programs and problems affecting the coastal zone. Various state departments have responsibilities for specific resource areas but no other single group has a total resource concern. To provide a comprehensive objective assessment of conditions and management potential, the Council has established an office with a staff of three persons. It is the staff responsibility to solicit various agency and/or individual views and to present to the Council for consideration an assessment and recommendations for possible action.

The Council was created by HR 483 in the 62nd Regular Session. Some pertinent quotations from that bill are:

(a) (The Council is) "an advisory body to assist in the comprehensive assessment and planning of marine-related affairs in this state and their relationship to national and international marine-related affairs."

(b) (Membership of the Council is by appointment of four each by the Governor, Lieutenant Governor, and Speaker of the House with one each) " . . . to represent government, one person to represent the educational profession, one person to represent commerce and industry, and one person to represent the public."

(c) (The Council) "is purely advisory, . . . may hold public hearings . . . shall establish liaison . . . with the federal government, . . . may accept gifts or grants, . . . may appoint a director, . . . shall meet (quarterly), . . . shall elect a chairman and may elect other officers."

(d) "Until the Legislature provides an appropriation for the operation of the Council, the contingent expense funds of the House of Representatives and of the Senate may be expended for such purposes authorized herein. . . ."

The Council has been involved in the "Superport" issue, among other things; also it is anticipated that the Council will be active in coastal zone management (in cooperation with other agencies), marine transportation, coastal environmental issues, flood and storm insurance, energy, etc.

Summary

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 are not subject to the constitutionally imposed limits which apply to cities and to counties. Some of these authorities and districts impact very directly on land utilization and development as well.

The Division of Planning Coordination, in attempting to further interagency coordination, will likely continue to improve the formal communication structure among various state agencies. It is likely that some of the strong agencies will continue on their own way, however, and that the Division (and the Office of the Governor) will have to be given substantial power over the agencies to actually achieve coordination in critical matters. In addition to increasing the planning and coordination authority and capabilities of the Office of the Governor, efforts should also be made to delegate responsibility for the conservation and development of state resources (including land) to the state agencies in a more rational manner than presently exists. Efforts should also be made to eliminate and/or mediate jurisdictional conflicts resulting from a multitude of local, regional, and special purpose governmental units, as well as to address land use problems associated with the unincorporated areas in Texas.

State Responses to Federal Land Use Requirements

Increasingly, the Federal Government is requiring states to respond to problems through the development of appropriate plans and policies that address specific local and regional needs. One area of concern at the present time is the development of federal and state policies to deal with the management of coastal zone lands; Texas' response to federal requirements in this area will be examined in this section in an effort to illustrate the state's response to federal land use initiatives.

Coastal Zone--
Legislative Example

In anticipation of the federal coastal management bill, Texas is developing legislation for the regulation of its coastal areas. Progress toward its completion is exemplified by current recommendations made by the Coastal Zone Study Committee, headed by State Senator A. R. Schwartz, and the Coastal Resource Management Program, conducted by the Interagency Council on Natural Resources and the Environment. It appears that a coastal zone management act will be introduced to the legislature some time late in the coming session.

Texas' coastal management legislation will certainly be broad in scope--intended to eliminate loopholes or deficiencies of previous legislation and also to impose regulations in areas heretofore untouched. When introduced, this legislation may include provisions which:

(a) Amend the Texas Water Code so that navigation districts can only lease, rather than buy, state-owned submerged lands. A state agency may also be authorized to refuse leases or to impose restrictions on them.

(b) Amend the Reagan-de la Garza Act to make leases of state-owned land available for a variety of purposes, not just industrial ones.

(c) Adopt the legal doctrine of "custom" so as to establish public rights on all Texas beaches.

(d) Eliminate the current loophole which may result in the loss of public rights on beach areas over 200 feet from the mean low tide line but short of the vegetation line.

(e) Guard the right of public access to beaches behind subdivision developments and hotels.

(f) Encourage cities and counties to provide for better beach maintenance (clean-up) and traffic control by increasing the state's share of matching funds for such purposes from 50-50 to 75-25 and removing the current ceiling allotment of $50,000.

(g) Strengthen the state's control over the disposal of waste materials at sea.

(h) Establish guidelines for spoil disposal, with special consideration to the preservation of bay bottoms.

(i) Insure adequate fresh water flow to bays and estuaries.

(j) Prevent land-fills in estuaries unless absolutely necessary.

(k) Prohibit development in areas where vital wetlands may be harmed.

(l) Insure that environmental safeguards are taken in mineral excavations, perhaps prohibit oil and gas production altogether in some areas.

It should be pointed out again that such measures are merely tentative. There is no guarantee that future legislation will be sufficiently inclusive or effective.

As yet the question of land development in coastal areas has not been considered. Senator Schwartz, in his recommendations to his committee, calls for the proscription of all development within 100 feet of the front lines of dunes, with compliance being required for the recording of subdivisions. Further, he recommends employment of land use planning to protect the whole of the coastal environment. The summary report of the Coastal Resources Management Program also deals with the problem of land development. It suggests the use of performance standards in conjunction with resource capability units to determine what types of development are acceptable in various coastal areas. It eschews the establishment and implementation of conventional zoning except where essential for the protection of critical environmental areas.

State Policies Indirectly Affecting Land Use

No governmental policy or activity impacts uniformly in time or in intensity within its sphere of influence; such policies and actions have indirect as well as direct impacts, and these frequently occur over long periods of time. In particular, a broad range of state policies--whether they be based upon legislative or administrative directives, whether they be attempts to deal with natural resource concerns or with social service systems--ultimately influence land utilization and management in Texas.

This overview of state policies on land use has thus far emphasized legislative directives and administrative mechanisms concerned explicitly with land use in Texas. Many state policies and decisions, however, also have major indirect land use consequences--consequences frequently ignored when a policy is adopted or a decision announced.

This presence of indirect land use consequences is illustrated, for example, by the recent decision to develop a major new campus of The University of Texas on the northwest fringe of San Antonio. This decision will not only affect the land on which the campus will be developed, but will also undoubtedly have a very significant impact upon the utilization and development of land in the entire San Antonio region.

Even those state agencies somewhat more directly concerned with land use in Texas frequently adopt policies which have substantial indirect land use consequences. For instance, a decision by the Texas Railroad Commission to permit 100 percent production by petroleum companies has many indirect land use consequences that may not be considered by the Commission. Road interchanges and accesses planned by the Highway Commission have considerable indirect, long-term impact on the development and use of land near the selected construction sites; the development of land near rejected construction sites will also be different than if the sites had been selected. Policies of such agencies as the Water Development Board and the Water Quality Board also indirectly affect land use, as indicated in an earlier section.

As part of the development of more rational statewide land resource management policies (e.g., improved coordination and unification), a serious effort should be made to have all state governmental units cognizant of the fact that their policies and actions might well have direct and/or indirect land use consequences, and that as a result land use impact assessments would frequently be beneficial (to other agencies as well as the agency directly involved). A first step in this direction is one of education and improved state-level coordination; future mechanisms for managing such assessments would depend on the land resource management approach which evolves in Texas.

Summary

Regulation of the utilization and development of nonfederal lands has traditionally been reserved to the states as part of their police power. In general, the states have refrained from regulating land use directly, but rather have delegated the authority to do so to local government units. Unfortunately, the jurisdictional limits of these local government units have frequently been too restricted to permit consideration of regional or area-wide environmental systems and economic development. Local zoning, the primary instrument of land use control, has commonly been utilized only to separate incompatible land uses in urban areas. Subdivision regulations have been applied--but irregularly--in suburban areas. Control over land use in other areas has been minimal or nonexistent.

Texas has been no different from other states. Having no statewide land use plan, Texas has adopted, in the majority of cases, the practice of leaving land use control and development in the hands of local governments. The resulting fragmented structure of municipal zoning and related development controls has long been the primary basis for affecting private land use decisions in Texas. These local controls, as well as the state agencies involved--directly or indirectly--with the administration, regulation, and coordination of land utilization in the state, have been the subject of the above discussion.

Although Texas has no statewide zoning and does not control areas of critical environmental concern, the above review of state policies in land use has shown that Texas has been active in land use management. Not only in guidance and assistance being provided through legislative and agency action, but also critical first steps have been taken in the Office of the Governor to rationalize and coordinate the land use policies of the various government units throughout the state.

Unlike other states Texas has had a series of indirect state policies effecting land-use operating most notably through its water agencies. They have been extensive in their effect since water has always been a critical element in land development in the arid regions. Further land policies have been expressed through state enabling legislation to local areas that basically leaves counties in a responsible and important position while providing cities with reasonable but now perhaps less than extensive enough powers. The latter is particularly true in the context of the expanded transportation-mobility range of most citizens due both to technological change and an extensive, effective and high quality state highway and interstate highway system.

