

**PATHFINDER FOR LOCAL GOVERNMENT  
PLANNERS AND MANAGERS  
WHO WANT TO CREATE ENVIRONMENTALLY SUSTAINABLE  
COMMUNITIES IN SOUTH CAROLINA**

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## **INTRODUCTION**

### **A. Subject of pathfinder**

This pathfinder attempts to direct research into land-use planning law and policy as they relate to sustainable development. It is directed toward those who make decisions about land use—city and county planners, managers, and attorneys. As such, it will address resources both attorneys and non-attorneys may use.

### **B. A primer in legal authority**

Because this pathfinder is addressed in part toward researchers who are not attorneys, an introduction to legal authority is appropriate. Legal sources fall under two categories: primary authority and secondary authority.

Primary authority includes those legal sources that issue directly from a law-making body. These correspond with the three branches of government: legislative, executive, and judicial; primary authority includes federal and state statutes, which are enacted by Congress and the General Assemblies of each state; federal and state regulations, which are created by federal and state administrative agencies, arms of the executive branch of the federal and state governments; and federal and state case law, which is comprised of federal and state judicial decisions. Primary authority also includes federal and state constitutions, because those documents create the branches of government and give them the authority to create such laws. Finally, primary authority includes local ordinances because state legislatures have elected to delegate some of their authority to make laws to local governments by allowing them to enact ordinances regarding particular matters.

Secondary authority includes those legal sources that explain the law, such as law review articles, books, and legal treatises.

This pathfinder will guide researchers to both primary and secondary legal sources, as well as non-legal materials.

### **C. A note about the Internet**

This pathfinder assumes that most planning professionals in today's day and age have access to and understand how to use the Internet. Therefore, where possible, I have given researchers direction about how to find materials online. However, I also have given direction about how to find materials in hardback form where I felt that appropriate.

### **D. A note about LexisNexis and Westlaw**

The two major legal publishers are LexisNexis and Westlaw. Both make their publications available online (<http://www.lexisnexis.com> and <http://www.westlaw.com>) and in hardback form. The online sites, however, are available only to subscribers, and the hardback publications are generally only available to the public through law libraries.

Therefore, they are largely inaccessible to the layperson. Furthermore, conducting research using their systems requires specialized training that the layperson most likely would not have. Thus, while I have referred attorneys to LexisNexis and Westlaw throughout this pathfinder, I also have attempted to direct those without access to them to other resources containing the same information. I also would refer researchers to a couple of free Internet resources that contain much of the same information found in LexisNexis and Westlaw: <http://www.findlaw.com> and <http://www.lexisone.com/caselaw/freecaselaw>.

## II. PRIMARY LEGAL SOURCES

### A. Federal

Land use planning is primarily a local function. The U.S. Supreme Court reiterated this recently in *Rapanos v. U.S.*, in which Justice Scalia, writing for the Court, said “regulation of land use ... is a quintessential state and local power.” 126 S.Ct. 2208, 2224 (2006). In that case, the Court rejected an expansive statutory interpretation that would have given the federal government more control over land use.

That being said, the federal government plays a large role in how local bodies regulate land use. Federal agencies regulate various elements of land use; federal courts create law by ruling on some land use cases (particularly in the area of eminent domain); and Congress enacts statutes that address land use.

#### 1. Constitution

The Constitution of the United States pertains to land use regulation primarily through the Fifth Amendment, which prohibits the deprivation of property without due process of law (the due process clause) and the taking of private property for public use without payment of just compensation (the takings clause). The Fourteenth Amendment makes the Fifth Amendment applicable to state and local governments.

The Constitution, including its Amendments, is available through the National Archives at <http://www.archives.gov/national-archives-experience/charters/constitution.html>. This site is available to the public for free. It is easy to navigate and contains interesting facts about the drafting of the Constitution. Other sites at which one may access the document and information about it include <http://www.usconstitution.net/> and <http://www.law.cornell.edu/constitution/constitution.overview.html>. Those without a computer would find a copy of the Constitution at their public library.

Attorneys might prefer to read the Constitution in the United States Code Annotated, which contains the full text of the document and its amendments. The United State Code Annotated is available online through LexisNexis and Westlaw, and in hardback form at law libraries. The Constitution is located after a section called “The Organic Laws of the United States” and before all of the numbered title sections.

#### 2. Statutes

Several major federal statutes deal with environmental issues as they relate to land use planning.

- **National Environmental Policy Act** (42 U.S.C. s/s 4321 et seq. (1969)): This Act, one of the oldest federal environmental statutes, establishes a broad framework for protection of the environment. It strives to assure that the federal government gives proper consideration to the environment prior to undertaking any major action that

significantly affects it. This becomes a local government issue when the action takes place in the jurisdiction of the local government—for instance when a federal agency wants to build a highway or purchase land for a park.

- **Clean Air Act** (42 U.S.C. s/s 7401 et seq. (1970)): This Act regulates air emissions from area, stationary, and mobile sources. It authorizes the Environmental Protection Agency to establish National Ambient Air Quality Standards in an effort to protect public health and the environment.
- **Coastal Zone Management Act** of 1972 (302 U.S.C.A. 1451 *et. seq.*): This Act encourages states to accept responsibility for regulation of coastal development through implementation of a development permit process.
- **Clean Water Act** (33 U.S.C. ss/1251 et seq. (1977)): This Act allows the Environmental Protection Agency to regulate discharges of pollutants into the waters of the United States; to implement pollution control programs; and to set water quality standards for all contaminants in surface waters. Perhaps most importantly to local governments, the Act also funds the construction of sewage treatment plants and gives the U.S. Army Corps of Engineers and the Environmental Protection Agency the authority to regulate wetlands.
- **Endangered Species Act** (7 U.S.C. 136; 16 U.S.C. 460 et seq. (1973)): This Act strives to protect threatened and endangered plants and animals and the habitats in which they live. The law prohibits any action that results in a “taking” of a listed species or adversely affects habitat.
- **Safe Drinking Water Act** (42 U.S.C. s/s 300f et seq. (1974)): This Act strives to protect the quality of drinking water in the U.S. by authorizing the Environmental Protection Agency to establish standards of purity. For more information, visit <http://www.epa.gov/Region5/defs/html/sdwa.htm>.
- **Resource Conservation and Recovery Act** (42 U.S.C. s/s 6901 et seq. (1976)): This Act allows the Environmental Protection Agency to control hazardous and non-hazardous waste generation, transportation, treatment, storage, and disposal.
- **Comprehensive Environmental Response, Compensation, and Liability Act** (42 U.S.C. s/s 9601 et seq. (1980)): This Act requires the clean up of uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment.

