

LINKING LAND USE & OHIO'S WATERS:

Best Local Land Use Practices



Ohio | Balanced Growth
Ohio Balanced Growth Program
December 2012





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Member Agencies – OWRC and OLEC:
Ohio Department of Natural Resources
Ohio Environmental Protection Agency
Ohio Department of Agriculture
Ohio Department of Transportation
Ohio Department of Health
Ohio Development Services Agency

Additional Member Agencies – OWRC:
Ohio Water Development Authority
Ohio Public Works Commission
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(photo: Andrea Aldrich)

LINKING LAND USE AND OHIO'S WATERS: Best Local Land Use Practices

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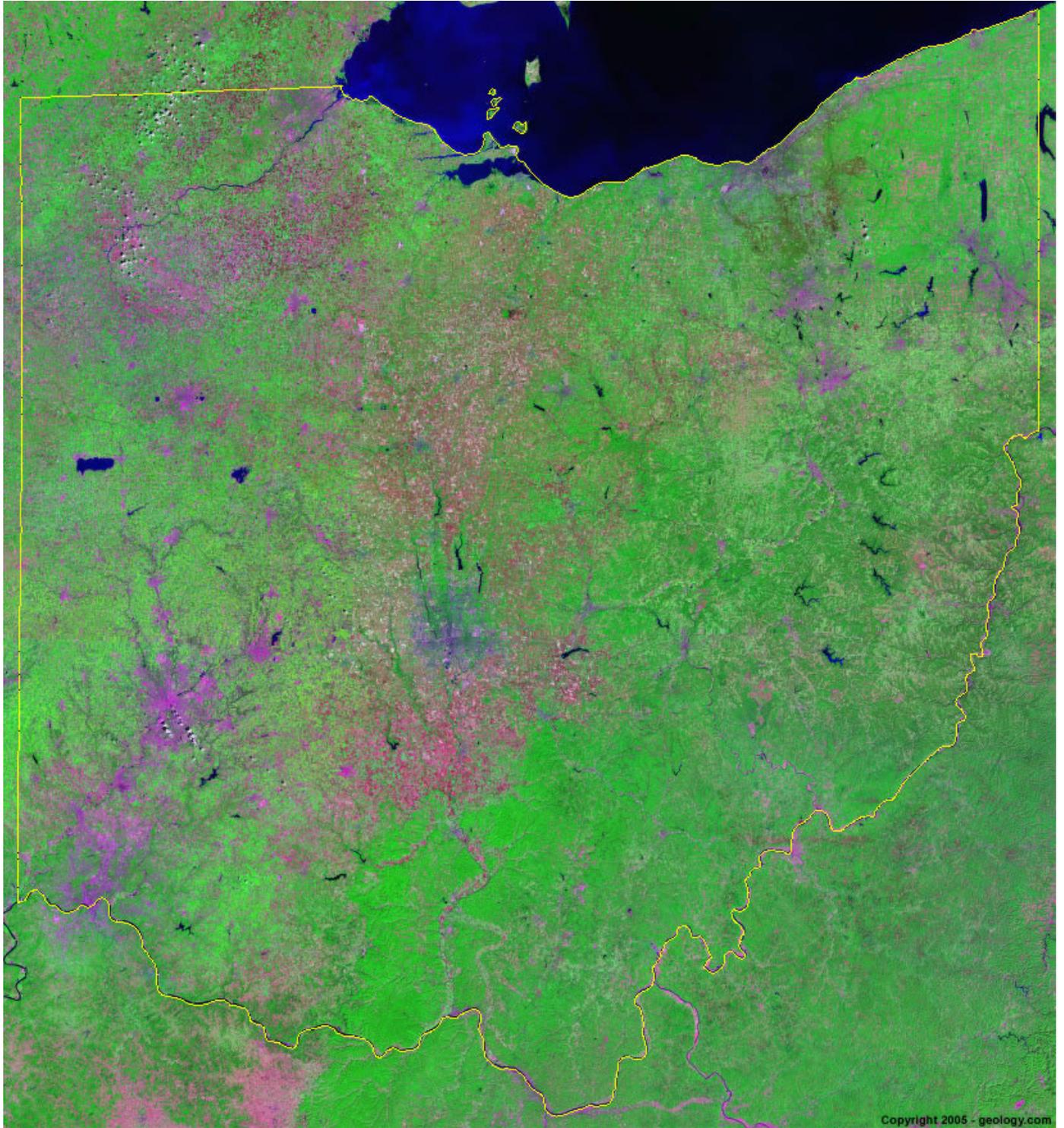
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LINKING LAND USE AND OHIO'S WATERS:

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Chapter 1: Introduction



*Above: Edgewater Beach, Cleveland, Ohio
(photo: Arnold Emerson)*



*Above Right: South Bass Island Lighthouse, South Bass Island, Ohio
(photo: Jennifer Thompson)*

NOW IS THE TIME to adopt best practices in using our land!