IV. LOCAL TEXAS POLICIES ON LAND USE

Local governments, either cities or counties have no inherent powers of self-government. Only through power delegated to them by the State can they apply land use controls. It is the State that is responsible for governmental power over its citizens and lands, subject to the Tenth Amendment of the U.S. Constitution ruling. This Amendment reserves to the State all those responsibilities not delegated to the Federal government nor prohibited to the States by the Constitution. Therefore, local policies are conducted under the auspices of the State, and only through enabling acts and State legislative rulings can local governments and authorities act. In Texas, the legislature has put land-use control almost entirely in the hands of the local authorities and this leads to an overlap of State and local policies. In separating State Policies from local policies one must realize the hierarchy of administration and view these local policies in this light.

In reviewing the local policies related to land use control two directions can be noted. Certain authorizations, procedures, and actions by the local government directly influence land-use. Other actions, such as transportation policies, environmental protection ordinances, and the location of sewage lines, involve different governmental and administrative structures, but nonetheless <u>indirectly</u> influence land use. In the following review, only the more prominent measures relevant to indirect land use change will be examined.

Inherent Problems

One of the principal obstacles to effective land use management is less the consequence of inadequate plans or architectural models than the lack of governmental institutions with comprehensive jurisdictions. The traditional tools for dealing with land use problems are local zoning restrictions. While these tools have proved useful for dealing with local land use issues, they are inadequate for handling land use activities that spill over local jurisdictional boundaries or involve matters of statewide concern.

Small units of government are inherently limited by the confines of their jurisdiction. Scenic or important natural areas are rarely viewed by a locality in terms of their regional importance. Even when one locality acts prudently to fit development to the capacity of the land, adjoining towns may not. The limits of local jurisdiction are not able to encompass regional ecological or developmental systems without some policy guidance from larger units of government.

A second reason for the inadequacy of local solutions to regional land use management problems derives from the dependency of many local governments upon development-related property tax revenues. Whatever may be in the best interests of the region must confront powerful local economic incentives. Cities find it difficult to act cooperatively in controlling land use, partly because neighboring communities compete economically.

As a consequence of problems largely beyond the control of local governments, the current locally oriented land use regulatory system is dealing inadequately with two kinds of issues: protecting lands that serve vital natural or aesthetic purposes for a regional population; accepting and siting developments that the larger-area may need badly but which may represent net tax costs or pose social problems.

The objectives of a land use policy must be to reform the institutions of government in such a way that important conservation areas are protected, vital developmental needs are accommodated, and major developments and facilities are controlled.

Instruments of Local Regulation

<u>County Regulation</u>

Counties in Texas have no general zoning power, although they do possess limited powers to regulate new subdivisions. These powers, however, do not include the authority to promulgate construction standards for new buildings. Counties of 190,000 or more are permitted by statute (Art. 2372k, V.T.C.S.) to create subdivision regulations applying to unincorporated areas. Counties with fewer than 190,000 people are empowered by another statute (Art. 6626a, V.T.C.S.) to set up subdivision regulations beyond the corporate limits of cities.

Subdivision regulation is related to zoning, but does not include a determination that certain lands should or should not be used for residential or other purposes: it assumes that if lands are subdivided, then the developer must meet certain standards. As matters currently stand, counties may adopt reasonable specifications for street construction and adequate drainage, but they may not set standards for the provision of utilities, minimum lot size, setbacks or building lines, or the creation of open spaces for parks and recreational developments. Articles 2372k and 6626a do permit county Commissioners Courts to disapprove subdivision plats if they do not have sufficient right-of-way for streets, or if the developer does not post a performance bond for street construction. But in general counties lack effective regulatory sanctions. They may not, for example, secure injunctions, deny building permits, or withhold utilities to prospective developers.

City Regulation

Cities in Texas possess the only effective system of land use control through subdivision regulation. They may establish comprehensive subdivision regulations that affect the construction of a number of land-use activities. The most prominent elements of regulation cover:

(a) Division and size of lots.

(b) Construction standards for streets.

(c) Continuity of streets.

(d) Provision of utilities.

(e) Adequate drainage.

(f) Easements.

(g) Sidewalks and public crosswalks.

(h) Bridges

Cities have a number of sanctions that can be applied to assure compliance with overall subdivision specifications. These include:

(a) The power to seek injunctions.

(b) Withholding city utilities.

(c) Refusal of building permits.

(d) Delaying or even denying plat approval.

(e) Imposing fines.

Less formal methods of regulation can involve requirements for posting performance and construction bonds as well as escrow deposits.

In 1951 Art. 6626 was amended to invest cities with power to approve subdivision plats for lands within five miles of their city limits. Cities were not, however, clearly granted power to set substantive standards governing those lands. Instead, the amendment to Art. 6626 indicates that cities gained within the five mile ring the same power that counties had, namely to determine that the lots can be located for taxation purposes. Thus, cities acquired little if any real regulatory power by the 1951 amendment.

In 1961, the legislature passed Art. 970a, which constitutes the last installment of Texas subdivision regulation. Art. 970a establishes municipal annexation procedures for Texas cities. A key provision creates a ring of extraterritorial jurisdiction ranging from one-half mile to five miles beyond the city limits, depending upon city size. Within this area of extraterritorial jurisdiction, the protected city may prevent new cities from incorporating. Section 4 of the Act allows the governing body of a city to extend its subdivision regulations into its area of extraterritorial jurisdiction. Presumably, a city may apply the full range of plat approval powers under Art. 974a. Although unable to punish violations of its regulations, the city may enjoin violations by court action.

The development of subdivision legislation has taken place slowly in Texas and involves an interplay between both cities and counties. Figure 1 depicts relationships as well as the statutory base from which they emerged. Under current law, cities may regulate subdivisions within their limits, and by passing an ordinance, may extend their regulations into their ring of extraterritorial jurisdiction established by the Municipal Annexation Act. As to lands lying beyond the extraterritorial ring and within five miles of city limits, cities have power to check the accuracy of subdivision surveys, but have no regulatory authority.

Cities share regulatory power with county governments as to subdivisions within their ring of extraterritorial jurisdiction. Counties are authorized to establish and apply regulations concerning street width, design,

FIGURE 1

SUBDIVISION CONTROL LEGISLATION IN TEXAS

	County
1.	County may require that minimum rights-of-way, road construction, and drainage specifications be met as a condition of plat approval under Art. 2372k and Art. 6626a.
	City
2. Five miles from city limits.	City may require accurate description of lands for tax purposes as a condition of plat approval under Art. 6626; county may apply regulations established under Art. 2372k and Art. 6626a.
3. Two mile ring of extra-territorial jurisdiction.	City may extend its subdivision ordinance into area of extraterritorial jurisdiction under Art. 974a standards for plat approval; county must also approve under Art. 2372k and Art. 6626a. Whose regulations control --city or county?
4. City of 40,000	City may set standards for plat approval within city limits under Art. 974a.

paving and drainage to subdivisions in unincorporated areas. It is not clear whether city or county standards control in case of conflict.

Zoning

The most familiar aspect of zoning is a city's capability to keep offending land uses out of protected residential districts. Other features, such as setback lines, minimum lot sizes, off-street parking requirements, and height limitations, come as virtual by-products when a city enacts a zoning ordinance. The focus on land use separation is understandable, because that is what causes most cities to turn to zoning controls.

Zoning and land use control became a national policy concern in 1926 when the United States Department of Commerce published A Standard Zoning Enabling Act with recommendations that the various states enact it and related model acts. In 1927, Texas passed a zoning enabling act substantially following the federally recommended guidelines. Many Texas cities adopted local zoning ordinances authorized under the act. In 1954 the federal government increased its pressure for local land use control by requiring "workable program certification" as a condition of grants under the federal urban renewal act. Zoning was administratively required as an element of workable program. In order to get federal funds, some Texas cities have adopted local zoning ordinances which otherwise would not have.

The Zoning Process

A municipality, drawing its power from the state enabling act, may determine that it wishes to control land uses within its boundaries. The legislative body of the city (ordinarily a city council) then appoints a zoning commission. The zoning commission, with or without expert assistance, studies the local land use situation and makes recommendations concerning appropriate uses and the location of commercial and residential districts.

Public Hearings

The zoning commission must hold public hearings to receive citizen reaction to its efforts. After its study and hearings, the zoning commission reports to city council. The commission presents its land use map showing the proposed zones along with a statement of the land use

restrictions which it recommends for those districts. The City Council then considers the proposal made by the zoning commission and holds public hearings. Council, acting as a legislative body may then pass a zoning ordinance declaring land use restrictions appropriate to the various districts established on the zoning map. The final ordinance may be identical to that proposed by the commission or it may differ from it.

After the effective date of the ordinance, property owners may not construct any structure or put the property to any use which conflicts with the zoning ordinance applicable to their district.

Methods of Enforcement

There are several methods of enforcing the ordinance:

(a) Via building permits.

(b) Via official checks to see that the proposed structure meets the requirements of the zoning ordinance.

(c) Via criminal penalties for violation of the zoning ordinance.

(d) Via injunction by the court.

