Using Land Use Planning Tools to Support Strategic Conservation

Overview

Local governments can leverage a variety of planning tools to preserve their community’s natural assets and quality of life. These tools range from setting specific preservation goals as part of a comprehensive planning process to working with developers to achieve those goals step by step.

Localities are granted authority by state legislatures to adopt and implement local planning policies, regulations, permit requirements and guidelines that shape the growth of their local community. In addition, some planning tools are specific to the Commonwealth of Virginia. More information about each of these tools is available in the detailed fact sheets that follow.

Traditional Land Use Planning Tools

- **Comprehensive planning** helps communities identify and plan for conservation-based goals.
- **Zoning** enables communities to protect valuable resources such as open space and agricultural land by classifying land for certain uses and specifying what is and is not allowable within these uses.
- **Subdivision regulation** empowers communities to specify minimum conservation requirements that must be met when developing land that is being subdivided.
- **Overlay/special use districts** offer communities a tool to target the protection of critical resources by adding more restrictions on top of basic zoning requirements in certain local areas.
- **Purchase/transfer of development rights** facilitates long-term protection of a communities’ critical natural areas by limiting future development on certain properties in exchange for cash payments or the right to more intensively develop on other local land better suited for development.

Using Home-Grown Tools for Conservation

- **Conditional zoning/proffers** are designed to offset impacts from development. For example, the owner of a new development that causes significantly more traffic may offer to build an additional road, a bus stop or bike lanes as a donation. This donation is known as a “proffer.”
- **Chesapeake Bay area local development requirements** are mandated for Virginia’s counties closest to the Chesapeake Bay and require stream buffer protection, among other measures. Counties and localities outside the coastal plain may voluntarily adopt these requirements.
Overview

The comprehensive plan (sometimes called a master plan or general plan) is adopted by cities, towns, and counties to describe priorities and policy direction for future growth, development, and conservation. This plan provides guidance on issues that affect the quality of life for local residents far into the future, such as planning for major infrastructure, public investment decisions, territorial annexation and zoning. All states have legislation that requires or enables local governments to adopt comprehensive plans.

Using the Comprehensive Plan to Support Strategic Conservation

Communities can use the comprehensive planning process to help identify and plan for conservation-based goals.

- The City of Charlottesville, Virginia outlined numerous actions in its comprehensive plan that can be taken to enhance or protect local natural resources and support related community quality of life goals. For example, the plan protects the current tree canopy of 32 percent and establishes a net goal to increase forest canopy to 40 percent, in order to create a more attractive city while also addressing global warming since trees sequester carbon and clean pollutants from the air.

- The City of Lincoln, Nebraska and surrounding Lancaster County carefully identified critical local and regional natural amenities and strategies for protection in their recent joint city-county comprehensive plan.
Special Considerations

- Comprehensive plans establish a vision and set of policies to guide land use decisions. For example, a plan may establish areas that should be protected for future water supplies, as well as areas that should be developed because they are close to urban areas or existing infrastructure.

- Comprehensive plans are more effective when the public is involved in plan development, local government is committed to implementing the plan, and the plan is updated to reflect current issues.

- Comprehensive plans are not typically legally binding, and only a few states require a locality’s zoning and land use changes to follow the existing comprehensive plan precisely.

Comprehensive Planning in Virginia

- All local governments are required to produce and adopt a comprehensive plan (section 15.2-2223). Plans must be updated every five years.

- Comprehensive plans also provide the basis for future zoning decisions.

- In Virginia, zoning must be “in accordance” with the comprehensive plan.

- The Transportation Act of 2007 enhanced requirements for comprehensive plans for counties meeting certain criteria, including a requirement to plan for higher density growth in select areas known as urban development areas.

Resources

- City of Charlottesville, Virginia’s Comprehensive Plan (www.charlottesville.org/Index.aspx?page=1745)

- City of Lincoln, Nebraska’s Comprehensive Plan (www.lincoln.ne.gov/city/plan/complan2030/index.htm)
Overview

Zoning is the fundamental tool that local governments use to regulate land use over time. A zoning map divides land areas within a government’s jurisdiction into different districts, and a zoning ordinance establishes regulations that apply within those districts. Zoning ordinances regulate:

- Permitted land uses.
- Development intensity or density.
- Dimensions and placement of particular uses.
- Parking and related development issues.

