

Managing Maryland's Growth:

Models and Guidelines

Achieving "Consistency" Under The Planning Act of 1992

***This document may not reflect current law
and practice and may be inconsistent
with current regulations.***

The Maryland Economic Growth,
Resource Protection, and Planning Act of 1992

Maryland Office of Planning

State of Maryland

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MARYLAND *Office of Planning*

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OVERVIEW



This publication is one in a continuing series of "Models and Guidelines" prepared by the Maryland Office of Planning as a form of technical assistance and outreach to local and State government on implementing the Economic Growth, Resource Protection, and Planning Act of 1992 (the Act).

The purposes of this booklet are to discuss the "consistency requirements" in the new Planning Act, to identify additional "types" of consistency which should be addressed in pursuit of the seven growth management "visions" in the Act, and to recommend both immediate and longer term actions that will help to achieve consistency of land use decisions with the local Comprehensive Plan and the Act.

The Consistency Requirement

Under the Act, all regulations that are used to implement the local Comprehensive Plan (the Plan) must be consistent with the recommendations and policies of the Plan, and State and local funding decisions must be consistent with the local Plan and the seven visions. Other "types" of consistency should be addressed; several types are discussed in this Report.

Defining and Evaluating Consistency

This booklet includes an operational definition of consistency and an approach for evaluating consistency. "Consistency" means that implementing regulations and funding decisions must have agreement and a logical connection with the policies and recommendations of the Comprehensive Plan and the visions.

The basic check points for evaluating consistency with the Plan and visions include land use, density, location, timing, and pattern of development.

Inquiries should be made as to what the Plan Map recommends for particular sites, and also where the Plan's written recommendations and policies say that particular types of land uses should be located. Consistency evaluations require logical coherence and reasonableness.

Linking Implementation Tools with the Plan

This booklet suggests several planning tools to promote improved linkages of implementing regulations and funding decisions with the adopted Plan.

For example, a rational, up-to-date, well thought-out, and unequivocal Comprehensive Plan is needed to provide adequate guidance for drafting implementation regulations and for making land use and funding decisions. Qualitative and quantitative benchmarks should be included in the Plan to permit assessment of consistent implementation over time.

“Statements of intent” should be featured prominently in the Comprehensive Plan and in all implementing ordinances, capital improvement programs, and functional plans. The Plan should distinguish itself as the dominant policy document and land use guide for all other plans, programs, and regulations in the jurisdiction. These statements will promote linkage between the Plan and the drafting, interpretation, application, and amendment of land use laws and programs.

Achieving consistency may also be enhanced through the use of innovative land use tools - such as conditional, floating and overlay zoning; developer agreements; and conflict resolution processes. Basic approaches such as orientation programs for new planners, decision-makers, and elected officials can promote consistency by ensuring that those involved understand the local Plan and the consistency requirements in the new Planning Act.

Assessing Consistency of Development Decisions with the Plan

The Annual Report of the local Planning Commission is a good tool to assess Plan-consistent implementation and progress towards the visions. It can also serve as a forum for the Planning Commission to recommend corrective action to the local legislative body. Charter counties are not required by law to prepare a Report, but should be; legislation would be needed.

The mandated Annual Report of the Economic Growth, Resource Protection, and Planning Commission should monitor the consistency of local and State actions with the visions. The use of benchmark measurements for progress would be helpful in this monitoring process.

State Government and Local Plans

A wide array of State programs involving planning, technical assistance, incentives, and regulatory actions should be consistent with the seven visions and with the local Plan. A State policy framework for planning and growth management is needed to guide State actions and to coordinate local Plans

Conclusions

Government agencies should review and consult this booklet when addressing the consistency issue at both local and State government levels.

The Economic Growth, Resource Protection, and Planning Commission, its Subcommittees, and the Maryland Office of Planning should work towards a State-wide planning policy framework that will complement the State's new funding policy for growth management, and ensure achievement of the visions

SECTION ONE

THE SCOPE OF THE

CONSISTENCY REQUIREMENT

Introduction

The Economic Growth, Resource Protection, and Planning Act of 1992 (the "Act") requires that county and municipal Plans be implemented by laws, ordinances, and regulations that are consistent with the Plan and the seven visions contained in the Act. (As used in this booklet, the term "Plan" refers to a local jurisdiction's adopted long-range, comprehensive, and general development and land use policy for the public and private sectors. The term includes, for example, Comprehensive Plan, Master Plan, General Plan, Sector Plan, Area Plan, and Subregion Plan.)

The Act also requires that funding decisions for public sector projects—both local and State—be consistent with the Plan and the visions (The seven visions are listed in Appendix A.)

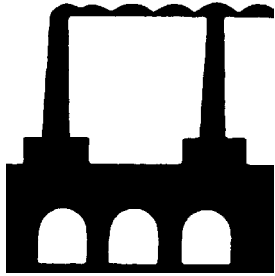
The consistency requirement is not new in planning theory or law. The local Plan in Maryland has, over the years, slowly gained a more prominent role in land use decision-making, and consistency is being required in some cases. The degree to which local land use regulations and decisions are consistent with the adopted Plan varies from jurisdiction-to-jurisdiction, and even within a jurisdiction. The requirements in the Planning Act for consistency are quite precise and their potential for improved growth management is noteworthy. (For more information about the consistency requirement in the context of land use law, see Appendix B.)

The visions are more likely to be achieved if additional "types" of consistency are addressed by State and local government. Thorough and broad-based consistency evaluations should be a prominent part of local and State land use planning and decision-making. Several types of consistency—in addition to those specifically delineated in the new Planning Act—are discussed below. Additional variations of the consistency theme undoubtedly exist.

