

**STATE-LEVEL GEOGRAPHIC INFORMATION SYSTEMS
AND
PUBLIC RECORDS OF PLANS, LAND DEVELOPMENT
REGULATIONS, AND DEVELOPMENT PERMITS**

This Chapter proposes model legislation for state-level geographic information systems (GIS). GIS is a computerized system that stores and links spatial or locationally defined data. Increasingly, state governments are establishing, by statute or administrative or executive measures, formal structures within them to manage, coordinate, and analyze geographic information. Section 15-101 establishes a division of geographic information in the state planning agency (although the function could be placed in any appropriate state department). The division is charged with operational responsibility for establishing and maintaining the state GIS, along with affiliated functions such as administering grant programs to local government and providing access to training. It also has rule-making authority. A Geographic Information Advisory Board provides general policy advice to the division under Section 15-102.

The Chapter also proposes statutes, in Sections 15-201 to 15-203, to ensure a permanent, easily accessible central storage of the rules and decisions that control or guide land development, including plans, land development regulations, and development permits through a system of public records.

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Chapter Outline

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Cross-References for Sections in Chapter 15

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STATEWIDE GEOGRAPHIC INFORMATION SYSTEMS

Commentary: State-level Geographic Information Systems

The term “geographic information system” (GIS) refers to a computerized system that stores and links spatial or locationally defined data in order to allow a wide range of information processing and display operations as well as map production, analysis, and modeling. GIS data can include property records, land, water, air, mineral, biological, and other natural resources, boundaries of governmental units, the distribution of plant, animal, and human populations, and the location of historically and culturally significant areas.

GIS is increasingly viewed as a transforming technology and a tool to democratize data. It enables governments to more quickly and better portray, communicate, and analyze existing and potential conditions from a visual perspective, making it more understandable. At the same time, GIS enables the public and other organizations to be better informed and more effectively involved in the governing process.

GIS is an important planning tool. GIS systems can produce maps of existing and future land uses, watersheds, aquifers, vegetation, buildings, zoning, and transportation and community facilities systems and can track information over time, such as the availability of vacant, buildable land, or changes in population characteristics. GIS can also be used to help analyze conditions and scenarios in new ways to empower planners and others to make decisions more effectively and efficiently.

In some states, the function is established by statute (see discussion below), in others by an executive order, and in still others by some other device, such as a memoranda of understanding. Many states adopt plans, policies, and standards to improve GIS technology availability and sharing among public, and, sometimes, private, organizations.

More states have been formally establishing the position of GIS coordinator, generally intended to provide a clearinghouse and educational functions. In 1985, there were 17 states with GIS coordinators, either established formally (10 states, through statutes or administration measures described above) or informally (7 states – a defacto designation occurring by tradition). As of 1995, that figure had risen to 41 states with 33 states where the position was formally established and 8 states where the position was informal in nature.¹ State governments that had geographic information coordinators, placed them in different agencies: 18 were in an information policy or technology agency, 12 were in an environmental or natural resources agency, 8 were in a planning, policy, or administrative agency, 2 were in another state agency, and 1 was in a non-governmental

¹Lisa Warnecke, *Geographic Information/GIS Institutionalization in the 50 States: Users and Coordinators* (Santa Barbara, Calif.: National Center for Geographic Information and Analysis, University of California, 1995).

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organization.² Table 15-1 shows, the different ways that state governments had been using GIS technology as of 1995, regardless of whether there was a coordinator.

Arizona places the function in a resource analysis division in the state land department. The division includes a state cartographer.³ Among the division's responsibilities are providing an information clearinghouse and central repository for map and imagery products and digital cartographic data. It is charged with creating a GIS for that state that "shall be capable of input, processing, compositing, analysis, synthesis and manipulation of data from maps, aerial photos, orthophotos, remote sensing devices, and other spatial data sources."⁴

Arkansas has a state land information board which is assigned to "write guidelines and develop a strategy for statewide" GIS, develop "standard metadata reports," and direct available funds to mapping and land records modernization projects – a big emphasis in the statute – at various levels of government. The board can contract with the state department of information systems to act as the state clearinghouse and to provide digital maps or metadata for all agencies and units of government.⁵

