

QUICKNOTES

THE CONSISTENCY DOCTRINE

INTRODUCTION

A comprehensive plan is a community's key planning document. It is often described as the "constitution" for future development and the "basic instrument" of land-use planning. Whether a community refers to it as a "comprehensive plan," "master plan," or "general plan," this document is the official statement of its land development policy. However, once the plan is adopted, is the community required to follow the plan when making decisions about land development or infrastructure? What happens if the community approves a rezoning that does not conform to the plan policies? What if it extends sewer mains into an area designated for very low-density, agricultural use? The answer lies in each state's land-use enabling legislation and case law, which varies from state to state.

The "consistency" doctrine is a legal requirement that your regulations or capital improvements comply with the comprehensive plan. If the doctrine applies, ordinances departing from the mandates of an adopted comprehensive plan are subject to invalidation under the zoning enabling legislation, or as lacking a rational basis or valid public purpose. Some state statutes also require plans to be internally consistent—i.e., that the policies not conflict with each other.

The Standard State Zoning Enabling Act (SZEa) gave birth to the consistency doctrine. The SZEa was published by the U.S. Department of Commerce in 1924, and became a model for many early (and still persisting) zoning statutes. This required that zoning be "in accordance with a comprehensive plan." However, "comprehensive plan" was not defined. This was left to the courts during the early years of zoning. The lesser known Standard Planning Enabling Act, promulgated several years after the SZEa, required local review of public improvements. This act has received little attention in the academic literature or the courts, so this article focuses on the SZEa and its progeny.

CONSISTENCY MODELS

The SZEa's nebulous language led to inconsistent decisions about whether a separate plan was required, and whether that plan was binding on zoning decisions. Modern planning statutes have begun to incorporate consistency requirements on zoning decisions, but their approaches differ from state to state.

States tend to follow these models in judging consistency:

Unitary View. Some courts have ruled that the zoning regulations are the "comprehensive plan." No separate, written plan is required, but the zoning regulations must provide a rational scheme for land use. This approach generally applies in SZEa states. In Missouri, separate written plans are considered "guidelines" that inform, but do not control, subsequent zoning decisions.

Planning Factor. Under this view, state law authorizes or requires a separate written plan. This plan becomes a factor in judging the legality of zoning decisions. However, it is not strictly binding. North Carolina has an interesting twist, where the local government must make a statement of whether a rezoning is consistent and why its decision is reasonable—but this finding does not require consistency and is not reviewable in the courts.

Consistency Applies if There Is a Separate Written Plan. Under this rule, no separate written plan is required. However, if one exists, at least partial consistency applies. This view applies in some SZEa states (such as Arkansas), although some (such as Oregon) now have comprehensive legislation that requires a separate written plan.



A Florida court ordered the demolition of these multifamily buildings because they were inconsistent with the comprehensive plan. (Image credit: Jim Nicholas)



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Separate Comprehensive Plan Required, But Not Consistency. Some states require local governments to adopt a separate comprehensive plan, but do not require consistency. In Virginia, for example, local governments are required to have a separate written plan. They must give the plan “reasonable consideration” in their zoning decisions, but are not strictly bound by the plan.

Separate Comprehensive Plan and Legislative Consistency. Some states (such as California and Minnesota) have reformed their planning enabling legislation to require a written plan and to require local zoning and land development regulations to conform to the plan. However, these states may or may not allow the community to use plan policies as criteria for land-use decisions. Instead, the plan guides local legislation (such as zoning regulations), which in turn is used to guide permitting decisions.

Separate Comprehensive Plan and Administrative Consistency. A few states not only require legislative consistency with a written plan, but also require permitting decisions to conform to the plan. For example, the state planning legislation may tie plat approval to the plan. In Florida, a development with built and occupied town homes was ordered demolished when the rezonings and permits were determined to be inconsistent with the future land-use map.

CONSTITUTIONAL ISSUES

Even if your zoning enabling statutes do not address consistency, plan consistency can become a factor in deciding the legality of zoning decisions. In states where separate comprehensive plans are used to govern land-use regulations, courts may apply strict scrutiny to zoning regulations departing from the terms of the comprehensive plans. Some courts have upheld severe restrictions on private property rights when buttressed by the public policies and technical analysis provided by the comprehensive plan. Even in states that follow the unitary view, ignoring the comprehensive plan could expose a zoning action to spot zoning or constitutional challenges.

CONCLUSION

Plan consistency is a fundamental element of consistent, defensible land-use decision making. When updating or administering your development regulations or making capital improvements, it is not only good practice to conform to your comprehensive plan—it might also be dictated by state law. Consider the following:

- Does your zoning map conform to your future land-use map?
- Do you have a process to compare zoning or capital improvements requests to your plan policies?
- Are you approving rezonings to districts that are inconsistent with your future land-use map? Are you making ad hoc zoning amendments that are partially consistent with the plan, but that lead to other decisions that erode the plan?
- Is your code up to date? How do the uses, dimensional standards, or design standards compare to your plan policies? Does your plan allow uses that the policies would not allow?
- Are you providing adequate infrastructure to places that your plan designates for growth? Are you extending infrastructure outside of designated growth boundaries, or to agricultural areas?

Look at the following issues in your state statutes and case law:

- Does your state enabling legislation or charter require plan consistency?
- If not, have your courts interpreted the statutes to require plan consistency?
- What documents are considered the “plan”? How are they adopted?
- Do judges consider consistency in considering the legality of land-use decisions?
- How tightly must the regulations conform to the plan?

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