

07-105 **STATE PLANNING OFFICE** (*obsolete; the rule chapter has been reassigned to 01 - Department of Agriculture, Conservation and Forestry*)

Chapter 205: SUBMISSION AND REVIEW OF MUNICIPAL GROWTH MANAGEMENT PROGRAMS FOR A CERTIFICATE OF CONSISTENCY

SUMMARY: This chapter outlines the procedural submittal requirements and establishes the criteria used by the State Planning Office during the review of municipal growth management programs for an award of a Certificate of Consistency with the goals and guidelines of the Maine's *Growth Management Act* (30-A M.R.S.A. §4312 *et seq.*).

Section 1. Purpose

This rule has two purposes:

1. The rule establishes the procedural requirements for the voluntary submissions of municipal growth management programs to the State Planning Office (hereinafter "the Office") for review for an award of a certificate of consistency pursuant to the requirements of the *Growth Management Act* (30-A MRSA §4312 *et seq.*), hereinafter "the Act."
2. The rule establishes the criteria the Office uses to review municipal growth management programs submitted by municipalities that seek a certificate of consistency under the Act. The objective of the review is to determine whether a municipality's growth management program, in its totality, is consistent with the Act.

Section 2. Definitions

The following definitions shall apply in this chapter unless the context otherwise requires:

- A. **Act:** "Act" means the Comprehensive Planning and Land Use Regulation Act (30-A MRSA §4312 *et seq.*).
- B. **Capital Improvement Program (CIP):** "Capital Improvement Program" means a document or interrelated documents developed by a municipality that includes:
 - a) an assessment of all public facilities and services, such as, but not limited to, transit facilities, bike paths, roads, sewers, schools (insofar as the municipality is solely responsible for these costs - see note below), parks and open space, and fire and police services;
 - b) a multi-year plan for the maintenance, replacement and expansion of existing public facilities or the construction of such new facilities as are required to meet planned growth and economic development, including projections of when and where such facilities will be required; and

- c) an assessment of the anticipated costs for maintenance, replacement, expansion, or construction of public facilities, an identification of revenue sources available to meet these costs, recommendations for meeting costs required to implement the program, and an implementation schedule.

The Capital Improvement Program, as compared to the preliminary Capital Investment Plan, is a more detailed working document sufficient for annual budgeting for the needed capital improvements.

[NOTE: The Office recognizes that a municipality, when contributing to a School Administrative District (SAD) together with several other neighboring communities, may not have control over the capital improvements programming for those facilities. Nevertheless, the Office does require a municipality to reasonably anticipate the possibilities during the planning period in its own capital improvements programming, and then (to the extent that they have input into the SAD budget) address cooperation with the SAD.]

- C. **Capital Investment Plan (CInP):** "Capital Investment Plan" means a plan which establishes a framework for programming and financing those new or expanded public service facilities that are needed to accommodate projected growth and development and that constitute major capital improvements for which the municipality has fiscal responsibility. The CInP should set forth general funding priorities among the needed municipal capital improvements, and must also identify potential funding sources and financing mechanisms.
- D. **Certificate of Consistency:** "Certificate of consistency" or the terms "certification," "certified," "certified Growth Management Program" or "certified program" used as its equivalent, means a certificate issued by the Office to a municipality finding that its growth management program is consistent with the goals and guidelines of the Act.
- E. **Comprehensive Plan:** "Comprehensive Plan" means a document or interrelated documents developed by a municipality in accordance with the procedural provisions of §4324 of the Act and with the intent of complying with the substantive requirements of §4326, sub-§1 to sub-§4 of the Act. As used in this rule, a "comprehensive plan" or "plan" shall mean the adopted municipal comprehensive plan which has been reviewed and commented on by the Office in accordance with the Act, and which is designated by the submitting municipality as the comprehensive plan upon which its zoning ordinance and other elements of its growth management program are based.
- F. **Consistent comprehensive plan:** "Consistent comprehensive plan" means a municipal comprehensive plan reviewed by the Office and determined by the Office to be consistent with the Act and the guidelines and standards established in Chapter 202, the Comprehensive Plan Review Criteria Rule.
- G. **Consistent zoning ordinance:** "Consistent zoning ordinance" means a municipal zoning ordinance reviewed by the Office and determined by the Office to be consistent with the Act and the guidelines and standards established in Chapter 210, the Zoning Ordinance Review Criteria Rule.

