

- an inventory of natural resources;
- data on growth trends;
- projection of the nature and quantity of land needed for designated purposes;
- establishment of a method to identify areas of critical environmental concern, key facilities, large-scale development, and developments and land uses of regional benefit; and
- establishment of methods for coordinating State and local programs affecting land use.

The bill would require that, within five years, the states develop methods of implementing certain controls, including

- determinative state authority over development in areas of critical environmental concern, key facilities and large-scale development; and
- actions to insure that pollution standards are observed.

Implementation must include both state planning and regulation and state administrative review of local plans and regulations.

The state must carry out the required activity in good faith to qualify for funding under the Act. After the five year period, a state which does not qualify shall be ineligible for further funding under the Act. An early draft would have penalized noncompliance by reducing State assistance under other federal grant programs.

The bill also requires federal consideration of state plans in the management of federal lands and the operation of federal agencies.

The chances for passage of the Land Use Policy and Planning Assistance Act or a similar Act are good. All states must therefore prepare to conform to the requirements which will be imposed at the federal level. Texas cannot afford to lose the revenues from the indicated grant-in-aid programs by failing to comply.

The federal emphasis would be upon state planning and the implementation of state policies. Because of its size, Texas will have a larger problem in inventorying and

evaluating its land use situation than will other states. Therefore, Texas should begin immediately to establish land use policies and undertake compliance with the proposed Act. Even without federal impetus, Texas should evaluate and update its land use policies and procedures to prepare the State for the prospect of explosive growth during the next quarter century.

IV. LAND RESOURCE MANAGEMENT IN TEXAS
 CONSTITUTIONAL BASIS FOR STATE
 REGULATION OF LAND USE

The Tenth Amendment reserves to the states all powers not delegated to the federal government nor prohibited to the states. The State of Texas thus holds residual governmental power over persons and property within its jurisdiction.

The states' residual powers are limited by the Fourteenth Amendment, which prohibits any state from depriving persons of property without due process of law, or denying persons within its jurisdiction equal protection of the laws. Roughly speaking, the Fourteenth Amendment places upon the states all of the limitations which the Bill of Rights imposes upon the federal government.

State constitutions establish the internal structure of state governments and further restrict state power, e.g., Article 1, § 17 of the Texas Constitution states that no person's property shall be taken for public use without compensation. In addition to requiring that the State pay for property taken by eminent domain, the clause disables the State from taking property from one person to benefit another person's private interests, even if payment is made.

The states thus are limited in the amount of control which they can lawfully exercise over persons and property. If an extreme interpretation were given, states could not impose any regulations upon landowners' use of their property because to some extent any regulation reduces an owner's "property." However, constitutional limitation is not that severe.

States are permitted to regulate landowners under their police power to promote the health, safety and welfare of the community. To pass the test of constitutionality, police power regulations must be reasonable and must be causally related to the health, safety and welfare goals.

Although land use regulation (e.g., zoning) may reduce the value of privately owned property, the state is not obligated to compensate owners for their losses. All persons must obey reasonable regulations which promote the health, safety and welfare of the community; hence, enforcement of those regulations is not a "taking" of private property. Using the police power justification, courts have allowed states to control privately owned land through conservation laws, zoning and subdivision regulations, and building codes. In questionable situations, courts ordinarily defer to legislative decisions that the regulated activities threaten community health, safety and welfare. Courts do, however, require that regulations not be applied discriminatorily, and that landowners not be denied all reasonable and profitable uses of their land.

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 so long as the federal and state constitutional limits are observed.

Outline of Land Resource
 Management in Texas

Some states administer extensive land use controls at the state level. Hawaii, for example, has state-wide zoning; Florida designates certain types of development as a matter of critical environmental concern and regulates them at the state level.

Although Texas does not have state-wide zoning and does not control areas of critical environmental concern, the State is active in land resource management, including control over private uses. Most land use controls are applied by local governments. The State has passed enabling acts giving cities extensive power to control land use, and giving counties limited powers. Texas has recently begun to offer technical assistance to urban areas to help them deal with other governmental agencies and handle some of the problems of urbanization. The legislature has created a number of special purpose authorities and districts which affect land use. State agencies have been created to regulate private use of the State's natural resources and to administer State owned resources. A concerted effort is being made to coordinate the activities of the

various State agencies and establish a rational resource management program for the State.

Texas' land resource management activity at the State level may be broken into the following categories for discussion:

1. Enabling acts for local governments
2. Technical assistance for local governments
3. Special purpose authorities and districts
4. Direct regulation of natural resources
5. State agency administration of State resources
6. Coordination of State policies

Enabling Acts for Local Governments

According to Dillon's rule, cities and counties have no inherent powers of self-government. Therefore, they can exercise police power only when authorized by the constitution or by an enabling act. Although legislatures have generally authorized cities to pass and enforce ordinances which promote their general welfare and to control nuisances, these delegations do not clearly empower cities to establish comprehensive land use controls.

The U.S. Department of Commerce recognized a need for local land use planning and controls in the 1920's, 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). Following a national trend, Texas adopted the standard format, thereby enabling cities to zone and to regulate subdivisions. Texas did not adopt the official map provision of the Model Act.

The major acts which enable cities and counties to control land use are:

- Art. 10111, authorizing cities to spend money to plan for future growth
- Arts. 1011a-et seq., and Art. 1175(26), authorizing cities to zone in accordance with a comprehensive plan
- Art. 1105a, authorizing cities to establish building lines on streets

- Art. 974a, authorizing cities to control subdivisions within their city limits
- Art. 970a, allowing cities to extend subdivision regulation into their rings of extraterritorial jurisdiction (ranging from one-half mile to five miles, depending upon city size)
- Arts. 2372k and 6626a, authorizing counties to place street design, construction and drainage requirements upon subdivisions

In addition to these acts, there are several enabling acts which grant specific land use control powers to local governments:

- Art. 46e-1, et seq., authorizing local governments to zone land uses around airports
- Art. 974a-1 and 974a-2, passed primarily for Houston's benefit, authorizing a few cities to enforce private deed restrictions
- Art. 1581e-1, authorizing counties on the Gulf Coast to engage in flood plain management
- Art. 8280-13, authorizing all State political subdivisions to engage in flood plain management
- Arts. 2372(1) and 2372(2), authorizing three counties to zone land around two State recreational areas
- Texas Water Code § 21.084, authorizing counties to license private sewage facilities.

Cities and counties have been given the power of eminent domain to take private property for public use upon payment of just compensation to the landowner. Some of the pertinent statutes are:

- Art. 6079f, authorizing incorporated places in counties of over 350,000 population to condemn land for parks and other purposes
- Art. 1107, authorizing cities to condemn property for streets and other purposes
- Art. 1015a, authorizing cities over 12,000 population to condemn land for park purposes

--Art. 1015c-1, authorizing joint action by cities, towns and counties in operating recreational facilities

--Art. 1581e, authorizing counties to condemn land for flood control purposes

The federal government has made funds available to local governments for slum clearance, public housing, urban renewal and new communities development. Texas passed enabling acts authorizing local governments to participate in these programs, namely:

--Art. 1269k, authorizing local governments to establish public housing projects

--Art. 1258, authorizing local governments to engage in urban renewal activities

--Art. 1269j-4.7, authorizing cities to issue Certificates of Indebtedness and to participate in the federal new communities program

In addition to the federal programs which require enabling acts for local government participation, there are federal requirements for area-wide planning and comment on applications by local governments for certain federal project funding. Texas has enabled local governments to engage in cooperative planning and contracting for local services. The principal acts are:

--Art. 1011m, authorizing local governments to establish regional planning commissions to conduct area-wide planning and comment on application for federal and state funding for local projects

--Art. 4413(32c), authorizing local governments to engage in cooperative activities and to contract to provide mutually advantageous services

Except for official map authority, Texas has followed the standard enabling procedures for cities. The legislature has generously passed specific legislation to meet the needs of cities such as Houston which wanted to pursue an alternative to standard zoning procedures.

Strong regulation over private land uses inside cities contrasts with surprisingly little regulation outside city limits. City zoning and building permit powers stop at the corporate limits. Although subdivision ordinances can be extended into rights of extraterritorial

jurisdiction, land developers often avoid this regulation. Counties have no zoning or building permit power, and very little power to control new subdivisions.

State Technical Assistance for Local Governments

The State has recently recognized a responsibility for assisting the local governments to solve their problems, by providing technical assistance, and otherwise adding to the capability of local government service.

Pertinent statutes are:

--Art. 4413 (32b), which established the Texas Advisory Commission on Intergovernmental Relations to study and evaluate intergovernmental relationships among local, State and federal governmental agencies

--Art. 4413(201), which established a Department of Community Affairs to help local governments deal with the state and federal governments, conduct research into local government problems, and make legislative recommendations

--Art. 4413(34), which established a Mass Transportation Commission to plan, encourage, and facilitate development of public mass transportation in the State and

--Art. 4413(39), which established a Building Material and Systems Testing Laboratory to engage in testing and evaluating building materials, products and systems to establish performance capability

Some small towns in Texas are totally deficient in revenue and planning expertise. They need direct financial and technical assistance to help them establish land use controls to handle pressing problems which threaten the health, safety and welfare of entire Texas regions.

Some problems are common to many cities in Texas. Each city standing alone cannot spare the resources to solve them separately; even if they could, the effort expended would be overlapping and wasted. If the State focuses on common problems and makes model analyses, solutions and information available to all cities, the amount of effort devoted to solving the problems may be reduced and the solution improved.

Special Purpose Authorities and Districts

Many special purpose authorities and districts provide specific services which affect land use. Some of these entities are created under general statutes; some are created by special legislative acts. Some have power to regulate and tax; others do not. Special authorities and districts can overlap existing jurisdictional boundaries and provide a variety of services, such as hospital facilities, mosquito control and schools. At least five types relate directly to land use: airport authorities, river authorities, soil and water conservation districts, navigation districts and water districts.

Airport Authorities. The legislature has created six airport authorities as permitted by the Texas constitution. Airport authorities are empowered to acquire property for airport purposes by eminent domain or otherwise, to construct and operate airport facilities, and to adopt and enforce airport zoning regulations.

Airport location can greatly affect the development of an urban region and of necessity influences land uses in the nearby vicinity. Decisions concerning location should be consistent with formally established state policies concerning urban concentration and population needs. When an airport adopts zoning regulations to prevent interference with air traffic, the limitation on developing may adversely affect city tax base revenues and cause monetary losses to nearby landowners. Some losses from airport operations are compensable, some may not be compensable.

River Authorities. The Legislature has created fifteen river authorities by special act. Each has a relatively comprehensive geographic coverage and is associated with a specific major watershed area. Most of the authorities are located near the Texas Gulf Coast with its extensive major coastal river system, e.g., Trinity and San Jacinto Rivers in the Houston area. The comprehensive geographic coverage of these authorities 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 and act as agents for regional waste disposal. A case study description of the San Jacinto River Authority appears representative of this particular type of special purpose authority.

With its headquarters located in Conroe, Texas, some 50 miles north of Houston, the San Jacinto River Authority's specific jurisdiction extends to the outfall of watershed divide delineation of the north and west forks of the San Jacinto River, extending south to approximately highway 1960 in the Houston Metropolitan Area including Lake Houston. River Authority control also extends to the water distribution canal system associated with Highland Reservoir near Baytown.

The San Jacinto River Authority received water conservation and distribution powers in the late 1940's. Presently the authority maintains and controls the distribution of water from Lake Houston, via a canal system to the Baytown area. Industries and agriculture to the north of Baytown are primary users.

The Authority participated in the design and construction of the Lake Conroe Dam. The San Jacinto River Authority maintains a 1/3 interest in the project with funding supplied through the Water Development Board. The other 2/3 interest is maintained by the City of Houston to supplement its needed supplies of surface water. The capacity of the reservoir is estimated at 430,000 acre feet. Cost will be approximately \$28 million dollars. The major customer for this water will be Gulf States Utility Company. Most of the supply will be sold to industry, because municipal use would require installation of a water treatment plant.

The San Jacinto River Authority also has responsibilities for water quality management. A major component of water quality management and pollution abatement is the monitoring of stream flows and chemical composition. The San Jacinto River Authority is currently preparing a comprehensive watershed-wide monitoring system with water quality test sampling stations and a laboratory facility for analysis.

In 1969 the Water Quality Board designated the San Jacinto River Authority to establish a sewage treatment plant for the Cypress Creek Watershed area. The order specified a regional and area-wide waste collection treatment and disposal system to serve the residents within the area and to maintain and enhance the quality of water in Cypress Creek, San Jacinto River and Lake Houston.

In accordance with its general plan for processing water discharge permits within the watersheds, the San Jacinto River Authority has begun construction of a number of large scale regional sewage treatment plants in

the area. Through its waste treatment activities, the Authority exercises considerable control over water district and subdivision activity in the Cypress Creek area. Although there are over 50 water districts platted in this general area, waste control orders are held by the San Jacinto River Authority which operates 15 plants. Water districts in the Cypress Creek area install waste treatment plants (usually interim plants of 25,000 gal/day--75,000 gal/day) and then deed them to the Authority. The Authority operates them until a central plant of higher capacity takes over service for the area. When this occurs, the interim treatment plants will be turned back to the water districts.

There can be no effluent discharge without control and approval of the River Authority. The control powers are not retroactive, however, and five treatment plants (water districts) are not held by the River Authority because they were in existence prior to 1969.

There have been very few violations of waste control orders. Those that have occurred concerned safety features on the equipment and problems not related to treatment plant specifications. The San Jacinto River Authority maintains a "vigilant inspection process in dealing with each application."

The San Jacinto River Authority maintains a constant working relationship with other regulating and planning authorities such as the Houston-Galveston Area Council, the City of Houston, the Texas Water Development Board to which it is directly responsible, and the Texas Water Rights Commission. Through its cooperation with these agencies, the Authority influences subdivision development, flood control, waste disposal systems and utility reticulation systems.