The best way for laypeople to find virtually all federal environmental statutes is through the Environmental Protection Agency’s Web site, which lists many statutes in full in addition to giving brief synopses of most. See <http://www.epa.gov/epahome/laws.htm>. The only Act listed above that is not available on the EPA’s Web site is the Coastal Zone Management Act, the text of and information about which is accessible through the

National Oceanic and Atmospheric Association's Web site at  
[http://coastalmanagement.noaa.gov/czm/czm\\_act.html](http://coastalmanagement.noaa.gov/czm/czm_act.html).

Attorneys, of course, may prefer to conduct a search through LexisNexis or Westlaw. Online, they might attempt to do so by using a general search inquiry such as "environment" while in the "United States Code Annotated" database. However, such a broad inquiry will yield thousands of responses. Therefore, it is best if the attorney knows the particular statute(s) he wishes to review and enters the citation(s) into the "find by citation" function of either database instead of sifting through such a large volume of documents, or at least has a more specific topic in mind when conducting the keyword search.

Similarly, searching generally (i.e., without looking for a particular statute) in the hardbacks is pretty ineffective as a research tool.

For example, the index of the United States Code Service (Lawyer's Edition), published by Lexis, references a few statutes under the general heading of "Zoning." They are very specific (e.g., limitation of the condemnation power during the existence of a zoning ordinance with respect to the Fire Island National Seashore) in nature, are far from comprehensive, and are scattered throughout the topical volumes. In contrast, under the general headings of terms that start with the word "Environment," hundreds of subcategories are listed, all pointing to various volumes. If one is looking for a particular statute, this could be a helpful way to find it, but it would not be too helpful to the researcher looking for environmental laws generally.

### **3. Regulations**

A few federal agencies have their hands in the regulation of environmental laws. These include the Environmental Protection Agency (<http://www.epa.gov>); the Department of the Interior (<http://www.doi.gov>); the Department of Energy (<http://www.doe.gov>); the Department of Defense, particularly the U.S. Army Corps of Engineers (<http://www.usace.army.mil>); the Department of Agriculture, particularly the Natural Resources Conservation Service (<http://www.nrcs.usda.gov>); and the Department of Commerce, particularly the National Oceanographic and Atmospheric Administration (<http://www.noaa.gov>).

Attorneys might want to search for regulations through LexisNexis and Westlaw. An online search within the "Code of Federal Regulations" database is not productive unless one's topic is quite narrow, however; a general search using the terms "environment" or "land use" yields thousands of responses—too many to be useful to the time-constrained researcher.

#### 4. Case law

Instead of annotating any particular cases here,<sup>1</sup> this pathfinder simply guides researchers to (a) resources that would lead them to relevant cases and (b) places where

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<sup>1</sup> Under the topic of land use planning, much federal case law deals with the Fifth Amendment. I include the seminal U.S. Supreme Court cases that deal with the Fifth Amendment here only as a footnote because they do not particularly relate to the environment, even though they are crucial for people who make land-use decisions to understand. They are listed in chronological order so that researchers may see how the case law developed over time.

- ***Pennsylvania Coal Co. v. Mahon***, 260 U.S. 393 (1922): While the government may regulate property to a certain extent, when the regulation goes too far it is a taking for which just compensation must be paid.
- ***Village of Euclid v. Ambler Realty Co.***, 272 U.S. 365 (1926): Zoning is constitutional.
- ***Penn Cent. Transp. Co. v. New York City***, 438 U.S. 104 (1978): Courts will decide non-categorical takings (all takings that do not fall under the rubrics of *Loretto* or *Lucas*) *ad hoc*, balancing the particulars of each case. Courts will consider the following factors when deciding whether an action is a taking: the economic impact of the regulation on the plaintiff generally, and the extent to which the regulation has interfered with distinct investment backed expectations in particular, and the character of the government action (courts are more likely to find a taking in a physical invasion than in a regulatory restriction). Courts will not divide a single parcel into discrete segments and attempt to determine whether the government action has abrogated rights in a particular segment; instead, they will look at the government's action as it interferes with the rights in the parcel as a whole.
- ***Loretto v. TelePromTer Manhattan CATV Corp.***, 458 U.S. 419 (1982): Where a government regulation allows a permanent physical occupation of property by a third party, the regulation is a taking for which just compensation must be paid.
- ***Hawaii Hous. Auth. v. Midkiff***, 467 U.S. 229 (1984): Where the government takes title to property in order to reduce the concentration of ownership, the act is a taking for which just compensation must be paid.
- ***Nollan v. California Coastal Comm'n***, 483 U.S. 825 (1987): When the government requires a property owner to meet some condition before it will approve a permit, the permit condition has to relate to the objective of the government in imposing the condition; an essential nexus must exist between the exaction and the governmental objective.
- ***First English Evangelical Lutheran Church v. County of Los Angeles***, 482 U.S. 304 (1987): Just compensation is required for a temporary taking just as it is required for a permanent taking.
- ***Lucas v. South Carolina Coastal Council***, 505 U.S. 1003 (1992): A government regulation that prohibits all economic use of property is a taking for which just compensation must be paid.
- ***Dolan v. City of Tigard***, 512 U.S. 374 (1994): When the government requires a property owner to meet some condition before it will approve a permit, the permit condition has to relate to the objective of the government in imposing the condition; an essential nexus and a rough proportionality must exist between the thing exacted and the govtral objective.
- ***Palazzolo v. Rhode Island***, 533 U.S. 606 (2001): The acquisition of title after the effective date of a government regulation does not bar a takings claim. // Where a regulatory action results in the deprivation of some but not all economic uses of property, courts will not find a taking under *Lucas*; such deprivations should be decided under *Penn Central's* balancing test.
- ***Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency***, 535 U.S. 302 (2002): Courts must consider moratoriums under the *Penn Central* balancing test because moratoriums do not take all economic use of a property when the property is considered temporally.
- ***San Remo Hotel v. City and County of San Francisco***, 545 U.S. ----- (2005): There is no exception to the full faith and credit statute for Fifth Amendment takings clause claims.
- ***Kelo v. City of New London***, 545 U.S. ---- (2005): A city's taking of private property to sell for private development qualifies as a "public use" within the meaning of the takings clause.
- ***Lingle v. Chevron USA***, 544 U.S. ----- (2005): Overruled *Agins v. City of Tiburon*, 447 U.S. 255 (1980), which held that a government regulation of private property is a taking if such regulation does not substantially advance legitimate state interests.

