of an overall land use plan. If the land becomes organized, LURC standards remain in effect until standards no less stringent are adopted by the new municipality. Exemptions currently exist for agricultural lands, for single-family residences, and for powerful forest products industries. Public utilities and other public service activities may also be exempted, following a hearing by the Public Utilities Commission.

(2) review and approval of subdivision developments. Administrative costs for this activity are partially offset by application fees.

(3) development of comprehensive land use guidance plans. As part of an Interim Land Use Plan, over 10 million acres, including 460 townships, must be zoned by July, 1973. This interim plan will not, however, establish final uses, but will rather outline the process of change that the Commission feels should occur.

LURC decisions may be appealed to the State Supreme Court; also, hearing procedures are provided for in the statutes.

Mandatory Zoning and Subdivision Controls for Shoreland Areas

This 1971 legislation requires that municipalities must adopt sufficiently stringent subdivision and zoning control ordinances by June 30, 1973, for all land areas that are even partially contained "within 250 feet of the normal high water mark of any navigable pond, lake, river, or salt water body." If this is not done, the power reverts to the EIC and the LURC.

Regional Planning Commissions

The governor of Maine, by executive order in January 1972, detailed the boundaries of eight regional planning districts in an attempt to provide areas small enough for local involvement yet large enough to ensure effective planning and administration, and ordered all state agencies to use these districts as a basis for future planning and action. Many state departments, however, have been negligent in submitting their required district-based plans to the State Planning Office, and the resultant

impact of these districts on the planning and administration activities of the EIC and the LURC is still uncertain.

Implications for Land Resource Management in Texas

The motivations underlying the establishment of a state land resource management system in Maine were similar in many regards to those found in Hawaii and Vermont. The rockbound Maine coast and the inland forests gave the state a unique environmental setting. The pressure for economic development created a perceived threat to the preservation of environmental quality. Finally, there was little in the way of effective land use control at the local level. In response to the problems created by these conditions, the state adopted a series of legislative actions in a piecemeal fashion, which when considered together constitute a state land resource management system.

The following factors are important in the Maine experience as having implications for the development of a land resource management system for Texas. As in Vermont, the development of controls appears to have preceded the determination of state goals and objectives, with much the same results. The system focuses on regulation rather than on planning. While regional participation is desired, it has not yet been developed. Thus, the lessons learned from the Vermont experience are repeated in Maine, i.e., planning should precede the implementation of controls and the administration of controls is more effective when the controls can be related to an overall plan. One feature of the Vermont system, also found in Maine, is the use of a broadly representative committee to review applications for development.

Colorado

In 1969, Colorado, faced with rapid economic growth in the urban areas lining the eastern slope of the Rockies and major recreational and second home developments in the mountain areas of the state, began to consider land resource management legislation. After an abortive attempt to adopt legislation similar to that of Hawaii in 1969, the state legislature did adopt legislation in 1970 which was extensively amended in 1971. It now stands as a unique attempt to achieve state and regional land resource management objectives by specifying standards for local government performance.

The basic land use law establishes a Land Use Commission of nine members to draw up a total land use planning program for the state by December 1, 1973. The Commission is directed to prepare a state land use plan which shall be utilized in adopting the land use map and which shall "promote the wisest use and development of the state's natural and land resources in the present and in the future, and which shall assure the most effective expenditure of public and private resources in its implementation."

The Commission is urged to classify land uses into matters of state, regional, and local concerns and is specifically required to sort out the roles and responsibilities and authority of the various levels and agencies of government. The Land Use Commission has a widely representative advisory committee.

A special section of the law relates to the Winter Olympics of 1976, relative to site selection, and environmental impacts. The Commission has authority to step in when local government fails to adopt ordinances of sufficient quality to meet requirements; may issue cease and desist orders where developments are a threat to public health, safety, and welfare; may develop model resolutions for local government; and may identify floodways and other critical conservation and recreation areas as well as state involvement in these.

A new law, passed in 1972, requires that each of the 63 counties in Colorado establish county planning commissions. The county planning commissions are required to develop, and the county commissioners to adopt and enforce, subdivision regulations for all lands within the unincorporated areas of the county not later than September 1, 1972. If a county fails to comply with this law, the State Land Use Commission can promulgate subdivision regulations for that county's unincorporated areas. The county commissioners would be required to enforce such regulations until the county does finally, itself, adopt subdivision regulations. All counties' subdivision regulations must be certified by the State Land Use Commission. Any subsequent changes in any county's regulations must also be sent to the State Land Use Commission.

Under the new law, the subdivision regulations adopted by each board of county commissioners must require subdividers to submit to the board of county commissioners "data, surveys, analyses, studies, plans and designs" on the following items:

(1) property survey and ownership;

(2) descriptions of relevant site characteristics and related analyses, including the following, to be submitted with the sketch plan:

  (a) streams, lakes, topography, and vegetation;

  (b) geologic characteristics of the area which will significantly affect the land use, and the impact these characteristics will have on the proposed use;

  (c) areas of potential radiation hazard;

  (d) soil analyses;

(3) a plat showing the layout or plan of the proposed development, including, where applicable, information on:

  (a) total development area;

  (b) total number of proposed dwelling units;

  (c) total number of square feet of nonresidential floor space;

  (d) total number of off-street parking for everything but single-family units;

  (e) estimated gallons per day of water requirements;

  (f) estimated gallons per day of sewage to be treated and sewage disposal means; and

  (g) estimates of cost and financing of streets, utilities, and water, sewage, and storm drainage systems; and

(4) adequate evidence that a water supply of sufficient quality, quantity and dependability will be available.

Each county's subdivision regulations must also include provisions governing sites and land areas for schools and parks to serve the needs of the future residents of the proposed subdivision.

In addition, the new law in Colorado requires that whenever a subdivision or commercial or industrial activity is proposed in an incorporated city or town, which will cover five or more acres of land, the municipality must send notices of that proposed activity to the Colorado Land Use Commission and to the board of county commissioners of the county in which the proposed activity is to occur. The zoning change, subdivision, or building permit application for the activity may not be approved until this major activity notice has been filed with the Land Use Commission and the board of county commissioners.

Colorado represents still another state facing a strongly perceived conflict between economic development and preservation of environmental quality. The scheduled 1976 Winter Olympics gave added impetus to political pressures for the state to take a more active role in land resource management. Now that the Winter Olympics in Colorado have been cancelled (by voter action, so to speak), it remains to be seen if the efforts at strengthening land use controls will continue. It is significant to the development of a land resource management system in Texas that Colorado began its program with an attempt to develop a state plan, and has coupled the development of the state plan with legislation aimed at encouraging counties to begin land use planning. The imposition of new land use controls is being withheld pending the completion of the planning phase at the state and county level.

Florida

Under the Florida Environmental Land and Water Management Act of 1972, the state government is in a position to exercise a limited degree of control over the growth and development of the state, while preserving the land use powers of local government agencies and the rights of private landowners. The role of the state in land use management is confined to those land use decisions which are judged to have a substantial impact outside the boundaries of the local government in which the land is located.

The new law provides that the governor and his cabinet can designate specific geographical areas as "areas of critical state concern," and can establish principles to guide the development of these areas. Areas of critical concern are defined as those areas in which there are:

(1) environmental, historical, natural, or archeological resources of regional or statewide importance;

(2) existing or proposed major public facilities or major public investments; or

(3) proposed areas of major development potential, such as new communities, which are designated in a state land development plan.

The Florida legislature also passed the Land Conservation Act of 1972, providing for the issuance of state bonds pledging the full faith and credit of the state to finance the cost of state acquisition of environmentally endangered lands or outdoor recreation lands, upon approval of the electors. The bonds are limited in amount to $200 million for the purchase of environmentally endangered lands, and $40 million for the acquisition of outdoor recreation lands. The governor and his cabinet are given the responsibility, authority, and power to develop and execute a comprehensive plan to conserve and protect environmentally endangered lands in the state.

Under the Environmental Land and Water Management Act, no area can be designated as an area of critical state concern due to its environmental significance until the voters of Florida approved by referendum the state bond program authorized by the Land Conservation Act. This referendum was passed in the general election held in November, 1972.

After an area has been designated an area of critical state concern, the local governmental agency having jurisdiction is given an opportunity to write land development regulations for the area to implement the established principles and, after the regulations have been submitted and approved, administer the regulations.

The governor and his cabinet are also empowered to adopt guidelines and standards to be used in deciding whether certain land developments are "developments of regional impact." These guidelines and standards will be subject to review and approval by the state legislature at the 1973 regular session. If approved, the guidelines become effective July 1, 1973.

In general, developments of regional impact are those which, because of their character, magnitude, or location, would have a substantial impact upon the health, safety, or welfare of citizens of more than one county. When development permits, such as recording of plats or rezoning, are requested for a development of regional impact, the local government must consider the conformity of the project to the state land development plan and its

regional effect as analyzed in a report to be prepared by the regional planning agency designated for the area in which the project is located.

Administration of the Environmental Land and Water Management Act is given to the Division of State Planning in the Department of Administration. This Division has responsibility for making recommendations to the governor and his cabinet regarding areas of critical state concern and the principles for determining developments of regional impact. In addition, this Division will approve local land development regulations in areas of critical state concern; give technical assistance to local government agencies in the preparation of their regulations; and write the development regulations in the event the local government fails to respond with suitable regulations.

The Act also designates the governor and his cabinet as the land and water adjudicatory commission, to hear and rule on administrative appeals from development orders by local governments relative to both areas of critical state concern and developments of regional impact. The procedures of the State Administrative Procedure Act will apply to the implementation of this Act. This insures the right of judicial review of all rules and final administrative determinations.

The Act does not diminish private property rights. The same constitutional protections which apply when local governments enforce land use regulations will apply to the state under this Act. Further, property rights acquired under local regulations, through such acts as plat recordation or issuance of a building permit and reliance and change of position on such acts, prior to the designation of an area as one of critical state concern or a development of regional impact, are expressly protected.

Finally, the Act creates an environmental land management study committee consisting of 15 members, to be appointed by the governor, the speaker of the house, and the president of the senate. This committee is charged with responsibility for studying all facets of land resource management and land development regulation, and may recommend new legislation to achieve environmental protection and a sound and economic pattern of well-planned development.

The Florida land resource management legislation would appear to be particularly well suited to the

problems and institutional structure in Texas. By placing emphasis on critical areas and developments of state or regional concern, this legislation provides for an active, but limited, role for state government in land resource management. It represents an adaptation of the approach to land resource management developed by the American Law Institute and closely parallels the major land use policy bills considered by the 92nd Congress. The Florida approach provides the same constitutional protections for private property at the state level that are currently provided when local governments enforce land regulations. It also protects existing property rights from abridgement by later actions in areas of critical state concern.

Oregon

With natural resource development the focus of each of Oregon's "big three" of industry--lumber and wood products, tourism, and agricultural products--it is not unexpected that Oregon has developed no sound system for coordinating economic growth and concern for the environment. No state-wide (or regional) land utilization and management plan exists. Key issues such as land use controls, especially on the Oregon coast, have yet to be resolved. No long-range, or even integrated short-range, development plan exists for the state. The state has no state planning agency; in fact, planning capabilities do not exist in many state agencies. Moreover, even though it is needed, serious consideration of land use issues will likely not occur in the next session of the Oregon legislature due to the unpopularity of this subject among many of the state's interest groups.

