Using Land Use Planning and Zoning to Maintain Minnesota's Forestland

Current status of land use planning and zoning in Minnesota.

To assess the effectiveness of local planning and zoning activities in addressing forest parcelization, it is critical to know the current status of planning and zoning in Minnesota. Since most forestland is located outside cities (incorporated areas), it is most relevant to focus on the units of local government that regulate unincorporated areas. These areas are governed by the counties and townships; however, counties are the dominant player when it comes to planning and zoning.

A background paper, available upon request, summarizes the current status of comprehensive plans, general zoning ordinances, and subdivision ordinances in Minnesota counties. Of the 85 counties with planning and zoning authority in Minnesota, the background paper includes comprehensive planning information for 76 counties. Of those, 73 (96%) have a comprehensive plan. For the status of general zoning, the background paper includes information for 79 counties. Of those, 68 (86%) exercise general zoning authority. Finally, for the status of subdivision regulations, the background paper includes information from 74 counties. Of the, 64 (86%) have subdivision regulations.

A majority of the county comprehensive plans in Minnesota are fairly recent. The counties adopted 49 of the 73 comprehensive plans since 2000, with 20 completed in the last 5 years. This indicates a fairly good level of recent planning activity by counties across the state. While it is often argued that a "lack of local plans" is a reason for the need to reform Minnesota's planning enabling laws, the information contained in the background paper indicates that the "lack of planning" may not necessarily be an issue. However, the information in the background paper does not assess the quality of these plans.

Minnesota's planning enabling laws include a very minimal definition of a "comprehensive plan." As a result, some of the plans listed in the background paper are very minimal and should in no way be considered "comprehensive." Other plans are a brief series of policy statements included in the county zoning ordinance, and some are a compilation of township plans. More legislative guidance about what constitutes a "comprehensive plan" would help improve plan quality.

A related issue is that the relationship between planning and implementing tools, like zoning, is not as strong as it could be. Minnesota courts recognize plans as a factor in deciding land use cases, but there is confusion about the strength of this relationship. Other states give local governments more clarity about the relationship between planning and zoning.

While both counties and townships can adopt comprehensive plans and adopt official controls such as zoning and subdivision ordinances, if a county has official controls, the township official controls must not be "inconsistent with or less restrictive" than the county's official controls. Minn. Stat. § 394.33. The county's ordinance therefore provides at least a uniform minimum standard for the county. Apparently no accurate data source currently exists as to which townships have adopted comprehensive plans/or official controls. The Minnesota Association of Townships does not have accurate current data. Adding to the difficulty of collecting this information is the fact that towns may exercise partial zoning setting standards for one district, for example, but relying on the county zoning ordinance for everything else. Nevertheless, a study conducted in 1991 by Minnesota Planning found 215 of Minnesota's 1786 organized townships had zoning ordinances. A 2007 survey by the Minnesota Association of County Planning and Zoning Administrators found that of the 64 counties responding to the survey, a total of 238 townships scattered across 31 counties enforced their own zoning ordinance. While the number of

townships exercising their own zoning appears to have increased only a small percentage of townships have adopted comprehensive plans or zoning ordinances.

Status of Planning and Zoning in Counties Where Forest Parcelization is an Issue

To help focus this evaluation of planning and zoning, a brief evidence-based assessment was done to identify where forestland parcelization may be an issue in northern and central Minnesota. The assessment included a review of public documents and personal and telephone interviews with planning and zoning officials in 13 counties (Aitkin, Becker, Beltrami, Carlton, Cass, Clearwater, Cook, Crow Wing, Hubbard, Itasca, Koochiching, Lake and St. Louis). Drivers of forest land parcelization were assumed to include: 1) county population growth at a rate that was greater than or equal to the 2000-2008 state population growth rate; and 2) high county-level demand for second homes. A county's degree of concern about forest parcelization was also assumed to reflect the importance of forest resources as a source of local employment and income.