Types of Consistency

Local and State Construction Projects Under the Planning Act

Under the Act, local jurisdictions may not approve a local construction project involving the use of State funds, grants, loans, loan guarantees, or insurance unless the project is consistent with the local Comprehensive Plan. However, an inconsistent project may be approved if the local jurisdiction determines that extraordinary circumstances warrant proceeding with the project and no reasonably feasible alternative exist. (Section 5-7A-02 (b), State Finance and Procurement Article.) The law does not prohibit a local government from approving an inconsistent project where only local funds are used.



Local Government Land Use Regulations Under the Planning Act

The State may not approve a State public works, transportation, or major capital improvement project funded through State or federal funds if the project is not consistent with the local Comprehensive Plan and the State Economic Growth, Resource Protection, and Planning Policy. (The Policy is defined in the Act as the seven visions and elaborated in Maryland Office of Planning Publication No. 93-02, *Procedures for State Project Review Under the Planning Act of 1992*.) However, an inconsistent project may be approved with a determination that there are extraordinary circumstances and that no reasonably feasible alternative exists. (Section 5-7A-02 (a), State Finance and Procurement Article.)

The fundamental concept of "consistency" under the new Planning Act is that land use regulations and land use decisions should agree with, and implement what the Plan recommends and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral - but it should never undermine the Plan. The Planning Act establishes the following consistency requirement, applicable to all local jurisdictions that exercise planning and zoning authority.

On or before July 1, 1997... a local jurisdiction shall ensure that the implementation of the provisions of the plan that comply with sections 3.05(a)(1)(vi) [the element that encourage flexible, streamlined, and innovative regulations] and (viii) [the sensitive area element] and 3.06(b) [the seven visions] of this article are achieved through the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are consistent with the plan. (Codified at Section 4-09, Article 66B.)

Consistency with the Visions

Both local and State government should take actions which further, or at least do not undermine, the visions. With this type of consistency, the issue is not whether the implementation tool meets the adopted Plan - the issue is whether that tool supports the visions.

In the context of the new Planning Act, the definitions, goal-setting, and methods related to each vision will be decided by each local government. At the State level, the Governor's Executive Order on the State's Economic Growth, Resource Protection, and Planning Policy will guide.

Consistency Among Plans (Intra-jurisdictional)

Consistency of a jurisdiction's "other plans" with the Comprehensive Plan is critical. This type of consistency means that the Plan is the dom-

nant policy document in the jurisdiction, and all other plans- such as water and sewerage plans, transportation plans, and sub-jurisdiction land use plans- support and advance the recommendations of the overall Plan.

For example, an Area Master Plan should detail the means of implementing the jurisdiction-wide Plan; it should not be the forum to reverse adopted policies. Likewise, the Water and Sewerage Plan should direct service to those locations recommended in the Comprehensive Plan.

Consistency of Development Decisions with the Plan

The most important practical dimension of the consistency requirement is whether the resulting development and land use pattern, over time, are accomplishing the Plan's vision for the future.

Interjurisdictional Consistency

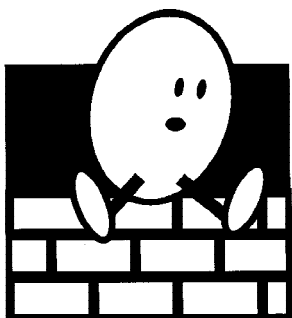
On both a geographical basis (e.g., adjacent counties) and governmental basis (e.g., county-to-State), this type of consistency is important.

Between adjacent counties, consistency ideally means that mutual physical, social, and economic connections- whether these be in the form of near-boundary land use projects or use of shared natural and man-made features (such as a river and a highway) - be complementary and compatible between the two counties.

The interrelationships of local, State, and federal governments introduce a different type of consistency. This refers to policies and programs at one level of government and how these impact another level. In practical terms, local, State, and federal consistency means that there is an absence of conflict among the various levels on a particular question of planning, regulating, or funding.

SECTION TWO : AN OPERATIONAL DEFINITION OF "CONSISTENCY"

Introduction



Consistency. 1) Agreement or logical coherence among things or parts 2) Compatibility or agreement among successive acts, ideas, or events

The American Heritage Dictionary
Second College Edition, 1985

When I use a word, Humpty Dumpty said ..., it means just what I choose it to mean - neither more nor less

Lewis Carroll, *Through the Looking-Glass*
Albert Solnit, *The Job of the Planning Commissioner*

An operational, or working, definition of consistency is proposed in this Section. It focuses on the Plan/regulation type of consistency. The approach taken is to examine major analytical components that might be used in judging consistency of a particular zoning or development proposal with the adopted Plan.

The method by which consistency is examined, of course, would vary with the type of consistency. Some basic concepts however, are universal. These involve 1) clearly identifying what is supposed to be consistent with what; 2) identifying shared characteristics and looking for conflict, support, or neutrality; and 3) applying principles of logical coherence and reasonableness.

Planners should readily agree on the simple, concise definition quoted above from *The American Heritage Dictionary*. The notion that consistency requires a "logical coherence" between what the Plan recommends and what "successive" implementation regulations allow, is critical to understanding the intent of the Act. While no Plan has ever advocated sprawl or environmental pollution, those unfortunate results have accrued with varying degrees of severity across the State; and where these impacts have not yet occurred, they will, if stronger linkage are not made between planning and land use regulation.

The reasons for such unplanned results may be numerous and complicated. In any case, avoiding the "Humpty Dumpty" syndrome is a fundamental step toward improving the relationship between the Plan and development patterns. That is, planners, regulation drafters, decision-makers, elected officials, interest groups, and citizen participants simply cannot choose to let consistency "mean just what [they] choose it to mean."

