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COMPREHENSIVE LAND USE PLANS AND THE CONSISTENCY REQUIREMENT

Probably the best evidence of the lack of planning today is found by observing the world around us—the typical metropolitan area. It is not necessary that the average American know anything about planning and the operations of planning agencies; all he has to do is look about him, and he recognizes that planning is not taking place.¹

The apparent lack of planning in our urban areas is only partly the result of a failure to plan; it is also the result of a failure to implement plans that are formulated. The failure to implement formulated plans may be attributed to the lack of a legal requirement of consistency between planning and land use regulations. Historically, neither legislative bodies nor the judiciary have required that there be such a relationship. As a result land use regulations are adopted on an ad hoc basis and thus are highly susceptible to the influence of special interest groups. This problem is compounded by the fact that, because of the lack of sufficient judicial standards against which their validity may be tested, there often is no effective means of challenging ill-considered land use regulations.

Through effective use of the planning process, the local community can compile facts, analyze data and employ modern planning techniques to formulate the goals of the community, to delineate the alternative means of achieving these goals and to determine the probable consequences of these alternative courses of action.² It is primarily through this process that planning provides a means for more orderly community development and more effective decision-making. Even so, the effectiveness of any particular plan formulated through this process is dependent not only upon the plan's nature and content but upon whether in fact it is followed.

One method of ensuring that formulated plans are followed is to legislate directives that require long-range planning and to mandate that all land use regulations be consistent with the resulting general

². D. HAGMAN, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW 1-10 (1971) [hereinafter cited as HAGMAN]. The comprehensive development plan has been described as: "(1) a source of information; (2) a program for correction; (3) an estimate of the future; (4) an indicator of goals; (5) a technique for coordination; and (6) a device for stimulating public interest and responsibility." Haar, The Master Plan: An Impermanent Constitution, 20 LAW & CONTEMP. PROB. 353, 356 (1955). See also PLANNING DEPARTMENT, CITY AND COUNTY OF HONOLULU, HAWAII, A STATUS REPORT: THE GENERAL PLAN REVISION PROGRAM (1970 [hereinafter cited as STATUS REPORT].
plan. These directives would create a legal relationship between planning and land use regulations by imposing the requirement of consistency. The proposed Local Government Comprehensive Planning Act of 1974, which recently failed to pass the Florida Legislature, adopted such a consistency requirement:

After a comprehensive plan or element or portion thereof has been adopted in conformity with this act, all development undertaken by, and all action taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted. All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan or element or portion thereof . . . .

Because there has been little experience with this method of ensuring that formulated plans are followed, the effect of giving a general plan legal status by imposing a requirement of consistency is uncertain. This note will examine the probable consequences of a requirement that land use regulations be consistent with a general plan. In order to place this discussion in proper perspective, a brief examination of the historical relationship between planning and zoning will be undertaken. The focus, however, will be upon the definition of "consistent with," the desirability of the consistency requirement and the planning considerations dictated by that requirement.

I. THE HISTORICAL RELATIONSHIP BETWEEN PLANNING AND ZONING

Traditionally courts have avoided inquiry into the specific relation-
ship between planning and zoning by refusing to provide any meaningful legal definition of the requirement, found in most state zoning enabling acts, that zoning regulations be "in accordance with a comprehensive plan." In 1926, the same year in which the United States Supreme Court recognized the validity of zoning regulations as a proper exercise of the states' police power, the United States Department of Commerce promulgated the Standard State Zoning Enabling Act. Section three of that act states:

Such [zoning] regulations shall be made in accordance with a comprehensive plan and designed to [promote enumerated community goals] . . . . Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality.

Because of the large number of states that have adopted this act, the language of this section often has been the subject of litigation concerning the question of whether, apart from the zoning code itself, a separate and distinct "comprehensive plan" must exist.

Uncertainty concerning this question is due in part to the absence of a definition of "comprehensive plan" in the Standard State Zoning Enabling Act. In a well-known article Professor Charles

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9. The act is reproduced in A. RATHKOPF, supra note 8, at 100-1 to -6.

10. See note 6 supra.

11. The phrase has been defined elsewhere as "the official statement of a municipal legislative body which sets forth its major policies concerning desirable future physical development . . . ." T. KENT, THE URBAN GENERAL PLAN 18 (1964). Such an independent plan has been referred to by a variety of names, including official plan, general plan, comprehensive plan and master plan. PRACTICING LAW INSTITUTE, ZONING AND LAND USE 17 (1972). In this note these terms are used interchangeably.