The status of planning and land use regulation in the 13 counties where forest parcelization has been identified as an issue or a potential issue is summarized in Table 1. The table shows whether a county has a comprehensive plan, when that plan was last updated, and if that plan addresses forest land parcelization by documenting its extent and/or by setting policy. It also identifies whether a county has subdivision regulations and zoning regulations (beyond the shoreland zoning required by state law) and when those regulations were last updated. To indicate whether or not existing regulations might be effective in addressing forest land parcelization, Table 1 also notes whether a county uses very large lot zoning or has provisions permitting conservation subdivisions, the two most likely tools to have been adopted by rural counties.

Table 2 - Status of Planning and Land Use Regulation

	planning			regulation			
county	comp plan (CP)?	CP documents parcellation?	CP sets policy re parcellation?	subdvision regs?	zoning?	very large lots in working landscapes?	allows conservation subdivisions?
Aitken	2000	no	yes, indirectly - but not implemented	since 1969, most recent amendment 2008	since 1970, most recent amendment 2008	proposed in comp plan, but not implemented, minimum lot size is now 2.5	proposed in comp plan, may be possible as a PUD
Becker	2003	no - documents trends, but not document land divisions	only a vague policy on land retention	incorporated into zoning	updated in 2008	discussed, but never adopted	yes
Beltrami	2002	no	no	since at least 2002, last amendment 2005	no	no	plan encourages them, but no implementation
Carlton	since 1967 updated 2001	no	no	since at least 2005	since 1978, updated 2005	20 A in A-1 is largest	both sub regs and zoning, better written than some
Cass	2002?	no	no	since at least 2006, last amendment 2009	since at least 2005, last amendment 2009	no	added in 2008, there are no conservation subdivisions now
Clearwater	2000	no	no	2007	no	no	subdivision regulations "encourage" provision of open space, but include no requirements or
Cook	1997, most recent area plan 2005	present growth scenarios, but no documentation	not directly	2006	1998	no, 20 A in FAR-1 is largest, but see the "no services" zoning provision	in subdivision regulations
Crow Wing	2004	mentions it, no data	forest resources element addresses public lands only	2006	since 2005? most recent amendment 200	barely: 1:20 A for year-round du in Green Space ZD, but 1:2.5 for seasonal; 1:10 in	yes, subject to basic standards; there is a very modest density bonus in the RR 5 and RR 2.5
Hubbard	2005	no	no	since 2006, most recent amendment 2009	no	plan recommends larger lot sizes in rural activity areas, but with no specifics	no
Itasca	2007	STILL NEED INFO	yes	since at least 1997, amendments pending	2009	discussed but not adopted	yes
Koochiching	2001	no	no	since 1981	since 1974		
Lake	2006	no	no	since 1978, most recent amendment 2006	since at least 2006	no	yes, but only 25% open required
Lake of the Woods							
Mille Lacs							
Pine							
St. Louis	compilation of town and area plans, dates vary	no	generic retain land base policy in some township plans, does not specfiically address parcellation	since 1993, most recent amendment	since 1993, most recent amendment 200	NEED MORE INFO	subdivision regs do, via PUD?

What Are These Minnesota Counties Doing to Address Forest Parcelization?

Forest parcelization is not a prime motivating factor for most counties, but many county plans do address the costs of infrastructure provision in remote areas and rural character.

Several counties have introduced the possibility of conservation subdivisions into their plans and regulations. This could help protect large (or at least larger) tracts of forest land and, with proper design, mitigate the potential for conflict with forest management practices on adjacent lands. Unfortunately, exemptions from the subdivision regulations that exist in every county provide an incentive to landowners to avoid platting land divisions or to design and develop conservation subdivisions.

The conservation subdivision provisions in the county ordinances contain only modest (if any) incentives. The counties set a low bar for open space provision, buffering, and other features that would make conservation subdivisions attractive. They typically require that only 50% of the parcel to be conserved as open space and impose minimal design standards. National practice typically requires 70-90% percent open space in a conservation subdivision. More importantly, national practice generally imposes site planning and architectural design standards that ensure a quality experience for those who purchase lots or homes in a conservation subdivision. The anecdotal evidence that conservation subdivisions are unattractive is just as likely to reflect a failure to make them sufficiently attractive as it is to reflect an absence of potential buyers.