If a city does not act on its own initiative, neighboring landowners may sue to enjoin the violation.

Nonconforming Uses

Prior to zoning, much land in a city may have been built upon and dedicated for certain uses. To a large extent, the original zoning scheme will follow the general land use trends established by private developments. However, there are occasional variations in the private development pattern, as when a filling station stands in a zone which is designated "residential only" by the ordinance. These uses, established prior to the application of the zoning ordinance, are called "nonconforming" uses.

It is generally assumed that nonconforming uses, which are not common law nuisances, may continue, even though the newly enacted zoning ordinance declares them unlawful. Because landowners made investments in their property prior

to the zoning ordinance, it would be unreasonable and probably unconstitutional to require immediate termination of established uses.

Requirement of a Comprehensive Plan

The zoning enabling act requires that the city's zoning ordinance be "in accordance with a comprehensive plan." Because the city's power to zone depends upon the authority granted through the state's zoning enabling act, it is advisable that cities follow the requirements of the Act precisely.

Although different interpretations exist, it is likely that the people who wrote the Zoning Enabling Act thought that zoning would be a two-step process. The first step would be a planning step. The second step would be to implement the plan through zoning. If such a procedure is followed, and if the product has citywide coverage, then comprehensive plan requirements have clearly been satisfied. However, in practice, zoning is not always orderly. Zoning is often a reaction to an immediately felt need to prevent some type of undesirable land development, such as mobile homes, filling stations or apartment project. Therefore it is not unusual for a local governing body to pass a zoning ordinance based on current land uses without going through an extensive preplanning study.

Comprehensive planning is probably less important today in determining initial validity of zoning ordinances than in judging modifications of a city's original zoning scheme. Judges may assume that a city's original zoning ordinance manifests a "comprehensive plan," and that zoning amendments which depart from the plan are therefore invalid. When rigidly imposed, this judicial attitude may make a city's zoning system so inflexible that it cannot adjust to conditions which were not apparent when the ordinance was first drafted.

Zoning Amendments

A city may experience unanticipated developments--such as new highway interchanges, airport expansion, or new power plant sitings--that require amending the zoning ordinance. Amendments must be passed as a formal legislative act by council. Nearby landowners are entitled to notice of the zoning amendment, and public hearings must be held. If 20% of the neighbors protest, the amendment must receive 3/4% council majority to pass.

Although the amendment procedure spelled out in the enabling act is a necessary part of zoning machinery, amendments which are unpopular with the neighbors are oftentimes challenged in courts.

A recent addition to zoning law, planned unit development procedures avoid the ad hoc appearance of spot zoning by spelling out in the basic zoning ordinance (as part of the required "comprehensive plan") the circumstances and standards to be applied to applications by landowners for major project rezoning. All requests for planned units are fed through the recommending steps to insure that they fit within the framework of existing regulations and community needs. Upon final approval, the city grants a permit allowing the landowner to build the specific project which he proposed.

Thus, planned unit developments meet the needs of the city, the developer, and the neighbors. By incorporating the planned unit procedure into the master plan, the city avoids "spot zoning." By delegating project review and recommendation to the city planning commission, then limiting the building permit to the specific project, the city avoids "contract zoning" problems.

Building Codes

Building codes are established by city ordinance to regulate the design, construction, materials, locations and designated equipment of all buildings and structures built within the city. Existing buildings which were lawful when originally constructed are allowed to stand, but later substantial repairs, alterations, or additions must meet code standards applicable at the time they are made. A building permit is required for construction covered by the code. Violations are punishable by fine. Local Building codes are usually modelled after a standard code recommended by a respected agency. Local modifications may be made to meet local conditions. On the other hand, some communities simply pass the "Southern Standard Building Code" without thorough examination.

Texas courts have held that supervision of the construction, maintenance, and repair of buildings is part of the police power which is inherent in the State. This power may be delegated by the State to a municipality. Unfortunately the courts have not pointed out where the delegation must appear. Home rule cities may rely upon their general constitutional authority and their statutory power "to enforce all ordinances necessary to protect

health, life and property . . ." Home rule cities also have power to regulate utilities. Inasmuch as buildings are likely to have utility connections, the building code could be justified as a regulation related to utility connections.

Although general law cities do not have the broad range of powers held by home rule cities, they have been allowed to enforce building codes. The courts have upheld in general a city's building code, citing the zoning enabling act as authority.

The Texas courts appear to be willing to uphold the power of general law cities to pass building codes without express delegation of authority. General law cities are empowered to pass laws "as shall be needful for the government, interest, welfare and good order of said body politic." This grant of unspecified power is probably broad enough to justify the courts in upholding cities in their control over new construction.

Annexation

Before 1963 Texas' Home Rule cities were virtually unsupervised in the exercise of their annexation powers. Home Rule cities may annex adjacent territory by ordinance, without needing a favorable vote from residents in the annexed area. As a result, when central cities in Texas felt pressure from active satellite cities, they could simply annex strips around the satellites thereby terminating this potential growth. Similarly when communities in unincorporated areas commenced proceedings to incorporate, the central cities frustrated their efforts by commencing annexation proceedings.

The Texas Legislature responded to these conditions in 1963 by passing the Municipal Annexation Act. This Act strikes a balance between protecting central cities from competitive incorporation and annexation, while preventing over-aggressive annexation by those cities.

The Act provides the following basic formula for settling the annexation issue:

> Each Texas city is granted a ring of extraterritorial jurisdiction, ranging from 1/2 mile to 5 miles beyond the city's corporate limits. The width of extraterritorial jurisdiction is determined by the city's population. In this area of extraterritorial jurisdiction, no new cities or municipal corporations may be created without the consent of the protected city.

However, residents of unincorporated areas may petition the city for annexation, and if desired, thus they may incorporate.

If the extraterritorial jurisdiction of one city overlaps that of another, the cities may apportion the area by contract. If the cities cannot agree, then either city may file in the district court for judicial apportionment of the extraterritorial jurisdiction.

A city may annex only lands that lie within its extraterritorial jurisdiction. Annexation may not exceed 10% of the total corporate area of a city in any one year; however, if the city fails in any year to annex its total authorized territory, it may carry that amount forward and annex not to exceed 30% of its total area in a subsequent year.

Cities may by ordinance extend subdivision regulations into their extraterritorial jurisdiction. The city may enjoin violations of the regulations but may not punish offenders by fine.

If a city annexes territory and does not provide services of a nature similar to that provided in other sections of the city, a majority of the voters and property owners in the annexed area may petition for disannexation. If the city refuses to disannex, property owners may sue for disannexation.

The city may contract with industrial districts not to annex property in the district. Such contracts shall not exceed seven years and may be renewed or extended for successive seven year periods.

General Law Cities

Unlike Home Rule Cities, General Law Cities must get a favorable annexation vote from residents of territory which they seek to annex. Inasmuch as cities with the qualifying population of 5,000 are likely to become Home Rule cities, this is not a significant disability in solving the "ring of satellites" problem. The limitation may even be helpful, in that satellite cities tend to be general law cities whose expansion might not be in the best interest of the metropolitan areas as a whole.

Regional Councils of Government and Land Use Control

Regional Councils of Government (COGS) are bodies composed of the chief elected officers from local governments within a prescribed geographical area that meet periodically to discuss the mutual problems of the region as a whole. The COG, as a device of intergovernmental communication, provides a forum where the implications for the planning of the future of the region can be made apparent. Each council provides a means for discussion, research and recommendation only; it has no power to enforce its decisions.

The Regional Councils as a Mechanism of Land Use Policy

The control of city growth and the uses to which land is put have one important common denominator: both will affect the environmental quality within and adjacent to the area in question. It is those cities which have not paid sufficient attention to this fact that are now feeling the unpleasant results: lack of recreational space, air pollution in densely-populated areas, a fragmented and piecemeal attempt to acquire new lands, physical blight, and the location of uncomplementary land uses adjacent to one another.

The situation cited is not a necessary outcome of growth, per se. There are means for providing for an orderly, controlled, and well-planned pattern of growth. The city's coordination of extraterritorial subdivision ordinances and zoning and subdivision ordinances within the city are tools that are useful in providing for controlled growth. There exists, however, at least one additional tool to help coordinate growth and land use policies. This is the council of government.

The regional council has characteristics that make it an invaluable partner in a coordinated attempt to manage urban growth and land use. Some of these characteristics have been recognized; others have not.

First is the COG's voluntary nature. No city, town or county government is forced to be a member of its regional council. A COG could not function as it is meant to, had it not the voluntary support of all its members. COG's are and must be receptive to member government input, without which the council cannot function. The regional council's major effort is to establish a running dialogue among member governments.

With a funding level commensurate to its responsibilities, the COG has an opportunity to employ the expert skills necessary for the specialized requirements of planning. Governments that cannot themselves afford expensive planning staffs can take advantage of the COG's resources. For governments that do not presently include a planning function, the implications are obvious. The COG can indicate to these governments what powers and sanctions are already available to them for controlling land use. This done, the COG can provide assistance in policy formulation. For those governments already involved in planning, the COG staff not only supplements and reinforces local planning efforts, but can act as a repository of information on neighboring government activities and can coordinate local government planning activities.