Using Zoning to Support Strategic Conservation

Effective use of zoning can help communities protect valuable natural resources such as open space and agricultural land by classifying land for certain uses and specifying what is and is not allowable within those uses.

- In 1999, Montgomery County passed a conservation district zoning ordinance to, among other things, “retain the open space areas of the county that are deemed non amenable to good development practices.”

- The zoning ordinance for Frederick County, Maryland includes a resource conservation zoning district that permits only low intensity development that is compatible with resource conservation goals, and an agricultural district that, among other goals, is intended to maintain “productive agricultural land and the character and quality of the rural environment…”

- In 2003, the City of Charlottesville amended its zoning ordinance to give city planners and developers additional tools to increase the residential density of the city. One such mechanism is the Planned Unit Development (PUD) zoning classification, which allows for putting buildings closer together to avoid sensitive areas such as steep slopes or wetlands.
Special Considerations

- Zoning regulations work best when they are regularly updated and consistent with the local comprehensive plan. Nearly half of all states require consistency between comprehensive plans and zoning regulations.

- Additional land uses, not normally permitted within a zoning district may be allowed through a special use permit. Special uses must already be allowed within the zoning district. For example, a residential zone may allow schools with a special use permit, or an agricultural area may allow a farm store with a special use permit. Local governments can build in special use permit requirements that help achieve conservation goals. For example, they may require that trail access be maintained or that more trees be retained to prevent stormwater runoff.

Zoning in Virginia

- Virginia provides authority for localities to establish zoning ordinances, however localities are not required to adopt zoning.

- Every city and nearly all towns and counties in Virginia use zoning to oversee land use and manage growth.

In the past, zoning was used primarily to separate noxious uses, such as keeping a slaughter house away from a residential neighborhood. Today, zoning has become more accepting of mixing appropriate uses to allow small businesses and offices within residential zones to reduce commutes and provide better neighborhood services.

Resources

- **Examples of Zoning Ordinances**
  - Fairfax County, VA: [www.fairfaxcounty.gov/dpz/zoningordinance/]
  - Montgomery County, MD: [gis.montva.com/departments/plan/legal/issues/tech/c1/c1ss.html]
  - Frederick County, MD: [www.co.frederick.md.us/index.asp?NID=1409#RC]

- **Municode.com**
  - Provides access to complete subdivision ordinances for localities across the country. [www.municode.com/resources/onlinelibrary.asp]
Overview

Subdivision regulations are used to direct how land is developed based on criteria such as lot sizes, block dimensions, streets and sidewalks, and infrastructure requirements. Typically, planning commissions review development plans for consistency with subdivision regulations. Reviews ensure that proposed developments meet community design guidelines, street and utility technical standards, and environmental requirements.

Using Subdivision Regulations to Support Strategic Conservation

Subdivision regulations can help communities specify minimum conservation requirements that must be met when subdividing land for development.

- A special use ordinance for the City of Charlottesville encourages low impact development strategies by rewarding developers with density bonuses when they add additional water infiltration using low impact development practices for developments less than two acres in size. The city gains water quality treatment for stormwater runoff, and the developer benefits through increased density and marketing their project as a “green” development.

- Subdivision regulations for Prince George’s County, Maryland require that new subdivisions “minimize the effects of development on land, streams and wetlands” to help meet water quality standards and to maintain and improve environmental quality of stream valleys.

Low impact stormwater management strategies such as rain gardens (left), and vegetated swales (right) filter pollutants from runoff and help manage stormwater flow.
Special Considerations

- If subdivision regulations have not been updated, they may not reflect current community goals or apply the latest technologies for site planning and stormwater management.

Subdivision Regulation in Virginia

- All local governments in Virginia are required to adopt a subdivision ordinance to ensure orderly and safe land development.
- Subdivision regulations are a key tool for implementing the comprehensive plan and supporting community goals such as rural preservation, watershed protection or infrastructure priorities.

The two graphics below highlight the difference between traditional (left) and clustered (right) subdivisions. In traditional plans, subdivisions parcel out land across a project area to maximize developable acreage. In a clustered plan, streams, wetlands and forest areas are commonly mapped and identified as conservation areas, and developable parcels are designed around the conservation areas. Cluster developments often allow for higher density housing on smaller parcels, an approach that yields higher economic returns while simultaneously conserving critical resources.