Haar analyzed the judicial interpretations from 1926 to 1955 of the Standard Zoning Enabling Act phrase, "in accordance with a comprehensive plan." He found that the courts have developed only an amorphous definition of that phrase and concluded that the "comprehensive plan"

may be the basic zoning ordinance itself, or the generalized "policy" of the local legislative or planning authorities in respect to their city's development—or it may be nothing more than a general feeling of fairness and rationality. Its identity is not fixed with any precision, and no one can point with confidence to any particular set of factors, or any document, and say that there is the general plan to which the zoning enabling act demands fidelity. 13

The judiciary presently is perpetuating the approach to this issue found by Professor Haar in his 1955 study. For example, the Supreme Court of Oklahoma has stated that the comprehensive plan referred to in the Oklahoma zoning enabling act 14 does not require a plan independent of the zoning ordinance itself. 15 The Pennsylvania Supreme Court has reached the same conclusion. 16 Another Pennsylvania court recently considered the question of whether the granting of a development permit for a trailer park was valid when an existing comprehensive plan designated the area as low density and forest preserve. 17 The court concluded that even if a separate comprehensive plan exists, there is no legal requirement that zoning ordinances conform to the plan. 18 The Court of Appeals of New York recently took a similar approach in Town of Bedford v. Village of Mount Kisco. 19 The Village of Mount Kisco changed the zoning of an area contiguous to the Town of Bedford from one-family residential to multiple-family, six-story residential. The rezoning was challenged by neighboring Bedford as contrary to Mount Kisco's comprehensive plan. The court found there was no requirement that the zoning ordinance conform to the general plan; instead, it merely looked to the ordinance itself

[hereinafter cited as Haar, Comprehensive Plan].

13. Id. at 1167.
18. Id. at 177.
in determining whether the enabling act's requirement of a comprehensive plan had been met.\textsuperscript{20}

Hawaii appears to have been the first state actually to require that zoning regulations be consistent with an independent, long-range plan. Hawaii's zoning enabling act requires in part: "Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county."\textsuperscript{21} This mandate was carried out at the local level by the City and County of Honolulu Charter which provides that "no . . . zoning ordinance shall be initiated or adopted unless it conforms to and implements the general plan . . . ."\textsuperscript{22} The Hawaii courts first gave effect to these legislative acts in the early 1960's by invalidating certain zoning changes made in the absence of an independent general plan.\textsuperscript{23}

Florida, which also adopted the Standard Zoning Enabling Act,\textsuperscript{24} does not appear explicitly to have decided whether the Act requires a comprehensive plan other than the zoning code itself. In considering challenges to the validity of zoning ordinances, however, the Florida courts have indirectly answered the question in the negative by upholding such ordinances in the absence of an independent general plan.\textsuperscript{25}

It thus appears that because of the judiciary's nearly universal failure to require a relationship between zoning and an independent general plan, a requirement that such plans be formulated and implemented will have to come from the legislature if planning is to become a means of solving or at least mitigating some of the problems that confront the local community. The legislature could approach this task in a number of ways. For example, state zoning enabling acts could be revised to explicitly require planning as a prerequisite to zoning. An alternative method, adopted by the proposed Florida

\textsuperscript{20} Id. at 160, 351 N.Y.S.2d at 136-37. At the time this case was decided there was a requirement that zoning ordinances be enacted in accordance with a comprehensive plan. See Town of Bedford v. Village of Mount Kisco, 338 N.Y.S.2d 447, 448 (App. Div. 1972). Subsequent to the decision the statute was amended and this requirement apparently was deleted. See N.Y. VILLAGE LAW § 7-700 (McKinney 1973).

\textsuperscript{21} HAWAII REV. STAT. § 46-4 (1968).

\textsuperscript{22} Charter of the City & County of Honolulu, Hawaii § 5-512.2 (1959). The charter was revised in 1973. See Revised Charter of the City & County of Honolulu, Hawaii § 5-412.3 (1973).

\textsuperscript{23} See STATUS REPORT at 3 & n.1. As a result of these decisions, the present general plan for the City and County of Honolulu was adopted in 1964. Id. at 3.


\textsuperscript{25} See, e.g., Oka v. Cole, 145 So. 2d 233 (Fla. 1962); City of Miami Beach v. Wiesen, 86 So. 2d 442, 444 (Fla. 1956).
planning act, is to enact legislation that requires both the formulation of a plan and that all land use regulations be "consistent with" that plan. The latter method is much broader in scope than the former since it requires that all land use regulations, rather than just zoning regulations, be "consistent with" the adopted plan.

II. A Definition of Consistency

Since the courts generally have not required consistency between planning and zoning, relatively little attention has been directed toward determining what is meant by the term "consistent with." There are two possible definitions of this term, each reflecting a different approach to the problem of determining whether a given zoning regulation is "consistent with" the general plan. First, land use regulations could be considered consistent with the general plan so long as the regulations allow only those specific uses denominated by the plan. Alternatively, land use regulations could be considered consistent with the general plan so long as the uses allowed are compatible with the goals and objectives of the general plan.

Application of the first definition requires only a comparison of the uses permitted by existing zoning regulations with the type of land use called for in the plan. For example, if the plan designates an area as residential, present use of the land for agriculture would involve a different type of land use and thus would be inconsistent. This analysis, although perhaps simple to apply, does not seem to consider adequately the role of planning as an instrument for directing future growth. A more satisfactory approach would be to view "consistency" to require that present zoning not undermine the long-range goals and objectives of the general plan. This approach would involve a comparison of the goals and objectives of the general plan with existing zoning regulations. For example, a present "agricultural" zoning classification might not appear to allow the same type of land use as would a plan that designates an area for residential development. Would such zoning, however, be detrimental to the future residential development of the area? If it could be shown that the community's present housing needs are satisfied and that the existing agricultural classification will not undermine the long-term goals and objectives of the housing portion of the general plan, the zoning classification would be found consistent with the general plan. On the other hand, if there is a current shortage of housing, the denial of the use of the land for housing development would be inconsistent with the objectives of the general plan.

