

TEXAS LAND USE

4-Significant Policies



THE INTERAGENCY COUNCIL ON NATURAL RESOURCES
AND THE ENVIRONMENT

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TEXAS LAND USE

A

Comprehensive Land Resource

Management Study

Report No. Four: Significant Policies

Conducted by:

Research and Planning Consultants

Austin, Texas

for

The Division of Planning Coordination

Office of The Governor

FOREWORD

Throughout its history, Texas has been blessed with an abundant supply of land and other natural resources capable of sustaining a wide variety of uses. This heritage has enabled Texas to grow and prosper in a manner characterized by a diversity of human lifestyles, agricultural capabilities, and business interests which are unique to our nation.

As the State has grown and developed so has the realization that our land resources are indeed finite. There is a need to study various land resource management techniques which may be useful in Texas to preclude or solve certain land use problems similar to those which have been experienced by older, more densely populated and heavily industrialized sections of the country. The seriousness of these problems has resulted in proposed federal legislation which, among other provisions, would encourage the state and local governments to develop planning and management mechanisms conducive to prudent land use practices.

Realizing the importance of these problems and the need for establishing proper land use practices throughout the state, the Governor's Office, through the Division of Planning Coordination, authorized a study of land resource management in Texas. This study is comprised of the following eight technical reports:

- * Historical Perspective - A survey of historical developments, trends, and processes in land resource management in the State of Texas.
- * Existing Mechanisms - A survey of the legal bases for existing land resource management activities in Texas.
- * Problems and Issues - A determination of existing and potential land use problems.
- * Significant Policies - An identification of existing significant public policies relating to land resource management in Texas.

- * Needs for the Future - A determination of the relative need for improving the existing approach or approaches to land resource management.
- * Management Approaches - Consideration of alternative approaches to improve land resource management.
- * Role of Planning - A study of the role and scope of land use planning as a major ingredient of a continuing land resource management program and as an element in an overall state planning process.
- * An Informed Public - Development of recommendations in regard to ways by which to best inform the citizens of the State of Texas about the need for a revitalized state and local role in land use planning and land resource management.

In this manner, factual information and objective interpretation of issues are presented with the expectation that they will provide a basis for action by those private citizens or public officials who will have the responsibility for making land management decisions in the future.

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I. INTRODUCTION

In examining policy with regard to land management, it is important to realize that we touch on a wide set of issues. The way in which land is utilized affects all aspects of our lives, work, residence and recreation. Our first purpose will be to examine some overriding issues that provide the context within which land management and land use planning operate, both now and in the immediate future. Some of the national issues to be raised in this context include the role of the Office of Management and the Budget, the Administration's move to develop its policy of revenue sharing, and the shift in the federal executive branch to deal more directly with the states. The latter is a major revision of previous policy of bypassing the states and dealing directly with local government.

Overriding policy considerations must be given the traditional role of states in adopting enabling legislation to allow direct land use decisions to be made at the municipal level. Also at the state level the policy decision to encourage regional councils in developing regional plans and coordinating local planning has been of major importance. As a consequence of state decisions municipal policies of land use management have been a dominate theme in urban regions throughout the United States. However, Texas is relatively unique in terms of the limited land management controls it has allowed its counties. This is accomplished in Section I.

Section II reviews all national legislation related to land management between 1945 and 1972. This review is developed by grouping national land management legislation into five basic categories (1) Urban Land, (2) Transportation, (3) Economic Development, (4) Natural Resource Management, (5) Recreation. Under each category policy trends are identified in specified areas, for example, Administrative Mechanisms, National Public Lands, Special Environmental Units. A sixth category looks primarily at potential comprehensive federal policy as expressed in "The Land-Use Policy and Planning Assistance Act of 1972" passed by the U.S. Senate in the 92nd Congress (S.632) and compares it to the other bills on this subject

pending in the U.S. House of Representatives. Finally, Appendix A provides a bill by bill, year by year, topic by topic description of the individual federal legislation. This is intended primarily as a detailed reference list for following up specific points in the text.

Section III is a review of the land use policies of the state of Texas as expressed in Constitutional structure and enabling legislation supplied by the State to local governments. A brief review is then developed of the way land related resources are administered in Texas through State Agencies, Regulatory Boards and Commissions, and Special Purpose Authorities. An example of the state's response to Federal land use concerns is given via the Coastal Zone issue. Finally a brief review of state policies which indirectly affect land use is provided. This is primarily illustrative and is intended to focus attention on the fact that many policies taken for reasons completely independent of land use have important land use consequences.

Local policies are outlined in Section IV with a detailed review of county and city regulatory powers as formal means of land use management. Regional Councils are discussed in their context of providing expertise to their members and as elements of review for federal funds directed to local governments. Another aspect of local land use policy is discussed in Section V. These are the wide issues of indirect land use consequences of local policies and by implication the informal ways in which local policies guide land development.

Finally we attempt to look at private sector issues in land management. Specifically the water district is reviewed as an example of private developer policies which affect the framework within which land is managed for public and private purposes. Another major element in land management is the role of public participation in public decisions on land use. This fact indicates that not only must decisions be made by properly elected public representatives but they must also be made in a public forum so that direct public access is possible. This has been an important policy element of environment legislation and by implication is likely to continue to be critical, particularly in such a sensitive area as land use.

Policy

Policy can be defined in a variety of ways but for review purposes it is useful to divide it into two

major areas. The first is formal policy which results from legislation enacted to direct and guide decision makers in a particular area. Legislation is, by definition, the articulation of policy. Informal policy is defined in terms of the interpretation of such legislation by the agency responsible for execution or by the courts. It should be realized that policy occurs in both the public and private sectors. In the private sector, policy is set by the operational mechanisms of the market and to some degree by the framework of public decision making. The informal aspects of policy, although extremely important in detail, are not usually critical in setting overall guidelines. Furthermore, they are difficult to identify systematically and must be treated as a secondary focus for this study.

Trends in National Policies

The interest Congress has taken in land-use has grown substantially since World War II. The role of the Federal government, its administrative organization, and involvement has undergone considerable revision. The land use policies of the federal government have evolved from separate aims of (1) rural and urban economic development; (2) growth of a nationwide multiple-use criteria for federal public lands, incorporating balanced usage, and most recently, (3) accommodating environmental quality, as an equal partner to economic growth.

Tracing the directions of federal policy through legislation in the last three decades, one finds Congress at first assigning responsibility to separate agencies to administer land use oriented legislation. Although amalgamation of responsibilities at the departmental level was stated as an early goal, it has still not been completed. Coordinating agencies were established such as the Federal Housing Authority which with the series of Housing and Urban Development Acts, centralized control in the urban development sphere in the Department of Housing and Urban Development.

Following President Kennedy's statement on the need for balanced usage of the nation's lands, the multiple use development policy became a national goal. Paralleling this development in Federal policy was the first indirect recognition of the present day environmental issue which came in the form of "beautification" legislation. To some degree this was an effort to counter the previous emphasis on land exploitation. Federal agencies were to encourage responsible "balanced" usage and enforce beautification

measures. During the last decade, this trend was intensified through the acquisition of recreation areas. Even during the 92nd Congress, four additional national recreation areas were established.

The change in federal aims has not only evolved in terms of the goals and administrative mechanisms, but also in a move toward tightening the links between federal and state land use planning. Congress has undertaken comprehensive review of some of the principal programs involving land use management and development in an effort to bring about more land planning at all levels of government: federal, state and local. This direction by Congress is seen in the efforts of legislation to encourage the promotion of federal projects, only after the approval of local authorities. At first this meant the increased involvement of federal agencies in local government affairs particularly in the field of urban land-use change. The by-passing of state authority in this area resulted in the direct interface of federal agencies and local urban governments. It appears that this process has begun to change under the new Administration which has emphasized a recognition of traditional lines of authority and greater responsibility for program definition and execution at the state and local levels. It is likely that the revenue sharing program and the comment and review process set up by the Office of Management and Budget (A-95) will act as a policy lever to increase the participation of state agencies and more diversified local agencies such as Regional Councils.

To summarize the trends is to note changes in direction by the Congress from national goals of economic development and growth to balanced usage with environmental quality becoming a goal of increasing importance. There are changes in the federal administrative position, with Congress assuming more responsibility for land use management by encouraging direct federal involvement in local land use planning but only via appropriate state agencies. This support is likely to be increased in the near future through added emphasis of state responsibility in land use management. National policy statements by Presidents Kennedy, Johnson, and Nixon have made it quite clear that an integrated national land use policy must be implemented and that growth must be balanced with considerations of "quality of life." The details of these trends can be seen clearly in the step by step review of national policy as reflected in national legislation since 1945 (Appendix A).

State Policies (Not Texas Specifically)

In general, states have been reluctant to adopt a comprehensive policy on land use. After the adoption of the enabling legislation to allow local municipalities to systematically develop zoning guides, as supported by the Hoover Administration, states have remained out of the area of large scale land use management until recently.

States have traditionally had concerns in the fields of recreation and park planning. Indirectly states have been able to foster growth and guide land use change through indirect policy levers such as transportation planning, in particular, highway development. Recently, under federal legislation, states have been encouraged to develop their own water and air quality control agencies to enforce Environmental Protection Agency standards. These agencies have become extremely important in their indirect controls over land-use. In a similar manner many states have utilized taxation policies to enhance or retard particular kinds of land use. The Texas General Land Office is a unique feature and is responsible for state public lands that in other states of the Southwest are often directly under the Federal Department of the Interior. Finally state agencies linked to wildlife management and conservation of historical monuments have played an important, vigorous, though small, role in land management.