How we use our land impacts our water and our quality of life. The thoughtful balance of environmentally friendly practices and development opportunities positively influences the quality of life in our communities. The health of Ohio's citizens now and in the future, and the robustness of the state economy depend upon the quality of our streams, rivers, lakes, and ground water.

How can local governments help?

Be proactive and take action! Follow in the footsteps of other communities that have implemented land use practices to reduce development costs, enhance property values, lower maintenance costs on streets and sewers, and protect the natural landscape. Local governments can help businesses and residents make smart decisions on local land use that will have a positive impact on the watershed and the quality of the community, as well as reduce their own costs.

Revamp dated land use policies, zoning, and development codes! Local governments can help guide businesses and residents to sound development practices by re-thinking and updating land use policies that have been around for decades. When considering land use and development activities – such as shopping malls, commercial and retail facilities, hotels, office parks, mixed-use developments, single- and multi-family detached and attached housing, assisted living and retirement communities, industrial sites, redevelopment and rehabilitated historic developments, schools, and parking lots – local

“About 70 percent of the Earth’s surface is water-covered, and the oceans hold about 96.5 percent of all Earth’s water. Of the world’s total water supply of about 332.5 million cubic miles of water, over 96 percent is saline. And, of the total freshwater, over 68 percent is locked up in ice and glaciers. Another 30 percent of freshwater is in the ground.”

US Geological Survey

The Great Lakes contain 20 per cent of all the world’s fresh water supply, and they shore up around 90% of the fresh water supply in the US.

Planet Green, a Discovery Company

governments should incorporate the best local land use practices contained in this manual. Doing so will increase the overall value of the community and the quality of life of its citizens.

Don’t forget about open spaces! Acreage – such as farmland, wooded and scenic areas, and parks – also add significant value to communities. Talk to land owners about conservation easements and apply best local land use practices when developing open land or when working with landowners on property issues such as drainage and flooding.

Remember you’re not alone! There are a number of agencies and resources ready to assist local governments in their efforts to implement best local land use practices in their communities. Your local county planning commission, county soil and water conservation district, OSU extension office, and watershed group are just a few resources with the professional expertise to assist your local government in moving forward. A comprehensive list of resources and contact information is found on page 7.

When should you begin?

How about now...

In this Introduction...

- What are best local land use practices?
- What practices are in this manual?
- Why are best local land use practices important?
- How can my community begin to implement best local land use practices?
- Examples of why it is important to implement best local land use practices
- Where can I go for help or assistance?
- Background on the Best Local Land Use Practices Program

What are best local land use practices?

Best local land use practices are recommendations from development and environmental professionals that Ohio’s local governments can use to change the way businesses and residents develop and redevelop properties. These practices both reduce the impact on drinking water, fishing and recreation, sanitation, irrigation, watering stock, wetlands, and the quality of other water resources, and provide economic benefits. They are not an exclusive list of ideas, but they are recommendations that may be valuable to local communities faced with the challenges of sensible and sustainable development.



*Above: Biking Family, Columbus, Ohio
(photo: Ohio Greenways)*

What practices are in this manual?

This manual is a “starting point” to help local governments balance development opportunities and environmentally friendly practices. The manual includes background information, example projects, and sample policy language for local government use, identifies key issues and recommends best practices.

The best local land use practices contained in this manual that have broad applicability to almost every community in Ohio include:

- Comprehensive planning
- Compact development
- Conservation development
- Source water protection
- Stream, wetland, and flood plain protection
- Storm water management
- Natural areas establishment

Best local land use practices in this manual that address other development and environmentally-friendly issues that may be applicable to individual communities, depending upon need, include:

- Agricultural lands protection
- Tree and woodland protection
- Scenic protection
- Historic preservation
- Steep slopes protection
- Transfer of development rights (TDR)
- Brownfields redevelopment
- Access management

Why are best local land use practices important?

Too many of Ohio’s 2,329 local governments are working with outdated land use policies that limit the maximum benefit of best local land use practices. For example, Comprehensive Planning is viewed as key to a government’s careful management of capital improvement funds, ability to fit infrastructure expansion to actual needs, and identification of hazard areas that create significant taxpayer costs if developed. Yet, many of Ohio’s local governments do not have a comprehensive plan or are working with one that hasn’t been updated for decades. Another example is zoning and development codes. These often are not kept current and reflect outdated development and business practices, significantly limiting the creation of innovative

Scenic protection can drive economic development through tourism. Visitors made 23,800 trips to the Paul Bunyan Scenic Byway in Minnesota in 2010 and spent \$21.6 million in the area.