Many Oregon citizens, however, are concerned about their natural environment, and legislative and executive steps have been taken to rationalize the state's environmental policy-making processes. With respect to the executive branch, the governor has sought to deal with the fragmented governmental structure in Oregon (e.g., the existence of several hundred single-purpose state boards and commissions, each relatively autonomous from any control from the governor or the citizenry) in a number of ways. For example, through the development of a very experienced and capable staff in his office, the governor has been able to use his office as the policy coordinator for the many agencies dealing with any particular issue. Through the office of his Assistant for Natural Resources, the governor has also established a Committee on Natural Resources and the Environment, chaired by himself and

including heads of all agencies with environmental impact. This committee is another effort to coordinate the activities of the various executive units by forcing them to discuss policy, planning, and common interests. Although slow at first, interagency coordination is beginning to occur more frequently under the strong leadership of the governor's staff.

At the present time a Department of Natural Resources does not exist in Oregon. Traditionally the governor proposes the establishment of a Department of Natural Resources at each legislative session; thus far no such department has been established, and prospects during the 1973 legislative session appear no better. There are a number of reasons for its demise each year; for instance, there is disagreement as to what should or should not be included in the Department. (The governor's bill would include: Fisheries, Forestry, Game, Geology, Minerals, Lands, Soil and Water Conservation, State Engineers, and Water Resources.)

A separate Department of Environmental Quality (DEQ) was established by the legislature in 1969, however, in an attempt to facilitate state environmental planning and management and to provide additional visibility to the public. The DEQ and its policy-making body, the Environmental Quality Commission, existed prior to 1969 as the State Sanitary Authority, a division of the Board of Health. The DEQ has the responsibility for establishing and maintaining standards for environmental quality in the fields of water, air, noise, and solid waste; this it accomplishes by setting air, noise, and water quality standards and emission contaminate levels. The Director of the DEQ oversees a staff broken down into functional divisions: air, water, solid waste, noise, lab and research, field services (regional offices), administration services, and the Office of the Director. The total staff numbers about 125 people, with a $3-$4 million budget per biennium. Aside from issuing regulations, the principal regulatory mechanism of the Department has been its permit system. Under this system anyone discharging materials into public waters must obtain a permit issued by the DEQ. Solid waste permits and air permits are also now required.

The Environmental Quality Commission is the policy-making body associated with the DEQ, and is the only Oregon commission that serves at the pleasure of the governor.

As noted earlier, no statewide land use plan has yet been developed. Probably the most significant

land use legislation now in effect in Oregon is the 1969 Zoning Act (Chapter 324, Laws of 1969). This act provided that if, after December 31, 1971, there were any lands within a county--whether or not within a city--that were not subject to comprehensive land use plan and zoning ordinances, the governor "shall prescribe, may amend, and shall thereafter administer comprehensive land use plans and zoning regulations for such lands." However, if a county had such plans and ordinances under consideration at this time and had shown satisfactory progress toward final enactment, the governor was empowered to grant an extension for compliance. Moreover, if a county (or city) governing body or other zoning authority adopts an appropriate plan and ordinance after promulgation of such by the governor, the county's (city's) plan and ordinance shall supersede those of the governor.

Goals of this comprehensive physical planning process include:

> conservation of open space and the protection of natural and scenic resources;
>
> conservation of prime farm lands and provision for an orderly and efficient transition from rural to urban land use;
>
> development of an orderly and efficient arrangement of public facilities to serve as a framework for urban and rural development;
>
> diversification and improvement of the state's economy;
>
> development of properties within the state which are commensurate with the character and physical limitations of the land.

The resulting land use plans and policies are to "provide guidance for physical development within the State responsive to economic development, human resource development, natural resource development, and regional and metropolitan area development."

In delineating plans under this Zoning Law, the governor may not prescribe building regulations. He may, however, institute proceedings to enjoin any development which is inconsistent with the applicable land use plan or zoning regulation. Required hearings on governor-prescribed plans and/or ordinances are to be held by the governor, or his designated representative, in the county

seat of the county in which the plans and/or ordinances are applicable.

The structure of state government in Oregon appears to be similar in certain respects to that in Texas. Of particular significance is the important role played by the Governor and his staff in providing a mechanism to ensure cooperation and coordination between various state agencies. The use of the threat of state action to motivate county adoption of comprehensive land use planning and zoning ordinances provides a good example of one method for getting greater action at the local level in the area of land use planning, particularly for the unincorporated lands of the state.

Washington

During the late 1960's the State of Washington experienced an unprecedented period of environmental and natural resource management consciousness. Occurring simultaneously, and providing an atmosphere within which such interest could more easily be fostered, was a rapid expansion of a state economy based primarily on natural resources and the aerospace industry. The state's rapid economic growth, particularly in the urban areas, served to heighten this concern in both the general population and in the legislative and executive branches of state government.

This concern was not an entirely new development. For example, the 1959 Washington Planning Enabling Act provided for the orderly physical development of counties. The State Planning Act and the Optional Municipal Code, later legislative action, were also designed to improve land utilization policies. Within the executive branch, the Public Lands Division of the Department of Natural Resources was responsible for the administration of state-owned lands and forests.

However, the existing state system for dealing with environmental resource management issues was generally fragmented and ineffective. An uncoordinated maze of councils, commissions, boards, and agencies resulted in the efforts of individual governmental units adding up to a relatively insignificant net effect on critical environmental issues. Moreover, the proliferation of small agencies and commissions had left the individual citizen with an ineffective voice in environmental decisions. Agency decisions could be judicially reviewed under the

state's Administrative Procedures Act, but costs were frequently prohibitive for most citizens.

The state was also faced in the late 1960's with the task of formulating a workable scheme for controlling site selection for new electric power generating facilities. While it was aware that increased power generation would be necessary in the future, the state also realized that power plants frequently had adverse impacts on local ecology, economy, development, and population growth. Broader land use policy issues had also yet to be adequately addressed.

As a result of these problems several steps were taken in the State of Washington in the late 1960's and the early 1970's to improve the state's environmental policy-making and administrative processes. Initial efforts, based upon the 1968 Report of the Governor's Task Force on Executive Reorganization, focused on the establishment in 1969 by the legislature of the Office of Program Planning and Fiscal Management; the following year the legislature reacted to environmental pressure with the adoption of a "superagency" Department of Ecology (DOE) and an associated Ecological Commission.

The DOE assumed the functions of four existing bodies: the Water Pollution Control Commission, the Water Resources Department, the Air Pollution Control Board, and the Health Department's Division of Solid Waste Management. This reorganization did not affect the statutory responsibilities of the Department of Natural Resources, which controls state lands, timber activities, and mining activities, or the Departments of Fish, Game, Agriculture, or Parks and Recreation. Headed by a Director responsible to the governor, the DOE organization involves two primary branches: Public Services, which handles daily technical and five regional office operations, and Administration and Planning, which provides supportive services and planning and program development.

The seven-member Ecological Commission, appointed by the governor to advise the Department of Ecology, includes one representative from each of organized labor, business, and agriculture, and four members representing the public at large; members are removable only for cause. Legislation requires the Commission's assistance when DOE proposes a state position, an environmental quality plan, decides on financial grants, variances, legislative appropriation requests, etc. In addition to its advisory role, the Commission is given a veto power over the DOE

action if five of the seven members disapprove by written memorandum.

One further interesting aspect of the Washington reorganization is the Pollution Control Hearings Board, which provides any interested party with free access to review of DOE decisions. Consisting of three governor-appointed members having staggered six-year terms, the Board travels to the actual site of the controversy and holds hearings without the necessity of attorneys or formality. These procedures eliminate the expense and time delays inherent in the state court system; by providing open, fast, and accessible airing of controversies, the Board has become a true "small man's" court. The Board does not eliminate judical review, for there is always recourse to state Superior Courts.

Also a product of the 1970 legislature was the Thermal Power Plant Siting Act, which statutorily underwrote the Thermal Power Plant Site Evaluation Council created by the governor (by executive order) in 1969. The Council consists of the directors (or their designees) of the Departments of Ecology, Fisheries, Game, Parks and Recreation, Social and Health Services, Commerce and Economic Development, Natural Resources, Civil Defense, and Agriculture, plus the Inter-Agency Committee for Outdoor Recreation, the Utilities and Transportation Commission, Office of Program Planning and Fiscal Management, the Planning and Community Affairs Agency, and a representative from the county of the proposed site. The Council has the power to adopt rules, develop environmental guidelines, receive and investigate applications, contract for studies, conduct hearings, report recommendations to the governor, and prescribe monitoring. It should be noted that the Council's jurisdiction is limited to thermal power plants, and excludes dam sites and nuclear reactors. The Council does have an effective veto power over proposed sites, but sites it sanctions may in turn be vetoed by the governor and other "checking" mechanisms. One problem with the existing system is that the Council responds only to proposed sites; it has no independent planning capability for siting research. Although the Council has the siting prerogative, the system is more a "full, fair stop" system than a "one-stop" procedure, with the Act providing for a "counsel for the environment" to portect the public interest for the duration of any proceedings, "independent consultants" paid by applicants' funds to evaluate proposals, and a freedom-of-information provision assuring full access to decision-making data.

1971 witnessed further environmental action by the legislature, including passage of an innovative

Coastal Waters Protection Act and a State Environmental Policy Act. Recently, however, economic conditions in Washington have been less favorable. It now appears that the environmental wave has crested in the legislature, with the bulk of the responsibility for environmental action being entrusted to DOE (and the Thermal Power Plant Site Evaluation Council).

Concern for the development of improved state land resource management policies has recently increased in Washington, however. As noted earlier, existing planning and land use policies in the state are essentially based on the 1959 Planning Enabling Act and later legislation such as the State Planning Act. The Planning Enabling Act, providing for the establishment of county planning commissions and the appointment of county planning directors, provides counties authority for

> guiding and regulating the physical development of a county or region through correlating both public and private projects and coordinating their execution with respect to all subject matters utilized in developing and servicing land, all to the end of assuring the highest standards of environment for living, and the operation of commerce, industry, agriculture, and recreation, and assuring maximum economies, and conserving the highest degree of public health, safety, morals, and welfare.

Each planning commission is directed to prepare comprehensive plans for the orderly physical development of the county, with each plan including maps, a statement of principles, standards, a land-use element, and other optional elements. The State Planning Act was later adopted to permit development of a statewide plan and the coordination of local, metropolitan, and regional efforts. Although this act, as well as others, permits the formation of regional planning councils and similar bodies, little has yet been done, for the acts provide no enforcement powers.

At the present time, in addition to the land use-related activities of the Thermal Power Plant Site Evaluation Council and other environmental agencies (e.g., DOE), the Washington State Land Planning Commission is actively involved in evaluating land use policies and planning in the state. This legislative commission has been in existence with a full staff for less than a year, and thus many of its programs and proposals are still in

the formative stages. It does appear, however, that a regional structure for dealing with state land use issues may be recommended by the commission.

Washington is characteristic of those states that have relied in the past principally on local planning and control of land use, but are now developing a land resource management system at the state level. Of possible significance to Texas is the fact that despite a rather broad delegation of land use planning powers to counties, the Washington system still appears to need regional and state land use plans to provide a basis for effective local land use planning.

Minnesota

At the present time there is no statewide land use plan in effect in Minnesota. Scattered efforts are underway at the state level, however, to deal with land utilization and management issues. For example, land use controls are exercised by the Pollution Control Agency, through its waste disposal permit system, and the Department of Natural Resources, through its model flood plain and shoreline management ordinances for counties. It is also the duty of the State Planning Agency (as the governor's representative) to classify all public and private lands in the state with reference to the use for which they are adapted. The Department of Natural Resources, in addition to assisting the State Planning Agency in the classification of state-owned or trust land (through its Division of Lands and Forestry), is required to develop standards and criteria for the subdivision, use, and development of shoreland for unincorporated areas.