Inasmuch as river authorities cover large geographical areas and focus their interest in specific watersheds, they are possible contenders with Regional Planning Commissions for the job of area-wide planning. Given additional regulatory power and funding, these authorities could play a considerable role in the State's land use controls future.

Soil and Water Conservation Districts. The U.S. Department of Agriculture provides technical assistance on soil, water and related resources to locally organized Soil and Water Conservation Districts.

One hundred eighty-six Soil and Water Conservation Districts have been created in Texas, covering almost 100 percent of the lands in the state. Districts are state entities governed by Boards elected by local landowners.

The districts have no taxing authority and no power of eminent domain. They receive funding through direct appropriations of the State Legislature. Although their enabling legislation authorizes compulsory land use regulations to prevent soil erosion, the districts rely almost exclusively upon voluntary action by landowners to fulfill their conservation objectives. In order to receive technical assistance from the Federal Soil Conservation Service, a landowner must become a member of the local Soil and Water Conservation District and cooperate with the district's plan on his land-holdings.

An example of an operating district is the Trinity Bay Soil and Water Conservation District which was organized in 1944. Its present jurisdiction incorporates all of Chambers County and the Southwestern portion of Jefferson County. This area is subdivided into five Supervisor Zones for administration by the District. Total area is approximately 520,000 acres. As of June 30, 1971, 289 landowners were cooperating with the District on 326,613 acres of land.

The district plan sets forth conservation problems and a program for developing and maintaining good local technical guides for conservation. Trinity Bay District's planning and program formulation have included soil surveys (1970-72), Draining Survey (1947) and specific programs aimed at the Chambers County wetlands. The major conservation practices include cropping systems, migration and drainage management, development systems, pasture management, water control structures and wetland management for wildlife. In 1962, the district approved the East Bayou Watershed, Drainage Improvement and Watershed Protection Plan, which was initiated under the Watershed Protection and Flood Prevention Act of 1954.

In addition to its conservation activity, the District has initiated a Community Action Plan involving related social and economic problems in the area.

The District received approximately \$2,500 from the State in 1970, along with \$1,500 from the Chambers County Commissioners Court. Federal matching funds were provided through the Agricultural Conservation Program. In 1971 this cost-sharing program was retitled to the Rural Environmental Assistance Program. This program provides technical and financial assistance to the District.

The Trinity Bay Soil and Conservation District has a working relationship with a local drainage district, Trinity Bay Conservation District. Many crops recommended for soil conservation will not grow on wet land. The Trinity Bay Conservation District's primary job is constructing main drainage outlets primarily for residential and agricultural use. The drainage district finances its activities through the issuance of bonds supported by its taxing power. The drainage district helps the Soil and Conservation District by implementing beneficial drainage programs.

Effectuation of Soil and Water Conservation District programs and plans depends upon voluntary participation by landowners. Sixty-five percent of the Trinity Bay Soil and Water Conservation District's landowners are members, accounting for about 65 percent of the total land area under the District's jurisdiction. However, many tenant farmers are not willing to invest capital to improve the property they do not own. Some landowners are less interested in soil and water conservation problems than with getting the highest immediate return on investment. The area west of the Wallisville Reservoir site is conspicuous in its nonparticipation. This area, accounting for most of the 35 percent of outstanding land area, is rapidly becoming industrialized and urbanized and land is held for speculative purposes with minimal agricultural or development activity. The escalation of land values in this area may be the cause of a lack of interest in soil and water conservation.

A proposed Model Act would expand the authority of Soil and Water Conservation districts, enabling them to regulate land disturbing activities such as grading and excavating for subdivisions and factory sites. Following State guidelines, all districts would develop soil erosion and sediment control programs and require that anyone engaging in land disturbing activities first submit a plan for erosion and sediment control and procure a permit from the district. Violations would be punishable by fine or imprisonment. If adopted, this expanded authority would greatly increase the effectiveness of soil and water conservation districts.

Navigation Districts. Twenty-six navigation districts have been created pursuant to general enabling acts and by special acts. Most of these districts are located in counties which border the Gulf of Mexico. Navigation districts establish and maintain port facilities to serve Texas' seaport areas. They may issue tax and revenue bonds to finance their activities.

Navigation districts perform narrowly defined functions and promote the commercial interests of their particular ports. Although useful and perhaps vital to the State, they are not particularly suited to make broad policy decisions in land resource management. Instead, their own activities may sometimes need to be brought into line with State land resource management goals.

The proposal to create an off-shore port to handle large ocean vessels highlights the significance of port development. A decision to build a superport commits Texas to industrial growth. If the port is located near existing urban and industrial areas, then those areas will expand. If it is located away from currently impacted areas, different growth patterns will develop. Clearly, the location of this new facility should be coordinated with Texas' long-range policies concerning population distribution, economic growth, and development of new industrial areas.

Water Districts. The Texas Constitution and statutes authorize formation of special water districts, ostensibly to provide a way for unincorporated communities to use governmental taxing and borrowing power to install water and sewer systems. Some water districts are created under the general statute administered by the Texas Water Rights Commission; some are created by special acts of the legislature.

Particularly in the rapidly growing Gulf Coast area, private land developers use water districts to provide services for new subdivisions located away from existing municipal sources.

The primary financial obstacle in the development of unimproved land for residential purposes is the cost of procuring basic water related utility improvements. By providing water and related improvements through governmentally created water districts, developers cover utility costs by having the district issue bonds to be paid out of later tax revenues. They thus reduce their own front-end development costs.

A water district is a governmental entity, authorized to issue bonds for improvements related to water and sewage disposal, and to tax land inside the district to pay the debt service on the bonds. Interest on the bonds is exempt from federal income tax. Hence, district bonds are quite salable, if the development itself appears to be economically sound. With money derived from sale of district bonds, a land developer may install these expensive

services, and the later residents will pay for them through tax levies.

Districts are unlimited as to taxing ability and debt limits. Because control of districts passes to subdivision residents, after a few years, developers include in a district only the land they can subdivide and sell during their period of control. This seldom exceeds 300 to 400 acres. District powers are limited to water related functions. The developer must therefore finance other improvements, such as streets, out of his development loan. Districts provide municipal-type services for subdivisions in unincorporated areas without creating a city government. Accordingly, nearby cities may annex lands served by water districts. Upon annexation, the city assumes districts' indebtedness.

Channelview is an unincorporated community in northeast Harris County. It is served by four water districts with a combined total of fewer than 4,000 customers. Only about one-third of Channelview's twenty square miles is actually within district boundaries. Therefore residents of the remaining two-thirds of the area must provide their own water and sewer service or obtain services on an out-of-district basis from one of the water district boards.

A comparison of four districts reveals many variances and multiplicities in size, tax structure, water and sewer rates, assets and liabilities. For example, in WCID 84, a customer pays \$3.00 a month for 5,000 gallons of water plus \$1.50 for sewer service. The taxes on a \$20,000 home are \$400.00 per year. In WCID 21, a customer pays \$3.10 per month on 5,000 gallons of water plus \$1.00 per month for sewer service. The tax rate on a \$20,000 home would be \$77.40 per year. FWSD 6 charges \$3.60 per month for 5,000 gallons of water, \$2.00 for sewer services and levies taxes of \$91.00 a year on a \$20,000 home. FWSD 47 charges \$3.50 for 5,000 gallons of water and \$1.50 per month for sewer service. The tax levy in this district on a \$20,000 home is \$80.00.

The cost of tax and utilities on an annual basis in Channelview thus depends entirely on where a family lives. Out-of-district water and sewer customers are free of the tax levy but pay higher utility rates.

One factor which affects the differences in costs among the four districts is the size and density of the population. WCID 21, which has the lowest tax and water rates has the largest area with 2,380 acres and the largest population with 2,755 taxpayers. WCID 84 has only 40

taxpayers, several of whom do not live in the district. This district also contains 593 acres, most of which is undeveloped. It was established in 1963 as a planned subdivision and now has an outstanding bond debt of \$930,000 and a 1972 debt requirement of \$56,000. Since the subdivision was not fully developed, its 34 customers have the services of water and sewer system designed to accommodate 5,527 people.

FWSD 6, on the other hand, established in 1940 is one of the oldest districts in Harris County and has an outstanding debt of only \$136,000 for its 300 customers. The debt requirement is now only \$13,120 but deterioration of the water and sewer lines is nearing a critical stage. The Board of Supervisors recently curtailed all sewer permits for multiple dwelling projects because the sewage treatment plant is presently operating at capacity. This decision angered several potential developers and has hampered growth in FWSD 6. Most of the water lines in the district are two and four inches and some are one inch. By state standards, a six-inch line is necessary to provide an adequate volume of water to fight fires. Homes in this district are 1,500 to 2,000 feet from a fire hydrant whereas the state standard is 600 feet. The Supervisors are trying to solve the inadequacies without a bond issue because an informal survey showed taxpayers probably would not approve bonds that would increase taxes.

FWSD 47 was established in 1959 by developers and is centrally located in the heart of a rapidly expanding housing development. The subdivision has flourished and the Board of Supervisors says the district is progressing well enough to permit a steady lowering of the tax rate. Taxes were lowered five cents in 1971, again in 1972 and another reduction is expected in 1973 of about five cents.

Developers' districts have become highly controversial. Among the issues to be resolved are whether developers' districts should be allowed at all; and whether developers' districts should be encouraged and their functions increased. These issues are discussed in a later section.

COMPARISON OF CHANNELVIEW WATER DISTRICTS

	FWSO 6	FWSO 47	WCID 21	WCID 84
Year Created	1940	1959	1950	1963
Acreage	855	467	2,361	593
Customers	380	1,240	2,276	34
Tax Accounts	510	1,259	2,755	61
Total Tax				
Roll - 1971	\$3,621,548	\$16,607,575	\$13,512,795	\$2,027,819
Bond Debt	\$ 136,000	\$ 820,000	\$ 938,000	\$ 940,000
1972 Tax Rate	\$.70	\$.40	\$.58	\$ 2
Assessment Ratio	65%	100%	65%	100%

Conclusions Concerning Special Purpose Authorities and Districts. Special purpose authorities and districts have become increasingly popular methods of getting specific jobs done at local levels. They are flexible enough to accommodate almost any task. They may provide services and assist in regulating land use. They can be given taxing power and they are not subject to the constitutionally imposed debt limits which apply to cities and to counties. Occasionally, governmental officials may use special districts to perform functions which are politically troublesome when handled by elected bodies. Districts may or may not be directly responsible to voters. If their officials are not elected, then government becomes removed from the people by one step; if their officials are elected, then a lengthy ballot becomes even longer. Texas uses districts to provide a range of services which range in variation from education to mosquito control. It is likely that districts and authorities will grow in number and function, rather than diminish. There is some concern that proliferation of special authorities and districts may be a problem in itself.

State Regulation of the Use of Natural Resources

In order to protect its natural resources from waste and pollution, the State has created several agencies with power to impose direct regulation upon landowners. These regulations establish performance standards for land use, and sometimes determine whether certain land uses will be permitted in a given area.

Control agencies are usually empowered to hold hearings, make findings, establish rules and regulations, issue orders and enforce their regulations and orders through legal action.

Agencies which are directly connected with natural resources control, and which affect land use are the Texas Air Control Board, the Texas Water Quality Board, the Texas Water Rights Commission, and the Texas Railroad Commission. The State's beaches have also been declared to be open to the public and several governmental entities administer them.

The Texas Air Control Board. The Texas Air Control Board was created in 1965 as a semiautonomous arm of the State Department of Health. The Board is comprised of nine members, which include an engineer, a licensed physician, a representative from industry, one experienced in municipal government, an agricultural engineer, and the remaining four from the general public. All Board members are appointed by the Governor. The objective of the Texas Air Control Board as stated by statute is "to safeguard the air resources of the State from pollution by controlling or abating air pollution consistent with the protection of the health and physical property of the people, and for the full industrial development of the State."

To accomplish this objective, the Board is empowered to develop a general plan for the control of air pollution by adopting and promulgating rules and regulations governing air pollution. The Board directs the activities of the Texas Air Control Program, which is administered by the State Department of Health, in investigating possible sources of air pollution, holding hearings on complaints for litigation through the Attorney General's Office, and in seeking compliance with its regulations.

The Air Control Program conducts studies and performs extensive research on air pollution throughout the State, collects and disseminates information, and cooperates with other governmental agencies interested in the control of pollution. Voluntary cooperation is encouraged through persuasion and consultation, but when necessary the Board issues such orders of determinations as may be necessary to control the air pollution. If the Board determines that a regulation is being disregarded or violated flagrantly, action for injunctive relief and/or fine is undertaken.

Texas Water Quality Board. Water pollution control laws in Texas date back to 1860 although no comprehensive Statewide coverage or control was visualized nor centralization effort undertaken until 1961. In that year, the 57th Texas Legislature, in response to public recognition of the rapidly increasing pollution of the State's streams, lakes, bays, and estuaries, enacted the Water

Pollution Control Act. This was the first step in the evaluation of an effective policy and an administering State agency.

Earlier responsibility for water pollution control was vested solely in the State Department of Health. Limited activities operated primarily under the direction of environmental health personnel of the Department and the affiliated local health departments throughout the more populous cities and counties of the State.

The 1961 Act established a seven member board with authority to study conditions and consider corrective measures. Three of these members are appointed by the Governor, and the other four are the Executive Director of the Texas Water Development Board, the State Commissioner of Health, the Executive Director of the Parks and Wildlife Department and the Chairman of the Texas Railroad Commission. Board authority and operating funds remained limited. No funds were appropriated directly to the Board during the first two years of its existence. This left the major pollution control functions in the State Department of Health with the Water Pollution Control Board acting in an advisory capacity only. For the 1964-65 biennium, the State made small appropriations for operation of the Board and authorized the receipt of any monies transferred to it from any Federal or State agency.

The Legislature in 1965, appropriated more funds and authorized the Water Pollution Control Board to employ some personnel. This was in recognition of the increasing need for a more comprehensive water quality control program and the value of an independent agency to develop a statewide program and coordinate the efforts of all State agencies involved. The Executive Secretary of the Board, supervisor of all pollution control activities, remained an employee of the State Department of Health. He acted in the dual capacity of Director of water pollution control for the Health Department and Executive Secretary to the Board of Water Pollution Control.