(Liechty, Schneider, and Tuck, 2010)

neighborhoods and commercial areas, health-enhancing parks and trail corridors, and cost-effective storm water management facilities.

The use of best local land use practices gives local governments a chance to enhance property values and create quality places that are attractive to businesses and residents, reduce local government infrastructure costs (streets and sewers), and protect against hazards such as flooding and pollution. Implementing best local land use practices also helps to ease the economic consequences of nonpoint source runoff, which impacts water quality. Clean water provides healthy drinking water for many Ohio families, and is an important input to the production process for manufacturing goods (such as in the steel and electric utility industries), and is important to such industries as tourism, recreational fishing, and aquaculture (fish farming).

Why it is important to implement best local land use practices?

Here are just a few examples of the benefits of the Best Local Land Use Practices. For more information and examples see the Literature Review and Bibliography in the Appendix.

Storm Water Management

In addition to lowering the burden on traditional water infrastructure, incorporating Best Management Practices (BMPs) into new developments can reduce development costs (due to smaller costs for piping and detention facilities, grading, paving, etc.) and increase property values (due to proximity to open space and similar amenities) (US EPA 2007).

Stream, Floodplain, and Wetland Protection

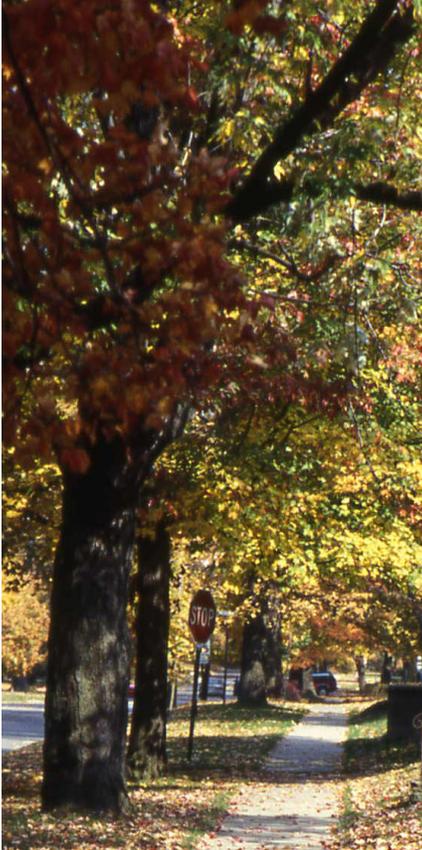
Wetlands ease the water treatment burden of human-made systems. A 2.5-acre protected wetland provides over \$4,000 in avoided water treatment costs, with up to \$10,000 in other benefits annually (Krop, Hernick, and Frantz 2008).

Brownfields Redevelopment

Public investment in brownfields redevelopment leverages private investment. \$5.7 million of brownfields-related public subsidies paved the way for \$325 million in private investment in the city of Milwaukee (Paull 2008).

Historic Preservation

Historic preservation efforts improve property values with significant



*A Neighborhood Sidewalk, Medina, Ohio
(photo: Kirby Date)*

positive spillover to surrounding properties. Median residential properties increased \$67,000 in areas in and near designated historic districts (Gilderbloom, Hanka, and Ambrosius 2009; Zahirovic-Herbert and Chatterjee, 2011).

Tree and Woodland Protection

Trees reduce the strain on stormwater management systems, easing runoff and improving water infiltration rates. A single large tree intercepts 2,100 gallons of rainwater annually. In the upper midwest region, 200 medium sized trees will provide direct water-management benefits equivalent to \$43,000 over a forty year period (before accounting for the reduced costs in new stormwater infrastructure). (McPherson et al 2006)

How can my community begin to implement best local land use practices?

All recommended practices are entirely voluntary, and policy decisions are the realm of the local government concerned.

- 1.** Contact any of the resources to meet with a planning or environmental professional to assess what is needed in your community.
- 2.** Work with a professional to either review or develop a comprehensive plan to determine what actions should be taken and which best local land use tools would be beneficial to your community. This process should involve the public, elected and appointed officials, local businesses, and key community stakeholders in a meaningful engagement process, and build consensus toward implementation of action steps (refer to the Comprehensive Planning chapter in this manual).
- 3.** Form a committee of stakeholders and technical experts to assist with a review of development and zoning codes.
- 4.** Outline and complete a checklist to identify areas of local development and zoning codes that require revision to align with goals of the comprehensive plan (see checklist resources on the Balanced Growth website at <http://balancedgrowth.ohio.gov>).
- 5.** Draft code language as appropriate (see example regulations and comparison matrices in each chapter of this manual for possible “starting points”).
- 6.** Discuss code language in public hearings and workshops, as appropriate.