Florida's statute is extensive. It provides for a geographic information advisory board in the executive office of the governor. The board is charged with facilitating the identification, coordination, collection, and sharing of geographic information among federal, state, region, and local agencies, and the private sector. In particular, the board must promote consistency of data elements by establishing standard data definitions and formats. The board can also issue guidelines on recommended best practices for GIS. Members of the board include representatives of state agencies, local governments, regional planning councils, water management districts, and county property appraisers. The statute also creates a geographic information advisory council, also composed of representatives from state agencies and a variety of interest groups, to assist the state board. The statute contains language that provides that if a state agency fails to comply with requirements of the law without "good cause," the executive office of the governor may withhold releases of appropriations of those portions of the agency's operating budget.⁶

²Lisa Warnecke, "Governing Geographically: State Legislative Direction to Institutionize Geographic Information Coordination and Technology," prepared for the American Planning Association (June 1999, unpublished), Table 3.

³Az. Rev. Stat. §37-172 (2000).

⁴Id., §37-173.1 to .2.

⁵Ar. Code §§ 15-21-501 et seq. (2000).

⁶Fl. Stat. §282.404 (2000).

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Table 15-1
GIS Use in State Government, 1995, Classified by Function
(in states that apply GIS by such function)

General State Government	Environment & Natural Resources	Cultural Resources	Infrastructure	Human Services	Other
13 – Revenue, including property taxation 13 – Census data center 12 – State planning 9 – Budget, finance, comptroller, state property management 3 – Library 1 – Banking regulation	49 – Water: quantity, quality, rights, or drinking 42 – Wildlife, game fish, or biological resources 39 – Waste management, including solid 29 – Air quality 27 – State forestry organization 27 – Agriculture 24 – Oil, gas, mining regulation and reclamation 22 – Public lands mgt. 22 – Parks mgt. 20 – Natural heritage program 18 – Coastal resources 12 – Energy	19 – Coastal resources 14 – Archaeology 1 – Other (museum)	50 – Transportation 9 – Utility regulatory commissions	25 – Health (primarily epidemiology) 6 – Social services 4 – Employment security and labor 3 – Education	24 – Public safety, emergency mgt. and military 20 – Economic development 20 – Community and local affairs 3 – Education

Source: Lisa Warnecke, *Geographic Information/GIS Institutionalization in the 50 States: Users and Coordinators* (Santa Barbara, Calif.: National Center for Geographic Information and Analysis, University of California, 1995).

Like Florida, **Kentucky's** statute creates a 26-person geographic information advisory council that is responsible for establishing and adopting statewide policies and procedures for GIS.⁷ The council is staffed by an office of geographic information, in the office of the secretary of the state

⁷Ky. Rev. Stat. §§61.598 et seq. (2000)

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finance and administration cabinet. Among its charges is coordinating multiagency GIS projects and providing education and training on GIS to state and local agencies. It also functions as an internal consultant to other state agencies, upon request.⁸

In **Minnesota**, the land management information center is located in the state office of strategic and long-range planning. The center's purpose is to "foster integration of environmental information and provide services in computer mapping and graphics, environmental analysis, and small systems development."⁹ **New Hampshire** charges the office of state planning, which is within the office of the governor, with developing and maintaining a statewide GIS.¹⁰

Utah's GIS function is housed in the "Automated Geographic Reference Center," in the division of technology services. The division manages the state GIS, establishes standard formats, make rules and establish policies to govern the center and its operations, and sets fees for the services provided by the center, a common provision in state statutes.¹¹ **Virginia** has established a department of technology planning and, within it, a geographic information network division, which is to "foster the creative utilization of geographic information and oversee the development of a catalog of GIS data" available in the state.¹² It has also created a Virginia Geographic Information Network Advisory Board, which advises the division.¹³ An interesting provision in the Virginia statute states that "Nothing in this article shall be construed to require that GIS data be physically delivered to the [geographic information network division]."¹⁴ Instead, state agencies that maintain GIS databases must report to the division the details of the data they develop, acquire and maintain.

In 1989, **Wisconsin** created a Land Information Board, staffed by the department of administration, and established a land information program that is used to develop and implement countywide plans for land records modernization, which typically involve GIS. The board includes state and local government and private members and is authorized to direct and supervise the land information program and serve as the state clearinghouse for land records modernization.¹⁵ The board provides grants for land modernization to counties that have established a land information

⁸Id., § 42.650.

