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# Statewide Growth Management Programs in Other States

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State Development AND Redevelopment Plan

## STATEWIDE GRCWIH MANAGEMENT PROGRAMS IN OTHER STATES

### OREGON

The State of Oregon has one of the most comprehensive programs for land use planning and development regulation in the nation. The core of the program is 19 Statewide Planning Goals which set the standards for land use planning throughout the state and guide local and state decisions affecting the development of land. In general, these goals aim to:

(1) conserve farm land, forest land, coastal resources, and other important natural resources;
(2) encourage efficient development;
(3) coordinate the planning activities of local governments and state and federal agencies;
(4) enhance the state's economy; and
(5) reduce the public costs that result from poorly planned development.

The Statewide Planning Goals are not just vague statements of what may be done someday; they are quite detailed, they are mandatory, and they have the force of law.

Three state agencies play central roles in Oregon's statewide planning program. The Land Conservation and Development Commission (LCDC) is a seven-member commission appointed by the Governor, subject to confirmation by the State Senate; it is the policymaking body that adopts the Statewide Planning Goals and sets the other standards for the statewide planning program. (Or. Rev. Stat. 197.030-197.060 (1985)) The Department of Land Conservation and Development (DLCD) is the staff that administers the statewide planning program and provides professional support to the LCDC. (Or. Rev. Stat. 197.075-197.095 (1985)) The Land Use Board of Appeals (LUBA) is an independent, three-member tribunal that essentially functions as a state court which rules on land use matters. (Or. Rev. Stat. 197.805-197.855 (1985)) For example, an appeal of a zone change by a county would go first to the LUBA, then to the Court of Appeals, and then to the Oregon Supreme Court.

The present system for statewide planning originated with the adoption of Senate Bin 100 (SB 100) by the 1973 Oregon Legislature. (1973 Or. Laws 80, codified as amended at Or. Rev. Stat. ch. 197 (1985)) With this legislation, the State required all of Oregon's cities and counties to adopt comprehensive plans and land use regulations in compliance with the Statewide Planning Goals. (Or. Rev. Stat. 197.175(2) (1985)) If a local government's plan and regulations were not acknowledged in their entirety before the statutory deadline of July 1, 1984, then the Department of land Conservation and Development could complete the plan and regulations itself. (1983 Or. Laws 827, 12(3))

which does not comply with the Statewide Planning Goals. (Or. Rev. Stat. 197.610-197.625(1985)) In the "periodic review process, " each local government every two to five years, at the direction of the LCDC, must review its acknowledged plan and land vise regulations and most either submit findings that the plan and ordinances remain in compliance with the Statewide Planning Goals or submit the amendments necessary to restore the plan and land use regulations to compliance. (Or. Rev. Stat. 197.640-197.647 (1985))

The state provides three types of grants to local governments to subsidize their planning efforts. (LCDC, Oregon's Statewide Planning Program 3 (1985)) "Planning assistance grants" cover such costs as the salaries of local planners and the printing and duplication of plans and ordinances. "Post-acknowledgement grants" cover costs associated with revisions to local plans to satisfy new Statewide Planning Goals or statutory requirements. "Implementation grants" go to coastal cities and counties to help carry out the requirements of the State's coastal management program, which the LCDC directs.

Oregon's statewide planning program has proven successful. It has earned widespread support and has consistently withstood movements in the state legislature and in statewide referenda calling for its repeal. (See DeGrove at 276-80, 288-90)

HAWAII

Hawaii has perhaps the longest history of direct state involvement in growth management. In 1961, two years after Hawaii became a state, the state legislature adopted the Hawaii State Land Use Law (1961 Hawaii Sess. laws 187, codified as amended at Hawaii Rev. Stat. ch. 205 (1985) ) as a way to exercise exclusive state control over the use of some lands and joint state and local control over the use of other lands. In 1978, the legislature enacted the Hawaii State Plan (1978 Hawaii Sess. laws 100, codified as amended at Hawaii Rev. Stat. ch. 226 (1985)) as a way to establish statewide development goals, objectives, and policies that guide the actions and decisions of all state and local agencies. These two programs constitute the core of a statewide system for managing land development.
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The Hawaii State Land Use law "consists largely of local zoning writ large.[11] (D. Callies, Regulating Paradise: Land Use Controls in Hawaii 7 (1984) ) The primary factor behind the passage of the Land Use Law was the need to preserve agricultural land on the islands in the face of increasingly intense pressures to develop land for other uses. (Callies at 6) The Land Use Law directs that all land in Hawaii be classified into one of four districts (urban, agricultural, rural, and conservation) , each of which is subject to different procedures and standards for managing land uses. (Hawaii Rev. Stat. 205-2 (1985))

use decisions of all state agencies must conform to the Hawaii State Plan.