The Texas Water Quality Board came into existence in 1967 through the enactment of the Texas Water Quality Act. This succeeded the Texas Water Pollution Control Board.

The Texas Water Quality Act expresses the State policy on water quality and water pollution control. It outlines a statewide control system to coordinate all water quality control programs of various State agencies and local governments with those of the federal government. The

statute created the Texas Water Quality Board as the State agency to administer these programs. The Water Quality Act was amended and codified in the Water Code in 1971.

The Public Law 660 Grant Program provides governmental efforts for water pollution control at all levels. This is the federal sewage construction grant program administered by the Texas Water Quality Board. Municipalities and other public bodies with authority to construct, maintain, and operate sewage treatment works are eligible for grants.

The establishment of a sound, basic program and essential organizational structures has been completed by the Texas Water Quality Board. Significant progress has been made in studying present and future needs in areawide sewage treatment facilities for every major populated region of the State.

The rapid development of quality control measures focused attention on the need for legislative action to delineate further State responsibility for water pollution control. This was coupled with the urged demand for immediate corrective control measures. Several State agencies and departments were still engaged in water quality control. Corrective action in this matter was taken by the 61st Legislature which spelled out the fields of responsibility and enforcement jurisdiction for the Department of Health, Water Quality Board, Water Development Board, Texas Railroad Commission, and Parks and Wildlife Department. The offense of water pollution was given the provision for criminal prosecution of violators.

Texas Water Rights Commission. Acts of both man and nature influenced the course of development of water policy in Texas. Early conflict between cattle and agricultural interests led to the passage of an act in 1913 creating the Board of Water Engineers. This initiated the first real attempt at orderly development of water rights. Floods in 1913-17 resulted in the adoption of a constitutional amendment recognizing the State's legal rights to regulate the conservation of its natural resources. The amendment also authorized the Legislature to pass all appropriate laws to accomplish this purpose.

With the growth of cities and industries within the State, municipal and hydroelectric interests became competitive with those of the cattlemen and the irrigators. This led to the passage of the Wagstaff Act in 1931 which declared, in effect, that for a given supply of water domestic and municipal needs must be met first. Then

industrial needs, irrigation, mining, hydroelectric power generation, navigation, and recreation were to follow in that order.

The passage of the Water Planning Act in 1957 vested the Board of Water Engineers with the primary function of administering water rights. In 1962, the Legislature changed the name of the Board of Water Engineers to the Texas Water Commission to depict more accurately its functions and responsibilities. This name was changed to the Texas Water Rights Commission in 1965 when the Legislature realigned the functions of the Texas Water Rights Commission and the Texas Water Development Board.

The Texas Water Rights Commission exercises continual supervision of the public waters of the State. Commission functions include permitting and regulating the use of water, enforcing laws relating to the use of water, and ascertaining that authorized structures are properly developed, constructed and operated to provide the greatest degree of public safety and conservation of the public water.

Applications for permits to appropriate public waters are carefully examined to insure that essential information is complete and accurate. Evaluation is made of the availability of appropriate water, the need for and beneficial use of the applied for water, the effect of the proposed project or prior appropriation, and the hydraulic and hydrological capabilities of the project. When structures are involved in the project, determination is made as to the adequacy of structural hydraulic and hydrologic design. This is followed by periodical inspections during construction to insure compliance with approved plans.

The regulatory functions of the Texas Water Rights Commission include investigation and studies made to assure compliance with State water statutes and Commission rules. Inspection by a corps of qualified personnel is continuous with reports filed concerning structural and hydraulic aspects of existing projects. These also include findings on complaints and use of water in highway construction. Inspections and investigations continue with appropriate remedial action when this is indicated by the Commission.

Statutory obligations require that the Texas Water Rights Commission evaluate, approve, or disapprove petitions for the creation of multicounty water development districts. For underground water conservation districts, the Commission must also designate the boundaries of the underground reservoir before the district is created. It

must also review the feasibility of projects planned by water control and improvement districts contemplating the issuance of bonds to defray construction or improvement costs.

The Commission is responsible for the adjudication and administration of water rights on streams or segments thereof. Investigations are made and basic data collected and evaluated in preparation for adjudication proceedings as scheduled. All findings are reduced to writing and the necessary plots prepared for illustration and records.

The Texas Water Rights Commission maintains interstate compact coordination among the various compact commissioners of interstate streams and other State and federal agencies. This is to insure that Texas' interests in interstate and boundary streams are adequately protected. The Commission also reviews federally-supported water resources projects for recommendations to the Governor as required by statute. Research and development of new procedures and techniques to provide more efficient water resources operations are continually carried on.

The Texas Railroad Commission. In 1891, the Texas Railroad Commission was created to regulate railroad rates and tariffs in the State and to prevent unjust discrimination. In 1917, legislation was enacted which, though dealing principally with pipelines as common carriers, designated the Railroad Commission as the agency to administer certain of its general provisions relating to the conservation of oil and gas. In 1919, broad regulatory and enforcement powers relating to oil and gas conservation were conferred upon the Commission and these activities have subsequently constituted its major concern.

The Gas Utilities Act, passed in 1920, gave the Commission authority over persons and companies engaged in producing, transporting, conveying, or distributing natural gas for domestic or other use. Legislation enacted in 1937 conferred regulatory powers over the liquified petroleum gas industry. The Motor Bus Law of 1927 and the Motor Carrier Law of 1929 extended the supervisory and regulatory authority of the Commission to commercial transportation over the State's highways.

The principal activity of the Railroad Commission concerns the supervision and enforcement of laws and rules related to the conservation and prevention of physical waste in the production of oil and gas, including regulation according to market demand. The Commission issues

drilling permits and conducts safety inspections upon completion of each well. Allowables for each well are set in accordance with production factors, consumers' requirements for oil and gas, and conservation practices.

In 1965, the Railroad Commission was given authority to provide for the pooling of mineral interests into proration units for an oil or gas well under certain conditions. The Commission was made solely responsible for the control and disposition of waste, abatement, and prevention of water pollution resulting from oil and gas activities. This involved both surface and subsurface water which was to be protected from contamination associated with oil and gas exploration, development, or production. Permits were to be issued for the discharge of waste resulting from these activities. The plugging of wells to prevent water pollution was given increased importance with broader powers for enforcement of related laws and regulations given to the Commission.

Under the Well Disposal Act, the Commission must issue a permit for drilling or conversion of wells for disposal of oil and gas waste. This waste is defined as "any waste arising out of or incidental to drilling for or protection of oil or gas which includes, but is not limited to, salt water, brine, sludge, drilling mud, and other liquid or semiliquid waste materials."

Open Beaches Law. In addition to providing agency regulation for the indicated functions, Texas has passed an Open Beaches Law which declares that State owned beaches along the Gulf Coast shall be open to the public. Denial of public access is punishable by fine. Coastal cities and counties are authorized to regulate traffic on the beaches. Counties may establish Beach Park Boards to operate public parks on the beaches. These Boards may issue revenue bonds to finance their activities. Businesses on the beaches must be licensed by the Parks and Wildlife Department. Excavation of beach sand without a permit from commissioners court is prohibited.

Through the Open Beaches Law, Texas has established the prior public claim to this valuable recreational resource. To the extent that private claims conflict, they are subordinated to the interest of the State.

Conclusions. The State has only begun to recognize the importance of the classification "natural resources" and the public interest which inheres in such classification. Although water has been given some public status, and is controlled as to use and pollution, one

important exception is maintained: the "right" of landowners to withdraw subsurface waters for their own use. This private right has been responsible for a great deal of public damage to the Texas Gulf Coast because excessive withdrawal of water and other fluids has caused extensive land subsidence. Portions of Baytown are in danger of flooding from high tides because of the subsidence. The San Jacinto monument sinks at the rate of six inches per year, and may soon suffer from flooding.

Land itself has not been given natural resource classification, although land is the basic resource of the state and, in fact, of the planet. Predictably, the State will eventually recognize a strong public interest which requires that land be classified as a community resource as well as an object of private ownership.

Administration of State Resources

The State owns property and spends or uses its resources for the public good. The Constitution and the legislature have created state agencies to carry out these functions. It is difficult to conceive of a significant state ownership or spending activity which does not somehow affect land use. For example, a decision to locate a major university in a certain area determines the land use of the school site itself and enhances the development potential of thousands of acres surrounding the site. A complete survey of land use influences at the state level would have to include all such activity. However, that job would never be finished. Therefore, reasonable research requires that only those activities which have great impact on state land use patterns are discussed in this survey.

The agencies perceived to have the greatest present and potential influence on state land use patterns through their ability to control state assets are the General Land Office, the Texas Highway Department, the Texas Water Development Board, the Texas Parks and Wildlife Department and the Texas Industrial Commission.

General Land Office. The General Land Office was first created in 1836 under authorization of the Constitution of the Republic of Texas. Although the Office was originally charged with the principal duty of keeping the records and archives pertaining to land titles, within the last half-century it has become a business office and collection agency. In 1876, the Texas Constitution dedicated

one-half of the then remaining public domain to the Permanent Free School Fund. In 1939, the residue of the public domain along with the mineral interest in river beds and the tidelands, including bays, inlets, and the marginal sea to the outer edge of the continental shelf.

In 1949, the Veterans Land Board was created as a new State agency. The employees of the agency were to be considered employees of the Land Office and much of its administrative work has been absorbed by the personnel and equipment of the Land Office.

The General Land Office performs field surveying required by statute relative to the public lands in which the State owns a mineral interest. The Office maintains files on field notes, plots, and maps filed or prepared in the agency. It constantly compiles new maps of counties, prepares plots of submerged areas offered for lease by the School Land Board, and prepares sketches and maps for the land leasing boards. Field notes returned to the Office on which patents or deeds of acquittance are to be issued are examined for approval.

The Office is charged with the duty and responsibility of keeping a register on survey lands dedicated to the Public Free School Fund and the Veteran's Land Board Fund, as well as on all surface and mineral leases, sales, and easements. The Spanish archives contain records of Spanish and Mexican titles deposited in the General Land Office. The Spanish translator is charged with the statutory duty of translating the instruments on file from Spanish into English.

The Office maintains information on drilling and exploration activities throughout the State and collects data pertaining to those areas where the State owns mineral interests. Current abstracts are kept of all original Texas land titles. At their disposal are files containing the original grants made at the time Texas became a sovereign State. Records of corrections in existing titles and patents and of new surveys and patents issued are maintained by the abstract compiler.

At the end of each fiscal year, the land records are compiled and printed as a supplemental abstract volume for the State agencies requiring its use and for the public. These are used by county officials for tax purposes as well as a means of determining the existence of lands within the counties. The Office handles legal matters relating to patenting of lands and boundary questions. The validity of claims under old land certificates which have not been patented for some reason are determined.

The General Land Office prepares patents issued by the State of Texas and deeds of acquittance by which the State grants titles to excess lands after payment of the price fixed by the School Land Board.

The General Land Office maintains an environmental planning division. This division reviews applications for permits, leases and sales of state lands to consider the environmental impact of the proposed activity. It then advises about the impact and recommends how adverse effects can be lessened. The division cooperates with related Federal and State agencies when their activities affect Texas public lands.

The General Land Office is a possible contender for major management responsibilities under any comprehensive Texas land resource management plan. It is headed by an elected official, and its management of state owned lands would in any event have to be coordinated with the management of private land uses.

Texas Highway Department. The Texas Highway Department was created in 1917 by act of the 35th Texas Legislature. At first it administered a program of State and federal aid to counties which performed the actual construction and maintenance of a proposed connected system of State highways.

In 1924, the Legislature gave the Highway Department active control over the construction, maintenance and operation of the State highway system.

Direct responsibility continues for these functions in rural areas, together with further identical responsibility for urban highway sections and for farm to market roads.

With the advent of the Federal Aid Highway Act of 1956, the Texas Highway Department began construction of the State's portion of the vast 42,500-mile Interstate Highway System. Texas has the largest portion of the system--3,166 miles, now 70 percent complete. The entire system is to be completed in 1978.

The Highway Department is dedicated to building, maintaining and operating facilities that provide the best service to all Texans, both in urban and rural areas. The Texas highway system now includes almost 70,000 miles of State maintained and designated highways.

Mileage is not the best measure of a highway system. What is significant is the kind of service it provides the traveling public. Does it provide convenient transportation in keeping with the flexibility of the motor vehicle as a mode of transportation? Is it a safe facility? Can it handle adequately the volumes of traffic that use it? These are tests of a modern highway network. Providing affirmative answers to these questions is the goal of the Highway Department.

The Department also supervises registration of all motor vehicles and issues certificates of title through county tax officers and makes audits of their records.

The Commission has other powers and duties related to land use. It is generally responsible for formulating plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. A biennial report to the legislature and the Governor, with the Commission's recommendations, is required.

The State Highway Engineer acts with the Commission in an advisory capacity and is responsible for submitting detailed reports on the progress of public road construction. He is also responsible for making and maintaining a complete road map of the State.

The authority to take over and maintain all the State highways is vested in the Commission. Responsibility for improvements of the State Highway System is however vested in the Highway Department as a whole. These two provisions were supplemented in 1957 by the authority given to the Commission to "lay out, construct, maintain and operate a modern State Highway System with emphasis on the construction of controlled access facilities." This latter grant of authority included the power to designate any State Highway as a Controlled Access Highway. The Department may operate and maintain causeways, bridges and tunnels in Gulf Coast counties, sell abandoned routes, and provide research and assistance which includes investigation for and consultation with county and city officials concerning highways within such cities and counties and with turnpike authority concerning turnpike facilities.

The Texas Highway Department has done an outstanding job in providing a system of highways for the State. Texas has long been noted for well-planned and well-maintained roadways. However, as the future of automobile transportation comes into question, and emphasis upon mass transit increases, some new ideas about highway

planning may appear. For example, highways and highway design may be used as manipulative devices to encourage or discourage certain types of urban growth. If metropolitan freeways connecting the business center with undeveloped land have continuous access, strip development will result. If access is limited and provided at widely spaced intervals, then modular development will result. Significant development modules could be more capable of eventually handling mass transit stops than low density strip development patterns. Regardless of highway design, automobile transportation will continue to be a significant factor in urban development during the foreseeable future.