27. See id. § 14.
Analyzing the consistency requirement in terms of the objectives and goals of the general plan rather than in terms of specific land use classifications appears to be the approach that California has adopted under a legislative directive requiring consistency. This approach is a result of the statutory definition of "consistent with" that was adopted by the California legislature: "A zoning ordinance shall be consistent with a city or county general plan only if . . . [t]he various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses and programs specified in such a plan." Although no California court has yet interpreted this provision, the California Attorney General has applied the definition in an opinion that considered the types of residential zoning that are consistent with a general plan designation of "agricultural." The Attorney General analyzed the question in terms of the objectives of the general plan and stated that "the term 'consistent' . . . requires that a zoning ordinance must tend to further the policies and designations contained in the open space plan and must not tend to undercut or inhibit such policies and designations."

The question responded to in the Attorney General's opinion involved the opposite case from our earlier example in which an area was planned for residential use but zoned for agriculture. It should be noted, however, that in both of these examples either the plan designation or the zoning regulations called for limited development of the area in question. In determining the consistency of a general plan and a specific land use regulation, undoubtedly fewer problems will arise if either the plan or the regulation calls for uses that do not involve intense development or building on the land in question. Certainly, all types of uses would not be consistent under the approach.

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32. Id.
33. The Attorney General was asked:
Would zoning of these prime agricultural lands for the following uses be considered to be consistent with the open space plan classification [classified as agriculture]:
(a) Minimum lot size of two acres with residential use only authorized;
(b) Minimum lot size of ten acres with agricultural use only authorized but where limited associated residential uses are also permitted?
Id. The Attorney General concluded that the zoning of residential use with a minimum lot size of two acres would not be consistent with an area planned as agricultural, but that the zoning of limited residential use on a minimum lot size of ten acres would be consistent with such a plan. Id.
of analyzing consistency in terms of the plan's objectives. Would a present zoning and use of an area as industrial be consistent with a plan designation for residential use? The development of an area as industrial would appear to undercut any long-range goals of a general plan that designated the area as residential and should be considered as inconsistent with the general plan.

Defining "consistent with" should be no more difficult when extensive development is under consideration than when permissible use under present zoning laws is at issue. Analysis of consistency in terms of goals and objectives is valid in both instances. The objective of designating an area for extensive development ultimately is the utilization of the land for that use. Since intense development of an area likely would prevent future changes in the type of development allowed, intense development different from the plan designation would constitute inconsistency. Conflicts between the general plan and land use regulations would not be likely to arise very often in areas of intense development, as the pragmatic approach in cases of this type would be to amend the general plan. Thus the issue is more likely to be raised in areas planned for limited developments or when the legislative body is attempting to limit present development in an area where future development is planned.

The Hawaii courts, after determining that an independent general plan is required, have turned their attention to the implementation of the consistency requirement. These courts, however, do not appear to have been faced with the problem of whether a specific zoning regulation is consistent with the general plan. This is probably due to the nature and specificity of Hawaii's general plan; the question is more likely to be raised where a more flexible general plan, designed to be a policy guide, is utilized. The Hawaii courts have been faced with a related aspect of the consistency requirement, that of ensuring that

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34. Although theoretically the existing development of an area could be changed by the technique referred to as elimination of nonconforming uses, the change of a highly developed area from one use to another presents complex problems. For a discussion of the subject of nonconforming uses, see 1 ANDERSON §§ 6.01-.07; HAGMAN at 146-62.
35. See notes 21-23 and accompanying text supra.
37. The comprehensive plan for the City and County of Honolulu does not deal with the relationship of land use to the social and economic needs of the community but concerns itself only with land use regulations. See STATUS REPORT at 2.
38. The plan is extremely detailed; for example, it shows the exact location of existing and proposed roads and designates in detail the planned use of each parcel of land. PLANNING DEPARTMENT, CITY AND COUNTY OF HONOLULU, HAWAII, THE PLANNING PROCESS IN EVOLUTION: A WORKING PAPER 29, 36 (1972) [hereinafter cited as WORKING PAPER].
the integrity of the general plan is not circumvented through the amendment process.

In *Dalton v. City and County of Honolulu* the Supreme Court of Hawaii invalidated an amendment to the general plan because "the county failed to follow a course of conduct consistent with the safeguards that are required in the initial adoption of the general plan." The court held that amendments to the general plan must be "comprehensive and long-range" in nature. In reaching its decision the court noted that "[t]o allow amendment of the general plan without any of the safeguards which were required in the adoption of the general plan would subvert and destroy the progress which was achieved by the . . . plan." The court went on to state: "[I]f the city believes the general plan of 1964 is obsolete, then comprehensive updating of the 1964 plan's 'studies of physical, social, economic and governmental conditions and trends' is in order." It thus appears not only that an independent general plan is required in Hawaii but also that the integrity of such plans must be maintained by an amendment process that furthers the concept of long-range planning. Once the decision is made that a separate general plan is required, the decision reached in the *Dalton* case seems to be a logical corollary. Without such a requirement zoning changes could defeat long-range planning through a two-step process. The general plan would first be amended, followed by a "consistent" amendment of the zoning ordinances. Such an approach effectively would promote the same situation that now exists: general plans are formulated but are not followed. If the governing body can achieve consistency between zoning and planning simply by voting first to amend the plan and then to amend the zoning ordinance, compliance with the plan remains voluntary. The *Dalton* court avoided this undesirable result by holding that the general plan can be amended only after the procedures for adopting the original general plan have been followed.