Recently there has been mounting pressure due to federal legislation for states with substantial coastal zone regions to become actively involved in developing a detailed land use management scheme within these zones. A few states, Texas included, have anticipated such developments and begun major administrative redefinition and extensive research on the problem of coastal zone management.

Local Policies

The authority for land use management by the public sector has traditionally been delegated to the local level, both nationally and within the State of Texas. The practice of management at this level has resulted in a great variation in the application of these powers from strict zoning and enforcement to no direct zoning at all. It should be noted that although strictly speaking, zoning may not be utilized in some instances, an indirect method of zoning occurs through deed restriction on land use. One advantage of local management, however, has been

the flexibility resulting from direct public access and participation. If local management of land use is to be modified or simply coordinated at the state level, it is vital that easy public access and participation are not lost.

II. NATIONAL POLICIES DIRECTED TO LAND USE

Congress has devoted an increasing amount of interest to land use policy and throughout the last three decades has gradually developed a number of programs to encourage and implement land planning, management and development. The trends in implementation have not always been consistent, and one can notice, in the development of the authorization of programs, shifts in direction that are inconsistent with the goals formulated at the outset. A further problem concerning legislation in the early decades (1945-1962) was the lack of interprogram coordination. This was particularly the case with programs involving grants to states and local governments for physical planning and development. A change can be noted in the congressional approach in the last decade, and legislation has been directed toward formulating universal goals and new coordination mechanisms, particularly through the process of administrative reorganization. A further change in congressional activity has come from the realization of the impact of many programs on our physical environment. The consequences have been implementation of direct action to curb further deterioration of environmental quality. There has been increased attention paid toward public lands at the national level, and although much of this legislation is relevant to national land use policy, Texas is less involved having a relatively small proportion of her land federally controlled (i.e., compared to New Mexico, Utah, Arizona, etc.). However, Congress has involved itself in specific legislation that is most pertinent to land use elements in Texas. The following outline of Federal legislation includes relevant special legislation. Such Acts as the Cape Cod National Seashore Bill (P.L. 87-126) and the Appalachian Regional Development Act (P.L. 89-4) are important precedents for Texas' land use goals.

In order to develop a review of formal policy-legislation developed at the national level, five basic areas of concern have been identified: (1) Urban Land, (2) Transportation, (3) Economic Development, (4) Natural Resource Management and (5) Recreation. Within these broad categories policies have evolved rapidly. In most

cases one of the key evolutionary elements is the changing administrative mechanisms, particularly the centralization of power. In recent years responsibility has decentralized from the federal structure to the state structure with the federal government offering only encouragement and assistance.

Key legislation has been grouped according to the categories noted above and further outlined below. An Appendix of national legislation has been developed. If a bill addresses more than one of these categories then the particular bill was repeated (see Appendix A). The following is a general summary of the impact of these policies and an interpretation of the present position and attitudes expressed at the national level by executive and legislative branches of government.

Urban Land

Administrative Mechanisms

The establishment of HUD to supersede the Housing and Home Finance Agency provided a central controlling agency to encompass most of the aspects of urban land use and development. Federal legislation later expanded HUD's powers to develop "open-space" programs and to consider environmental quality as a pertinent goal. However, urban mass transportation was transferred from HUD in 1968 and made the responsibility of the Department of Transportation, thus reestablishing a dualism in control of this important urban feature.

An important shift in emphasis has occurred in the delegation of responsibility. Federal agencies went through a brief period in the mid and early '60's when they passed the state and dealt directly with local governments. This is most notable in the provision of federal planning funds to assist smaller communities which lack adequate planning resources and to aid regional planning. The program was designed to facilitate comprehensive planning for urban and rural development, to coordinate transportation systems, and to encourage regional planning. Recently, however, the federal government has recognized the need for coordination at all levels. The regional planning commissions have been encouraged to make recommendations through A-95 review but have no coercive powers to implement their plans.

Urban Development

Although the federal government adopted a goal of "a decent home and a suitable living environment for every American family," its attempts to achieve this have been only partially successful. Its control over urban sprawl however has been negligible. In fact, the availability of FHA financing to satisfy the primary goal stated above has encouraged undisciplined sprawl in the suburbs. Lacking control or incentives to influence middle-class flight to the suburbs, federal legislation has been mostly directed towards urban renewal programs. With public housing and interest subsidy programs for low income housing lacking sufficient support at the local level, urban renewal programs have required direct federal involvement.

The urban renewal programs envision local renewal authorities empowered by state law to identify, condemn and take title of slum properties. Local authorities clear the land and offer it for sale to private developers who agree to rebuild according to the city's renewal plans. The federal government pays 67 percent of the total loss suffered by the local authorities. Congress requires that localities be federally certified to have a "workable program," such a condition acting as a control of local land use. This workable program certification requires the locality to utilize planning and police powers to maintain and upgrade the properties received under this program. Legislative and administrative requirements relate to adequate land use planning, citizen participation, relocation planning for "dislocated" persons and housing, building and zoning codes.

Urban renewal is thus conceived as a flexible urban development tool which can be used in a manner most appropriate to the particular locality. It has a multitude of uses, but its influence has been limited. This revolves around local authorities' enthusiasm and willingness to become involved in the program. Urban renewal programs have their drawbacks. Funding is uncertain. There is a time lag between authority for new programs at the federal level and actual local implementation. Relocation of the "dislocated" is still a problem with its social and racial implications. Programs do not cover the wide array of social needs which may be uncovered during the course of the project. Cities may forego the benefits of urban renewal because they lack the expertise to carry them out or because they don't wish to embark on such an ambitious course. Texas cities have not fully entered into the program. In June of 1970 only 23 Texas

cities had active urban renewal projects: Houston and Dallas are conspicuous by their absence in this list. On the other hand, Waco and San Antonio stand as two cities that have actively engaged in urban renewal.

Model Cities legislation reflects the desire to try a new approach to helping low income population. The basic provision envisions the determination of projects by the people being helped. The program has been expanded from a 10 to 12 city demonstration project to encompass 112 cities. Significantly the State was included in the program as advisor, coordinator and supporter. Several Texas cities which chose not to become involved in urban renewal programs found the Model Cities approach to be more attractive. Clearly, national policy has been important in the changing use of urban lands.

Housing

The national goal of providing "a decent home and a suitable living environment for every American family" has been the major influence in housing legislation. Housing demands following World War II accelerated the FHA program for home loans, the V.A. home loan programs which made home buying easier in the postwar era. Land use patterns in the nation and the configuration of the suburban landscape are due in large measure to the activities of these federal programs. Urban sprawl, uncontrolled subdivision development on city fringes, leap frog development, suburban spread, and the middle class flight to the suburbs are all expressions of similar phenomena.

Postwar housing programs to a great extent accomplished their aims but missed the housing needs of the poor. Federal programs of urban renewal, model cities and low-income housing were attempts to meet these requirements. Federal influence on housing standards in rural areas and in the cities extraterritorial jurisdiction is negligible because control by local governments is poor. Recent legislation concerning water quality standards will bring some indirect federal control into these unincorporated areas, but administration is largely to be left in state hands.

Federal efforts to ease the lot of the poor and their housing needs have only been partially successful. Public Housing programs, organized through Local Housing Authorities (L.H.A.) have suffered adverse publicity and have been often poorly planned and executed (New York is an exception). Public housing has a social "welfare" taint to it. Recent legislation has tried to overcome some of

these shortcomings. Turnkey projects require the active involvement of private firms and developers to construct housing, but the costs still discriminate against the poor. A rent supplement program provided in 1965 is another federal attempt to aid low-income groups in their housing needs through the use of existing-available-housing supplied in the market. In the general, control is strongly in the hands of the municipalities and they can direct these programs however they are inclined.

Transportation

Administrative Mechanisms

- The Department of Transportation established in 1966 has the responsibility for the nation's transportation systems. It is the central controlling department for all transportation projects, but it delegates responsibilities to State-level agencies.

Since the inception of the automobile, the highway has actively influenced land use, population location, economic growth and regional development. The era of the automobile was further heralded by the 1956 Highway Act which authorized the biggest road-building program in U.S. history. The "automobile system," including the massive component of truck transportation, is an integral part of American life. Consequently the D.O.T.'s interest in highway and to a lesser extent in airway development has led to a decline in usage of other transportation means. Recently D.O.T. has become responsible for urban mass transit. A federal supported national railroad experiment has been put into operation and is an effort to evaluate the possibilities of local and transcontinental transportation, primarily passenger.

A further move away from unquestioned highway development has been the turn toward a consideration of environmental quality goals. The National Environmental Act of 1969 was passed to protect the air, water, and land from abuses. The Act establishes a constitutional-like framework for making decisions where environmental values are found to be in conflict with other values.

D.O.T. was responsible for applying the NEPA considerations to highway development but its guidelines for State agencies have not been clearly stated. Guidelines for considering whether an environmental impact statement should be included in a projected highway plan are so vague

that invariably the State agency is left with the decision. One major consequence of this imprecise advice from the federal agency is a slowing of the bureaucratic procedure. For any major project the State agency must, to cover itself, draw up a comprehensive environmental impact statement. D.O.T. now has more projects being held up due to E.P.A. injunctions than any other federal agency.

Urban

Federal legislation provided funds for the planning and establishment of coordinated urban mass transportation systems. Originally urban mass transportation programs were to be part of the comprehensively planned development of an urban area, a HUD responsibility. However, in 1968 HUD was relieved of urban mass transit development, and D.O.T. assumed responsibility. The federal aim in this move was to incorporate urban transportation development into a national system, thus integrating primary and secondary highway systems with their urban extensions. In the 1970's, the Federal Aid Highway Act required D.O.T. to undertake planning at the national level to create integrated transportation systems within designated regions and corridors of "critical" importance.