Texas Water Development Board. Texas has 274,416 square miles of land, much of which is underlaid with usable groundwater. There are about 3,700 streams in the State having a combined length of approximately 80,000 miles, and some 1,000 miles of coastline which includes the shorelines of numerous bays. The State has more than 150 major lakes and reservoirs, each with a capacity of 5,000 acre-feet or more.

The struggle in Texas for the conservation, development, and management of its water resources dates back to 1889. In that year, the Legislature patterned its statutory concepts and procedures on those of other arid western states. This was an attempt to establish a basis for orderly distribution and peaceful development of the State's limited water resources.

From 1889 to the present, the struggle, in the form of effective water legislation and constitutional amendments, has been continuous in keeping with changes in the population pattern and general economy of the State. Texas has gone from a sparsely settled land of dry farms and cattle ranges to the fourth most populous State with modern mechanized agriculture, including thousands of acres of irrigated farmland, thriving urban centers, and highly industrialized complexes.

In 1957, the State reacted to the multimillion dollar property loss resulting from rampant floods on all major streams and earlier extensive drought conditions that prevailed throughout Texas. Texas advanced the cause of conservation and development by adopting a constitutional amendment creating the Texas Water Development Fund. This action initiated a program of loan assistance to local political subdivisions to encourage the development of the State's water resources. The issuance of the State's first water development bonds to finance such programs was also

authorized. In 1965, the Legislature increased the responsibilities of the Water Development Board by transferring to it all planning and water development functions previously vested in the Texas Water Commission.

The most significant achievement of the Texas Water Development Board was the completion of the Texas Water Plan which was released in November, 1968, and formally adopted by the Board in April, 1969. The Plan was the culmination of more than ten years work on the part of the State. It was formulated through the simultaneous progress of activities in many program areas. This included detailed summaries relating to each river basin concerning historical, present, and projected water conditions plus the holding of 27 public hearings.

An extremely sophisticated research program of system analysis was initiated by the Texas Water Development Board. Its objective was the devising of an ultimate tool for the effective operation and management of the complex facilities proposed in the Texas Water Plan. The first part of this system analysis research program was funded, in part, by the Office of Water Resources Research, United States Department of the Interior. It was completed in September, 1969. The second phase of this research is underway along with preliminary application to the Texas Water Plan of the results of last years' research. All of these studies and their results will be reviewed and refined as progressive steps are taken to implement the Plan.

Following the release of the Plan, refinement studies began, directed toward its ultimate implementation. On August 5, 1969, an election to amend the Texas Constitution was held. Two proposals affecting water resources development were on the ballot. Amendment 6 would have made financing available for implementing the Texas Water Plan by lifting the 4 percent interest restriction imposed by the Texas Constitution on Texas Water Development bonds. Amendment 2 would have increased the constitutionally authorized amount of Texas Water Development bonds by authorizing the Texas Water Development Board, with approval of the Legislature, to issue \$3.5 billion in bonds to pay the Texas share of the cost of implementing the Texas Water Plan. Both of those amendments were defeated.

Some of the major economic studies prepared by the Texas Water Development Board have been concerned with water resources benefit-cost calculations, cost allocation, and analysis of electric power production. A study of the importance of an alternative irrigation water supply to the West Texas economy has been completed. Evaluation of

water-oriented recreation benefits and projections of population, employment, and municipal and industrial water requirements have been initiated. Each of these studies is being conducted on a continuing basis with revisions being made as new information becomes available.

The Texas Water Development Board is studying the potential of desalination. The objectives are the determination of the economic feasibility of desalting brackish and saline water resources and the role of desalting in the water resources planning activities of the State. A more detailed regional study has been completed examining the application of large-scale desalting in lieu of small individual desalt plants for nine Rio Grande Valley cities. An engineering-economic appraisal has been made of the variations of desalt plant capacities.

The Board is the foremost 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 water storage space in federal projects. The Board acts as the state sponsor of federal projects where no suitable local agency or agencies can undertake the task. It also assists and coordinates efforts of local governments in applying for flood insurance coverage under the National Flood Insurance Act.

Texas Parks and Wildlife Department. The Legislature created the Texas Parks and Wildlife Department in 1963, by merging the State Parks Board and the Game and Fish Commission. The merger came about as a proposed economic move to consolidate the two agencies which had similar functions and administrative structures and which could be appropriately integrated. The new Department initiated long-range policies and programs designed ultimately to provide the State with modern parks and game management in keeping with public demand for outdoor recreation areas and the preservation of wildlife resources.

Increased appropriations by the Legislature have made possible the emerging development program. Added emphasis and financial support came with the enactment of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578) providing financial assistance in the development of public outdoor recreational areas and facilities. State participation, authorized by the Legislature in 1965, designated the Texas Parks and Wildlife Department the State agency to cooperate with the federal government in administration of this Program. A Statewide Comprehensive Outdoor

Recreation Plan (SCORP) approved in January, 1966, established eligibility to receive federal funds and has been maintained and updated in accordance with the State's needs.

The annual federal apportionment under this act is divided, according to the State plan, 60 percent for State projects and 40 percent for projects sponsored by local governments. Grant-in-aid funds match State-appropriated funds for State park acquisition and/or development. Assistance is provided local political subdivisions in the preparation and submission of applications for federal matching funds to acquire new land for park sites or to construct recreational facilities on locally owned land. Approved local projects receive continuing administration by the Department for the duration of each project.

Acquisition and development of new State parks were provided for by the adoption of a Constitutional amendment on November 11, 1967, authorizing the issuance of \$75 million in State general obligation bonds for this purpose.

Investigations of potential sites continue, with areas of 1,000-2,000 acres, and water based areas considered particularly desirable, especially if accessible to major metropolitan centers. Further acquisition is dependent upon additional bond sales.

The Texas Parks and Wildlife Department is responsible for the enforcement of game and fish laws, water safety laws, and trespass laws. Responsibility for the planning and execution of the Department's game and fish management programs are delegated to the Wildlife Restoration and Inland Fisheries functions. Their objectives are as follows: manage and regulate wildlife resources in regulatory authority districts; determine game and fish restoration needs and possibilities; conduct programs of applied research on wildlife management areas, reservoirs, and privately-owned lands and carry out proven restoration practices on suitable areas.

These objectives are accomplished through projects carried out under the provisions of the Federal Aid in Wildlife and Fisheries Restoration Acts. Projects are approved by the Department of Interior which reimburses the State for 75 percent of the funds expended on approved activities.

A marine fisheries program involves the management of marine resources of the Gulf Coast. With the dual objectives of research and management practices, the Texas Parks and Wildlife Department studies the common species

of marine life in their ecological relationships to associated coastal and marine plants and animals. Included in these efforts are related problems such as control of industrial waste coming from oil fields, ships and sewage disposals. An inland fisheries program produces and distributes fish and conducts continuous biological experimentation to improve the crop.

In 1969, 2.4 million State hunting licenses were sold. Individuals also bought 1.4 million fishing licenses. Both types of licenses sold averaged an 18 percent increase in two years. Fish produced and distributed by 14 State hatcheries totaled 15.2 million.

The Texas Parks and Wildlife Department administers the provisions of State laws relating to the sale of sand, shell, gravel, and marl from the public waters and streams of the State. Before anyone can legally take such material from these waters, he must secure a permit from the Department to operate, post a surety bond, and file monthly reports of his activities together with payments for the material removed. The Department is required to make refunds to municipalities, counties, and the State Highway Department for sums paid to the State for the purchase of sand, shell, gravel used in road, street, and highway construction.

Soil and Water Conservation Board is the coordinating agency for the Texas soil and water conservation districts under procedure specified by State law. There are 188 soil and water conservation districts in Texas comprising 99 percent of the State's total land area.

Each soil and water conservation district constitutes a governmental subdivision of the State. The districts have various powers including the formulation of regulations governing use of lands within the area to conserve soil and soil resources and prevent or control soil erosion.

The Texas Soil and Water Conservation Board offers and provides assistance to the districts in the execution of programs and plans and in coordinating and securing private and intergovernmental cooperation. The Board has been designated by the Governor as the approval agency for applications to plan and carry out watershed protection and flood prevention programs on small watersheds of 250,000 acres or less.

Texas Industrial Commission. The Texas Industrial Commission is the State's agency for attracting

industry and encouraging the expansion of existing industry thereby creating jobs for Texans.

The Commission conducts the State's advertising programs, provides consultants to communities to help outline local industrial development programs, and operates a department for the export of Texas made products.

As an information center, the Commission, through advertising, direct contact, and follow-up inquiries, seeks to attract the favorable attention of prospective new industries to Texas. The Commission also serves as a computerized clearinghouse for community data which can be used effectively by corporate industrial location executives seeking plant sites.

The Commission is vitally interested in development using water transportation, both from the standpoint of new or existing industry and through the development of Texas ports, and their export potential.

Some Texas cities obviously need additional jobs and industry. Others may have too many for their long-range benefit. No one has an easy formula for determining what areas should and what areas should not grow. However, this Commission may eventually have to face that task.

Conclusions Concerning State Agencies. Decisions by state agencies account for the expenditure of millions of dollars of state and federal funds annually. Their influence on land use is sometimes staggering. The Highway Department, for example, can determine the configuration of an entire urban region through freeway location and design. If the Department provides new freeway access to a suburban area within a major metropolitan region, that area will almost certainly develop for residential and commercial purposes. If frequent freeway access is provided, development will be of a "strip" type; if infrequent access is provided, development nodes will result.

If the Water Development Board locates a major reservoir in an accessible region, surrounding land will become valuable for recreational purposes. The water supply opens up new growth opportunities for an entire region.

The potential of the Industrial Development Commission is unknown. If it is successful in influencing industrial development, it can increase industrial concentration in existing urban areas or cause a scattering of industrial development into rural areas.

The state agencies having control over state resources create extremely powerful variables through which land resource management goals can be formulated and implemented--or frustrated.

Formulation of Coordinated Policies for Land Resource Management

The State's regulatory and administrative agencies exert considerable influence over land use in the State. However, each agency was formed to respond to a particular need and tends to operate within its legislative or constitutional statement of purpose. In pursuing their stated purposes, the agencies sometimes complement the policies of other agencies, and sometimes they do not. For example, a major conflict may arise if the Highway Department places a freeway interchange so near a wildlife preserve that the preserve is threatened by heavy land development, or if it proposes to run a highway through a state park.

State agencies are very autonomous, they obtain their appropriations from the Legislature, and it is the Legislature and their governing boards they must answer to--not the Governor.

P.A.C.T. Recognizing that major State agencies sometimes act at cross purposes, and that a vehicle was needed to formulate state policies and coordinate the agencies' activities, the Legislature in 1965 established a Planning Agency Council for Texas (PACT).

The Council served as a central planning agency and coordinating body with authority to review and unify State improvements such as water supply, parks, transportation facilities, including highways and public transit, and other programs involving the use of federal, state, and local funds. PACT had agency representation from the State Department of Health, the Texas Highway Department, the Texas Industrial Commission, the Parks and Wildlife Department, the State Soil Conservation Board, the Texas Employment Commission, the Railroad Commission of Texas, and the Texas Water Development Board. The Governor's office supplied administrative help and coordination for the Council. PACT was replaced in 1967 by Interagency Councils structured along functional lines.

The Division of Planning Coordination. In 1967, the Legislature began to institutionalize the planning and coordination function and established planning as a

responsibility of the Governor's office. The Act

1. Designated the Governor, Chief Planning Officer of the State;
2. Required the Governor to appoint Interagency Planning Councils in various functional areas;
3. Established a Division of Planning Coordination in the Office of the Governor.

In 1968, the Governor activated Planning Agency Councils in the broad areas of health, natural resources and law enforcement. The Division of Planning Coordination was staffed and given the following mission:

1. To provide the Governor with policy guidance for using the State's natural and human resources;
2. To provide State agencies with a forum for coordinating their activities;
3. To provide information for State agencies;
4. To provide technical and financial help for regional planning agencies;
5. To review and comment upon applications by local governmental units for funding under federal programs; and
6. To support interagency council activities.

The Division of Planning Coordination is currently defining goals for itself and for the various agencies, and beginning the coordination task. Although the division is not presently an implementing agency for statewide land use controls, its recommendations could determine both the need and the structure for such a system.

The Natural Resources section of the Division of Planning Coordination is now involved in land use planning for the State. According to the Division's 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 and recommending to the Governor and the Legislature alternatives on how the State should plan, manage and develop the coastal zone environment.

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 control. 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. Such action would be required by the proposed federal Land Use Policy and Planning Assistance Act.

Some degree of interagency coordination will probably result from having a formal structure which encourages communication among various agencies. It is likely that some of the stronger agencies will tend to go their own way, however, and that the single office will have to be given substantial power over the agencies to achieve coordination in critical matters.

Clarification of State Goals. The Division of Planning Coordination has commenced coordinating the activities of the various State agencies. But toward what ends?

Recognizing a need for goal clarification, the Governor commissioned a "Goals for Texas" study in 1969. Phase I consisted of agency recommendations. Phase II is an impressively packaged compilation of detailed objectives for the State, broken down into two-year, six-year, and ten-year objectives. Primary recommendations came from the State's Regional Planning Commissions. Many of the statements reflect deep understanding of the State's problems. However, a close review of the 1970 Phase II publication reveals that the stated goals sometimes offer directly conflicting opinions from the various RPC's and do not represent consensus as to where Texas should be at the two, six, and ten-year points. Phase III of the goals project was the Governor's budget, which was selectively based on the policy recommendations.