40. Id. at 209. The safeguards referred to by the court include the requirements that a public hearing be held by the planning commission, that the plan be long-range and comprehensive in nature and that it be based on studies of the physical, social and economic conditions of the community. Id. at 205-08. The court noted that in order for the city council to exercise its general power to amend ordinances it did not have to consider these safeguards. Id. at 207.
41. Id. at 209.
42. Id.
43. Id.
44. See notes 14-20 and accompanying text supra.
45. See Comment, "Zoning Shall Be Consistent With the General Plan"—A Help or a Hinderance to Planning?, 10 San Diego L. Rev. 901, 906-08 (1973).
46. See 462 P.2d at 209.
The proposed Florida planning act requires a similar process to amend a general plan. Section 12 of the proposed act provides that in order to amend the plan or a part thereof the procedure required for the original adoption of the plan must be followed. The procedure for the original adoption of the plan requires that the plan be based upon data appropriate to each element and implies that surveys and studies are to be utilized in the preparation of the comprehensive plan.

*Dalton* did not deal with the considerations that should be involved in determining whether specific regulations are consistent with an existing general plan. Rather, it concerned an attempt by the City and County of Honolulu to amend the general plan and related zoning regulations to permit a 47-acre area of land to be changed from residential and agricultural use to medium-density apartment use. This apparently was considered such a flagrant disregard of the general plan that the issue of whether such uses are consistent was not even discussed.

In order to make planning an effective tool for directing future growth, land use regulations should be considered consistent with a general plan only if the uses allowed are compatible with the goals and objectives of the plan. This approach to the consistency requirement is desirable because it allows the general plan to reflect the goals and objectives of the community by its designation of future land uses while preserving the plan's flexibility by providing a method of allowing growth to proceed according to the present needs of the community. These important functions of a general plan are lost if land use regulations are considered consistent with a general plan only when they allow those specific uses denominated by the plan. In order for the consistency requirement to accomplish its stated purpose—the creation of a legal relationship between land use regulations and planning—an additional requirement should be imposed: any amendment to a general plan should be the result of a procedure similar to that required for the adoption of the original plan. Imposition of this further requirement protects the integrity of the general plan from subversion by an amending process that does not include the safeguards required for adoption of the general plan.

III. THE DESIRABILITY OF THE CONSISTENCY REQUIREMENT

Two major problems have resulted from the judiciary's failure to

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47. *Fla. H.R. 2884*, § 12 (Comm. Substitute 1974). "Specific" amendments require concurrency of four-fifths of the governing body; adoption of the plan and "comprehensive" amendment each require only a simple majority. *Id.*

48. "Element" was used in the proposed Florida planning act to designate the particular part of the act that required the subject to be included in the plan. *See id.* § 8.


50. *See 462 P.2d* at 201.
require any relationship between planning and land use regulations. First, this attitude allows ad hoc adoption of land use regulations. Secondly, it precludes the development of a sufficient standard by which the validity of specific regulations may be judged when challenged in the courts.

As Professor Haar noted in his study, the phrase "in accordance with a comprehensive plan" has been equated with a basic test of the constitutionality of the challenged regulations. The courts generally have considered only whether specific land use regulations are a valid exercise of the police power or whether they violate the constitutional guarantees of due process and equal protection. Thus,

51. Haar, Comprehensive Plan at 1157, 1171-73.

52. The state's authority to enact zoning ordinances was first upheld as a valid exercise of the police power in Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), and has not been subject to serious challenge since that date. 1 ANDERSON § 2.01. Specific zoning regulations or their application have been challenged successfully as an invalid exercise of the police power. See, e.g., Nectow v. City of Cambridge, 277 U.S. 183 (1928); City of Boca Raton v. Tradewind Hills, Inc., 216 So. 2d 460 (Fla. 4th Dist. Ct. App. 1968); State ex rel. Noland v. St. Louis County, 478 S.W.2d 363 (Mo. 1972). "[A] listing of cases from the several states holding that a zoning ordinance may be challenged on the basis of its application to a particular piece of property would be too voluminous to be useful . . . ." 1 ANDERSON § 2.12.

53. See, e.g., Jameson v. St. Tammany Parish Police Jury, 225 So. 2d 720, 724 (La. Ct. App. 1969), cert. denied, 228 So. 2d 482 (La. 1969); Moore v. County Bd. of Supervisors, 227 So. 2d 862, 863 (Miss. 1969) (challenged regulation would have been invalid if it had been found "discriminatory"); Kent v. Borough of Mendham, 267 A.2d 73, 78 (N.J. Super. Ct. 1970). A restrictive regulation may be a violation of due process if it is deemed a constructive "taking" of property without compensation. See, e.g., Just v. Marinette County, 201 N.W.2d 761, 767 (Wis. 1972). A discussion of when a constructive taking is deemed to have occurred is beyond the scope of this note; for a thorough analysis of this issue, see F. BOSSelman, D. CALLIES & J. BANTA, THE TAKING ISSUE (1973).