Therefore, an operational definition is needed to focus the term in the context of planning and land use regulation. (Different operational definitions may have to be used for different types of consistency.) That can be accomplished by identifying basic "checkpoints" and using analytical "inquiries." The checkpoints should be comprised of the substantive planning issues involved in the consistency requirement - such as density and land use type. The inquiries should be fashioned so as to look at the issue from varying perspectives. These checkpoints and inquiries, along with the "logical connection" test (i.e., the rational nexus test) should then be applied with reasonableness and uniformity to help evaluate consistency. Reasonableness and uniformity will help to prevent unfairness and promote predictability in judging consistency with the local Plan.

Land use decisions - even under the new Planning Act - remain firmly the domain of local jurisdictions (except that State funding, permitting, and other approvals often play a role). Local government land use decisions will likely continue to be accorded great deference under judicial review. That is, legal judgments about compliance with the consistency requirement may be held to the standard that local government decisions merely avoid being arbitrary and capricious.

Nonetheless, the Act emphasizes the necessity for consistency and assigns the Economic Growth, Resource Protection, and Planning Commission with the responsibility to report each year to the Governor and General Assembly on various issues, including consistency. The Commission will likely hold both local and State efforts to a higher standard than that associated with judicial review. The Plan should be unequivocal and sound, and the implementing tools and the resulting development should show clear and demonstrable support of the Plan and the visions.

The Components of the Working Definition

Introduction

The meaning of "consistency" is very dependent on facts and circumstances. Since planners undertake multi-faceted analyses, this sometimes means that a regulatory or development proposal arguably has both consistent and inconsistent aspects in the context of the Plan. The issue then becomes whether the proposal is more consistent, or more inconsistent. A clear Land Use Plan Map is often, but not always, a good tool for resolving these kinds of debates.

If consistency is defined as a literal, exact translation from Plan to land use law over the entire jurisdiction, undesirable results might occur. For example, the Plan will become the zoning, meaning that planners would

perform a function that is essentially legislative in nature and that alters the traditional process of going from goals, objectives, and policies to more specific regulation. The tough battles fought in the zoning arena would simply be shifted to the Plan adoption stage.

Another unwanted result is that jurisdictions might devise a Plan of such general nature that it would give inadequate guidance to the drafting of zoning and other land use laws. To achieve the standard of exact match between Plan and law, planning and zoning could simply end up permitting most anything, anywhere, under any conditions.

This booklet recommends a series of issues that should be considered when judging or defining consistency, and it calls for reasonableness and flexibility. It is meant as a working definition in two senses- it may evolve with experience, and it can be used by readers needing a methodology for planning and formaking consistency determinations under the new Planning Act. The approach can also be adapted for use in looking at the types of consistency.

First Things First

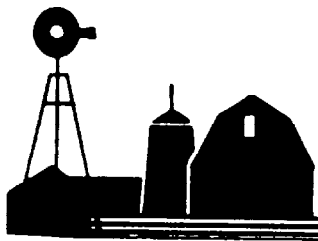
The beginning point must be: What has to be consistent with what? This is not an unimportant question. The courts based on previous law, determined that "zoning must be consistent with a zoning plan" and that "the Plan is *just* a guide (emphasis added)" (see Appendix B). Hopefully, the courts will not continue, under the Act, to hold that zoning must be consistent only with itself, or that the Plan has the mere status of a guide and no more. Local governments should be using the Plan when the question arises as to whether the funding of capital projects, zoning regulations, zoning map changes, facility planning, the subdivision of land, or any other land use proposal should be approved.

For example, justification of a sewerage line, or a shift from "no planned service" to "service" in the functional Water and Sewerage Plan, should rest on the foundation of the clear text and map that are in the Plan.

Use, Density Location, Timing - Basic Checkpoints

A land use regulation should be in agreement with the recommendations of the Plan in terms of use, density, location, and timing. These elements create the resulting "pattern" of development.

Growth Area Examples Areas designated in the Comprehensive Plan for residential development on public sewers should have sufficiently high zoning densities to allow relatively concentrated use of the land and economical use of public sewerage when it becomes available. Pre-



emptive low density development on properties planned and zoned for high density development should be discouraged. (These land use inefficiencies can be alarming if substantial public investment has already been made.)

Areas planned for job and economic growth should be zoned industrial, employment, manufacturing, office, warehouse, business, or similar categories. Regulatory incentives should also be created. The same relationship between the Plan and zoning should hold true for commercial, institutional, commercial recreation, and other developed land uses.

Aside from having appropriate regulations and programs, growth areas also require funding support for needed infrastructure. Also, these areas must have attractive community character, with good schools and safe environments. Thus plans for infrastructure, community development, public education and safety need to be consistent with, and support, the Plan.

Rural Non-Growth Area Examples Areas planned for rural conservation or agricultural preservation should have zoning and other tools that preserve critical masses of resource areas and farmland and prevent land use incompatibilities or encroachments. At the same time, provisions for rural and agricultural related industries and economies should be provided, in accordance with the Plan's recommendations.

Sprawl subdivision activity in rural areas should be curtailed or severely limited. Economic disincentives may be created by using very low density zoning, and the level of density can be based on regional characteristics. In some cases, simple approaches such as large lot or low density zoning will not, by themselves, work.

Land economics should play an important role; one of the problems is that land is simply too cheap in rural locations. Very low density zoning, such as that in the rural parts of Baltimore and Frederick Counties, acts as an economic disincentive to subdivision. But where demand is high, such as on the waterfront, even these tools, by themselves, may not work.

Other forms of disincentives, along with incentives for growth areas, may be needed. Progress toward protecting rural areas may be reflected through a combination of tools such as zoning, mandatory clustering, transfer of development rights and purchase of development rights.