*A Planning Workshop
(photo: Kirby Date)*

7. Adopt code changes.
8. Review and update the comprehensive plan on a regular basis, at least every 3 to 5 years. This process will include assessment of population needs and development trends, development and zoning regulations, and any changes needed.

The other chapters of this manual include many examples of how the practices have been implemented by other communities.

Where can I go for help or assistance?

- Your local county planning commission
- Your local Soil and Water Conservation District office
- Your local OSU Extension office (<http://extension.osu.edu/>)
- Ohio Balanced Growth Program (balancedgrowth.ohio.gov)
- Ohio State University, Fact Sheet Comprehensive Planning (<http://ohioline.osu.edu/>)
- Meck, S. and K. Pearlman. Ohio Planning and Zoning Law. Baldwin's Ohio Handbook Series. Thomson Reuters Westlaw, updated annually.
- Evans-Crowley, J., ed. Guide to Planning in Ohio. Columbus: Ohio Planning Conference, 2005.
- American Planning Association (312.431.9100 or <http://www.planning.org>)

Background on the Best Local Land Use Practices Program

The Best Local Land Use Practices (BLLUP) program is a statewide initiative to assist individual local governments with implementation of land use policies in support of balanced growth. Balanced Growth, as defined by the Ohio Balanced Growth Program, is a voluntary, incentive-based strategy to protect and restore Lake Erie, the Ohio River, and Ohio's watersheds to assure long-term economic competitiveness, ecological health, and quality of life.

Brownfields redevelopment improves neighboring property values. Properties within a mile of redeveloped brownfields will increase in value between \$0.5 million and \$1.5 million. Crime in areas near redeveloped brownfield sites may also be reduced.

(EPA 2012)

The BLLUP program is the sister program to the Balanced Growth Watershed Planning program, which provides a mechanism for local governments to work together at the watershed level to identify voluntary priorities for development, conservation, and (where applicable) agricultural uses. Where the Watershed Balanced Growth Plans focus on regional cooperation and coordinated land use planning among jurisdictions, the BLLUP program stresses individual actions that can be taken by Ohio's local jurisdictions to improve their local land use policies and provide for balanced growth within their communities. While the Best Local Land Use Practices are an excellent means for local communities to use to work toward implementation of regional watershed planning priorities, the practices may be used by any local jurisdiction in Ohio.

All recommended practices are entirely voluntary, and policy decisions are the realm of the local government concerned.

How did the BLLUP Program begin?

The Ohio Lake Erie Commission adopted the Lake Erie Protection and Restoration Plan in 2000. The Plan, which was prepared with the participation of many Lake Erie stakeholders, experts, and officials, concluded that the "quality of Lake Erie is a reflection of the quality of the entire watershed." The Plan established a priority strategic objective to "infuse best available Balanced Growth principles in local land use decision making." A specific action was recommended:

(H-5, page 10) Publish and distribute a Lake Erie Model Zoning Ordinance and Building code by 2003 and encourage its voluntary acceptance by local communities. Ensure that all interested concerns (local communities, developers, conservationists, agriculture, etc.) have the opportunity to fully participate.

A Balanced Growth Blue Ribbon Task Force was created in 2001 to develop strategies to balance the protection of the Lake Erie watershed with continued economic growth. This task force consisted of government officials, business leaders, conservationists, academia, agriculture, and other stakeholders.

During its deliberations, the Balanced Growth Task Force also decided to develop models and basic standards for best land use practices that could be adopted voluntarily by local governments and would be encouraged through incentives (funding, awards, etc.). The Task Force met over a two-year period to develop recommendations for model land use regulations and guidance that could be used by Ohio local governments to implement land use plans that would be more protective of the



*Urban Housing in the Mill Creek
Development of Slavic Village in
Cleveland, Ohio
(photo: City Architecture)*

their watersheds, while at the same time providing clear direction for continued development. This document became known as “Linking Land Use and Lake Erie: Best Local Land Use Practices.”

A training program for Best Local Land Use Practices was begun in 2006, which provided education, information and referral, and technical assistance to local governments interested in pursuing adoption of the recommendations.