those researchers will find the actual cases. I chose not to annotate any particular federal land uses cases here for a few reasons: (1) because land use planning is a broad subject, thousands of cases touch on one element of it or another, and an exhaustive listing of these cases would run on for many pages, (2) land use planning by its nature is very topic specific, so each case would only be relevant to a single research question or two, and therefore a comprehensive listing would not be useful to anyone, and (3) I wanted to devote more time to and space on secondary sources that would be more useful to the layperson than a list of cases.

A researcher may find listings of federal cases by subject in the following digests.

- **United States Supreme Court Digest:** This digest, published by West, contains listings of brief descriptions of cases coming out of the United States Supreme Court. Under the descriptive word index, land use topics are addressed under the general heading of “Zoning,” which directs one to the “Zoning” volume (No. 126), where “Zoning and Planning” is covered. The table of contents for the Zoning and Planning volume includes “in general,” “validity of zoning regulations,” “modification or amendment,” “repeal of regulations,” “construction, operation and effect,” “nonconforming uses,” “administration in general,” “permits, certificates and approvals,” “variances or exceptions,” “judicial review or relief,” “enforcement of regulations,” and “offenses and penalties.” If a researcher is looking for information on a narrower topic, he may find where exactly within this volume the topic is addressed by using West’s Key Number system. For example, under the subcategory of “agricultural uses,” one will see the word “Zoning,” followed by a depiction of a key and the number “279”; that means that if one goes to the Zoning volume and looks for the section dealing with key number 279, one will find cases discussing that topic in particular.
- **West’s Federal Practice Digest 4th:** This digest contains listings of brief descriptions of cases from all federal courts. The research process here echoes that of the United States Supreme Court Digest described above. Under the descriptive word index, land use topics are addressed under the general heading of “Zoning,” which directs one to volume 96B, where “Zoning and Planning” is covered. The table of contents for this section is essentially the same as that of the United States Supreme Court Digest as described above, and the Key Number system works in the same fashion.
- **Eleventh Decennial Digest:** This digest, published by West, contains listings of brief descriptions of cases from all state and federal courts by topic from 2001-2004. Similar digests are available for previous years (Tenth Decennial Digest, Ninth Decennial Digest, etc.). Like the two digests described above, under the descriptive word index land use topics are addressed under the general heading of “Zoning,” which directs one to volume 55, where “Zoning and Planning” is covered. The table of contents for this section is essentially the same as that of the United States Supreme Court Digest as described above, and the Key Number system works in the same fashion.

Federal cases are actually printed a few places:

- **United States Reports:** This reporter, published by the U.S. Government Printing Office, contains cases coming out of the United States Supreme Court.
- **Supreme Court Reporter:** This reporter, published by West, contains cases coming out of the United States Supreme Court.
- **United States Supreme Court Reports:** This reporter, published by Lexis, contains cases coming out of the United States Supreme Court.
- **Federal Reporter:** This reporter, published by West, contains cases coming out of the United States Courts of Appeals, Court of Claims, Court of Customs and Patent Appeals, and the Temporary Emergency Court of Appeals.

In order for a reporter to find either of these reporters useful, he would need to know the citation of a particular case(s) for which he is looking.

Online, a researcher may find cases through LexisNexis and Westlaw.

## **B. State (South Carolina)**

### **1. Constitution**

The Constitution of the State of South Carolina addresses county and local governments in articles VII and VIII, respectively. In Article VIII Sections 7 and 9, the South Carolina Constitution gives the state's General Assembly the authority to create laws addressing the organization, powers, and duties of counties and municipalities. The other sections of these articles relate to various other county and local government topics. Article XIV also addresses a topic relating to land use planning: eminent domain.

The Constitution of the State of South Carolina is available for free is on the state legislature's Web site at <http://www.scstatehouse.net/scconstitution/scconst.htm>. Those without a computer would find a copy of the state constitution at their local library.

Attorneys who prefer to find the state constitution through LexisNexis and Westlaw may do so by looking online or in hardback books under the South Carolina Code of Laws. It is available both places after the last numbered title in the Code.

### **2. Statutes**

In carrying out the authority given to it by the South Carolina Constitution, the South Carolina legislature has enacted statutes that create local and county governments, and that address their proper functions. The legislature has placed most such statutes in Title 4 (Counties), Title 5 (Municipal Corporations), and to a lesser extent Title 6 (Local

Government—Provisions Applicable to Special Purpose Districts and other Political Subdivisions) of the Code of Laws of South Carolina 1976.

With regard to land-use planning in particular, the legislature has enacted the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, which is located in Chapter 29 of Title 6 of the Code of Laws (Section 6-29-310 *et. seq.*). That Act, as well as Chapter 7 of Title 6 of the Code of Laws (Section 6-7-10 *et. seq.*), which is titled “Planning by Local Governments,” are the two main sources of statutory law relating to local government planning and zoning in South Carolina.

However, several other code chapters also pertain to the topic at least in part. These include but are not limited to the South Carolina Local Government Development Agreement Act, located in Chapter 31 of Title 6 of the Code of Laws (Section 6-31-10 *et. seq.*); the Tax Increment Financing Act for Counties, located in Chapter 33 of Title 6 of the Code of Laws (Section 6-33-10 *et. seq.*), a chapter on water front improvements (Chapter 35 of Title 5 of the Code of Laws—Section 5-35-10 *et. seq.*), and a chapter on streets and sidewalks (Chapter 27 of the Code of Laws—Section 5-27-10 *et. seq.*).