The COG's role as a repository of local data cannot be overemphasized. The councils assemble and organize vast amounts of data of local concern and regional significance. This information-gathering would consume large amounts of expensive time and manpower if left to each member government to do on its own. The COG, with links to numerous governments within its region, can more easily obtain the data and provide a central location for its storage and dissemination.

The COG provides a central location from which to plan for future needs of cities, towns, counties, and the region as a whole. This is true for several reasons. First, by its very membership, a local government evinces its concern for and interest in the planning activities of neighboring governments. Second, member governments can realize substantial savings in time and manpower by drawing from the COG's fund of expertise and information. Finally, governments of the entire region can benefit from a coordinated approach to land use and growth policies. The COG supplements local functions; it does not supplant them.

V. LOCAL POLICIES WITH MAJOR INDIRECT LAND USE CONSEQUENCES

Water District Establishment

For purposes of conservation as well as acquiring and distributing water, the State authorizes the creation of water districts. The water district laws of Texas were originally conceived as a weapon to fight disease, improve sanitation, and provide adequate water supplies. In many of the large urban counties water districts have taken on other responsibilities such as sewage disposal, fire protection and regulation of plumbing. By providing these services, water districts have been instrumental in helping contractors and developers, especially in unincorporated areas.

In some cases water districts may contract with city governments for the purchase of water. Under this arrangement the city can require the district to engage in land use control activities that bear on subdivision development.

Sewer Facilities--Extension

The local government can by extending its sewer facilities, influence the direction of expansion at its boundary limits. It can through this device also indirectly influence the use of the land in its extraterritorial area and beyond.

Electricity Supply

It is possible that the city can use the supplying of electricity to subdivisions to wield another lever in contractual negotiations of land use within the subdivision. A city could in the same manner as the Water District contractual arrangements, use electricity supply as an influencing argument.

Pollution Control

The city can through inspection and modification of sewer facilities, police waste disposal in its extraterritorial areas, and, in this way, influence land use. Other regional bodies, such as River Authorities, possess the same power, but it may be necessary for such control to be brought under the central jurisdiction of a Statewide agency or agencies that together cover all the State's territory.

Transportation Development

The city can indirectly influence land use through control of the transportation network development programs. Through cooperation with the State Highway Commission, local authorities can actively influence highway development in their territories, and thus indirectly influence growth and expansion of their residential and commercial sectors. This consideration has many facets, for transportation is an integral part of the economic and social fabric of a community. How a city organizes its transportation system has a very strong influence on the patterns of growth in the future.

Environmental Policy Ordinances

Many cities in Texas are now considering ordinances with broader implications than pollution control. Proposed environmental policy ordinances have been generated in cities that have experienced heavy population growth, high density urbanization and business expansion. These proposals indirectly affect a variety of land use activities.

The central element in proposed environmental policy ordinances is the requirement of impact statements from city departments or their agents when engaged in work having a significant effect on the environment. Each impact statement would represent a mixture of the following items:

1. Complete description of the proposed action
2. Possible impact of proposed action on the environment
3. Unavoidable adverse environmental effects

4. Assessment of the cumulative, long-term effects on the environment
5. Any irretrievable and irreversible commitments of resources that would take place if the proposed action were implemented
6. Measures proposed to minimize adverse environmental impacts
7. An objective evaluation of real alternatives
8. A cost-benefit analysis of the environmental effects of the proposed action
9. A clear statement of departmental policy which this action reflects
10. A discussion and incorporation of objections, criticisms raised by other departments, interested groups or individuals
11. A statement as to how and when citizens and interested groups were informed and encouraged to make comments

Summary

The review has summarized the controls a local authority can use to influence land use policies. This authorization has been bequeathed to the local level by the State. The local governments have power to influence land use, but there are many problems involved which often make this power less effective. Few local governments have fixed goals for their future growth, and even "Master Plans" have to be couched in terms that allow for flexibility and alteration of goals. Local control of land use goals can be well executed, but local governments do not have comprehensive jurisdiction. Often the Council involved in zoning appeals, subdivision ordinances, are not fully aware of the alternatives and consequences of their action. Too often the individual case is considered independently, disregarding the total view of development and land use policies.

Land resource management of more than local significance can only be provided by state policies. State agencies, acting as coordinators of local government programs, can serve to provide uniform state wide land use goals and, in an advisory capacity, provide the technical assistance for regional land use planning.

VI. PRIVATE POLICIES TOWARD LAND DEVELOPMENT

Developer Policies and Land Resources (The Water District Issue)

Water districts provide an excellent example of the impact of the policy of "nonmanagement" by the State of new land development. Many such examples exist, but this will serve to focus attention on the fact that no definite policy still results in specific patterns of private responses (policy).

Land developers use water districts to supply water and sewer services for their new subdivisions. The creation of a district 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 backed by the district's taxing ability, and 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 may be free from much of the supervision applied to general law districts.

Developers' districts have come under attack in recent years. Although districts are defined as governmental units, development under the special act designation is almost completely unregulated. Developers appoint directors, determine how much the bond issue will be, and may hold nonpublic meetings to conduct district business. Districts created by special act are especially suspect inasmuch as regular procedures are bypassed almost entirely.

Criticisms raise major questions which need to be examined.

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

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; they contribute to urban sprawl. Although these issues cannot be resolved here, some discussion is in order.

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, and hence affect their vote, specify the bond amounts, and identify who will serve as district directors. At least at the inception, everyone in the district--voters, directors, and the district itself--is in part captive of a developer. Under such circumstances, the otherwise public administrative procedures tend to be secret and fiscally unresponsive to the large public (state) good, e.g., approval of several millions of dollars of district bonds in a district-wide election by a vote of 3-0.

Facilities installed by a water district undeniably cost more than if a city with good credit rating installed the same facilities. Water districts must hire lawyers and engineers at premium rates. Without established credit ratings, water district bonds carry higher interest rates than would city bonds. Although the incidence of incorrect use of power 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 an 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 or restricting development to areas which can be served by existing municipal services.

The water district problem is a manifest example of uncoordinated land resource management at the State level. The legislature and its own regulatory agency, the Texas Water Rights Commission, is not in a position to

determine whether the urban sprawl which results from water districts is good or bad for the State. Left virtually unregulated, land developers can use the districts for personal profit without regard to whether the consequences are good or bad for the urban region. It is the guidance mechanism and lack of consistent coordination that is the policy issue to be addressed here. It is the framework that is at fault not the mechanism (water districts) itself. Private local policies can not be expected to take into account larger statewide issues, especially when the existing public policies are contradictory.

Policies of Public Participation

There are three major ways in government to reach policy on large public projects such as statewide land resource management decisions, administratively in the courts, and in the legislative body itself. It is our view that our current administrative system is the proper one. We should solve our difficulties by making improvements in the administrative process.

Improving the Administrative Process

Great changes have been taking place in our administrative system in the last few years. Until a short time ago, it was assumed that the government agency itself represented the public interest. In its proceedings and deliberations there was conceived to be a two-party adversary stance; the persons being regulated, typically business and economic interests, operated as adversaries in the technical legal sense against the regulating agency. The regulating agency was the full representative of the public.

In the space of less than the last decade, we have gone through an almost complete reorientation. A general change in attitude toward protecting the public interests and a recognition of a need for more direct representation of the public viewpoint, have brought it about. We no longer view our administrators as the sole representatives of the public interest. They have been pushed into a somewhat quasi-judicial role of more passively deciding among competing considerations. The adversaries are the regulated business and economic interests on the one hand and the general public on the other. These adversaries present their conflicting points of view to the agency or administrator for ultimate resolution.

This new view makes the agencies more deliberative bodies. But it also exposes their decisions to more effective public scrutiny.

There are also disadvantages in this change. It undoubtedly means slower decision making. It almost surely means more instances of projects being tied up in court for review for substantial periods of time, at least until we learn more effectively to deal with public interest advocacy. But these delays and difficulties may be counterbalanced by ultimately better decisions which more adequately take into account all of the competing values involved.

It may be somewhat an overstatement and generalization, but it probably is acceptable to say that this new attitude toward governmental regulation in many ways creates a new role for our administrative agencies and for our administrators. This in turn means that there must be development of new procedures more effectively to fulfill this role.

The most serious single question which now must be raised is: "Who will speak for the public?" Self-styled public representatives will present certain viewpoints, but there are other public viewpoints which may not be presented. There is a substantial drive now in Washington to create a public counsel to represent the public viewpoint. Creation of an independent and impartial public counsel would be a significant advance. It could insure that at least to some degree competing public viewpoints could be reconciled in effective presentation to agencies and departments.