The Pattern of Development: An Overall Checkpoint

The pattern of growth involves the shape and size of development over the landscape. The pattern of future development and growth should be described in the Plan; this provides an overall checkpoint in evaluating consistency.

The pattern of growth is an important feature in some of the local Plans in Maryland; considerable analysis of alternative patterns of growth were considered during the planning process. Some Plans are less precise about the pattern of growth.

Where Plans recommend specific "patterns," zoning or development proposals should be evaluated to determine whether the development enhances or detracts from the recommended pattern. Where Plan-recommended patterns are less specific, a consistency evaluation can look at whether the proposal involves traditional concerns over the pattern of growth: suburban sprawl, leapfrog development, strip development, and environmentally insensitive development.

Achieving a rational growth pattern (i.e., one that reflects sensitive, efficient, and effective land use) is difficult, even within planned growth areas. Theoretically, planners envision growth beginning at the edge of developed areas and moving outward, in a contiguous pattern.

Functional plans such as transportation and sewerage plans can aid in the timing and shaping of growth. Another tool is to carefully size the growth area, or strictly phase-in the growth area, to match the projected land demand over the time frame of the Plan.

Consistency should include some evaluation of the shape and size of growth areas in relationship to land demand. All planners and decision-makers would agree that a growth area sized precisely to match projected demand is unworkable. They would also agree that rational and efficient patterns of growth cannot be achieved with an overly large growth area. Growth area shape and size should be an issue for judging consistency and progress toward compliance with the Act.

The determination of what constitutes an "appropriate size" for a growth area is a question that needs to be addressed in future work. The answer involves more than just applying some "multiplier" factor.

Trial by Inquiry

The following is intended to complement the basic checkpoints discussed above. These questions may be a useful approach in making consistency determinations.

The initial inquiry involves looking at both the Land Use Plan Map and the Plan's text. A reviewer of a comprehensive zoning map should ask: At a particular site in the jurisdiction, does the Plan Map recommend the land use and density that is being proposed there by the zoning? From the alternative perspective, the reviewer should ask: Does the Plan's written goals, objectives, and policies recommend or support the land use indicated by the proposed zoning map? A determination of Plan consistency is supported by a favorable response to one of these initial questions.

While the Map may be unequivocal, the Plan text may indicate that there are competing interests that is a proposed zoning or project might be consistent with parts of the Plan, and inconsistent with others. The reviewer should nonetheless strive to assess whether there is overall consistency.

In debatable cases the reviewer may want to proceed to the following second set of questions, which essentially address issues of scale, neighborhood character, direct impacts and spin-off impacts. This second set of questions is also useful for injecting flexibility where the Plan warrants it.

If approved, does the zoning or project impair the integrity of the Plan and its policies? If approved, is the approval a precedence likely to lead to other similar projects? If so, is the cumulative effect of other such projects likely to undermine the integrity of the Plan and its policies? If, and only if, the answers to each of these second-tier questions are "no," should the zoning or project proceed.

The Standard of Review: The Reasonable Test

There may be difficult "grey" areas in judging consistency between the Comprehensive Plan and its implementing regulations. One guideline for judging consistency should be to focus on *clear* contradictions, illogical connections, and disagreements between the Plan and implementation laws. If the Plan recommends protection of agriculture, but zones all agricultural land for one-acre lot subdivisions, a clear contradiction seems evident. However, as zoned density becomes lower, the judgment as to whether it is consistent with the Plan's recommendation for "protection" becomes increasingly difficult.



Flexibility seem to be in order where a Plan recommends, for example, five dwelling units per acre, and the zoning allows seven units per acre. Reconciliation of such differences might depend on whether the increased density is in line with actual levels of support facilities. The difference might be justified by changed circumstances that occurred between the writing of the Plan and the drafting of zoning. Perhaps additional sewerage treatment capacity became available, or new federal highway dollars were secured. One way to decide whether zoned density is consistent with planned density is to focus on the resulting "type" of development. For example, if the Plan contemplates single-family housing, the zoning should follow through with this basic policy. However, if the Plan discourages growth and calls for resource protection, the zoning (and sewerage plans) should support that policy.

Another example where flexibility may be appropriate is where the Plan Map proposes a developed use which is tied to future infrastructure and where the precise alignment of the infrastructure has yet to be determined. That Plan Map symbol could justifiably be viewed as a "floating" designation within a limited geography. This would permit, under the consistency requirement, higher-use zoning on a site that exhibits an appropriate relationship to the infrastructure.

There may also be specific uses that, while not included in the Plan, have sufficiently similar characteristics to what was intended so as to permit these uses to be judged consistent with the Plan.

These types of issues are where reasonableness should factor into judgments of consistency. However, in all cases, there must be a rational nexus with the Plan which supports a finding of consistency.

Summary of the Operational Definition for Consistency

Regulations must have a logical connection and agreement with the recommendations and policies of the Plan as to land use, density, location, timing, and pattern. Regulations are consistent with the Plan if, and only if, inquiries into the Plan's map and text support such a judgment; reasonableness and logical coherence should be applied.

SECTION THREE

LINKING IMPLEMENTATION TOOLS TO THE ADOPTED PLAN

Start With A Good Plan

Prepare a Plan that Creates a Sound Basis for Land Use Regulation

Start with a good plan: create a sound basis, articulate the visions, and establish measures for success

Although apparent, it is worth stating that the job of drafting land use laws that comply with the consistency requirement and other parts of the Act will be easier if guidance is provided by a rational, well thought-out, clear and unequivocal Plan. Specificity in the Plan, via text, diagrams, charts and maps, also aid in achieving consistent regulations. A clear statement of policies, goals, objectives, principles, and standards in the Plan ("policies"), with clear maps or textual descriptions of the geographical distribution of those policies across the landscape, is also helpful.

