TEXAS LAND USE

6-Management Approaches

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TEXAS LAND USE

A

Comprehensive Land Resource

Management Study

Report No. Six: Management Approaches

Conducted by:

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for

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Office of The Governor

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I. INTRODUCTION: A TYPOLOGY OF APPROACHES TO LAND RESOURCE MANAGEMENT

A number of alternative approaches to land resource management have emerged in recent years. Studies by various professional organizations such as the American Law Institute and the American Society of Planning Officials, and by at least two national advisory commissions, the National Commission on Urban Problems (the Douglas Commission) and the Advisory Committee on Intergovernmental Relations, have recommended a number of institutional changes for dealing with the management of land resources. For the most part, these recommendations have emphasized finding solutions to specific land use problems. None has attempted to encompass in a comprehensive manner all of the various aspects of land resource management.

The recent Congressional Hearings on proposed legislation seeking to establish a national land use policy and the continuing interest and debate on this legislation have brought forth a host of comments and suggestions from both private and public organizations. While these statements reflect the specific concerns of the organizations making them, taken together, they address a broad range of land resource problems, and reflect a number of alternative approaches to land resource management.

A number of states have already enacted innovative legislation dealing with land resource management. These legislative actions reveal several basic approaches to the problem of meeting land use problems.

Three studies and a conference have focused on the specific problems of land resource management in Texas. A number of legislative recommendations have been made. Alternative institutional structures for land resource management, as they pertain to Texas, have been described.

Before considering the alternative approaches to land resource management which emerge from the studies by professional organizations and national advisory commissions, the comments and suggestions of various public and private organizations, and the legislative actions taken by

a number of states, and before examining their application to the problems and needs of Texas, as addressed in prior studies, it is instructive to first examine the various ways of classifying approaches to land resource management. In this section, three means of classifying approaches are considered.

Classification by Problem Focus

One method of classifying approaches to land resource management emphasizes the problem focus of the approach. For example, approaches are commonly developed to solve either urban or rural problems. Alternatively, recently proposed federal legislation is directed at "critical environments" and "key facilities."

Urban/Rural Classification

It is clear from the examination of land resource problems that most, if not all, can be divided into urban and rural problems. Urban problems include deterioration of central city cores, urban sprawl, leapfrog development, and location of public facilities. Rural problems include both those resulting from the out-migration from rural areas and the accompanying decline of small towns, and environmental areas of concern such as seacoasts and tidelands, river basins, forests, agricultural lands, and wetlands, including swamps and estuaries. Problems related to fisheries, water supplies, and mineral extraction also, for the most part, can be taken to be rural in nature.

However, some land resource problems are found in **both** urban and rural environments. For example, the problems of the Coastal Zone do not break out exclusively as urban and rural problems. By the same token, land resource problems in the extraterritorial areas surrounding the major urban centers should be considered in both urban and rural contexts. Many of the problems which surround the provision of adequate water supplies for urban areas involve the development of facilities in rural areas. Thus, a classification system based solely on an urban/rural dichotomy would be of limited usefulness in describing land resource management alternatives.

Critical Environments/Key Facilities Classification

At first glance, a classification system based on critical environments and key facilities would appear to be

a more appropriate basis for describing approaches to land resource management than a breakdown based on urban/rural problems. Not only has this classification system been proposed in federal legislation, but it has also been used in a number of state land resource management programs.

Critical environments are often defined in terms of major ecosystems, such as forests, estuaries, and beach shorefront areas. However, in some sense, all environments are critical and environmental systems seldom exist in isolation. Environmental systems overlap and interrelate in such a way as to make difficult a clear delineation of their boundaries. Moreover, a classification system based on critical environments focuses on natural features and does not address social environments, even though the latter are directly related to the use of land.

The concept of key facilities, on the other hand, relates most directly to the man-made environment. Here again, however, decisions as to which developments are "key developments" are difficult to make. Key facilities may be defined either in terms of the scale of activity or in terms of some functional criteria. In either case, however, the definition is likely to be arbitrary.

It would appear that a classification made solely in terms of critical environments and key facilities emphasizes the undeveloped land resources and may ignore the very real land use problems related to lands that are already developed. This approach is, almost by definition, a regional approach, not structured to focus on the unique needs of urban areas.

Classification by Institutional Responsibility

A second method for classifying approaches to land resource management focuses on the level of institutional responsibility. Approaches may be identified as being federal, interstate, state, regional, county, or local. The level of institutional responsibility primarily refers to the level of government exercising land use control powers. However, it may also refer to the level of government responsible for funding programs.

This type of classification system, when applied to existing land resource management problems, reveals the dominant position of cities and other local entities which historically have been delegated authority over land use. Only in recent years, have regional and state governments begun to assume land use control powers. A classification

system based on the level of institutional responsibility may not be appropriate, however, when dealing with approaches to land resource management which involve coordinated actions by several levels of government.

Classification by Control Mechanism

A third method for classifying approaches to land resource management is based on the type of control mechanism employed. Such mechanisms would include direct regulation, indirect regulation, taxation, and grants-in-aid.

Most of what normally are considered as land use controls are methods of direct regulation based on the "police powers" of the state designed to protect the health, safety, and welfare of the general public. Examples would include such actions as zoning, subdivision regulation, building codes, housing codes, density controls, and permit systems.

Perhaps the most neglected type of control mechanism is that of indirect regulation. Such actions as the formulation of a Master Plan, establishment of guidelines, and development of open space plans represent forms of indirect regulation. In many instances, the administration of direct regulations is tied to these types of indirect regulation.

Taxation has an important influence on the use of land resources. While the impact on land use is often a secondary, and frequently unrecognized, aspect of taxation, it is nonetheless an important land use control device. Taxation would include not only the administration of the property tax system, but also such actions as the imposition of effluent surcharges and the creation of tax incentives for promoting land conservation and preservation.

Grants-in-aid would include policies supporting the acquisition of easements, park land, open space, and greenbelts. It would also include the pre-emption of land for development through the use of land banks or other purchase programs.

A classification system based on the type of control mechanism employed is perhaps adequate for the discussion of partial approaches to land resource management. However, most comprehensive approaches would employ all of the above control mechanisms in some form or other.

Definition of Approach

It is clear from the above discussion, that there is no single best basis for classifying approaches to land resource management. Land resource management programs should be problem focused, should contain clear delegations of institutional responsibility and should include a mix of control mechanisms. What distinguishes one approach to the development of a land resource management system from another is the particular combinations of problem focus, institutional responsibilities, and control mechanisms employed. In the following sections, various approaches will be described and ultimately evaluated in light of Texas situations and realities.

II. DESCRIPTION OF PRIOR STUDIES, REPORTS, AND COMMENTS

In this section, a number of prior studies, reports, and comments on the subject of land resource management are described. First, four major studies by professional organizations and national advisory commissions are discussed. Next, comments and suggestions made by both public and private organizations at recent Congressional Hearings on proposed legislation seeking to establish a national land use policy are presented.

Description of Prior Studies

Two major professional organizations (the American Law Institute and the American Society of Planning Officials) and two national advisory organizations (the National Commission on Intergovernmental Relations and The National Commission on Urban Problems) have prepared reports dealing with land resource management. These reports are reviewed below.

The American Law Institute Model Land Development Code

The American Law Institute is a nonprofit organization whose projects in the past have included the Restatements of key areas of the common law, the Uniform Commercial Code and model penal and procedural codes. These projects serve two purposes. The first is to promote uniformity when such would serve to simplify or otherwise improve legal arrangements between parties. This was the thinking behind the Commercial Code and, to some extent, behind the Restatements.

The second function of these projects is to provide legislators with well-drafted, and well-researched proposals for an improvement or updating of existing law. It is clear that this second function is the one to be served by the Model Land Development Code (MLDC). Thus, there is no intent that to be useful, the Code should be adopted unchanged by any large number of states. The intent is rather that the Code improve upon the present "model codes," the

U.S. Department of Commerce Standard State Zoning Enabling Act and Standard City Planning Enabling Act (SCPES), drafted in 1922 and 1928, respectively.

The writers of the Code have by no means limited themselves to a procedural critique of zoning. Their research has led them to consider the goals for land use management discussed in reports such as the Douglas Commission Report, the ASPO Connecticut Study and various examples of forward looking legislation in the several states. The ALI shows great sensitivity to the concerns of planners, both through the Code's references to published works and through the inclusion of planners and other social scientists on the Code advisory committee.

Thus far, the Code has been referred to as if it were a finished document. This is not the case. The writers have proposed a Code consisting of twelve articles. To date, only nine have been written and presented to the ALI. The presentations have been tentative drafts distributed for discussion at annual ALI meetings. There are currently four tentative drafts (TD 1, TD 2, TD 3, TD 4). The titles of the articles and their status is:

Article 1. General Provisions (TD 2)
Article 2. Power to Regulate Development (TD 2)
Article 3. Land Development Plans and Powers of Planning Governments (TD 2)
Article 4. Land Acquisition (Unwritten)
Article 5. Termination of Existing Land Use (TD 4)
Article 6. Compensation for Development Regulation (Unwritten)
Article 7. State Land Development Regulation (TD 3)
Article 8. State Land Development Planning (TD 3)
Article 9. Judicial Review (TD 3)
Article 10. Enforcement (TD 4)
Article 11. Public Records of Development Permits (TD 4)
Article 12. Financial Provisions (Unwritten)

The writers of the Code have drawn heavily on the literature surrounding urban problems and environmental protection. Thus in many cases, the Code can be read as legislation to enact the recommendations of the Douglas Commission. In other cases, it echoes innovative state legislation to control the impact of certain developments on the environment.

One of the most drastic departures from the prevalent pattern of land use management is the use of land purchases to accomplish public goals. Unfortunately, none of the articles dealing with these nonregulatory devices

have yet been written. Thus this description is limited to the elements of administrative and judicial regulation embodied in the first four tentative drafts.