Other procedural devices could be developed and used. As mentioned earlier, we could more readily use the local hearing so that the people most directly concerned can express their views. On occasion, independent advisory commissions could be of tremendous usefulness.

But the major developments must be with the procedures of the agencies themselves. There must be effective means developed to insure that the viable alternatives are carefully considered, the variety of viewpoints of the public are adequately heard, and yet there comes a termination point so that we can get final decisions in order to move ahead.

There is one additional principle, often overlooked, which needs firm application. This is the need for adequate notice to public groups generally that land management decisions are contemplated.

Another positive consideration in the development of these procedures deserves mention. We cannot allow all representatives of the public to be full parties with the full panoply of rights, including the right to cross examination and full participation by counsel. Principles of intervention and of protest, the filing of written suggested alternatives and the granting of hearings to such groups but without full adversary participation by them are the techniques which must be more effectively utilized to give adequate participatory opportunity but without so overburdening the hearing that it collapses of its own weight.

Conclusion

To maintain and enhance public participation compromise within the existing judicial system must be combined with imaginative use of change in administrative procedures.

In terms of land use management we have allowed people to use their own land with a wide latitude of consideration. We have only narrowed that latitude when a clear and present threat to the larger public, such as in issues of health, sanitation or fire, could be identified. Clearly the externalities of the way in which land is used has been recognized in higher density incorporated urban environments for a longer period than in low density rural environment. In even the urban environment, however, there has been a long and noble tradition of public access to the regulating agencies such as zoning boards. It may even be argued that the reason zoning has survived as a method of guiding land development has been its flexibility and close approximation to the public as an administrative device. With the continued recognition and emphasis by the federal government on local review, as indicated by the Environmental Protection Agency directives on local review of impact statements, this would be a critical issue in the development of policies to deal with a statewide land management system. The issue that must be resolved is maximum public access to the decision-making apparatus while local issues are resolved in the light of their larger county, regional, state or national impact.

VII. POLICY CONCLUSION

The development of a national land use policy is occurring within a new framework of state-federal relationships that include (a) increased federal recognition of state power and responsibility for the implementation of policies structured by federal leadership and (b) increased federal-state fiscal interdependence as indicated by the concepts of revenue sharing. The key thrust of pending federal legislation is a determination that (a) the state should be the central focus of land management, (b) that the state should define its extent of power, operational rules and precise means for smoothing the incorporation of a land management system into its own institutional structure, (c) that the state should to some degree become more responsible in the area of direct land regulation, an area which has traditionally been the prerogative of local government, (d) that the state should accomplish (a) through (c) particularly in the area of (i) critical environments, (ii) key facilities and projects with large (iii) temporal and (iv) areal effects.

Reviews of state agencies indicate a high level of recognition of the impact of their policies on land use particularly with regard to the Water Agencies, Transportation Agencies, and the other Environmentally Sensitive Agencies. However, such policies are developed independently and basically in a vacuum with no integrative mechanism between them on overall policy framework for reference purposes at the State level. The result is that coordination is almost nonexistent and conflicting policies develop. It is truly the remarkable asset of the State agencies that the present formal structure has not led to more formal conflicts in this area.

Issues and the resulting policies at the local level are developed on a piecemeal and experimentalist basis. The Home Rule structure is not strong enough to prevent satellite encroachment around major centers and where it is strong, when combined with informal powers of utility supply and building code enforcement, it is not widely understood or effectively utilized. This is a direct result of the lack of guidance, definition of indirect powers, which might be utilized at the local level.

It is critical to remember that local governments, their general powers as well as land management powers, are derivative from the State. In essence the State is responsible and this is precisely the federal argument. If more coordination, cooperation, power restructuring, and information can result in better land management it is the State that must take into account the larger public good in helping local areas to better manage their own problems and in particular in helping them cope with those problems which are of greater than local significance.

APPENDIX A: NATIONAL LEGISLATION 1945-1972

I. URBAN LAND

Administrative Mechanisms

1948

Creation of a Housing and Home Finance Agency (Presidential Reorganization Plan No. 3)

The Housing and Home Finance Agency was created to succeed the National Housing Agency. The plan had three constituent parts: A Federal Home Loan Bank Board, the Federal Housing Administration, and the Public Housing Administration. In addition a National Housing Council was established under this reorganization.

1964

The Department of Housing and Urban Development (P.L. 89-174)

This Department (HUD) was created to supercede and reorganize the Housing and Home Finance Agency.

1970

Housing and Urban Development Act of 1970 (P.L. 91-609)

Certain titles of this Housing Act were pertinent to land-use elements. Title VII consolidated administration of the open-space programs to reduce HUD costs. The Urban Growth and New Community Development Plan, another section of this legislation, established specific goals for future urban growth and also provided increased funding to public agencies and private developers for "new community" development.

Urban Development

1949

Housing Act of 1949 (P.L. 81-171)

A national housing goal was declared, calling for "a decent home and a suitable living environment for every American family." The Act contained several Titles relating to land-use elements.

Title I - provided for slum clearance and community development and redevelopment.

Title II - provided FHA mortgage insurance authorization.

Title III - provided low rent public housing.

1954

Omnibus Housing Act of 1954 (P.L. 83-560)

The 1949 act was revised to eliminate abuses and there was a major broadening of the urban development program. This urban renewal program provided matching grants to the states to assist communities with populations under 25,000 in plannning projects. Communities were encouraged to plan public works through a provision of the Act that authorized a revolving fund for interest free federal loans. These loans were advanced to communities on the understanding that they would be repaid when the works were put under construction.

1955

Housing Amendments Act of 1955 (P.L. 84-345)

More funds were made available for slum clearance and urban renewal, and for loans to public agencies for planning community facilities.

1956

Omnibus Housing Act of 1956 (P.L. 84-1020)

The scope of the urban renewal programs was broadened and the funding to the urban planning grant authorization increased.

1961

Housing Act of 1961 (P.L. 87-70)

This Act increased the scope of federal aid programs in housing:

(1) It expanded the categories for mortgage loans that could be insured by the FHA and provided subsidies of direct loans at lower interest rates for the construction of housing for the elderly.
(2) Urban renewal was funded up to $2 billion.
(3) Mass transit program funding was increased to $25 million.
(4) Urban planning aid received $55 million.
(5) $50 million was granted to states and local authorities to pay up to one third of the cost of acquisition of urban land, specifically to develop "open-space" areas for recreational conservation, scenic and historical purposes.

In this latter authorization, the trend to recognize and encourage development, pertinent to environmental quality goals, appears in Urban housing legislation, signaling a change in federal and popular opinion towards this 'new' direction.

1964

Urban Housing Act of 1964 (P.L. 88-560)

Minimum housing standards were set for federal aid, authorized urban renewal projects for air-rights developments. Air rights projects would be undertaken in an area which was not itself in need of slum clearance, but consisted of land primarily under highway, railway or similar blighting influence and would provide elevated sites for low or moderate-income housing.

Urban planning aid was authorized to areas where withdrawals of federal installations had reduced employment opportunities, and to any other "depressed" area without regard to the population which qualified for assistance under the area redevelopment program. Advances for public works planning were increased by $20 million. The Act established a new system for federal-state training and research in planning and community development and authorized government aid to support a fellowship program in city planning and urban specialists.

1965

The Housing Act of 1965 (P.L. 89-117)

Several new features were included in urban development programs: These were (1) uniform land acquisition procedures; (2) matching grants for construction of basic public water and sewer facilities; (3) increased grants for open space acquisition, including a new program to encourage parks and playground development in urban areas; (4) grants to local public bodies to provide for urban beautification and improvement programs; (5) expansion of loan programs for rural residence loans to all age groups.

Further, HUD was authorized to investigate and report on methods of reducing the loss to homeowners whose property depreciated because of its proximity to airports and flight paths.

1966

Demonstration Cities on Metropolitan Development Act of 1966 (P.L. 89-754)

This Act was aimed at developing a broad new program of community development and urban renewal in U.S. cities. There was a three year $1.2 billion "Demonstration cities" plan which envisaged a restructuring of the total environment in such urban areas, designed as demonstration communities. Included in the legislation was a new program for federal land development mortgage insurance for developers of "New Towns" and a plan for incentive grants to encourage comprehensive area-wide planning.

1967

Rent Supplements and Model Cities Act (P.L. 90-121)

Demonstration cities were renamed "Model Cities" and $312 million was appropriated for the program.

1968

Housing and Urban Development Act of 1968 (P.L. 90-448)

This Act was a major piece of housing legislation; several titles in the act have significant effects on land-use:

Title IV involved New Community Land Development.

Title V included its Urban Renewal legislation authorization of $1 billion for the model cities program for 1970 fiscal year, and $12 million for model cities planning grants in 1969.

Title VI, Urban Planning in Facilities legislation included the authorization of an increase of grants for demonstration projects to $20 million.

Title VII concerned Urban Mass Transportation.

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Title VII consolidated administration of the open-space programs to reduce HUD costs.