Resources

- Subdivision and Water Protection Ordinances for Charlottesville, VA (www.charlottesville.org/Index.aspx?page=1291)
Overlay Districts

Overview

Overlay zoning districts and special districts enable a municipality to promote or discourage development in certain areas by supplementing underlying zoning standards with additional requirements that can be designed to protect natural resources. Overlay zoning districts can be positioned over the standard zoning for an area in order to customize some of the regulations for that specific area.

Using Overlay Districts to Support Strategic Conservation

Overlay and special districts are commonly used to protect sensitive or unique areas, such as floodplains, agricultural resources, historic properties, aquifers, road corridors, downtowns, gateways, and scenic views.

- An Agricultural and Forestal District is a voluntary agreement between farmers and the local government to maintain land in farming for a set term. When a district is established, landowners agree not to convert their farm or forest to development for a period of between four and 10 years. In return, the locality offers lower land use taxation rates, protection from nuisance suits, and consideration of the district in local land-use planning. The state also agrees not to take actions or make infrastructure investments that will place increased pressure on landowners to convert land. It is possible to stipulate that no utility hook ups are allowed on utility lines passing through these districts.

- The County of York, Virginia passed its Watershed Management and Protection Area Overlay to protect watersheds near current or potential public water resources consistent with the objectives of the comprehensive plan.

- To help achieve the objectives of its comprehensive plan, the City of East Bethel, Minnesota established its Significant Natural Environmental Areas Overlay District in order to protect and rehabilitate the city’s natural resources that contribute to public health, welfare, and quality of life.
Special Considerations

- There may be limitations on the types of activities that overlay zones and special districts can legally restrict. In Virginia, for instance, historic districts specify the form and character of buildings but cannot control or specify other related aspects such as height and bulk.

Overlay Districts in Virginia

- Virginia law approves the use of at least two overlay districts for local governments: historic districts (section 15.2-2283) and entrance corridor districts (section 15.2-2306). Others can arguably be inferred from other provisions of state law and local governments’ general zoning powers and authority to protect the safety and general welfare of citizens. Please see the resources section for examples of additional forms of overlay districts.

Resources

- Natural Environmental Areas Overlay District: East Bethel, Minnesota (eastbethel.govoffice.com)

- Additional Virginia Overlay Districts:
  - Rural overlay district (Chesapeake) (www.chesapeake.va.us/services/depart/planning/pdf/design-guidelines/Chapter-IV.pdf)
  - Watershed management and overlay district (York County) (www.epa.gov/owow/nps/ordinance/documents/york_va.pdf)
  - Floodplain overlay district (Middleburg) (www.middleburg.org/town.pdf/ArticleXVII_PaayDistrict.pdf)

Virginia has approved the use of two overlay districts for local governments: historic districts and entrance corridor districts.
Overview

PDR, or purchase of development rights, occurs when a landowner willingly sells their property development rights to a land trust or government agency. In return for a cash payment, the landowner voluntarily signs a legally binding document, such as a conservation easement, that allows only certain uses of the land, such as farming.

TDR, or transfer of development rights, occurs when a property owner moves some or all of the rights to develop from one property to another property. To create a TDR program, a locality must establish a “sending zone” from which development rights are transferred and a “receiving zone” to which rights are given. Sending zones are often rural areas or land around reservoirs that the locality desires to protect, while receiving zones tend to be located in urban areas where there is existing infrastructure such as roads and schools.

Using TDRs and PDRs for Strategic Conservation

TDR and PDR programs can help communities facilitate long-term protection of critical natural resources. TDR and PDR are traditionally used to limit development in areas targeted for protection, such as farmland, open space, streams and buffer zones.

Several localities in Virginia have established local PDR programs including Albemarle County, Clarke County, James City County, and the City of Virginia Beach.
Special Considerations

- PDR programs need a stable source of funding to be most effective.
- PDR and TDR programs can benefit from ranking systems that rate land based on capacity to help meet local goals such as water protection, agricultural land conservation or scenic views. In Albemarle County, a sliding scale is used to provide greater financial compensation based on landowner incomes.
- For TDRs to work, the receiving zone must already have the capacity to accept new development or increased densities. If the receiving area is within an incorporated town or county, the local governing body must amend the zoning code to designate the receiving area. At the time of transfer of development rights, an instrument providing for the permanent preservation of the character of the sending property and restrictions on future development must be executed and recorded.

