

Chapter 2

PLANNING CONSIDERATIONS AND REQUIREMENTS

1. Overview

Traditionally, one of the major obstacles to successful planning at all levels has been the lack of coordination, both within and between levels of government. Of particular concern has always been the lack of coordination between local planning and Federal decisions. Because the Federal action was often a major one such as a highway, its impact on local plans could be significant.

The A-95 Intergovernmental Coordination procedure (replaced by Executive Order 12372 which became effective on September 30, 1983) was one of the first attempts to make sure that Federal agencies were aware of and took into account State and local plans when they were taking actions that might affect those plans. The National Environmental Policy Act also sets forth the requirement that Federal agencies consider "the possible conflict with...regional, State and local land use plans and policies when assessing the impact of a proposed action." As major environmental legislation has been passed requiring local and State governments to develop plans to solve various environmental problems, the legislation has almost always included a requirement that Federal actions be consistent with those plans.

The concern for coordination of Federal actions with State and local plans is primarily due to the fact that many Federal actions are generally outside of local control. In HUD's case, however, almost all projects are either proposed by local governments or must be approved by local governments. Therefore the need for an extensive coordination and consistency evaluation is reduced. In fact, in the case of State Implementation Plans (SIPs) for air quality and Areawide Water Quality Management Plans (208 plans) local approval of a project can be considered verification of consistency and no further review by HUD personnel is required. In the case of comprehensive plans, the concern of HUD staff should be mainly whether the project is consistent with plans of the jurisdiction in which it is located, plans of neighboring jurisdictions, and any regional or areawide plans that may be in existence.

2. Related Laws and Regulations

Executive Order 12372, "Intergovernmental Review of Federal Programs" became effective on September 30, 1983. The Executive Order revoked OMB Circular A-95 and, in general, allows States, after consultation with local officials, to establish their own process for review and comment on proposed applications for Federal assistance, and provide for increased Federal responsiveness to accommodate State and local views. There is now a "single point of contact" (SPOC) in each State through which the process works. Field staff, however, should not assume that the process is

applicable or applicable equally to HUD housing programs. Field staff should be guided by outstanding instructions relating to trigger points, threshold levels, comment periods and special exceptions for each HUD program.

3. Assessment Questions

The principal questions involving comprehensive planning considerations are:

- a. Is the proposal consistent or compatible with completed components of the local or regional comprehensive plan?
- b. Is there a state plan and is the proposal consistent?
- c. Is the proposed project consistent with other plans including those prepared by areawide planning agencies, special districts and boards in various functional areas?

4. Analysis Methods

Conformance and consistency will need to be determined by HUD staff. To the extent possible, the E.O. 12372 intergovernmental review process should be used to provide an indication of project consistency. To assist in consistency determinations, it is suggested, if possible, that an inventory of relevant plans be assembled as part of the HUD office data file.

5. Conformance or Consistency Findings

The reviewer must not only be aware of the various types of plans, (Areawide 208 Water Quality Management Plans, State Implementation Plans, Coastal Zone Management Plans, Local Comprehensive Plans, Areawide Plans and any others); they should also understand the relationship between them and the necessary coordination required. At the areawide scale, in particular, it is likely that the planning agency is involved in all of these specialized planning efforts.

Following is a brief description of some of these special purpose plans and their consistency or compliance requirements.

a. State Implementation Plan (SIP)

Part A of the Clean Air Act, as amended, requires each State to prepare and submit to EPA a State Implementation Plan (SIP) which describes how the State will meet the primary and secondary national ambient air quality standards and generally provide for the implementation, maintenance and enforcement of the air quality standards.

The Metropolitan Statistical Area (MSA) is usually the geographic bounds of most areawide planning and transportation planning agencies. This unit may not be identical to the Air Quality Control Region (AQCR) used in air quality planning.

States (and in some cases local agencies) have the major SIP responsibilities and can take enforcement actions to implement SIP requirements. Building permits and land use regulations as means of compliance with SIP's are necessarily the province of these local agencies. Housing activities assisted or insured by HUD must be approved locally and must meet all State and local regulations and requirements. Approval by local government should, therefore, constitute adequate verification that the proposed activities are consistent with measures to attain and maintain ambient air quality. In exceptional cases, where a large residential development (requiring an EIS) is being proposed and was not included in the SIP, further coordination with the local air quality agency may be necessary.

b. Coastal Zone Management Plans

The Coastal Zone Management Act of 1972 (CZMA) is considered the first national legislation to include a mandatory land development control element as part of a Federally-funded state planning process. By encouraging coastal States (including those bordering on the Great Lakes) to develop coastal zone management plans, the act provides a mechanism to States trying to balance the conflicting interests in coastal areas: those favoring public recreational use and environmental control, and those favoring increased development.

Under Section 307(c)(i) of the CZMA, projects which "directly affect" lands or water of the coastal zone must be carried out in a manner consistent with the approved state coastal zone management program. The "directly affecting" test which triggers operation of the Federal consistency provision applies to all Federal activities and determines the degree of State influence over these activities.

The consistency determination will be made by HUD staff with the opportunity for comment provided to the State CZM agency. Where problems related to consistency are identified, they will need to be resolved with the State CZM agency.

c. Water Quality Management Plans

The Federal Water Pollution Control Act, now called The Clean Water Act (1977), established a national goal to eliminate all pollutant discharges into waterways by 1985. Under this Act, Section 208 requires States and localities to develop areawide comprehensive plans for improving water quality in an area or State. The rationale for areawide planning is that water quality problems do not stop at municipal boundaries, consequently neither should planning their solutions. The States have the primary role in water quality management--they establish water quality standards, determine "201" sewage treatment work construction priorities and, in some cases, issue National Pollutant Discharge Elimination System Permits (NPDES).

Water Quality Management Plans or "Areawide 208 Plans" or "208 Plans" as they are sometimes called are prepared by the State Water Quality

Agency. In the case of urban areas, they are prepared by an areawide planning agency designated by the governor. All "208" plans must include procedures to control non-point sources of pollution, particularly storm water runoff in urban areas and runoff from construction sites.

Areawide 208 plans must identify all necessary sewage treatment facilities, any related land acquisition requirements, and the necessary wastewater collection systems to meet an area's needs for 20 years. It must establish priorities and a time schedule for the construction of treatment facilities. Sewage treatment facilities are critical to urban growth. They do not necessarily have the same immediate importance to suburban and rural growth, however. The manner in which 208 plans are developed and implemented will determine, to a great extent, the growth potential and direction of growth for a particular region, county, or locality.

In addition to non-point source pollution control, 208 plans must establish a program to regulate the location, modification, and construction of any point source water pollution. Treatment plants, homes, stores, offices and other buildings which discharge into a sewer system fall into this category. With this authority a city or county might deny construction and development permits or request the alteration of proposed projects if the potential discharge threatens to exceed existing treatment capacity.

As with SIPs, approval by local government should constitute verification that the proposed projects conform to the goals of the 208 plan. In some cases where a large scale development is being proposed that was not anticipated by 208 plan, further coordination with the 208 planning agency may be necessary.