The taking issue often is raised in discussions of whether there should be a requirement that land use regulations be consistent with the general plan. See generally Comment, "Zoning Shall Be Consistent With the General Plan"—A Help or a Hinderance to Planning?, 10 SAN DIEGO L. REV. 901 (1973). An example of how planning might raise the taking issue can be illustrated by considering planning for public facilities. If the local community includes in its plan for public facilities the precise location of future buildings, the question will be raised as to what current land uses are consistent with such a plan. If the designated land in question is privately owned and its interim use severely curtailed by the plan, the owner may assert that the regulation results in a taking of the property. The need to limit development of land that is to be taken by condemnation at some future date often is a direct result of recognition of the increased acquisition cost of developed property. Planning methods using this approach, however, probably will not be allowed in Florida if the courts uphold the position taken in Board of Comm'rs v. Tallahassee Bank & Trust Co., 108 So. 2d 74 (Fla. 1st Dist. Ct. App. 1958), cert. denied, 116 So. 2d 762 (Fla. 1959). There the court held that zoning cannot be used merely to keep future acquisition prices at a depressed level. Id. at 81, 86. It thus appears that the Florida courts are unlikely to uphold any severe land use restriction designed to enable future acquisition by the community at a depressed price. See also City of Miami v. Romer, 73 So. 2d 285 (Fla. 1954).

It should be noted, however, that the taking question would not necessarily arise
because of the presumption of validity normally accorded legislative acts, there often is no effective way to challenge ill-considered land use regulations; there is no concrete standard by which their validity can be measured. By requiring that an independent general plan exist and that all land use regulations be consistent with such a plan, the general plan would serve as an additional standard against which the validity of individual land use regulations could be measured.

In addition to the often detrimental effects of an ad hoc approach to land use regulation, the failure to implement existing general plans also may undermine public confidence in the validity of long-range planning. If existing plans fail to materialize, disillusionment with planning and with the plan itself may result in a corresponding decrease of public pressure to implement land use regulations in compliance with the general plan. It may be that a general plan will be effective only if adherence is compelled by law; experience has shown that plans without legal status are frequently ignored and that pressures from special interest groups often result in the implementation of land use regulations that are inconsistent with any existing general plan.

from the implementation of the proposed planning act. Whether the question arises will depend entirely upon the approach taken by the local community in developing its plan. The issue could be avoided either by a long-range acquisition program or by avoiding identification of the precise site of future acquisitions. The latter approach might be instituted by establishing standards and objectives for future acquisitions and by locating the site only by reference to a broad general area.

54. See Haar, Comprehensive Plan at 1157. The Florida courts also adhere to the general rule of law that land use regulations are presumed to be valid and that if the question of validity is fairly debatable, the regulation will be upheld. See, e.g., City of St. Petersburg v. Aikin, 217 So. 2d 315, 317 (Fla. 1968); Oka v. Cole, 145 So. 2d 233 (Fla. 1962); City of Miami Beach v. Wiesen, 86 So. 2d 442 (Fla. 1956).

55. See Haar, Comprehensive Plan at 1167, 1174.

56. Id. at 1175.

57. See notes 14-20 and accompanying text supra.

58. Criticism of the existing methods of administering land use regulations on these grounds has been quite severe:

The running, ugly sore on zoning is the total failure of this system of law to develop a code of administrative ethics.

... ...

If any reader of this little malediction believes the references obscure or claims not to know of what I speak, he is either unacquainted with the local quasi-judicial practices that exist in most jurisdictions, or he is so enthralled by the radiant masterpieces of obfuscation passed off as zoning ordinances that he is unwilling to admit that behind such gloss there operates a rather shoddy system called zoning administration.

Some opponents of the consistency requirement assert that the requirement of a nexus between the general plan and the implementing regulations will degrade the existing planning process.\textsuperscript{59} This argument is based primarily upon the assumption that when planning has no legal status it is relatively free of political and special interest pressures.\textsuperscript{60} These pressures are instead focused on the implementation tools, such as zoning and other land use regulation. It is contended that under these circumstances the planning process is free to generate what are, at least from a planning viewpoint, desirable plans.\textsuperscript{61} Advocates of plans that are not legally enforceable acknowledge that implementation of the plan is still subject to the traditional abuses of special interest groups. They argue, however, that these abuses are more than offset by the fact that the vast majority of land use decisions are consistent with a desirable comprehensive plan.\textsuperscript{62} If zoning and other regulations must be consistent with the comprehensive plan, it is argued that the traditional pressures will be applied to the planning process, which will result in degrading the general plan to the lowest common denominator of political reality.\textsuperscript{63} If all land use decisions are then consistent with this plan, the overall result will be less desirable than when the vast majority of decisions were consistent with a more desirable plan.

On balance, this argument seems unpersuasive. For a plan with no legal status to have any impact on the regulatory process there must be, at the very minimum, a system designed to keep public attention focused on whether land use decisions are consistent with the plan. In some communities this is done by referring all land use proposals to a planning agency for a determination of whether they are consistent with the general plan.\textsuperscript{64} The local governing body is free to make its own decisions, but public attention is focused on all proposals including those that are contrary to the plan. This approach requires the expense of establishing a planning agency and formulating plans, and still would permit the plan to be thwarted at will.