⁹Minn. Stat. §4A.05 (1999).

¹⁰N.H. Stat. Ann. § 4-C:3 (1999).

¹¹Ut. Code §63A-6-202 (1999).

¹²Va. Code §2.1-563.37 (1999).

¹³Id., §2.1-563.41.

¹⁴Id., §2.1-563.38.7.

¹⁵Wis. Stat. §§16.966 to 16.967 (1999).

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office.¹⁶ Nonetheless, the department of administration is charged by statute with developing and maintaining GIS in the state.¹⁷

MODEL STATUTES

The models in Sections 15-101 and 15-102 are based chiefly on the Florida, Kentucky, and Virginia statutes, but also incorporate ideas contained in the Utah statutes. Section 15-101 establishes a division of geographic information in the state planning agency (although the function could be placed in any appropriate state department). The division is charged with operational responsibility for establishing and maintaining the state GIS, along with affiliated functions such as administering grant programs to local government and providing access to training. It also has rule-making authority. A Geographic Information Advisory Board provides general policy advice to the division.

15-101 Division of Geographic Information

- (1) There is hereby established a division of geographic information, referred to in this Section as the “division,” in the [state planning agency *or other state department*].
- (2) The director of the [state planning agency *or other state department*] shall appoint a person of suitable training, experience, and knowledge to manage the division and who shall serve at the pleasure of the director.
- (3) As used in this Section and in Section [15-102], “**Geographic Information System**” or “**GIS**” means computer software programs that allow the analysis of data or databases in which location or spatial distribution is an essential element, including, but not limited to, land, air, water, and mineral resources, the distribution of plant, animal, and human populations, real property interests, zoning and other land development regulations, and political, jurisdictional, ownership, and other artificial divisions of geography.
- (4) The division may solicit, receive and consider proposals for funding from any state agency, federal agency, local government, university, nonprofit organization, or private person or corporation. The division may also solicit and accept money by grant, gift, bequest, legislative appropriation, or other conveyance.
- (5) The division shall:
 - (a) provide staff support and technical assistance to the Geographic Information Advisory Board established pursuant to Section [15-102];

¹⁶Id., §16.967(7).

¹⁷Id., §16.966(3).

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- (b) establish a central statewide geographic information clearinghouse to maintain data inventories, information on current and planned geographic information systems applications, information on grants available for the acquisition or enhancement of geographic information resources, and a directory of geographic information resources available within the state or from the federal government;
 - (c) administer any grant programs for local governments or other governmental units to establish and maintain geographic information systems as such programs may be established by the [state legislature];
 - (d) coordinate multiagency geographic information system projects, including overseeing the development and maintenance of statewide data and geographic information systems;
 - (e) provide access to both consulting and technical assistance, and education and training, on the application and use of geographic information technologies to state and local agencies;
 - (f) develop, maintain, update and interpret geographic information and geographic information systems standards, under the direction of the Geographic Information Advisory Board;
 - (g) provide geographic information system services, as request, to agencies wishing to augment their geographic information system capabilities;
 - (h) in cooperation within other agencies, evaluate, participate in pilot studies, and make recommendations on geographic information system hardware and software;
 - (i) prepare proposed legislation and funding proposals for the [state legislature] that will further coordinate and expedite implementation of geographic information systems;
 - (j) address data sensitivity issues so that information is available to the public while protecting needed confidentiality; and
- ◆ For example, property ownership data, or the habitat of a protected animal species subject to poaching.
- (k) contribute to the biennial report of the [state planning agency], as required by Section [4-104].
- (6) Pursuant to Section [4-103], the division may adopt rules, issue orders, and promulgate guidelines in furtherance of this Section. The division may request the advice of the Geographic Information Advisory Board before adopting rules, issuing orders, and promulgating guidelines.