Primary control of private uses of land is concentrated in the individual counties and incorporated areas, however, for they are free to regulate development to whatever extent they wish. Since 1959, all Minnesota counties (except Hennepin and Ramsey) have had the authority to establish a planning commission, prepare, adopt, and enforce zoning ordinances. A county's comprehensive plan applies only to unincorporated areas, but it may specifically control plotting and land development. Likewise, under the 1965 Municipal Planning Law, a municipality may create a planning agency, adopt a comprehensive plan, adopt zoning ordinances extending two miles into unincorporated territory in a town or county having no zoning regulations of its own, and prescribe subdivision regulations.

Following the adoption of its comprehensive plan, a county may enforce it through the use of controls; such controls include the establishment of zoning districts designating lands for such usages as agriculture, forestry, recreation, residence, industry, trade, soil or water supply conservation, surface water drainage, shoreland conservation, and so forth. The enforcement of ordinances, regulations, or controls adopted under a county's comprehensive plan is up to the County Board of Commissioners. In addition to other remedies, the Board may institute proceedings to prevent or abate violations.

In the Twin Cities (Minneapolis and St. Paul) area, the Metropolitan Council must review, and may suspend, the long-term comprehensive plans of independent commissions, boards, and agencies such as the Park Reserve Districts, the Metropolitan Airports Commission, Conservation Districts, and Watershed Districts. The Metropolitan Council is also in the process of establishing a Metropolitan Development Guide, a long-term comprehensive planning guide for region-wide development.

At the present time about 80 percent of the Minnesota counties have completed their comprehensive plans. Basic research in each has gone into present land uses, population records, economic base, and transportation networks. Counties, usually with the help of consultants, have then projected future land uses, economic shifts, etc.

This concentration of land use determinations in counties and municipalities is a weakness in current Minnesota law, for these governmental units have been provided no specific guidelines by the state as to what constitutes good land utilization. Furthermore, a county's comprehensive plan may only be a collection of colored maps, since implementation controls are not required.

At the state level, the absence of a statewide land use plan has resulted in agencies makeing land use decisions on an ad hoc basis. No agency appears to make permit-granting decisions on the basis of a comprehensive plan, or to cooperate extensively with other agencies on issues affecting both.

These difficulties with local and state land use management in Minnesota have resulted in considerable support for a coordinated administrative approach at the regional level, with local and regional development plans formulated within the framework of a state plan having broad land classifications and administered by Regional

Development Commissions as outlined in the 1969 Regional Development Act. This 1969 Act divided the state into 11 regions, excluding the seven-county Minneapolis-St. Paul region. Within each region the governor shall establish a Commission upon receipt of a petition of local government units representing a majority of a region's population. Since there is no requirement that each region shall have a Development Commission, less than one-half of the regions currently have formed Development Commissions (and only two of these have been in existence for more than one year).

Once formed, a Regional Development Commission (as described in the enabling legislation) has the job of preparing and adopting a regional comprehensive development plan consisting of policy statements, goals, standards, programs, and maps prescribing guides for an orderly development of the region. The comprehensive plan must recognize at least the following future developments having a regional impact: land use, parks and open space needs, necessity and location of airports, highways, transit facilities, public hospitals, libraries, schools, housing, and other public buildings. No regional development plan may be adopted until 60 days after its submission to the State Planning Agency; the latter, however, has no authority to suspend or revoke any regional development plan.

Each city, village, borough, town, county, watershed district, and soil conservation district, all or part of which lies in the region, must submit its comprehensive development plans to the Regional Commission, which has 60 days to review any such plans. On such plans the Commission can only make comments and recommendations and hold hearings to mediate differences of opinion. The Commission is also to review comprehensive plans having regional impact of independent commissions, boards, or agencies, and can suspend such plans if they are incompatible with the regional development plan for that region.

The Minnesota experience points up once more the importance of a state plan setting forth goals and objectives for land resource management as a prerequisite to effective implementation of land use controls at the local level. It also highlights the significant role which regional planning commissions can play in a comprehensive system of land resource management. Both of these lessons are of significance to the development of a land resource management system for Texas.

IV. PRIOR STUDIES AND SUGGESTIONS RELATING TO LAND RESOURCE MANAGEMENT IN TEXAS

The issue of land resource management in Texas has been the subject of three previous studies conducted by State agencies. The approach to be taken toward land resource management in Texas was also the subject of a recent two-day conference sponsored by the Council of State Planning Agencies and the Office of the Governor of Texas. In addition, a number of legislative actions dealing with land resource management have been proposed by the newly formed Texas Environmental Coalition. In this section, these prior studies and suggestions are summarized, and their implications for the development of a land resource management program for Texas are discussed.

Goals for Texas

In January, 1969, the State of Texas initiated a comprehensive examination of the effectiveness of State programs and expenditures. The major agencies of the State were asked to prepare a projection of future program goals and expenditures. The initial results of this investigation were published in September, 1969, as Goals for Texas, Phase One. It contained an inventory by program categories of all major State activities as developed by State agencies.

Copies of the agency goals were distributed to more than 8,000 persons, including officials of Regional Councils of Government in the State's twenty-one official planning regions. These officials assumed responsibility for appointing ten task forces of citizens in each region to develop goals for each of the ten categories of governmental activity dealt with in Phase One. The results of this process were published in September, 1970, as Goals for Texas, Phase Two.

The ten program categories used in Goals for Texas were: education, the economy, general government, health, housing, human resources, natural resources, recreation and open space, public protection, and transportation. In each program category, three types of goals were delineated: (1) long range goals with a minimum ten year planning horizon; (2) intermediate goals with a six year objective; and (3) short terms goals with a two year proposed accomplishment.

While the issue of land resource management in Texas was not dealt with in a comprehensive way in Goals for Texas, four of the ten program categories, housing, natural resources, recreation and open space, and transportation, contained statements of goals related to land resource management. Taken as a whole, these goal statements provide a useful insight into the range of land resource issues which are of concern to Texans and the type of approach needed to deal with these issues. In the following sections, the land resource goals identified in Phase One and Phase Two of Goals for Texas are summarized, and the implications of these goals for the development of a land resource management system for Texas are discussed.

Phase One Land Resource Goals

In Phase One of Goals for Texas, the major State agencies identified long range, intermediate, and short term goals. Not surprisingly, these goals proved to be closely related to the existing on-going programs of the various agencies. Given the limited role played by State agencies in land use planning, the number of goal statements pertaining to land resource management were predictably small.

In the area of natural resources, four goals were identified which have an indirect relation to land resource management: (1) providing public access to the fishing and boating waters of the State by obtaining rights of ways and easements; (2) completion of an inventory of water uses and water availability in the State; (3) preventing pollution and controlling drilling on submerged lands; and (4) purchasing lands for resale to eligible veterans.

In the area of recreation and open space, the following goals were identified: (1) obtaining data on the environmental resources of the State; (2) state acquisition of public recreation sites; (3) state acquisition of unique natural areas; and (4) state acquisition of approximately thirty historic and prehistoric sites of statewide significance.

Phase Two Land Resource Goals

In Phase Two of Goals for Texas, goals identified by citizen's groups within each of the State's 21 official planning regions were presented. It should be noted that these goals were presented as developed by each region, and no attempt was made to consolidate the goals or to avoid overlap. While the program categories used in Phase Two were identical to those used in Phase One, the range of goals

delineated in each category was much broader. This was particularly true of those goals pertaining to land resource management.

Housing. A major section of the goals identified relating to housing concerned land utilization policies. The following long range goals were mentioned: (1) bring about a rational use of land areas; (2) strengthen the urban-rural balance pertaining to land use and zoning; (3) develop compatible zoning regulations permitting new development programs providing economic flexibility; (4) assure coordinated efforts by all cities, counties, regions, and other levels of government so that zoning regulations applying to housing development will be standardized; and (5) develop land use controls over unincorporated areas.

Intermediate goals developed in the area of housing included: (1) extend zoning and subdivision controls to all counties, or to SMSA counties; (2) obtain a complete compilation of land uses by census tract or other geographic unit and establish a mechanism for annual updating; (3) encourage the use of Planned Unit Development and other new techniques in urban land use planning in order to effectuate large scale housing developments and better utilization of urban land; (4) assist in the improvement of continuing sound housing development through continuing studies of the existing and future distribution of land uses; and (5) provide environmental protection for home purchasers through promotion of revised, modern legislation; and uniform development and subdivision regulations.

Short term goals identified in the area of housing included: (1) establish methods providing cities more control in the extraterritorial jurisdictional areas; (2) expand the land utilization code to enhance the use of modern, more efficient methods of housing construction; (3) develop a State land bank program which could provide low interest loans or grants to municipalities wishing to purchase vacant land for future low-income housing development; (4) encourage uniform land utilization codes on a statewide basis that would set minimum standards and permissive codes for rural housing; and (5) simplify procedures for platting and approval of plats for land development.

Natural Resources. In the area of natural resources, goals were identified for fish and wildlife management; water development, management, and administration; soil and water conservation; environmental improvement; land use management; oils, minerals, and gas; agricultural development; and forestry.

In the area of fish and wildlife management, the following intermediate goals were identified: (1) create opportunities in the midst of rapid urbanization, for maintaining adequate habitats for the native wildlife of the region; (2) expand the use of botanical gardens and wildlife preserves that are necessary for the preservation and study of types of plant and animal life; (3) establish development easements through negotiated deed restrictions to protect wildlife areas and irrigated farm land from urban encroachment; and (4) provide grants by Parks and Wildlife Department that will enable local landowners to establish game preserves on their own land. In addition, a number of specific suggestions for the acquisition and preservation of major wildlife areas were made.

In the area of water development, management, and administration, the following intermediate goals were presented: (1) establish a regional authority for environmental management that will maintain an inventory of estuarine areas and natural resources; acquire land through purchase, gift, lease, easement or condemnation; contract with the State, federal, or any local government to purchase or maintain any estuarine land or water; and enact rules and regulations to protect the marine and aquatic wildlife in any bay, coastal area, bayou, marsh, estuary or any other body of water not under the control of the federal government; and (2) provide data necessary to reflect the current influence of changing land use and forest conditions for statewide, multipurpose water planning. One short term goal provided for the establishment of a regional authority or committee to approve proposed developments on municipal lakes.

In the area of soil and water conservation, several important land resource goals were identified. Long term goals included: (1) implement a resource conservation and development project plan for three million acres of land; and (2) obtain a detailed scientific soil survey report for each region to be used as a vital and necessary tool for comprehensive regional planning. Intermediate goals included conserving wet lands, impounding basins, structurally weak soils, drainage ways, and flat plains. Short term goals were: (1) establish a regional authority that will be empowered to review and pass on any construction project that will involve flood control and drainage that may result in the flooding of any lands, and deny any construction permit that will result in irreparable damage to the environment; (2) establish a regional authority that will assist the State in developing regional flood plain management studies that stress conservation and multiple use; and (3) find suitable locations for county landfill

sites; acquire the land; and complete all planning necessary to begin work.

Environmental improvement goals included two long range goals: (1) encourage the preservation of all natural resources through the involvement of regional councils of governments; and (2) achieve scientifically sound management for optimum balance of the total environment. Several important intermediate goals were presented: (1) initiate a program to bring together all existing efforts in environmental quality control and improvement, including air pollution, water pollution, flood plain management, agricultural resource management, solid waste disposal, liquid waste treatment and disposal, noise, open space preservation, ground water resources and subsidence, resource protection and utilization, environmental health, marine biology and marine resources, and preservation of unique ecologies; (2) encourage public and private agencies to identify critical environmental problems and to develop action programs to minimize any detrimental practices; and (3) provide for coastal and rural natural resource management to preserve the environment from hodge-podge and unplanned development.

Short term environmental management goals included: (1) gather ecological baseline data on all coastal waters and conduct periodic updating of this program; (2) establish controls over areas along streams and tributaries to preserve the ecology; and (3) design a data-gathering network that will allow scientific monitoring of any deteriorating environment.