In the introductory memorandum to TD 2, the writers cite several problems which they feel land management based on SZEA and SCPEA have either caused or been unable to cope with. In abbreviated form, these are:

(1) Regulation without public acquisition and disposition of land and public power to secure desired development will not produce a desirable development pattern.
(2) Placing almost all land management power in small units of local government has meant a distortion of metropolitan growth patterns and an inability to deal with regional problems such as housing and transportation.
(3) Local government, in many cases, has been guilty of incompetent planning and of administrative processes which are unfair and disorderly.
(4) The relation of planning to regulation has been ineffective to guide regulatory action in the light of a dynamic city growth pattern.
(5) The 1920's ordinances are insufficient to allow governments on the periphery of urban growth to deal with large scale "new communities" and industrial parks and these towns and counties have not developed the staff necessary to do intelligent planning.

This list of problems provides a good backdrop against which to discuss the provisions of the Code. The remainder of this description will set out what the Code proposes with regard to each of the five problems.

As has already been mentioned, those sections of the Code dealing with public market operations to steer development are yet to be written.

The Code takes the position that 90 percent of the land use decisions currently being made are best made by local government with no state intervention. The Code recognizes three circumstances in which the state has a valid and overriding interest in how land is used:

(1) Portions of the state whose environmental characteristics make development of any sort a matter of state concern. Examples would include marshes, tidelands, highway interchanges and airports.
(2) Types of developments that create state or regional benefits. Examples would include airports, highways, utilities, housing and large centers of employment.

(3) Large scale developments which because of their size have impact beyond the borders of the local government.

The provisions of Article 7 essentially allow the state government to override local decisions when those decisions conflict with valid state interests. Precedents for this type of action are to be found in Massachusetts and New York (preemption for low income housing), Vermont and Maine (developments of ten acres or more) and Oregon (all land adjacent to natural bodies of water).

There is nothing, in theory, revolutionary about such proposals. All local powers flow as a license from state government. However, it is a revolution in practice. This article constitutes the basic commitment to an active state role in land use management. Future changes in definitions of the state's area of active regulation can occur through incremental political processes. Adoption of Article 7 is a sharp break with patterns of American land management that have prevailed since the 1920's.

The scope of the provisions is measured by the fact that no new basic legislation would be necessary for a state to totally control industrial location and, thus, the rate and pattern of growth of urban areas.

The incompetence and unfairness of many local zoning authorities was one of the major complaints of the Douglas Commission. This feeling is repeated and further documented by the commentary to the Code. Alleviation of these conditions is the task of Articles 1, 2, 3, 8, 9.

Articles 1 and 2 serve to define concepts and to make the basic grant of power over land use to local government. The Code begins by combining zoning and subdivision control into a single development ordinance administered by a single local agency. While the Code does not say what component of local government must serve as "Land Development Agency," it does set out the procedures which must be followed for any variance or special permit. These hearings and written decisions are designed to facilitate the process of judicial review set out in Article 9 and review by state land authorities set out in Articles 7 and 8. In essence, the articles allow the state to impose uniform procedures on all local land authorities. In so doing, it also brings land use regulation procedures up to the accepted quasi-judicial standards of other state and federal regulatory agencies.

Following the Douglas Commission, Article 2 provides that all governmental developments are subject to

local zoning. Technically, this provision may be nullified by Article 7. However, it does act to bring all governmental land use decisions under the review of a single local and/or state agency. At present, of course, each part of the bureaucracy: highways, parks, education, health, makes its locational decisions apart from any overall consideration of state interests or planning concepts.

Article 3 attempts to deal with the current lack of competent land use planning in many localities and the lack of any coordination between planning and zoning even in those jurisdictions with technically proficient planning staffs. The philosophy of the Code is to set forth the necessary elements of a land use plan and then to grant certain regulatory powers only to those localities which prepare a plan acceptable to the state government. Article 3 attempts to link planning to regulation by requiring that decisions involving the special powers be justified in terms of the local land development plan.

The elements of the land use plan are:

(1) Economic and social data concerning present conditions and problems and probably future conditions if present trends continue.
(2) A statement of objectives, policies, and standards for solving the problems and to set out affirmative plans for future development.
(3) An up-to-date plan of public actions (acquisitions and capital improvements) for the next three to five years, an estimate of the cost involved, the expected impact and the assumptions used with respect to other public and private developments.

From this description, several things are apparent. First, the standard zoning map with its accompanying set of zone descriptions would not be an acceptable plan. Second, just because a government is once certified as a "planning government" does not mean the grant of powers is permanent. If the program of public action and the data base were not kept current, the state would presumably revoke the special powers.

The writers of the Code realize that such comprehensive planning may not be economically feasible for many small units of government. On one hand, this is intentional. Governments without adequate planning should not exercise powers involving wide discretion. On the other hand, Article 8 makes provision for technical assistance by a state planning agency to localities for the preparation of plans. This arrangement, coupled with the large number of federal planning grants available under current legislation,

makes it unlikely that any local government seriously concerned with "enlightened regulation" would be unable to qualify as a planning government under the Code.

The four powers of a planning government are:

(1) In granting special development permits, the criteria for development in the land development plan can be used as justification rather than requiring "economic necessity" or the other standard justifications for variances.
(2) Land can be zoned so that it may be developed only in tracts exceeding some minimum acreage. Permission to develop in such zones can be conditioned on much more comprehensive review than is allowed under Article 2 zoning.
(3) The land development agency can reserve land for future public use.
(4) A developer can be required to provide the additional land or money required to make his development consistent with the land development plan. Other governments are far more restricted in the demands that can be made on real estate developers.

Given the strong sentiment evidenced in the Code towards making sophisticated planning both the prerequisite and the touchstone of the use of discretionary powers by local governments, it is to be expected that those unwritten articles concerning acquisition and active development activities by local government will restrict most powers to planning governments.

The fourth problem, tying planning to decision-making is accomplished through allowing for state and judicial review of local decisions. Variances must be at least not inconsistent with the objectives and assumptions of state and local plans. If they are, a mechanism is provided for appeal of the local agency's decision to the courts as necessary.

In the past, the common law has provided judges with no measure other than "reasonableness" by which to judge the actions of local agencies. This has resulted in a refusal to reverse zoning decisions which concerned property characteristics properly regulated under the police power regardless of the economic or social unreasonableness of the action taken. The plan, the requirement of records of decisions and hearings, and the provisions for judicial review and remedy in the Code should force judges to take many more factors into account in reviewing zoning decisions than they have in the past.

As the plan will be the major statement of the intent of the city's legislative branch, the courts should view this as the benchmark from which reasonableness is measured. This arrangement should prevent some outrageous decisions, but more important, it should serve to force zoning officials to justify their decisions in terms of the plan. Keeping the plan in the public eye in this manner will do much to insure it reflects the political desires of the population and to create pressure to keep the plan up-to-date.

Measures to meet the planning problems of large scale developments have already been alluded to. They consist of the state's ability to take charge of regulation under "overriding state interest" when the local government is unable to deal with a situation. Alternately, the state planning agency can offer the local government technical assistance, possibly preempting control if assistance is refused.

A statement is made in the introductory memorandum to Tentative Draft 2 to the effect that the Code is meant only as a source of ideas for legislators, that it does not have to be adopted in toto. This brief review of its approach to problems it proports to deal with belies this view. Most of the problems require, as a minimum, the adoption of Article 7, allowing the state to preempt local zoning. It is difficult to see how the state could function effectively without also adopting, in some form, Article 8, the creation of a state planning agency.

One of the major incentives for a local government to adopt a land use plan is to avoid coming under a state plan. Thus Articles 7 and 8 also appear necessary to achieve the desired results from Articles 2 and 3. Further, if the procedural reforms are to be effective, at least the threat of state and judicial review should be present. This ties the success of Articles 2 and 3 very closely to the enactment of Article 9.

Finally, if market operations are necessary to a desirable development pattern as the commentary maintains, the reforms of the written articles are incomplete without adoption of those of the articles which are as yet unwritten.

The Code is an extremely political document. While it appears to speak in terms of procedures more than policies, adoption would affect the entire balance of pressure groups that has built up around the land use regulation function of local government. Moreover, the ability of the Code to deal with important social problems such as

housing and pollution rests on the question of the political feasibility of such regulation at the state level. Noting the growing predominance of suburban legislators in the Texas House of Representatives, it appears that feasibility with respect to policies such as housing and industrial location is far from certain.

Finally, the Code makes a tremendous commitment to increasing the role of planning and planners in the land management process. This is a large part of the justification for taking power from some local governments and increasing the discretionary powers of others. The greatest part of this burden of planning may well fall at the state level. Not only does the state have responsibility for devising state and regional plans and enforcing them, it also has responsibility for reviewing local plans and providing technical assistance to small units of government to help them create these plans.

All this leads to the conclusion that adoption of the Code in spirit as well as letter would require some increase in the number of professionals and supporting staff employed by state government in the land management field. Any judgment as to the political feasibility of the Code should include consideration of the feasibility of financing a relatively large and highly paid new agency. Without a sufficient staff, land management decisions will quickly come to be dominated by real estate developers, financiers, and local officials as the staff has no option but to depend on them for information and plans. This might present more problems than the present system.

American Society of Planning Officials--New Directions in Connecticut Planning Legislation, 1967

The major focus of ASPO appears to be methods of strengthening the role of planning and planners in the land development process. It would be more than surprising if a document prepared by the American Society of Planning Officials did anything else. However, for this reason, the distribution of development powers presented is suspect. both as to desirability and to political feasibility. Similar suspicions are in order when considering the role given lawyers in the Model Land Development Code of the American Law Institute.

Planning is tied to zoning in two specific ways. First, local governments are allowed to employ sophisticated

land use controls such as land banks and planned unit developments (PUD's) only when they have a plan, approved by the state planning agency, which includes

(1) A compendium of land use regulations covering zoning, subdivision, building and housing approved by the local government.
(2) A locally approved capital improvement program.
(3) Sufficient employees or consultants to provide the technical expertise necessary to the administration of such powers.

Second, the report envisions the state legislature adopting land development policies in the form of very broad statements of legislative intent. It would then fall to the state planning agency to adopt regulations to interpret and implement these policies. Such regulations would have the force of law on local land use agencies and private developers. Supposedly the state planning office would be staffed by professional planners and regulations would be based on sound planning.