A few counties have had serious discussions of increasing minimum lot sizes to reduce the potential for development in forested areas. Some counties and townships have even adopted larger minimum lot sizes in some zoning districts, but these range only up to 20 acres and do not appear to be large enough to consistently conserve production units or protect them from land use conflict.

All of the counties where interviews were done manage significant tracts of public land. Most of these counties are attempting to “block up” the lands they manage to maximize both conservation values and economic returns. This process is a slow one, but to the extent the local land commissioners are successful, their acquisitions and exchanges do reduce the potential for future forest parcelization.

Most, though not all, of the counties where interviews were conducted have the staff resources and organization that would be needed to administer measures to combat forest land parcelization. Professional planners are rare in rural Minnesota, but the paraprofessional staffs in rural forested counties are mostly aware of the issues and could do a credible job of administering additional planning tools if given a mandate to do so.

Why Doesn’t Forest Land Parcelization Motivate More Local Action?

Whether forestland parcelization is an issue varies from county to county, but all of people interviewed know that forest land parcelization *could* be an issue in their county. County officials are well aware of local real estate trends, including the disposition of formerly corporate timberlands, but none of them have been motivated to systematically document the past and future consequences of forest land parcelization in their plans, nor have any of them taken potentially effective regulatory actions to suppress forest land parcelization or mitigate its consequences. Even the documentation of the local economic importance of forest resources in local comprehensive plans is spotty.

This is, at least in part, because population and land use change have been relatively slow in rural Minnesota, and it appears that there is a substantial supply of available existing lots in most places. Permitting records show that these counties did experience a real estate "boom" earlier in this decade, but current events (which definitely are reflected in the counties' permitting activities) only reinforce the perception that the long-term trend is one of modest, incremental change. Further, almost all development in these counties has been on lakeshores, not out in the woods. Because lakeshore development is regulated by state-mandated shoreland zoning, it may well seem to local officials that no additional action is needed. Some counties have also focused more on the conservation of farmland. Cass County, for example, has a "right-to-farm" provision in its land use regulations, but does not extend that protection to forestland.

The most commonly reported reason for inaction on forestland parcelization is that the extensive tracts of public lands in these counties provide sufficient open space, eliminating any need to protect private lands other than shorelands. This argument is bolstered by the counties' ability to use the lands they manage to help reduce forest land parcelization.

Vulnerability of Forestland to Parcelization

The interviews and document reviews show that Minnesota counties are highly vulnerable to the rapid parcelization of their forest landscapes, *assuming* there is future demand for extensive development. Given the size of northern Minnesota and the extent of public lands, this vulnerability is limited, but the counties' current planning and zoning programs will not prevent either the continuing incremental parcelization of forest landscapes (which county regulations implicitly encourage) or the loss of resource values that could be caused by a single large project. This is not to say that the counties are "asleep at the switch." Quality varies, but the counties have capabilities and programs on which a planning system that is less vulnerable to parcelization could be built.

Alternative Approaches for Addressing Parcelization through Land Use Planning and Zoning

What is the State Role in Land Use Planning and Zoning?

Beginning around the turn of the last century, all states adopted enabling acts that authorized land use planning and implementation by local governments. Over time many states have assumed a greater role in land use planning, particularly planning for natural resource protection and infrastructure. The American Planning Association has identified six main approaches to land use planning at the state level. None of these approaches exist in a "pure" form, but they provide a basis for understanding and discussing the options Minnesota might consider:

1. ***State planning.*** The state prepares a statewide land-use plan and implements that plan with zoning. Hawaii comes closest to this approach because the state directly zones some land. Hawaii is unique, however, because the state is comprised of only five counties and has no other form of local government.

2. ***State permitting.*** The state requires permits for certain types of development, with a state agency reviewing original applications and approving or denying permits. Many states, including Minnesota, require permits for very specific types of development, but Vermont has used this approach for most development since the enactment of Act 250 in 1970.