The State is currently studying a number of land use problems and formulating policies concerning them. Among areas of study are:

A coastal resource management system

Power plant siting

Deep water port development
 Flood plain management
 Transportation
 Basin-wide water quality
 Statewide industrial development
 Land use regulations for unincorporated areas
 State supervision over land development of critical State concern

Goal clarification is a difficult process. Although it is easy to state that Texas' goal is to achieve the "good life" for all of its citizens, that goal is so abstract that it conveys little meaning. In real life, goal setting probably results from a stream of claims which are made upon policy-makers, e.g., for factory sites, food, wealth, clean air, and lower costs.

All claims involve some trade-off against other, conflicting claims. For example, claims for growth and industrialization have trade-offs against clear air and pure water. Often, these trade-offs have not been taken into account.

A planning and implementation process needs to be developed by which all major claims are rationally stated and developed and analyzed for trade-off decisions against other claims. Because of the approaching critical point in industrialization, population and depletion of resources, all significant trade-offs must be thoroughly assessed before the community unalterably commits itself to major decisions concerning resources allocation. Constant feedback must be assured in order that the effects of decisions can be measured and goal statements modified to meet new necessities or claims.

The Division of Planning Coordination may have one of the most difficult, yet most essential roles to be played in State government. Federal requirements could probably be met by a fairly superficial process. The real challenge, however, is to establish a system by which man can indeed realize "the good life" and lengthen his stay on earth.

Present law merely directs the Governor to establish the Division in his Office. It does not define the

limits of authority or the responsibilities of the Division. The functional basis for planning, coordination, and goal establishment needs to be statutorily resolved and more definitively described.

Developers' Water Districts: A Study in Nonmanagement of Land Resources

Houston area land developers use water districts to supply water and sewer services for their new subdivisions. The district method frees developers from reliance upon municipal sources of utilities, and allows them to develop land far removed from existing cities.

Water districts are governmental units which can issue bonds to pay for capital expenditures involved in constructing water and sewer facilities. The bonds are easy to sell, because they are backed by the district's taxing ability, and because the interest on district bonds is exempt from federal income taxation.

Developers form their districts under a general statute or special act. If formed under a general statute, districts are subject to supervision by the Texas Water Rights Commission. If formed by special act, districts are free from much of the supervision applied to general law districts.

Developers' districts have come under attack in recent years. Although districts are governmental units from the moments of their inception, developers use them as extensions of their own business. Developers appoint directors, determine how much the bond issue will be, and hold secret meetings to conduct district business. Districts created by special act are especially suspect inasmuch as regular procedures are bypassed entirely.

Criticisms raise three major questions which need to be resolved: (1) whether creation of districts by special legislation should be stopped, (2) whether developers' districts should be eliminated altogether, and alternatively, (3) whether districts should be encouraged and their functions enlarged.

Should the Practice of Creating Water Districts by Special Legislation be Stopped?

Procedures under the general act are time-consuming and not particularly applicable to developers' districts.

For example, a formal hearing must be provided for persons who wish to have their lands excluded from a proposed district. Inasmuch as developers own all of the land in their water districts, this formality is useless. Many developers avoid this and other general act requirements by having their districts created by special legislative act. Such acts have the appearance of favoritism and avoidance of orderly administrative process.

Districts which are created by special act are freed from desirable controls as well as from tedious formalities. If special districts are to be permitted for development purposes, the Commission procedures should be streamlined to fit their needs, and the practice of forming districts by special act stopped.

Should Developers' District Be Eliminated?

Critics assail developers' districts on several grounds, and the charges are serious enough to ask whether districts should be eliminated entirely. Major complaints are that developers' districts subvert governmental process for private gain; they increase the cost of water and sewer service; they add to pollution; and they contribute to urban sprawl. Although these issues cannot be resolved in a survey paper, some discussion is in order.

Do Developers' Districts Subvert Government Process? Developers control their districts from inception until subdivision lot owners take over two or three years later. They draw district boundaries, put the first voters on the property, tell them how to vote, specify the bond amounts, and identify who will serve as district directors. Everyone in the act--voters, directors, and district itself--is captive of a developer, doing his bidding to provide sewer and water service for a private development. Under such circumstances, governmental procedures tend to be secret and even farcical, e.g., approval of several millions of dollars of district bonds in a district-wide election by a vote of 3-0.

If districts are to be allowed, it would be more forthright if the State eliminated the facade of public involvement and allowed developers to create districts which would remain under the control of the original directors until the estimated completion of the development. The Commission would continue supervision throughout the period. Giving developers firm control for a longer period of time might encourage them to put more land into a district, thereby increasing its efficiency.

On the other hand, it may make sense to start the district off as a governmental entity, and build up the tradition of following governmental form. Subdivision lot owners will eventually take over the district, and they need an established pattern of governmental operation. The district is a governmental entity; and its function is governmental, even though directed toward a specific privately defined goal.

Do developers' districts increase the cost of water and sewer service to the disadvantage of subdivision lot buyers and annexing cities?

Facilities installed by a water district undeniably cost more than if a city with good credit rating installed the same facilities. Without established credit ratings, water district bonds carry higher interest rates than would city bonds. Although the incidence of rip-off by developers has decreased since the Texas Water Rights Commission increased its supervision, there is still the possibility that a developer will put in an inadequate system at exorbitant cost.

All district costs are passed on to subdivision lot buyers who pay the taxes required to retire district bonds. If a nearby city annexes a water district, then it takes over the district indebtedness. If installation costs are higher than need be, then the costs to the subdivision lot buyers and to the city are presumably higher. It would appear that the interests of the lot buyers and the city would best be served by eliminating developers' districts and restricting development to areas which can be served by existing municipal services.

As illogical as it may seem, however, lot buyers and annexing cities may benefit from developers' districts. First, the lot buyer. Water districts enable developers to use land which is priced lower than if it were served by city utilities. The land is removed from city building codes and the builders will be able to build at lower cost. For the lot buyers, the savings resulting from these two factors can totally offset the water district tax levy.

Moreover, if the subdivision were developed inside a city, the lot buyers might pay city taxes which are higher than their water district taxes. City fire and police protection may not be worth the added cost to middle income subdivisions which are isolated from the primary crime problems and fire hazards of the city. Thus, through water districts, subdivision lot buyers may get the services they really want without having to pay for those they do not need.

Assuming that people really want to buy outside of the city limits, the water district is a lower cost option than if the developer built a private system for the subdivision, using his ordinary development financing. The costs of a private system would be passed along to the buyers, either through higher lot costs or through higher service charges. Even with an untested credit rating, water district bonds carry an interest rate which is lower than development financing. Bond buyers are willing to buy low interest district bonds because the interest income is not subject to federal income taxation. The interest on the bonds is also lower than the mortgage interest the lot buyers would pay on his house purchase. For federal income tax purposes, lot buyers can deduct tax payments made to the district just as they would deduct the interest on their home mortgages. All told, the lot buyers may be money ahead by buying into a water district subdivision.

Lot buyers sometimes complain that they are misled by developers who do not tell them that they will have to make tax payments to the water district. They may also have the misfortune of buying into an unsuccessful subdivision, and find that district operating expenses are more burdensome than if all lots had been sold and built upon allowing costs to be spread more broadly. If districts go bankrupt, lot buyers may lose their homes along with their water service. These complaints are legitimate. Although the first problem can be resolved by requiring full disclosure, the problem of solvency is not easily eliminated so long as developers are allowed to venture into new subdivision territory.

From the cities' point of view, water districts may promote urban growth without adding to city problems. Under the Municipal Annexation Law cities can control general law districts within their extraterritorial jurisdiction. To enlarge its control area, Houston has annexed strips along its freeways and thereby extended its extraterritorial jurisdiction throughout most of Harris County. Houston can require new water districts to follow city standards so they can be absorbed easily into the city upon annexation. Houston may feel that it benefits from fringe area growth which provides lower cost housing to area residents. Water districts do not add to the city's debt or operating cost until annexation.

Although the city could get a lower interest rate on its own bonds, it may not want to use its limited borrowing power to provide services which can be furnished by another governmental agency. Also, the city may be no more

anxious to provide city services to new developments than the developments are to get them. It would be costly for the city to extend its utility lines and police and fire protection to serve fringe area subdivisions. The city may thus be content to wait until water district indebtedness is paid down to the point where it makes fiscal sense to annex developed land, and reap the benefits of urbanization without paying its cost.

There is substantial dispute concerning the actual cost to the city which annexes a water district. One study shows that the cost does exceed the income which the city receives in taxes from the newly annexed land. However, a precise cost accounting study may be needed to determine just what balance exists between ad valorem tax income from newly annexed middle-income subdivisions and the actual expense of service to those subdivisions.

Do Districts Add to Pollution? Developers do not create water districts which are larger than the acreage which they feel they can sell during their control over the district. This is rarely larger than four hundred acres. Such districts may be too small to have a professional staff to perform the important sewage treatment operations. Hence, even though the equipment may be well designed and capable of adequate treatment, inadequate supervision may cause a significant pollution threat in an area such as Houston.

The pollution objection could be eliminated by regional supervision over water districts, coupled with a requirement that central treatment plants be used. An industry observer noted that if water districts are outlawed in the Houston area, then developers will simply put in septic tanks--an alternative far more likely than a properly run water district to add to the pollution problem.

Do Developers' Districts Contribute to Urban Sprawl? Clearly, water districts contribute to leapfrog development in the Houston area. By providing basic services in unincorporated areas, water districts free developers from having to buy land at the immediate urban fringe. This capability encourages developers to seek less expensive land away from the city and also enables them to avoid expensive compliance with the city's building codes.

If urban sprawl is bad, then perhaps it should be addressed directly by strict greenbelt zoning to prevent total destruction of the open areas around expanding cities. Eliminating water districts would not eliminate sprawl, although it might slow it down. If water districts are

eliminated and if septic tanks are allowed, the sprawl problem will be worsened, because larger lots would be necessary and a given parcel of land would accommodate fewer people.

Water districts do leave large tracts of undeveloped land between subdivisions. Without water districts, low density housing would be built upon those tracts and the city would expand in an orderly fashion. However, with leapfrog development, the left-over land may acquire value for higher density uses such as apartments. Leapfrog development can thus lessen sprawl by increasing density in the left-over parcels.

Leapfrog development also adds the advantage of age diversity to urban development. Housing eventually wears out, and needs to be replaced. It is sobering to reflect on the miles and miles of single family housing which will decay at the same rate and some day form a gigantic low density slum. There may be an advantage in having diverse uses and diverse age development interspersed with decaying single family housing to heighten private rebuilding interest during the decay cycle.

Should Special Districts Be Encouraged and Their Functions Increased? Special districts avoid the need for newly developing areas in a metropolitan region to incorporate. Yet, they provide municipal type services to subdivision residents. Unincorporated subdivisions are subject to orderly annexation when major metropolitan cities expand their services and influence to that area; incorporated suburbs are not. If suburban areas had to incorporate to provide the necessary services, then Texas cities could find themselves ringed with suburbs and suffer the fate of northern cities which have no place to go.

Perhaps water districts should have their functions expanded so they can better serve as the intermediate point between raw land and final incorporation into the major city in a region. Newly authorized Municipal Utility Districts can provide recreational space as well as water and sewer service for their residents. Would it not be appropriate to allow districts to provide fire protection, garbage pickup and even police protection for subdivisions in the twilight suburban zone of urban government? Although districts probably should not be allowed to pass ordinances and engage in other purely legislative capacities, an expanded role might be entirely appropriate.

This survey of land resource management cannot resolve entirely the water district issue. However, the

water district problem is a manifestation of inadequate land resource management at the State level.

Current Proposals for Land Resource Management in Texas

A number of proposals have been made concerning land resource management in Texas. The Division of Planning Coordination and the Texas Urban Development Commission have provided several concrete proposals for action. However, the most sweeping proposal was introduced in the Texas Legislature in 1971, but was not passed. The scope, operation and approach of this bill deserve considerable attention.

The Texas Land Use Management Bill

This bill would have delegated statewide land use control power to the Texas Land Commissioner. A Land Use Management Division would have been created with power to inventory existing land uses and to make an interim land capability and development plan based on ecological consideration. After hearings, the Commissioner could present a detailed map and statewide land use plan to the Governor for approval. After approval and further hearings, the product would become the established land use plan.

Thereafter, Regional Planning Commissions could adopt zoning regulations based upon the approved plan. Although existing municipal zoning would not be affected, all lands not otherwise covered by zoning would be covered by the State regulations.

The land commissioner would control all new subdivisions in coordination with the local planning commissions.

Recommendations by the Texas Urban Development Commission

The Texas Urban Development Commission has recommended several legislative proposals as a result of intensive study of urban problems facing the State. Among these proposals are:

1. An amendment to Article 970a, to allow cities to enforce construction standards in their extra-territorial jurisdiction by injunction.
2. A bill granting counties broader subdivision control power and allowing them to establish construction standards through a permit system regulating nonfarm structures.
3. A bill authorizing the Governor to provide technical assistance to local governments in land use matters, and allowing the State to assume regulatory responsibility over development in unincorporated areas which threaten the health and safety of citizens.
4. A bill setting performance standards for industrialized housing at the State level.
5. A bill authorizing the Texas Department of Community Affairs to administer a new communities development program. The department could develop new communities, use eminent domain powers to acquire land, and issue revenue bonds.
6. A bill enabling local governments to create regional public transportation administrations to plan and operate public transportation facilities and issue revenue and ad valorem tax bonds.

The Urban Development Commission's proposals have much to offer, and should clearly be incorporated into the land use system in one form or another. However, they are only part of the total fabric which must be created to give Texas a land resource management system which will be adequate for the next quarter century.

V. REGIONAL PLANNING

COMMISSIONS

Background

Lack of adequate planning by local governments has created and aggravated urban slums, sprawl, inadequate open space, and automobile strangulation of cities. Instead of planning for the public interest, cities have sometimes used zoning powers to keep poor families out of elite residential districts and to increase the profits of private investors.

Although Congress was aware that local governments were not meeting their planning responsibilities, its position in the federal system prevented direct intervention into traditionally state and local domains. Indirect influence, however, was a different matter-- Congress could make money available to the local governments to clear up some of their problems, while placing conditions upon the grants to insure that recipient governments began a rational planning process.