It is impossible to overlook the influence this report had on Tentative Drafts #2, 3, and 4 of the ALI Code. Thus it will not be surprising that many of the institutional provisions found in the Connecticut plan are quite similar to those in the Code. In many cases, the major difference in the two appears to be a greater concern on one part of ALI with specifying procedures to be followed by local and regulatory agencies. ASPO sidesteps these details by vesting the power to set procedures in the state planning agency.

Structurally, ASPO envisions three changes in local land regulation patterns. First, all zoning and subdivision regulation functions are to be vested in a single administrative agency directly answerable to the city council or chief executive. This agency and its administrator have full responsibility for holding public hearings on development policies and plans for both general revisions and individual requests for changes. Additionally, the administrator would hear all appeals from decisions of enforcement officers such as building inspectors. The agency would have the manpower necessary to analyze and approve or disapprove all subdivision plats, planned unit developments and variances.

In line with the centralization of power in this local regulatory and planning agency, planning commissions would be reduced to citizen advisory committees with no powers of deciding appeals or cases of first impression. It is unclear why it is felt necessary to maintain these

commissions as a powerless shell. Surely it cannot be much more difficult to destroy them than to strip them of all power. However, compulsory abolition of planning commissions is not recommended in this report.

The final structural change is more a suggestion than a recommendation. ASPO envisions adding broader development questions to the jurisdiction of some local administrative agencies. This additional jurisdiction could include responsibility for administering local housing programs, conservation plans and industrial promotion. Supposedly, a local agency could expand its scope only if the planning authority certified that the agency had the technical capability necessary. However, the report does not mention how the state can stop a locality from giving additional powers to an administrator.

While most of the responsibility for initiating development plans and regulations lies with local and regional units of government, ASPO gives the state government an extremely strong position. The specific powers are summarized in the following list.

(1) Devise guidelines and model codes for adoption in whole or in part by local governments.
(2) Fund and conduct training of local officials.
(3) Hear all appeals from decisions or local agencies.
(4) Review and approve or disapprove all local and regional plans required in connection with contingent regulatory powers.
(5) Set statewide standards for public works and dedications required of subdividers; establishing both minima and maxima.
(6) Review and coordinate development of all state agencies.
(7) Interpreting legislative intent, establish state regulations with respect to projects involving:
    a) state-wide effects (utilities, airports, etc.);
    b) ecologically fragile areas; and
    c) other state objectives (housing, industry).
(8) Establish procedures for local hearings and regulatory actions.

The level of staffing and legislative support will ultimately determine the balance of power in land use regulation between state and local government. Certainly the powers recommended by ASPO are sufficient to give state government total control. On the other hand, with token staffing and little confidence from the legislature, the state planning agency could end up making only token reviews of local plans and approving local decisions on all appeals.

While ASPO has set forth a state and local structure capable of accommodating a wide spectrum of power distributions, it has not discussed in any detail the implications of the various possibilities. Without such a discussion, it is difficult to judge how effective this organizational prescription would be to meet potential objectives.

Breaking down economic and racial housing segregation is apparently a major issue in Connecticut land use regulation. In dealing with the problem of the exclusion of the poor and non-white from the suburbs, the report appears to vacillate. Uniform dedication requirements are intended to prevent the inflation of housing costs in certain localities by requiring the developer to make public goods investments far in excess of those required by health and safety considerations. On the other hand, ASPO specifically rejects any statute outlawing large-lot zoning, perhaps the major exclusionary tool available to suburban communities.

In the final analysis, the question comes down to the state's ability to preempt local zoning to meet regional or state housing needs. While ASPO has a structure capable of this through implementation of legislative intent, it goes on at some length about how difficult it is to determine the "proper mix of single and multi-family dwellings" and how bad it might be to make such decisions by fiat. ASPO appears to recognize housing as being much more than a technical question and thus perhaps unsuitable for resolution in a technical report.

Putting aside the state-local question, the major addition to techniques of development guidance is a wider use of compensation to landowners. ASPO sees local agencies having the power to acquire land for any community objective including the provision of commercial centers and locations for industry. To aid in the removal of nonconforming uses, the report recommends allowing localities to pay citizens for the unamortized value of improvements when condemnation without compensation would be held an illegal taking of private property.

The ASPO report appears to coincide closely with the ALI model code. Particularly through the discretion allowed the state agency to make regulations interpreting legislative intent, ASPO seeks to take the specifics of land regulation out of the hands of elected officials and place them in the hands of administrators. It is probably correct to assume ASPO sees these administrators and their staffs being composed of planners and related professionals.

The question of these professionals' ability to handle the social and economic questions manifested in land use decisions remains unanswered.

Report of the National Commission on Urban Problems (Douglas Commission) (1966)

The basis for this study is Section 301 of the Housing and Urban Development Act of 1965. The goal of the study is to look at the actions of local governments concerning zoning, building and housing codes, finance, and subdivisions and annexation, which affect the provision of housing, particularly for low and moderate income groups. A secondary goal is to study the causes of "urban sprawl" and make recommendations for controlling the pattern of land development.

Two factors in the historical context of this report must be taken into account. First, the Commission's work was done against the background of the largest scale riots in the nation's history. The summer of Watts was in the immediate past. While the research was in progress, the assassination of Dr. Martin Luther King ignited a whole new outburst of anger and frustration from the inhabitants of the central cities. Part of the sociological explanation given for the riots was the feeling of central city blacks that they were surrounded by a "white noose" which excluded them from the houses, jobs and schools of the suburbs. Thus the task of the Commission, as part of the federal government's response to those riots, was to examine the policies and institutions which constituted this white noose, attempt to understand the process of exclusion and make recommendations for weakening the barriers to economic and racial integration of the suburbs as well as revitalization of the central cities.

The timing of the ecology movement is the second factor against which the report must be interpreted. Federal and state concern with the environmental impact of land development and facility siting did not become strong until well after the work of the Douglas Commission was completed. This is very important to remember in evaluating the Commission's approach to the guidance of land development.

Before the spate of environmental legislation in the late 60's and early 70's, there were rather narrow judicial and political constraints on the degree to which government could regulate a person's use of real property, particularly its initial transformation from agricultural

to residential or industrial use. The factors now subject to discretionary regulation in the name of environmental quality were usually immune from government direction through the typical zoning ordinance.

The environmental legislation also had the effect of bringing the states directly into land use regulation. The Commission saw the role of state government as being one of increasing the power of local government through amendment of enabling legislation, while at the same time increasing the administrative capabilities of local government through a series of "sticks and carrots."

To summarize, the Commission worked under a mandate to find ways of providing housing to low income people by removing barriers posed by zoning, building codes and housing codes. Related to this, they were concerned with the influence of municipal finances and ordinances on the pattern of employment and housing. However, they did not foresee a great increase in the direct role played by many states in land use decisions at the urban fringe and in rural areas. Thus while their recommendations may be valid, they were thought out under institutional and political constraints which have been greatly loosened in recent years.

Recognizing zoning and subdivision regulations as the major instruments of land use control for local governments, the Commission organizes its analysis of present problems around the criticisms that . . .

> . . . regulations act to reinforce racial and economic segregation, raise the cost of housing and stifle interesting and innovative design. And there are charges that regulations are failing to protect established neighborhoods, to prevent sprawl on the outskirts of cities and decay within them. Finally there are charges that the administration of regulations is too often ridden with favoritism and corruption . . . .

On the whole, the Commission finds these criticisms to be valid; not universally, but with sufficient frequency to lead to a conclusion that the problem is one of economics and institutional structure far more than malfeasant officials.

According to the Report, one of the main factors leading to zoning and subdivision practices which exclude the poor is the importance of the property tax in financing

local services. This tends to make land use controls a major weapon in the battle to keep taxes low while keeping the quality of services, particularly schools, high. Towns want only new housing which contributes more in tax revenue than it requires in new government expenditures. This encourages towns to attempt to exclude low cost housing, including apartments, particularly floor plans which attract families with large numbers of school-age children.

Besides this concern for fiscal viability, the Commission recognizes that many regulations are written and administered to keep out "undesirables"--particularly the black and the poor. Even where the ordinance allows for higher density dwellings, local officials may delay approval of permits for such a long period that developers are unwilling even to attempt low and moderate income housing. Because of the lack of involvement of state government and the unwillingness of the courts to accept leadership in making policy, ". . . the result . . . is that even some of the most outrageous exclusionary practices go unchecked by any institution outside the local government itself."

Zoning is also found wanting as a means to quality development at reasonable cost with fairness to those within the system. The technique was originally devised to prevent the incursion of industrial uses into established residential and commercial neighborhoods. The problem is that as policy objectives have expanded to include aesthetic considerations and economic provision of public services, no major technique has been developed to replace or supplement 1920's zoning laws. As the report states,

> It is becoming increasingly clear that regulator techniques cannot alone solve many of the most pressing land use problems and must not be thought of as even the primary vehicle for solving them. It is not surprising that communities have continued to rely on regulations to achieve increasingly ambitious development guidance objectives. Experience shows, however, that new goals require new techniques that go far beyond regulation.

Basically, the Commission recommends four policies to deal with the problems it perceives.

(1) <u>Increase the scale of land development</u>. This is to be accomplished by public aid to developers in assembling larger tracts. The advantages of this policy are putting responsibility in the hands of firms large enough to afford highly

skilled designers, creating large enough parcels that the developer can create a new environment; removing the need to coordinate with existing structures; and lowering development costs through wholesale construction and installation of utilities.

(2) Increase the administrative capability of local land use authorities. The goal of this recommendation is to force municipalities to act responsibly with respect to the powers granted by the state. This is to be accomplished by making the grant of state powers contingent on the preparation of plans, assembly of competent professional staff, making public construction subject to local zoning control and creation of state level technical assistance agencies.

(3) Increase the availability of low income housing. Here the Commission advocates state planning, data collection and policy statements. However, the only direct action recommended is that states authorize local governments to acquire sites for housing.