Good background data and maps concerning physical conditions and past trends will assist in creating a solid foundation for the Plan. Sound population projections and economic forecasts will help in determining future land demands, and hence, the proper sizing of growth areas, distributions of land uses, and staging of public support facilities and services.

In some areas, sub-jurisdiction Plans may be warranted to provide more detail and further refinement of planning policies.

Clear Land Use Plan Maps are preferred in order to geographically depict the Plan's policies and as an aid in deciding whether implementation laws, development applications, and government projects are consistent with the Plan. Textual descriptions can be sufficiently detailed to provide similar guidance, but this requires additional effort to evaluate the text against some type of map. Even a Plan that is basically a "policy plan" (as opposed to a physical Plan) should include a map that identifies the geographical components of the policy. Maryland law does not require a Land Use Plan Map as part of the required Land Use element. However, a map provides helpful guidance in regulation writing, project evaluation, and decision-making - even if the map is not officially adopted as part of the Plan.

Some jurisdictions have quite sophisticated Plans, these lend themselves more readily to consistency evaluations. Other jurisdictions have Plans which reflect less specificity, leaving consistency evaluations open to question and debate. However, *some* degree of specificity is needed or, by definition, the Plan is not a Plan, and should fail on that basis alone. The Plan must provide a basis of accountability in the subsequent adoption of land use laws. If not, the Plan will revert to its former status of being a mere procedural requirement.

Articulate the Visions in the Plan

It will be easier to stay the course in meeting the Act if the Plan devotes a discussion on how the jurisdiction defines the visions that it must implement.

For example, the visions contain several geographical or spatial elements. Vision one refers to "suitable areas," vision two - "sensitive areas," and vision three - "existing population centers." Where practical, the Plan should identify these areas with maps and textual descriptions.

The visions also include several planning goals that should be articulated, including "concentrated," "protected," and "directed."

Information included in the Maryland Office of Planning's publication *Procedures for State Project Review Under the Planning Act of 1992* may provide help in articulating the visions in the local Plan (see pages 69, "Elaboration of State's Economic Growth, Resource Protection, and Planning Policy").

Establish Benchmark Measures to Assess Plan-Consistent Implementation

Qualitative and quantitative goals or benchmarks in the Plan can help to assess whether the policies and land use recommendations of the Comprehensive Plan are being met, and will help to determine where corrective action is needed.

It would be good to organize the benchmarks according to the particular vision or visions being measured. The types and levels of benchmarks used would be determined by local government. (The State should likewise formulate benchmarks for measuring progress and collect and analyze relevant data.) The following parameters are provided as illustrative examples.

- Percent of population growth to be captured within designated growth areas (Vision One)
- Percent of building permits to be directed toward designated growth areas and existing population centers (Visions One and Three)
- Percent of development to be supported by public sewer. (Vision One)
- Data on per capita land consumption. (Visions One and Three)



- Locations and percent goals for protection of rural resources such as open space, forest, mineral resources, wetlands, and farm land. (Visions Two and Three)
- Length of stream meeting State water quality standards (Visions Two and Four)
- Solid waste recycling goals, vehicle trip-reduction goals, and adoption of energy-efficient site design and building regulations (Vision Five)
- Administrative efficiency goals for processing development reviews (Vision Six)

The following discussion recommends ways to ensure proper linkage between the Plan and the tools that are supposed to make the Plan a reality.

Use "Statements of Intent"

One clear lesson from the *Gaster* and *Coffey* cases (see Appendix B, p.28) is: if a local land use ordinance or statute states that consistency with the Plan is intended or required, then lack of consistency with the Plan may be relied on to deny the project as proposed, even though all other conditions, laws, regulations, and permits may support project approval. In *Gaster*, the critical language appeared in Cecil County's Subdivision Ordinance. In *Coffey*, the statement appeared in Article 66D (at that time, the enabling legislation for Prince George's and Montgomery Counties - and now recodified as Article 28 of the Annotated Code).

This principle of "intent" should be broadly used to ensure technical, procedural, and legal linkage of all land use laws, functional plans, area plans, and capital programs with the Plan. These intent statements will ensure that the drafters of the actual regulations, functional plans, and capital programs stay focused on the Plan's policies and goals, and will likewise assist the decision-makers - e.g., the Planning Commission, the Board of Appeals, and the local legislative body - to focus on the Plan as decisions are rendered on development proposals. Following are several model intent statements

Plan Statement

The Plan should contain a clear statement of intent. The following model statement is provided :

This Plan is the basis for the subsequent development of land use laws, ordinances and regulations. The Plan's recommendations, policies, goals, objectives, principles and standards are to be carried out through these land use laws. The Plan's geographic description and delineation of recommendations and policies are to be carried out in the comprehensive zoning map. The Plan's recommendations and policies are to be relied on in deciding piecemeal zoning changes, special exceptions, and floating zones. The Plan's recommendations and policies are to serve as the basis for functional plans, amendments to these plans, and capital funding decisions.

Ordinance Statement

All land use ordinances and regulations should likewise include a clear statement of intent that links these laws to the Plan. This should include, for example, the zoning ordinance, subdivision regulations, environmental regulations, design ordinance, and adequate public facility ordinance. The following model statement is provided :

The purpose of this Ordinance is to implement the policies, goals, objectives, principles and standards of the adopted Plan. The Plan shall be used as the basis for deciding applications submitted under the terms of this Ordinance. All amendments incorporated into this Ordinance shall be consistent with the Plan. The Planning Commission's Annual Report shall be reviewed to determine if corrective action is needed to ensure the consistency of this Ordinance with the Plan, including amendments to it and the manner in which it is being applied.