Accordingly, when the Housing Act of 1949 made money available for slum clearance and urban redevelopment, the Act required that projects be consistent with the local plans of the municipality as a whole. In 1954, Congress increased the slum clearance program and required that local governments meet "workable program" guidelines in order to participate in urban renewal, public housing and related programs. Workable program certification required a program of local planning and passage of adequate regulatory codes to control private land use. The 1954 Act also provided federal grants to help cities develop their planning capabilities. Although the money was made available, and formal requirements were established, local governments did not accept the federal charge to plan for the future. Instead, they responded grudgingly to federal requirements, and sometimes simply ignored the entire federal package.

In 1961, federal emphasis shifted from local to regional planning and planning conditions were imposed upon programs which local governments could not easily ignore. The Housing Act of 1961 required planning on a metropolitan basis for funds under the open space land program. The 1962 Amendments to the Federal Aid Highway Act imposed similar requirements for highway funds. In 1964 and 1965, area-wide planning requirements were established as a condition of funding local governments in mass transportation, basic water and sewer facilities, and land development for subdivision and neighborhoods.

Federal emphasis shifted from local planning to regional planning for at least three reasons. First, what a local government does often affects land uses far beyond the political boundaries of that government. For example, a major city's decisions concerning street layout and mass transit will directly influence traffic in adjoining cities, and may affect the development of all cities in the metropolitan area. Because fragmented planning cannot accommodate regional concerns, a broader planning base is needed. Second, cooperative planning can save federal dollars. Many cities in an urban region may cooperatively use water and sewer facilities instead of duplicating them, and thereby reduce the cost of improvements which are provided partly at federal expense. Third, the federal government was simply exasperated by the failure of local governments to plan adequately. Because cities and counties failed to do their own planning, the federal government required that a separate planning system be established to do the job.

In order to satisfy the regional planning requirements set by federal legislation, states created or authorized creation of agencies with regional planning capability. Political opposition was minimized because regional agencies did not directly deprive local governments of political identity or implementation power. Federal funds from the Comprehensive Planning Assistance Program helped finance the agencies' planning and management activities. Although the funding system and the planning function are federally inspired, the aim of regional planning is to accommodate and coordinate the goals of the various local governments within a planning region. It is difficult to argue with the purposes or the results of this attempt to improve regional planning and cooperation.

Review and Comment under OMB Circular A-95

In 1966, the Demonstration Cities Act added considerably to the duties of regional planning agencies by requiring that all applications under designated programs, e.g., federal loans or grants for open-space, hospitals, airports, libraries, water supply and distribution facilities, and transportation facilities, be submitted to them for review and comment. After notification that a unit in its region has applied for federal funding under a designated program, the agency may arrange for a consultation with the parties affected by the project. After study, it may forward on to the funding agency affirmative or negative comments concerning the application. Although comments do not bind the funding agencies, the clear implication is that comments will influence the agencies' decision. The Office of Management and Budget has issued Circular A-95 which lists some 98 federal funding programs which provide for review and comment by a state clearinghouse (The Division of Planning Coordination) and a regional clearinghouse (the local Regional Planning Commission).

The Texas Act

In 1965, Texas responded to the federal pressure for area-wide planning by enacting a Regional Planning Commission Act. The Act provides that the State will be divided into planning regions, and that within each planning region, any two or more general purpose local governments may form a Regional Planning Commission (RPC) to engage in comprehensive planning for the area. Twenty-four RPC's have been formed in the State's 21 planning areas, covering 97 percent of the State's population.

The Texas Act broadens RPC responsibility beyond that required for federal program review. In addition to A-95 review, Texas RPC's are required to make similar comments concerning applications to State agencies for funding if the application has regionwide significance. This requirement indicates that the State accepts the inherent importance of planning and coordination at the regional level.

The Texas Act allows RPC's to contract with member governments to provide any services which a private, nongovernmental agency could provide. RPC's may by contract provide waste disposal, utilities, professional planning, and even public transportation within the region.

Additionally, RPC's located at the State boundaries may plan jointly with RPC's from adjoining states; RPC's located on the southern border are permitted to join agencies of the Republic of Mexico to plan for their region on an international scale.

Although the precise form of organization is determined by the local governments, at least two-thirds of the RPC's governing body must be elected officials of general purpose governmental units. Member governments may withdraw from an RPC unless the RPC's charter provides that they cannot.

Having no power to tax, RPC's in Texas obtain operating funds from State and federal grants, local dues, and payments for contract services rendered. The enabling Act sets State formula support at an annual base grant of \$10,000, plus \$1,000 per dues paying county, and 10¢ per capita for all city and county populations served by the RPC. Minimum State financial assistance is set at \$15,000.

In order to qualify for State assistance, an RPC must be composed of two or more general purpose governments in the region, with a combined population equal to at least 60 percent of the regional population. The RPC must engage in comprehensive planning, and it must receive from sources other than the State or federal government an amount equal to at least half of the State contribution.

Urban and Rural Cogs: A Comparison

Some RPC's have established themselves as significant participants in regional land planning. Others may play a less active role, perhaps because area needs for coordination are less critical. To some extent, urban area RPC's are intrinsically more active than rural RPC's.

The differences may be highlighted by a comparison between the Houston Galveston Area Council (incorporating the Houston/Galveston Metropolitan Area with its intensive urbanization and industrial activity), and the Golden Crescent Council of Governments (GCOG), a predominantly rural area centered around Victoria.

The HGAC--Houston Galveston Area Council

The Houston Galveston Area Council was officially created in 1966. In 1967 it was designated by the State and by HUD as the Metropolitan Clearinghouse to review federal assistance applications from its 13 county area, known as the Gulf Coast Area Planning Region. HGAC serves as both the Regional Planning Council and the Council of Governments for this area. It is essentially a voluntary association of governmental member entities with a membership of 100--13 counties, 60 cities, 19 school districts and 10 Soil and Water Conservation Districts. It has an area of 12,500 square miles and a population of 2.3 millions.

Apart from its function in the OMB Circular A-95 Review Process as a Clearinghouse, HGAC has embarked upon a comprehensive and wide-reaching range of programs. Among the significant projects and programs developed by the HGAC during its first five years are:

- A regional sewerage system plan.
- A water supply distribution plan.
- Project review under Circular A-95.
- Open space and recreational plans for the region.
- A regional information management system for accumulation and retrieval of data, forms, formats, planning books, etc.
- A water quality improvement program.
- A criminal justice program.
- A regional health program.
- A survey of regional airport-airspace systems.
- An agency to assist subsidized housing sponsors and their lawyers.
- A regional land use projection to 1990.
- A regional atlas of maps depicting water courses and reservoirs, topography, mineral resources, geology, ground cover, wildlife, livestock, population, land uses, and governmental units.

A census data analysis and retrieval system.

A regional Economics and Dynamics Records and Forecast System, into which information concerning populations, work force, land use, building permits, natural resources, water quality measurements and topography have been programmed.

A transportation study for the Houston area.

Perhaps the most interesting present program development effort is represented by the highly sophisticated Environmental Decision Assistance System (EDAS). This is a partially developed, modularized data monitoring, retrieval and simulation system that will allow decision makers in both the public and private sectors to be appraised of the possible consequences of future sets of actions in the land-development and policy-making arenas. In maintaining the system, HGAC will be able to keep an accurate and current account of all land development activity within its 13 county region. In appraising the consequence of a given course of action, the major driving component, the Regional Simulation and Systems Control Model (aspect of EDAS) may enable HGAC staff evaluators to assess efficiently and accurately the nature and extent of environmental impacts. This would be a significant contribution to the expedition of the present time-consuming and potentially erratic OMB Circular A-95 Review and Comment Process.

As long as RPC's have no power stronger than review and comment on federally assisted programs, their influence depends upon the extent to which they provide a regional information system and develop a service rapport with major land development protagonists. HGAC, with the development of EDAS, is approaching this problem directly in a manner which promises success.

The HGAC review process for FHA applications gives an adequate description of the operation of this review and comment process.

Preliminary housing project applications are sent to the HGAC by the FHA and the Local Housing Authority (in the case of public housing). Once the applications are received and forwarded to the appropriate reviewing staff members, the review process is begun and must be completed within fifteen (15) days. It is during this fifteen-day period that the HGAC must make the applicant aware of any problems or conflicts which it has

recognized and attempt to negotiate with the developer to make changes which might correct these deficiencies.

During the review period the reviewer evaluates the project from two aspects:

- (1) Environmental Assessment
- (2) Environmental Impact

The Environmental Assessment is divided into three areas of assessment:

- (1) Physical Facilities
- (2) Service Facilities
- (3) Neighborhood Facilities

After locating the project on a "master status map," the reviewing staff member begins identifying all agencies, municipal authorities and jurisdictions which would be affected by the project. These authorities are then notified for comment. Essentially two questions are asked of these authorities:

- (1) Are you aware of the project?
- (2) Has it been reviewed by you and are there any comments?

The list of those who normally would be consulted includes:

- (1) City
- (2) School District
- (3) Water Control Improvement Districts
- (4) County Planning or Engineering Office
- (5) Flood Control Engineer
- (6) Others

The comments from these authorities assist in the completing of the "Environmental Assessment."

The first element of the Environmental Assessment, the Physical Facilities Analysis, determines if

there are adequate water and sewer facilities in the area to accommodate the new project. If there is a deficiency, an attempt is made to determine when adequate service might be provided.

The service Facility Analysis is concerned with adequacy of fire protection, schools, parks, and green belts in the project area. For schools the analysis attempts to determine

- (1) the ability of existing schools to service projected population increase;
- (2) the proposed new schools planned for the area and the anticipated completion.

The evaluation of parks is based on in-house maps prepared under HUD work program for 1971. The reviewer checks the location of existing parks and proximity to any future parks as proposed by area "701" Plan. For green belts, the project is checked to determine if it falls within a proposed green belt as designated by the new (1971) park maps.

For the Neighborhood Facilities Analysis, the reviewer makes a personal visit to the site. Here the reviewer is attempting to evaluate streets, drainage characteristics, site and compatibility with existing neighborhoods. The streets are reviewed for accessibility, adequacy for additional traffic loading, and needs for improvement, if any. For reviewing drainage characteristics, the site inspection is augmented by contacting the county engineer to determine if the developer's drainage plans are consistent with the county plan. The site inspection also evaluates the proposed use of the site in the context of the immediate surrounding uses and determines the ability of surrounding neighborhood facilities (grocery stores, restaurants, etc.) to serve adequately the needs of the proposed project. In assessing the compatibility of the proposed project, the reviewer attempts to ascertain if the proposed use is a high-friction intrusion that will detrimentally affect the immediate surrounding area.

For analyzing Environment Impact of the project, the reviewer evaluates the applicant's responses to the preliminary environmental clearance worksheet. This worksheet consists of a series of questions concerning the nature of the project's physical and social impact on the community. The reviewer makes direct responses and analyses of the applicant's statements.

After completing the analysis of the Environmental Assessment and Environmental Impact, the reviewing committee states specific findings to the Executive Committee. The Committee then formulates its positions and incorporates them into the final review statements of the transmittal letter. The transmittal letter is then returned to the FHA office, where the final decision concerning the project is made.

The FHA evaluation concerns itself primarily with the "economic feasibility" of the project and the immediate environmental aspects of the site. For this reason they have indicated that they look to HGAC evaluation for determining the broader regional environmental aspects of the projects. There are indeed cases which have received negative recommendations by the Council which ultimately were rejected by FHA. "Often the case is that if the project receives negative comments from the Council, we (FHA reviewing staff) place 'conditions' on the application which must be complied with before we will accept the project for funding" In either case, it can be concluded that the possibility of having an application rejected because of a negative council comment provides an incentive for the developer to expand the scope of concerns in his project applications in order to comply with those of the Council.

Once the HGAC receives a housing application, it concentrates on guiding the developer's decisions by making him aware of a full range of environmental concerns, as previously described. In so doing, the attempt is to induce the developer to improve the environmental quality of the actual subdivision itself as well as to insure the project's compatibility with surrounding environmental conditions.

The GCCOG--Golden Crescent Council of Governments

The GCCOG is less extensive in both area, population, and membership than HGAC. Consequently, it remains far less developed in its approach and present range of programs. Being essentially a collection of rural counties with only one real population center of any magnitude, Victoria (pop. 45,000), the RPC's participation and level of planning in the area is minimal. In program development, the GCCOG has spent most of its efforts in Criminal Justice and penal programs. GCCOG's comprehensive program is still in the development stages. GCCOG only recently hired a regional planner. Statistically the GCCOG covers an area of c. 5000 sq. mls., with

a population of c. 126,000, distributed in 6 counties. A significant natural resource, Matagorda-Lavaca Bays, lies within its jurisdiction. GCCOG's A-95 review has covered water and waste water treatment plants, road construction and other civil works projects.

At one time GCCOG had an A-95 review committee composed of engineers and other professional people. The Executive Board of GCCOG voted to discharge the committee, and all A-95 reviews became subject to only Executive Board review. The regional planning staff now conducts the review and determines whether it is consistent with area-wide planning.

If objections are raised, the applicant is contacted and the problem discussed and resolved. A brief is then submitted to the Executive Board Members with staff comments. The Board determines whether the project is of local or regional significance and if it has regional significance they discuss various implications related to the projects. To date there have been very few, if any, rejections of applications.

Without a fully developed comprehensive regional plan, decisions made about consistency with area-wide planning must be on a somewhat ad hoc basis. Likewise, in the absence of detailed land-use and land-use suitability inventories decisions about present environmental impact tend to be based upon local knowledge of staff reviewers.

COG's and the A-95 Review Process--A General Comment

When an RPC is well staffed, the actions which alert the RPC to proposed grant applications using federal funds initiate a sophisticated clearance system. The RPC is able to alert potentially affected actions in a region to the proposed action, and ensure discussion and often accommodation to permit the applicant to maximize his objectives and also minimizing the impact upon other regional participants.

If RPC's perform their clearinghouse function well, they can help resolve much of the abuse and clumsiness of the categorical federal and state grant programs without impairing these programs' potential for needed resources distribution.