3. ***State-mandated planning.*** The state sets mandatory standards for those aspects of land use that involve state interests. Local governments are required to prepare plans consistent with those

standards and the local plans are reviewed by a state agency to ensure compliance. The agency may impose sanctions for failure to comply. Local regulations must be consistent with the approved local plans. Florida, Oregon, and Washington are identified this approach, though there are significant differences in their programs.

4. State-promoted planning. The state sets guidelines for local governments to meet in their planning and offers incentives for compliance. A state agency reviews local plans for compliance. Maine and Georgia are identified with this approach. Maine's program requires local governments to address forest resources in some detail. Georgia makes funding from several major state programs--community and economic development, natural resources, and water and sewer facilities--contingent upon compliance with comprehensive planning requirements.

5. State review (the "mini-NEPA" system). The state requires environmental impact reports for the adoption of local general plans (which would be called comprehensive plans in Minnesota) and for local decisions on many types of development. This imposes a second tier or level of review on local plans and decisions. California has been identified with this approach since the California Environmental Quality Act (CEQA) was adopted in 1970.

6. State enabling. The state authorizes local governments to plan and regulate land use, but there is no review or approval of local plans by the state. States that do not fall into one of the categories explained above are usually included here. The "state enabling" approach includes considerable variation in what states allow local governments to do. Idaho, for example, provides statutory guidance for what local governments need to include in a comprehensive plan, requires that local governments adopt a comprehensive plan, enables local governments to use a variety of implementation tools, and requires that local land use decisions be generally (the Idaho courts have not insisted on precision) consistent with the local comprehensive plan. Until 1999 Wisconsin, did not include any guidance for what to include in a comprehensive plan, did not encourage comprehensive planning, and did not require that zoning and other implementation tools be consistent with a local comprehensive plan prior to 1999. It now does all those things, but still does not authorize local governments to use a variety of contemporary planning tools. Several other states, including Kansas, Michigan, and North Carolina, have also made improvements to confusing and antiquated enabling legislation.

Minnesota's Hybrid Approach.

One would probably categorize Minnesota's approach to local planning as 'state enabling,' but Minnesota, like most other states, uses other approaches as well. The Metropolitan Land Planning Act, adopted in 1976, is an example of 'state-mandated planning.' It requires comprehensive planning by local governments in the seven-county Minneapolis-St. Paul area, defines what must be in a local comprehensive plan, and requires local plans to be consistent with regional policies developed by the Metropolitan Council. The Council reviews local comprehensive plans and ordinances for consistency with regional policy and has the authority to modify local plans if they conflict. The use of official controls (e.g., zoning, subdivision, official mapping) and fiscal devices (e.g., tax increment financing) by local governments must not conflict with local comprehensive plans or regional policy. Under the Metropolitan Significance Law, the Council also has the authority to review and temporarily suspend developments of regional significance.

An example of 'state-promoted planning' in Minnesota is the Metropolitan Agricultural Preserves Program, which is also limited to the seven-county metropolitan area. This program establishes incentives for local governments and farmers to plan for and protect agricultural lands. The Metropolitan Council administers this program, reviewing plans for compliance with a one-unit per forty acres density standard.

In addition to laws limited to the metropolitan area, Minnesota has a number of statewide programs that could be classified as 'state planning,' 'state permitting,' 'state mandated,' or 'state promoted.' Most of these relate to water resources and, due to the prevalence of lakes, rivers, and wetlands have a very significant reach in terms of the amount of land covered. A partial list of these laws follows.

- The Public Waters Work Permit Program requires a permit from the Department of Natural Resources (DNR) for filling, excavation, and other construction below the ordinary high water mark.

- The Wetlands Conservation Act relies on a partnership between the Board of Water and Soil Resources, local conversation districts, and local governments to protect wetlands. The Shoreland Management Act requires local governments to adopt and enforce zoning regulations promulgated by the DNR to protect shorelands.

- The Floodplain Management Act requires counties and cities to adopt and enforce floodplain management ordinances that comply with federal and state standards. The DNR reviews applications for conditional uses and variances before local governments act on them.