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15-102 Geographic Information Advisory Board

- (1) There is hereby established a Geographic Information Advisory Board, referred to in this Section as the “board.”
 - (a) The board shall be located, for administrative purposes, in the [state planning agency]. The division of geographic information shall provide the board with staff support.
 - (b) All state agencies and officers shall provide the board with the necessary assistance, resources, information, records, or advice as it may require to fulfill its duties.
- (2) The board shall be composed of:
 - (a) *[List state agency heads or other relevant state officials, or their designees, who serve by virtue of their positions];*
 - (b) *[List appointed members who are not state agency heads, but who are appointed by the governor for four-year terms, such as representatives of counties, municipalities, regional planning agencies, local law enforcement agencies, city and regional planners, public utility representatives, surveyors, geologists, etc].* The governor shall initially appoint *[insert number]* to serve [2]-year terms and *[insert number]* members to serve [4]-year terms. Thereafter, the terms of all appointed members shall be [4] years and the terms must be staggered. Members may be appointed to not more than [3] successive terms and incumbent members may continue to serve on the board until a new appointment is made.
 - (c) [2] nonvoting legislative liaisons, [1] to be appointed by and to serve at the pleasure of the speaker of the house of representatives and [1] to be appointed by and serve at the pleasure of the president of the senate.
- (3) [The director of the state planning agency, or his or her designee, shall serve as chair of the board *or* The board shall select from its membership a chair and any other offices it considers essential.] A majority of the membership of the board constitutes a quorum for the conduct of business. The board shall meet at least twice each year, and the chair may call a meeting of the board as often as necessary to transact business.
- (4) A member of the board shall not:
 - (a) be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that has, a substantial interest in the geographic information industry and is doing business with state agencies or other governmental units of the state;

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- (b) own, control, or have directly or indirectly, more than [10] percent interest in a business entity that has a substantial interest in the geographic information industry and is doing business with state agencies or other governmental units of the state;
 - (c) be in any manner connected with any contract or bid for furnishing any contract or bid for furnishing any governmental body of the state with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities, that have substantial interest in the geographic information industry; or
 - (e) accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate gift or otherwise.
- (5) The duties of the board shall include the following:
- (a) advising the division of geographic information in the adoption of policies and procedures related to geographic information systems;
 - (b) overseeing the development of a strategy for the implementation and funding of a statewide geographic information system;
 - (c) overseeing the development and recommending statewide standards on geographic information and geographic information systems to promote consistency of data elements;
 - (d) overseeing the development, delivery, and periodic revision of a statewide geographic information plan and annually reporting to the governor, the legislature, and the judicial branch. Such a plan shall include provisions for training and education;
 - (e) overseeing the assessment of state agency plans for geographic information systems standards compliance;
 - (f) promoting collaboration and sharing of data and data development as well as other aspects of geographic information systems; and
 - (g) appointing, as necessary, ad hoc technical advisory committees.
- (6) Neither the board nor its members shall have the power to form or award contracts or to employ staff. Members appointed under subparagraph (2)(b) above shall serve without compensation. Members shall be reimbursed for their expenses.

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- (7) If any specified state agency fails to comply with this Section or with Section [15-101] without good cause, the [office of the governor *or* state controlling board] may withhold releases of appropriations of those portions of the agency's operating budget that pertain to the collection and analysis of geographic information. The [governor *or* board] may, before withholding releases of such appropriations, request a recommendation from the board.

PUBLIC RECORDS OF PLANS, LAND DEVELOPMENT REGULATIONS, AND DEVELOPMENT PERMITS

Commentary: Public Records of Plans, Land Development Regulations, and Development Permits

How does a citizen find out if and when a development permit has been issued for a particular piece of property or if a particular piece of property is subject to a special restriction like a historic district? How that information is accessed depends on state requirements for maintaining public records of planning-related documents. This has been an area in which there is scant guidance in state legislation. What there is available is concentrated in requirements for official recording of plans and land development regulations of general application. For example, **Washington** requires counties planning under the state growth management act to file with the county assessor a copy of the county's comprehensive plan and development regulations that have been adopted before July 31st of each year.¹⁸ **Ohio** calls for a county or township board of trustees (but not a municipal legislative body) to file the text and maps of a zoning resolution with the office of the county recorder and with the regional or county planning commission, if one exists, within five days after the amendment's effective date. However the failure to file such an amendment does not invalidate the amendment or provide grounds for an appeal of any decision to the board of zoning appeals.¹⁹ **Minnesota** has a similar law requiring the filing of any "official control" with the county recorder.²⁰

Once it is issued, a development permit becomes part of the legal history of the particular lot or parcel (the words are used interchangeably) of the land to which it applies.²¹ For example, the development permit and the documents that support it, like site plans, show the application of the development regulations as of the date of the permit. This is essential in establishing whether the resulting development in fact conforms with what is authorized by the development permit and, if

¹⁸Wash. Rev. Code. §36.70.495 (1999).