Where the Clearinghouse process is highly visible, as it is in the case of HGAC, it becomes an

effective device in "educating" local government and the private sector on the availability and potential utility of federal resources. The extension of the review process to corner state programs in Texas further enhances this information dissemination.

If an RPC occupies a benign relationship to local government, and often private development interests, it can be an effective agent in providing federal technical assistance to local areas.

Where there is no "comprehensive planning program" the A-95 review process is essentially conducted in a vacuum. This is also true where a plan exists but it has been allowed to lapse. Manning a critical A-95 review process requires manpower, which for developing RPC's may be problematic.

The difficulty in making distinctions between "good" and "bad" from a regional point of view, perceived as an overwhelming failure in a recent study of the A-95 review process, may well be answered by the operation of HGAC's EDAS program. Here the complexities and "unbiased" realities of an urban and regional setting can be modeled and the counter-intuitive aspects of planning decision-making circumvented. To a large extent, the continual operation of this system will be the comprehensive plan for the region and as such will become a much more visible form of alternative to the fixed "one-point-in-time" colored map descriptions of land-development activity, mandatory requirements of the present way of doing things.

Two Different Approaches to Comprehensive Development Planning

In order to receive State funds, RPC's must engage in "Comprehensive Development Planning," which is defined as:

- (1) Assessing the needs and resources of an area;
- (2) Formulating goals, objectives, policies, and standards to guide its long-range physical, economic, and human resource development; and
- (3) Preparing plans and programs for the region.

Clearly, an RPC should "think big" when it does comprehensive Development Planning. But what does this

mean in operation? A recent research paper describes two markedly different ways an RPC can approach a planning process. One approach is used by the Houston Galveston Area Council (HGAC); the other is used by the Miami (Ohio) Valley Regional Planning Commission (MVRPC).

The difference in approach is illustrated by HGAC and MVRPC's use of their review and comment power over HUD assisted and insured housing developments.

In 1971, RPC's acquired review and comment responsibility over all HUD assisted or insured housing developments involving subdivisions having fifty or more lots, and multi-family housing developments having 100 or more units.

HGAC's approach is shaped by the region's affection for "marketplace" determination of urban form. Accordingly, HGAC has concentrated on providing a data base to predict where private development is likely to take place, thereby giving member governments and private participants information which will be useful to them, and checking proposed developments to see that the necessary facilities (sewer, water, transportation, school, and open space) are available. HGAC does not undertake to distribute private development within the region or to influence the type and price of housing which private builders provide. HGAC's comments therefore relate to the availability or nonavailability of governmental services and the quality standards of the proposed development.

MVRPC, on the other hand, has made a detailed survey of housing needed within its region, and has adopted a scatteration policy for governmentally assisted housing. MVRPC uses its own determination of what type housing should be built within the region, and where it should be built to guide its comments on HUD applications made by private developers.

On the surface, HGAC and MVRPC are following radically different philosophies. HGAC acts primarily to accommodate the market decisions made by private developers; MVRPC sets regional goals and seeks to guide private development by its review and comment power. Assumedly, when a region reaches its capacity for a certain type of HUD assisted housing according to its plan, MVRPC will comment negatively on future applications for housing of that type within the region. HGAC would never reach that point, instead concentrating on performance standards to insure that adequate support facilities are

available for whatever developments the private participants provide.

HGAC and MVRPC are both engaged in comprehensive planning. Their divergent approaches to planning reflect the views of their respective constituencies. The HGAC region is generally friendly to private land developers, and heavily influenced by Houston's laissez-faire attitude. Ohio, on the other hand, is more attuned to standard governmental planning and controls.

Whether the goals for an RPC are set by governmental planning or by the market place, the need for planning and cooperative action is the same. HGAC builds goal identification into its planning process, even though in theory it follows the market. Similarly, the market influences MVRPC when it sets its goals. HGAC and MVRPC both provide a wealth of information for member governments and for private developers, thereby adding to the chances that public and private decisions will be rational.

Regardless of which planning theory finds political acceptance in a region, the individual governments cannot plan or coordinate urban development without a regional organization. The primary value of an RPC may be that it can assist local governments to identify and attain common goals which might otherwise go unnoticed. Both approaches--HGAC's prediction and response, and MVRPC's goal implementation--are roughly in accord with the federal goal of coordinating efforts at the local level, thereby avoiding waste and achieving a better planned product. However, the MVRPC approach is much more firmly based in conventional planning theory, in that it posits a public agency determination of urban form within the planning region.

What Future Role for RPC's:
Purist Planners or Region-States?

The Weak, but Pure, RPC

Texas RPC's have power to plan, but no power to require that member governments, private developers and private landowners follow their plans. The only control which RPC's have over regional growth comes from their ability to plan, to persuade member governments and private parties to follow the plans, and to comment upon applications for federal and State funds.

Related to their inability to control other governmental units is the fragility of RPC's own internal structure. An RPC depends for its continued existence upon the support of member governments within the region, who may withdraw if they wish. Except for the mandatory planning requirements for highway, water, sewer, and open space program funds, local governments could probably go their own way without worrying about the RPC. If the carrot of federal funds loses its taste appeal, member governments may forego the federal funds and desert the agency. If an RPC takes an independent stance contrary to the wishes of a powerful member, then that member may withdraw its membership and financial contribution, thereby disqualifying the RPC from receiving State funds. Thus, there is always a danger that an RPC will become a captive of its most powerful member.

The exact reverse may be a problem. The largest and most populous member of an RPC is likely to be in an actual minority position in the formal control structure. For example, the City of Houston is easily outvoted in both governing bodies of the HGAC. If tied to the HGAC by its dependence upon federal funding, Houston may become a captive of its surrounding governmental suburbs. Whether the "one-man-one-vote" constitutional representation requirements should apply to RPC representation is debatable. However, it is clear that the representatives of Houston voters are grossly outnumbered at the council meeting.

Perhaps this political standoff is the key to RPC effectiveness. No participant--large city, small city, or RPC itself--can push too hard for too long. If the RPC becomes overbearing, then a city, county, or other unit may pull out. But by leaving the RPC, that governmental unit gives up project approval leverage on federally funded projects. Large cities, small cities, and the RPC therefore must work together. The same pressures affect the Executive Director. If he alienates the Executive Committee, he will be fired. But if a governmental unit offends the Director, it may find that it receives consistently adverse staff analysis upon its applications for funding.

In such a standoff, common goals must come to the front because selfish goals cannot survive the trading process. Thus, the RPC's may be able to persuade member governments to adopt advantageous common goals without needing control power.

If they were given power to force regional governments to do this bidding, it is doubtful that the RPC's would long remain independent, pure planning agencies. Present RPC control is so dependent upon consensus that the job of director is not coveted or subject to sale. If power did lie with that job, then all of the forces of "under the table" control would be directed toward it--from affected governments as well as from private parties affected by control decisions. The appearance of political weakness leaves RPC's free to plan purely and to identify common goals as an assistance to the member governments. Because they have no formal power, RPC's must sell plans and proposals on their merits and their tangible benefits to the members affected.

By combining their powers to plan with this ability to provide to member governments services by contract, RPC's may accomplish most of the goals of regional government without changing the political system. Local governments traditionally provide services and locally based police power regulation within their jurisdictional areas. Apart from land use regulation, today's most exasperating regional problems relate to the service side of governmental functions: police and fire protection, utilities, transportation and waste disposal. It is unlikely that local governments would willingly suffer themselves to be dissolved or give up their local control in matters such as land use zoning and control over local police. However, they have passed to RPC's some of the burden of police training and they might let the RPC contract to absorb many of the headache-producing service functions without a whimper. Shifting responsibility to the RPC for garbage collection and disposal by contract would make political sense as well as regional sense.

An active RPC may be able to implement its regional plans by persuasion and project review; it may accomplish the important functions of regional government by contracting with member units to provide services on a region-wide basis. If RPC's can implement their plans and provide regional services without a shift of formal power, then their purposes may be better served than if member governments are threatened by a formal shift of control to the RPC.

The Strong, Powerful, Independently Financed RPC

In a report to the Texas Urban Development Commission, Phillip P. Barnes argues for a stronger RPC. He sees RPC's lack of power to implement their plans as a

shortcoming. He outlines a series of strengthening steps, including veto power instead of comment power for A-95 programs. Barnes would have RPC's assume control over capital improvements by special districts within the region, and eventually veto power over capital improvements by all governments within the region. Barnes also proposes a "holding company" approach over special districts, whereby the RPC would appoint the directors who control districts and authorities within the region. Finally, he would give RPC's general land use control power over unincorporated areas.

Barnes would strengthen the financing picture for RPC's by freeing them from their present reliance upon grants and local dues. He proposes that RPC's share state taxation revenues or acquire taxing authority, thereby giving them an independent financial base. Barnes would change the representation system so that voting control within the RPC would progress from the present system with its small member control to an intermediate "one-man-one-vote" proportional voting or to ultimate direct election of a percentage of the Council.

Barnes' proposals would create specialized region-state governments with financial autonomy and considerable governmental control over land use planning, capital improvements and services within their regions.

The metro-regional governments of the future may be increasingly powerful RPC's. Responding to federal requirements, states may give RPC's power to zone land uses within their regions, to perform all services on a regional basis, and to pass out all funds which come from the only bountiful source, the federal government. If RPC's become the government of the future, the state governments could become irrelevant insofar as regional planning and development are concerned. If this happens, some of the values attributed to the federal system may be lost. The practical hierarchy of government would run from local governments through RPC's to the primary funding source for regional functions, the federal government.

Conversely, a completely different picture may develop. Experiencing failure in its attempts to direct the solutions of local problems, the federal government may decide to send money instead of advice. Direct revenue sharing will channel some of the money collected by income taxes back through the state governments. This system will dispense money through state bureaucracies instead of through the federal bureaucracy. If revenue sharing replaces specific project funding, what is the future of RPC's?

RPC directors who possess enough political acumen to keep their present jobs are likely to recognize that a shift in allegiance is called for--from federal agencies to the governor's office. And the state will need their help. Detailed land use planning and control for the entire state cannot be handled in Austin. Efficiency will require delegation to regional and local agencies, and the state will feel the same need which caused the federal government to establish an effective regional planning agency. The Barnes model of a powerful regional agency would work as an instrument of state land use policy and as a provider of regional services. RPC's are after all regional entities which have operated long enough to gain some expertise in planning and coordinating local activities. Texas has shown confidence in their ability. It is likely that the state would use existing RPC's to dispense its newly acquired planning funds and to oversee the state programs, following roughly the guidelines which were developed for federal programs.

In summation, if RPC's can survive in the short run, their long run prognosis is good. Parental neglect during the present period of adolescence is their biggest problem. Unless they receive a firm financial foundation, regional planning agencies may die before necessity insures their longevity--whether that necessity be as defined by the present system or by a radically different one.

VI. COUNTY CONTROL OVER LAND USE

In forty states, counties are authorized to impose extensive land use controls over privately owned land. In such States, counties may zone unincorporated areas for residential, industrial and commercial uses, and set detailed standards for subdivision developments.

In Texas, counties have no general zoning power. Counties have limited power to regulate new subdivisions; they have no power to set construction standards for new buildings. This gap in Texas regulatory authority leaves private developers outside of established cities virtually uncontrolled. However, counties do have some power to influence growth and to provide vital services for their residences. These have in some cases been used in a very imaginative manner.

This survey of county control over land use will look briefly at the tradition and structure of county government, then examine their land use control powers and land use influencing activity, and finally identify alternatives for improving and coordinating a control structure.

County Governmental Structure and Tradition

Traditional Role

Pursuant to the Texas Constitution, the Legislature has created 254 counties, which now cover all lands within the State. Counties are political subdivisions of the state, and perform administrative duties imposed by the legislature. Counties are subject to the limitations of Dillon's Rule, i.e., they have no independent or general legislative power and can exercise only those limited powers which the legislature or constitution may grant.

In each county, one city is designated as "county seat," wherein the governmental functions of the county are performed. Because travel distances make the State capitol practically inaccessible to most areas of Texas, county governments provide an important service link between

organized State government and individual citizens. For example, county governments provide an official record system for land transfers, a law enforcement office, judicial system, road and bridge construction and maintenance, and local taxing authority.

The county governmental system is fragmented according to its service functions, and elected officials fill many key positions, e.g., clerks of the county and district courts, sheriffs, county judges, and county commissioners. Each elected official enjoys relatively independent status in the administrative system.

County business is carried out by Commissioner's Court. The County judge presides over the court, which is made up of himself and four commissioners. Each Commissioner is elected from a separate county precinct. The principle of equal apportionment requires that each commissioner's precinct contain substantially one-fourth of county population.

Many county commissioners view county road management as their primary job. Because counties often parcel out the road maintenance functions on a precinct basis, each commissioner has a source of grassroots political control through his control over road funds for his precinct. Although the Texas Highway Commission has taken over the responsibility of planning highway planning for the State, the County still plays a substantial role in right-of-way acquisition and road maintenance. Commissioners' emphasis on roads and precinct politics has created a county political structure which historically has not concerned itself with land planning and policy matters.

Many county judges are qualified managers who recognize the growth problems of their county and comprehend the need for planning and controls over new developments. However, in most counties, the judge must split his time between running the county's business and sitting as county judge. Additionally, county judges cannot supervise the other elected officials.

Counties need substantial governmental reorganization before they can adequately handle the additional task of land use planning and control. However, the pressures of urban development in many counties will not wait for county reorganization, and must be addressed through the present system. By comparison with Regional Planning Commissions most counties are not geared to plan for future growth in the unincorporated areas. Politically, however, the State is much more likely to vest political control in

county governments than in the Regional Planning Commissions. Moreover, counties have the virtue of existing as functioning political entities which could perform additional tasks, including land use controls.

Metro Government: A Potential Role for Texas Counties?

The metro model. In several states, metropolitan area cities and counties may modify their traditional relationships and create a new type of government with region-wide functions. Although Dade County, Florida, provides the most familiar example, other types of metro governments operate in Nashville and Baton Rouge.