Zoning District Statements

Each zoning district within the ordinance should be introduced by a clear statement of intent that references the Plan and its relevant recommendations, policies, and goals. If the Plan is insufficiently articulate about the issues and opportunities associated with its recommended land uses, the drafting of intent statements for each zoning district should be relatively straightforward. Following are two examples of intent statements that could be associated with certain zoning districts

Agricultural Zone. *This District applies to areas in the county that are designated in the Plan for agriculture and related rural uses. This District is intended to accomplish the following goals and policies of the Plan: Preserve critical masses of prime and productive soils for agriculture, horticulture, and silviculture. Protect farming operations from encroaching land use incompatibilities. Prevent conversion of land to residential development. Make farming the preferred use of land. Ensure the right-to-farm and the right-to-harvest-timber, with adequate environ-*

mental safeguards Make provisions for agri-business with adequate environmental safeguards

Sensitive Area Stream and Buffer Zone. This District applies to areas designated, described, or defined in the Plan as sensitive area stream and buffers. This District is intended to accomplish the following goals and policies of the Plan: To protect the water quality of streams that receive storm water runoff from developed and developing sites. To protect the stream-land interface by preventing bank erosion and preserving stream and stream-edge habitat and vegetative cover. To establish minimum widths for vegetated buffers along streams within which development shall not encroach. To provide for alternative means of minimizing water quality impacts to receiving waters where undeveloped buffers do not currently exist. To provide priority areas for reforestation and afforestation on developing sites as part of implementing requirements of the County's Forest Conservation Plan. To provide justification for approval of waivers that will permit relaxation of other building setbacks on-site so as to permit maximum setbacks along streams.

Functional Plan Statement

Function plans, such as water and sewerage plans and highway plans, should include an intent statement that provides linkage to the Plan. An example follows:

Water and Sewerage Plan. Proposals under this plan for creating or amending water and sewerage service categories and establishing or amending plans and priorities for water and sewer lines, pumping stations, and treatment facilities shall be consistent with and implement the land use policies and recommendations of the jurisdiction's adopted Plan.

Sub-jurisdiction Plan Statement

Some local governments develop a jurisdiction-wide Plan and then follow up by preparing more detailed plans for smaller parts of the jurisdiction. These detailed plans should be consistent with the recommendations and policies of the Plan. An example of an intent statement follows:

Area Master Plan. This Master Plan shall conform to and further the policies and recommendations of the Plan. The goals, policies, and objectives of the Plan are hereby incorporated into this Master Plan and shall guide in its interpretation and use.

Capital Improvements Program Statement

Including an intent statement in this document is particularly important since the Planning Act imposes requirements for Plan consistency as part of using State funds. Capital projects, such as schools and certain roads, use State funds. The following model statement is suggested:

Apply Land Use Tools Creatively

Capital Improvement Program. Capital projects included in this Program shall be consistent with the land use policies and recommendations of the adopted Plan.

One of the features of the new Planning Act is that the Plan should encourage regulatory innovation. Additional work is needed to identify innovations that might be applied in the development approval process. For example, use of innovative and flexible zoning - such as revitalization zones, mixed use zones, floating and overlay zones, and cluster zones - may be useful tools for achieving consistency and hence, the visions. The use of development conditions, developer agreements, streamlining in growth areas, and new resource protection techniques may also be useful in promoting consistency.



SECTION FOUR: ASSESSING CONSISTENCY OF DEVELOPMENT DECISIONS WITH THE PLAN

When the Plan and land use regulations have been adopted, the focus should shift to the question of whether the Plan is being implemented through the day-to-day decisions that are being rendered. That is, is the resulting development actually consistent with the Comprehensive Plan? The local Planning Commission's Annual Report is recommended as a means of assessing consistency over time.

In its Final Report to the General Assembly (December 1969), the Planning and Zoning Law Study Commission recommended that a new requirement be added to Article 66B. The Study Commission recommended a new section 3.09, which would require the local Planning Commission to prepare an Annual Report. The General Assembly subsequently adopted this recommendation into law.

The Annual Report process appears to be well-suited for assessing consistency and achievement of the visions. The preparation of an Annual Report, as outlined in the law, with a special section on progress in meeting the goals of the new Planning Act, makes good sense. The Annual Report should be widely promoted as a tool for ensuring implementation of the Plan and progress toward the visions; the Report could incorporate information gleaned from the benchmark measures discussed in Section Two.

The Annual Report requires the jurisdiction to review all of its land use decisions during the previous years. It helps the local government to focus on where the development is actually going where the Plan recommends. Where divergence from the Plan is detected, the Annual Report must recommend corrective action to the local legislative body. The language of section 3.09, Article 66B follows:

The planning commission shall annually prepare, adopt, and file an annual report with the local legislative body. The annual report shall be made available for public inspection and a copy of the report shall be mailed to the Director of the Maryland Office of Planning. The annual report shall (a) index and locate on a map all changes in development patterns including land use, transportation, community facility patterns, zoning map amendments and subdivision plats which occurred during the period covered by the report, and shall state whether these changes are or are not consistent with each other, with the recommendations of the last annual report, with adopted plans of the jurisdiction, with adopted plans of all adjoining jurisdictions, and with adopted plans of all State and local jurisdictions that have responsibility for financing or constructing public improvements necessary to implement the jurisdiction's plan; (b) contain statements and recommendations for improving the planning and development process within the jurisdiction. The local legislative body shall review the annual

report and direct that such studies and other actions as appropriate and necessary be undertaken to insure the continuation of a viable planning and development process Section 3.09, Article 66B, Annotated Code of Maryland.