¹⁹Oh. Rev. Code §§303.12(H), 519.12(H) (1999).

²⁰Minn. Stat. §395.35 (1999).

²¹American Law Institute (ALI), *A Model Land Development Code: Complete Text and Commentary* (Philadelphia, Pa.: ALI, 1976), 458-459 (Commentary on Article 11, Public Records of Development Regulations).

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so, whether a certificate of compliance can be issued. If a development permit for a commercial use is authorized and that use is lawfully established, and the zoning regulations are later changed to prohibit that use, the development permit and certificate of code compliance will be invaluable in determining the nonconforming status of the property.

MODEL STATUTES

The critical issue then is to ensure a permanent, easily accessible central storage of the rules and decisions that control or guide land development. The three Sections below are adaptations and revisions of portions of Article 11 of the American Law Institute's *Model Land Development Code* that are intended to achieve that objective.²² Section 15-201 establishes filing requirements for development permits, land development regulations affecting specific lots or parcels (such as overlay zones or historic districts), and related actions (such as development agreements, certificates of compliance, and certificates of nonconformity). It assigns the responsibility of maintaining an index of this information to an official of the local government, so as to allow retrieval of this information by any person seeking data regarding a particular lot or parcel without knowing the identity of the owner. Such a method of indexing information by parcel instead of by owner's name has become vastly more simple with the use of geographic information systems, which allow the user to access the information by pointing to the property on an electronic map.

Section 15-202 addresses public records for plans and land development regulations of general applicability. It provides for a notice to be filed by each local government in the office where deeds of land are recorded. The notice must specify the existing of plans and land development regulations and the office of the local government where they may be examined. The recorder must maintain this information according to the name of each governmental agency presenting notices for recording. Until this notice is filed in the manner required by the Section, the plans and the land development regulations are not effective. This is no different than the laws of many states which require the recordation of deeds and other documents transferring interests in land for those documents to be effective by or against third parties.

Section 15-203 authorizes the state planning agency to establish uniform forms for use in filing. It also authorizes the agency to approve a tract index different from the one required by Section 15-203 that may be proposed by a local government.

15-201 Filing Requirements for Development Permits and Land Development Regulations Affecting Specific Lots or Parcels

- (1) The following development permits, land development regulations, and related documents shall be filed as provided in this Section:

²²Id., §§11-101 et seq.

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- (a) any development permit; provided that this does not negate the requirement of Section [8-301(4)] that minor subdivision, resubdivision, or final subdivision plats shall be recorded with the county [recorder of deeds *or similar official*];
 - (b) land development regulations designating a lot or parcel of land as being included in a critical and sensitive area overlay district or a natural hazards area overlay district.
 - (c) land development regulations designating a lot or parcel as being included in a historic or design review district or as a historic landmark;
 - (d) land development regulations designating a lot or a parcel as a sending or receiving area for a transfer of development rights program and any certificate issued pursuant to Section [9-401(4)(k)];
 - (e) development agreements;
 - (f) certificates of nonconformity;
 - (g) certificates of compliance; and
 - (h) enforcement orders and judgments, administrative or judicial, in enforcement actions pursuant to Chapter [11].
- (2) As used in this Section and Section [15-203], the “**Clerk**” means the clerk of the local government or the [local planning agency], as designated by ordinance. For the purposes of Section [15-202], the “**Recorder**” means the county [recorder of deeds *or similar official*].
- (3) The filing required by this Section shall be considered to be completed when the following acts have been performed:
- (a) delivery to the clerk of the information to be filed, in proper form;
 - (b) payment to the clerk, or arrangement with the clerk for payment, of the required filing fee as part of a development permit fee, except that there shall be no fee for the filing of land development regulations enacted by the local government, as described in subparagraphs (1) (b) to (d) above; and
 - (c) entry of the required identifying reference in the index.
- (4) The information concerning development permits, land development regulations, and related actions is sufficient for filing if it includes:
- (a) a description of the lot or parcel involved sufficient to enable a property entry to be made by the index required by paragraph (6) below;

