricultural and rural districts, uses other than those permitted by the commission regulations may be allowed by special permit granted by the county planning commission. The county planning commission may grant special development permits only if the proposed use will promote the effectiveness and objectives of the state act.

Conservation districts include areas necessary for preserving water resources, scenic and historic areas, parklands, wilderness, beaches, and other lands of this type. Conservation districts are governed by the Department of Land and Natural Resources. Any development in a conservation district requires a permit from the Board of Land and Natural Resources, the governing body of the department. Figure 3 is a diagrammatic representation of Hawaiian land use control.[2]

Figure 3: Hawaii Land Use Organization



FOOTNOTES

[1]Haw. Rev. Stats. Chapter 205

[2]Bosselman and Callies, Quiet Revolution in Land Use Planning, Council on Environmental Quality, 1971, p. 11.

MAINE

In contrast to the comprehensive legislation of Hawaii, Maine has taken a piecemeal approach to land use planning. Separate legislation has been passed concerning subdivisions[1], great ponds[2], shorelands[3], critical areas[4], site location of developments[5], establishment of a Land Use Regulation Commission (LURC)[6], a State Planning Office (SPO)[7], a Department of Environmental Protection (DEP)[8], and Regional Planning Commission (RPC)[9].

The composite of these laws is an intricate web of agencies involved in land use planning functions. On the state level, the State Planning Office provides technical assistance to the governor and the legislature in identifying long-range goals and policies for the state. It has the responsibility for coordinating the development of a state-wide comprehensive plan and collecting data relevant to its analysis and planning functions. The SPO is to assist local and regional planning authorities and to act as a coordinating body among state agencies. With the advice of the Critical Areas Advisory Board (CAAB) the SPO identifies the state's critical areas and makes recommendations to various state agencies to acquire property rights in areas threatened with adverse alteration or destruction.

The Maine Land Use Regulation Commission consists of the Commission of the Department of Conservation and six members of the public appointed by the governor. The LURC has authority over all unorganized and deorganized townships and classifies such lands into protection, management, and development districts.[10] LURC prepares a comprehensive plan for these lands and

prescribes minimum standards for use of these lands. LURC approval is required for all developments, and a certificate of compliance is required prior to use or occupation of the developments. No application shall be approved unless there are adequate provisions for meeting the pollution control standards, both technically and financially, for assuming safe and uncongested transportation, for reaching harmony with the natural environment, and for meeting the standards of the soil suitability guide. Existing residential use is exempt from these standards. The LURC is required to review its plans every five years and it has the power to grant special exceptions to it. LURC also has the authority to go to court to enforce its regulations or prevent violations. After a hearing before LURC an aggrieved party may appeal LURC's decision to the Superior Court of Kennebec County.