The traditional pressures that are applied to land use decisions, coupled with an absence of standards against which to measure challenged decisions, may foreclose effective implementation of a

\textsuperscript{59} Telephone interview with Allen Jacobs, Director of Planning, City and County of San Francisco, California, in San Francisco, January 5, 1974.
\textsuperscript{60} Id.
\textsuperscript{61} Id. The term "desirable plan" is used here to mean a plan formulated solely on the basis of available planning information.
\textsuperscript{62} Id.
\textsuperscript{63} Id.
\textsuperscript{64} HAGMAN at 46-47.
general plan. In addition, to assume that a consistency requirement will undermine the integrity of a general plan demonstrates a lack of faith in both local government and the courts. In view of the complexity of the problems faced by local communities, abuses of the regulatory process may well be the result of inadequate information and poor formulation of objectives and goals.\(^6\) It is precisely these ills that land use planning addresses. Once the planning process is established, however, a consistency requirement will operate to prevent intentional abuses that may occur by providing the general plan as a standard against which the judiciary can measure the validity of individual decisions.

It also has been observed that, even if the plan is not followed, it serves an educational purpose by creating a climate for desirable development.\(^6\) It is suggested that both the public and legislative bodies will look to the plan for guidance.\(^6\) It might be argued, therefore, that a "less desirable" plan will lose this "visionary" value and, even though it may be more closely followed, will not ultimately result in a greater degree of desirable development. This argument also seems unconvincing. If it is determined that visionary documents have educational value, the same benefits may be enjoyed without denominating the general plan as such.\(^8\)

Thus the imposition of a consistency requirement would be a practical and desirable means of avoiding the ad hoc adoption of land use regulation by according a general plan legal status. Moreover, it would provide an additional standard against which the validity of land use regulations can be measured, resulting in a more compelling ground upon which to base challenges to ill-considered regulations. Through application of this standard the judiciary could operate as a more effective check against abuses of the regulatory process.

IV. PLANNING CONSIDERATIONS AND THE CONSISTENCY REQUIREMENT

Many of the apparent difficulties with a consistency requirement are mere mechanical problems of timing, transition, specificity and funding. Therefore, in analyzing the legal implications of the requirement that land use regulations be consistent with a general plan, it should be noted that certain issues are likely to be raised only after adoption of an inadequate general plan that does not provide for

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65. *See generally Status Report at 19.*


67. *Id.*

68. Interview with Ira M. Heyman, Professor of Law, University of California at Berkeley, in San Francisco, California, January 7, 1974.
these mechanical considerations. Suppose, for example, an industrial site is planned in an area currently unable to provide support facilities. Must industrial development be allowed to occur in this area at the present time? The possibility of such a situation arising emphasizes the need to incorporate adequate timing considerations into the general plan. Instead of attempting to designate future land use classifications, a general plan should provide for changing land use classifications as the community develops.\textsuperscript{69}

Timing, as used in this context, calls for readjustment of the general plan if a proposed development is consistent with currently desirable uses but inconsistent with planned future development.\textsuperscript{70} For example, if no development consistent with the general plan has taken place by the time support facilities and the demand for industrial development are realized, the plan should call for changing the designated use of the land to industrial at that time.\textsuperscript{71} Such an approach would not prohibit present development but would allow only that development deemed desirable under current conditions.

Transition is a planning consideration that is closely related to timing. Suppose, for example, that parts of an adopted general plan are not compatible with existing zoning regulations. The most obvious solution to this problem would be for the local legislative body to revise the zoning regulations at the time the plan is adopted, thereby avoiding any conflict. Since the same local legislative body that adopts

\textsuperscript{69} See California Council on Intergovernmental Relations, General Plan Guidelines III-1 (1973) [hereinafter cited as General Plan Guidelines].

\textsuperscript{70} The concept of timing should be distinguished from sequence planning. Timing, as used here, refers to a change in the designated uses of land as the community develops. Sequence planning, on the other hand, attempts to control the order and rate of growth. See Golden v. Planning Bd., 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972), for an example of a successful attempt to control the sequence of development. This concept is beyond the scope of this note but it is, nevertheless, of extreme importance in the implementation of certain types of plans.

\textsuperscript{71} The traditional approach to planning utilizes time periods in excess of 20 years. Perry, The Local "General Plan" in California, 9 San Diego L. Rev. 1, 5 (1971). Although there are obvious problems in predicting the future, the primary problem is that of providing an adequate means of evolving from the present to 25 years in the future. Theoretically, the plan should consist of a range of short-term objectives and policies that serve to implement the long-range plan and ensure that it is being carried out. General Plan Guidelines III-1. See also Status Report at 10-11. The time frame for implementation of the plans contemplated under the proposed Florida planning act is not specifically stated. The act does, however, require reappraisal of the plan at least every five years. Fla. H.R. 2884, § 13(1) (Comm. Substitute 1974). It also provides that planning is to be an on-going process. Id. Thus, the proposal provides for periodic evaluations of the success of the plan in terms of its effectiveness. This would provide an impetus to the local community to adopt effective means to ensure that its plan is being implemented. Constant review of the general plan also would serve to keep the public informed of the success of the plan and to illuminate the needs and direction of the community.
the general plan also adopts the zoning regulations, any conflicts that remain could be resolved by that body. Another approach would be to resolve conflicts on a case-by-case basis when the existing regulations are challenged as inconsistent with the general plan. This approach would create unnecessary uncertainty, however, concerning the future use of the land.