The Urban Growth and New Community Development Plan, another section of this legislation, established specific goals for future urban growth and also provided increased funding to public agencies and private developers for "new community" development.

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(4) grants to local public bodies to provide for urban beautification and improvement programs.
(5) expansion of loan programs for rural residence loans to all age groups.

Further HUD was authorized to investigate and report on methods of reducing the loss to homeowners whose property depreciated because of its proximity to airports and flight paths.

1969

Housing and Urban Development Act of 1969 (P.L. 91-152)

This Act authorized the Department of Housing and Urban Development to set up a flood insurance program which would provide insurance for flood damage in those states which adopted land use practices consistent with the accepted use of areas subject to flooding risk.

II. TRANSPORTATION

Administration

1966

Department of Transportation (P.L. 89-670)

This Act established a Department of Transportation and a Cabinet level department.

Urban

1964

Urban Mass Transportation Act of 1964 (P.L. 88-365)

The Housing and Home Finance Agency was authorized to make grants covering sixty percent of the net cost of a project, that involved a unified coordinated urban transportation system as part of comprehensively planned development of an urban area.

1966

Amendment of the Urban Mass Transportation Act of 1964 (P.L. 89-562)

The amendment authorized the use of grant funds for involvement in the development of mass transit systems in coordinated programs for entire urban areas. Planning and Technical studies prior to construction and operation of mass transit systems were supported and grants would cover up to two thirds of the cost, to state and local public bodies of planning, designing and technical studies of urban mass transit systems.

1968

Urban Mass Transit Program Reorganization (President's Reorganization Plan No. 2)

The Department of Transportation was hence forth responsible for urban mass transit development thus releasing H.U.D. from that sphere of influence.

1970

Urban Mass Transportation Act (P.L. 91-653)

The Department of Transportation was to take into account environmental values when considering future urban highway development plans.

Federal-Aid Highway Act of 1970 (P.L. 91-605)

Further continuation of the 1946 Federal highway program was assured by this Act. The Act extended the national Interstate Highway System until 1972, continuing primary and secondary systems and their urban extensions. States were to be provided with ongoing aid in face of the possible reduced Interstate allocations, and provisions for creating coordinating urban highway systems were established.

Environmental aspects involved - Highway development and redevelopment were again stressed to be of equal importance to other considerations.

There was a provision in the Act that marked a beginning of the creation of integrated transportation systems, designating regions and corridors when transport volume reached "critical" levels. This legislation would enable the Department of Transportation to undertake planning to accelerate the development of transportation systems to meet these critical needs.

Highways - Construction

1956

Highway Act of 1956 (P.L. 84-627)

Concerned with highway construction, the Act authorized the biggest road-building program in U.S. history. Certain highway-use fees and taxes were directed into a Highway Trust Fund to aid in the financing of the National System of Interstate Highways, which was initiated in the 1944 Federal Highway Act (P.L. 78-521).

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Highways - Impact

1963

Federal Highways Amendments Act (P.L. 88-157)

This Act extended for two years the program of federal incentives for Billboard control along the Interstate Highway System. Again, in the early 1960's federal interest is directed towards considerations of the impact of their programs on the environmental quality and this Billboard Act heralds this trend in Federal highway programs.

1965

Highway Beautification Act of 1965 (P.L. 89-285)

A further theme in Federal policy towards beautification and improvement of environmental quality was enacted by this new program. This authorized measures to beautify the nation's federal-aid highways such as the removal of junk yards and landscaping of adjacent areas to the highways. The Treasury was to directly fund this program and although no funds were authorized for immediate action in this program, the bill established "beautification" of highways as a major national goal.

1966

Highway National Policy Legislation (P.L. 89-574)

Congress declared as national policy that the Department of Transportation be conscious of the need to preserve federal, state, or local government parklands and historic sites. The Department was to cooperate with the states in developing highway projects taking due consideration of the beauty and historic value of the parklands and historic sites. In particular a date was set, July 1st, 1968, after which the Department was only to approve those highway projects which did not require the use of such parks and historic sites, unless all possible alternatives had been considered and any harm to the park or site had been minimized to its full possible extent.

1968

Federal Aid Highway Act of 1968

This Act as well as increasing the development of a national Interstate Highway System also authorized several measures designed to increase the "beautification drive." The Department of Transportation was to preserve park and historic sites considered for encroachment. The penalty of 10% reduction in construction funding in states which do not have a beautification program, was to be retained. The Act further required hearings on proposed highway development to consider the impact and effect on the community's environment as well as the economic impact.

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Airports - Construction

1946

Federal Airport Act of 1946 (P.L. 79-377)

The Administrator of the Civil Aeronautics Administration together with the War and Navy Departments

were authorized by Congress to cooperate in developing a national plan for the development of public airports to meet the needs of civil aeronautics.

1955

Revision of the Federal Airport Act (P.L. 84-211)

The 1946 Act (P.L. 79-377) was amended to authorize specific grants with which the states could contract for airport development.

1964

Public Works and Economic Development Act (P.L. 89-136)

Several parts of this act directly influenced land-use. Title I authorized development grants for facilities such as water treatment plants, water and sewer lines, waste treatment plants and health facilities; highway development needed for industrial and commercial development; land improvement and site utilities of industrial parks, harbor facilities, railroad marshalling yards and airports; tourist facilities and vocational schools.

Title V was aimed at encouraging redevelopment programs in "depressed" regions. States were encouraged to cooperate with each other, to establish regional commissions to plan and organize economic developments programs. Federal technical aid and planning aid was to be supplied to the regional development commissions.

Airports - Impact

1970

Airports and Airways Development Act (P.L. 91-258)

The Department of Transportation was authorized to take account of environmental values when considering the siting of future airports.

III. ECONOMIC DEVELOPMENT

National Public Lands

1946

Creation of the Bureau of Land Management (Reorganization Plan No. 3, 1946)

The Bureau of Land Management (BLM) was created in the Interior Department, to coordinate the functions of two former agencies abolished by Plan No. 3 - the Central Land Office and the Grazing Service. Thus the management of the public lands in the U.S. and Alaska and the administering of the laws providing for disposition of the public lands, were to be administered by one agency. In addition the BLM was to administer the 1872 Mining Law, the 1920 Mineral Leasing Act and the 1934 Grazing Act.

1949

Anderson-Mansfield Reforestation and Revegetation Act (P.L. 81-348)

Funds were acquired through this Act for more rapid reforestation and revegetation programs in national forests and range lands.

Amendments to the 1924 Clark-McNary Act (P.L. 81-392)

The Clark-McNary Act was the basic legislation for federal-state cooperation to enhance forests on state and private lands. This amendment provided authorization for aid to states to restock denuded farm land with seedlings.

1953

Land Utilization Project Areas

The Federal government had acquired 7 million acres of these submarginal lands during the "Great Depression" and these were now to be managed by the Forest Service. In assigning these lands over to the Forest Service from the Soil Conservation Service the aims of the

Department of Agriculture's long-term policies could be seen, for in the future the marginal lands would be added to the national forest system.

1955

Multiple Surface Use Act (P.L. 86-167)

Designed to combat the abuses on governmental land use, this Act countered the mining "loophole" and stated that unless a patent was obtained, all timber, grazing, and other public utilities and resources remained inviolate as federal property.

1958

Multiple Use Act (P.L. 86-517)

This Act established as a specific formal overall Federal policy that the national forest system should be administered under the principles of multiple use. The objective in this multiple use-sustained yield program was to develop five basic resources; outdoor recreation, fish and wildlife resources, timber, watershed and range areas.

1961

BLM Management Criteria

The direction of BLM policy was outlined by statements of the President and the Secretary of Interior and it changed to direction of the Federal governments attitudes towards public land management. From henceforth, public lands were "a vital national reserve that should be devoted to productive use now and maintained for future generations." (President Kennedy, national resources message, February 23rd, 1961).

Public lands would not be sold and opened to settlement unless the applicant could show that the use to which he would put the land was at least equal in value to possible Federal uses if the BLM kept the land.

A multiple use - sustained yield policy was to be the goal for all public lands and the stress was to be on a balanced usage designed to reconcile the conflict uses of conservation, grazing, forestry, recreation, wildlife development, urban development and mineral exploitation.

From this time onward, the BLM was responsible for control, and disposal of public lands, ensuring that environmental considerations should be as important as economic considerations.

1964

Public Land Law Review Commission (P.L. 88-606)

The Public Land Law Review Commission was established to study existing public lands. The main goal of the Commission was to establish firm principles of national policy for public land management.

1969

National Environmental Policy Act (P.L. 91-190)

This Act established as a national goal the need for full scale action to restore and maintain the quality of the natural as well as manmade environment. The Act maintained the dual goals of economic development and preservation of environmental quality and thus provided a precursor to future legislative measures that will deal with future land-use in terms of both goals.

1970

Land and Water Conservation Fund Act Amendments (P.L. 91-485)

The amendment provided for the transfer of excess federally controlled lands to States and other local agencies for the purpose of recreational pursuits. Also the funding capacity of the Fund was increased to $300 million.