Highways

The 1956 Highway Act and its supporting 1970 Federal Aid Highway Act authorized the construction of the national interstate highway system. The 1970 Act was couched in more conservative terms than the earlier law. The former Act envisaged unparalleled growth whereas in 1970, conditions were written into the legislation to provide States with aid but also made possible reduced interstate funding. Environmental considerations were to be accounted for in the new highway development. A "highway beautification" policy was adopted by Congress. It first implemented billboard control along interstates; it established "beautification" as a national goal; and, then it advocated that highway development give consideration to historical, archeological sites, parklands, and natural and wildlife areas in any future highway plans.

Airports

Immediately following World War II, the Civil Aeronautics Administration was authorized to draw up a national plan for the development of a public airway system

and airports to meet the needs of civil aeronautics. States were aided through federal funds in the construction and development of local airports. Cooperation in the siting decisions was at the federal/state level and control was left principally in the state agency's hands. Airport authorities were actively involved in airway development and could not be expected to act impartially. Thus environmental considerations were often bypassed in the site location process. The Congress did make some provisions in their 1964-1965 Urban Housing Acts, for reimbursement to homeowners affected by airport and flight-path location, but this was a conciliatory measure, not a preventive measure. In 1970, D.O.T. was authorized to take account of environmental values when considering the siting of future airports, but in this legislation the consideration was toward natural and wildlife areas, such as the Florida Everglades. How much influence environmental impact statements will have on future airport siting hearings is still not clear but it is likely to be substantial. The implication is that environmental impact statements may soon be required by all agencies involved in large-scale projects.

Economic Development

National Public Lands

There has been increased attention given to public lands at the national level and although much of the federal legislation is relevant to national land use policies as noted previously, Texas is less involved, having a relatively small portion of her land federally controlled in comparison to most Western states.

Congress clearly has not centralized in one agency all controls of national public lands, but the Bureau of Land Management's role in management of federal land has been expanded. The BLM is the principal administration body for coordination of all actions concerning federal land and it is through this agency that the congress has voiced its goals for national land use. Following President Kennedy's statement on the need for balanced usage of the nation's lands, the multiple-use development policy became a national aim. Under this multiple-use/sustained yield policy, lands whether they were forest, flood plain, wilderness, or wet lands, were to be administered under a usage designed to reconcile the conflicts between conservation, grazing, forestry, recreation, fish and wildlife protection, urban development and mineral exploitation.

A Public Land Law Review Commission was authorized to study existing public lands and to establish firm principles of national policy for federally owned land management.

Regional Overview

The federal approach to regional development has changed through the three decades after 1945. In the 1950's the emphasis was given to soil conservation and watershed protection programs, and to upgrading of sub-marginal lands with more stable vegetation. Congress, through legislation, was directly involved in guiding marginal land use out of farming into forestry and other uses. Federal programs were directed toward assisting the local authorities and individual land owners. Change in federal attitudes toward rural areas is signified by the authorization of funding to the Department of Agriculture for programs to develop local land use plans and to aid in the implementation of these plans. The Rural Development Act of 1972 is the culmination of the interest Congress has taken in rural development. It is comprehensive legislation establishing as a national goal the aim of balanced rural-urban development. The Department of Agriculture was to be responsible for coordination of a nationwide rural development program. The whole scale of rural activity was covered in this legislation, with multistage regional planning agencies established and encouraged on the one hand, and small scale farm activities aided on the other hand.

A regional approach was adopted toward river basin management, and in 1965 the Water Resources Council was established to provide for federal and regional coordination of plans for water resource development. Regional commissions administered the river basin development act and have become coordinators of federal, state, interstate, local and private interests.

Region Specific

In 1960, the Appalachian Regional Development Act heralded direct federal involvement in the support of an economically depressed region. Federal funding up to \$1 billion was allocated to this program for balanced regional development. Amendments in later years have continued to supply federal funds for this specific regional program, the 1972 Amendments extending it for another five

years. This represents a significant step by Congress to directly enter into regional land-use management.

Congress has also broadened the criteria for "depressed" areas eligible to receive assistance and has liberalized the conditions under which assistance could be granted. This further commits federal interest to regional development and acknowledges the national responsibility towards balanced rural/urban development.

Natural Resources Management

Administrative Mechanisms

Administration of natural resources is decentralized, with separate Federal agencies responsible for particular resources. This has led to overlap in responsibility and to conflicting federal jurisdiction, but natural resources are so varied that one central agency could not hope to successfully manage all of them. There are two types of Federal agencies administering natural resource management. Certain agencies are specific in their responsibilities, like the Parks and Wildlife Service. Others act as coordinating bodies, administering general policies toward all natural resources. Some agencies such as the Environmental Protection Agency act as Federal "policemen," rather than agencies of direct implementation. Whether this mix of responsibilities is efficient is questionable, but the range of natural resources is so varied that a division of responsibility is suitable.

Land and Water

Aside from the interest in the management of the nation's public lands, Congress has continued to legislate programs pertinent to state and local land-use elements. Programs to encourage and promote rural development have been referred to in Section C. Congress, concerned with the Forest resources of the nation, provided funds for reforestation programs. Submarginal land improvement programs, formerly under the auspices of the Soil Conservation Service, were assigned to the Forest Service. The multiple use-sustained yield principle was applied to the national forest system, incorporating recreational goals into the use of national forests. Preservation was to be paralleled by balanced usage, and federal aims have been towards extending the use of national and state forest lands for multiple purposes.

Throughout the three postwar decades, Congress has supported soil and water conservation practices, providing assistance in cost-sharing contracts with local authorities and individuals. Funding for these federal land and water conservation programs was to be partially supported by admission and recreation use fees, by net proceeds from the existing two percent net tax on motor boats, and by appropriations. This practice in supporting land use programs supplemented by local funding acted as a partial control on local usage of public lands.

The practice of diverting recreation user fees for support of natural areas was extended to historical monument sites, as well as recreation areas. Concern for historical and archeological sites was increased to the same level previously paid to natural and wildlife areas.

Management of mineral resources was set apart from management of "surface features" since legislation concerned with one does not adequately accommodate the other. Noticeably, National Forests, ranges, and wildernesses have become the concern of Congress for "recreation area" programs with the Bureau of Outdoor Recreation and the Park Service taking over responsibilities from the Bureau of Land Management. Recreation usage has become a principal concern in land management; Federal legislation in the 1960's reflects this trend. In all federal programs involving land and water resource development, due consideration now had to be given to recreational use, and to game and wildlife resources. Authorized funding on a cost-sharing basis was to be provided by the federal government to state, regional, and local authorities to accommodate these extra considerations.

Land resource management at the federal level is closely allied to balanced usage with federal aid supporting the "recreational" side.

As early as 1946, for example, the multiple-use principle was applied to a water development project with the Grand Coulee Agreement. Since that beginning federal interest in balanced usage of river basin development has increased. The Federal Water Resources Council was established to provide for federal and regional coordination of plans for water resource development. Recreation, fish and wildlife management and other considerations were to be included in the investigation and planning of any federal water project. To support these considerations, a uniform federal/local cost-sharing formula was established.

The Scenic Rivers, Wild Rivers programs were developed, in line with the national goals of expanding the national recreational area system. These were established to preserve stretches of rivers from incompatible water resource development, pollution, or commercialism. In this system "preservation" has superseded "development," and Congressional reaction to growing public pressure and balanced usage does not strictly apply in these areas. This approach is in line with the President's policy statement of February 8, 1972. In proposing a national principle of responsibility for natural resources he advocated the "protection of our natural heritage."

Wetland legislation has not been as comprehensive as river basin legislation and although studies were authorized in 1955-1956 and later in 1968 (P.L. 90-454), it wasn't until 1972, with the Coastal Zone Management Act that Congress entered the field. This Act encourages states to investigate the problems of their coastal areas and to develop with comprehensive plans and programs to reconcile conflicts and preserve the coastal zones. The Act provides grants for developing comprehensive coastal zone management programs and administrative grants to aid in the program implementation. The program must be coordinated with local, areawide and interstate plans applicable to areas within the coastal zone. Federal conditions must be met in the federal-state cost sharing programs, and this is a direct policy condition of the Act. The states can organize their own management program, within the federal limits. It does reflect the growing concern of Congress and the federal authorities for all aspects of national land use and yet it attempts to respect the concerns of the state and local authorities.

Concern over water pollution control has resulted in the Federal Water Pollution Control Act Amendments of 1972, which is one of the strongest pieces of federal resource management legislation to be enacted. This Act definitely indicates the direction that Congress is taking in resource management. It is a major piece of legislation setting up an integrated water quality system that is policed by a federal agency, the Environmental Protection Agency. At the core of the Act are its water quality standards, to be administered through a new permit system, The National Pollutant Discharge Elimination System. If a state wishes to operate its own permit system it must enact statutes and regulations that will control discharges in order to meet these federal standards. If states do not comply, the EPA will apply its own requirements directly. The permit system is designed to exercise control

on industrial and municipal polluters, and both criminal and civil penalties may be levied.

Special Environmental Units

The federal concern with special environmental units has led to legislation establishing Wilderness Preservation and Wild or Scenic River Systems. The principles of positive coastal zone management were established by the 1972 Act. This resulted from surveys in 1954-1955 and 1968 when investigation of coastal wetlands was authorized by Congress. Concern with submarginal lands has resulted in federal legislation to aid in their conservation and development. (The Great Plains Conservation Act of 1956 being a ready example.) This act was extended in 1969 to continue through 1981. These cost-sharing programs were expanded in the 1971 Amendments to the Public Works and Economic Development Act, which broadened the criteria for eligibility for support and identified special "disaster" areas for particular consideration. The overlap of these federal programs provides extra support for marginal rural lands.