- H. **Growth management program:** "Growth management program" means a comprehensive plan and all implementation measures, including zoning ordinances and other regulatory and non-regulatory measures, adopted to implement the plan as described in §4326, subsections 1 to 5 of the Act.
- I. **Subdivision Ordinance:** "Subdivision ordinance" means a land use ordinance of general applicability in a municipality which establishes the requirements for regulating subdivisions as defined in 30-A M.R.S.A. §4401(4) and is enacted in accordance with and is consistent with the provisions of 30-A M.R.S.A. §§4401-4407. Within the context of this rule, a subdivision regulation adopted by the municipal reviewing authority of a municipality has the same meaning as a subdivision ordinance.
- J. **Zoning ordinance:** "Zoning ordinance" means a new or revised land use ordinance of general applicability in a municipality which:
1. divides a municipality into districts and that prescribes and reasonably applies different land uses and/or regulations in each district, and
 2. has been developed by the municipality in accordance with the procedural provisions of §4324 of the Act, and with the intent of complying with the substantive requirements of §4326 of the Act and any rules pursuant thereto.

[NOTE: A municipality's program may use alternative regulatory techniques to encourage orderly growth and development and implement a municipality's designation of growth and rural areas and other relevant goals and policies in its comprehensive plan.]

Section 3. Procedural Requirements for Growth Management Program Submission for a Certificate of Consistency

A. Receiving Growth Management Programs

A growth management program submitted to the Office will be considered "received" for the purposes of determining the 90-day review period established by §4348, sub-§1, paragraph B of the Act, when the Office has received a submission that is complete and complies with the procedural requirements of this section.

B. Requirements for Submitting Growth Management Programs

In order to be considered for a certificate of consistency for its local growth management program, a municipality must submit the following growth management program elements to the Office for review:

1. A consistent comprehensive plan that has been adopted by the municipal legislative body (1 copy).
2. A consistent zoning ordinance that has been adopted by the municipal legislative body (1 copy).
3. A capital improvement program that has been reviewed by the municipal legislative body as part of the official budgetary process (1 copy).

4. A report in the format provided by the Office concerning the status of the municipality's implementation program as defined in its comprehensive plan. The report shall include a listing of implementation measures contained in the comprehensive plan that are scheduled for completion as of the date of the municipality's request for a certificate of consistency. These measures may include local ordinances regulating land use, but are not limited to:
 - a.) subdivision ordinance,
 - b.) shoreland zoning ordinance,
 - c.) floodplain management ordinance, and
 - d.) site plan review ordinance.

The Office may request the municipality to submit for review these and other local ordinances deemed by the Office to be related to, and a significant component of, the municipality's growth management program as identified in its comprehensive plan.

5. Proof of compliance with the Municipal Code Enforcement Officer Certification requirements (30-A M.R.S.A. §4451(5)).
6. A completed growth management program submission form - to be supplied by the Office. The form shall be developed by the Office and sent to the municipality to fill in and return with the following information:
 - a) name of contact person of municipality,
 - b) location of copies of the growth management program and the times when the growth management program is available for public review, and
 - c) certification by the chief elected official that the submission is complete.

[NOTE: It is expected that each municipality's local growth management program will contain a variety of measures, both regulatory and non-regulatory, that the municipality has chosen to implement its comprehensive plan. Regulatory measures may include, but are not limited to, aquifer protection, site plan review and impact fee ordinances. Examples of non-regulatory measures include downtown redevelopment and public facilities improvements to attract development to growth areas, and establishment of a local land trust to acquire important open space areas.]

If certain measures called for in the comprehensive plan's implementation program are incomplete at the time of submission to the Office, they should be so indicated at the time of submission, along with an explanation as to the cause and nature for the delay, a schedule for their completion, and a statement whether these measures are essential for the program to successfully address the goals and guidelines of the Act.

The Office may grant a waiver of the requirements of this subsection pertaining to the number of copies of a plan or ordinances to be submitted or other similar technical requirements. For

example, if a municipality has recently submitted a comprehensive plan or ordinance for review, to which no changes have been made, the Office may delete those items as part of the submission requirements, and would use the recent versions for review for program consistency.

C. Delivery and Acceptance of Growth Management Programs For Review

1. Incomplete Submitted Materials.

If the Office finds the submission to be incomplete according to the requirements of Section 3(B) above, it shall, within seven (7) working days of receipt of the material, notify the municipality's designated contact person of the deficiencies.

2. Acceptance of Submitted Material for Review.

If the Office finds that the submission complies with all submission requirements of Section 3(B) above, it shall accept the submission for review. The Office shall:

- a. record the date of such acceptance,
- b. make a copy available of the submission for public inspection at the Office,
- c. send a written notice of the acceptance to the municipality,
- d. send a written notice of the comment period for the growth management program under review to be posted in the Town Office and in other conspicuous public places in the municipality. The notice will clearly indicate where and when copies of the materials can be reviewed, the deadline for submitting written comments to the Office and the address of the Office,
- e. send a written notice of the comment period for the growth management program under review to be posted in the Town Office or other conspicuous public place of all contiguous communities. The notice will clearly indicate where and when copies of the materials can be reviewed, the deadline for submitting written comments to the Office and the address of the Office.
- f. send a written notice that a growth management program has been accepted for review to the applicable regional council and interested State agencies, including, but not limited to, those State agencies listed in §4346 subsection 5 of the Act.