- The Minnesota State Wild and Scenic Rivers and Critical Areas acts require local governments to adopt and enforce state-devised management plans for designated reaches of the Mississippi, St. Croix, and other rivers.

- Finally, the Comprehensive Local Water Management Act gives funding priority to local governments that have prepared a comprehensive water management plan.

In addition to these water resource related programs, Minnesota has laws that address general environmental issues, including the Minnesota Environmental Policy Act. While not as strong as CEQA, this act does apply to state agency actions as well as a limited set of local planning issues, giving Minnesota a limited "mini-NEPA" approach. There is also the Minnesota Environmental Rights Act, a unique law that gives citizens standing to challenge actions that harm the environment. As these laws reflect, planning in Minnesota, (as in most states) is a hybrid of approaches. A critical function of planning is to try to coordinate all these various laws and policies.

Key Findings from Other States that May Apply to Minnesota.

Several states require local governments to address forestry issues in their plans and, in some cases, regulations. This section provides a summary of their effectiveness in addressing forest land parcelization, and potential lessons for Minnesota.

Vermont. Vermont's system of direct state land use regulation – popularly known as Act 250 - was a

response to the impacts of the exurban development, including extensive land parcelization, that followed the extension of the Interstate Highway System into Vermont in the mid-1960s. The Act was drafted by a distinguished citizen's commission and adopted in 1970.

A review of Vermont's Act 250 indicates that state land use regulation can protect important resources, including forest lands, from the adverse impacts of major developments. This is especially important in places like Vermont and rural Minnesota, where local governments have limited resources and may have limited political will for effective land use planning and regulation.

The effectiveness of state land use regulation, however, can be seriously compromised by exemptions that permit extensive incremental development, and has been so compromised in Vermont. Vermont's experience also demonstrates the importance of "details" like definitions. An overbroad definition of agricultural soils has actually encouraged exurban sprawl in Vermont's growing communities.

Vermont's experience also makes it clear that state land use regulations will be more effective if they have the support of a well-funded purchase of development rights program that offers landowners an alternative to development. Minnesota's Outdoor Heritage Fund may help fill this need.

In addition, Vermont illustrates the importance of having clear, complete enabling authority for local planning and regulation. Vermont municipalities can confidently adopt any reasonable regulatory strategy, so long as that strategy is consistent with the local comprehensive plan. The state has also provided financial and technical support for community planning.

Finally, Vermont demonstrates that a high level of state involvement in land use issues is not inconsistent with good local planning. Vermont's progressive communities can and do require developers to exceed the requirements of Act 250.

Wisconsin. In 1999, Republican Governor Tommy Thompson signed significant changes to Wisconsin's local government planning enabling statutes into law. These changes, probably most accurately referred to as the "Comprehensive Planning Law," ushered in a new era of planning. The heart of the law is those parts that deal with comprehensive planning. These are the parts of the law that were built by the consensus process involving many stakeholders. The 1999 law made the following changes to Wisconsin's planning enabling laws: provided the state with its first definition of a comprehensive plan (the nine elements defined in statutes: Issues and Opportunities; Housing; Transportation; Utilities and Community Facilities; Agricultural, Natural, and Cultural Resources [including forest resources]; Economic Development; Intergovernmental Cooperation; Land Use; and Implementation). This is a definition that applies to all types of local government in Wisconsin (cities, villages, towns, counties, and regional planning commissions) so there is a common terminology to aid communication and cooperation among local governments. The definition also tries to get communities thinking about the complex relationships of things like jobs, housing, and transportation and moving beyond an overly simplistic focus on land use. The 1999 changes also require citizen participation throughout the planning process and adoption of plans by the governing body, things that were not required under prior Wisconsin law.

The 1999 law established a grant program making approximately $2 million dollars available every year for local comprehensive planning. Finally, the law required that if a local government is going to have zoning, subdivision, or official mapping ordinances, those ordinances must be made consistent with the local government's comprehensive plan. The requirement for consistency took effect on January 1, 2010. This gave local governments 10 years to prepare comprehensive plans to be able to comply with the consistency requirement.