Land use management goals included the long term goal of preparing unified regional land use plans for the development and management of the regions based on a comprehensive inventory of the natural environment. Intermediate land use goals included: (1) develop a multilevel framework to facilitate analyzing an array of specialized land uses of various sizes, fulfilling different functions, and occurring at various times; (2) promote the use of flood plain zoning; (3) implement the results of a land use study by providing county and regional councils of government with land use regulation authority; (4) develop procedures and criteria for evaluating the relative costs and benefits of alternative land uses, combinations of land uses, and land treatment measures; (5) tighten the Submerged Land Leasing Act; and (6) encourage cooperation among the U.S. Corps of Engineers, Texas Water Development Board, U S. Weather Bureau, and the U.S. Geological Survey to develop a land use and drainage plan.

Short term land use management goals included: (1) encourage county and local governments to assist in the publication of completed soil surveys; establish guidelines on zoning regulations; and encourage highway and city officials to review future development plans with planning agencies; (2) determine the impact of tax policies on present land use; (3) request legislation for county zoning and platting laws; (4) determine the impact of land ownership patterns, and land ownership trends upon the availability of alternatives in land use; (5) provide a series of alternative land use maps to guide development of government programs and the development of private use of the land; and (6) appraise land use impacts on private uses.

In the area of oil, minerals, and gas, several short term goals dealt with the need to survey known mineral deposits, including in particular petroleum reserves, to determine their quantity and quality and the possibility of economic utilization or conservation.

In the area of agricultural development, the long term goal of protecting future crop lands and grass lands from being improperly used and developed received high priority. Intermediate agricultural development goals included: (1) set up zoning regulations in order to locate housing and highways in areas not suitable for the production of food and fiber; and (2) establish methods to conserve production land and grass land for the future, and develop control systems to protect the important production lands from urbanization and industrialization.

In the area of forestry, a long range goal identified was the development of management techniques to determine the most efficient combinations of practices for public and private timber production. An intermediate goal in forestry dealt with developing and implementing a comprehensive productivity concept as the basis of forest land valuation. A short term forestry goal was to encourage assistance in managing natural wooded areas to help private owners manage their wooded areas.

Recreation and Open Space. A number of significant land resource management goals were identified in the section on recreation and open space. Long term goals included: (1) state acquisition and development of land for parks, recreation and scenic areas, and open spaces; and (2) development of an area's landmarks program in which historic sites and prehistoric sites of value to the community are located, identified, and preserved.

Intermediate goals included: (1) urge all levels of government and private organizations to acquire areas for open space and appropriate park uses; (2) promote the advance acquisition of open space ahead of intended development to take advantage of lower land cost; (3) provide special recreation opportunities through the acquisition and development of large acreages of artificially forested land, a large animal compound exhibiting different species of animals in separate environments to be viewed from the automobile, and by restocking with native large and small game; (4) identify possible rights of ways and easements for public access to water bodies; (5) require dedication of adequte parks and playgrounds as part of subdivision regulations; (6) promote venture capital for development of natural resources for recreation; (7) develop joint State and local planning, programming, financing, acquisition and development of parks and open spaces in county areas and regions; (8) develop State and local financing programs for the purchase and the renovation of buildings of historic and architectural value by developing a cooperative program with the State Historical Survey Committee, the Parks and Wildlife Department, local civic organizations, and governmental units; (9) furnish assistance to local landowners in establishing fish hatcheries, picnic facilities, and swimming areas around conservation lakes; and (10) consider the possibility of granting tax relief for locating camping facilities in areas of high land cost near urban centers.

Short term recreation and open space goals encompassed most of the goals listed as long term and intermediate. In addition, the following short term goals were identified: (1) acquire crucial, irreplaceable beach and bay area land; (2) investigate unspoiled acreage in contemplated growth areas and encourage recreational land donations or long-term leases from private landowners; (3) require the State Highway Commission, other land-using agencies, and public utilities to place a value on natural habitat and wildlife in an area under study for a road or other development, and accordingly route highways and other projects; (4) pursue the feasibility of controlled development along the scenic routes and approaches to major attractions; (5) protect open space and recreation areas from encroachment by other public uses that pre-empt or decrease the quality of recreation experience; (6) protect open areas suitable for replenishing underground water supplies; and (7) promote public use of privately-owned large and extensive recreation land.

Transportation. Among the goals delineated in the transportation area, was the goal of developing compatible zoning controls around existing airports and proposed airport

sites by excluding residential development and by reserving land for acceptable uses such as agriculture, parks and recreation, and industrial development.

Implications for Land Resource Management in Texas

The review given above of the land resource management related goals identified in Goals for Texas reveals a substantial difference in viewpoint between the two phases of the study. The State agencies were able to identify but a few goals pertaining to land resource management in Phase One, while the citizen's groups within each of the State's 21 official planning regions were able to identify a host of goals in Phase Two within each category related to land resource management. One is left with the impression that the land use goals developed in Phase Two represent a much more comprehensive view of the State's role in land resource management than the more limited role indicated by the goals identified by State agencies in Phase One.

The difference in viewpoint can be explained by a difference in perspective. As mentioned earlier, State agencies focused their goals on existing programs and activities. Since the present role of the State in land resource management is limited, few goals were identified in this area. On the other hand, the citizen groups responded more to perceived needs and their goal statements reflected the rising concern throughout the State with issues that are related to land resource management. In addition, the citizen's groups were free to develop far-reaching goal statements without having to develop or assume responsibility for means of implementing these goals.

The sizeable list of goals relating to land resource management in Phase Two provides a clear indication that pressures are developing for the State to assume a much greater responsibility in this area than it has to date. The emphasis given to coordinated activities involving the State, regional, county, and local governments indicates the need for a multilevel approach to land resource management. Finally, the fact that land resource concerns are not limited to the traditional areas of urban zoning and subdivision control supports the view that a land resource management system for the State must be comprehensive in scope, including an entire range of concerns (e.g. housing, transportation, recreation, open space, preservation, conservation, and natural resource development).

The Texas Urban Development Commission

The Texas Urban Development Commission was formed in May, 1970, and was charged by the Governor with the

responsibility for reviewing progress being made in urban areas, identifying obstacles that retard or prevent urban problem solving, and recommending long-range development goals for state and local government. Early in 1971, the Commission formed the Land Resource Management Committee to examine the need for improvement in the land use control processes being employed by local governments in Texas. The Committee's first report, A Land Resource Management System for Texas, was published in 1971 and contains not only an analysis of the significant issues and problems confronting Texas in the area of land use, but also a proposal for a new system of land resource management for the State.

The Committee set forth the respective roles, responsibilities, and authorities of each operational level of governmental organization in Texas under what they termed a "unified system of land resource management." Within each level of government, the Committee discussed the required functional activities of the system, including policy formulation, planning, management, regulatory, supportive assistance, and arbitration of differences. In the sections below, the Committee's recommendations with regard to State governmental organization are described first, followed by a description of the regional and local governmental organization.

State Roles and Responsibilities

The Committee begins by asserting that "in order to achieve a greater coordination and unification of land resource management activities at the State level, it is desirable to focus these significant new roles and responsibilities within existing state organizations." Thus, the new land resource management system is designed to fit within the existing framework of Texas State Government.

The Governor, the Committee recommends, should be given authority by the Legislature to begin formulation of a State Land Resource Management Policy, along with the associated requirement for coordinating all land resource planning by the State.

The primary responsibility for the formulation of State land resource policy should be given to the Governor's Office, but with provision for input by the Legislature, a widely representative advisory committee of regional and local interests, the Interagency Council on Natural Resources, and the General Land Office. Once formulated, the policy proposals relating to land resource management should be formally submitted to the Legislature for consideration and adoption.

The Committee notes that the existing Division of Planning Coordination in the Office of the Governor will continue to function to coordinate existing resource agencies, but in addition will be given primary responsibility for maintaining an overview of the state land resource planning process and its interaction with regional and local policies and neighboring states as well. To accomplish these new tasks, the Committee recommends that the Division be strengthened and appropriately funded.

In perhaps the most controversial portion of its report, the Committee recommends that the key responsibility for developing the new land resource management system and for carrying it out be given to the General Land Office. "The General Land Office has an existing organizational structure and background in similar management and regulatory programs that lend themselves well to the proposed State role in land resource management."

The Committee recommends that the General Land Office, under the direction of a new Deputy Commissioner for Land Resource Planning and Management, be given responsibility for the following functional activities: state land resource planning; provision of technical and financial assistance to other State agencies, regional and local units; resource management and the application of regulatory programs and practices; and the provision of an arbitration mechanism to resolve conflicts in land management activities at the respective levels of government.

Under the new system, coordination of State activities with those of federal, regional, and local governments, will be the responsibility of the Governor's Office, which shall continue to be responsible for receiving and allocating any federal funds available for land resource planning and management programs. Allocation of State funds to this program should also be coordinated through the Governor's Office, with the advice of the Legislative Budget Board.

The Committee recognizes the need for close coordination between the Division of Planning Coordination in the Governor's Office and the new functional roles of the General Land Office. It recommends that the new State role should be a "gradually phased process, allowing sufficient time for full consideration of State policy objectives by all elements of the system."

Regional Council Roles and Responsibilities

The Commission views the regional councils as playing significant roles in a land resource management system.

It makes a distinction between the functions which regional councils already have the capability to perform, and those functions which would require new capabilities.

The Commission views regional councils as a logical focal point for regional policy formulation with regard to land resource management. Regional councils have the capability to bring together the expertise and views of regional, state, federal, and local policymakers. The Commission also notes that "the planning function is the regional council's forte in trade." The administrative capability exists for land use planning in most regional councils, even though, as the Commission notes, the actual planning appropriately awaits the policy formulation function. Assistance to local member governments and proper referral to assistances available at the state and federal levels is another obvious function of regional councils.

With regard to the management and regulatory function and the arbitration function, the Commission notes: "A careful evaluation of the requirements of these functional categories, by the regions, their members, and the State, should precede the actual enactment of legislation or changes in bylaws to implement this recommendation."

Local Roles and Responsibilities

Recognizing that "A significant level of citizen participation in the policy formulation, planning, and arbitration functional requirements is prerequisite to the operation of this system," the Committee recommends a rethinking and comprehensive restructuring of the basic enabling legislation which gives to municipal, county and other local governmental agencies their basic authorities for land use planning and regulation. It notes, however, that "the creation of a restructured code for local planning and management of the land resource should come as a by-product of the proposed unified system and not as a forerunner to it."

Local responsibilities are seen to commence with the process of policy formulation which should include every segment of the community. The appropriate policy adopting board, in most cases the city council or the commissioner's court, should provide the necessary impetus, support, and guidance to assure a high level of citizen input into the policy formulation process.

The planning process, while relying for the most part on the existing expertise of professional planning staffs at the local level, should also involve public

participation, and should reflect the "values and needs of a cross section of the community . . ."

The Committee concludes that the new land resource management system will require that local governments become involved in much more than the traditional land use planning activities associated with the zoning and subdivision controls. It sees the local governmental unit being responsible for providing for innovative developments, performance criteria, and environmental protection and enhancement. To accomplish this task, the Commission recommends that the capabilities of local government should be strengthened, and some restructuring of local government land responsibilities should be undertaken to provide for assistance to the individual landowner or developer and for resolving differences and conflicts, both between the local government and private interests, and among differing private interests.

Implications for Land Resource Management in Texas

The Texas Urban Development Commission's recommendations constitute the most far-reaching proposal for change in the existing system of land resource management in the State. Of particular significance to the development of such a system, is the emphasis given in the Commission's report to a "unified system" providing for specific assignment of roles and responsibilities to the State, regional councils, and local governments. A basic criticism of the report is the Commission's failure to recommend the specific changes in the existing structure of government at all levels needed to implement the new system of land resource management.