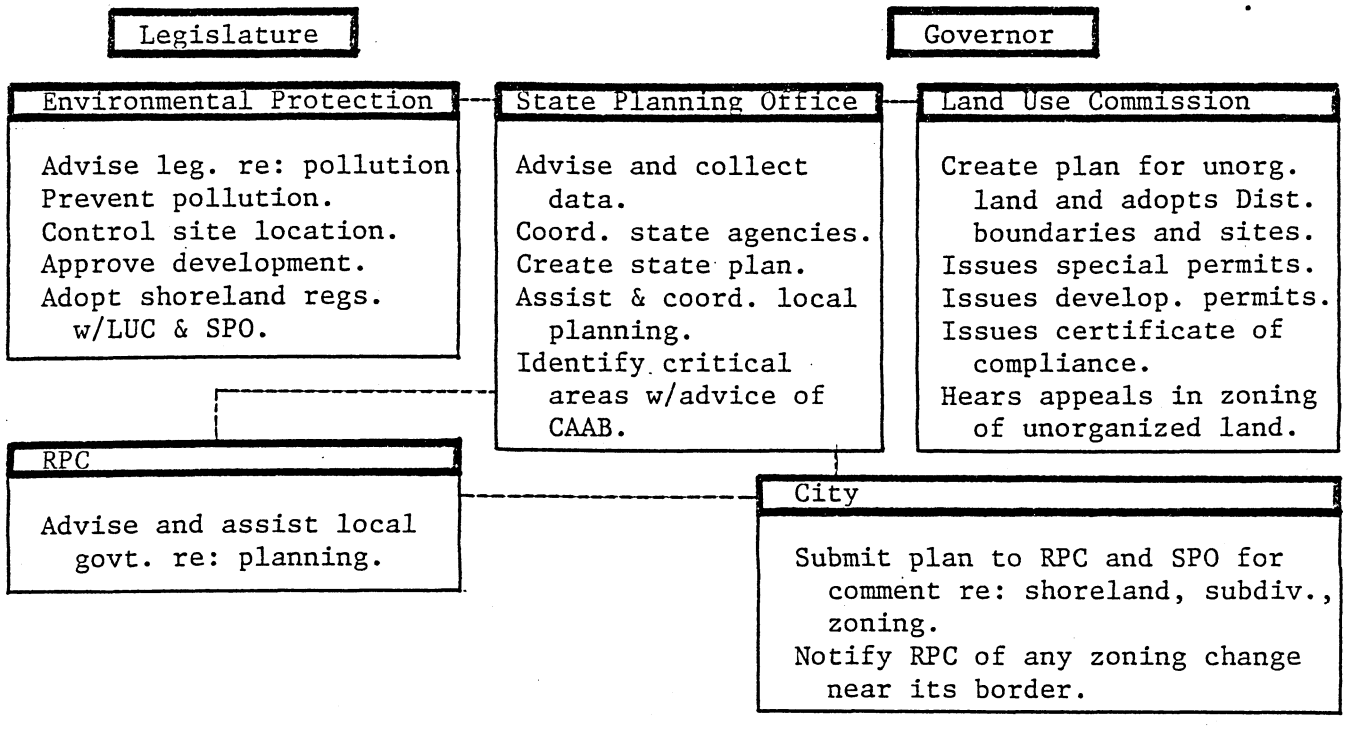
Environmental interests in Maine are represented by the Department of Environmental Protection (DEP) and the Board of Environmental Protection (BEP). The 10 member board, appointed by the governor, is to exercise the police power of the state to control, abate, and prevent the pollution of air, waters, and coastal flats, and to advise the legislature on such matters. The BEP has the power to control the location of those developments substantially affecting local environment, including any commercial or industrial development of over 20 acres and structures over 60,000 sq. ft. Individuals are required to give the BEP notice of their intentions to construct or generate such a development. The DEP together with the LURC under the coordination of the SPO shall write minimum guidelines for the protection of shorelands and adopt suitable ordinances for municipalities that fail to adopt their own conforming regulations. If a municipality

fails to enforce such an ordinance, the Attorney General may seek a Court order requiring local officials to enforce it.

Regional Planning Commissions (RPC) are voluntary associations of seven or more municipalities within the same regional development district. Where RPC's exist, they serve to promote cooperative development within their district and assist their members in planning. They review all long-term comprehensive plans having a regional effect within their jurisdiction and study all proposed zoning changes within 500 feet of a boundary of a municipality within its jurisdiction.

Maine's land use planning organization is illustrated in Figure 4:

Figure 4: Maine Land Use Organization



FOOTNOTES

[1]Maine Revised Statutes (MRS) T. 30, 4956.

[2]MRS T. 38, 380, 35. seq.

[3]MRS T. 12, 4811, et. seq.

[4]MRS T. 5, 3310, et. seq.

[5]MRS T 38, 481, et. seq.

[6]MRS T. 12, 681, et. seq.

[7]MRS T. 5, 3301, et. seq.

[8]MRS T. 38, 341, et. seq.

[9]MRS T. 30, 4511, et. seq.

[10]MRS T 5, 685-A.

OREGON

One of the recent land use concerns of Oregon's legislature was the need to protect its coastal zone as a valuable public resource and still maintain a balance between conflicting public and private interests in developing the region. This concern resulted in the creation of the Oregon Coastal Conservation and Development Commission (CCDC)[1]. This body, appointed by the governor, studies the natural resources of the coastal zone and submits its recommendations to the governor and the legislature for the best use of these resources and a comprehensive plan to guide the preservation and development of this area.

In 1973 the Oregon legislature broadened its concern for coordinated land use beyond its coast lines and extended it throughout the state. They established a Department of Land Conservation and Development (DLCD), a Land Conservation and Development Commission (LCDC), and a Joint Legislative Committee on Land Use (JLCLU)[2]. The role of the LCDC, also appointed by the governor, is to establish state wide planning goals, prepare state wide planning guidelines, review comprehensive plans and coordinate the planning activities of state agencies and local governments to assess conformance with state wide planning goals, and prepare and inventory of land use. The law also designated activities of state wide significance, including the planning and siting of public transportation facilities, sewage and water supply systems, solid waste disposal facilities, and public schools. No such project may be initiated without a permit issued by LCDC. The LCDC may recommend to the JLCLU additional activities for designation. The LCDC may also recommend to the JLCLU the designation of areas of critical state concern together with the justification to be