An early assessment of the results of this legislation indicates that as of April 2008, 73% of Wisconsin local governments had adopted or were in the process of preparing a comprehensive plan, a considerable milestone given that ten years earlier a study had found that only about 29% of Wisconsin's local governments had a document that could be called a land use plan and far fewer had anything that could be called a comprehensive plan. Most people who are familiar with pre and post 1999 planning efforts in Wisconsin firmly agree that the quality of local planning has significantly improved. Due to the requirement for citizen participation throughout the comprehensive planning process, more people have been involved with local planning processes than in the past. The requirement that the governing body adopt the comprehensive plan has also brought comprehensive planning into the mainstream of the political process. The 1999 changes have also helped create a culture of planning. Communities that adopted their comprehensive plans five or six years ago are recognizing the need to refine their plans to address contemporary issues and are adding elements to address sustainability, for example, or are creating more sophisticated economic development elements of their comprehensive plans to address the impact of the current economic challenges.

As a result of the consistency requirement, hundreds of Wisconsin communities have updated their zoning and other local ordinances and programs. Many communities had ordinances that were written in the 1960s. As communities update their ordinances, many are incorporating contemporary planning concepts like new urbanism and conservation subdivisions. A few communities have created purchase of development rights or transfer of development rights programs.

While there are many examples of improvements in local planning in Wisconsin, not every community in the state has been receptive to the notion of planning for the future. Some communities have refused to adopt a comprehensive plan even though they have a zoning ordinance. There is considerable opposition to planning in these communities that have not adopted plans. Many of the non-planning communities are located in the forested parts of the state.

It is too early to fully assess the law's impact on the development patterns in Wisconsin. Planning is an incremental process and change happens over the long term. While some changes may be discernible over the course of the next few years as communities begin to implement their plans after January 1, 2010, many of the impacts will not be fully appreciated until probably ten or more years into the future.

Oregon. Oregon's land use program, which was adopted in 1973, revolves around 19 statewide goals. Several are relevant to forest concerns. For example, Goal 7, Areas Subject to Natural Hazards, requires local governments to address wildfire hazards. Goal 4, which addresses Forest Lands, begins:

> *To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.*

The specific Goal 4 requirements local governments must meet are adopted as administrative rules. These voluminous rules require counties to inventory forest lands and place forest lands that are not within urban growth boundaries in a zoning district that strictly limits subdivision (generally new parcels must be at least 80 acres in size and 160 acres is required to obtain a permit for a forest dwelling) and restricts the uses permitted to those that are arguably compatible with timber production and harvest. In terms of forest and farm lands, Oregon dictates even the details of local plans and zoning. Oregon's land use program has succeeded in protecting farm and forest lands from conversion to other uses.

According to the *Final Report to the 2009 Oregon Legislature,* prepared by the Oregon Task Force on Land Use Planning, one percent of wildland forests were converted to other uses from 1975 to 2001. To improve the Oregon land use program as it relates to forest resources, the report recommends allowing for more flexibility in the classification of forest land, authorizing the transfer and/or purchase of development rights for farm and forest lands, and the development of a statewide land trust with incentives for landowner participation in land preservation efforts.

The program's effectiveness is also measured by the numerous challenges–both in the legislature and at the ballot box–it has prompted from rural landowners and developers. One of these, Measure 37, finally passed in 2004. Measure 37 did not repeal the land use program. It simply allowed landowners to file claims for reductions in property values due to land use regulations forcing cities and counties to waive regulations when they could not pay the claims. Oregon voters quickly decided that Measure 37 had unacceptable impacts and adopted Measure 49 in 2007. Measure 49 provided for the settlement of Measure 37 claims and limited new claims. In the end, the essence of Oregon's land use program was preserved while landowners may have gained some flexibility.