The Code of Laws of South Carolina 1976 is available in hardback form and online via subscription through the legal databases Lexis Nexis and Westlaw as well as free through the state legislature’s Web site at <http://www.scstatehouse.net/code/statmast.htm>.

Most library systems would have copies of the series in hardback form, but a researcher should call ahead to verify this because the books may be located at only one branch. In the hardback index, useful general search terms include “counties” and “political subdivisions” as well as search terms beginning with the words “local”, “county,” and “municipal.” With respect to land-use planning in particular, useful search terms include “local government comprehensive planning enabling act of 1994,” and “zoning and planning.”

In the online form of LexisNexis and Westlaw, a person could search using the Code of Laws section numbers above, or a person could search for statutes using terms such as “local government” and “planning.”

The state legislature’s Web site is not geared for researching via search terms; the above Web site address opens directly to a table of contents of the Code of Laws of South Carolina; from this table of contents, a researcher may click on any Title of the Code in order to open a page containing it. To find Code of Laws sections pertaining to local governments, a researcher should click on “Title 4,” “Title 5” or “Title 6.”

### **3. Regulations**

State agencies issue a multitude of rules and regulations on a variety of different topics every year. Some state agencies in South Carolina have promulgated regulations that pertain to land-use planning at the local level. These include the South Carolina Coastal

Council (Chapter 30)<sup>2</sup>, the Department of Health and Environmental Control (Chapter 61), the Department of Highways and Public Transportation (Chapter 63), the South Carolina Land Resources Conservation Commission (Chapter 72), the South Carolina Mining Council (Chapter 89), the Public Service Commission (Chapter 103), the Water Resources Commission (Chapter 121), the South Carolina Wildlife and Marine Fisheries Department, (Chapter 123), and the Department of Parks, Recreation, and Tourism (Chapter 133).

As stated above, the Code of Laws of South Carolina 1976 is available in hardback form and online via subscription through the legal databases Lexis Nexis and Westlaw as well as free through the state legislature's Web site at <http://www.scstatehouse.net/code/statmast.htm>.

Also as stated above, most library systems would have copies of the series in hardback form, but a researcher should call ahead to verify this because the books may be located at only one branch. When using the Code of Laws in hardback form, the easiest way to find pertinent rules and regulations is to go to the above chapters and scan the table of contents.

A researcher also could use the index of the Code of Laws to find relevant rules and regulations in two ways: by looking under the topic of "rules and regulations," and by looking under subject matter topics, such as "environmental protection." Both ways, however, are more hit-or-miss than simply going to the table of contents of the rules and regulations of the relevant agencies. This is true for two reasons. First, using the "rules and regulations" topic to obtain sources is hit-or-miss because the "rules and regulations" topic does not list *all* the rules and regulations of the various entities. For example, the "rules and regulations" topic does not list anything under the subcategory of "environmental protection"; yet when one looks under the topic of "environmental protection," an entry appears. Secondly, using subject matter topics to obtain sources is hit-or-miss because a researcher must be able to divine the categories used by the indexer, which is not prohibitively difficult but involves trial and error with a large number of keywords. For example, I looked for land-use planning regulations under all of the following topics, and found relevant entries under only the last one: all search terms that start with the words "municipal," "county" and "local," and the search terms "county," "political subdivisions," and "environmental protection."

Subscribers may find rules and regulations online via LexisNexis and Westlaw. The most appropriate database under LexisNexis is SC-ADMIN; under Westlaw, it is SC-ADC. Here again, searching is hit-or-miss since the categories are so particular to discrete subjects; a general search of "land use planning" rules and regulations is ineffective, returning only four entries in both Westlaw and LexisNexis.

Therefore, the easiest way anyone (layperson and attorney alike) to find rules and regulations online is through the South Carolina legislature's Web site at

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<sup>2</sup> Chapter numbers in this section refer to chapters in the Code of Laws of South Carolina 1976.

<http://www.scstatehouse.net/coderegs/statmast.htm>. This site does not have a search function, but one may click on each of the chapters to view the text of that chapter in full.

### 3. Cases

Instead of annotating any particular cases here, this pathfinder simply guides researchers to (a) resources that would lead them to relevant cases and (b) places where those researchers will find the actual cases. I chose not to annotate any particular South Carolina land uses cases here for a few reasons: (1) because land use planning is a broad subject, thousands of cases touch on one element of it or another, and an exhaustive listing of these cases would run on for many pages, (2) land use planning by its nature is very topic specific, so each case would only be relevant to a single research question or two, and therefore a comprehensive listing would not be useful to anyone, and (3) I wanted to devote more time to and space on secondary sources that would be more useful to the layperson than a list of cases.

A researcher may find listings of cases in West's South Carolina Digest 2d and West's South Eastern Digest 2d:

- **West's South Carolina Digest 2d:** This digest contains listings of brief descriptions of cases from South Carolina. Under the descriptive word index, land use topics are addressed under the general heading of "Zoning," which directs one to volume 27, where "Zoning and Planning" is covered. The table of contents includes: "in general," "validity of zoning regulations," "modification or amendment; repeal," "construction, operation and effect," "construction, operation and effect," "nonconforming uses," "administration in general," "permits, certificates and approvals," "variances or exceptions," "judicial review or relief," "enforcement of regulation; offenses and penalties."
- **West's South Eastern Digest 2d:** This digest similarly contains listings of brief descriptions of cases from several southeastern states, including South Carolina. Under the descriptive word index, land use topics are addressed under the general heading of "Zoning and Planning." That general heading directs one to volume 50A, half of which is dedicated to the subject of zoning and planning. The table of contents include many of the same topics as in West's South Carolina Digest 2d: "in general," "validity of zoning regulations," "modification or amendment," "repeal of regulations," "construction, operation and effect," "nonconforming uses," "administration in general," "permits, certificates and approvals," "variances or exceptions," "judicial review or relief," "enforcement of regulations," and "offenses and penalties."

South Carolina cases are actually printed two places:

- **South Carolina Reports:** This reporter prints cases coming out of the supreme court and the court of appeals of South Carolina.

- **Southeastern Reporter:** This West-published reporter prints cases coming out of the supreme courts of appeals of Virginia and West Virginia, and the supreme courts of North Carolina, Georgia, and South Carolina.