At the State level, the Commission views the role of the Governor as being limited to policy formulation. It assigns prime responsibility for administration of the new land resource management system to the General Land Office. Since the State Land Commissioner is an elected official, his responsibility to the Governor is more personal than statutory. This raises the question of whether the proposed system would meet the requirements of the pending federal land use legislation which assigns to the Governor the responsibility for land use planning.

Further, the Commission does not recommend a procedure for handling conflicts between various agencies at the State level. It notes that the Division of Planning Coordination in the Office of the Governor would continue to coordinate existing resource agencies, but leaves open the question of who would have final authority to resolve conflicts both between these agencies and between an agency

and the newly created Deputy Commissioner for Land Resource Planning and Management.

The Commission report indicates that the Deputy Commissioner will have broad responsibilities for planning, provision of technical and financial assistance to state agencies and regional and local government, resource management and the application of regulatory programs and practices, and the provision of an arbitration function, but the report does not consider the scope of these powers, their relation to the other agencies of state government and to regional councils and local governments, and their relation to existing programs. It leaves the provision of technical assistance and arbitration of conflicts to administrative determination. Finally, the report does not indicate if the General Land Office will be directly involved in land resource management, or whether this function will be carried out by local government under guidelines prepared by the General Land Office.

The Commission assigns to regional councils responsibilities for policy formulation, planning, and technical assistance to member governments, activities already carried out by these councils. It leaves open the question of the extent to which regional councils will become involved directly in regulation and arbitration. Since the regional councils as presently structured in Texas are ill-suited to carry out these roles, there is some question as to whether the Commission really intends that the councils play a significant role in regulation and arbitration in the new land resource management system.

At the local level, the Commission proposes that local governments continue to have prime responsibility for planning and regulation with regard to land use. The Commission recommends that the state enabling legislation for local land use controls be strengthened, but does not indicate what changes in the enabling legislation are required.

Thus, the Commission's recommendations provide a general outline of the approach to be taken toward land resource management in Texas, without providing specific legislative recommendations for implementing the system. The framework suggested by the Commission does provide a useful starting point for the design of a comprehensive system of land resource management for Texas.

Texas Advisory Commission on Intergovernmental Relations

The Texas Advisory Commission on Intergovernmental Relations released a report on "Governmental Regulation of

Land Use in Unincorporated Areas of Texas" on September 8, 1972. The Commission defined the major problem to be addressed by the report as the lack of control by any general governmental unit over building standards, provision of public services, and incompatible patterns of land use in areas outside unincorporated cities and towns. Below, the description of the problem given by the Commission is summarized and the three alternative legislative actions recommended by the Commission are described.

Description of the Problem

The Commission report deals with only one aspect of the general problem of land resource management, control over development in the unincorporated areas of the State.

Texas cities have been growing at rapid rates in recent years. This growth is expressed both in population and in the extent of the unincorporated land annexed by cities each year. Because of this growth, what today is unincorporated farm land, is tomorrow part of a city. Because of the financial dependence of local government on the property tax, there is strong economic pressure on cities to annex less developed land to enable revenue to increase through growth in assessed values of new development rather than totally through increased assessments on developed land or increases in the tax rate.

However, annexation ordinances require that the city provide certain services to all city property. These services almost always include streets and curbs, utility conduits, waste treatment and sanitation. When a subdivision is developed on land subject to city subdivision regulations, the city can require the developer to adhere to certain standards pertaining to provision of streets and utilities and to dedicate a certain percentage of the subdivision or the equivalent in cash for schools, parks, and other public works. Thus, the cost is borne by the homeowner or commercial user rather than by the city treasury.

Under existing Texas law, cities may exercise control over subdivisions only from one-half to five miles outside their limits depending on the city population. Outside these belts, the only unit of government empowered to regulate land use is the county. Unfortunately for the cities, the regulatory authority available to the county is quite limited: ". . . they may not require standards for the provision of utilities, minimum lot size, setbacks or building lines, or the reservation of space for parks and recreational purposes." About the only power the county has is to require provision for streets and drainage.

As a result of the limited powers over land use in areas outside the extraterritorial jurisdiction of cities, cities often annex subdivisions with streets, utilities, and open space far below legal standards. Most cities have no option but to upgrade the public services of these tracts at city expense. This allows the developer to shift the cost of these improvements to the city as a whole rather than to the purchaser, and thus to be able to sell at a higher markup or a lower price.

For its part, the State has some significant interest in preventing urban sprawl both for reasons of preserving environmental quality and to protect the financial position of its cities. The marked differences in standards on either side of the corporate limit of extraterritoriality encourages premature development not only past city limits, but up to five miles past these limits. Such spread forces an uneconomic expansion of utilities and encourages unsightly strip commercial development.

The consumer is also faced with several problems. The lack of city building standards means the home-buyer is subject to a great deal more uncertainty about the quality of his purchase. This lack of legal constraints on the quality of housing services is likely to be of even greater importance to renters. Finally, many such developments may be sold with at least the intimation that a city will soon annex the land and provide the necessary city services. Should the city not annex, the buyer may be stuck with an uninhabitable and unsellable piece of property.

The Commission concludes: "The overriding issue pertaining to land use regulation in unincorporated areas of Texas is whether the citizens of the State can continue to depend entirely on the present piecemeal and haphazard system as a means of insuring sensible and beneficial use of the State's land resources."

Proposed Legislation

The Commission offers three proposed pieces of legislation which would "extend a broad range of permissive development controls to both cities and counties, allowing them to insure quality development in all areas of the State." The Commission points out, however, that the proposed legislation is permissive in that "each local government will continue to be free to adopt development standards and policies as it sees fit."

Proposal Number One: City Standards in Areas of Extraterritorial Jurisdiction. The first proposal would

amend the Municipal Annexation Act to permit cities to extend ordinances governing the construction and maintenance of structures into their extraterritorial jurisdiction. The powers to be granted would include ordinances governing plats and the subdivision of land, and the construction, alteration, or maintenance of structures, but would not include the power to zone. When a property is within the extraterritorial jurisdiction of two or more cities, the regulations or ordinances of the city which are the most restrictive in character would control, if enforced by that city.

Proposal Number Two: County Development Standards. The second proposal would extend the full range of subdivision and building regulation authority to all counties. Farm dwellings and other agricultural structures would be exempt. Counties would regulate subdivisions and set construction standards in areas of city extraterritorial jurisdiction if the city in question has not extended its regulatory authority into such an area by ordinance. Otherwise, the city ordinances would hold.

Proposal Number Three: County Land Protection and Management. The third proposal is the most far-reaching. It would authorize counties to regulate land use in unincorporated areas through the use of standard zoning methods and procedures. Thus, under this proposal counties would be given the same land use control authority presently given to cities and towns. The proposed legislation "would eliminate the need for piecemeal delegations of zoning authority to specific counties, as has been the pattern in the past, and allow all counties to establish necessary controls over development in flood plains and provide protection for areas of critical local or State concern." In the area of extraterritorial jurisdiction, the county standards would apply, unless a local community had enacted more stringent ordinances.

It is clear from the report, that the Commission prefers the third alternative. "It is clear that the State as a whole, and especially regions near central cities, have failed to achieve the standard of residential life in some subdivisions to which citizens and officials alike should be committed. To prevent these conditions from continuing, most counties should begin with a system of comprehensive planning to direct future growth in an orderly manner. County zoning would provide a useful management tool to prevent the further proliferation of land use problems which can be found in all sections of the State. The need for strong subdivision regulations, including enforcement, is also clearly apparent."

Implications for Land Resource Management in Texas

The Commission's report deals exclusively with the problem of land resource management in the unincorporated areas of the State. It is concerned primarily with planning and control of substandard development. Its first recommendation would enable municipalities to extend their building codes into the area of their extraterritorial jurisdiction. Thus, it would provide a mechanism for meeting the problem of substandard development in the extraterritorial jurisdiction areas, but would not provide for zoning of these areas, nor would it provide for any additional land use controls in the unincorporated areas which are not included in some extraterritorial jurisdiction.

The remaining two proposals would provide for the extension of land use controls to all unincorporated lands at the option of the county. The third proposal would provide for the extension of full land use controls to unincorporated areas at the option of the county, and would require substantial additions to the administrative structure of county government to implement these controls.

The Commission's report does not address the larger issue of state land resource management. None of the proposed grants of power are made contingent on any demonstration by county or city government that they have the planning staff or willingness to intelligently administer these new powers. No role is indicated for State or regional government in determining guidelines for regulation of land use in unincorporated areas. Thus, the Commission's report provides a useful institutional mechanism for enabling land use controls to be extended to unincorporated areas at the local level, but does not address the larger question as to how the extension of these controls might be integrated into a comprehensive statewide land resource management system. If the controls are to be effective in meeting the problems identified by the Commission, it would appear that more than mere enabling legislation would be required.

Texas Conference on Land Resource Management

The Texas Conference on Land Resource Management was convened in San Antonio on August 21-22, 1972, for the purpose of exploring various approaches which would lead to a more effective system of land resource management for the State of Texas. The Conference, cosponsored by the Council of State Planning Agencies and the Office of the Governor of Texas, brought together 22 individuals representing a wide diversity of interests and backgrounds, both public and private. In addition to the participants, a number of State

agency representatives were invited to address the Conference and to provide briefings on land use problems in Texas and the particular responsibilities of their own agencies in resource management programs. The conclusions of the Conference have been published in a report, Texas Land: Quality and Quantity. This report represents the first comprehensive assessment of the role and position of the State of Texas with regard to land resource management.

Position Statement

The Conference developed a brief position statement on land resource management for Texas urging the adoption of an approach which resembles the model land development code advocated by the American Law Institute. This approach "puts state government in a position to exercise the necessary degree of control over growth and development of the State, while preserving the process of local government and rights of private property owners. The role of the State is focused primarily on those land use decisions which would have a substantial impact upon more than one locality, have statewide implications, or require a final state level appellate or coordination effort." The State land resource management program should provide for the designation of areas and developments of critical state concern, and for the establishment of principles, standards, and criteria to guide the use of those areas and developments. The position statement concludes: "The adopted program is not to be one of merely negative controls, but rather an incentive and guide to the State in achieving its goals and objectives."

Recommendations and Principles to Guide the Development of a State Land Resource Management Program

The Conference set forth nine principles and objectives which provide a set of general guidelines for the development of a State Land Resource Management Program.

(1) Recognize a legitimate and emerging new role for state government and regional entities in land resource management, designed to complement and strengthen the existing local effort.

(2) Ensure that no element of a state land resource management program is unduly restrictive of private rights or constitutes a taking of property or rights without just compensation.

(3) Strengthen and improve existing mechanisms which have already proven effective and provide incentives and means necessary to their use.

(4) Acknowledge continuing role of local governments in land use planning and management and propose specific enabling legislation to strengthen this role.

(5) Stress an equitable intergovernmental system of land resource management, especially through intragovernmental and intergovernmental coordination of planning activities.

(6) Provide for adequate consideration of economic and social problems, as well as environmental problems.

(7) Improve and coordinate the collection and utilization of data and information.

(8) Provide means of enhancing public awareness of land management needs, and of increasing opportunities for public participation in processes related to a land resource management program.

(9) Accommodate the expected requirements of pending federal land use policy legislation.

Roles and Responsibilities for Each Level of Government Participation in a Texas Land Resource Management Program

In order to meet the needs of Texas in developing a statewide land resource management program, the Conference utilized the guidelines outlined above to make specific recommendations concerning the responsibility and role to be given to each level of government.