Washington. Washington's requirements for local planning include the following goal for forest lands:

> *(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses (RCW 36.70A.020).*

The Growth Management Act (GMA), adopted in 1990, and administrative code provide more guidance for local planning for forest lands, including an overarching requirement to conserve resource lands and critical areas:

> *(a) The county legislative authority shall adopt a county-wide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forest lands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forest lands, and mineral resource lands and protecting these designated critical areas … (RCW 36.70A.040(3)).*

The GMA also provides guidance including how to classify such lands and requires counties and cities to adopt regulations which:

> *… assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals (from RCW 36.70A.060(1)(a)).*

RCW 36.70A.060(1)(b) requires that all plats and permits approved within 500 feet of designated resource lands bear a notice that the subject property may be affected by agricultural, forest management, or mining activities. Forest lands are defined as follows:

> *(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on*

land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses. (from RCW 36.70.A.030).

A 2007 report to the Washington Legislature entitled *The Future of Washington's Forests and Forestry Industries* indicates that the conversion of forest lands to other uses is still a concern, as does a 2008 report to the legislature entitled *Meeting the Growth Management Challenge in Growing Communities: The Washington State Growth Management Act Effectiveness Report*. The latter report identifies the shortage of local tools for addressing the issue and discusses several current legislative efforts to provide local governments with additional tools to address forest parcelization.

While Washington imposes less stringent guidance on its local governments than Oregon, Washington voters faced a ballot measure similar to Oregon's Measure 37 in 2006. It was defeated, suggesting that the local plans and regulations resulting from the Growth Management Act are not perceived as unfair by a majority of voters.

Maine. Maine does not require local governments to prepare plans or regulate land use, but it does make many types of state funding contingent on the adoption of a comprehensive plan. The legislature lists one purpose of planning in Maine as being to "safeguard" agricultural and forest resources. The statutes go on to require that comprehensive plans include an inventory of forest resources and:

F. Ensure the protection of agricultural and forest resources. Each municipality or multimunicipal region shall discourage new development that is incompatible with uses related to the agricultural and forest industries; (§ 4326.3-A)

The Maine State Planning Office (SPO) web page includes a checklist of comprehensive plan review criteria, including agricultural and forest resources criteria. In addition to that checklist, the SPO publishes *Comprehensive Planning: A Manual for Maine Communities*, which includes a helpful chapter on agricultural and forest resources.

California. California also requires local governments to address forest resources. In addition, California and several other states require or encourage local governments to address wildfire hazards. California's *General Plan Guidelines* ask cities and counties to consider wildfire in at least three plan elements, including Housing, Open Space, and Safety. Wildfire hazards also must be addressed, where relevant, in the environmental impact report that is required for adoption of a local general plan. In addition to California, Colorado, Montana, and Oregon all provide models of how wildfire protection planning can be integrated into local planning and regulations that are worth considering in Minnesota (refer to Appendix # for more information).

Minnesota's past efforts to improve local land use planning and zoning.

A brief summary of some of the land use law modernization efforts undertaken in Minnesota over the past ninety-five years is provided in additional background documents. County and township zoning were both authorized by the legislature in 1939. In 1959, county planning and zoning authority was expanded considerably with the passage of the County Planning Act, which provides the current framework for county planning and zoning. The Municipal Planning Act, the basic planning and zoning enabling law followed by cities today, was passed by the legislature in 1965. Since the 1970s, several

studies have cited the need to update Minnesota's local planning enabling laws because of the inadequacy of local planning and implementation efforts. While legislators have introduced a number of significant land use enabling law reform bills, the bills have not passed. Although a few targeted bills have passed, making some minor improvements, significant reform remains elusive.

During the 1980s and 1990s, several state initiatives focused on land use reform. In 1991, then Governor Arne Carlson began the *Minnesota Milestones* project to involve the public in setting goals for Minnesota's future. Through the work of Minnesota Planning, the project established long-term goals for the state and developed indicators for measuring the state's progress toward achieving those goals.