In order for a reporter to find either of these reporters useful, he would need to know the citation of a particular case(s) for which he is looking.

Online, a researcher may find cases through LexisNexis and Westlaw.

#### **4. Ordinances**

Municipal and county ordinances have the force of law in their jurisdiction. Therefore, it is essential to look at such ordinances when researching a local issue, such as land use planning.

The easiest way to find municipal and county codes online is through [www.municode.com](http://www.municode.com); searching is free. Additionally, the company that maintains the site is the official recording service of many local governments; therefore, information obtained from the site is generally accurate and up-to-date. In South Carolina, the site contains ordinances for about 30 jurisdictions.

Because the company that maintains the site is not the official recording service of every county and municipality, however, it does not contain the ordinances of all communities. These ordinances may be obtained from the local government entities themselves, often via a Web site. For example, the Town of Mt. Pleasant maintains its Code of Ordinances through American Legal Publishing Company; a researcher may access it via the town's Web site at <http://www.townofmountpleasant.com/index.cfm?section=14&page=11>.

### **III. SECONDARY LEGAL AND NON-LEGAL SOURCES**

Land use planning is a broad subject about which many people have written. A full summary of publications on the topic here is impracticable; here are summaries of a few that were published recently enough for me to consider them useful.

#### **A. Books, treatises, and hornbooks**

Please note that a huge number of books have been written on particular subjects pertaining to land use law (for example, the Clean Water Act, the Endangered Species Act or regulatory takings); such topical books are beyond the scope of this pathfinder, which includes only general land use planning publications.

A researcher will find many land use planning books by doing a keyword search on the University of South Carolina's Law Library catalog, which is available via the School of Law's Web site at <http://www.law.sc.edu>. From that page, a researcher may click on "law library catalog," then enter "land use planning" in the "advanced keyword" box; because

most of these materials are held in the law library, keeping the default search location as “Columbia Law Library” works fine.

One may try a similar search via the online catalogs of public libraries as well, or simply use the list provided above as a starting place. Each of these books contains a bibliography, which will take a researcher to other materials of the same topic.

### Books

- **CURRENT TRENDS AND PRACTICAL STRATEGIES IN LAND USE LAND AND ZONING** (Patricia E. Salkin, ed. American Bar Association 2004): This publication is from the American Bar Association’s Section of State and Local Government Law. The editor includes only one chapter touching on an environmental issue: “the next frontier: land-use planning and environmental justice.” The chapter is a short and basic overview of the topic.
- Daniel R. Mandelker, **LAND USE LAW**, Fifth Ed. (LexisNexis 2003, supplemented in 2006): This excellent book was written by a professor at Washington University in St. Louis. It is well researched and well cited. It contains chapters on “zoning for land use, density, and development,” “growth management and the control of public facilities,” and “environmental land use regulation,” among others.
- Peter W. Salsich, Jr. & Timothy J. Tryniecki, **LAND USE REGULATION: A LEGAL ANALYSIS AND PRACTICAL APPLICATION OF LAND USE LAW**, Second Ed. (American Bar Association 2003): This book is an American Bar Association publication, courtesy of the ABA’s Real Property, Probate and Trust Law section. It is a good source of fairly comprehensive information about land use planning law, although by now it is a few years out of date. It contains a chapter on “environmental land use regulation.”
- **TRENDS IN LAND USE LAW FROM A TO Z: ADULT USES TO ZONING** (Patricia E. Salkin, ed. American Bar Association 2001): This focuses on a few select trends in land use law. Among these include several chapters addressing environmental issues, including “comprehensive planning and smart growth” and “neither home rule nor state-mandate: a third way to growth management.”
- Robert R. Wrighty & Morton Gitelman, **LAND USE IN A NUTSHELL**, Fourth Ed. (West Group 2000): The West Group’s “Nutshell” series are designed to give law students the black-letter law in particular topical areas. This book gives a broad overview of the subject, never delving too deeply on any of its subjects. It is useful as a beginner’s guide to land use, and contains chapters on “natural resources,” and “environmental controls” among others.
- **2006 ZONING AND PLANNING LAW HANDBOOK** (Patricia E. Salkin, ed. Thomson/West 2006): This handbook is up-to-date; it contains a section on current trends that really are current. The handbook is divided into several parts; several

relate to environmental issues: “takings,” “eminent domain,” and “issues in local land use, environmental and preservation law.”

### Treatises

- Arden H. Rathkoph & Daren A. Rathkopf, **RATHKOPF’S THE LAW OF ZONING AND PLANNING** (Edward H. Ziegler, Jr., principal revisionist, Thomson/West 2005): This 91-chapter treatise covers land use planning law in exacting detail. It is a bit unwieldy due to its voluminous nature, but worth reviewing for its extensive analysis on literally hundreds of different aspects of planning and zoning. Particularly relevant to environmental issues are Volume 1, Chapter 7 (Floodplain and Westland Regulation); Volume 1, Chapter 8 (Municipal Regulation of Hazardous Waste and Protection of Groundwater); Volume 1, Chapter 9 (State Environmental Impact Review); Volume 2, Chapter 15 (Growth Management: Integrating Planning, Regulation, and Infrastructure Controls); Volume 2, Chapter 20 (Tree and Vegetation Protection); and Volume 2, Chapter 21 (Wildlife Protection). The principal revisionist co-founded the Rocky Mountain Land Use Institute at the University of Denver College of Law, where he teaches.
- Norman Williams, Jr. & John M. Taylor, **AMERICAN LAND PLANNING LAW** (Thomson/West 2005): This treatise was first written in 1975 and recently updated. It is quite voluminous, and covers the topic of land use planning in great depth. It does not treat environmental issues in one place, but instead spreads them throughout the volumes; it also does not treat the entire range of environmental issues relating to land use planning. The environmentally oriented chapters are Chapter 9, “density control to prevent overcrowding, and related goals”; Chapter 80, “parks”; and Chapters 157-159, “preservation of open space.”

### Hornbook

- Julian Conrad Juergensmeyer & Thomas E. Roberts, **LAND USE PLANNING AND DEVELOPMENT REGULATION LAW: HORNBOOK SERIES** (Thomson/West 2003): This book is a basic overview of land use law. Relative to the environment, it contains a chapter on “growth management.”