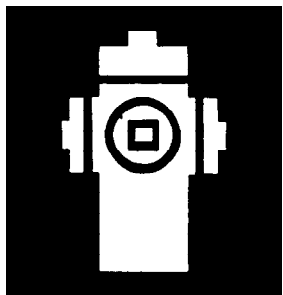
Several of the detailed requirements for the Annual Report are noteworthy in the context of the new Planning Act. Mapped information is required. A statement of Plan consistency must be given for all changes. The consistency statement must evaluate changes with respect to each other, the Plan of the jurisdiction, with Plans of neighboring jurisdictions, and with State plans. The Annual Report should ideally have a section that reports progress in meeting the Planning Act, including a discussion of the Plan's benchmark measures.

An Annual Report is not required in charter counties, but should be. A suitable Annual Report requirement for charter counties should be developed and proposed as a legislative initiative. In the process, the 66B version should be studied as well to see if it requires amendments. For example, it might be a good idea to require a section in the Report that summarizes progress towards, or compliance with, the Planning Act. Also, some of the methods for documenting decisions might warrant simplification in high-growth areas.

SECTION FIVE

CONSISTENCY OF STATE ACTIONS

State and Local Government Consistency



A wide array of State planning, funding, and permitting programs should be consistent with the seven visions (the State's growth policy) and with the local Plan. In general, State programs having major physical elements and land use implications should be used to help achieve the visions and support local Plans

For example, water and sewerage plans and facilities which are approved or funded by the State should be consistent with, and help implement, the local Plan and promote the State's growth policy.

The same is true for State transportation planning. The required integration of land use and transportation planning under the federal Intermodal Surface Transportation Efficiency Act is a critical tool for achieving consistency and need to be pursued. It is especially important for the State to coordinate because local governments have much control over land use decisions

With respect to State permitting actions, these regulatory programs warrant a broader growth management perspective, as opposed to the traditional narrow mission-oriented functions. These actions should help channel growth where it is recommended by the local Plan.

State programs, such as those related to housing and community revitalization and open space protection should support the visions and the local Plan.

State construction projects should be consistent with the visions and the local Plan. These projects are often precursors to growth. When these projects are not contemplated in, or consistent with, the local Plan and comprehensive zoning map, they serve as catalysts for piecemeal rezoning under the legal theory of "change in the neighborhood." These projects can alter development pressures, development suitability, and market forces on specific properties- and thus, impair the Plan.

Linking State Actions to the Visions and Local Plans

State Growth Management Framework

Statewide, the intent of the new Planning Act may not be fully met if jurisdictions merely have regulations that are consistent with the individual Plans. One important issue, from this perspective, is whether all local Plans, when taken together, reflect a quality economic growth and resource protection vision for the State. An articulation of a larger State growth management picture would help to ensure that the sum of all local Plans will demonstrate consistency with the visions.

In this regard, the Economic Growth, Resource Protection, and Planning Commission should continue to work on the use of benchmarks for monitoring progress in meeting the visions (this subject is introduced in the Commission's Annual Report for 1993). Benchmarks could be used to compare conditions and trends against expectations and goals.

The Commission and its Subcommittee should continue to work with the Maryland Office of Planning to solidify a land use policy framework for Statewide planning. While the new Planning Act provides a mechanism to link State funding decisions with the visions and local Plans, this does not fully address Maryland's land use, economic growth, and resource protection activities. A Statewide policy framework might be useful in describing how all local Plans should fit together, and in prioritizing and guiding State agency planning, technical assistance, land acquisition, land protection, permitting, and funding in support of the visions.

This framework should encompass a quantitative and qualitative long range vision of Maryland's future. It should be sufficiently detailed to serve as a tool in assessing whether development, growth, and resource protection are meeting the visions and the land use recommendations of local Plans.

The Annual Report

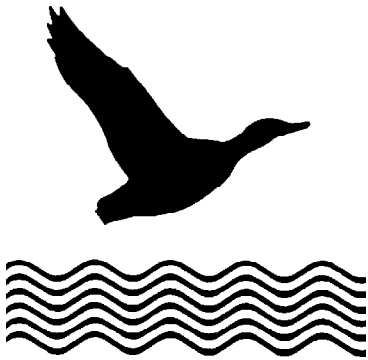
The Annual Report of the Economic Growth, Resource Protection, and Planning Commission should serve some of the same purposes as the local planning commission's annual report. It is important to have benchmark measurements in the Annual Report to assist, from year to year, in monitoring both local and State progress, strengths, and weaknesses. Data on land use change, parcel characteristics, and population will help to describe the State's changing landscape in terms of population and residential unit growth, depletions of resource land, and other land use and demographic patterns.

**Growth Management
Ethic in State
Government**

Additional work need to be accomplished to achieve increased relevance of growth management perspectives in both day-to-day and longer range decisions of State agencies. Planning, programming, funding, permitting (and other forms of regulating), and incentive programs should be included in the effort. The Economic Growth, Resource Protection, and Planning Commission's Annual Report should focus carefully on State progress and use benchmark measurements within the Annual Report to assist in the required annual assessments of progress.

APPENDIX A: THE VISIONS

"... the [planning] commission shall implement the following visions through the plan ...



- (1) development is concentrated in suitable areas*
- (2) sensitive areas are protected;*
- (3) in rural areas, growth is directed to existing population centers and resource areas are protected;*
- (4) stewardship of the Chesapeake Bay and the land is a universal ethic;*
- (5) conservation of resources, including a reduction in resource consumption, is practiced;*
- (6) ... economic growth is encouraged and regulatory mechanisms are streamlined; and*
- (7) funding mechanisms are addressed to achieve these visions"*

(Codified at Section 3-66b), Article 66B, Annotated Code of Maryland.)