Recreation

Recreation has become one of the more important considerations in federal land use policies. The management of recreational area systems has grown with the expansion of the responsibilities. The National Park Service was given expanded authority over the National Park System.

Congress has enlarged the National Park System and converted other public lands to recreational uses. In the decade 1963-1973, a National Wilderness Preservation System was established along with a National Wild and Scenic Rivers System and a National Trails System. These joined the National Seashore System established in the mid-50's to provide a greatly enlarged series of national recreation areas. The Fish and Wildlife Service was involved in protection and management of fish and wildlife resources. Much of the later federal legislation included consideration of this agency's responsibilities in developing plans and programs. Siting of airports, highways, water projects were all to take into consideration the impacts on wildlife management.

The trend in congressional legislation has been towards increasing recreational usage of public lands. National policy statements by Presidents Kennedy, Johnson,

and Nixon have made it quite clear that in an integrated national land use policy, growth must be balanced with environmental "quality" considerations. This increased action by Congress to develop recreation facilities to preserve natural and wildlife areas is a response to demands for environmental quality standards, echoing the political statements of the Presidents.

Potential Land Use Policies (The Land Use Policy and Planning Assistance Act of 1972)

The purpose of this section is to provide information on the Land Use Policy and Planning Assistance Act of 1972. The discussion concentrates entirely on the 1972 Act or Senate Bill 632, as revised, because it is believed that this Act includes the principal points of an earlier version of S.632 sponsored by Senator Jackson and S.992, which was supported by the Administration.

The revised version incorporates important provisions of both the Jackson bill and the Administration bill. The Act gives the Secretary of the Interior overall responsibility for the federal land use program; the Act requires governors to centralize land use planning in a single state agency; and the Act would require planning efforts to be principally concerned with areas of critical environmental concern as well as key facilities, land use development of regional importance and large scale development. The members of the Committee on Interior and Insular Affairs felt that the states could not develop comprehensive statewide land use plans for five to ten years because of a lack of technical expertise and funds at both the state and local level.

Prospects for the passage of land use legislation similar to the Land Use Policy and Planning Assistance Act of 1972 during the 93rd Congress appear to be almost certain. This bill has bipartisan support and the real question which will need to be answered in 1973 is what form the House version of the Act will take and the final form of the Act after the Senate-House conference committee reconciles the House-Senate versions.

Principal Provisions

Purpose: Section 103 of the Land Use Policy and Planning Assistance Act states that the purpose of the Act:

- (a) to establish a national policy to encourage and assist the several states to more effectively exercise their constitutional responsibilities for the planning and management of their land base through the development and implementation of state land use programs designed to achieve economically and environmentally sound uses of the Nation's land resources;
- (b) establish a grant-in-aid program to assist state and local governments and agencies to hire and train personnel, and establish the procedures necessary to develop and implement state land use programs;
- (c) establish reasonable and flexible federal requirements to give individual states guidance in, and to condition the distribution of, certain federal funds on, the establishment and implementation of adequate state land use programs;
- (d) establish the authority and responsibility of the Secretary of the Interior to administer the grant-in-aid program, to review statewide land use processes and state land use programs for conformity to the provisions of the act, and to assist the coordination of activities of Federal agencies with state land use programs;
- (e) develop and maintain a national policy with respect to federally conducted and federally assisted projects having land use implications; and
- (f) coordinate planning and management of federal land and planning and management of adjacent nonfederal lands.

Section 201 of the act calls for the creation within the Department of the Interior of an Office of Land Use Policy. The Office of Land Use Policy would be headed by a Director, appointed by the President with the advice and consent of the Senate. The Director will be responsible to the Secretary of the Interior and have such duties and responsibilities as the Secretary may assign.

Responsibilities of the
Secretary of the Interior

The Secretary of the Interior will be responsible for:

- (a) administering the Act's grant-in-aid program;
- (b) conducting studies of land resources in the United States and their use;
- (c) cooperating with states in developing standard methods for the collection of land use data;
- (d) maintaining a Federal Land Use Information and Data Center with regional branches which would have on file: plans of federal activities, as well as plans and programs of state and local governments and private enterprises which are of more than local significance; statistical data and information on past, present and projected land use patterns of more than local significance;
- (e) making the data center's information available to all levels of government and the public;
- (f) consulting and coordinating with officials administering federal land use planning assistance programs.

Advisory Board

The Act also calls for the creation of a National Advisory Board on Land Use Policy. The composition of the Board would consist of the Director of the Office of Land Use Policy, who would serve as Chairman, and representatives from the Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission; the Environmental Protection Agency; observers from the Council on Environmental Quality; the Federal Power Commission; and the Office of Management and Budget.

The principal duties of the National Board on Land Use Policy would be:

- (a) providing the Secretary of the Interior with information on the relationship of the Act's

policies to the programs of agencies on the Board;

- (b) providing advice to the Secretary of the guideline making agency. The Act allows the President to designate an agency to issue guidelines and assist in carrying out requirements of the Act;
- (c) assisting the agencies represented on the Board and the Secretary in coordinating the review of statewide planning processes assisted through the Act;
- (d) providing reports to the Secretary on land use matters referred to the Board.

The most important requirements of the Land Use Policy and Planning Assistance Act of 1972 are stated in Section 302 and Section 303. These sections deal with the specific requirements of the Act with reference to state land use planning activity.

The Statewide Planning Process

Section 302 of the Act would require the state to have developed an adequate statewide land use planning process within three fiscal years from the date of enactment of the bill. The purpose of the development of an adequate planning process is to insure that a state has an adequate base of professional expertise and data upon which to base a wise and informed land use policy and an effective state land use program.

The Act would require:

- (a) an up-to-date inventory of the state's land and natural resources;
- (b) an up-to-date statewide data base concerning population densities and trends, economic characteristics and trends, and directions and extent of urban and rural growth;
- (c) projections of the nature and quantity of land needed and suitable for recreation and aesthetic appreciation; agriculture, mineral development, and forestry; industry and commerce, including the development, generation and transmission of energy; transportation, urban development of new

towns, and the economic diversification of existing communities which possess a narrow economic base; rural development, taking into account future demands for and limitations upon products of the land; and health, educational, and other state and local governmental services;

- (d) an up-to-date inventory of environmental, geological, and physical conditions which influence the desirability of various land uses;
- (e) an up-to-date inventory of state, local government, and private needs and requirements concerning federal land with the state;
- (f) an up-to-date inventory of governmental organization and financial resources available for land use planning and management within the state, and of state and local programs and activities which have a land use impact of more than local concern;
- (g) the establishment of methods for identifying areas and uses to be included in the state land use programs (areas of critical environmental concern, key facilities, large scale development and land use of regional benefit);
- (h) the training of state and local land use planning and management personnel;
- (i) the establishment of arrangements for exchanging land use data on an intra- and intergovernmental basis and with the public;
- (j) the establishment of a method for coordinating state and local programs and services significantly affecting land use;
- (k) the conducting of public hearings and preparation of reports on the statewide land use planning process;
- (l) the provision of opportunities for participation of local governments and the public in the statewide land use process and in the guideline and rule making for administering the process;
- (m) the consideration of interstate land use issues.

The State Land Use Program

Section 303 of the Act requires that the states have within five fiscal years, (two years after the development of a statewide land use planning process) an adequate state land use program. Also Section 303 would require continuation of the planning process as outlined in Section 302.

Key requirements of the section of the Act are:

- (a) providing state authority over the use and development of land in areas of critical environmental concern; areas which are or could be impacted by key facilities, including site location and location of major improvements and access features of key facilities; and large scale development of more than local significance in its impact on the environment;
- (b) assuring that local regulations do not unreasonably restrict or exclude development and land use of regional benefit;
- (c) regulating large scale subdivisions to assure the planned maximum beneficial use of land;
- (d) revising periodically the state land use program to meet changing conditions;
- (e) assuring dissemination of information to and participation of local governments and members of the public in the development of the state land use program and in the guideline and rule-making for the administering of the program.

The implementation of the program by the state may be through two alternate administrative devices or mechanisms. The state may develop plans directly or the state may provide review of local land use plans and regulations and their implementation with full powers to approve or disapprove.

Eligibility and Sanctions

The principal requirements which the states must meet in order to remain eligible for funding are:

- (a) the state must not exclude any areas of critical environmental concern;

- (b) the state must demonstrate good faith efforts to implement the purposes, policies, and requirements of its land use plan;
- (c) the state land use program must be reviewed and approved by the Governor;
- (d) the state must coordinate its land use program with the planning activities and programs of its State agencies, the Federal Government and local governments;
- (e) the state must provide for the participation of and dissemination of information to appropriate officials or representatives of local governments and members of the public.

Although the sanctions were removed from the final version, Senate Bill 632, they have been reviewed here as they existed in the version approved by the Senate Interior and Insular Affairs Committee. The Act provides for two principal sanctions to be used for failure of a state to comply with the requirements of the Act:

- (a) any federal agency which contemplates any major action significantly affecting the use of non-federal lands, must hold hearings 180 days prior to the proposed action concerning the affect of that action on land use in any state which has had its eligibility withdrawn for participation under the provisions of the Act;
- (b) a state found ineligible after five fiscal years after enactment of the Act would suffer the withholding funds from three grant-in-aid programs over a three fiscal year period at a rate of seven percent the first fiscal year, 14 percent the second year, and 21 percent the third year. These funds would be held by the Treasury Department and disbursed immediately to the State when it subsequently meets the requirements of the Act. The funds subject to withholding are:
 - (1) those for airport development provided by the Airport and Airway Development Act;
 - (2) federal aid highway funds other than interstate highway funds or funds for planning and research;

- (3) funds from the Land and Water Conservation Act of 1965.