## **B. Newsletters<sup>3</sup>**

### American Planning Association

The American Planning Association publishes several newsletters. They are available on its Web site, <http://www.planning.org>, under the “publications” tab. However, access to all is restricted to those who have created login identities, which is a free process but

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<sup>3</sup> I found these newsletters via a search on the search engine Google, <http://www.google.com>. A researcher could find other newsletters using a similar search, perhaps employing the terms “newsletter” and “land use planning.”

during which registrees must give out some personal information such as phone numbers and addresses; and access is some is for American Planning Association members only.

The American Planning Association's newsletters include:

- **Planning and Environmental Law:** This newsletter contains information about the latest judicial decisions and legislation that affects planning. It is written for planners and planning lawyers.
- **Planning:** This newsletter contains pertinent information about multiple facets of land use planning, not just environmental issues. However, nearly every issue contains an article that somehow relates to the environment.
- **PAS Memo:** This newsletter strives to deliver expert advice about planning; it highlights new planning programs, spots trends, and analyzes escalating problems in land use and planning. It is available only to Planning Advisory Service (PAS) members.
- **Smart Growth:** This newsletter existed in eight editions between the winter of 1996 and the spring of 2000; it is archived for free access, not subject to any login process, at <http://www.planning.org/growingsmart/newsletter.htm>.
- **Practicing Planner:** This newsletter is written by the American Institute of Certified Planners, the professional institute of the American Planning Association. It contains articles on a wide range of planning topics.
- **The Commissioner:** This newsletter is directed toward planning commission members. It contains feature articles, profiles on various commissions, briefings on planning law and guest columns from commissioners themselves.
- **The New Planner:** This newsletter is produced by and for the American Planning Association's student members; articles explore communities and planning from the student perspective.
- **Interact:** This is a monthly e-newsletter that briefs American Planning Association members on new developments in the field.
- **APA Advocate:** This biweekly newsletter covers federal legislative and public policy issues of interest to planners and communities.
- **Zoning Practice:** This newsletter is designed to inform planning professionals about how to write and administer strong development codes.

Particular to South Carolina

Most states have a university or research center that publishes a land use planning newsletter; in South Carolina, The Strom Thurman Institute of Government and Public Affairs (part of Clemson University), publishes one periodically. It is available at <http://www.strom.clemson.edu/insight.html>.

### C. Legal looseleaf services and reporters

Looseleaf services are a handy way to stay updated regarding a particular area of the law. They contain statutes, regulations, cases, rulings and editorial comments. Two major looseleaf services pertain to domestic (as opposed to international) environmental law:

- **Environmental Law Reporter:** This reporter, published by the Environmental Law Institute, contains updates about federal and state statutes, regulations, and judicial decisions. It is available through LexisNexis and Westlaw, as well as through <http://www.eli.org>.
- **Environment Reporter:** This reporter, published by BNA, consists of a weekly report about legislative, administrative, and judicial decisions at both the federal and state levels. It is available through LexisNexis and Westlaw.

Few looseleafs and reporters exist that are particular to land use planning. One that appears promising<sup>4</sup> as a strong resource is

- Patrick J. Rohan, **ZONING AND LAND USE CONTROLS** (Eric Damian Kelly, ed. Matthew Bender, originally published in 1977 but updated regularly). According to the LexisNexis bookstore, it offers most forms, a strong index, model ordinances, and detailed annotations organized by jurisdiction. Its topics include “modern land use law trends,” “federal and state regulation,” “zoning procedures and judicial review,” “model ordinances,” “site plans,” “sample building permits,” and “zoning application forms.” The USC law library does not have this looseleaf; one may order it from LexisNexis’s bookstore (<http://www.bookstore.lexis.com/bookstore/catalog>) for \$1,892 or perhaps find it at another law library in the country.

### D. Scholarly journals

Land use planning is a broad topic; most law schools and all planning schools have entire courses devoted to the topic. Thousands of articles have been published over the years about land use planning, so instead of including a sample list here, I will lead researchers

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<sup>4</sup> I use the word “appears” because I have not actually seen this looseleaf; the USC law library does not maintain a copy of it according to a catalog search using terms such as “looseleaf and land use planning,” “looseleaf and land use,” “looseleaf and property,” and “looseleaf and environment” and using the ISBN number.

to the most applicable scholarly journals, where they may search for articles on particular subjects.

The best way to find scholarly journals is by using the database HeinOnline, available for free to the public at <http://www.heinonline.org>. A list of journals carried by HeinOnline is available at <http://www.heinonline.org/HOL/Index?collection=journals>; one may simply go to the appropriate place in the alphabet to find a link to the below mentioned legal journals.

This database is particularly useful not only for its extensive collection of journals but also for the format in which it presents them; one may choose to visit a particular page by number or by scrolling through a easy-to-use pagination function. As an additional bonus, the articles are displayed as one would find them in a journal hardcopy, which makes for easy reading.

One drawback to the database is that it does not provide information about the publishers of the journals with each volume; it lists only the title and not the associated law school. One must resort to an Internet search engine such as Google to determine which school publishes which journal.

Only one journal mentioned below is not available through Hein Online: the Journal of the American Planning Association, which is available by subscription at <http://www.planning.org/japa/index.htm>. Some public libraries also may carry it; certainly most college and university libraries would do so.

These journals are also available via LexisNexis and Westlaw's law review databases for the legal practitioner who has access to such. Furthermore, each likely would be available by subscription through the publisher.

#### Journals that pertain particularly to land use<sup>5</sup>

- **American Municipal Law Review** (1936-1942): Covers a variety of municipal law topics, including but not limited to land use planning. For example, Volume 7 contains an article called "The Objectives of Public Housing" (related to land use planning) and an article called "Municipal Finance and Fiscal Operations" (unrelated to land use planning).
- **Journal of Land, Resources, & Environmental Law** (1980-2005): Published twice a year by the University of Utah College of Law, this journal publishes not only traditional legal articles, but also articles of an interdisciplinary nature, articles written by or for the practitioner, and articles that provide an overview of specialized areas of law. For information about the journal, visit <http://www.law.utah.edu/academic/JLREL/>.