(4) Allow timing of development by local and state authorities. The Commission finds much of the urban sprawl results from an overabundance of land at the periphery of cities. This results in scattered subdivisions and low density commercial strips which greatly increase the cost of city services. The report recommends allowing government (a) to acquire land as a "land bank" in order to restrict this supply and (b) to zone land as a holding zone for three to five years to prevent development except in concentrated areas. A revolving federal fund is suggested as a means of financing such activities.

In the final analysis, the Commission seems to have relegated its primary purpose to secondary importance. Most of the recommendations for strong action by state and federal government concern large scale development and the prevention of urban sprawl. On housing, the strongest suggestion is that the Justice Department act as amicus curie in cases challenging exclusionary zoning. The rest of the recommendations amounts to little more than jawboning. For whatever reason, the Commission did not recommend that federal funds be withheld from jurisdictions refusing to zone for family apartments or imposing other exclusionary devices. There is no recommendation that HUD or FHA refuse to insure mortgages in municipalities employing clearly exclusionary practices.

In short, the Commission was more interested in the aesthetic quality of large subdivisions than in ending exclusionary zoning through federal action. The report is useful with regard to an assessment of the inadequacies of zoning regulation and administration. However, its recommendations seem valid only as regards upgrading the technical competence of administrators and the assembly of land for large scale development. It was unsuccessful in this instance of meeting the mandate of Congress and the President.

The National Advisory Council on Intergovernmental Relations - Urban and Rural America: Policies for Future Growth (1968)

The problem on which the ACIR report focuses is the pattern of American urbanization. ACIR concludes that the solution to rural outmigration, urban decay and suburban sprawl lies in the facilitation of new communities and large-scale developments within commuting distance of existing employment centers.

It is unclear just how such facilitation will alleviate the problems of the inner cities: high crime, rising property taxes, the relocation of employment and a rapidly worsening educational system. New communities may make the flight to the suburbs more orderly and less aesthetically displeasing. They are unlikely to improve the lot of those left behind.

ACIR defines new communities as being at least 1,000 to 1,500 acres, self-sufficient as regards commercial and cultural needs, but relying on existing employment centers for primary employment through the use of incentives to attract industry.

Four major advantages are supposed to accompany the shift from piecemeal to large-scale suburban development. These are:

(1) Increased social mixing of races and income groups.
(2) An end to the present pattern of urban sprawl.
(3) Increased use of modern technologies to lower building costs.
(4) Provision of public services at lower cost.

These advantages are at best speculative. For most middle-income whites fleeing the center city and the inner suburbs, racial mixing will hardly be a big selling point. Other than the elderly, low income families would

have to be introduced at a later phase of development and kept to a miniscule proportion of the total population.

Even were barriers of prejudice not present, it remains to be shown that low income blacks or whites can afford to live in new construction and pay the high costs of a long commute to work. Federal programs may subsidize housing, but they are unlikely to buy automobiles or pay the cost of their operation. Any major social mixing as a result of planned development must be regarded as highly unlikely.

The facilitation of large-scale development by state action will prevent some sprawl. However, unless the state is prepared to undertake a truly massive role as land developer around all center cities, the reduction in sprawl is likely to be marginal. Only a few large developers will be able to make their main business planned communities. For most builders, the subdivision of less than 100 dwellings will remain the staple undertaking. Given the limited number of large developers, it is highly unlikely new communities will be able to provide even a majority of the state's new housing needs. From the information provided, it is difficult to imagine the ACIR recommendations radically transforming the pattern of new residential development.

Large developments do, in theory, offer substantial opportunities for applying new technology to construction problems. However, these benefits are not certain. The economy of industrialized housing occurs not simply from the long-term total demand for housing and apartments. To make assembly line techniques work, demand must fall in a relatively short time span. Few developers, even with federal assistance, can afford to put up hundreds of houses for speculative sale. Unless sales occur shortly after construction, finance charges quickly erase any savings in construction costs.

Some savings should be possible in new communities as they will normally not be subject to the often outmoded building codes of the center cities. However, such opportunities are also available to piecemeal developers beyond the extraterritorial jurisdiction of the cities. It is unclear that the scale of the development will automatically result in extraordinary savings.

The final advantage, efficient provision of utilities and other public services, appears to be the advantage of large scale development most likely to occur. Despite the objections above, this advantage alone seems to

justify the state's intervention in the urbanization process. Comprehensive planning has the potential to provide not only the normal public services, such as streets and parks; a development of sufficient scale could provide for efficient public transportation within the development, community health clinics and other human resources services.

In summary, the ACIR study appears to be a very limited proposal geared to a slight curtailment of urban sprawl and an increase in the efficiency with which public services are provided. The report does not appear to contain any substantive recommendations for dealing with either the land use or housing problems of the center cities. It is basically a plan for more orderly suburban growth.

Further, despite the title, there appears to be little attention paid to the protection of ecologically fragile rural areas. While the state is pictured as a major land assembler and developer, it apparently has no role in the planning of land use to further state goals other than economic development and social integration.

The ACIR Machinery

The ACIR Report envisions a major role for state or regional government in the initial phases of development planning, with power shifting to county or local government during the predevelopment period. The state government is to have the following five powers:

(1) The power to acquire land through negotiation or eminent domain.
(2) The power to contract for land clearing and installation of basic utilities.
(3) The power to withhold land for later development or permanent public use.
(4) The power to sell, lease or otherwise dispose of rights of use and develop the land assembled and to place restrictions on such development through contracts and deed restrictions.
(5) The power to charter regional and local land development agencies.

ACIR anticipates that such land development agencies should be largely self-sufficient financially. Appropriations from state funds should be needed only to supply a revolving fund of working capital.

The Commission recognizes the key role of industrial location in determining patterns of residential

growth. Thus, the state is also given power to influence industrial location to aid the growth of large-scale developments through providing industrial credit to firms locating in certain areas, by awarding state and local procurement contracts on the basis of plant location and by selective deferral of state property taxes. The constitutional problems with several of these powers in Texas are obvious. A constitutional amendment to allow the state to attract industry away from existing population centers should have an interesting time at the polls.

Once the land has been assembled and the developer selected, control of development passes to local government, in general in the form of a county planning agency. This local authority would have several powers:

(1) The developer would have to obtain approval of a comprehensive plan before development could begin.
(2) The local authority could place detailed controls on the type, design and price of development within the bounds of the comprehensive plan.
(3) The pace of development could be regulated through a set of land reservation tools.
(4) The plan and later details could be modified by the developer and the local authority by trade-offs or arbitration.

Finally, the ACIR provides for final resolution of any disputes between the developer and the local agency by a state or regional review board. The exception to this provision would be disputes involving state or federal policies. Such disputes would be resolved in the appropriate judicial system.

After initial development, ACIR envisions continuing land use control through zoning and deed restrictions. Such authority would apparently continue to be exercised by the county until the new community reached a base population or was annexed by a larger community. It is not clear where the local authority is to obtain the funds or the personnel necessary to carry out its regulatory functions. Potential problems also exist as to how largely rural county officials will relate to large development firms.

Summary of Positions Taken by Various Public and Private Organizations

During the course of the past three years, various private and public organizations have made formal statements concerning the question of land resource

management. Many of these statements were presented during the months of March, April, and July, 1970, and May and June, 1971, when over 60 witnesses testified on the national land use bills pending before the United States Interior and Insular Affairs Committee. A recurring theme in the testimony was the inadequacy of existing land planning arrangements at the state level. A number of witnesses stressed that the states are potentially capable of becoming the principal architects of a national land resource management system, particularly with regard to developments or regional and statewide concern. In this section, the views of a number of representative public and private organizations are summarized.

Views of Public Organizations

Among the more significant public organizations making formal statements on land resource management were: (1) the National Governors' Conference; (2) the Council of State Governments; (3) National Service to Regional Councils; and (4) the National Association of Counties.

The National Governors' Conference. At the 1970 National Governors' Conference, a policy declaration was adopted endorsing a national land use policy. The Conference stated:

> There should be undertaken the development of a national policy, to be known as the National Land Use Policy, which shall incorporate environmental, economic, social, and other appropriate factors. Such policy shall serve as a guide in making specific decisions at the national level which affect the pattern of environmental and industrial growth and development on the federal lands, and shall provide a framework for development of interstate, state and local land use policy.

The Conference set forth seven objectives of a national land use policy. Objective number five dealt with the role of state government:

> (The National Land Use Policy should) . . . Assist State Government to assume responsibility for major land use planning and management decisions which are of regional, interstate, and national concern.

Thus, the primary concern of the National Governors' Conference was to insure that the federal efforts with regard to land use policy are coordinated with and supportive of state responsibility for the management of land resources.

The Council of State Governments. In a recent study, The States' Role in Land Resource Management (January, 1972), the Council of State Governments described the status of state activities in land resource management, presented alternate types of state action, and explained the possible effects of proposed federal legislation pertaining to land use. The Council concluded that a national land use policy should incorporate a combination of federal-state-regional-local effort:

> The federal government should set the general national policies and provide administrative and financial assistance; the state governments should adopt more specific guidelines to meet their particular needs and implement and/or enforce the general aspects of their programs; the regional bodies should provide input into the development of state guidelines and be responsible for administering factors of more than local impact; and local governments should retain and improve upon the administration of the greatest portion of this hierarchical system of land resource management.

The National Service to Regional Councils. As expected, the case for using "regional councils," which involve more than one local government and encompass regional communities, as a means of establishing areawide policy jurisdiction without depriving local governments of the control and direction of their own social and economic destinies was made by the representative of the National Service to Regional Councils in his testimony before the Senate Interior and Insular Affairs Committee:

> Planning is a two-way street. It cannot be effectively accomplished by a process imposed solely from the top. In short, local and regional interest must be articulated and considered in the formulation of state land use plans. And in our opinion, this interest could be represented through the elected officials of the local government, acting through their regional councils, if they are to be most effective.

The National Association of Counties. The representative of the National Association of Counties, in his testimony before the Senate Interior and Insular Affairs Committee, argued strongly for the use of existing expertise of local agencies for both the planning and implementation of statewide plans wherever local units have been delegated such authorities:

> The detailed preparation of land use plans should be accomplished at the county and city level. Statewide and regional consideration should be paramount in preparing these local plans, but we should not ignore the expertise and many years of experience that exists in our local planning agencies.