Implications for State and Local Policy

The development of a national land use policy will have important implications for state and local governments. The key thrusts of the pending federal legislation on land use identify four general areas of concern for state and local governments.

- (a) The state is to become the new central focus of the system.
- (b) Given the nature of the incentives and penalties outlined in all versions of the pending legislation, each state will be faced with problems and decisions associated with the establishment of a new agency or with assigning new responsibilities to an existing agency or entity. These problems will include determination of the role, extent of powers, operational relationships to other governmental units (federal, state, local), and a means for smooth incorporation into the existing institutional framework of the state.
- (c) Given even the more modest program requirements of S.992, it will be necessary for state government to intervene to some degree in the area of direct land use regulation, an area which has traditionally been a prerogative of local government. Here, policy making, institution building, and program administration will confront the conflicts inherent in any attempt to balance goals of system effectiveness, efficiency, and equity with the realities of political pressure.
- (d) Federal land use legislation means a large increase in demands for federal-state coordination and cooperation. Recognition of and concern for this fact has been a strong theme in all related congressional hearings held to date. Yet, if the responsibility for federal land use policy is assigned to the Interior Department, which has no regional or centralized state offices, lines of coordination and cooperation will have to span the distance from the state-designated land use agency directly to Washington, D. C. The mechanisms proposed for implementing greater

federal-state coordination are for the most part centralized. The National Advisory Board on Land Use Policy will provide for coordination among the various federal departments. Ad Hoc Federal-State Joint Committees will provide a means for coordination between the federal government and state and local interests over matters concerning planning and management of federal lands and of adjacent nonfederal lands. The Interior Department is given the option of establishing regional branches for the Federal Land Use Information and Data Center, which will provide land use information to all levels of government.

One can conclude from this array of arrangements that if federal-state coordination and cooperation in land resource management are to be realized, strong initiative must come from the individual state land use agencies. Such initiative would represent a vast opportunity for individual states to assert significant new degrees of control over federal activities located within their respective borders. But this implies a central, strong, and adequately supported state land use agency, an institution possibly in conflict with politically viable organizational alternatives that would divide land use management responsibilities among a number of agencies within the state.

COMPARATIVE CHART OF
FEDERAL LAND-USE BILLS

Non-Federal Lands

92nd Congress	S632	HR7211
Bill Number	Jackson (D. Wash.)	Aspinall (D. Colo.)
Purpose	Provides federal grants-in-aid and technical assistance to help states develop land use programs.	Establishes public land policy federal land management authority (below), also provides assistance to states.
Administration	Directs Secretary of Interior to administer through new office of land use policy administration.	Directs Secretary of Interior to administer through new office of land use policy and planning administration.
Plans	Requires states, within three years, to develop planning process for funding, personnel, information and agency structure.	Requires states to form land use planning agencies to develop comprehensive planning process. No time limit.
Programs	Requires states within five years to develop land use programs for areas of critical environment concern, key facilities, regionally beneficial development, large-scale developments.	Requires comprehensive state plans for areas of critical environmental concern, key facilities, regionally beneficial developments, large-scale developments, new subdivisions, new communities.
Grants	Authorizes \$100-million in annual payments to states for eight years, with federal share of 90% for first five years and 66-2/3% for next three years.	Authorizes \$204-million over five years: \$54-million for the first year with 90% federal share, \$45-million the second and third years (75% federal share), \$30-million the fourth and fifth years (50% federal share).
Sanctions	If state program is not developed after five years, withholds federal grants-in-aid (for airport development, highways, land and water conservation fund) at rate of 7%, 14% and 21% over three years. Funds held in escrow until state qualifies.	If state does not qualify by July 1, 1976 withholds federal grants-in-aid (for highways, airports, land and water conservation fund) at rate of 7%, 14% and 21% over three years. No escrow provision; funds revert to U. S. Treasury.
Appeals	If state is declared ineligible for grants, President must name three-member ad hoc hearing board which must rule within 90 days.	No appeals provisions. Conflicts resolved by interior secretary, Congress, or President, if necessary.
Coordination	Requires federal-state coordination and cooperation in planning and management of federal and adjacent non-federal lands.	Requires comprehensive coordination of federal and non-federal land use planning through national land use policy and planning board, national committees and advisory councils.

Federal Lands

Bill Number	S2401	HR7211
Sponsors	Jackson-Allott (R. Colo.)	Aspinall
Policy	Declares that lands administered by Bureau of Land Management (BLM) be retained in federal ownership and managed for multiple use and sustained-yield.	Applies to all federal lands, retains most under government ownership to be managed for multiple use and sustained yield.
Classification	Requires Interior Secretary to make inventory of all BLM lands with priority to areas of critical environmental concern and potential wilderness.	Requires that all public lands be inventoried and classified for uses of maximum public benefit with some dominant use classifications.
Disposal	Authorizes Interior Secretary to sell or dispose of BLM lands after considering environmental management and public objectives.	Authorizes disposal of any federal lands meeting certain criteria under uniform procedures for sale, acquisition and exchange.
Withdrawal	Uses existing procedures for executive withdrawal of federal lands for other purposes, such as national parks, monuments or forests.	Limits future withdrawals to 25,000 acres for non-resource uses. House and Senate Interior Committees have veto power over withdrawal decisions.

III. PRESENT STATE POLICIES ON LAND USE

Although it is actively involved in land resource management, Texas does not have any statewide land use plan or agency responsible for land management. In the majority of cases, the state has adopted the practice of leaving land use control in the hands of local governments. As a result, municipal zoning and related development controls have been the primary tools for affecting private land use decisions in the state. This reliance on local government units has resulted in a fragmented structure of regulatory measures, unstable land use practices in many unincorporated areas.

Present Texas land use policies will be examined within the following framework:

- A. Constitutional Basis for State Policies on Land Use
- B. Legislative Basis for State Policies on Land Use
- C. State Administration of Land-Related Resources
- D. State Responses to Federal Land Use Requirements
- E. State Policies Indirectly Affecting Land Use

Constitutional Basis for State Policies on Land Use

The Tenth Amendment to the U.S. Constitution reserves to the states all powers not delegated to the federal government nor prohibited to the states. Thus the State of Texas holds residual governmental power over its citizens and all land within the state. This power is limited, however, by the Fourteenth Amendment, which prohibits any state from depriving persons of property without due process of law or from denying persons within its jurisdiction equal protection under the laws.

State constitutions further establish the internal structure of state governments and restrict state

power; for example, Article 1, Section 17 of the Texas Constitution states that no person's property shall be taken for public use without compensation. In addition, this clause prevents the state from taking property from one person to benefit another person's private interests, even if payment is made.

Although states are thus limited in the amount of control they can exercise over persons and property, the constitutional limitations are actually not that severe. For example, states are permitted to regulate landowners under their "police power" in order to promote the health, safety, and welfare of its people. In the enforcement of such regulations, states have been allowed by the courts to control privately-owned land through zoning, conservation laws, subdivision regulations, and building codes; the courts, however, do require that regulations not be applied discriminatorily. State control over privately-owned land can also occur when the state "takes over" the property; in this case, the state must pay the landowner an appropriate amount.

Local governments have applied standard land use controls through "police power" which has been delegated by the state. The constitutional test for "police power" is the same, whether the state or its authorized subunit applies actual control; however, subunits may act only when the power has been delegated, whereas the state itself is in a plenary position to exercise the "police power" to its fullest extent, providing federal and state constitutional limits are observed. Moreover, because courts have upheld zoning and other land use controls applied by the various subunits of government, there should be no doubt that the state can apply the same controls on a state-wide basis without infringing upon the constitutional rights of private landowners.

Legislative Basis for State Policies on Land Use

Texas legislative directives relative to land use policies have primarily been enabling acts giving cities fairly extensive power to regulate land development and utilization and providing counties limited power. Activity at the statewide level has primarily been limited to the coordination of local land use planning and the administration of state owned land and certain natural resources.

Present zoning and subdivision regulation policies of Texas municipal governments are predominantly modifications of state enabling legislation adopted in the 1920's.

During that time the U.S. Department of Commerce recognized a need for local land use planning, and drafted and recommended to the states two model acts: A Standard State Zoning Enabling Act (1924) and A Standard City Planning Enabling Act (1928). Although Texas has adopted the basic Zoning Enabling Act, it has never adopted the Standard City Planning Enabling Act. The philosophy expressed in these early legislative models has continued to have a significant impact upon subsequent Texas land use legislation.

Control of Land Use

Cities. Articles concerned with the control of land use by cities are:

--Articles 1011a-1:

This is the basic grant of power for adopting local comprehensive zoning ordinances by Texas cities and incorporated villages. The Article specifies those features of land use, building, or other structural development which may be properly regulated (1011a); the creation of zoning districts (1011b); the requirement of coordination with a comprehensive plan and the purposes to be achieved (1011c); the procedures to be followed as established by the local legislative body after appropriate public hearings (1011d); provision for changing the adopted ordinances (1011e); the appointment of a Zoning Commission and its responsibilities (1011f); the appointment of a Zoning Board of Adjustment to review and approve exceptions, variances, and appeals (1011g); a procedure for enforcement of the adopted ordinances (1011h); and other considerations.

One additional provision has a particular significance for promoting coordination and cooperation between local jurisdictions. This is the permissive authority to create a Joint Planning Commission among those local governmental units whose sphere of zoning influence is adjacent or contiguous (Art. 1011k).

--Article 1175(26):

Specifically enumerates the powers of Home Rule Charter cities in relation to zoning. There are no significant differences in the authority provided home rule and general law municipalities.

--Article 1105a:

Authorizes cities and towns to establish building (set-back) lines on streets.