A twofold approach to problems of transition appears to be more sound. In those situations where an immediate revision of zoning regulations would create difficulties, the general plan could incorporate a transition period to provide the time needed to bring existing zoning classifications into conformance with the uses designated by the plan. Alternatively, problems involved in a revision of the existing zoning regulations could be avoided by applying the general plan only prospectively, the approach taken in the proposed Florida planning act. Under this approach only development by local government, development orders issued by local government and subsequently enacted land use regulations must be consistent with the general plan. If this interpretation were upheld, it would seem that existing land use regulations would be subject to challenge only when development orders inconsistent with the general plan are issued.

Another basic planning consideration involves the degree of specificity to be used in the general plan. Should the plan consist of a detailed map or of general policy statements? Both of these approaches, respectively termed "future model" and "policy" plans, have been used by planners in the past and have stimulated comment as to the undesirability of each. Both Hawaii and California appear to require at least some form of map as a part of the general plan. The City and County of Honolulu charter, under which the present general plan was adopted, states that "[t]he General Plan shall set forth the council's policy for the long-range, comprehensive physical development of the city," and adds that the "General Plan shall include a map

74. The problem with a general, policy statement type of plan is that it does not provide adequate standards against which to measure particular decisions. See Haar, Comprehensive Plan at 1174. "To be more than a letter to Santa Claus, [the general plan] must be sufficiently specific to indicate, at least in general, how its goals can be achieved." B. Spatt, A Proposal To Change the Structure of City Planning: Case Study of New York City 106 (1971). There also have been unsatisfactory results with plans that contain too much specificity. See notes 78-79 and accompanying text infra. A plan that designates what the future city or area will look like (referred to as a future model approach to planning) is generally too inflexible and does not provide adequate means of implementing the plan. See R. Linowes & D. Al lensworth, The Politics of Land Use: Planning, Zoning and the Private Developer 43-44 (1973).
The map that has been developed in Honolulu is extremely detailed. Exact locations of future streets, lot lines and precise types of land use are shown. This degree of specificity, combined with the requirements of the *Dalton* decision concerning amendment of the general plan, have exhausted the planning department's resources in processing the constant flow of amendments to the general plan. This expenditure is largely unnecessary, since many of the amendments have no significant policy implications.

In California, which also has a legislative requirement that zoning regulations be consistent with an independent plan, a different type of general plan has evolved. The California Government Code states that "[t]he general plan shall consist of a statement of development policies and shall include a diagram or diagrams ..." Implementation of this requirement at the local level is illustrated by the City and County of San Francisco charter, which requires that "[t]he master plan shall include maps, plans, charts, exhibits and descriptive, interpretative and analytical matters, based on physical, social, economic and financial data . . . ." Although a map apparently is required, the planning approach in California has not produced maps or plans of the type used in Hawaii. California general plans consist more of policy statements than of physical maps. This approach has been encouraged by the California

75. Charter of the City and County of Honolulu, Hawaii § 5-509 (1959), as revised, (1973).
76. WORKING PAPER at 29, 36; Interview with Ian C. McDougall, City Planner, City and County of Honolulu, Hawaii, in Honolulu, Dec. 27, 1973. This type of plan has been an outgrowth of the present planning requirements. The city charter has been revised so as to require two types of plans: "The general plan shall set forth the city's broad policies for the long range development of the city. It shall contain statements of the general social, economic, environmental and design objectives to be achieved . . . ." Revised Charter of the City and County of Honolulu, Hawaii § 5-408 (1973). "Development plans' mean relatively detailed schemes for implementing and accomplishing the development objectives and policies of the general plan . . . . A development plan shall include a map . . . ." Revised Charter of the City and County of Honolulu, Hawaii § 5-409 (1973).

Note that the new general plan is not required to include a map; policy for future growth, rather than establishment of a future model of the city, seems to be the focus of the plan. The general plan revision program is still in progress and the final form of the new general plan or the development plan has not yet been determined. Until the new general plan is adopted, the present general plan will remain in effect. Interview with Robert May, Director of Planning, City and County of Honolulu, Hawaii, in Honolulu, Dec. 27, 1973.
77. See note 46 and accompanying text supra.
78. WORKING PAPER at 38.
79. Id.
81. Charter of the City and County of San Francisco, California § 116.
82. Interview with E. Clement Shute, Jr., Deputy Attorney General, State of Cali-
Council on Intergovernmental Relations through its publication of general advisory plan guidelines. These guidelines clearly favor a policy approach to planning over the future model approach found in Hawaii. The experience of those local governments in California that have adopted enforceable plans, however, is still too limited to reach any conclusions regarding actual implementation of the guidelines.

The proposed Florida planning act appears to leave a great deal of flexibility with regard to the question of whether a map is to be part of the general plan. Section 8(1) of the proposed planning act states that the plan should "consist of materials, in such descriptive form, written or graphic, as may be appropriate to the prescription of principles . . . and standards . . . ." Although this description seems to require a policy statement type of plan rather than a detailed map, the individual elements of the general plan indicate that some sort of map will be necessary. The traffic circulation element, for example, requires that the location of transportation routes be shown. Perhaps a statement of the general location will satisfy this requirement, but a map probably will be the result in most cases. Regardless of the requirements of any particular legislative act, the tendency may be to show all general plans on a map.