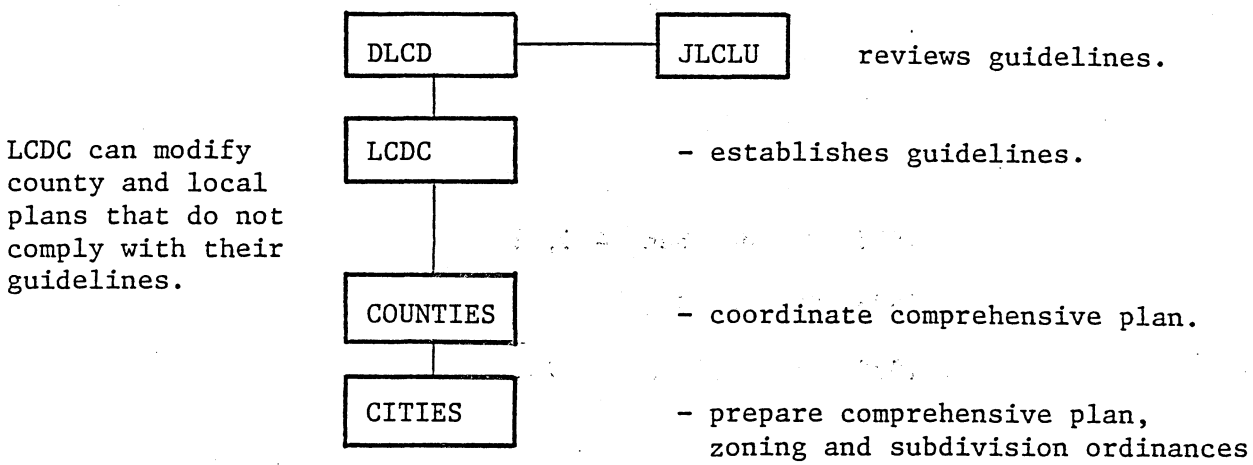
applied to this area.

The main responsibility for planning remains on a local level in Oregon. Cities and counties are required to adopt comprehensive plans consistent with the state wide planning goals, and they must also enact zoning and subdivision regulations to implement them. The county has the responsibility for coordinating all of the planning within its county. However, one year after the adoption of initial state-wide planning goals and guidelines, the LCDC may prescribe, amend, and administer local plans, zoning ordinances, and subdivision regulations as necessary to implement compliance with the goals. The LCDC shall also review petitions of local governments and/or persons substantially affected by governmental action and/or comprehensive plans which are in conflict with state planning goals.[3]

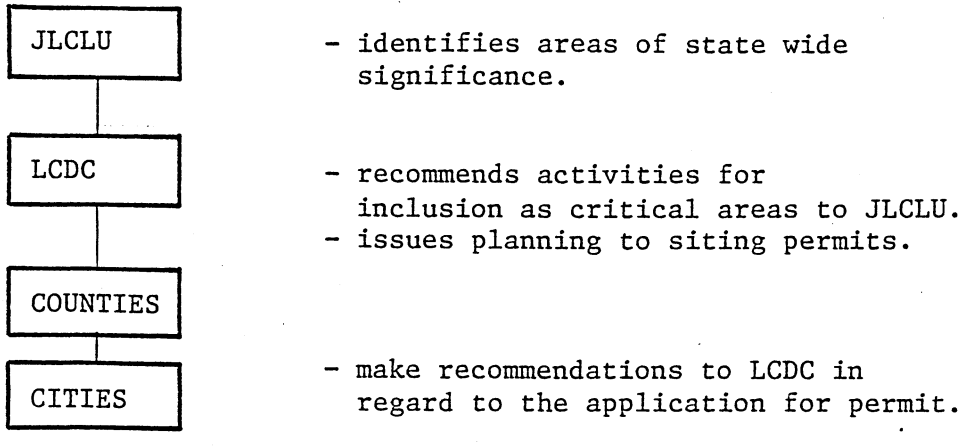
The role of the JLCLU is to advise the department and review and make recommendations to the legislature concerning state-wide planning goals and guidelines, a plan for compensation to the owners for any loss of value resulting from imposition of land regulatory controls, designation of critical areas, and other matters relating to land use planning in Oregon.[4]

The interrelation of the various land regulatory bodies is shown in Figure 5.

Figure 5: Oregon Land Regulatory Bodies




Areas of Statewide Significance



FOOTNOTES

[1]O.R.S. 191.20

[2]Oregon Laws of 1973, Ch. 80, Sec. 4,5,22

[3]Oregon Laws of 1973, Ch. 80, Sec. 51

[4]Oregon Laws of 1973, Ch. 80, Sec. 22,23

UTAH

A lightly populated state of vast size might not be concerned with land use planning. Yet the State of Utah has recognized that it is best to have an orderly planning scheme before land development becomes a serious problem. The Utah Land Use Act of 1974 established a nine-member Land Use Commission (LUC).[1] The membership of the LUC is appointed by the governor and is comprised of representatives of local governments, industry, agriculture, land developers, environmental interests, and the public at large. The duties[2] of the LUC include: 1) formulating a comprehensive state land use plan, 2) preparing an inventory of land uses and natural resources, 3) compiling a data bank for land planning, 4) providing planning assistance to local governments, 5) coordinating and land planning activities of all agencies and local governments, and 6) insuring compliance of all significant local land use programs with the comprehensive state plan.