--Article 97a:

Before any city with a comprehensive zoning ordinance in effect may be annexed to or incorporated with another municipal corporation, the ordinance or incorporating procedure combining such zoned territory must provide for the identical comprehensive zoning for such territory as existed prior to the change.

--Article 970a (Municipal Annexation Act):

Establishes the extraterritorial jurisdiction of Texas cities and towns by population class:

<u>Population Class</u>	<u>Extraterritorial Limits</u>
0 - 4,999	one-half (1/2) mile
5,000 - 24,999	one (1) mile
25,000 - 49,999	two (2) miles
50,000 - 99,999	three and one-half (3-1/2) miles
100,000 or greater	five (5) miles

--Texas Water Code No. 21.084:

Authorizes counties to license private sewage facilities.

Specific Land Use Control Powers

Cities and Counties. Articles concerned with specific land use control powers of cities and counties are:

--Articles 46e-1 to 15:

This law authorizes cities and counties having airport hazards within their jurisdictions to establish and enforce appropriate zoning regulations in the airport region.

--Article 974a:

This 1927 enabling act provides the basic authority for municipal governments in Texas to adopt, administer,

and enforce appropriate subdivision regulations, usually in the form of ordinances governing the proposed conversion of raw (undeveloped) land into residential, industrial, or commercial building sites. Submission of subdivision plats for approval by the local city council or planning commission is the usual method of enforcement.

The act requires that, after formal adoption of the necessary ordinances, all owners of lands located within the city or within five miles of the city submit a plat of any land to be divided into two or more parts for the purpose of sale. Local ordinances must specify the details of such required plats. Plats must be filed for record with the county clerk only after receiving the prior approval of the appropriate city council or planning commission. (The five-mile restriction here is modified subject to the provisions of Article 970a, according to an opinion of the Texas Attorney General in 1965.)

--Article 974a-1:

This amendment to Article 974a applies to a method of enforcement of subdivision rules and regulations adopted by cities, towns and villages in Texas counties of more than 1,000,000 population (Dallas County and Harris County only) which do not have zoning ordinances in force. Provides for suit to enjoin any violation in the competent court of jurisdiction.

--Article 974a-2:

This amendment applies to the regulation of commercial building permits by cities of 900,000 or more (Houston only) by reference to property (deed) restrictions on the use of or construction on said property.

--Article 1581e-1:

This article extends limited zoning and building regulation authority to counties along the Gulf Coast for the control of development within flood-prone areas. The law was passed to allow residents of the Gulf Coast counties to obtain insurance against flood damage under the National Flood Insurance Act of 1968.

Section 4 of this article provides that cities may extend their subdivision ordinances into these extra-territorial areas by adopting explicit ordinances. This is not an automatic authority granted to any city or town with previously existing ordinances governing plats and subdivision of land.

Counties. Articles concerned with land use control powers of counties are:

--Article 2372k:

Gives counties of 190,000 or more population the authority to adopt land subdivision regulations applicable to all lands outside of the boundaries of any incorporated town or city having their own subdivision ordinances. This would seem to conflict with the provisions of Art. 974a (as amended by Art. 970a) in relation to enforcement of subdivision controls in the extraterritorial jurisdiction areas of the cities and towns. In practice, where city and county share this jurisdiction, the city's exercise of its authority has prevailed.

The Commissioners Courts of the respective counties are the designated approving agency for submitted subdivision plats. Adopted regulations may specify street and drainage requirements, bonding to insure proper construction and maintenance of such roads or streets, and other provisions.

--Article 6626a:

Authorizes all counties of less than 190,000 population to adopt subdivision regulations applicable to land outside the corporate limit of any city therein.

--Articles 2372(1) and 2372(2):

These articles extend comprehensive zoning authority to Cameron County and Willacy County with respect to regulation of development on Padre Island and to Val Verde County with respect to the regulation of development in a portion of the county around Amistad Reservoir.

--Article 8280-13:

All state political subdivisions were authorized to engage in flood-plain management.

Power of Eminent Domain

--Article 969b:

Provides that any incorporated place in a county of over 350,000 population (Bexar, Dallas, El Paso, Harris and Tarrant counties) may separately or jointly with any city, town, cities or towns, in the same county, receive

or acquire any property in the state located inside or out of its corporate limits for any of the following purposes: parks; hospitals; extension, improvement, or enlargement of its water system; water supply reservoirs, watersheds or dams; sewage plants and systems; rights-of-way for water and sewer lines; playgrounds, airports, and landing fields; incinerators or garbage disposal sites; streets or other public ways; and any rights needed in conjunction with any of the above purposes. Condemnation by eminent domain is authorized.

--Article 1107:

Governs the condemnation of property for public utility purposes by cities and towns.

--Article 1015a:

Authorizes the condemnation of lands for park purposes by cities of over 12,000 population.

--Article 1015c-1:

Authorizes joint action by cities and counties to cooperate in operating recreational areas.

--Article 1581e:

Gives counties the right of eminent domain for flood control purposes.

Participation in
Federal Programs

--Article 1269k:

Authorizes cities to establish public housing projects.

--Article 1258:

Authorizes cities to engage in urban renewal activities.

--Article 1269j-4,7:

Authorizes cities to issue Certificates of Indebtedness and to participate in the federal "new communities" program.

Cities and Counties. Cooperative planning and contracting legislation includes:

--Article 1011m:

Authorizes local governments to establish regional planning commissions to conduct area-wide planning and comment on applications for federal and state funding for local projects.

--Article 4413 (32c):

Authorizes local authorities to engage in cooperative activities and to contract mutually advantageous services between cities and counties.

State Technical Assistance

Local Governments. Articles concerning state technical assistance to local governments include:

--Article 4413 (32b):

Establishes the Texas Advisory Commission on Intergovernmental Relations to study and evaluate relationships among local, state, and federal governmental agencies, including those concerned with land use policies.

--Article 4413(34):

Establishes a Mass Transportation Commission to plan, encourage, and facilitate development of public mass transit in the state.

--Article 4413(39):

Establishes a Building Material and Systems Testing Laboratory to test and evaluate building materials, products, and systems to control performance capabilities.

--Article 4413(201):

Establishes a Department of Community Affairs to help local governments deal with state and federal governments, conduct research into problems of local governments (including those related to land use), and make legislative recommendations.

Other. In addition to these attempts to control the utilization of land through local governments, the Texas

Legislature has adopted an Open Beaches Law (Article 5415d) to regulate state-owned beaches along the Gulf Coast. Denial of public access to such beaches is punishable by fine. Further regulations authorize coastal cities and counties to be responsible for beach traffic; counties may also establish Beach Park Boards to operate public parks on the beaches. Removal of raw material (i.e., sand or gravel) from the beaches is prohibited. The Intergovernmental Cooperation Act of 1971, useful in promoting intergovernmental relations and agreements, is yet another legislative effort having an impact on the development of land use policies.

State Administration of Land-Related Resources

The Texas Constitution and the Texas Legislature have created a variety of state agencies, boards, and commissions to carry out the state activities related to land and other natural resources. Although land use planning and control is primarily concentrated in local governmental units, these state units do carry out a variety of necessary administrative, regulatory, and/or coordination functions.

Four types of state government organization dealing with land use related issues will be considered:

1. State Administrative Agencies
2. State Regulatory Boards and Commissions
3. Other State Level Coordinating Units
4. Special Purpose Authorities and Districts

State Administrative Agencies

State agencies perceived to have the greatest present and potential influence on state land use patterns through their ability to administer and control land related state assets are:

The General Land Office. The General Land Office was created by the Texas Constitution to register all land titles emanating from the state. Its primary function now is to supervise, administer, and manage the 22.5 million acres of public lands in the state. The proceeds of leases and rentals on these acres amount to more than \$130 million annually.

In the Constitution of 1876, one-half of the remaining public domain was dedicated to the Permanent Free School Fund. In later years, the residue of the public domain was added to the Land Office's responsibilities, along with mineral interests in the state's river beds and tidelands, including bays, inlets, and the marginal sea areas. The General Land Office awards oil, gas, and sulphur leases on these lands, exercising a broad degree of discretion. The Commission may adopt and enforce rules and regulations to prevent pollution of water in any development of state lands.

In 1949, the Veterans' Land Board was created to issue bonds to fund a program under which nearly 40,000 Texas veterans have purchased more than three million acres of land on long-term, low interest loans. The General Land Office administers this program.

Although not provided in the statutes, the General Land Office has an environmental planning division. It is in charge of developing guidelines and criteria for the multiple use of public submerged and upland areas. This division reviews applications for permits, leases, and sales of state lands to determine the environmental impact of the proposed activity. It then advises the Land Office on the potential impact and recommends how adverse effects can be lessened. This division also cooperates with related federal and state agencies when their activities affect Texas public lands.

The General Land Office is headed by an elected official. Until recently the critical concern of the Land Office was the management of public state lands for maximum economic benefit. However there has been a marked shift in management policy to include the environment and other issues of greater public interest. This has been expressed by the General Land Office's effort to develop an environmentally sound management program for the state's 4,045,000 acres of submerged lands and 892,493 acres of uplands.

The Texas Highway Department. Pursuant to its constitutional authority to lay out, construct, maintain and operate a connected system of state highways, the Texas legislature created the Texas Highway Department.

The Department may purchase, in the name of the state, any land which is necessary or convenient to any state highway to be constructed, reconstructed, maintained, widened, straightened, or lengthened. The power of eminent domain, subject to the procedural requirements, is granted. The Department may also pay counties or cities for

rights-of-way acquired by them for the Department. The Department may also exchange any lands donated to the state for right-of-way or park and recreational purposes for other lands which are more desirable for the Department's purposes.

The Highway Department helps to supervise federal and state funds for the construction and improvement of state highways.