State Legislative Responsibilities. The Conference recommended that the State Legislature consider legislation which (1) meets immediate land resource management needs; (2) strengthens interagency and interfunctional coordination for land resource management planning and administration; (3) establishes the goals and broad policies to guide this program; and (4) permits the establishment of a broadly representative entity for guiding the development of a state land resource management program.

Executive Responsibilities. The Conference divided Executive Responsibilities into three sections:

The Governor should (1) make appointments to a state land resource management entity, with legislative confirmation; (2) guide the policy formulation and planning process of a land resource management program; (3) provide

staff support and participation in interagency planning and coordination; and (4) recommend needed enabling legislation.

The Interagency Council on Natural Resources and the Environment should (1) provide advisory assistance to a state land resource management program; (2) provide data and other supportive assistance to the entity; (3) continue to provide the coordination and cooperation which is needed to ensure an effective and integrated interfunctional planning process; and (4) participate in evaluating any proposed policy or planning recommendations on land resource management.

A Texas land resource management entity should (1) identify goals, examine and evaluate the likely consequences of attaining the goals, and evaluate the potential costs of alternative approaches to achieving adopted goals; (2) identify areas and developments of critical state concerns; (3) authorize regional planning agencies to suggest areas and developments of critical regional concern; (4) provide guidelines for administration and regulation of designated critical areas and developments; (5) encourage local governments to adopt and administer effective land use and development programs; (6) provide for evaluation of local planning and regulatory programs relating to critical areas and developments and make provisions for intervention in cases of local default; (7) ensure that adequate protection of private rights and interests are provided at each level of government; and (8) provide for public information and participation in a state land resource management program.

Regional Responsibilities. The Conference recommended that regional entities should: (1) provide service and information inputs to a state land resource management program; (2) participate in establishing criteria and guidelines for identifying and designating areas and developments of critical regional concern; (3) prepare regional land use plans; (4) provide assistance in establishing effective local planning activities; and (5) establish mechanisms for public participation in a land resource management program.

Local Responsibilities. The Conference recommended that local governments should: (1) provide the major share of responsibility for a land resource management program; (2) assimilate and use new land resource management capabilities as provided; (3) make more effective use of available authorization for interlocal and intergovernmental activities; (4) provide strong local leadership and input to regional aspects of a land resource

management program; and (5) ensure adequate protection of private rights and interests.

Possible Structure of a Texas Land Resource Management System

A proposed structure for a Texas Land Resource Management System is outlined in Figure 1. Reflecting the guidelines presented earlier and the assignment of responsibilities to each level of government described above, the proposed structure is hierarchal in nature, assigning responsibilities and roles from the state level down to the local level of government.

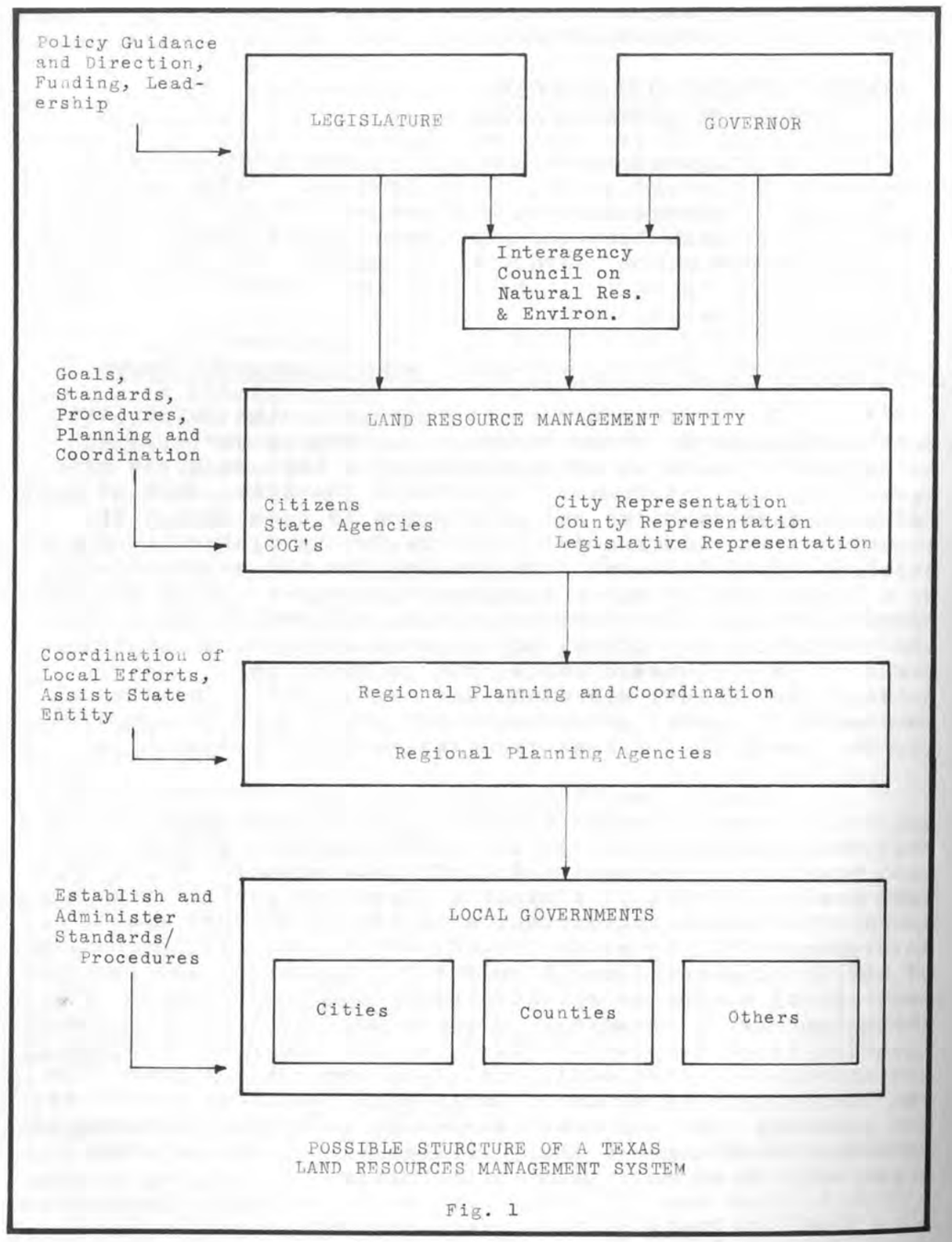
The Implications for Land Resource Management in Texas

The Conference report represents the latest and most comprehensive recommendation concerning the approach to be taken toward the development of a land resource management system for Texas. It defines the State role in land resource management as being principally concerned with establishing standards and criteria for developments of critical State concern. It provides for the establishment of a State land resource management entity to carry out this responsibility. The Conference also delineates the role and responsibility of regional councils and local governments. The regional council role is principally one of policy formulation, planning, and assistance to member governments. Local governments are given prime responsibility for carrying out land resource management activities.

Several important issues are not addressed by the Conference report. First, how is the recommended State land resource management entity to be structured? Will it have veto power over the activities of State agencies which affect land use? How will it administer land use control powers in areas of critical State concern in the event that local governments fail to act? Second, is the existing mechanism of the Interagency Council on Natural Resources and Environment strong enough to provide the needed coordination of State land use activities? How are conflicts between State agencies to be resolved? Third, should counties or local governments be given additional land use control powers in the unincorporated areas of the State? If these powers are not granted, then the control over developments in areas of critical State concern that are located in unincorporated areas will by default pass to the State.

Texas Environmental Coalition

The Texas Environmental Coalition, founded in October, 1971, recently has adopted a platform containing a



POSSIBLE STURCTURE OF A TEXAS
LAND RESOURCES MANAGEMENT SYSTEM

Fig. 1

number of proposals relating to the "achievement and maintenance of a quality environment for Texas." The planks of the platform are directed principally toward statewide issues, including regional and local governmental organization and activities which should be instrumental to dealing with statewide environmental concerns. A major portion of the platform is devoted to issues specifically related to land resource management.

The Coalition states: "Poor land use is one of the major environmental problems of our times, impairing not only the property wrongfully used, but also other near-by property. Maintaining undeveloped property in a natural state or for agricultural uses is often precluded by the actions of others. Some of our prime agricultural land is being engulfed by urban sprawl, to the long-range detriment of our food supply."

The Coalition concludes that the government must exercise some regulations over the many uses of land, both at the State and local levels. It calls for the "establishment of a coherent land use regulatory system . . ." Statewide land use management legislation should "provide for comprehensive land use planning and management by all levels of government to preserve the environment from uncontrolled deterioration." Among those areas needing protection, the Coalition emphasizes floodplains and coastal zones.

The Coalition states: "Land use regulations should provide for adequate notice and hearing for all those to be affected by a ruling, including landowners and the public. Private property and values should be respected and established uses should be permitted insofar as compatible with sound planning."

A statewide system of land resource management should "effectuate the best uses of land, including (a) preservation of areas of high amenity and ecological value, (b) maintenance of prime areas for agricultural use, (c) designation of areas of high environment-impacting activity, and (d) designation of areas best suited for residential, commercial, transportational, and all other proper uses."

In addition, the Coalition favors vesting regional governments with comprehensive land use planning and management authority. "The concept of a regional plan, rather than just a city or county plan, recognizes that there are spillovers between urban activities and adjacent areas. Many natural land features extend through several counties--for example, large watersheds and aquifers. It is time that regional organizations be given real roles and functions."

Appropriations are called for to support the development of a state land use inventory, the development of regional and local inventories, and the development of a coordinated data collection process among all agencies engaged in land resource planning and management.

Among the specific land use controls recommended by the Coalition are:

> . . . regulation and control of the growing, harvesting, and production of all forest resources and products, to the end that recreational, ecologic, and long-range commercial values of these areas shall be preserved and enhanced;
>
> . . . control of strip mining, including requirements for (a) the denial of permits in significant natural areas, (b) the cancellation of permits for strip mining projects unless restoration of the mined land, including topsoil and stream life, will be achieved in each appropriate parcel behind the mining operation, (c) ample powers and appropriations for enforcement, and (d) a severance tax to finance regulation;
>
> . . . establishment of standards for on-premise outdoor advertising, for meeting traveler service requirements, and for the control of future billboards adjacent to interstate and primary highways;
>
> . . . requirement of comprehensive transportation planning at the state and regional levels, and to limit and to authorize the use of gas tax revenues for specific purposes, including State construction, operation, and support of hiking, biking, and horseback trails, State support of regional comprehensive transportation planning, and State support of planning, construction, and operation of mass transit systems;
>
> . . . adoption of legislation to facilitate the unit management of oil and natural gas fields.

Other areas of the platform also deal with land resource management. For example, the section dealing with parks and recreation recommends: (1) that the Parks and Wildlife Department should substantially increase State acquisition and preservation of significant natural areas, including Scientific Areas, and should reduce environmental impairing construction and activity in State parks; and (2) legislation should be enacted to establish a State scenic rivers and trails system.

The Coalition also recommends that legislation should be enacted to establish and to implement a State policy with respect to the management of coastal resources and to provide more effective protection of the bays and estuaries of the State.

The platform of the Environmental Coalition is drawn for the most part from comparable legislation at the Federal level. At the same time, it is compatible with the approach recommended by the Texas Conference on Land Resource Management. Both groups suggest the need for a greater State role in land resource management, and call for the development of a State Land Resource Management System to include specific assignments of responsibilities to all levels of government. Both groups stress the need for strong regional participation in land resource management. Both reports emphasize the need to strengthen land use controls in areas of statewide concern. Finally, both groups call for the development of mechanisms to ensure public participation in land resource management.