The demand for metro government is strongest in heavily populated urban areas where a central city finds itself hemmed in by a large number of separately incorporated suburbs. Although each city has tightly drawn political boundaries, the area's problems and service requirements are not so neatly separated. For example, the demands for waste disposal, water supply, fire and police protection, mass transit, and even a uniform taxation system are region-wide. If each city within the region supplies these services for its own residents, costs may be higher and efficiency lower than if they were supplied by a single government on a metropolitan area-wide basis.

One existing governmental unit, the county, has geographical coverage which usually includes all of the cities within a metropolitan area. If the county had sufficient governmental power, it could provide region-wide services to all of the political subdivisions, with a resulting increase in efficiency and perhaps lower cost.

Shifting responsibility for metropolitan area services to the county government may eliminate a wasteful overlap between present county and city services. For example, in Harris County, both the city of Houston and Harris County make ad valorem tax assessments on the lands inside the city limits of Houston, and keep separate tax records. This duplication of effort could be eliminated if the county maintained the tax records and handled all assessments and collections.

In a successful metro system, member cities would not lose their separate identity and functions. People ordinarily acquire an affinity for their local governmental unit, and they make demands upon it for services which that government is best equipped to provide. For example,

Houston does not have a zoning ordinance. Yet, several separately incorporated villages within the boundaries of the central city have highly restrictive zoning ordinances. Residents of Bellaire, West University Place, and Hunter's Creek would not want their zoning system turned over to a distant county government, and they would not want to be absorbed into Houston.

Successful metro government is based upon a careful delineation and delegation of functions which can best be performed at an area-wide level, and an identification of other functions which are purely local and which can best be performed at the village or city level.

Home Rule as a Metro Government Basis. As presently constituted, Texas counties are not equipped with sufficient power to become general regional governments. By constitutional amendment, Texas once sought to allow counties to acquire general governmental power by adopting a "home rule" charter. The amendment was restrictively worded, however, and an attorney general's ruling so reduced its effect that adoption was hardly worth the effort. Nevertheless, several counties attempted to qualify for home rule. Their efforts were unavailing. Interested counties failed one-by-one to meet the technical and confusing requirements for acquiring home rule status. In 1969, the home rule amendment to the Texas Constitution was repealed.

Consolidation of Functions for Metro Services. The way for consolidation of some city and county governmental functions has been paved by later amendments to the Texas Constitution. The legislature is authorized to provide for consolidating local governmental functions, provided that a majority of the voters in the affected political subdivision approve the consolidation.

If local governmental officials want consolidation, and if the voters approved, then the legislature would probably pass enabling legislation. However, the electorate is likely to be uninformed about the options, and local officials often have a vested interest in the status quo. If there is sufficient value in metro government, the State may need to play a more active role in selling it or prescribing it for Texas metropolitan areas.

Does Texas Need Metro Government? The need for metro government in Texas may be less than in some other states. Texas cities benefit from liberal annexation laws which allow home rule cities to annex additional territory by ordinance, without the consent of the annexed residents. Thus, major cities are able to extend their boundaries to

take in most of the metropolitan area population, and to provide services on a quasi-regional basis.

Additionally, all major local governmental subdivisions in Texas have broad powers to contract to provide services to one another. Presumably, if it is politically and economically feasible to provide a specific service on a region-wide basis, the local governmental units will combine to do so. The capability of Regional Planning Commissions to provide services to member governments by contract on a region-wide basis may be even more valuable than would be metro government for Texas metropolitan regions.

Land Use Control Powers

Zoning

The Department of Commerce recommended two primary land use control mechanisms for local governments: zoning and subdivision regulation. Zoning involves a determination by a legislative body that land within the planning area should be classified according to several primary use categories, e.g., residential commercial, industrial, and perhaps rural and agricultural zones. After comprehensive planning to determine which lands within the area are best suited for these specified uses, the zoning authority draws district lines and prohibits future uses within each district which are not in accordance with the zoning plan for that district.

For example, if a county had zoning power, it could determine that certain portions of the unincorporated areas should be used only for single family residential purposes. These portions would be designated on a zoning map as residential districts and commercial or industrial exercise of the State's police power, private landowners would not be entitled to compensation for loss of value which they suffered from zoning. Although Texas cities are amply empowered to adopt zoning controls, Texas counties have no general zoning power. As a result, there is virtually no control over placement of industrial plants, residential subdivisions, and commercial uses in unincorporated areas. However, there have been limited grants of zoning power to counties in three areas: Major recreational areas, airports and flood plains.

Recreational Area Zoning: Padre Island and Amistad. The legislature has made two isolated grants of general zoning authority to Texas counties. In 1954, the

Commissioners Courts of Cameron and Willacy Counties were empowered to zone the unincorporated areas of Padre Island; and in 1971, the Commissioners Court of Val Verde County was empowered to zone the lands surrounding Amistad Recreational area.

Both statutes reflect a positive legislative response to local needs for control over anticipated promotional recreational and resort development which could ruin the character of the areas. Despite the specialized nature of the zoning acts, the statutes followed the same general statements of "purpose in view" used in the standard zoning enabling act, e.g., "to less congestion in the streets and roads; to secure safety from fire, panic, and other dangers; . . . to provide adequate light and air; . . ." Both statutes require that a zoning commission be appointed to make recommendations for the initial ordinance. Although the Padre Island statute placed administrative duties on a Board of Adjustment, the Amistad statute vested administration in the Commissioners Court.

Padre Island and Amistad areas have benefited from special zoning acts; other recreational areas have been left to the market, and suffer from the consequences of highly visible commercial and trailer park development which detracts from the recreational purposes of the area.

Airport Zoning Authority. The Airport Zoning Regulation Act authorizes all political subdivisions of the State to adopt zoning regulations around airports. As political subdivisions, counties may use this limited authority to protect airport users and nearby landowners from the hazards of airport operation.

The Airport Zoning Regulations Act is much more precisely drafted than is the recreational zoning act for Padre Island and Amistad. Instead of stating a purpose out of the Standard Zoning Enabling Act, the Airport Act identifies its goal simply and directly: "to prevent the creation or establishment of airport hazards." In cases where literal enforcement of the Act would cause undue hardship, property owners may apply to a Board of Adjustment for a variance. In addition to granting power to the political subdivision to zone land uses, the Act allows the use of eminent domain to terminate nonconforming uses which interfere with the airport usage.

The Act is a sensible response to an obvious need to control land uses around airports. Life and property interests require such regulation. However, it furnishes

no general authority for counties to zone land uses for purposes not related to airport hazards.

Flood Plain Zoning. In the National Flood Insurance Act of 1968 Congress established an insurance program to cover previously uninsurable private losses from floods. In order to qualify its residents for flood insurance, a governmental agency must regulate land uses in flood prone areas to reduce the losses from future floods. In 1969, Texas authorized all political subdivisions to take "all necessary and reasonable actions to comply with the requirements" of the National Act. The powers granted include "engaging in flood plan (sic) management and adopting enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act." In addition to the power generally granted to political subdivisions, Gulf Coast counties have specific enabling authority to regulate land use and structures in flood prone areas.

As with the other grants of zoning power to counties, the delegation is too narrow to meet the control needs for areas in which extensive urbanization or recreational development takes place.

Chambers County: An Obvious Need for Zoning Power. Situated on Trinity Bay, between Houston and Beaumont, Chambers County is about to experience explosive urbanization in unincorporated areas near a new United States Steel plant. The county's existing cities are small and have no significant experience in land use planning. Extensive private development will occur outside of existing city limits, and will be uncontrolled as to location. The area will attract both industrial and residential uses.

Without power to apportion the available land between these highly incompatible uses, Chambers County can only sit and watch as subdividers and industries create a jumbled land use pattern. Industries and residences require different types of services, including utilities, transportation facilities, and recreational amenities. Without some controls to insure compatibility, they will develop haphazardly, thereby increasing the cost of supplying services and decreasing the quality of life for the new county residents.

The County Judge and the Commissioners are farsighted and recognize the problems which they are about to face. Chambers County recently asked a study group to tell them how they can regulate the new developments. Under current Texas law, the answer is that they have no effective

control over new development, and they must simply prepare to absorb whatever comes and provide services for it as best they can. This is not a satisfactory answer for a concerned government which wishes to do better for its future.

Perhaps Texas has not given its counties zoning power because they have neglected to ask for it. The State has responded generously to specific situations when zoning was needed to comply with a federal program or to protect a recreational area. Texas should enable its counties to regulate land uses in unincorporated areas by zoning, and should give the counties ample power to enforce their ordinances by fine, injunction and permit authority.

Subdivision Regulation

Purpose

Subdivision regulation is a control system which is related to zoning, but which operates in a different manner. Subdivision regulation applies with or without zoning. Subdivision regulations apply to private landowners who divide their land into smaller parcels for sale to builders and consumers. Most new urban areas develop as a result of subdivision activity; subdivision development also occurs around newly established lakes and other recreational areas.

Subdivision regulation does not involve a determination that certain lands should or should not be used for residential or other purposes: it assumes that if the lands are subdivided, then the developer must meet certain standards before he can sell his subdivided lots.

What standards should an adequate regulatory system require of private subdivision developments? A first requisite is that the subdivision be accurate, so that purchasers will get title to the lots they buy, and taxing authorities may accurately record the subdivision lots on the tax rolls. Additionally, the subdivision streets should comply with the design and naming system used by whatever nearby city is likely to annex the subdivision. Subdivision streets should also be improved and dedicated to the public to insure access by lot buyers and the public. Adequate drainage should be provided, and all lots should have access to basic utilities. Depending upon the character of the area, the subdivider could be required to place utility lines underground and observe minimum lot sizes or qualify for cluster development. Arguably, recreational facilities

should be provided for subdivision lot buyers and the cost thereof included in their lot price.

Today in Texas, recreational subdivisions can be developed in unincorporated areas without access to basic utilities. Accordingly, buyers who paid thousands of dollars for their recreational lots may not be able to build a house. Urban residential subdivisions are developed in flood plains, and home buyers suffer inundation from seasonal floods. In totally substandard subdivisions, buyers get unimproved, undedicated streets, bad drainage, inaccurate survey, no utilities, and bad land title. When buyers discover that their subdivisions are substandard, they turn to organized governments for relief. There, they learn that the majority of the community got paved streets and utilities from the developer, not from government.

Part of the reason for the ineffectiveness of subdivision regulation in Texas results from the confusing legislative background and equally confusing present application of subdivision laws.

Legislative History of Texas Subdivision Regulation in Unincorporated Areas: A Confusing Patchwork of Statutes and Court Decisions. In 1927, Texas enacted the predecessor to art. 974a, which authorizes cities to regulate new subdivisions inside city limits. Under the regulatory system, the city must note its approval on subdivision plats before they can be recorded in the county records. It is unlawful for a subdivider to sell land by lot and block description unless his plat is recorded; it is also unlawful for the county clerk to record a subdivision plat unless the plat has been approved by the appropriate regulatory authority. Thus, if a subdivider wishes to record his plat, he must get the required approval. As an added enforcement device, the city may withhold utilities from unapproved subdivisions.

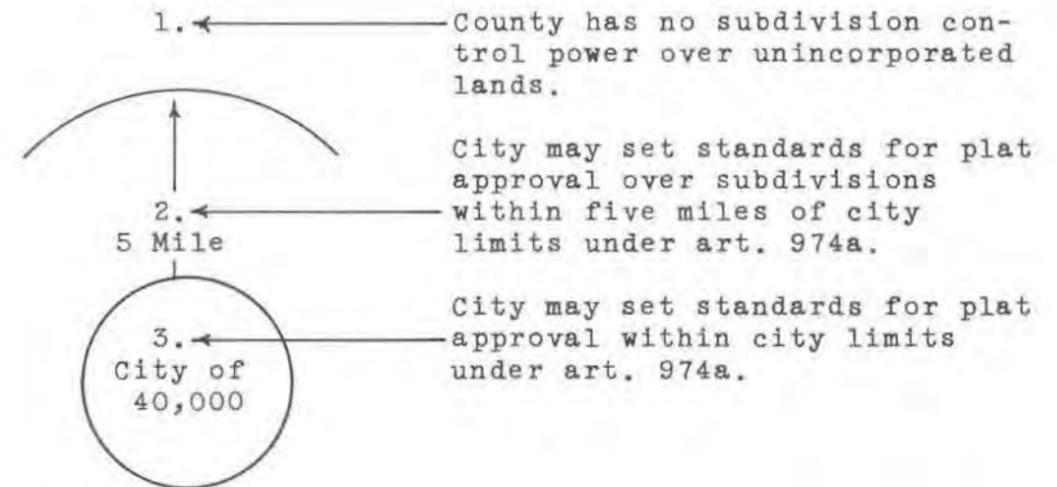
A city may refuse to approve any plat that does not conform to the street plans, utility standards, and other requirements which city council may set by ordinance to protect the health, safety, and welfare of the city.

Although city regulatory authority appears to be quite broad, the control system operates only against those developers who elect to record a plat of their subdivision. In order to escape regulation, a subdivider may sell each lot by surveyor's field notes (a metes and bounds description) instead of recording a plat. Such subdivisions, called "red flag" subdivisions, are often deficient in street construction, utilities and drainage.

As originally enacted, the Texas statute gave cities plat approval power over subdivisions within their limits and within a five mile radius of those limits. Thus, cities could set standards for subdivisions which they might reasonably expect to annex in the future, as well as subdivision within the corporate limits. See Figure 1.

FIGURE 1

SUBDIVISION CONTROL UNDER ORIGINAL VERSION OF ARTICLE 974a



Beyond the five mile limit, there was no control by any governmental agency, and developers could create subdivisions without meeting any regulatory standards.

A 1931 amendment to art. 6626 required that the county commissioners approve subdivision plats outside the limits of incorporated cities before the plat could be recorded. See Figure 2. This amendment appeared to recognize a need for subdivision regulation in unincorporated areas of the county, as well as within and near cities. However, the Texas Courts proceeded to reduce subdivision regulation in unincorporated areas to a meaningless formality.