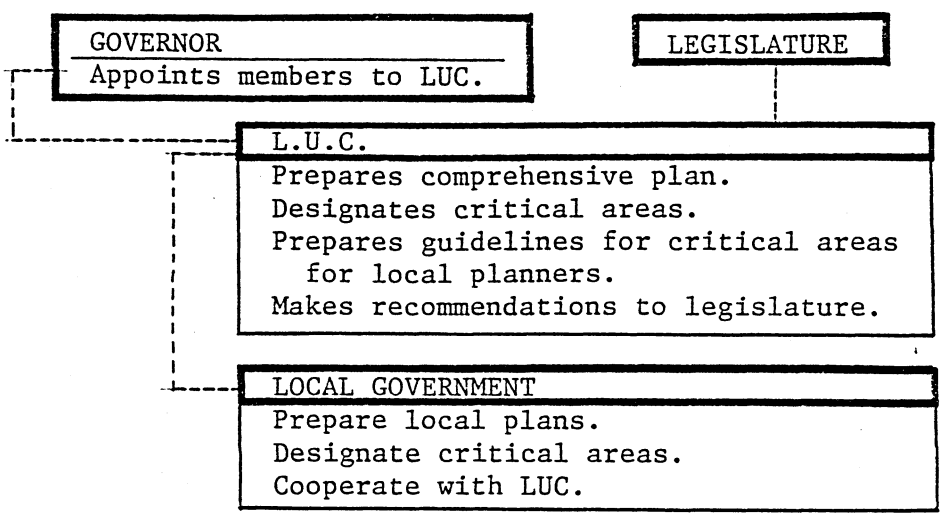
The LUC is also to cooperate with local plans which take into account the following considerations: 1) aesthetic and environmental values, 2) suitability of the land, 3) demand pressure for land use, 4) areas of unusual local significance and value, 5) the impact on the local property tax base and the cost to local governments of providing services to proposed developments, and 6) the designation of areas of greater than local concern.

The LUC is further required, in cooperation with the local governments, to designate critical areas of greater than local concern.[3] The criteria[4] for these areas include areas containing, or activities

having a significant impact upon, resources of greater than local significance, important watersheds, areas of major public investment, areas of major development potential, and areas with unique intrinsic qualities whose development or non-development will have a significant impact on the economic, recreational, or social opportunities of the citizens of the state. The LUC shall review the local government's recommendation and may make additions to them, but not subtract from them. The LUC will submit its final plan for critical areas to the 1975 general session of the legislature together with proposed rules and regulations for these areas and methods of enforcement, and methods to provide for the protection of private property rights.[5]

The LUC is also to make recommendations to the legislature for the permanent establishment of the committee, whose authority now terminates in June of 1977.

Figure 6: Utah Land Use Organization



FOOTNOTES

[1]Utah Laws, 1974, Ch. 30, 4

[2]Utah Laws, 1974, Ch. 30, 5

[3]Utah Laws, 1974, Ch. 30, 6

[4]Utah Laws, 1974, Ch. 30, 7

[5]Utah Laws, 1974, Ch. 30, 5

VERMONT

One would expect that a tiny New England state with good skiing, quaint villages, and forest lands only a few hours drive from some of the largest population centers in the nation would be subjected to considerable development pressure, particularly for second home and recreational developments. The 1970 Vermont Legislature attempted via a system of controls to balance development demands and environmental preservation.[1] The Vermont Land Use and Development Plans Act regulates land development and subdivisions via a permit system.

The act divides the state into nine districts. Each district has an environmental commission of three members who are appointed by the governor. In addition, the legislature created a state Environmental Board of nine members appointed by the governor.