The Hawaii State Plan was adopted as law by the state legislature in 1978, and amended by the legislature in 1984. Adopting the State Plan as part of the statutory code transformed it from a non-binding policy document into a set of preeminent legal requirements. The three primary components of the Hawaii State Plan are:

(1) explicit statements of goals, objectives, and policies covering the state's economy, physical environment, and physical, social, and economic well-being;
(2) a system for implementing the State Plan and coordinating state and local planning efforts; and
(3) a set of priority guidelines for state and local planning efforts.

The State Plan also establishes the State Plan Policy Council to ensure that the goals, policies, objectives, and priority guidelines of the State Plan were reflected in all state and county plans and programs, to reconcile conflicts between the agencies and the plans called for by the State Plan, and to promulgate rules for amendments to the goals, objectives, policies, and priority guidelines in the State Plan. (Hawaii Rev. Stat. 226-54, 226-56 (1985)). The Policy Council consists of 18 voting members: the four county planning directors, nine members of the public, and five of 13 state agency members, depending on the issue before the Policy Council. (Hawaii Rev. Stat. 226-53 (b) (1985)) The Department of Planning and Economic Development serves as the staff of the Policy Council. The Policy Council does not serve as an independent decision-making body. Rather, it submits comments and recommendations to the legislature regarding amendments to the State *Plan* and conflicts between agency actions and the State Plan; final decisions in these matters rest with the legislature. (See Hawaii Rev. Stat. 226-54, 226-56 (1985))

The Hawaii State Plan requires the preparation of functional Plans by state agencies in at least 12 functional areas: agriculture, conservation lands, education, energy, higher education, health, historic preservation, housing, recreation, tourism, transportation, and water resources development. (Hawaii Eev. Stat. 226-52 (a) (3), 226-57 (1985)) Each functional plan is to contain the objectives to be achieved in that field of activity, with policies to be followed addressing major programs and the location of major facilities. (Hawaii Rev. Stat. 226-57 (b) (1985)) A functional plan is not effective as a state of state policy or as a binding guide to agency actions unless it is adopted by a concurrent resolution of the legislature. (Hawaii Rev. Stat. 226-59 (a) (1985)) Ten functional plans were adopted

also provided for the implementation over time of three plans to provide guidance for land use decisions throughout the state.

The Environmental Board consists of nine members appointed by the Governor, subject to confirmation by the Senate. (Vt. Stat. Ann. tit. 10, 6021 (1984)) It basically performs two functions: (1) to act as the overseeing body for the regulatory system established by Act 250, and (2) to formulate the plans serving as guides for land use decisions throughout the state.

The regulatory aspects of Act 250 have evoked little controversy and seem to have worked effectively. (See DeGrove at 74) Act 250 set up nine District Environmental Commissions (Vt. Stat. Ann. tit. 10, 6026 (1984)), each consisting of three members appointed by the Governor, basically to grant permits for the sale or construction of any development or subdivision within the particular district. The Act defines "development" basically to include the construction of improvements for commercial or industrial purposes on tracts of land involving more than ten acres, or more than one acre in municipalities that have not adopted permanent zoning and subdivision laws, and to include the construction of housing projects with ten or more units. (Vt. Stat. Ann. tit. 10, 6001(3) (1984)) The Act defines "subdivision" as a tract or tracts of land that have been partitioned for resale into ten or more lots. (Vt. Stat. Ann. tit. 10, 6001(19) These definitions have required about one third of all development in the State to receive permits from the District Environmental Commissions. (DeGroye at 92)

The core of the regulatory permitting procedure is a set of statutory criteria, covering a wide range of potentially detrimental impacts of development, against which all applications are evaluated. Before a District Environmental Commission can issue a permit, it must find that the project:

(1) will not result in undue water or air pollution;
(2) does have sufficient water available for reasonably foreseeable needs of the subdivision or development;
(3) will not cause an unreasonable burden on an existing water supply, if one is to be utilized;
(4) will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
(5) will not cause unreasonable congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports, and airways, and other means of transportation existing or proposed;
(6) will not cause an unreasonable burden on the ability of a municipality to provide educational services;
(7) will not place an unreasonable burden on the

In 1975, the Legislature enacted the Local Government Comprehensive Planning Act (LGCPA) (1975 Fla. Laws 257, codified as amended at Fla. Stat. 163.3161-163.3211 (1985)), which also contemplated consistency with a state comprehensive plan that did not then exist (Fla. Stat. 163.3177(4) (a) (1985)). Die LQCPA mandated that all local governments prepare a comprehensive plan that includes a number of particular plan elements. Under the LGCPA, local plans were to be reviewed for consistency with the state comprehensive plan by the state's land planning agency (Fla. Stat. 163.3184(3) (b)- (4) (1985)); however, the absence of a state plan made this review an empty exercise.

The review of large-scale developments under Chapter 380 did infuse a statewide perspective into land use decisions. However, the results of this effort were much criticized in a review by the second Environmental Land Management Study Committee (ELMS-2) of the state's array of land use programs. EDS-2 was particularly critical of the failure to adopt the state plan as a policy framework for local planning; it recommended that the state establish a vertically integrated set of local, regional, and state plans. In response, the Legislature in 1984 mandated the Executive Office of the Governor to prepare a State Comprehensive Plan to serve as a policy guide for regional policy plans and local government comprehensive plans. (1984 Fla. Laws 257 5, 7)

Legislature assigned responsibility for the preparation of the State Comprehensive Plan to the Executive Office of the Governor and not to the state land planning agency; in fact, however, there was a substantial amount of interaction between the Governor's office and the state land planning agency. A draft plan was prepared and submitted to the legislature, which made substantial revisions and adopted the State Comprehensive Plan as law. (1985 Fla. laws 57, codified as amended at Fla. Stat. ch. 187 (1985))

Florida's State Comprehensive Plan represents an extra ordinary "top-down" planning structure; increasingly definite policies are imposed on lower levels of government by higher levels of government. The State Comprehensive Plan contains about 300 broad policy statements addressing 25 subjects of statewide significance: education, children, families, the elderly, housing, health, public safety, water resources, coastal and marine resources, natural systems, air quality, energy, hazardous materials, mining, property rights, land use, public facilities, historic resources, transportation, governmental efficiency, the economy, agriculture, tourism, employment, and plan implementation. The State Comprehensive Plan is to be implemented through a series of functional plans to be prepared by each state agency (Fla. Stat. 186.021, 186.022 (1985)) and regional policy plans to be prepared by each of the state's

prepare land use plans consistent with the State Land Use Plan; if the local government failed to do so, then the State could enforce its own plan for that jurisdiction's territory. (DeGrove at 86) This proposal and subsequent proposals were never adopted by the Legislature, due in part to the fears of residents and local governments that the proposals were thinly disguised attempts at statewide zoning and to an increasing interest on the part of local governments in basic land use planning, which they seldom exercised before the 1970s. (DeGrove at 91) Act 250's call for a State land Use Plan in fact was repealed by the Legislature in 1983. (1983 Vt. Acts 114, 5)

This series of events and conditions leaves Vermont without a coherent set of guiding policies which someone could point to as "the" state comprehensive plan, as one can do with the Hawaii State Plan, Florida's State Comprehensive Plan, and Oregon's Statewide Planning Goals. If Vermont has a statewide plan, it lies in the statewide regulatory system that Act 250 established and which has proven effective as a way to control the impacts of development. The regulatory system, however, lacks a clearly defined relationship between state programs and actions and local governments plans, programs, and actions. It simply provides another tier of development review — another permit for the developer to obtain — without requiring consistency between or a hierarchy of state and local actions or policies. Act 250 does not require plans developed by municipal and regional planning commissions to be consistent with the Land Capability and Development Plan. It does not supersede or replace the requirements or actions of any other state or local agency. (Vt. Stat. Ann. tit. 10, 6082 (1984)) Vermont therefore lacks an integrated policy framework for state and local plans and actions regarding land development.