The degree of specificity used in the general plan is important. While the comprehensive plan should not be so broad as to become a collection of vague generalities, neither should it be so detailed as to be a picture of the ideal community at some future date. The future model approach ignores the need for flexibility and the inherent inadequacies of long-range planning, while the policy statement approach often provides no real standards for making individual land use decisions or for determining whether the plan is in fact being followed. It should be noted, however, that the detailed future model approach does not follow of necessity from utilization of a map. Some

83. See General Plan Guidelines.
85. The tendency to adopt a map is the result of certain advantages attributed to mapping. These are: (1) a map is easily understood; (2) it ensures that future land acquisition prices will be kept to the minimum; (3) it enables the community to plan with more certainty than otherwise; (4) it directs future growth. Kucirek & Beuscher, Wisconsin's Official Map Law: Its Current Popularity and Implications for Conveyancing and Planning, 1957 Wis. L. Rev. 176, 177.
86. A similar trend has developed in Hawaii. See Status Report at 9, 13.
87. See note 74 supra.
88. See id.
combination of realistic goals, objectives and standards could easily be integrated into a generalized map. For example, the map might be drawn in terms of density, with allocation of various uses indicated in accompanying statements of the objectives, principles and standards by which implementation regulations could be measured.

Another aspect of the planning process that must be given consideration is capital availability. The planning process is closely related to the capital improvements budget of the local community since support facilities, such as roads and sewers, must be provided to facilitate certain types of development. Planning critics have cited the absence of control over funds available for capital improvements as a reason for not requiring that land use regulations be consistent with the general plan. This criticism seems especially valid in areas where capital improvements are subject to local referenda or where federal funds play a major role. The result in these cases may be an inability to carry out portions of the general plan. Under a flexible approach to planning, however, the uncertainty of future funding should not be a serious concern. Changes in available funds and community priorities will indicate that a change should be made in the general plan as part of an on-going planning process.

The proposed Florida planning act requires that the economic feasibility of the plan be a consideration and that proposed funding sources and priority rankings of projects be indicated. This seems to be an implied recognition that the amount of future funding is uncertain and, therefore, that priorities must be established. This uncertainty, however, should not be viewed as a shortcoming of the planning process, but simply as one of the reasons for adopting a type of plan or planning process that is suitable for a constantly changing society.

Undoubtedly the discussion of the planning considerations outlined above, as well as others, will be intensified if the general plan attains legal status. Although according the general plan legal status will cause careful thought to be given to these considerations in order to determine what type of plan can best achieve the community's goals, it should be emphasized that these are planning considerations, not


90. The concept of requiring the developer to furnish the necessary support facilities if he wishes to develop his property prior to the time the support facilities provided by the community become adequate was upheld by the court in Golden v. Planning Bd., 285 N.E.2d 291, 296, 334 N.Y.S.2d 138, 144 (1972).


problems with the consistency requirement itself. Critics of imposing a consistency requirement should not be allowed successfully to raise these "problems" in defense of the current ad hoc approach to adoption of land use regulation.

V. CONCLUSION

Comprehensive, long-range community planning is needed in order to provide information that will enable local officials to make effective decisions concerning land use and to provide a standard against which the judiciary can measure the validity of challenged land use regulations. Experience has shown that, even where a general plan exists, often it will be ignored by both decision-makers and the judiciary if it has no legal status. This failure to consider the general plan has resulted in the ad hoc adoption of land use regulations. For this reason it is necessary not only that local communities plan, but also that all land use regulations be consistent with the resulting general plan. In addition, in order to prevent circumvention of the purpose of the plan, the general plan amendment process must take into account the same considerations that are involved in the adoption of the original plan.

Once the decision is made that land use regulations must be consistent with a general plan, attention will become focused on the meaning of "consistent with." A definition that requires an analysis of consistency in terms of the goals and objectives of the general plan would be flexible enough to provide local officials with the discretion necessary both to resolve future growth problems and to preserve the integrity of the general plan. This flexibility will be enhanced if careful consideration is given to the specificity of the formulated general plan and if the plan includes adequate provisions concerning timing, transition and funding.

The purpose of planning is not to inhibit growth but to control it. It has been recognized that Florida, like many other areas of the country, needs the kind of economic development that growth can bring. But growth need not involve sacrificing our shrinking natural resources. Effective planning may provide a method of attaining the proper balance between growth and the protection of our resources. Governor Reubin Askew recognized the value of planning when he stated that the proposed Florida planning act "would be of positive benefit in helping Florida face the future."

It has been stated that it is only a matter of time before some sort

94. Id.
of local planning bill is enacted by the Florida Legislature. Hopefully the next session of the Florida Legislature will result in the passage of a bill that will require local planning and land use regulations that are consistent with the resulting plan. This would be a positive step toward providing the people of Florida with the "thoughtful and thorough planning that should be characteristic of good government."  

KENNETH HART

96. Address by Florida Governor Reubin O'D. Askew, note 93 supra.