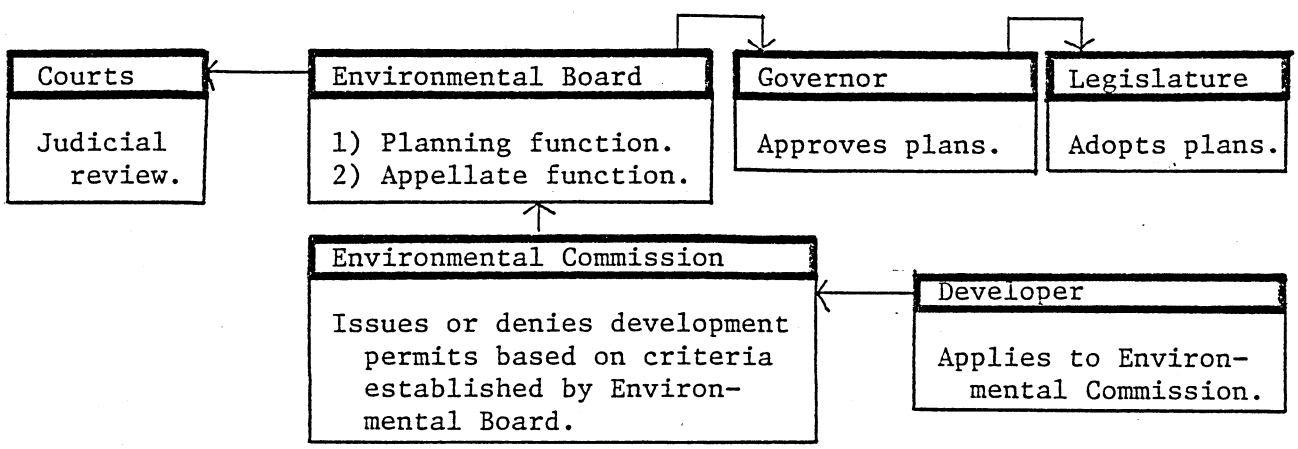
The Environmental Board was tasked with preparation of a land capability and development plan to be submitted to the governor and legislature for approval. The board was required to hold public hearings throughout the state as it gathered the information for this plan.

A capability and development plan was adopted by the legislature in the 1973 session.[2] The capability and development plan is a broad 19 section policy statement to be used as the basis for the Vermont land use plan which is to be prepared by the Environmental Board.[3] This work is apparently in progress. While the land use plan is being prepared, development in the state is being regulated under an interim plan adopted by the board.

Applications for development are submitted by the developer to the district environmental commission. Before granting a development permit,

the commission must consider the effect of the plans on: 1) water and air pollution (including floodplains and shorelands), 2) water availability, 3) burden on existing water supplies, 4) soil erosion, 5) highway congestion, 6) burden on local schools, 7) burden on municipal services, 8) effect on scenic or natural beauty, aesthetics, historic sites or rare and irreplacable natural areas (includes protection of endangered species), 9) conformance with local or regional development plans.[4] A permit may not be denied solely for the reasons set forth in 5, 6, or 7 above, but may be denied for failure to comply with any of the other criteria. The decision of the district environmental commission can be appealed to the state Environmental Board or to county court. The Environmental Board sits as an administrative court, with the power to reverse the decisions of the regional environmental commissions. In this way, the state retains both a check against excessiveness and a means of ensuring that the state standards are met. Figure 7 is a block diagram of the Land Use and Development Plan Act:

Figure 7: Vermont Land Use and Development Act



In Vermont, the Land Use and Development Act compliments several other pieces of environmental legislation. A subdivider usually must obtain additional state permits from the health department, highway department, department of water resources, and the department of securities.[5]

According to one observer, weaknesses have become evident in the act, the largest of which is an exemption of subdivisions in which no more than nine lots are under 10 acres in size. This has prompted numerous subdivisions of greater than 10 acre lot size. The act is applicable to both major and minor developments resulting in a heavy burden on the district commissions' time for relatively unimportant applications. Finally, a lack of manpower has hampered enforcement.[6]

A reading of the act with application to Minnesota in mind results in some observations. Vermont and Minnesota vary greatly in physical size, and to carry out the Vermont plan in Minnesota and maintain a close relationship with local governments would require far more than nine districts, perhaps as many as a few hundred. Minnesota isn't subject to as much outside pressure as Vermont. Development pressure in Minnesota seems to come from within the state, rather than from outside. One must question the constitutionality of legislation which some would characterize as exclusionary and as interfering with interstate commerce.[7] Finally, it would be interesting to examine the work load of the Environmental Board; does its function as an appellate agency overload its staff and slow down the planning function? Is it appropriate for the agency which proposed the plans to hear appeals from decisions based on these plans?

To place the board in the appeal process places one more administrative road block in the path of a party which is attempting to challenge the plan itself, but at the same time gives the board opportunity to fine-tune the legislation via its decisions.

FOOTNOTES

[1]James L. Leng, Vermont's New Approach to Land Development, 9 ABA L.J. 1158, October, 1973

[2]V.S.A., T. 10 6042

[3]V.S.A., T. 10 6043

[4]V.S.A., T. 10 6086

[5]Leng, at 1159

[6]Leng, p. 1160

[7]But consider Steel Hill Development Inc v. Sanbornton 338 F. Supp 301 (1972) (New Hampshire) which held exclusion of second home developments acceptable.