The Texas Highway Department has provided impetus to the economic development policy within the state through the provisions of the Farm-to-Market road legislation. This legislation has not only aided rural Texas but has also resulted in 2,248 miles of farm-to-market roads being built that also serve industrial complexes. Basically however the Department has taken a "catch up" stance in not building roads, particularly loops, until there is a demonstrated demand generated beyond the proposed location.

Multimodel transportation studies are carried out by the Highway Department and transportation interfaces are of critical concern. Historically the Port Authorities, Airport Authorities, railroads and the Highway Department have worked closely to develop jointly productive facilities. Furthermore access to public education most notably secondary schools was an important dedication issue in the development of the highway system in this state, just as access to recreation and parks has become an important issue in recent years.

The State Highway Department led the nation in beautification issues such as reduction of signs by attempting to develop voluntary compliance in the 1930's and then again after the 1956 Interstate Highway Act was passed. This was before the Mandatory Compensation Amendment of 1965. By the time the latter occurred, compliance could not be enforced in key areas where easements occurred. The Interstate System provided a stimulus to the growth of the state system which was already extensive.

The Highway Department of the State of Texas continues to face the issues of land development and land management in a variety of ways. Transportation and land use are inseparable and the department recognizes this in all planning.

The Texas Water Development Board. The Board was created in 1957 to help Texas political subdivisions develop local water supplies by means of long-term, low interest loans from the Texas Water Development Fund. Such assistance

is available for construction, acquisition, or improvement of "any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state." The Act has been subsequently broadened, and the Board now has sixteen different legislative and/or constitutional functions.

The Water Development Board is the primary state liaison agency with federal water resource agencies. In addition to cooperating with the Bureau of Reclamation and the Corps of Engineers in water resource project planning, the Board negotiates with the Federal Government for inclusion of water storage space in federal projects. The Board also assists and coordinates the efforts of local governments in applying for flood insurance coverage under the National Flood Insurance Act.

The Board engages in a wide range of research and planning activities, including preparation and maintenance of a current comprehensive state water plan. This plan is used as a guide for state policy in water resource development.

In regard to research, the Board has the authority to conduct studies of: the occurrence, quantity, quality, and availability of the surface and ground-water of the state; engineering, hydrological, and geological matters concerning state water resources; water needs of the different regions of the state; underground water supplies; and the like.

Perhaps, more directly concerned with broad land use policy issues than other state water-related agencies, the Water Development Board has especially evidenced its concern in matters related to the Texas Water Plan. For example, the irrigation aspects of this plan clearly impact on land use, as does the suggested use of flood plain zoning as an alternative to flood protection works. In this plan, the Board also took opposition to drainage of certain land areas, arguing rather for the need to protect wetlands in certain instances. Studies of the Edwards Aquifer region and other areas have also been performed by the Board. Although the Board must consider general land use issues more comprehensively in its policy-making processes (e.g., the residential and recreational developments resulting from a decision to construct a reservoir), it is cognizant of the fact that its decisions are not implemented in a vacuum.

The Texas Soil and Water Conservation Board. This Board administers and coordinates the activities of the 187

Soil and Water Conservation Districts. It also administers for the state the upstream watershed protection and flood prevention program. Most of the state's soil and water conservation activities however are directly handled by the local districts or other state agencies.

The Board's primary responsibility lies in the creation of Conservation Districts. Applications to create a district must be filed with the Board. After a public hearing, the Board determines whether there is a need for the district and defines its boundaries. The Board then supervises an election on the district creation in the area involved (if it has made an affirmative finding). If the application is approved by the electorate, the Board determines whether the operation of the district is administratively feasible and practical. If not, the petition is denied. If the district passes this hurdle, the Board divides it into five subdivisions and appoints two supervisors pending formal elections.

The Board has also been designated by the governor as the state agency to receive and approve or disapprove applications to the Federal Government by political subdivisions for assistance in planning and carrying out watershed protection and flood prevention projects.

Following the lead of the soil conservation service at the federal level, the Board has begun to manifest more concern for nonagricultural problems, e.g., soil erosion in the urban fringe resulting from clearing and construction. The Board would also like to see the Soil and Water Conservation Districts exercise some of the regulatory powers they possess. The federal soil conservation authorities are increasingly recognizing the relationship between land factors and social/economic factors, as evidenced by multidistrict projects in Texas in such areas as low-rent housing and recreation; this trend toward multidistrict projects giving more attention to land use issues is presently being considered at the state level.

The Texas Parks and Wildlife Department. In 1963 the legislature merged two state agencies, the State Park Board and the Game and Fish Commission, into the Parks and Wildlife Department.

In 1925 the State Park Board was created to make an investigation of land to determine park suitability and to report their findings to the state legislature. This general enabling statute had the goal of "initiating movement of a system of state parks." As a result of this and

later statutes, the Department now has the power to locate, designate, and create parks (recreational, scenic, or historic), historic sites. Original financing for land acquisition was inadequate, so in 1967 the Department was authorized to issue \$75 million in Texas Park Development Bonds, pursuant to a constitutional amendment. In 1971, additional financing for the acquisition and development of state parks was provided through the levying of an excise tax on cigarettes. This produces approximately \$12 million per year of additional revenue for the Parks and Wildlife Department.

The Department is the state agency designated to administer the federal Land and Water Conservation Fund. This fund provides grants to the state and local political subdivisions for the acquisition and development of outdoor recreational areas. To qualify for these funds the Department must prepare and maintain a state comprehensive outdoor recreation plan. The first of these plans was prepared in 1966.

In fulfilling its general responsibility to "investigate land to determine park suitability," the Department prepares a master plan for any proposed state park. By 1970, the Department was administering 66 state parks containing more than 63,000 acres.

There has been a radical shift in the policy of Texas Parks and Wildlife. In the early period when there were little funds for park acquisition, design, or operation the department basically (1) acquired parks through gifts, (2) provided few facilities and (3) operated them through concessions. The consequences were (1) a greater differential in park quality and development, and (2) a great variation in park usage due to the variety and inconsistency in location of parks relative to demand centers. Today park location is developed in conjunction with demand centers and unique floral, faunal and geographical interest. Location criteria have been extended to a concern for the preservation and development of historical and archeologically valuable sites. The Land and Water Conservation Fund that the Department administers has aided many of these changes in policy.

The Department protects and promotes fish and other wildlife interests of the state. An overriding policy on wildlife is the development of an education process to get private landowners to develop their lands in ways that are compatible with wildlife management. To do this demonstration projects have been developed. In inland waters the policy of the stocking of new lakes has been

widely used. An important new policy in the area of fisheries has developed via the environmental responsibilities of the Department. The Department will seek both fines for pollution as well as replacement cost for pollution damage. An overriding policy in the coastal fisheries area allows commercial fisheries to harvest the same species as sports fishermen. A close look at the policy of shell dredging is presently being undertaken.

The Texas Industrial Commission. Originally created in 1920 to assist the governor in solving labor-management disputes, the primary duty of the Commission is now to "plan, organize, and operate a program for attracting and locating new industries in the state of Texas."

The Commission's general duties are roughly of three types: administrative (e.g., cooperate with interstate commissions, other state agencies, and local communities in developing business, industry and commerce); planning and research (e.g., investigate ways to promote and encourage the development and protection of Texas business, industry, agriculture, and commerce both within and outside the state); and advertising (e.g., advertise and disseminate information as to natural resources, desirable locations, and the like).

The Commission also can grant cities, counties, and conservation and reclamation districts the authority to issue nontaxable revenue bonds to finance the acquisition, construction, enlargement, or improvement of projects, such as (1) public health, research, and medical facilities, and (2) land, buildings, equipment, facilities, and improvements required or suitable for the promotion of industrial growth. Under the "Rural Industrial Development Act," the Commission also has the authority to make loans, not to exceed 40 percent of the project cost, to aid in the promotion and development of new and expanded industrial and manufacturing enterprises. Perhaps the most important overall policy of the Commission that needs recognition is its focus on the intermediate and small sized centers as viable alternative locations to the metropolitan centers. This focus should not be construed to mean a reduction in economic base or viability of the large centers but rather to make sure that smaller centers are also evaluated in the industrial locating processes.

Texas Agriculture Department. This department does not directly involve itself in land management programs. It exists as advisory agent on land use problems participating in interagency cooperation when relevant issues of agricultural land management nature are raised.

It plays an active role in consultation on agriculture land use management within the council of natural resources but this is an advisory and not a decision making role.

Texas Forest Service. The Texas Forest Service has set up a regional framework for administering its services. Seven districts have been established with six in East Texas and the other in the Lost Pines Area near Bastrop. In each district five professional foresters represent the Service in providing counselling and advice to private owners of forested lands. The Forest Service supplies private land owners with a comprehensive report on their (the land owners) land use problems together with advice on alternatives and objectives in the development of forested lands. Their concern is for the best use of forested lands and they consider the total range of options available to private land owners. In their capacity as advisors, they attempt to balance needs of the individual land owner with the "best practice" goals of the forest service, but they have no jurisdiction on the enforcement of these goals.

State Regulatory Boards and Commissions

In addition to the primarily administrative state agencies, the state has established several agencies with power to impose direct regulation upon landowners. These agencies can hold hearings, establish rules and regulations, issue orders, and enforce their regulations and orders by legal action. The primary state agencies of this type are:

The Texas Air Control Board. The Board was created by the Texas Clean Air Act in 1965. It is the legal entity responsible for the abatement and control of air pollution. Its primary objectives are: (1) set ambient air quality and emission standards and develop a comprehensive plan to control the state's air resources; (2) establish rules and regulations consistent with the intent and purpose of the Act; and (3) organize administrative and technical staff required to attain the prescribed goals.