He described the role of regional and state government in reviewing local land use plans:

> After counties and cities have prepared detailed land use plans, councils of government and state authorities should review these plans for regional and state implications and consistencies.

Views of Private Organizations

Many of the individuals testifying on the proposed national land use legislation before the United States Senate Committee on Interior and Insular Affairs represented various private interests. In addition, at least one major corporation has prepared a formal statement on the issue of land resource management. Representative statements made by various private organizations are summarized below, along with a more detailed analysis of the statement prepared by Humble Oil and Refining Company.

The American Institute of Architects. Suggestions made by the American Institute of Architects in testimony before the Senate Committee on Interior and Insular Affairs include creating:

> . . . those mechanisms that will make it possible to:
> (1) build . . . free-standing new towns of considerable size;
> (2) encourage the planned expansion of smaller communities;

(3) build satellite new communities on the periphery of existing metropolitan areas; and
(4) control the growth or direct the growth that . . . is bound to occur on the periphery of our metropolitan areas.

One mechanism suggested for achieving these objectives is the establishment of state-chartered urban development corporations. "Such corporations would need public financing to acquire raw land, through the power of eminent domain if necessary, prepare the plan for the development of the area, install the necessary public facilities, roadways, and utilities." The corporation could then sell or lease the land to private developers who would develop the property in accordance with the overall development plan.

A second mechanism suggested by the AIA is through coordinated use of the state/public investment programs to encourage economic development where the state land use plan calls for such development. A third mechanism suggested by the AIA deals directly with the problem of growth on the periphery of metropolitan areas. It involves the establishment of a development plan and a metropolitan governmental agency with the authority over public investment within a metropolitan area to implement it.

> This agency should have control over the location of transportation systems - major highways and mass transit - the location of airports - the location of major utility lines, water and sewer, the acquisition of a major open space, and major land use allocations for such things as housing and industry.

The National Chamber of Commerce. In a statement released December 17, 1971, the National Chamber of Commerce defined the Chamber's position as to the proper role of the Federal Government in land use policy and planning:

> A proper function of the Federal Government is to articulate a statement of national goals, developed through interaction of the public and governments at all levels, as a general framework for anticipating long-range national needs, including land use needs. Federal legislation should encourage states to develop broad land use goals taking into consideration the overall supply of resources and the fundamental economic and social needs of the nation as reflected in the statement of national goals. . . .

The American Petroleum Institute. In November, 1971, the American Petroleum Institute called for the establishment of a balanced national land use policy that would permit access to important reserves of petroleum, coal, and uranium, both known and undiscovered. The API recommended four elements be embodied in the policy. First, planning and zoning authority should remain in the hands of state and local governments. Second, specific areas and activities of national concern would be delineated. Third, land use problems should be evaluated in terms of balanced criteria, recognizing the importance of national defense, economic, and environmental factors. Fourth, the federal government should assist the states and local governments in carrying out their land use control responsibilities.

The National Coal Association. In his testimony before the Senate Interior and Insular Affairs Committee, the representative of the National Coal Association urged that a distinction be made in establishing land use criteria which reflects understanding of the inherent differences between renewable and nonrenewable land resources:

> There must . . . be an express recognition that mineral extractive operations are only a temporary use of the land and, thus, lands should be categorized and considered in terms of their multiple benefits to man. Inherent in this multiple-use concept is the assumption that we can no longer disqualify the use of land for different purposes at different times. Therefore, land well suited to supply premium coal close to a major urban market area for a period of years, could after that time, be classified as best suited for low-density residential use, open space or industrial use. This is particularly true in view of what can be done today through sound, effective reclamation of surface mined areas.

The National Grange. In testimony before the Senate Committee on Interior and Insular Affairs, the National Grange stressed its concern over the loss of agricultural land for "non-productive" uses. It suggested that a study should be made of the feasibility of reimbursing a land owner who foregoes sale of agricultural land for a higher "economic (non-agricultural)" use category in order to retain this resource for the benefit of all. The Grange also went on record as favoring comprehensive planning of land use by all levels of government. In particular, "our Federal and State legislatures should enact without delay

legislation which shall evaluate and preserve land most suitable for agricultural purposes and use. . . .

The National Wildlife Federation. The Executive Director of the National Wildlife Federation, in testifying before the Senate Committee on Interior and Insular Affairs, stated:

> Probably, the most important single device for preserving and enhancing natural values of a quality-type could be a sound national land-use policy. It could, in effect, set out a coordinated Federal-state-local government plan for molding the future of this country. It could, or should, resolve inconsistencies. . . . It should set out national objectives and goals, determine priorities for attaining them, and delineate procedures whereby intelligent decisions can be made on land uses in the best public interest. Carried out, such a policy should result in the development of master plans for land use, including open space. In effect, this might be considered as rural zoning of a sort on a national scale.

He stressed the need to provide some mechanism for assembling and retrieving resource data now being generated at every level of government.

> We see the tremendous need for coordination of information gathering and coordination of the land and resources planning. We believe that this coordination would be useful in setting local, state, regional, and national goals for land use and resource planning.

The Humble Oil and Refining Company. One of the most complete discussions of land use planning and management is found in a corporate position paper prepared by Humble Oil and Refining Company. The statement begins by recognizing the need for changes in the existing system of land resource management:

> In some areas of the nation, society's many and varied demands for the use of finite land resources has resulted in a growing awareness that existing systems of land management are unable to prevent loss in productivity, the misallocation of resources, or provide adequate environmental protection. In such critical areas, states and federal governments have complementary roles to play and new or revised systems of land use planning and management are needed in order to assure proper resource development and adequate land and water sites for essential activities and to provide a proper balance among economic achievement, environmental conservation, and other emerging social concerns. Such systems must protect private property rights, maintain a climate for competitive free enterprise, encourage compatible multiple uses of land resources, protect the environment and desirable ecosystems, and be sufficiently flexible to adapt to social and technological changes.

While recognizing that the exact structure of planning and management systems may differ from state to state, the position paper sets forth a common set of principles by which each system may be tested.

1. New Land Use Systems Applied to Areas of Critical Concern. The imposition of new or revised systems of land use planning and management implies greater or more effective restriction on freedom of choice for the use of land and water sites. Such is not needed in all areas of the nation, but only in certain critical areas where the competition for finite land resources has become or likely will become excessive. Therefore, limited geographically determinable areas of such critical concern should be specifically and formally designated by the state land use system for planning and management purposes.

2. Protect Private Property Rights. . . . It should be a goal of land use systems to avoid unduly preempting an owner's choice of land use or overly restricting the choices available to him. Land use systems relying primarily upon preemptive state-wide zoning or national or regional land use plans or specification of single-use designations are undesirable in this respect and should be discouraged.

3. Compatible Use and Performance Standards Encouraged and Dominant Uses Recognized. State land use systems which adhere to the concept that multiple compatible uses of land are desirable should be

encouraged. Management systems based on uses meeting prescribed performance standards are to be preferred over permit, zoning or regulatory systems although these latter, too, may be consistent with the goal of encouraging compatible uses, particularly in urban areas. Performance standards for areas of critical concern could be developed by the land use authority pursuant to a study of the area and its use values and pursuant to the usual administrative due process, including public notice and hearings.

4. Free Enterprise Encouraged. . . . The best interests of the nation are served, and the natural resources are most efficiently developed through the operation of a system of competitive enterprise under enlightened regulation. Legislation affecting land use management should state that it is the goal of government to promote and protect such an economic climate.

5. States Should Dominate. Land use planning and management systems will involve all levels of government and the role of each should be carefully delineated. In our system of government, the states have the basic authority to manage non-federal lands and therefore should have the dominant role in the land use system. The degree of concentration of administrative power at the state level is a matter of state concern and will vary with the type and nature of state government involved. It is a legitimate function of state government to delegate authority to agencies, municipal corporations and other substate bodies as needed for proper and efficient exercise of state responsibility. However, in many instances, local actions are at variance with the broader needs of society and it would be expected, therefore, that proposed land use systems will place much of the land use planning and management authority at the state level.

6. Interstate Cooperation Needed . . . the formation of compacts or commissions as needed by adjoining states' authorities is preferable to the solution of such interstate matters by federal or federal-state commissions.

7. Administration of Federal Lands. . . . It is a proper function of federal and state governments to protect recreational and wildlife resources through the creation of parks, wilderness and wildlife preserves and the like on publicly owned land and/or to acquire land for that purpose. Also, public lands should be made available on an equitable, competitive basis for proper resource development by private enterprise. The goals of compatible use and environmental protection of the state land use systems should also apply to federal lands. Since by far the most populated and economically productive lands are in private ownership, the federal land administration should conform to and be coordinated with the state land use authorities where federal lands exist in areas of critical concern.

8. Federal Role in Matters of National Concern Affecting State Lands and Private Properties. In matters of national importance, federal policy must dominate and thereby affect state-local government or private prerogatives. The federal role should not be to participate directly in land use planning and management at state levels as regards matters of national concern, but should be to provide broad guidelines to inform state land use planners of national needs. . . . It is the responsibility of the state planners to implement and execute programs consistent with the federal guidelines on matters of national concern.

9. Federal Financial Support. To the extent possible, the states should be encouraged to be financially self-supporting in their land use planning and management. However, it will likely be necessary for the federal government to financially support the states' land use activities. It is vitally important that this aspect of federal-state relations in land use management not be used to subordinate the states to the federal will . . . The federal government in qualifying states for financial assistance should not specify any particular form of state land use planning and management system nor should the federal government participate in the states' planning process.

10. Administration Aspect of Land Use Systems. The needs for resource development, the private

property rights, ecological and environmental considerations, the wishes of local populace, national security should all be given fair and even-handed consideration. For this reason, it is important that the state land use authority have a balanced bias and not be established in agencies representing only one point of view. Land use planning and management should represent all views and should be responsive to elected bodies. Performance standards, dominant uses and plans should be subject to periodic review. The land use system should bear evenly on all land users and appeal procedures should be available. The state land use systems should not have the power to abrogate contracts or order cessation of activities undertaken prior to the findings of an area of critical concern. The land use authority should not be empowered to declare unlimited moratoriums pending hearings or planning studies nor should it have power to declare areas of critical concern to be single-use sanctuaries.