WASHINGTON

The state of Washington responded to the pressure for improved land use planning by creating a temporary, two-year, State Land Planning Commission.[1] The nineteen member bipartisian commission was comprised of legislators chosen by their respective bodies and members of the general public appointed by the governor.

The purpose of the commission was to help local governments and state agencies work toward state planning objectives, outlined in the act, by providing them with information acquired in the course of their investigation and evaluation of land use charges which were expected to have a substantial impact and effect beyond the physical boundaries of the governmental jurisdiction to which the proposed land use is located.

The commission was also to study all state planning and enabling laws, planning laws of other states, proposed federal laws and the ALI model land use code. Another task of the commission was to develop a pilot program for a state-wide land use data bank. A study was to be made of the feasibility of permitting both public and private enterprise to utilize the system on an allocated cost basis. The commission reported its findings, recommendations, and proposed legislation at the end of the session, and the Washington legislature failed to adopt the proposed legislation.

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[1]Wash. Laws, 1971, Ch. 287.

# LAND USE PLANNING COMMUNICATIONS IN MINNESOTA

**KEY**

- GOVERNOR
- EQC MEMBERSHIP
- EQC
- SPA
- DNR
- RDC
- REGIONAL PLANNING BOARD
- MUNICIPAL COMMISSION
- LOCAL
- JUDICIAL MATTERS

Minnesota Land Management Information System Study
University of Minnesota
Center for Urban and Regional Affairs

1974

## GOVERNOR (State Planning Officer)

Elected

Delegates responsibility to State Planning Agency.
Appoints various members to SPA.
Designates critical areas.
Provides financial assistance to qualified RDCs.

## LEGISLATURE

HOUSE — SENATE

Must approve designation of critical area or RDC must approve within 3 years.

## LEGISLATIVE ADVISORY COMMITTEE

3 senate members.
3 house members.
11 appointed by governor.

Advises governor and legislature on land use.

## STATE PLANNING AGENCY

ADMINISTRATIVE AGENCY

Advises legislature on statewide planning.
Prepares comprehensive, long range recommendations for growth of state.
Coordinates and reviews all state agencies' planning and budgets.
Coordinates and encourages planning of state agencies and local governments and RDC.
Reviews plans submitted to federal from state.
Designates historic sites.
Coordinates mapping and survey needs and activities of agencies within the state.
Classifies all lands as to use and suitability

## DEPARTMENT OF AGRICULTURE

Administrative Agency

## DEPARTMENT OF ENERGY

ADMINISTRATIVE AGENCY

Issues certificates of need for power plants.

## DEPARTMENT OF HIGHWAYS

Administrative Agency

Location of highways affect land use.

## DEPARTMENT OF HEALTH

Administrative Agency

Issues certificate of need for health care facilities.

## POLLUTION CONTROL AGENCY

Administrative Agency

Regulations may affect land use.

## DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE AGENCY

SHORELANDS ACT (MS 105.485)
Establishes minimum standards and criteria for subdivision, development and use of shorelands in municipalities and unincorporated areas.
Local governments are required to meet the minimum standards, if not, after holding a hearing, DNR can adopt an ordinance for the local government.

FLOODPLAIN MANAGEMENT ACT (MS 104.01)
Establishes minimum standards and criteria for floodplain management.
Local governments are required to meet the minimum standards, if not, after holding a hearing, DNR can adopt an ordinance for the local government. In addition, establishes criteria for permitted land uses on a floodplain, collects and promulgates floodplain data, coordinates federal, state, and local floodplain management programs, establishes criteria for alternate management methods.

WILD AND SCENIC RIVERS ACT (MS 104.32)
Designates rivers for inclusion.
Establishes minimum standards for management, protection and preservation of designated rivers.
Prepares management plan for each designated river, holds hearings on the plan.
If local ordinances do not conform with the minimum standards and management plan DNR can adopt an ordinance for the local government.
Can acquire land or interests in land along the route.

WATER APPROPRIATION AND USE (MS 105.41)
Grants permits for appropriation and use of water including domestic uses (if over 25 people are served).

DRAINAGE (MS 106.021)
Establishes a list of criteria that county boards or district courts must consider when establishing or improving drainage systems.
Recommends any changes to be made in the proposal and comments on the desirability of the project.

## DEPARTMENT OF AERONAUTICS

Administrative Agency

(MS 360.063) In certain cases, has the power to zone the land within 5 miles of an airport.

## DEPARTMENT OF COMMERCE

Administrative Agency

SUBDIVIDED LAND SALES ACT (MS 83.20)
Grants public offering permits for sale of subdivided lands (more than 10 parcels).
Requires evidence of compliance with zoning and other government laws, ordinances, and regulations affecting the use of the land and federal, state, and local environmental quality standards.