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- (b) the name of the office of the local government and its address at which an inspection can be made of the development permit, land development regulations, or related action and any plans or specifications referred to or incorporated therein; and
 - (c) a general description of the effect of development permit, land development regulations, or related action.
- (5) A document is sufficient for filing if:
- (a) it is a copy of all, or a portion of, the development permit, land development regulations, or related action, so long as it contains the information required by paragraph (4) above; or
 - (b) it is presented on a form prescribed under Section [15-203].

A document is sufficient if it substantially complies with the requirements of this Section even though it contains minor errors that are not misleading.

- (6) The clerk shall establish an index of the matters required to be filed by this Section, arranged in such a manner that a search starting with an identification of the lot or parcel will disclose all development permits, land development regulations, and related actions with respect to that lot or parcel.
- (a) Unless the clerk has obtained approval of a different index system as provided in Section [15-203(2)] below, the index shall be a tract index system, based on the lot or parcel identifier used to enable discovery of the assessed value for real property tax purposes when the name of the taxpayer is not available but the location of the lot or parcel is known.
 - (b) Under the lot or parcel identifier established for each lot or parcel of land, the clerk shall enter a reference to the matter filed in the clerk's office sufficient to enable the matter to be found and examined.
 - (c) The clerk shall maintain maps, including maps contained in geographic information systems, and other aids to help searchers determine the lot or parcel identifier on which the index is based.

15-202 Recording Requirements for Plans and Land Development Regulations of General Applicability

- (1) The following plans and land development regulations are not effective until the recording requirements of this Section have been completed:
- (a) a local comprehensive plan, including any optional elements, or amendments thereto, under Section [7-201];

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- (b) any subplan, or amendments thereto, of a local comprehensive plan under Section [7-201];
 - (c) land development regulations, or amendments thereto, under Section [8-102]; and
 - (d) a rule that is a final proposal for designation of an area of critical state concern by the [state planning agency *or* governor *or* legislature] under Sections [5-207] and [5-208] and state or local land development regulations, or amendments thereto, under Section [5-209].
- (2) The notice described by this Section shall be recorded in each public office where the deeds of land subject to the plans and land development regulations would be recorded.
 - (3) The recorder shall maintain an index that arranges the notices required by this Section alphabetically according to the name of each governmental agency presenting notices for recording. At the appropriate place in the index the recorder shall enter an identifying reference to the notices recorded by that agency sufficient to permit the information in the office to be traced and examined. The index shall also state the date on which the recording of each entry was completed.
 - (4) The information concerning plans, land development regulations, or rules subject to this part is sufficient for recording if it gives:
 - (a) the name of the local government or state agency and the name and address of the office where a copy of the plan, land development regulations, or rule may be examined; and
 - (b) a brief general description of the nature of the plan, land development regulations, or rule.
 - (5) A document is sufficient for recording if:
 - (a) it is a copy of the plan, land development regulation, or rule, so long as it contains the information required by paragraph (4) above; or
 - (b) it is presented to the recorder on a form prescribed under Section [15-203].

15-203 Duties of [State Planning Agency] regarding Forms and Tract Index

- (1) The [state planning agency] shall by rule:
 - (a) specify the contents for notices under Sections [15-201] and [15-202]; and
 - (b) adopt such other official forms as are useful to improve the operation of the filing process required under this Section and Sections [15-201] and [15-202].

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- (2) If a clerk wishes to establish a tract index system different from the one required by Section [15-201], or to modify an index previously established under that Section, the clerk shall use the following procedure:
- (a) The clerk shall establish an advisory committee of users of the records to consult with the officer on the indexing and filing system.
 - (b) After taking into account recommendations made to the clerk by the advisory committee and by any other person, the clerk shall propose a new index system to the [state planning agency] for approval.
 - (c) The [state planning agency] shall by rule approve or disapprove the index system proposed by the clerk and shall inform the clerk of its findings and conclusions. The index system shall become effective at the time specified by the [agency] in its approval.