III. DESCRIPTION OF EXISTING STATE LAND RESOURCE MANAGEMENT PROGRAMS

Traditionally, regulation of the use of nonfederal lands has been reserved to the states as part of their police power. The states, however, generally have not sought to regulate land use directly, but have delegated authority to do so to local government. The limits of local jurisdiction often have been too narrow to encompass regional environmental systems or to encourage desirable patterns of regional economic development. Local zoning, the main instrument of land use control, typically has been used only to separate incompatible land uses in urban areas. Control over land use in nonurban areas has been minimal.

Within the past decade, growing dissatisfaction with the inadequacies in present state and local institutional arrangements for land resource management and for regulating the use of land has manifested itself in a trend toward more direct state involvement in land resource management. The factors receiving the most attention in recent state legislation concerning land resource management are:

(1) protection of critical environments, such as wetlands, estuarine areas, and floodplains;

(2) control over location and character of key developments, defined either in terms of size or significance, or both; and

(3) control of growth on the periphery of urban areas.

In this section, a number of the more innovative state land resource management programs are described in some detail, and their implications for the development of a land resource management system in Texas are discussed. A word of caution is in order, however, regarding the applicability of programs developed to meet the land

resource management needs of other states to the needs of Texas. Not only is Texas much more geographically diverse than other states, but it is also unique in political traditions and institutional structure. Thus, while the programs of other states and their experience with them are instructive, they should not necessarily be considered as models for the development of a land resource management system for Texas.

Hawaii

In 1961, Hawaii placed statewide zoning power in its State Land Use Commission, which was directed to classify all lands in the state into land use districts and to adopt rules of practice and procedure, and regulations for land use within the various districts. The law, as amended in 1963 by addition of the Rural District and in 1965 to shorten petition processing time, provides for four districts: Urban, Rural, Agriculture, and Conservation.

The Land Use Commission--administered through the Department of Planning and Economic Development, consists of nine members. They include one from each of the six Senatorial districts, one at-large, the Director of the Department of Planning and Economic Development, and the Chairman of the State Board of Land and Natural Resources. The latter two are ex-officio voting members. All are appointed by the Governor and confirmed by the Senate.

By 1964, all lands in the state had been classified by the commission according to the following criteria:

(1) agriculture district boundaries were set with regard to providing the maximum protection to lands having a high capacity for cultivation (minimum lot size of one acre);

(2) conservation districts were determined in order to preserve existing forests and watersheds;

(3) rural districts were defined to include a mixture of small farms and low density (minimum lot size of one-half acre) residential housing; and

(4) urban districts were defined to include those areas already in urban use plus a reserve area for accommodating future urban growth.

In agricultural and rural districts, the commission established land use regulations to be administered by counties. In conservation districts, land uses are determined and administered solely by the State Department of Land and Natural Resources. Land uses within urban districts are determined and administered by the counties concerned.

Once established, district boundaries can be changed by the Land Use Commission through a petition and public hearing process. The procedure includes a County Planning Commission recommendation, a public hearing and action by the Land Use Commission requiring six affirmative votes for approval. In agricultural and rural districts, certain uses are permitted without a change in district designation. Unusual and reasonable uses may be permitted through special permits requiring a public hearing and both county and Land Use Commission approval.

One of the intentions of the law is that property tax assessments are meant to encourage the best use of land. The Land Use Commission informed the Department of Taxation (which administers statewide property tax assessment and collection) of changes in district boundaries and special permits so that the department can give consideration to the existing and permitted uses of land in making its assessments.

During its 1970 session, the State legislature amended the Land Use Law to require the State Land Use Commission to establish, throughout the state, shoreline setback lines between twenty and forty feet from the shoreline. The shoreline--always difficult to find--is, the Law says, defined by "the upper reaches of the wash of waves, other than storm and tidal waves, usually evidenced by the edge of vegetation growth." County planning commissions were mandated to promulgate and enforce shoreline setback rules and regulations. Additionally, the Land Use Commission was given the authority to impose additional restrictions on special permits in agriculture and rural districts. The initial land use law passed by the legislature in 1961 stipulated: "Irrespective of changes and adjustments that may have been made, the Commission shall make a comprehensive review of the classification and districting of all lands and of the regulations at the end of each five years following the adoption thereof." The first mandatory review, completed in 1969, reviewed all related facets of land use in Hawaii within the five-year time period.

Following its review, the Commission altered its rules and regulations with the intent of strengthening its hand in dealing with development proposals, particularly those of large scope and requiring many years for fruition. Under its revised rules, the Commission can approve a total scheme, in concept, grant initial rezoning to initiate the development process, and approve future rezoning on the basis of performance as represented by the developer and agreed upon by the Commission. The Commission retains the power to rezone any property if evidence is obtained that the development has not occurred within the time period indicated in the manner originally represented. This is believed to be the first comprehensive application of the rezoning authority by a state or local body.

The statewide land use controls adopted in Hawaii were aimed primarily at controlling the development of land for urban uses. Two problems brought about the legislation. First, the development of land for urban uses, in many cases, tended to occur in areas where it was uneconomical for public agencies to provide proper and adequate service facilities. Second, in many cases, it occurred on the state's limited prime agricultural land, which it was felt, had a greater capacity for contributing to the long-term basic economic stability of the state by remaining in agricultural use.

In a speech, delivered in 1971, Dr. Shelley M. Mark, Director of the Department of Planning and Economic Development, for the State of Hawaii, stressed the efficacy of the law in preserving prime agricultural lands:

> The record shows that from the time the Land Use Commission drew up its first district boundaries in 1964, up to the latter part of 1970, it received requests for more than 100,000 acres to be reclassified into the urban district, where economic valuations are obviously the highest. Of that 100,000 acres, only 30,000 acres were given urban classification by the Commission. Of the 30,000 acres reclassified into the urban district, only 3,500 acres were considered prime agricultural lands. And even these prime lands included two pickets in the midst of an already heavily urbanized area, while the remainder of the reclassified agricultural lands were devoted to immediate housing needs.

In addition, Dr. Mark stressed the importance of coordination of land use planning and tax assessment policy:

> . . . the Hawaiian experience has brought out quite clearly the predominant role of the tax assessor in constraining or even formulating planning decisions; often to the benefit of the individual property owner and contrary to the so-called public interest. While the land use law does have the intent of requiring tax assessment to take cognizance of state and local zoning decisions, it is evident that the 'highest and best' use concept followed by the assessor can actually accelerate urbanization pressures and cause premature rezoning or redistricting. Much coordination of state land use planning and tax assessment policies, whether administratively or through legislative changes will be required so that the two authorities complement rather than contradict each other in the attempt to attain rational land use policies and practies at the state and local levels.

In considering the applicability of the Hawaiian approach to land resource management to Texas, several factors need to be kept in mind. First, the unique natural features of the state brought about a serious conflict between urbanization and environmental quality. This provided an impetus for the adoption of a statewide land resource management system. Second, the fact that Hawaii has uniform statewide property tax assessment and collection greatly facilitated the implementation of a statewide land resources management system. Finally, "Hawaii's ability to institute state-level planning and zoning was considerably strengthened by its one level of local government (the consolidated city and county) . . . ."

None of these factors exists in Texas. Nevertheless, the Hawaiian experience provides a useful insight into the role of land resource management in protecting prime agricultural lands from urban intrusion. This may become important in Texas as our urban areas continue to grow. Additionally, the close relationship between land use planning and property tax administration, highlighted by the Hawaiian experience, needs to be kept in mind.

Vermont

In recent years the three main segments of Vermont's economy--agriculture, forestry, and recreation--have increasingly threatened each other's existence. This conflict, basically one between economic development and environmental quality, together with the lack of a state

mechanism for coping with it, resulted in 1970 in the reorganization of state government and the passage of the Land Use and Development Act, or Act 250, Vermont's omnibus environmental and land resource management law. In so doing, Vermont not only placed all environmental programs in a new Agency of Environmental Conservation but also became one of the first states to adopt a statewide land use planning and control program.

These responses resulted from various pressures and events which came to a climax in 1970. For example, the authority for environmental pollution control was spread over various state agencies and departments without any overall coordination. Moreover, by 1969 it was clear that Vermont's 1964 Municipal and Regional Planning and Development Act was ineffective: only 20 percent of the towns had zoning and the southern Vermont towns could not handle the large-scale developments underway in their communities. Furthermore, large-scale development was occurring in undeveloped lands, particularly in mountainous areas characterized by a fragile ecology and in small towns with low tax rates and few municipal services. Water quality issues also came to the fore with oil spills and unregulated sewage disposal present in the state. Politically, the existence of the Governor's Commission on Environmental Control and the influence of an environmentally-concerned governor provided support for significant changes.

In addition to passing the Land Use and Development Act and creating an Agency of Environmental Conservation, the 1970 Vermont legislature also passed legislation regulating land sales practices, open burning and sanitary landfills, and the use of pesticides. Other 1970 laws dealt with particular land use problems, e.g., shoreland zoning and mobile home park development. Preservation of open spaces in areas of rapidly increasing property taxes was also encouraged through the establishment of tax incentives for private landholders to sell or transfer property to the state or a municipality.

Act 250 is essentially a means for regulating and planning Vermont's land use which is reflected in other Vermont environmental laws. The law is best understood as consisting of two laws administered under a single body, namely, the state Environmental Board. The "first law" in Act 250 provides for the decentralized regulation of most land developments and subdivisions in the state, while the "second law" mandates statewide planning of land use. Upon completion, these statewide plans will become the primary guidelines for regulation of development

and subdivision. Before examining these two aspects of Act 250 in more detail, it is useful to briefly consider the reorganized state structure in which administration of Act 250 occurs.