## UNIVERSITY OF MINNESOTA

Serves educational function in planning area.
Assists state planning agency with studies of geographic projection, population growth, growth of the economy and state land use.

## EQC CITIZEN'S ADVISORY BOARD

Appointed by Governor, with approval of Senate, one member from each congressional district, three members at large

Advises EQC.
Makes recommendations to legislature and Governor.
Reviews agency programs in light of environmental quality.
Holds meetings throughout the state.

## ENVIRONMENTAL QUALITY COUNCIL

MEMBERSHIP AS SHOWN
Prepares a long range plan every year for governor and legislature.
Advises the governor on environmental matters.
Reviews state agencies' programs and environmental regs and criteria for granting permits.
Reviews and comments on proposed legislation affecting the environment.
Initiates interdepartmental investigations on environmental matters.
Establishes interdepartmental or citizen task forces.
Convenes annual environmental congress.
Cooperates with RDC.

CRITICAL AREAS ACT (MS 116G.01-.14)
Adopts regulations preparing criteria for selection of critical areas.
Receives recommendations for critical areas from RDC and local units.
Recommends critical areas for designation by governor.
Reviews and approves RDC and local plans for critical area.
Prescribes its own plan for critical area if no acceptable RDC or local plans are adopted within one year.
Reviews plans 2 years after adoption.

POWER PLANT SITING ACT (MS 116C.51)
Prepares inventory of potential sites.
Appoints citizens advisory committee.
Issues certificate of site compatability for utility facility and transmission lines.
Holds annual public hearing.

ENVIRONMENTAL POLICY ACT (MS 116D.04)
Sets rules and regulations specifying when an EIS is required and what one must contain to be acceptable.

## POWER PLANT SITING ADVISORY BOARD

15-25 members, appointed by EQC.

Assist EQC.
Review, advise, and recommend in assisting Council in selection of sites.

## SITE (CORRIDOR) EVALUATION COMMITTEE

Appointed by EQC

Evaluates specific proposed sites or corridors.

## REGIONAL DEVELOPMENT COMMISSION (MS 462.387)

1 member from each county board.
1 additional member from each county over 100,000.
1 member of a town board of supervisors for each county having towns.
1 additional member from each county not having townships.
1 mayor or councilman from a municipality under 10,000 from each county (selected by all the mayors of towns less than 10,000).
1 mayor or councilman from each municipality over 10,000 in each county.
2 school board members elected by chairmen of school boards in the region.
1 member from each council of governments.
Citizens representing public interests within the region selected by Commission Chairman, selected by the commission.

Prepares comprehensive regional development plan.
Reviews local plans with regional impact; advisory role only.
Reviews plans of independent agencies with regional impact. May suspend plans.
Reviews local applications for state and federal grants.
Develops data collection and storage system and does research.
Assists local governments in planning.
Coordinates civil defense, community shelter and floodplain management.
Participates before Minnesota Municipal Commission.
Appoints a non-voting member of a subregional planning board.
Reports to governor, legislature, and local units yearly.

CRITICAL AREAS
Recommends critical areas to EQC.
Approves of critical areas designated within 3 years if legislature does not.
Reviews local and regional plans for critical areas and advises EQC.
Adopts EQC's plans for critical areas.

## REGIONAL PLANNING BOARD (MS 467.371-374)

2 or more local units can enter into an agreement for regional planning.

Prepares regional plans.
Reviews local comprehensive plans before adoption.

## RDC ADVISORY COMMITTEE

Appointed by RDC

Reviews matters referred to it by the RDC.

## MINNESOTA MUNICIPAL COMMISSION (MS 414.01-.09)

3 members (1 city, 1 suburban, 1 outstate) appointed by Governor

Rules on petitions for incorporation, annexation and consolidation.
After each federal census, reviews towns of over 2000 population and makes recommendations to town board.
Can contract with regional, state, county or local planning commissions for specialized information or assistance.

## COUNTY BOARD OF COMMISSIONERS (MS 394.22 et. seq. amended 1974)

ELECTED
Has power to prepare and adopt comprehensive plan.
Can create a planning commission.
Has the power to zone including land within a municipality if requested to do so by the municipality (must hold public hearing).
If zoning ordinance is passed, must create a Board of Adjustment.
Can adopt an official map (must hold public hearing).
(378.32) Can zone for and regulate the surface use of waters within the county.

SHORELANDS, FLOODPLAINS, WILD AND SCENIC RIVERS
Passes and enforces ordinances to meet DNR's minimum standards.

CRITICAL AREAS
Can recommend [to EQC] an area for designation as a critical area [if no RDC].
Must submit plans governing an area designated as a critical area within 30 days to RDC or EQC if there is no RDC.
Adopts EQC approved plan for critical area.
Grants or denies permits in accordance with EQC approved plan.
Notifies EQC of application for development permits within a critical area.