The Coalition recommends giving regional governments comprehensive land use planning and management authority. However, it does not resolve the question of how this authority is to be given without a restructuring of regional councils. The Coalition calls for the development of a statewide system of land resource management, but does not indicate how this system is to be structured or how the roles and responsibilities of the State, regional councils, and local government are to be defined.

V. ANALYSIS OF ALTERNATIVE APPROACHES TO LAND RESOURCE MANAGEMENT

Based on the prior studies, reports, and comments dealing with land resource management, the innovative state programs described above, and the studies and suggestions that have been made relating to land resource management in Texas, a number of alternative configurations of a state land resource management program may be identified.

In the section which follows, three basic approaches to the development of a state land resource management system are delineated and discussed. The approaches are differentiated largely on the basis of the direct role played by the state in managing its land resources. It should be recognized that many forms of public policy may be included within an approach.

Each alternative approach is examined first in light of its institutional and legal requirements, level and types of controls employed, and problem focus. Next, each alternative approach is evaluated in terms of political feasibility in Texas and ability to meet the needs of Texas.

The first approach is that taken by the majority of states today, including Texas, in which the state delegates to local governments responsibility for land resource management. While several variations of this state delegation of power to local governments are presented, all have the property of placing principal responsibility on local government, defined to include towns, cities, and counties, for managing the land resources of the state. Direct state action with regard to land resource management is generally confined to the administration of state owned lands and the acquisition of land for state purposes. The remaining activities of the state, while admittedly having an impact on land resource use, are not coordinated in any comprehensive way to achieve state land resource

goals and objectives, other than the continued coordinating efforts of the Interagency Council on Natural Resources and Environment.

The second approach recognizes that the state has an active role to play in managing its land resources, but also recognizes that the state role should be limited and well defined. It begins with the delineation of state goals and objectives and the formulation of a state land resource management plan. It provides for some form of partial state control over land use. However, the primary responsibility for administration of land resource management controls remains with local government. Several variations exist among the states in the definition of those areas or types of development which are of state concern, and for which state guidelines are developed. The precise nature of state controls also is subject to variation. An important, but frequently overlooked element of this approach is the coordination of land use activities of all levels of government to achieve state goals and objectives for land resource management.

The third approach to the development of a state land resource management system places the state in the central position of regulating land use. It differs from the second approach principally in the extension of statewide land use controls to all lands in the state, rather than to specific areas or types of development. In general, this approach relies more extensively on the use of permits and focuses more on regulation than on planning.

Approach Number One: State Delegation to Local Governments

It is useful to begin with the existing approach to land resource management as typified in the majority of states, including Texas. Under this approach, the bulk of the land use control powers are delegated by the state to cities and other local entities. These delegations of land use control powers from states to local governments trace their origin to the Standard State Zoning Enabling Act (1924) and the Standard City Planning Enabling Act (1928) recommended to the states by the U.S. Department of Commerce.

Description of the Approach

In general, incorporated areas are given broad land use control powers under the Standard Enabling Acts.

Cities have the authority to adopt comprehensive zoning ordinances, subdivision regulations, and building codes. This authority is normally contingent upon the city developing a master plan. Platting requirements provide for appropriate right-of-way dedication and utility easements. Cities are granted authority to require that a developer dedicate a certain portion of his subdivision or the equivalent in cash for schools, parks, open space, and other public uses. In addition to land use controls, cities are also given the power of eminent domain to acquire land for public purposes.

In most states, some authority exists for the extension of certain land use controls to unincorporated areas. The most restricted type of extension, which exists in Texas, is limited to areas immediately adjacent to the boundaries of municipalities, termed areas of extraterritorial jurisdiction. In Texas, the area of extraterritorial jurisdiction extends from one-half to five miles from the municipal boundary, depending on the size of the population in the municipality.

The extent of land use control powers granted to cities for use in their extraterritorial jurisdiction area varies from state to state. In Texas, only platting and subdivision control powers may be exercised in this area, although the power of eminent domain may be exercised in the extraterritorial jurisdiction area for cities of greater than 350,000.

In addition to the land use control powers which cities may exercise both within their corporate limits and to at least some degree in their area of extraterritorial jurisdiction, several other land use control devices exist. Virtually all states, including Texas, permit cooperative arrangements between municipal, county, and regional organizations for planning purposes, and encourage their use. This permits a city, for example, to contract with the county to provide master planning in the unincorporated areas of the county.. Cities may also extend their corporate land use controls to outlying areas by tying the sale of certain services, such as water and sewerage, to the exercise of given land use controls. Recent innovations in subdivision regulation, such as the Planned Unit Development concept, provide flexibility to cities in promoting better planning. It should be noted that many cities have not chosen to exercise these land use control devices, even though they appear to offer good potential as supplements to the traditional land use controls.

The existing system of land resource management, as described above, focuses on the grant of land use control powers by the state to local governments. It should be noted that the state remains directly involved in such activities as highway development, parks programs, air and water quality control, water development funding, and private use of state owned land. While these activities have important impact on land use in the state, for the most part, they are functional programs undertaken for specific purposes and their land use impacts are a secondary, and frequently unrecognized, aspect. Under the existing system, no attempt is made to coordinate the various actions of state government to achieve goals related directly toward land resource management.

Analysis of the Approach

In analyzing the existing system, it is apparent that adequate legal and institutional arrangements exist for its operation. With its emphasis on local administration, the existing system of land resource management has led to the development of expertise within municipal planning departments to carry out planning, zoning, subdivision control, and building code enforcement. The legal basis for exercising these controls has been well established with the courts generally upholding local actions. The procedure for implementing local controls is well established, including mechanisms for public hearings and administrative appeals.

The existing system of land resource management contains a number of methods by which a city can insure compliance with overall requirements and assure that necessary public services are properly provided. These include:

(1) withholding plat approval;

(2) imposition of fines;

(3) denial of city utilities;

(4) injunctions; and

(5) denial of building permits.

The existing system of land resource management was developed primarily to control urban development and to promote city planning. Under this system, broad land use control powers are granted to cities and towns, but

almost no land use control powers exist for the unincorporated areas of the state.

The Actions Available to Texas Under Existing Approach

A number of alternatives are available to Texas to strengthen its land resource management system under the existing approach. The most important of these include:

(1) extension of land use control powers which cities can employ in their extraterritorial jurisdiction; and

(2) extension of land use control powers to counties for application in all unincorporated areas.

Extraterritorial Jurisdiction Extension. A modest change in the existing land use management system could simply extend additional land use control powers possessed by cities within their corporate limits to the area of their extraterritorial jurisdiction. Two such extensions of land use control powers have been suggested.

The first suggestion, put forth by the Texas Advisory Commission on Intergovernmental Relations (TACIR), would authorize cities and towns to extend development standards applied inside incorporated areas to their extraterritorial jurisdictions. Such development standards would not include zoning, but would embrace all ordinances governing plats and the subdivision of land, and the construction, alteration, or remodeling of structures. Since cities and towns already possess authority to regulate platting and subdivisions within the area of their extraterritorial jurisdiction, the proposed legislation in essence only authorizes cities and towns to extend building code regulations into this area.

A more extensive change in the existing system of land resource management would involve legislation to permit cities and towns to exercise the same land use control powers in the area of their extraterritorial jurisdiction that they now exercise within their corporate limits, including zoning powers.

Both of these suggested changes could be accomplished by simple statutory authorization. Since the necessary expertise and mechanisms required for implementation

already exist at the local level, no significant institutional changes would be required. Similarly, the proposed changes would not affect either the level of control nor the type of control mechanisms in existence today. The proposed changes would focus exclusively on the problem of substandard construction in that portion of the unincorporated area lying within the extraterritorial jurisdiction of a city or town, and with the second proposal, on the problem of conflicting uses of land in this area. Both proposals would provide a better foundation for master planning of lands in the area of extraterritorial jurisdiction.

County Extension. A second set of changes in the existing system of land resource management would involve extension to counties the land use control powers presently given to cities and towns, these powers to be exercised in unincorporated areas. In more than forty states, land use control powers, including the authority to adopt zoning, subdivision, and building code ordinances, are extended to counties. In Texas, counties may only establish reasonable specifications for street constructions and adequate drainage. They may not require standards for the provision of utilities, minimum lot size, setbacks or building lines, or the reservation of space for parks and recreational purposes. Neither are counties given the power to zone, except for special limited grants of zoning power for major recreational areas (Padre Island and Amistad Reservoir), airports, and flood plains.

The TACIR has proposed two alternative pieces of legislation related to county land use controls. These are outlined and analyzed below.

Under the first recommendation, legislation would be enacted authorizing counties to establish development standards in all unincorporated areas. Such standards would include construction standards for all non-farm structures meant for human habitation; lot sizes and set-back requirements; specifications for streets, alleys, bridges, and parks; and specifications for waste disposal facilities. Under this proposal, counties would not have the power to zone. County authority would not apply in the area of extraterritorial jurisdiction of a city exercising development controls pursuant to an ordinance.

Under the second recommendation made by the TACIR, counties would be given the same general zoning powers and related authorizations long exercised by Texas cities. In addition, the proposal would authorize counties

to create a County Land Management Commission to recommend boundaries of zones and the regulations to be applied therein, and to appoint a Board of Adjustment to hear and decide all appeals arising from the exercise of land use controls. As proposed by the TACIR, the new legislation would apply to all unincorporated areas, including those in the extraterritorial jurisdiction of municipalities. In the case of conflicting regulations, i.e., where both a city and the county had promulgated zoning, subdivision, and building code regulations, the more stringent regulations would apply. This could create some confusion, where only parts of ordinances were in conflict.

The proposed extensions of land use control powers to counties would require only a legislative authorization, similar in nature to the enabling acts for city land use control powers. Under the first proposal, counties would provide for the full range of subdivision and building code regulations. This could probably be accomplished with little change in institutional structure. The second proposal, however, would create the need for extensive new institutional arrangements at the county level to provide for administration of the zoning authority. The TACIR proposal would require the county to develop a "comprehensive plan" to include the designation of districts within the county. Construction codes would be uniform for each class or kind of building throughout each district, but could differ from those in other districts. To carry out its new land use control powers, a county would be required to establish a Land Management Commission; and to provide for an appellate procedure, counties would be required to establish a Board of Appeals.

Extension of land use control powers to counties would provide for local control over land use in unincorporated areas utilizing the same tools that have recieved acceptance in incorporated areas. The proposed changes would provide a basis for avoiding the problems discussed in the TACIR report. However, the program would be comprehensive only in terms of giving all counties the option to control land use in unincorporated areas. There would be no way of ensuring that counties would effectively utilize this new authority, or of providing for control of developments in areas of critical state concern.

Finally, there is a widely recognized need to improve the procedures employed in the exercise of existing land use controls. This need would also apply to the extensions of present powers already discussed. The best statement of the need and specific recommendations for change are found in the Model Land Development Code

prepared by the American Law Institute. As this work has been analyzed in some detail earlier in this report, discussion here is limited to this mention.

Evaluation of the Approach

The existing approach to land resource management in Texas is clearly politically viable. Further, there is reason to believe that extensions of land use authority to cities for use in their area of extraterritorial jurisdiction or to counties for use in the unincorporated areas of the State would be politically feasible.

The existing approach, however, even if enhanced by adoption of one of the proposals for change discussed above, does not permit the State to meet all of its land resource management needs. First, there is no provision for the development of a state land resource management plan, and without a plan there is no clear enunciation of what the State's goals and objectives in land resource management are. Second, there is no coordinating mechanism at the State level to resolve land resource management conflicts between State agencies or to ensure consistent land resource management activities at the State level. The existing cooperative arrangement provided by the Interagency Commission on Natural Resource and Environment is a step in the right direction in terms of the first type of coordination.