Regional

1954

Watershed Protection and Flood Prevention Act of 1954 (P.L. 83-566)

The Soil Conservation Service was authorized by Congress to administer a permanent watershed program

providing for a coordinated balanced development of soil and water resources in areas up to 250,000 acres.

1956

Amendments to the Small Watershed Act (P.L. 84-1018)

These amendments expanded the scope of the program permitting small watershed projects to be undertaken for other purposes than flood prevention and irrigation purposes. Projects could be implemented for purposes such as municipal and industrial water supply, fish and wildlife development and recreation.

Agricultural Act of 1956 (P.L. 84-540)

The Soil Bank Conservation program was enacted to directly encourage shifts in land-use to purposes for which it was most suitable. Given the farm-surplus production figures at the time, this was an attempt to retire land from crop-production, but it also encouraged conservation practices. Through the program farmers could acquire financial assistance for converting their general cropland particularly to the planting of trees. This program was intended to supplement the present forestry programs in accommodating an adequate future supply of timber by helping to stock over 50 million acres of federal and private or state lands.

1962

Food and Agriculture Act (P.L. 87-703)

The land-conversion efforts of the federal government were increased in this Act. The Act authorized programs under which the Department of Agriculture would aid farmers and local government units to develop land use plans and to help these local units to implement the plans. The aim was directed toward shifting rural farm land out of marginal crop production into forest usage; to involve in the plans the application of conservation and water-development practices; and to turn marginal land to industrial and commercial uses in an effort to increase rural prosperity.

1964

Public Works and Economic Development Act (P.L. 89-136)

Several parts of this act directly influenced land-use.

Title I authorized development grants for facilities such as water treatment plants, water and sewer lines, waste treatment plants and health facilities; highway development needed for industrial and commercial development; land improvement and site utilities of industrial parks, harbor facilities, railroads, marshalling yards, and airports; tourist facilities, and vocational schools.

Title V was aimed at encouraging redevelopment programs in depressed regions. States were encouraged to cooperate with each other, to establish regional commissions to plan and organize economic development programs. Federal technical aid and planning aid was to be supplied to these regional development commissions.

1965

Water Resources Planning Act (P.L. 89-80)

This Act established the Federal Water Resources Council, to provide for federal and regional coordination of plans for water resources development. The Council was to evaluate regional and river basin plans and to administer federal water programs. The President was to establish regional river basin commissions to coordinate federal, state, interstate, local and private water development plans for the basin. A comprehensive joint development plan considering all alternatives was to be maintained and the regional commissions were to establish priorities for the basic data for planning. The Water Resources Council would act as the central coordinator for these regional commissions.

Rural Water Systems (P.L. 89-260)

Waste disposal systems in rural areas were to be federally funded, both in the development of comprehensive plans and for the implementation of the schemes. $55 million in grants for the implementation and $5 million was authorized in grants to public agencies to prepare comprehensive plans.

1969

Great Plains Conservation Program Extension (P.L. 91-118)

This Act extended the Program that was established in 1956 (P.L. 84-1021) to December 31st 1981, thus providing continued assistance in cost-sharing contracts with local authorities and individuals in the Great Plains area to encourage soil and water conservation practices.

National Environmental Policy Act (P.L. 91-190)

This Act established as a national goal the need for full-scale action to restore and maintain the quality of the natural as well as manmade, environment. The Act maintained the dual goals of economic development and preservation of environmental quality and thus provided a precusor to future legislative measures that will deal with future land-use in terms of both goals.

1970

Agriculture Act of 1907 (P.L. 91-524)

Title IX of the Act called for a series of reports to formulate programs of rural development and introduced as a national goal the establishment of balance in rural-urban development.

Regional - Specific State Projects

1960

Appalachian Regional Development Act (P.L. 89-4)

This Act instigated active federal involvement in supporting an economic depressed regional area i.e., the 12 state Appalachian region. A sum in excess of $1 billion was allocated for additional highway construction, conservation, timber aid, mining area restoration, water resource appraisal, sewage treatment, expenses of local development districts, and research programs.

IV. NATURAL RESOURCES MANAGEMENT

Administrative Mechanisms

1946

Administrative Recreation Authority Bill (P.L. 79-633)

The Park Service was granted clear statutory authority to continue certain administrative activities in connection with existing park system units and to administer for recreation purposes in compliance with inter-agency agreements, land under the jurisdiction of other agencies. In this context the Park Service was authorized to administer and investigate water rights and rights of way in connection with the park system; to administer, maintain and improve the Chesapeake and Ohio Canal; and to continue its educational program. The Grand Coulee Agreement involved the cooperation of the Parks Service with the Bureau of Reclamation and Indian Affairs, in the management of a national recreation area at the Grand Coulee Dam, Washington. This cooperative program was the first of the multiple-use of water projects and was the first established "national recreation area".

Coordination Act (P.L. 79-732)

(a) Government-wide policy was established by this Act that all new federal water projects should whenever possible, prevent loss or damage to fish and wildlife existing at the project site. Thus whenever any project was comtemplated, the Fish and Wildlife Service had to be consulted on the measures of protection for the fauna. Public and private agencies operating under federal permits or licenses would be subsidized in the planning and construction of prevention measures by the federal government.
(b) Other aspects of the Act included (1) giving the Fish and Wildlife Service power to cooperate with states and other Government agencies in wildlife control; eg. disease control efforts, minimizing damage from overabundent animals, rearing and stocking of animals and the provision of public shooting areas, (2) conducting studies of the effects of pollution on wildlife and (3) surveying the wildlife on federally controlled lands and waters.

Creation of the Bureau of Land Management (Reorganization Plan No. 3, 1946)

The Bureau of Land Management was created in the Interior Department to coordinate the functions of two former agencies abolished by Plan No. 3 - the Central Land Office and the Grazing Service. Thus the management of the public lands in the U.S. and Alaska and the administering of the laws providing for disposition of the public lands were to be administered by one agency. In addition the BLM was to administer the 1872 Mining Law, the 1920 Mineral Leasing Act and 1934 Grazing Act.

1953

Land Utilization Project Areas

The Federal government had acquired 7 million acres of these submarginal lands during the "Great Depression" and these were now to be managed by the Forest Service. In assigning these lands over to the Forest Service from the Soil Conservation Service, the aims of the Department of Agriculture's long-term policies could be seen, for in the future these marginal lands would be added to the national forest system.

1961

BLM Management Criteria

The direction of BLM policy was outlined by statements of the President and the Secretary of Interior and it changed the direction of the Federal government attitudes towards public land management. From henceforth public lands were "a vital national reserve that should be devoted to productive use now and maintained for future generations." (President Kennedy national resource message, February 23, 1961).

Public lands would not be sold and opened to settlement unless the applicant could show that the use to which he would put the land was at least equal in value to possible Federal uses if the BLM kept the land. A multiple use-sustained yield policy was to be the goal for all public lands and the stress was to be on a balanced usage designed to reconcile the conflicting uses of conservation, grazing, forestry, recreation, wildlife development, urban development and mineral exploitation. From this time onwards the

BLM was responsible for control and disposal of public lands ensuring the environmental considerations should be as important as economic considerations.

1963

Bureau of Outdoor Recreation (P.L. 88-29)

Following the recommendations of the Reporting to Outdoor Recreation Resources Commission, the Department of Interior created a Bureau of Outdoor Recreation. In 1963 Congress gave statutory authority to this Bureau, creating a centralized planning agency with responsibility for studying and encouraging coordinated and rapid development of recreation facilities at all government levels, from Federal to local government. The agency was charged with the task of coordinating the plans for outdoor recreation development at all levels, through a comprehensive nationwide plan.

1969

National Environmental Policy Act (P.L. 91-190)

This Act established as a national goal the need for full-scale action to restore and maintain the quality of the natural as well as the manmade, environment. The Act maintained the dual goals of economic development and preservation of environmental quality and thus provided a precusor to future legislative measures that will deal with future land-use in terms of both goals.

Resource Specific - Land

1947

Forest Resource Appraisal

A two year study of forest resources was completed in 1947, by the Forest Service. The report concluded (1) that the volume of saw timber on publicly and privately owned forests land declined 43% the preceding 36 years, (2) that saw timber was being removed at a rate one and a half times as fast as it was being replaced by growth, (3) that the quality of lumber as well as the quantity was deteriorating and (4) that only 8% of the cutting practice on private forest land was rated above good. The overall

conclusion of the report was that, in spite of the present situation where there was ample forest land in the U.S. for timber needs, the saw timber growing stock should be built up to double the existing volume to balance those needs.

1949

Anderson-Mansfield Reforestation and Revegetation Act (P.L. 81-348)

Funds were acquired through this Act for more rapid reforestation and revegetation programs in national forests and range lands.