## COUNTY PLANNING COMMISSION (MS 394.30)

5-11 members, appointed by County Board of Commissioners

Prepares a recommended comprehensive plan for county board.
Prepares recommended measures for plan implementation for county board.
Reviews applications for conditional use permits, subdivisions or, if granted authority by the Board of Adjustments, rules on them.
Carries out additional duties as assigned by the Board of Adjustments.

## COUNTY BOARD OF ADJUSTMENT (MS 394.27)

3-7 members, no county officer or employee of Board of Commissioners can belong, 1 member must also be member of Planning Commission.

Hears appeals from orders, requirements, decisions, or determinations of county planning ordinances.
Hears appeals in disputes over official map.
Has exclusive power to grant variances.
Can delegate powers to planning commission including power to act on subdivision applications conditional use permits and planned unit development permits.

## MUNICIPAL PLANNING AGENCY (MS 462.354)

CREATED BY MUNICIPAL GOVERNING BODY

Prepares comprehensive municipal plan and amendments, holds hearing on municipal plan.
Proposes means of implementing the comprehensive plan.
After adoption of land use plan, prepares proposed zoning ordinance.
Holds public hearing on proposed zoning ordinance.
Adopts major thoroughfare plan and community facilities plan.
Recommends official map to governing body.
Reviews and recommends action on appeals and petitions to Board of Adjustment and Appeals.

## MUNICIPAL BOARD OF ADJUSTMENT AND APPEALS (MS 462.354)

Created by municipal governing body, can be the governing body, separate board, planning agency, or committee of the planning agency.

Hears appeals from orders, requirements, decisions or determinations made in enforcement of zoning ordinance.
Hears requests for variances.
Hears appeals in disputes over official map.

## MUNICIPAL GOVERNING BODY (MS 462.351 et. seq.)

Elected

Has power to adopt and implement a comprehensive plan.
Can create a planning agency.
Has the power to zone extending up to 2 miles beyond the corporate limits (if the county or town hasn't zoned the area, must hold public hearing).
If zoning ordinance is passed, must create a Board of Adjustment and Appeals.
Has the power to adopt subdivision regulations and extend them to 2 miles beyond the corporate limits (but not in a town that has adopted subdivision regulations for the area, must hold public hearing).
Can adopt an official map (must hold public hearing).

394.32 May contract with the county board for planning and zoning services to be provided by the county or for joint municipal-county planning.

412.015 et. seq. "Villages" are municipalities.

SHORELANDS, FLOODPLAINS, WILD AND SCENIC RIVERS
Passes and enforces ordinances to meet DNR's minimum standards.

CRITICAL AREAS
Can recommend (to EQC) an area for designation as critical area if there is no RDC.
Must submit plans governing an area designated as critical area within 30 days to RDC or EQC if there is no RDC.
Adopts EQC approved plan for critical area.
Grants or denys permits in accordance with EQC approved plan.
Notifies EQC of applications for development permits within a critical area.

## TOWN BOARD OF SUPERVISORS

Elected

URBAN TOWN (MS 368.01 et.seq.)
Town with platted portions and either 1) over 1200 residents or 2) platted portion within 20 miles of a 1st class city over 200,000, has the same zoning powers as a municipality under MS 462.351.

OTHER TOWNS (MS 366.10, 366.182)
May zone if authority granted by voters, but shall not enact or enforce official controls inconsistent with or less restricted than the county ordinance.
Town ordinance may be more restrictive.
May appoint a planning and zoning commission.

## TOWN PLANNING AND ZONING COMMISSION

Appointed by Town Board of Supervisors

Advises Town Board regarding zoning.

## DISTRICT COURT WITH JURISDICTION OVER SITUS OF THE CONTROVERSY

Court of original jurisdiction in Environmental Rights Act suits.
Court of original jurisdiction, in judicial review of municipal and county zoning and land use actions.

## ENVIRONMENTAL RIGHTS ACT (MS 116B.01)

Gives affected citizens the right to bring a civil action for damages in District Court.

## MINNESOTA STATE SUPREME COURT

Hears appeals from district courts.

## SPECIAL DISTRICTS

Elected

Created by special legislation
Have some land use control powers within their area of special concern eg. Watersheds, Sanitary Districts, School Districts, Mosquito Control,

A Comparative Analysis of the Land Use Laws of Minn. and Selected Other States. June 1975.

COPY 1

MINN. LAND MANAGEMENT INFO. SYSTEMS (MLMIS) (CURA)

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A Comparative Analysis of the Land Use Laws of Minn. and Selected Other States. June 1975.

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MINN. LAND MANAGEMENT INFO. SYSTEM (MLMIS) (CURA)