The Air Control Board has several programs which focus on air quality but which, by their nature, have considerable impact on land resources and their use. The Board does more than set air quality standards. For example, under its authority to grant construction permits for new or modified facilities emitting air contaminants into the air,

the Board can refuse to grant a permit if the proposal does not include "proper consideration of land use." Land use factors are becoming more important in considering issuance of permits that meet strict emission standards. Further expansion of responsibility into land use management will be required if pending federal court action favors "nondegradation" of existing air quality. This means that no deterioration of existing clean air will be allowed. Such a decision would be of a high order than present national standards.

The Texas Water Rights Commission. The Texas Water Rights Commission was created in 1965. The Commission receives, administers, and grants applications for the permitted appropriation and use of State waters by individuals, governmental entities, and the Texas Water Development Board. The Texas Water Rights Commission is basically a regulatory agency, however it participates in general water planning with the Texas Water Development Board.

In terms of land use, one of the Commission's significant actions is the creation and supervision of water districts. These districts must obtain permits from the Commission to function, and must file information with the Commission concerning their boundaries, financial operations, organizational composition, and administrative functions and operations.

The Commission is limited in its ability to regulate water use, insofar as underground waters are concerned. Underground waters are not considered State water. Hence, individuals are entitled to drill wells on their own land and to remove water for their own use. This can be disastrous, as in the Houston area, where excessive groundwater withdrawals have resulted in the compression of depleted aquifer formations and have caused extensive land subsidence.

The Commission's involvement in the creation and supervision of water districts clearly is related to land use in Texas. However, Commission critics claim that some developer-controlled water districts are illustrative cases of nonmanagement of land resources. In addition some critics believe that the Commission does not consider adequately the impact of its decisions on urban sprawl and other land related activities. But, there is no real basis for criticizing the Commission for this incomplete evaluation of land use impacts related to water districts, which has in some instances contributed, seemingly to urban sprawl and other land use issues. The Legislature, for

instance, has simply responded to uncontested bills offered by various representatives and in this way has enabled residential and industrial land developers to increase the number of water districts. The Texas Water Rights Commission is revising its rules and regulations, and is proposing new legislation which will strengthen its authority and enhance its control over water districts.

Basically the Texas Water Rights Commission executes its policies through eight basic programs:

1. Water Use Permit Program
2. Dam Safety Review Program
3. Adjudication of Water Rights Program
4. Cancellation of Statutory Water Rights Program
5. Ownership of Water Rights and Recorded Claims Program
6. Creation of Water Districts
7. Review of Project Feasibility and Bond Issuance by Water Districts
8. Dam and Reservoir Inspection Program

All of these programs impact heavily on land use.

Therefore, the State should recognize the basic function of the Texas Water Rights Commission and its programs as integral elements of a state-wide land use or land resources management policy.

The Texas Water Quality Board. Evolving out of the underfunded and understaffed Texas Water Pollution Advisory Council (1953) and the State Water Pollution Control Board (1961), the Water Quality Board was created by the Texas Water Quality Act.

Under the Water Quality Act, the Board engages in such activities as the development of a comprehensive state water quality plan; the development of water quality management plans for the different areas of the state; development of regional waste water collection, treatment, and disposal systems where necessary; establishment of state water quality standards; and issuance of permits for effluent discharges into or adjacent to water in the state. (The Disposal Well Act authorizes the Railroad Commission

to issue permits for the well disposal of oil and gas wastes, generally brines.) However, the Water Quality Board must state that the disposal will not endanger freshwater strata in the area and that the formation of stratum to be used for the disposal is not freshwater sand. The most important part of the Solid Waste Disposal Act is the Board's permit power over the disposal of industrial solid waste.

Clearly the Texas Water Quality Board has several programs which focus on water quality and management but which, by their very nature, have an influential impact on land resources and their use. Standards imposed by the Board have established guidelines which increasingly affect land use and development. For example, the area-wide Board order regulating septic tank use and prohibiting their use in certain areas around reservoirs has changed the pattern of development in residential areas. The regulation concerning the Edwards Underground Aquifer Recharge District will also have an impact upon growth in that area. The Board, however, still views itself as being concerned with land use issues only insofar as these issues affect water quality. The Board realizes, of course, that such actions as permit denials will influence the use and non-use of land, but in some instances does not necessarily consider land use factors in making water quality decisions since water quality is its major function.

The consequence of the "no degradation" issue in stream quality developed by the federal government is a substantial constraint to regional decentralization of development. This agency can not be expected to be in anything but a reactive position in land use given the shifting sands of federal water quality legislation. A major exception here being the enforcement by this agency to encourage new water districts to join region waste control system in urban region. This is a policy which is likely to continue and be expanded.

The Texas Railroad Commission. The Railroad Commission regulates railroads, trucks and busses, and oil and gas production. The Commission's important transportation responsibilities are in the designation of crude pipeline carriers and motor common carrier routes for the movement of intrastate goods. Two aspects of oil and gas regulations affect land use: prevention of waste, and prevention of pollution by oil and gas related activities.

To prevent waste, the Commission sometimes restricts the number of wells that can be drilled on a tract of land. This regulation requires the spacing of wells for

the purpose of efficient withdrawal of oil or gas resources and also prevents cluttering of land surfaces by oil and gas production equipment which might restrict other uses.

The Commission has the authority to determine whether inoperative or abandoned wells are causing pollution of fresh water above or below ground, and to require abatement of pollution including ordering wells plugged. The Commission also makes and enforces rules and regulations concerning test techniques, drilling, completion and production of new wells to prevent pollution of surface waters and subsurface strata which are capable of producing water suitable for domestic, agricultural, or industrial use.

Other State-Level Coordinating Units

The state's regulatory and administrative agencies exert considerable influence over land use in the state. However, each agency was formed to respond to particular needs and thus operates within its legislative or constitutional statement of purpose. This results in agencies complementing, as well as conflicting with, one another.

In 1967 the Legislature began to institutionalize the planning and coordination function in state government. The Legislature designated the Governor as Chief Planning Officer of the State and permitted him to appoint Interagency Planning Councils in various functional areas. In addition, this legislation established a Division of Planning Coordination in the Office of the Governor.

In 1968, the Governor activated Interagency Councils in the broad areas of health, natural resources, and law enforcement. The Division of Planning Coordination was given the following mission: provide the Governor with policy guidance for using the state's natural and human resources; provide state agencies with a forum for coordinating their activities; provide information for state agencies; review applications by local government units for federal funding; and support Interagency Planning Council activities.

The Natural Resources section of the Division of Planning Coordination is now involved in research for land use planning for the state. According to a Division statement in 1971, the Natural Resources section "is responsible for the Coastal Resources Management Program by developing

an environmental analysis of the coastal resources and the coastal problems of Texas. . . . The team provides staff support and leadership to the Interagency Council on Natural Resources and the Environment."

The Natural Resources section's actions are directed toward agency coordination, research, and recommendations. The activity does not represent any substantial entry by the state into actual land use management. However, the existence of a governmental agency charged with the duty to plan and recommend action does institutionalize the function and increases the likelihood of implementing action when appropriate.

Land use problems currently under consideration by the Division of Planning Coordination include: a coastal resource management system, power plant siting, deep-water port development, and this study.

Special Purpose Authorities and Districts

Although not state-level agencies, several special purpose authorities concerned with land use issues have been established in Texas. These special authorities and districts can overlap existing jurisdictional boundaries, and frequently supplement local government authority. Special purpose authorities and districts directly concerned with land resource utilization and management are:

Airport Authorities. Six airport authorities have been created. They are empowered to acquire property for airport purposes, to construct and operate airport facilities, and to adopt and enforce airport zoning regulations.

River Authorities. By special act (Texas Constitution, Article 16, Section 59), the Texas Legislature has created fifteen river authorities. Each has a relatively significant geographic coverage associated with a specific major watershed area. This comprehensive geographic coverage places them in an advantageous position with respect to areawide planning, control, and use of natural resources. Authorities supply and distribute water, engage in flood control and water conservation activities, prepare plans for water quality management and pollution abatement, concern themselves with water resource development, and act as agents for regional waste disposal.

Soil and Water Conservation Districts. There are over 180 Soil and Water Conservation Districts which cover almost the whole of Texas. The districts have no taxing authority, no power of eminent domain, and receive funding through legislative appropriations. They are authorized to apply compulsory land use regulations to prevent soil erosion, but the districts rely upon voluntary action by landowners to fulfill their conservation objectives.

Conservation districts are beginning to extend their soil conservation programs into the urban fringes to combat soil erosion as land uses change from rural to urban. For example, a wind erosion program has been developed in the El Paso area. As the federal--and now state--government has indicated increasing interest in multi-district projects dealing more specifically with land use, the districts have begun to consider the feasibility and desirability of such joint efforts.

Navigation Districts. Twenty-six navigation districts have been created by the Texas Legislature. These districts, primarily located in counties bordering the Gulf, establish and maintain port facilities to serve the seaport areas. Performing narrowly defined functions, these districts are not well-suited to make broad policy decisions concerning land use.

Land use concerns of the Navigation Districts evolve around efforts to develop industrial complexes in the vicinity of port facilities established and operated by the Districts. Even though the authority of the Navigation Districts to purchase submerged land and then lease it to industrial developers has now been questioned, the Districts remain very interested in the development of land near their facilities. This interest in land use is industry-focused, however, and many land issues of importance to Texas are not adequately addressed by these Districts.

Water Districts. Water districts, ostensibly set up to provide a means by which unincorporated communities could use governmental taxing and borrowing power to install water and sewer systems, have primarily been used by private land developers to provide services for subdivisions located away from existing municipal sources. District powers are limited to water related functions.

Marine-Related Affairs. The Texas Council on Marine-Related Affairs represents an effort on the part of State government to provide a focal point for the various