APPENDIX B:

THE CONSISTENCY REQUIREMENT IN MARYLAND ZONING LAW

This section is a brief historical overview of the consistency requirement in its traditional sense. It describes past and current trends in the Maryland Courts on the legal significance of the Plan and its relationship to zoning, and provides a background for the new consistency requirements of the Planning Act.

Early History

The first Standard Enabling Act for Planning and Zoning was developed by the federal government in the mid-1920s and thereafter was adopted almost verbatim by most of the States. The Enabling Act contained a requirement that "zoning must be in conformance with a comprehensive plan." Many planners and land use practitioners believed, at least theoretically, that the requirement for "conformance [i.e., *consistency*] with a comprehensive plan" referred to consistency in zoning with the Plan.

However, the courts treated the "consistency requirement" as "meaning nothing more than that the zoning ordinance shall be comprehensive - that is, to say, uniform and broad in scope of coverage." Haar, 68 Harv. L. Rev. 1154 at 1157 (1955), *In Accordance with a Comprehensive Plan*.

Early versions of Article 66B (Maryland's Planning and Zoning Enabling Legislation) mirrored the language of the Standard Enabling Act, requiring that zoning shall be "in accordance with a comprehensive plan" (see, e.g., Article 66B, section 21(c) (1957)). In Maryland, the courts interpreted this requirement as meaning that "zoning must be in accordance with a comprehensive *zoning* plan." Mandated linkage between zoning and the Plan was rejected as a principle of law.

Recent History

The Maryland Planning and Zoning Law Study Commission was formed in the late 1960s to study a variety of planning and zoning issues, one of these being the lack of significance accorded to the Plan. In its Final Report to the Maryland General Assembly in December, 1969, the Commission recommended amendments to Article 66B to elevate the status of the Plan. The Commission's hope was that a Plan elevated in status would more likely result in consistent land use regulations.

One recommendation was to require that the local legislative body adopt the Plan. The Commission recognized that planners spent "large amounts of time in preparation of a ... [Plan] to be used as a guide" for subsequent zoning and other implementation tools. It also recognized that, in reality, zoning was being "prepared independently of the [P]lan" -



the Plan was merely a procedural requirement that, once adopted by the local Planning Commission, would be “neatly filed away.” The Commission reasoned that adoption of the Plan by the local legislative body would make the Plan the official policy document of the jurisdiction, and give the legislative body (which is also required to adopt zoning and other land use laws) a greater stake and vested interest in seeing the Plan’s recommendations implemented.

Another significant recommendation was to define the term “Plan,” and to change the language in the statute which read “[zoning regulations shall be made] in accordance with a comprehensive plan...” to “[zoning] regulations shall be made in accordance with the plan.”

These recommendations of the Commission were enacted into law.

Most of the Maryland case law which addressed the issue of consistency between land use laws and the Plan involved questions of piecemeal rezoning. The rule created by the courts was that “the Plan is just a guide” for zoning decisions. This result was still somewhat disappointing to advocates of the theory that the Plan should be implemented with consistent land use laws, and that the Plan should be more than “just” a guide. On the other hand, the courts also recognized, where comprehensive (as opposed to piecemeal) zoning was being challenged, that a strong presumption of validity would be accorded to comprehensive zoning that is based on the Plan. This latter rule at least acknowledged the Plan as an important first step in adopting zoning regulations.

Breaking New Ground

The rule that “the Plan is just a guide” changed, however, with the *Gaster* case. Board of County Commissioners of Cecil County v. Gaster, 285 Md. 233, 401 A.2d 666 (1979). In *Gaster*, the Court of Appeals affirmed Cecil County’s authority to base the density of a subdivision project on the density recommended by the County’s Plan (1 dwelling unit per acre) - thus denying the developer the higher density allowed by zoning (2.3 dwelling units per acre). The same issue arose in Prince George’s County in the *Coffey* case, with the same results. Coffey v. Maryland-National Capital Park & Planning Commission, 293 Md. 24, 441 A.2d 1041 (1982). The County’s decision to limit subdivision density to that specified in the Plan (2.7-3.5 dwelling units per acre), instead of the zoning density (8.0 to 11.9 dwelling units per acre) was affirmed by the Court of Appeals. The interesting part about *Coffey* was the drastic difference between planned and zoned density.

The Turning Point?

The *Gaster* and *Coffey* cases meant that, in certain situations, the Plan can attain legal status that is a higher status than being a mere guide - to the point of taking precedence over "rights" conferred by zoning. To quote a prominent Maryland zoning lawyer, commentator, and author:

A recent line of cases has... elevated the master plan in some situations to more than merely a guide for future action. It has been recognized as a supportable basis for comprehensive zoning decisions. More dramatically, decisions have indicated that if statute or ordinance requires decisions to be in accord with such plans, this is a mandatory element and even though all other requisites for approval are present, an application may be denied if not in accord with the plan. Stanley D. Abrams, *Guide to Maryland Zoning Decisions*, p. 214, 1992.

Gaster and *Coffey* stand for the principle that development resulting from the subdivision process must be consistent with the Comprehensive Plan, if such consistency is required by the subdivision regulations. The Court noted that the zoning was not consistent with the local Plan, but did not choose to rule directly on this issue.

The new Planning Act may be the turning point in achieving Plan-consistent implementation regulations. The Act is a mandate for local governments to link their Plans with a wide range of implementation laws and regulations. The Act should provide fertile ground for the continuing evolution of the importance of the Plan as the basis for local land use laws.