The Ohio Water Resources Council adopted the Ohio Balanced Growth Program statewide in the fall of 2009 as part of its initiative to integrate water resource management with local planning and decision-making. Simultaneously, a statewide outreach program for Best Local Land Use Practices was initiated. The emphasis of this program is to recognize regional variation and issues across the State, and to support the work of local governments, planning agencies, and organizations already working on policy improvement in each region. To date, the Best Local Land Use Practices Program has been highly successful, providing a range of training and technical assistance opportunities across the State.

How can the BLLUP Program help?

The BLLUP Program is designed to assist in the implementation of best local land use practices, as determined by each community. Resources currently available include:

- The BLLUP section on the Balanced Growth website: Contains this guidance document; checklists for code review; example regulations and matrices comparing them; final training modules, an inventory of built practices in each region with a photo and an information file for each (case studies), Power Point slides, and a DVD explaining the practices; information on the larger Balanced Growth Program, including state incentives; and case studies of example projects across the State.
- Technical Assistance: Free technical assistance by professional planners may be available to communities on request. Assistance can be in the form of workshops and education focused on the community; assistance with drafting codes; advice on forming citizen committees and organizing a planning process; help with developer-community conversations; and review of development projects.
- Education and Workshops: These are provided around the state in a variety of settings, covering a variety of topics. See the Balanced Growth website’s Calendar Page.

Stream and floodplain preservation is the most cost-effective means of minimizing flood damage and controlling erosion.

(Chagrin River Watershed Partners, Inc. 2006)

Legal Review

A note about Example Regulations and Legal Review

It is imperative that any governmental entity seeking to adopt or implement any ordinance or policy based in whole or in part upon this guidance seek independent legal review by their own counsel.

The example regulations and guidance documents **should never be adopted without careful legal review** to assure that they are adapted to fit the authority and needs of the specific governmental body. They may need to be adapted for use by the specific type of local government and must be independently evaluated against potentially applicable federal or state law. **The law director/ solicitor, county prosecutor or other appropriate qualified legal counsel should always be consulted prior to adoption of any enforceable measures** based upon this guidance document to insure compliance and consistency with any applicable state and federal law, and to consider potential legal ramifications and liability in the implementation of the laws or rules to be adopted. Questions about the models and guidance can be directed to the Ohio Balanced Growth Program.

A number of ongoing practical and legal concerns make independent review upon consideration and adoption of these Guidance documents and example regulations critically important. First, laws of all sovereigns change constantly. Any review previously provided may be out of date given changes in legislation or judicial interpretation. Second, each local sovereign jurisdiction, be it city, county, township, or other entity, may have specific procedural or substantive requirements that may change what can or should be adopted or might compromise the ability to adopt the models as drafted. Finally, as with any legal review, it is impossible to anticipate all factual and legal variables. The Guidance and example regulations raise a number of legal issues about which communities should be aware as they consider development, adoption, and/or implementation of them. Without limitation, a few of the most obvious concerns include:

1. Authority to adopt/Home Rule. The authority of governmental entities within Ohio to act is set forth by the Constitution of the State of Ohio and Chapters 1 through 7 of the Ohio Revised Code. In the adoption of these recommendations, a governmental entity, acting alone or in concert with other such entities, must confirm that the authority to do so is consistent with these authorities.

2. Appropriations/Takings. Both the process for the adoption of the recommendations and the substance of them should be reviewed closely. It is strongly recommended that governmental entities adopting these recommendations include clear and reasonable criteria for the implementation of the ordinances or guidance, coupled with administrative and/or legal procedures to review the decisions of the implementing entity. In addition, it is recommended that any procedures adopted include an administrative procedure for seeking variances from the adopted requirements or procedures in appropriate cases.

Consistency with existing authority

When adopting any new legislation, the governmental entity must consider whether the proposed new laws are consistent with the body of existing law applicable to that jurisdiction. There may be other legal concerns that could be relevant to the specific application of any of these proposed items. While they have all been reviewed in the abstract prior to the recommendation of the Ohio Lake Erie Commission and the Ohio Water Resources Council, each must be considered individually by the adopting entity in order to insure correct procedures for implementation, minimize potential legal liability for the adopting entity, and minimize subsequent litigation among members of the community impacted by any codes or policies that may be adopted.

Where to from here?

Our future quality of life, economic prosperity, and family health depend on the quality of our waterways, lakes, streams, rivers, groundwater, and the quality of our built environment. All of this depends on the actions of every one of our 2,329 cities, villages, townships and counties, which control most policy related to land use in Ohio. It is the goal of the Ohio Balanced Growth Program to continue to assist local communities with the implementation of best local land use practices.

Resources:

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For additional references cited, see the Bibliography in the Appendix, <http://balancedgrowth.ohio.gov/BestLocalLandUsePractices/BestLocalLandUsePracticeChapters.aspx#Bibliography>