1953

Land Utilization Projects Areas

The Federal government had acquired 7 million acres of these submarginal lands during the "Great Depression" and these were now to be managed by the Forest Service. In assigning these lands over to the Forest Service from the Soil Conservation Service, the aims of the Department of Agriculture's long-term policies could be seen for in the future those marginal lands would be added to the national forest system.

1955

Multiple Surface Use Act (P.L. 84-167)

Designed to combat the abuses on governmental land use, this act countered the mining "loophole" and stated that unless a patent was obtained, all timber, grazing, and other public utilities and resources remained inviolate as federal property.

1956

Great Plains Conservation Act (P.L. 84-1021)

Farmers were encouraged to participate in programs to combat soil erosion; a major goal proposed in this legislation was to encourage the development of a permanent cover vegetation in lands that were unsuitable for continuous cultivation, i.e., submarginal lands.

1964

Land and Water Conservation Fund Act (P.L. 88-578)

In an increased effort to speed up acquisition of suitable areas for outdoor recreation, a special federal fund was established. This fund was to be supported from the following sources:

(1) admission and recreation user fees which were to be imposed at existing recreation areas operated by federal agencies.
(2) net proceeds from certain federal surplus real property sales
(3) proceeds from the existing two percent net tax on motorboat fuels.
(4) appropriations averaging no more than $60 million per year.

National Wilderness Preservation System (P.L. 88-577)

The Secretaries of Agriculture and Interior were authorized to study areas of the national forest system classified as "primitive" and other wild areas of the national park system and national wildlife refuges and game ranges, to determine which of these federally controlled areas could be included in a National Wilderness Preservation System. Congress had established the system by designating to it some 9 million acres of "wild", wilderness or "canoe" areas of the national forest lands and the additional lands could be added to the System only with Congress authorization.

1969

Great Plains Conservation Program Extension (P.L. 91-118)

This Act extended the Program that was established in 1956 (P.L. 84-1021) to December 31, 1981, thus providing continued assistance in cost-sharing contracts with local authorities and individuals in the Great Plains area to encourage soil and water conservation practices.

Resource Specific - Water

1946

Administrative Recreation Authority Bill (P.L. 79-633)

The Park Service was granted clear statutory authority to continue certain administrative activities in

connection with existing park system units and to administer for recreation purposes in compliance with interagency agreements, land under the jurisdiction of other agencies. In this context the Park Service was authorized to administer and investigate water rights and rights of way in connection with the park system; to administer, maintain, and improve the Chesapeake and Ohio Canal; and to continue its educational program. The Grand Coulee Agreement involved the cooperation of the Parks Service with the Bureau of Reclamation and Indian Affairs in the management of a national recreation area at the Grand Coulee Dam, Washington. This cooperative program was the first of the multiple-use of water projects and was the first established "national recreation area."

1953

Establishment of Cape Hatteras National Seashore.

Authorized in 1937, this North Carolina "national seashore area" was established in January 12, 1953, and was the first of a number of seashore sites, to be incorporated into a national seashore system.

1954

Recreation and Public Purposes Act (P.L. 83-387)

The Bureau of Land Management was given the authority to dispose of federal public lands to state or local governments, providing its use was for recreation such as campsites, boating, and swimming areas, hunting and fishing areas, ski runs, trails and parks; or other public usage, such as for schools, hospitals, sewage plants and waterworks.

Watershed Protection and Flood Prevention Act of 1954 (P.L. 83-555)

The Soil Conservation Service were authorized by Congress to administer a permanent watershed program, providing for a coordinated balanced development of soil and water resources in areas up to 250,000 acres.

1956

Vanishing Shoreline Survey

This was the first of three major studies on potential national seashore recreational areas undertaken

in 1954-55 by the Park Service. It recommended immediate action to purchase at least half of the 640 miles of seashore available for public recreational use by Federal, state, or local agencies. Sixteen "choicest areas still available" were recommended for consideration and the study emphasized the need to acquire hinterland marsh and swamp areas adjacent to the shorelines for wildlife development and control. In particular agencies were advised to acquire areas which housed plant-animal communities of great ecological interest along the shore and its hinterland.

1961

Cape Cod National Seashore Bill (P.L. 87-126)

This Bill authorized the establishment of the first national seashore recreational area following the recommendations of the "Vanishing Shorelines Survey." It was also the first 'National Park' to be acquired largely through government purchase and condemnation of private land and creates an important precedent in Federal involvement over private interests.

1964

Land and Water Conservation Fund Act (P.L. 88-576)

In an increased effort to speed up acquisition of suitable areas for outdoor recreation, a special federal fund was established. This fund was to be supported from the following sources:

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(2) net proceeds from certain federal surplus real property sales.
(3) proceeds from the existing two percent net tax on motorboat fuels.
(4) appropriations averaging no more than $60 million per year.

Ozark Scenic Riverways (P.L. 88-492)

The Secretary of Interior was authorized to acquire 65,000 acres of privately owned lands so that with additional lands added from government sources a complete riverway National Park could be established. In zones

within the Park, not set aside for public safety limited hunting and fishing were provided for in this Act.

1965

Water Resources Planning Act (P.L. 89-80)

This Act established the Federal Water Resources Council, to provide for federal and regional coordination of plans for water resources development. The Council was to evaluate regional and river basin plans and to administer federal water programs. The President was to establish regional river basin Commissions to coordinate federal, state, interstate, local and private water development; plans considering all alternatives were to be maintained and the regional commissions were to establish priorities for the basic data for planning. The Water Resources Council would act as the central coordinator for these regional commissions.

The Federal Water Project Recreation Act (P.L. 89-72)

A uniform federal-local cost-sharing formula was established for recreation facilities and fish and wildlife development programs at federal water projects. This Act ensured that recreation and fish and wildlife consideration would be included in the investigation and planning of any federal water project.

1968

Land and Water Conservation Fund (P.L. 90-401)

Additions up to an annual $200 million were authorized by Congress to this Fund.

Estuary Preservation Study (P.L. 90-454)

The areas included in this program to preserve the national estuaries were coastal marshlands, bays, sounds, lagoons, seaward areas and the shores and waters of the Great Lakes. The Department of Interior was authorized to provide legislative recommendations in a report due by January 30, 1970.

1970

Land and Water Conservation Fund Act Amendments (P.L. 91-485)

The amendment provided for the transfer of excess federally controlled lands to States and other local agencies for the purpose of recreational pursuits. Also the funding capacity of the Fund was increased to $300 million.

Resource Specific - Special Environmental Units

1953

Land Utilization Project Areas.

The Federal government had acquired 7 million acres of these submarginal lands during the "Great Depression" and these were now to be managed by the Forest Service. In assigning these lands over to the Forest Service, from the Soil Conservation Service, the aims of the Department of Agriculture's long-term policies could be seen for in the future these marginal lands would be added to the national forest system.

1954

Watershed Protection and Flood Prevention Act of 1954 (P.L. 83-566)

The Soil Conservation Service was authorized by Congress to administer a permanent watershed program, providing for a coordinated balanced development of soil and water resources in areas up to 250,000 acres.

1956

Amendments to the Small Watershed Act (P.L. 86-1018)

These amendments expanded the scope of the program, permitting small watershed projects to be undertaken for other purposes than flood prevention and irrigation purposes. Projects could be implemented for purposes such as municipal and industrial water supply, fish and wildlife development and recreation.

Great Plains Conservation Act (P.L. 84-1021)

Farmers were encouraged to participate in programs to combat soil erosion and a major goal proposed. This legislation was to encourage the development of permanent cover vegetation in lands that were unsuitable for continuous cultivation - i.e. submarginal lands.

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Wild and Scenic Rivers System (P.L. 90-542)

A National Wild and Scenic Rivers System was established to preserve stretches of rivers from incompatible water resources development, pollution, or commercialization. Three categories of areas were set up: wild river areas, which were accessible only by trail; scenic river areas largely primitive but accessible by road; recreational river areas readily accessible by road.

V. RECREATION

Administrative Mechanisms

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1968

National Trails Systems Bill (P.L. 90-543)

This bill created three categories of trails: national scenic trails, national recreation trails and side trails. The scenic trails were to be kept strictly for biking and camping and were to be located in remote areas. Recreation trails were to be located near urban areas and would be developed for such uses as bicycling and rambling. Side trails would act as connecting trails provding additional

points of public access to the other trails or acting as connections between scenic and recreation trails. Two trails were set up to initiate the system the Appalachian Trail and the Pacific Crest Trail, the land being acquired through the Land and Water Conservation Fund.

1970

Federal Assistance for Resource Conservation and Development Projects (P.L. 91-343)

This amendment to the Bankhead-Jones Farm Tenant Act furthered the development of resources for outdoor recreation in rural areas. The Department of Agriculture was authorized to provide financial assistance for promoting public recreation or fish and wildlife development projects authorized by the Bankhead-Jones Act. The funding was to cover one half the cost of the land, rights-of-way easements and minimum basic public facilities required to develop projects not exceeding 75,000 acres.

Texas Land Use

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