The Agency of Environmental Conservation

The Agency of Environmental Conservation, in which the Environmental Board is located, consolidates the state's environmental programs, including parks, forests, recreation, natural resources management, water resources management, fish, game, water and air pollution control, sewage regulation, and solid waste control. This cabinet-level organization, headed by a governor-appointed Secretary, consists of three policy-making boards--the Environmental Board, the Water Resources Board, and the Fish and Game Board--and several advisory boards and councils (e.g., Division of Protection).

The Environmental Board: District Environmental Commissions

Located within the Agency of Environmental Conservation for budget and staff purposes, the Environmental Board is the administering arm of the system established by Act 250. The Environmental Board itself is composed of nine members, all appointed by the governor. Members serve for four-year terms, with the exception of the chairman who serves a two-year term. Act 250 does not specify that board members should represent particular social or economic interests. Other than the appointive power of the governor and budgetary control through the Agency of Environmental Conservation and the state legislature, the Environmental Board is autonomous and not subject to the direction or control of any state agency or department. The Board may appoint one full-time executive officer and other professional and administrative employees. For fiscal year 1972, the Board's budget was $147,000; half of this was raised by means of application fees, the other half through legislative funding.

The Board has five principal functions:

(1) Administrative: The Board administers itself and its subordinate district commissions.

(2) Regulatory: The Board has the authority to promulgate regulations establishing standards under the criteria specified in Act.250.

However, until now the Board and its district commissions have not promulgated their own regulations, but have merely accepted the standards promulgated by the state agencies administering categorical programs (e.g., water and air quality standards of the Agency of Environmental Conservation).

(3) Quasi-judicial: The Board hears appeals from the land use permit decisions of the District Environmental Commissions. Such appeal hearings are de novo and thus any relevant issues may be raised and discussed. Further appeals are to the State Supreme Court.

(4) Planning: Policy enunciated in an interim land use capability plan prepared by the Board and approved by the governor in 1972 continues to be used as a guide in evaluting land use proposals. Two other plans are to be developed by the Board by 1973: a state capability and development plan, and a state land use plan.

(5) Enforcement: The Board has the power to institute legal action to prevent or abate violations of Act 250 or Board regulations.

Eight District Environmental Commissions have been established by the legislature as subagencies of the Environmental Board. Each commission consists of three members from the district appointed by the governor for staggered four-year terms; one of those three is appointed chairman by the governor for a two-year term. Other than accountability to the Environmental Board, commissions are autonomous administrative hearing bodies subject to no control by any state agency. Their primary function is to consider applications for Act 250 land use permits and to hold hearings. District Environmental Commissions are served by full-time environmental coordinators who provide assistance to applicants, schedule hearings, keep commission reports, handle commission administration, and the like.

The Division of Protection

The Division of Protection is the enforcement arm for all units within the Agency of Environmental Conservation except the Fish and Game unit as well as being the administrator of air and water pollution control programs. The Division of Protection also coordinates the

Agency's review and comment process relative to the Act 250 permit program. This Division determines who will review the application within the Agency, directs special studies of the site if necessary, writes the Agency's official position paper on each application, and represents the Agency in any hearings before the District Environmental Commissions and the Environmental Board. The Division of Protection, however, does not actually decide what the Agency's official position will be on an application.

The Agency 250 Review Committee

This committee, an interdisciplinary body consisting of representatives from conservation agency departments and from other state departments (e.g., Highway, Education), determines the Agency of Environmental Conservation's official position with respect to an application for a permit. This committee receives both a copy of each application to a district commission and a copy of the Division of Protection's position paper on the application, and then prepares a position paper representing the views of the Agency and all reviewing units. This document is presented to the district commission for its use in reaching a decision on the application.

The Act 250 Permit Program

Under Act 250, most individuals wishing to develop or subdivide land must apply to the appropriate District Environmental Commission for a permit. Developments for which a permit is required include the following:

> land development for commercial or industrial purposes, other than agriculture or forestry, under 2500 feet elevation, if it is on a tract of land exceeding one acre or, if in a municipality with permanent subdivision and zoning ordinances, exceeding ten acres;
>
> any residential project involving ten units or more, including any other units owned or controlled by the developer within a five-mile radius;
>
> subdivisions of land into ten or more parcels, each of which is less than ten acres, including any other lots of less than ten acres owned or controlled by

the subdivider within a five-mile radius within a continuous period of ten years beginning April, 1970;

any development over 2500 feet elevation;

any project for state or municipal purposes involving more than ten acres.

Specifically excluded are construction for agriculture or forestry purposes below 2500 feet elevation and electric transmission/generation facilities.

According to an Environmental Board ruling, development occurs with the first man-made change to the land, and thus permit is required before any site preparation can be undertaken. Moreover, Vermont law requires that prior to recording a deed a transferor must certify on the Vermont Property Transfer Return that the subject property either complies with or is exempt from Act 250.

The District Environmental Commission awards a permit if the proposed development is found acceptable in four major aspects:

no unnecessary pollution of air, land, and water;

no unreasonable burden on municipal services;

conformity of the proposal to any duly adopted local, regional, and state plan;

no "undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas."

A district commission must hold a hearing on a permit application if requested to do so by anyone required to receive notice of it. Notice of a permit filing must be given by the applicant to any municipality where the land is located, any municipal or regional planning commission affected, and adjacent Vermont municipalities and planning commissions if the land is located on a boundary. The request for a hearing must be made within 15 days of receiving notice of a permit filing. The applicant must also post a notice in the town clerk's office and publish notice in a local newspaper not more than seven days after the District Environmental Commission has received the application. Within 15 days of the newspaper notice an adjoining landowner may also request a hearing. The district commission may also order a hearing within 20 days of receiving a permit application.

If no hearing is requested or ordered on the permit application, action must be taken by the District Environmental Commission on the application within 60 days following filing, or the application is automatically approved and there is no appeal. If a hearing is requested or ordered, it must be held within 40 days of the filing date. The Commission must issue its decision on a permit application within 20 days of the final hearing day.

District Environmental Commissions may deny permit applications if they find the proposed subdivision or development would be "detrimental to the public health, safety, or general welfare," but specific reasons must be given for the denial. The Environmental Board has authorized these commissions to refer to the model subdivision regulations of the Vermont Planning and Community Services Agency as a guide for decisions on permits until the Board has developed a permanent Land Capability and Development Plan and a permanent Land Use Plan.

The Environmental Board hears appeals of district commission decisions: the law limits the parties who may appeal to the planning commissions and municipalities required to receive notice of the application filing. Once an appeal is taken, the Environmental Board issues notice to interested parties and schedules a de novo hearing on all issues requested by any party. The Board then makes an entirely new decision based upon the same criteria as the commissions and makes its own decision whether to grant or deny the permit. Any party to the appeal dissatisfied with the Board's decision may appeal to the Vermont Supreme Court. In the judicial appeal, no objection may be considered which was not raised before the Board.

As of June 1, 1972, 812 applications had been filed with district commissions, of which 682 had been acted upon. Of these, 27 were denied, primarily because of technical deficiencies or poor preparation.

Act 250 Land Use Plans

In Act 250 the Environmental Board and the District Environmental Commissions are also directed to prepare and seek adoption of three land use plans, namely:

(1) Interim Land Capability Plan.
This first plan has been adopted (in early 1972) and describes "in broad categories the capability of the land for development and use

based on ecological considerations . . . . "
The Interim Plan is an inventory of present uses of the land and of available natural resources and does not reflect policy decisions concerning future land utilization. However, this plan will be used in the evaluation of land use proposals until the adoption of the state plans discussed in (2) and (3) below.

(2) Capability and Development Plan.
Act 250 states that the Environmental Board "shall adopt a capability and development plan consistent with the interim land capability plan which shall be made with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state, which will, in accordance with the present and future needs and resources, best promote the health, safety, order, convenience, prosperity, and welfare of the inhabitants, as well as efficiency and economy in the process of development . . . . " This second plan is to reflect basic planning decisions governing future development in Vermont; for example, in this plan will be made decisions as to future locations of industries and second-home developments.

(3) Land Use Plan.
This plan, to be developed by the Environmental Board, is to take the form of a map showing "in broad categories" the present and prospective uses of land and "the plans to be further implemented at the local level by authorized land use controls such as subdivision regulation and zoning." The difference between the Capability and Development Plan and the Land Use Plan is that the former is to be a detailed planning document whereas the latter is simply a map indicating the results recommended by the planning study.

The responsibility for overseeing the completion of these last two plans in 1973 resides with a state planning committee consisting primarily of the governor's cabinet and a state plan sterring committee that includes the Secretary of Administration, the Secretary of Development and Community Affairs, the Chairman of the Environmental Board, and the Director of the State Planning Agency. Regional task forces and private public interest groups are having significant input into the development

of these two land use plans; the Vermont Natural Resources Council, in particular, has very actively tried to encourage broad citizen participation in the planning process.

Before final adoption of each of these last two plans, the Environmental Board must hold at least one public hearing in each of the state's districts; the Board must also send each proposed plan to each municipal and regional planning commission for comment. Final approval of the plans is given by the Environmental Board. Following Board approval, the plans must be sent to the governor, who must approve or disapprove each within 30 days of receiving it; if he does neither, the plan is deemed approved. As a final step, each plan must also be adopted by resolution in the Vermont General Assembly.

Act 250--An Evaluation

It appears that although Act 250 has had little effect on the rate or amount of development in Vermont, the quality of such development has improved; most projects, for example, are given permits with conditions attached. A significant loophole in Act 250, however, is the exemption of subdivisions over ten acres; farming, logging, and forestry (under 2500 feet elevation) are also exempt from Act 250's restrictions. It is unlikely that an effective land use plan can be developed which continues such exemptions and loopholes.

The administration of the act has also become more centralized than originally intended, in part because of a failure of local and regional groups to become adequately involved. Inconsistent interpretation of Act 250 among districts has also provided impetus for this centralization. Efforts to inform the citizens of Vermont of the nature and purpose of Act 250 have been inadequate, although the Vermont Natural Resources Council is actively seeking to stimulate broad citizen participation.