Section 4. Procedures for Growth Management Program Review for a Certificate of Consistency

A. Review and Comment Period

The deadline for Office receipt of comments on a growth management program under review for a certificate of consistency shall be forty-five (45) days after the date the Office accepted the materials for review. The Office has no obligation to send comments

received after this deadline to the municipality, or to address such comments in the Office's findings.

B. State Agency and Regional Council Review

1. Upon the request of the State agency's and/or regional council's review coordinator, the Office shall send a copy of the submission materials for review and comment, along with the following information:
 - a. the name and address of the Office reviewer to whom comments should be sent,
 - b. the deadline for Office receipt of comments, and
 - c. the comment format called for in section 4(C), below.

C. Format of Comments

1. To be accepted by the Office, all comments submitted by a State agency, regional council, municipality, resident, or other person or organization must be written.
2. State Agency comments shall:
 - a. Include the date the comments are sent to the Office, identify the growth management program commented on, and identify the State agency and the name and telephone number of the agency's review coordinator;
 - b. Identify any areas where the growth management program is inconsistent with the agency's programs and policies, or relevant statutory requirements;
 - c. Recommend measures the municipality should take to ensure that its growth management program addresses the identified inconsistencies; and
 - d. In general, be limited to portions of the municipality's growth management program for which the opportunity to comment has not previously been provided. State agency comments on previously submitted sections of the municipality's growth management program should be consistent with comments made and received by the Office at the time of the initial review opportunity, unless statutory or regulatory requirements have changed since the time of the initial review.
3. Regional Council Comments shall:
 - a. Include the date the comments are sent to the Office, identify the growth management program commented on, and identify the regional council and the name and telephone number of the regional council's review coordinator;
 - b. Identify any areas where the program is inconsistent with the adopted or proposed growth management programs, or elements of adopted or

proposed growth management programs, of contiguous municipalities and/or regional policies and programs;

- c. Recommend measures the municipality should take to ensure that its growth management program addresses the identified inconsistencies; and
- d. In general, be limited to portions of the municipality's growth management program for which the opportunity to comment has not previously been provided. Regional council comments on previously submitted sections of the municipality's growth management program should be consistent with comments made and received by the Office at the time of the initial review opportunity.

D. Office Review and Findings

1. **Review Criteria.** In reviewing a growth management program the Office shall apply the review criteria set forth in the goals and guidelines of the Act and any criteria adopted by the Office, including, but not limited to, "Procedural Rule for Submittal and Review of Municipal Comprehensive Plans and Zoning Ordinances" (Chapter 201), "Comprehensive Plan Review Criteria Rule" (Chapter 202), "Subdivision Ordinance Review Criteria Rule" (Chapter 203), "Zoning Ordinance Review Criteria Rule" (Chapter 210), and this Chapter.
2. **Consideration of Comments.** In preparing the Office's findings, it shall review and consider all written comments received by the Office within the 45-day comment period. The Office findings shall identify points on which there exist significant conflicts among the comments and shall clearly state the Office's position on such points. All copies of comments provided to the Office shall be made available to the municipality whose growth management program is being reviewed.

E. Format of Office Findings

Office findings shall:

1. Determine, and, as appropriate, explain whether the municipality's growth management program is consistent with the goals and guidelines of the Act, and criteria adopted by the Office.
2. Recommend measures the municipality should take to complete any scheduled elements of its implementation program that are as yet incomplete or completed in a manner inconsistent with the Act or the municipality's comprehensive plan.

F. Delivery of Office Findings to the Municipality, Applicable Regional Councils, and State Agencies

The Office shall send its findings, along with all written comments on the program received by the Office within the 45-day comment period, to the municipality and applicable regional council within 90 days after receiving a complete request for review of the program or within such further time mutually agreed upon between the Office and

the municipality. The Office shall send the findings to the municipality's designated contact person and its chief elected official. The Office shall also send the findings to any State agency or other person upon request.

Section 5. Criteria for the Review of Growth Management Programs

A. Comprehensive Plan, Zoning and Subdivision Ordinances

All comprehensive plans, zoning ordinances, and subdivision ordinances will be reviewed based upon the criteria established under "Procedural Rule for Submittal and Review of Municipal Comprehensive Plans and Zoning Ordinances" (Chapter 201), "Comprehensive Plan Review Criteria Rule" (Chapter 202), "Subdivision Ordinance Review Criteria Rule" (Chapter 203), "Zoning Ordinance Review Criteria Rule" (Chapter 210), this Chapter, and the adopted comprehensive plan.