In 1993, the Minnesota Environmental Quality Board and Minnesota Planning completed a growth management study entitled *A Question of Balance: Managing Growth and the Environment.* The study concluded that Minnesota's state and local framework for planning and managing land use change was fragmented and uncoordinated. In 1993, Governor Carlson also launched the Minnesota Sustainable Development Initiative. Coordinated by the Minnesota Environmental Quality Board and Minnesota Planning, this Initiative continued to focus on planning law reform. In 1994, the Initiative published *Communities by Design: A Process for Building a Sustainable Future.* That report identified five key issue areas that limit Minnesota's ability to achieve sustainable communities:

●Lack of statewide policies and goals;

●Lack of local plans;

●Inadequate plans;

●Interjurisdictional conflicts; and

●Inconsistent implementation and enforcement

In 1994, a bill relating to sustainable development and statewide comprehensive land use planning was introduced in the Legislature (H.F. 2126). The bill called for the creation of a planning program similar to the program in the State of Oregon--state goals developed and coordinated by a state agency, mandated local comprehensive planning, state review of local comprehensive plans, and creation of a new chapter in the Minnesota statutes related to sustainable development. The bill, which was not a product of the Minnesota Sustainable Development Initiative, did not pass.

The Minnesota Sustainable Development Initiative continued to produce reports into the late 1990s related to planning and needed reforms. The initiative clearly increased awareness about sustainability in Minnesota, but no significant land use planning legislative changes resulted from the work of the Initiative.

In 1997, the legislature expressly enabled the use of transfer of development rights and purchase of development rights by cities, townships, and counties. That year the legislature also passed the Community Based Planning Act, which attempted to create a statewide framework for planning; provided a planning grant program and state technical assistance for local governments to plan cooperatively under the law; established 11 community-based planning goals; and provided for state review of local plans for consistency with the goals. The Act did not replace the existing local planning enabling laws. The law, however, did not have widespread support and sections of the law (including the 11 goals, the funding, and the process for state review of community-based plans) were repealed in 2001.

In 1999, the legislature passed a law directing Minnesota Planning to prepare options for a state development strategy that would guide growth for the next 20 years. In 2000, Minnesota Planning published *Minnesota by Design: Options for a State Development Strategy.* The report evaluated state planning laws in other states and included a series of recommendations for land use reform in Minnesota ranging from technical assistance provide by the state to requiring local comprehensive planning consistent with state goals and planning.

From 1999-2002, then Governor Jesse Ventura pursued a number of "Smart Growth" initiatives including a number of planning related issues, although the reform of the state's planning and zoning enabling laws was not central to those efforts.

While significant local planning and zoning land use law modernization efforts have not come to fruition in Minnesota, various minor amendments have been made to the planning and zoning enabling laws over the past decade. For example, in 2008, the Minnesota Legislature passed the *President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open space Land.* 2008 Minn. Laws ch. 297, art. 1, §§ 56 – 61. This law requires that certain cities, townships, and counties consider adopting comprehensive plans and ordinances that include "goals and objectives for the preservation of agricultural, forest, wildlife, and open space land, and minimizing development in sensitive shoreland areas." Minn Stat. § 394.231 (emphasis added).

Minnesota's ongoing efforts to improve local land use planning and zoning. Various interest groups continue to push for legislation to modernize local land use planning and zoning. For example, a coalition of environmental groups are advocating for land use reform related to global climate change. The land use planning reform components of a bill supported by these groups did not advance. It is anticipated that this coalition will continue to work on these land use reform efforts.

Another bill, H.F. 1035/S.F. 913, introduced in 2009, makes the express legislative finding "that land use reform is a key strategy in the effort to reduce the state's emission of greenhouse gases." The bill proposes limiting development densities in the unincorporated areas of the state to one residential unit per 40 acres and promotes the use of cluster development to avoid fragmentation of farmland, woodlands, and "other significant stands of vegetation." The bill is part of the legislative agenda of the Coalition of Greater Minnesota Cities whose primary concern relates to annexation. The Minnesota Association of Townships is opposed to the bill.

There is also current interest in more general planning enabling law reform among a number of other groups but no specific bill has been introduced. Needless to say, land use issues remain a significant public policy issue for the Minnesota Legislature. It is critical that forest policy interests are represented in these ongoing legislative developments.

Posting Date: 12 May 2010