PDRs and TDRs in Virginia

- Localities and land trusts in Virginia have the authority to purchase development rights, accept donations, and hold them in perpetuity.
- In 2006, Virginia enabled localities to develop TDR ordinances. TDR programs are currently in place in Frederick and Arlington Counties.
- In 2007, an amendment was passed that authorizes the transfer of development rights between adjacent jurisdictions.
- Other recent changes allow landowners to “sell” their rights to a land bank for later “withdrawal” by a willing buyer - this system would make transactions easier over long time periods.

Resources

- A Model Purchase of Development Rights (PDR) Program For Virginia
  – Includes a discussion of what should be included in a local PDR program. ([www.vdacs.virginia.gov/pdffiles/pdf05.pdf](http://www.vdacs.virginia.gov/pdffiles/pdf05.pdf))

- “Conserving Rural Land” Virginia Department of Forestry
  – Provides background on both TDR and PDR as well as links to several related resources. ([www.vaplanning.org/pubs/index.cfm](http://www.vaplanning.org/pubs/index.cfm))
Overview

Conditional zoning permits a voluntary offer by a property owner, known as a proffer, during a rezoning process in order to mitigate the effects of a rezoning proposal. These voluntary offers might include cash, land, infrastructure, or other property conditions or restrictions. If the proffer is approved during the rezoning approval, the proffer is incorporated into the zoning ordinance associated with the affected property. Proffers are intended to help localities offset the impacts from development, such as new transportation or recreational needs.

Using Conditional Zoning/Proffers for Strategic Conservation

The use of proffers can support community conservation goals during a rezoning if developers offer conservation-related proffers such as stream buffers.

- Communities can facilitate the use of proffers for conservation goals if they clarify the importance of proffers for serving the public good and how the proffers will achieve this. They should also communicate that conservation-related proffers will enable developers to avoid certain development restrictions.

- Many localities have formally established the use of proffers as a growth management tool in their comprehensive plans and established guidelines for their use.
Special Considerations

- Proffers are only allowed if a property must be rezoned for development. The proffer must be substantively related to the impact from the development. For example, if a developer will be clearing forested land, additional tree planting elsewhere or close to the development may be offered. If more people will be using a local park, then a developer may proffer new trails or new facilities such as playgrounds.

- Localities, however, are not allowed to require proffers as part of rezonings. Proffers must be offered voluntarily. The locality may create a map or text that describes community needs such as parkland, trails or recreation areas.

- Communities with an established green infrastructure map can aid developers in selecting the most critical land to conserve through land donations or clustering development to avoid encroaching on conservation areas.

Resources

Chesapeake Bay Act Program

Overview

The Chesapeake Bay Act Program, created by the Bay Preservation Act of 1988, is a nonpoint source pollution program involving the Commonwealth of Virginia and local governments. The program’s local area development requirements are mandated for counties closest to the Chesapeake Bay and require stream buffer protection, among other measures. These regulations may also be adopted by localities outside of the Bay region to help reduce upstream sources of pollution since most of Virginia drains to the Chesapeake Bay.

Using the Bay Act Program for Strategic Conservation

The Bay Act Program is especially important for helping localities achieve conservation-related goals. In particular, the program gives localities additional authority to address water quality and use local land use planning tools to achieve water quality goals.

Chesapeake Bay Act Program in Virginia

- Only localities in the Tidewater area are required to participate, however any locality may adopt the Bay Act Program and use local land use planning tools to achieve water quality goals.
- Albemarle County and the City of Charlottesville adopted Bay Act provisions to protect forested buffer zones along major streams.

Resources

- Virginia’s Bay Act Program
  - Offers in-depth information about the Bay Act Program and how it applies to local governments. (www.dcr.virginia.gov/chesapeake_bay_local_assistance/abtprogram.shtml)

Localities in Virginia’s Chesapeake Bay Tidewater area can use Bay Act program tools to support community conservation and water quality protection goals.