B. Capital Improvement Program

In order to be consistent with the Act, the capital improvement program (as defined in Section 2(B) above) should reasonably reflect priorities stated in the Capital Investment Plan (as defined in Section 2(C) above). The Office recognizes that changes in priorities and needs will occur, and these changes shall be explained as part of the municipality's submission.

C. Other Implementation Program Measures

In order to be consistent with the Act, implementation measures must be:

1. Consistent with and supported by the municipality's comprehensive plan, which has been found by the Office to be consistent with the Act and applicable rules;
2. Consistent with the goals and guidelines of the Act;
3. Consistent with the municipality's zoning ordinance and other implementation measures indicated in the comprehensive plan; and
4. Consistent with other laws governing local land use. Such laws include, but may not be limited to, the following:
 - a) Forest Practices Act (12 MRSA §§8867 - 8869)
 - b) Gravel Excavation (30-A MRSA §3105)
 - c) Zoning Ordinances (30-A MRSA §4352)
 - d) Subdivision Law (30-A MRSA §§4401- 4407)
 - e) Manufactured Housing Act (30-A MRSA §§4358)
 - f) Enforcement of Land Use Regulations (30-A MRSA §§4451- 4452)

- g) Mandatory Shoreland Zoning Act (38 MRSA §§435 - 449)
- h) Natural Resources Protection Act (38 MRSA §§480-A - 480-X)
- i) Site Location of Development Act (38 §481- 490)
- j) Endangered Species Act (12 U.S.C. §7751 - 7758)
- k) National Flood Insurance Program Act (42 U.S.C. §4001 - 4128)

In addition, the program may include a range of non regulatory activities which can include public access strategies, establishment of "greenbelts," alternative transportation strategies, and open space retention strategies.

Section 6. Recertification

Certification of a local growth management program shall be valid for five (5) years, and does not lapse in any year in which the Legislature does not appropriate funds to the Office for the purposes of receiving programs for recertification. To maintain certification for an additional five year period, a municipality shall maintain its growth management program and submit to the Office all revisions, including but not limited to changes resulting from new, or anticipated, growth and development as well as changes in the implementation schedule of the growth management program.

For recertification, the program must be submitted to the Office for review and certification in the same manner as the initial growth management program in accordance with this Chapter. In addition, as part of the recertification process, the municipality shall submit to the Office a self-evaluation of the municipality's growth management program that will be used to determine how successfully the municipality's comprehensive plan strategies have addressed each of the applicable State and local goals contained in the comprehensive plan.

For each goal, the municipality shall:

- A. Describe which implementation strategies were intended to promote the purposes of the goal;
- B. Evaluate the effectiveness of these strategies (in quantitative terms, if appropriate) in achieving the goal; and
- C. If applicable, describe the reason(s) for the strategy's ineffectiveness in achieving the goal, and recommend additional or alternative strategies to address the goal.

A form shall be provided by the Office and shall be used by the municipality to link each goal to the municipality's policies and implementation strategies.

Section 7. Scope of Review

The scope of the Office's review, and of this rule, is limited to those aspects of the local growth management program which are relevant to the goals and guidelines of the Act. It is not the

purpose of the Office's review to provide a comprehensive determination of legal sufficiency. Also outside of the purview of the Office's review for consistency are provisions which may be necessary in order for the program to be legally valid, but which are not directly related to the goals and guidelines of the Act or are unlikely to have a direct bearing on the issue of effectiveness in implementing the policies and strategies in the plan. The municipality remains responsible for these matters of form and legal sufficiency and for the overall integrity and effectiveness of program components.

Notwithstanding the Office's limited scope of review, serious omissions and weaknesses which would affect the success of the program, and hence its effectiveness in implementing the plan, may provide a basis for denying certification.

Section 8. Eligibility for the state aid, grants and assistance

When awarding grants or assistance under any of the following programs, State agencies shall give preference to a municipality that receives a Certificate of Consistency over a municipality that does not obtain the certification within 4 years after receipt of the first installment of a financial assistance grant or rejection of an offer of financial assistance.

- A. Programs that assist in the acquisition of land for conservation, natural resource protection, open space or recreational facilities under Title 5, chapter 353;
- B. Community development block grants; and
- C. Programs intended to:
 - (1) Accommodate or encourage additional growth and development;
 - (2) Improve, expand or construct public facilities;
 - (3) Acquire land for conservation, recreation or resource protection; or
 - (4) Assist in planning or managing specific economic and natural resource concerns.

This prioritization does not apply to state aid, grants or other assistance for sewage treatment facilities, public health programs or education.

STATUTORY AUTHORITY: 5 M.R.S.A. §13058(3)

EFFECTIVE DATE:
April 20, 1997