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<sup>5</sup> I have annotated only the journals that pertain particularly to land use planning; doing the same for the general environmental law journal articles is beyond the scope of this pathfinder, but I wanted to at least provide a list of such journals.

- **Journal of Land Use & Environmental Law** (1985-2005): Florida State University College of Law, known for its strong environmental law program, publishes this journal twice a year. It contains articles specific to Florida, and also articles that are applicable on a broader scale. For information about the journal, visit <http://www.law.fsu.edu/journals/landuse/>.
- **Journal of Natural Resources & Environmental Law**: The University of Kentucky College of Law publishes this multi-disciplinary journal of law, science, and policy published twice annually. Geared toward practitioners, academicians, policy-makers, and other professionals, it focuses on legal, policy, and ethical issues related to the environment, natural resources, land use, and energy. For information about the journal, visit [http://www.uky.edu/Law/current\\_students/jnrel.html](http://www.uky.edu/Law/current_students/jnrel.html).
- **Journal of the American Planning Association** (1985-2005): This journal is the American Planning Association's means of communicating about planning issues with its subscription-based membership. It contains articles on a broad array of planning topics.
- **Land and Water Law Review** (1966-2000): The University of Wyoming formerly published this journal, which contained articles about land and water law that remain available through HeinOnline. Scant information about the journal is available online; the university's Web site no longer contains information about it.
- **Public Land and Resources Law Review** (1980-2005): The University of Montana School of Law publishes this journal, which focuses on public land law, natural resources law, environmental law and Indian law. The journal contains articles about these issues from both regional and national perspectives. For information about this journal, visit <http://www.umt.edu/publicland/>.
- **Sustainable Development Law & Policy** (2000-2006): American University College of Law publishes this journal, which focuses on reconciling the tensions between environmental sustainability, economic development, and human welfare. It uses an interdisciplinary approach reach practitioners, policy makers, and concerned citizens. For information about this journal, visit <http://www.wcl.american.edu/org/sustainabledevelopment/>.

#### General environmental law journals

- Albany Law Environmental Outlook Journal
- Boston College Environmental Affairs Law Review
- Buffalo Environmental Law Journal
- Colorado Journal of International Environmental Law and Policy
- Columbia Journal of Environmental Law
- Duke Environmental Law & Policy Forum

- Environmental Law
- Environmental Law Journal
- Environmental Lawyer
- Environmental Practice News
- Fordham Environmental Law Review
- Georgetown International Environmental Law Review
- Harvard Environmental Law Review
- Hastings West-Northwest Journal of Environmental Law and Policy
- Journal of Energy Law and Policy
- Journal of Environmental Law
- Journal of Environmental Law and Litigation
- New York University Environmental Law Journal
- New Zealand Journal of Environmental Law
- Pace Environmental Law Review
- Southeastern Environmental Law Journal
- Stanford Environmental Law Journal
- Temple Journal of Science, Technology & Environmental Law
- Tulane Environmental Law Journal
- UCLA Journal of Environmental Law and Policy
- University of Baltimore Journal of Environmental Law
- Virginia Environmental Law Journal
- William & Mary Environmental Law and Policy Review
- Wisconsin Environmental Law Journal

### **E. American Law Reports**

American Law Reports is a good resource for a researcher who wants an overview of an area of the law along with citations to primary authority. It does not provide deep analysis of any topic.

As described by its publisher, Thomson West, American Law Reports is “a continuing series of articles that collect and analyze every court case decided on a particular point of law.” When a researcher finds an ALR article on point with his topic, the resource is extremely helpful. Whether such an article exists, however, is another thing altogether.

A few ALR articles might be helpful to an attorney interested in advising about land use planning policy:

- Validity of zoning laws setting minimum lot size requirements, Gavin L. Phillips, J.D., 1 A.L.R.5th 622
- Validity, construction, and application of state hazardous waste regulations, William B. Johnson, J.D., 86 A.L.R.4th 401

- Validity of local regulation of hazardous waste, William B. Johnson, J.D., 67 A.L.R.4th 822
- Validity of statutory classifications based on population--zoning, building, and land use statutes, John S. Herbrand, J.D. and Sheldon R. Shapiro, J.D., 98 A.L.R.3d 679
- Applicability of zoning regulations to waste disposal facilities of state or local governmental entities, William H. Danne, Jr., J.D., 59 A.L.R.3d 1244
- Zoning: planned unit, cluster, or greenbelt zoning, Ferdinand S. Tinio, LL.B., LL.M., 43 A.L.R.3d 888
- Validity, Construction, and Application of Adequate Public Facilities Statutes or Ordinances, Michele L. LeFaivre, J.D., 123 A.L.R.5th 349

These are available in hardback form at law libraries and online through LexisNexis and Westlaw.

## F. Legal encyclopedias

Much like their general encyclopedic counterparts, legal encyclopedias are works that attempt to describe, by subject alphabetically, particular legal topics. They provide general background information and limited citations to primary authority, but they do not provide deep analysis of any topic.

Corpus Juris Secundum (CJS) and American Jurisprudence 2d (AmJur) are the two main general legal encyclopedias; South Carolina Jurisprudence is a legal encyclopedia specific to the state.

It would be unlikely for a public library to carry these legal encyclopedias. However, they would be available at most law libraries, and all are available online through LexisNexis and Westlaw.

- **Corpus Juris Secundum (CJS):** CJS dedicates an entire volume (No. 101A) to “Zoning and Land Planning.” The volume spans many topics, including “subjects of zoning and validity of regulations,” “construction, operation, and effect,” “nonconforming uses,” “administration,” “permits and certificates,” “variances, exceptions, and conditional or special uses,” “judicial review or relief,” and “enforcement of zoning laws—offenses and penalties.”
- **American Jurisprudence 2d (AmJur):** Like CJS, AmJur includes one volume entirely dedicated to the subject of “Zoning and Planning.” The volume contains subjects similar to those found in CJS: “sources and distribution of power to zone,” “municipal and regional planning,” “validity of zoning ordinances,” “lawfulness of zoning for particular purposes,” “lawfulness of substance of zoning regulations,” “districts and boundary lines,” “building and lot regulations,” “regulations of uses of property,” “planned unit schemes,” “subdivision controls,” “official maps,” “procedures for enactment, amendment, and repeal of zoning ordinances,” “nonconforming uses; uses established under illegal permits,” construction of zoning

and planning laws,” “zoning administration,” “variances,” “special permits,” “judicial review of zoning and planning decisions,” “and “enforcement of zoning and planning regulations.”