With respect to the application system, many developers believe that the form is confusing and that the act will eventually eliminate the small- and medium-sized developers who cannot afford the delays and paperwork involved. At the same time, the Act 250 permit application system does not really provide a mechanism by which explicit economic-environmental trade-offs can be made. Thus a continuing evaluation of the permit application system in the context of the forthcoming state land

use plans is necessary if Vermont is to develop a state system which effectively can manage its land resources.

Implications for Land Resource Management in Texas

Vermont, like Hawaii, faced a serious conflict between economic development and preservation of environmental quality which brought about a political climate favorable to the development of a strong state role in land resource management. Of particular significance, was the unique nature of Vermont's physical environment--a small mountainous region with many forests, lakes, and streams--and the small size of its urban areas. Equally important was the lack of effective land use controls at the local level.

Texas, on the other hand, is much more geographically diverse and has a tradition of local land use controls. While the threat to Vermont's environment was clearly perceived by the public in terms of specific types of development, e.g., recreation, second homes, and urbanization, no such statewide threat is widely perceived in Texas. The concern in Texas is related more to specific problems which are regional or local in nature and which are not generally applicable across the entire state.

In Vermont, the response to political pressures for the state to take an active role in land resource management was the centralization of all environmental programs in a single agency, the establishment of a regional organization for environmental management, the implementation of a permit system to provide centralized control of land developments, and the formulation of a state land use plan.

Because of the dissimilarities between Vermont and Texas in environment, geographic size, institutional structure, and political attitudes, it is unlikely that the land resource management program adopted by Vermont would be directly applicable to Texas. Nevertheless, several aspects of the Vermont program and the experience with it are of significance in approaching the development of a land resource management system for Texas.

First, the Vermont program attempted to implement a system of state land use controls, e.g., the permit system under Act 250, before the development of a general planning structure for land resources. This practice has resulted in inconsistent application of the

permit granting power across regions of the state. It would appear essential that land use controls be directly related to a general plan which sets forth the goals and objectives to be accomplished through the exercise of controls. Otherwise, controls can become an end in and of themselves.

Second, the failure of local and regional groups and the general public to become involved in the land resource management program in Vermont is of particular significance in Texas, a state with widely diverse geography and a large number of metropolitan areas of differing size. Again, the development of controls prior to the development of a state plan may have contributed to the lack of involvement on the part of regional and local groups and the general public. Such involvement is much more likely to result from participation in the policy formulation and planning process, than from the process of regulation.

Third, several features of the permit system are of particular significance. The permits are granted on the basis of performance criteria, e.g., no unnecessary pollution, no unreasonable burden on municipal services, conformity to established plans, and no undue adverse environmental effects, rather than on the basis of specific requirements. This provides for greater flexibility in administering land use controls. The Agency 250 Review Committee, which reviews permit applications, is broadly representative of the conservation departments and other state departments. It thus provides an interdisciplinary review of permits. Finally, ample provisions are made in the permit process for public hearings and adjudicatory procedures.

Maine

With its extensive forest lands (87 percent of its inland area is considered forest or wood lot) and deep-water ports (12 of the 14 deep-sea areas on the entire Atlantic seaboard which can handle the planned transoceanic "super-ships" are located off its coast), Maine has increasingly become the focus of attention of petroleum companies, land developers, and the like. Until the late 1960's lack of planning and effective regulation with respect to land use concerns and coastal zone management made the state vulnerable to this invasion "by land and by sea." That Maine found it virtually impossible to control development is partially explained by the fact that only about 16 percent of the state's local governments

had enacted zoning laws, with subdivision controls even less widely in effect. Moreover, the state structure for dealing with land-related issues was also disorganized and ineffective; with more than 220 autonomous boards and agencies, consistent decision-making could not be provided. Lack of long-range state land use plans and non-agency, nonboard input into the decision-making processes were also problems.

In response, Maine initiated a series of steps (primarily legislative) during 1970-1972. Significant components of this state action were: state government reorganization and the establishment of a Department of Environmental Protection; a Site Location Law; an act extending the jurisdiction of the Maine Land Use Regulation Commission; a bill providing for State-level Land Use Controls--Mandatory Zoning and Subdivision Controls for Shoreland Areas; and, the designation of regional planning districts to facilitate state planning and action.

As a result of the 1971 reorganization of state government, functions concerning the environment are now included in a Department of Environmental Protection (DEP); this department serves as a mechanism for coordinated administrative decision-making with respect to various environmental activities, including land, air, and water quality control. The DEP contains three major environmental agencies--the Environmental Improvement Commission (EIC), the Land Use Regulation Commission (LURC), and the Site Location Bureau. Each agency receives administrative support from the DEP but maintains its own decision-making authority.

Within the DEP, the EIC has assumed a position of prominence; this is not unexpected, since the Chairman of the EIC has also been the director of the DEP. The EIC consists of ten members, each appointed by the governor to a three-year term. Commission members theoretically represent the various opinions present in Maine. The 1970-71 EIC budget was approximately $1,000,000. The EIC has no investigatory staff. The Site Location Bureau assists the EIC in performing tasks related to the Site Location Law; its staff, however, is also small (e.g., in 1971 the Bureau had only two staff members). The LURC consists of seven members: three permanent (the Director of the State Planning Office, the Forest Commissioner, and the Director of Parks and Recreation) and four governor-appointed members serving staggered four-year terms. Both the administrative staff and the budget of the LURC are small.

The Environmental Improvement Commission: Site Location Law

The EIC, established first in 1941 and given additional authority in 1964 to monitor and enforce standards for air, water, and coastal flat lands quality, received increased responsibility under Maine's 1970 Site Location Law. This 1970 law requires large developments to be certified with a permit from the EIC prior to construction and thus enables the EIC, in consultation with appropriate state agencies, to at least partially control the location of future developments.

Not all land developments require an EIC permit. As passed in 1970 the law covered only commercial and industrial development; later amendments, however, have given the EIC jurisdiction over state, municipal, quasi-municipal, educational, and charitable developments as well. The initial version of the law also only covered projects over 20 acres in size; this was later modified so that developments of more than 20 acres subdivided into five or more lots during a time-period of five years must now be certified by the EIC if one lot is less than ten acres. State highways are still exempt.

Developers whose projects are covered by the amended Site Location Law must submit a completed 25-page application form to the EIC prior to development. (This form is first submitted by the developer to the Site Location Bureau, which in turn distributes copies to the EIC and other appropriate agencies and officials.) On this form the developer must provide information concerning his financial and technical capability, the legal history of the proposed site, the estimated use of the site, the community and utility services required, the social and ecological impact of the project, additional legal authorizations needed, site descriptions, current land and water use at the site, cover and terrain characteristics, drainage characteristics, soil types, corrective work needed on the site, adequacy of water supply and waste discharge, description of access and circulation patterns, types of advertising signs to be used, and so on. Answers are required which force the developer to specify details of his proposed project.

In addition to the EIC (and the Site Location Bureau), nine other state agencies and various regional and municipal officials also review these application forms. These nine agencies are: the Soil and Water Conservation Commission, the State Highway Commission, the Division of Sanitary Engineering, the State Planning

Office, the Department of Sea and Shore Fisheries, the Department of Inland Fisheries and Game, the Forestry Department, the Park and Recreation Commission, and the Land Use Regulation Commission. Evaluations are made with respect to the four criteria noted in the law: capability of the developer to complete the project, ability of the developer to handle traffic movement problems, ability of the development to fit harmoniously into the natural environment, and the compatibility of the development with soil type. The EIC surveys and coordinates these various evaluations, as well as the application itself, and makes the final decision. Initially the EIC was required to issue a decision on an application within 14 days; this was judged to be inadequate, however, and the law now allows 30 days.

The EIC can issue a permit for a project as proposed, can issue a permit with conditions imposed, or can refuse to issue a permit. Although conditional approval could be used to make development unfeasible, it is more often used to force consideration of unique site attributes. The EIC does not need to hold a hearing for every permit denial. If not held prior to an EIC ruling, hearings conducted by the EIC may be requested by a developer following such a ruling if he documents his objections to the ruling, citing the basis for his objection and the ruling he desires. Such hearings may be requested within 30 days after the Commission issues its order. EIC decisions following such hearings may be appealed directly to the State Supreme Court.

If permit conditions are violated or if a developer fails to first obtain a permit, the EIC can have the Attorney General enjoin the developer. The EIC can also require that all illegal development be removed from a site and that the site be restored to its original condition.

In summary, certain aspects of the Maine Site Location Law (and the EIC's involvement with it) might be regarded as favorable:

consideration of the effect of developments upon natural and social environments is required;

some control over the location of major developments will exist, when a state land use plan is developed;

permit applications are reviewed by appropriate state, regional, and local entities, resulting in agency involvement and interagency contact;

the use of conditional approvals provides flexibility and the consideration of unique site characteristics.

Aspects which might be regarded as unfavorable include:

policy is made through the accumulation of individual decisions;

it is a regulatory, rather than a planning, mechanism;

the legislation is poorly drafted;

the permit-granting system needs improving (e.g., the EIC cannot suggest or evaluate alternative sites, enforcement of permit conditions is lax since no field staff exists);

a "grandfather" clause provides loopholes for those municipalities and industries (e.g., forest products industries) operating under permits with looser restrictions;

budget limitations have resulted in selective administration of the law (e.g., less than 10 percent of the EIC's 1970-71 budget was allocated for the enforcement of the Site Location Law).

The Land Use Regulation Commission

The Land Use Regulation Commission (LURC), the other Department of Environmental Protection agency significantly involved with land use issues, currently has jurisdiction over the 51 percent of Maine that is unorganized or deorganized; such jurisdiction consists of planning, zoning and subdivision controls. All developments in such areas which do not come under EIC jurisdiction as a result of the Site Location Law must be approved by the LURC. (As a result, the LURC, as well as the EIC and the Site Location Bureau, administers the Site Location Law.) The LURC also formulates general land use plans for the areas under its jurisdiction.

In particular, the Land Use Regulation Commission has the following functions:

(1) classification of lands under its jurisdiction into protection, management, development, and holding districts, with standards set for each type. Interim standards recently adopted permit the Commission to regulate until the promulgation