Third, even if controls are extended to the unincorporated area, no provision exists for delineating areas of critical state concern or types of development that are of greater than local concern, and no mechanism exists for ensuring that uniform controls are placed on such developments. Further, there is no mechanism at present for regulating land use on a regional basis. The Councils of Government, as presently structured, would have difficulty exercising regulatory powers. Without regional regulatory powers, the need to extend land use controls beyond the bounds of local government would have to be met by the imposition of state controls, although these controls could be administered in a state agency having a regional structure.

The existing approach, if improved by the adoption of the proposed extension of extraterritorial jurisdiction powers of cities or of the proposed extension of land use powers to counties, could meet the needs of local government for guiding development in the unincorporated areas of the State.

Finally, the existing system, even if enhanced by the adoption of the proposed extensions of local land use powers, would not fulfill the requirements of the pending national land use legislation. It would provide no mechanism for identifying areas of critical state concern, nor would it provide for the delineation of key developments affecting land use. Further, even if these areas and types of development delineations could be made, there would exist no statewide mechanism for providing appropriate guidelines for them.

Approach Number Two: Selective Involvement in Land Resource Management

A second approach to the development of a state land resource management system begins with the assumption that some areas of the state or some types of development are of statewide concern. For such areas or types of development, the state develops land resource management criteria. Actual implementation of land use controls in these areas or over these types of development is generally left to local government working within the confines of the state guidelines.

Description of the Approach

The development of a selective state involvement in land resource management begins with the formulation of a state plan for land resource management. The plan should set forth in clear detail the goals and objectives of the state in managing its land resources. This statement of goals provides a basis for the implementation of all measures taken to control land use. The plan should also define the roles and responsibilities of all levels of government in the state in managing land resources.

The development of a state land resource management plan provides the foundation for the formulation of a state land resource management program. The program should set forth in some detail the criteria to be employed in determining areas and types of development which are of state concern. The program should provide some mechanism for enabling participation of local and regional governments, and special purpose entities such as river authorities, in the determination of areas and types of development of state concern. Finally, the program should assign responsibilities for the control of land use in areas of state concern and for the regulation of developments of state concern.

Two alternative arrangements could be made for the assignment of responsibility for land use regulation in areas of greater than local concern and over developments of state concern. First, the State could undertake directly to exercise land use control powers. This would require that the State develop the institutional mechanisms needed to implement land use regulation. A second alternative would be for the State to become directly involved in land use regulation only if local units of government prove unwilling or incapable of regulating land use under State guidelines. For this second alternative to be effective in reducing the need for direct State involvement, some provision would have to be made for regulation of all lands in the State either by counties (unincorporated areas) or by cities (incorporated areas and areas of extraterritorial jurisdiction).

Thus it can be seen that the adoption of approach number two would have to be accompanied by adoption of the proposals for change discussed under approach number one if the State is to encourage the exercise of land use controls in critical areas and over key developments by local governments.

It should also be recognized that the alternative of delegating most of the work of implementation to local governments may appear to avoid an increase in the cost of State government. Such a view is deceptive. Despite the existence of excellent land use management capabilities in the governments of several of Texas's larger cities, most of the rural political subdivisions of the State would require significant enlargement and technical upgrading of their planning staffs before they would be capable of exercising the delegated powers. State government is likely to have to bear a goodly portion of the additional costs incurred.

In addition, a program of land resource management should provide guidelines for the exercise of land use control powers in areas of state concern and over developments of state concern. The traditional land use controls of zoning, subdivision, and building code ordinances may be unsuitable for the accomplishment of statewide land resource management objectives. A permit system, utilizing performance objectives, may be a more efficient device for achieving these objectives. Finally, the program should establish some type of adjudicatory mechanism for resolving the appeals from administrative actions taken under the program.

The development of the state land resource management plan and program should be accompanied by the formulation of some type of mechanism to coordinate the various land use activities of the different levels of government in the state. The mechanism should ensure that actions of all state agencies affecting land use are consistent with the goals and objectives identified in the state land resource plan. Actions of regional and local governments should also be coordinated to achieve state land resource management goals and objectives.

Analysis of the Approach

The development of the second approach to land resource management would require that the state exercise its constitutionally authorized police and regulatory powers to control land use. Some type of organization for policy formulation and planning would have to be established at the state level. Such an organization should be broadly representative of the various land resource interests in the state, and should provide for public participation in the process of goal setting and planning. Once the organization has developed the state land resource management plan, the plan should be given legislative and/or executive sanction.

The administration of the land resource management program would require the development of some type of institutional authority at the state level, either in an existing agency or office, or in a newly formed agency or office. In administering the state land resource management program, the functions of planning, regulation, and adjudication should be clearly separated.

Under the second approach, the level of land use control shifts, at least partially, from the local to the State level for those areas and developments which are of State concern. However, for the bulk of the lands in the State, control would still be exercised at the local level. The role of regional governments under the second approach could be enhanced through participation in the setting of State goals and objectives, in the determination of areas and types of development of greater than local concern, and in the coordination of the land use activities of local member governments. Given the existing structure of councils of government in Texas, it is unlikely that they could be given regulatory authority over land use.

The mechanisms of control under the second approach would, for the most part, be identical to those in

use today at the local level. In addition, however, the State might wish to consider greater use of a permit system, combining the zoning, subdivision, and building code ordinances into one type of control, with the emphasis on performance rather than the meeting of rigid requirements.

In addition to the land use controls, there might be greater need for the use of the State's power of eminent domain, particularly in dealing with State responsibilities in areas of State concern. These responsibilities could also be met by the purchase of rights-of-way, easements, and development rights by the State. Finally, the entire taxation process should be examined for its impact on the use of land resources.

The second approach, if accompanied by the extension of land use controls to counties, would focus on all of the land resource management problems that have been identified as being of significance in Texas. The extension of land use controls to counties, as explained above in the discussion of the first approach, would provide a mechanism for dealing with the development of the unincorporated lands in the State. The identification of areas and development types of State concern would provide a mechanism for dealing with major state-wide land resource problems.

Evaluation of the Approach

The selective application of state land resource management powers would constitute a new venture for State government in Texas. Undoubtedly, it would meet with some resistance from those who fear State encroachment upon areas that have heretofore been the perogative of local government and private landowners. On the other hand, the clear identification of State goals and objectives, coupled with a program involving the least possible State intervention in land resource management consistent with the attainment of these goals, would be viewed by many as a positive response by the State to the land resource problems facing it.

A selective involvement of State government in land resource management would make possible the meeting of State needs in the area of land resource management, only if it were combined with the extension of land use control powers to counties as explained under the first approach. Only a combination of approaches one and two would both meet the need to control development of the unincorporated areas in the State and provide a mechanism

for State involvement in the management of land resources in areas of State concern and for developments of greater than local concern.

It should be recognized, however, that this system still relies on the State influencing private development. It does not include provision for the State to engage in developments, such as industrial parks and housing, which may also be necessary to affect State goals on population distribution as well as other goals. Initiative in development is an aspect of management which this study was not charged to consider. However, its potential role in the implementation of State land resource management plans should not be totally forgotten.

The second approach would also fulfill the requirements of the pending federal land use legislation. It would identify areas and developments of State concern and provide for uniform State standards for these areas and types of development. It would provide a mechanism for coordination of the land resource management activities of all levels of government in the State.

Approach Number Three:
State Management of Land Resources

The third approach to the development of a state land resource management system would give the principal role in land resource management to the State. Systems utilizing this approach are frequently given the title of "comprehensive" land resource management systems. This title is somewhat deceptive, however, since the third approach is no more comprehensive than the second approach, except for the fact that it brings all lands in the state under the potential management of the state. This type of approach has been used in Hawaii, Vermont, and Maine and is being considered in Colorado.

Description of the Approach

The development of a statewide land use management approach would involve both the development of a comprehensive State land resource management plan and the formulation of a comprehensive program for management of the State's land resources. In this manner, the third approach is similar to the second approach described above. The principal difference between the two approaches is that the third approach assigns major responsibility for land use control to the State, rather than to local government.

Instead of focusing on areas and development types of State concern, this approach would place all lands in the State and all types of development potentially under direct State control. In state land resource management systems utilizing this approach, there is generally some uniform criteria developed to determine if a development falls within the control of the state agency regulating land use. This criterion is normally expressed in terms of the scale of development, although it could also be expressed in terms of the type of development.

The State land resource management plan would set forth the criteria to be employed in determining which developments came under State regulation. It is likely that the plan would divide the State into districts or regions. Regulations concerning land use would be established by a State agency for each type of region or district, in much the same manner that a city establishes zoning controls for subareas within its boundaries.

Once the regulations concerning land use were established, the State could either choose to directly enforce these regulations throughout the State or to delegate responsibility for some portions of the regulation to regional or local governments. The most common type of regulation for use by the State would be the permit system. This system would require any developer whose development meets the criterion specified in the State land resource management plan to submit an application to the State or to its delegated agent. The application would then be reviewed for consistency with the standards specified in the State land resource management plan. Ideally, the regulating agency would be able to apply performance standards rather than inflexible requirements.

After appropriate review by the regulating agency, the application would either be granted or denied. Some mechanism would be established to provide for appeal of the regulatory decision, should the developer choose to make such an appeal.

Under the third approach, some type of mechanism would be employed to ensure that all activities of the State were carried out in a manner consistent with the goals and objectives of the State land resource management plan. Further, the activities of regional and local government affecting the use of land would also be reviewed for consistency with the overall State land resource management plan.

Analysis of the Approach

The third approach would require the most significant legal and institutional changes in Texas. It is difficult to see how such a system could be made to work without the consolidation of the State's environmental activities into a single agency. This would pose a significant problem in a state, such as Texas, with a strong tradition of independent agencies.

The level of control under the third approach would shift from the local level to the State level for all lands in the State. While some of the responsibility for land use control might be delegated back to regional and local governments, a substantial portion would remain at the State level.

The mechanisms of control utilized in the third approach would be substantially the same as in the second approach. The important distinction between the two approaches lies in the fact that in the third approach, these mechanisms would be employed, at least potentially, in all lands in the State, rather than in only those areas and for those types of development of State concern.

The third approach could focus on both the local problems relating to the development of unincorporated areas and on the more important statewide land resource problems. It would provide the most flexibility of any approach in dealing with the entire range of land resource management problems.

Evaluation of the Approach

It appears evident that the political climate in Texas would be hostile to the development of a statewide land use management system such as involved in the third approach. This type of approach would encroach more on the traditional perogatives of local government and private landowners than either of the other two approaches.

This anticipated resistance in Texas to a system giving primary responsibility to the State for land resource management is not inconsistent with the experience of those states which have adopted this approach. All had extremely weak traditions of local land use control. In Hawaii, the State has never delegated primary zoning powers. In 1971, when a State land use control law was first enacted in Maine, over 80 percent of the municipalities in the State had no land use control laws. A similar

situation existed in Vermont prior to the adoption of its land resource management system. There are no examples of states abandoning traditional local control in favor of statewide land use management.

The third approach would be effective in providing a mechanism to deal with the entire range of land resource management problems found in the State. It offers great flexibility, since the State may designate any number of regions or districts and may affect any type of development within the State. Because of its centralized nature, this type of approach would afford a greater opportunity than either of the other two approaches to ensure consistent application of standards in accordance with the State land resource management plan. Finally, such a system would meet the requirements of the pending federal land use legislation.

Texas Land Use

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Problems and Issues	Ron Jones, Robert Waddell
Significant Policies	Kingsley Haynes
Needs for the Future	Ron Jones, Ron Luke
Management Approaches	Jared Hazleton
Role of Planning	Ron Jones, Ron Luke
An Informed Public	Christian, Miller & Honts, Inc.