- **South Carolina Jurisprudence:** Unlike the two general legal encyclopedias, South Carolina Jurisprudence contains little information about land use planning, and it is spread throughout several volumes. In the index, topics classified under the general heading of “Zoning and Planning” include “adjoining landowners,” “condominiums,” “covenants,” “equal protection challenges,” “injunctions,” and “taking of private property.” In order to find information about these individual topics, one should look in the index under them directly to find which volumes to look in.

### G. Practice aids

Practice aids are publications that help attorneys in the practice of law. The field of land use planning has produced a couple of practice aids.

- Brian W. Blaesser & Alan C. Weinstein, **FEDERAL LAW USE LAW & LITIGATION** (Thomson/West 2006): This book emphasizes issues pertaining to litigation and on providing an understanding of the procedural and strategic dimensions of federal law use law. It contains a chapter on takings, which is current through the most recent U.S. Supreme Court decisions on the issue (*Lingle*, *Kelo*, and *San Remo*).
- Brian W. Blaesser, **DISCRETIONARY LAND USE CONTROLS: AVOIDING INVITATIONS TO ABUSE OF DISCRETION** (Thomson/West 2005). This book provides a guide for developers and planners about how discretionary land use techniques, case examples, and the law intersect in planning and zoning. It contains chapters on “the nature of discretionary controls,” “variances,” “special use permits,” “the floating zone,” “site plan review,” “planned unit developments,” “contract/conditional zoning and development agreements,” and “design review.”
- **Building Codes:** Many communities have adopted building codes that relate to land use planning including: the International Building Code, the International Code Council Model Construction Codes Combined (Multi), the International Code Council Performance, the International Energy Conservation Code, the International Existing Building Code, the International Fire Code, the International Fuel Gas Code, the International Mechanical Code, the International Plumbing Code, the International Private Sewage Disposal Code, the International Property Maintenance Code, the International Urban-Wildland Interface Code, the International Residential Code, and the International Zoning Code. Some libraries may carry these; they also are available for purchase from many vendors such as <http://www.constructionbook.com>, and are available to subscribers through LexisNexis and Westlaw.

## H. Organizations

Many organizations exist for the purpose of encouraging environmentally sustainable communities. The following are some of the best organizations that address planning on a general (as opposed to a topic-specific) level.

- **American Planning Association:** The American Planning Association is the professional organization for planning professions. It describes itself as “a nonprofit public interest and research organization committed to urban, suburban, regional, and rural planning.” The member-based organization offers an unparalleled array of services and products to members, but few to non-members; such services and products include guidance in understanding legislation and policy, several publications, consultant services, planning education, a job bank, and conferences and workshops. The APA’s Web site is <http://www.planning.org>. The **South Carolina Chapter of the APA** has its own Web site, <http://www.scapa.org>. That chapter of the national organization lobbies on behalf of the South Carolina planning community, provides education to planners, publishes a newsletter about the organization’s work, and provides a listing of job openings in the Southeast.
- **Clemson Strom Thurmond Institute of Government and Public Affairs:** This institute, which is part of Clemson University, produces myriad publications regarding land use at the local, regional, state and national levels based on its own applied research into the topic. The Institute is well-regarded among local governments in the state. The Institute’s Web site is <http://www.strom.clemson.edu>.
- **Municipal Association of South Carolina:** The Municipal Association of South Carolina provides many services to municipalities: legislative, research, education, insurance, management, collection, technology, and trades certification. Although the organization spans topics beyond land use planning, its research is also directed into that area. The organization’s Web site is <http://www.masc.sc/>.
- **National Association of Regional Councils:** This non-profit, membership-based organization strives to build help communities build regional collaboration. It advocates for members on legislative and regulatory matters and provides information, including best practices, about several topics including but not limited to development, the environment, and transportation. Its Web site is <http://www.narc.org>.
- **National League of Cities:** This organization provides research and legislative services to cities. While its topics go beyond land use planning, it covers that area as well. For example, it recently published a 43-page report on “Land Use and Development Challenges in America’s Cities.” The organization’s Web site is <http://www.nlc.org>.
- **South Carolina Association of Counties:** This organization provides support to South Carolina counties in many ways. One such way is by providing a list of links to

county zoning ordinances and comprehensive plans. The general organizational Web site is available at <http://www.sccounties.org/>; the planning component is available at <http://www.sccounties.org/links/countyplanning.htm>.

- **South Carolina Councils of Governments:** South Carolina is divided into 10 councils of governments—regional planning organizations. The Web sites of each, which contain information on a host of topics including land use planning, is available at <http://www.state.sc.us/cogs/>.
- **Urban Land Institute:** This member-based, international organization funds research fellows, doles out highly sought-after awards to communities that practice good land use planning, publishes magazines, and provides a directory of its members to other members. It has two entire sections devoted to smart growth and sustainable development. The organization's Web site is <http://www.uli.org>.

Other organizations provide useful information on specific topics:

- International Downtown Association (<http://www.ida-downtown.org>)
- Project for Public Spaces ([www.pps.org](http://www.pps.org))
- Environmental Protection Agency (particularly [www.epa.gov/brownfields/](http://www.epa.gov/brownfields/) and [www.epa.gov/ecocommunity/](http://www.epa.gov/ecocommunity/))
- EcoIQ.com
- Smart Communities Network ([www.smartcommunities.ncat.org](http://www.smartcommunities.ncat.org))
- Smart Growth Network ([www.csc.noass.gov/smartgrowth/test/resources.html](http://www.csc.noass.gov/smartgrowth/test/resources.html))
- Sprawl Watch Clearing House ([www.sprawlwatch.org/](http://www.sprawlwatch.org/))
- Smart Growth Network ([www.smartgrowth.org/](http://www.smartgrowth.org/))
- The Trust for Public Land ([www.tpl.org/](http://www.tpl.org/))
- Center for Livable Communities (<http://www.lgc.org/center/index.html>)
- Association of Metropolitan Planning Organizations (<http://www.ampo.org>)