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The
Texas
Assembly
on
Land Use



**The
Texas
Assembly
on
Land Use**

Conducted at

Texas A&M University

**College Station,
Texas**

A Report on Assembly Findings

The Texas Assembly on Land Use

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| AFFILIATED WITH | The American Assembly Columbia University |
| ASSEMBLY CO-DIRECTORS | W. D. Moore TRERC Education Division Texas A&M University John E. Bebout Institute for Urban Studies University of Houston |
| PUBLICATION EDITING & DESIGN | Bob Robinson TRERC Information Division |
| PUBLICATION ART | Jim Raatz Texas A&M University |

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Why A Texas Assembly?

Texas land use policy has been historically characterized by an uncoordinated approach, utilizing no overall, statewide plan. Although politically defensible, this approach may or may not serve Texas in the future.

Many public and private groups throughout the state have become involved in gathering land resource information useful for land use decisions. These efforts for the most part, however, are uncoordinated and fragmented.

Past and pending federal regulation, such as the National Environmental Protection Act (NEPA), the Coastal Zone Management Act (CZM), the National Land Use Policy Act (NLUPA) and others, may force Texas into decisions involving use of land resources which may not be in its best interests unless a workable approach to land use is followed.

Finally, use of land resources influences every Texan economically, socially and politically. Texas, with its extensive and varied resources, has much to gain by formulating a land use policy at this particular time.

The policy may be a continuation of the uncoordinated approach if it will serve most interests in the best way possible. Or the policy may be something entirely different. Either way, it should be articulated.

The Texas Assembly was formed to suggest such a policy.

The Texas Assembly on Land Use was a nonpartisan forum designed to form a policy statement which can serve as a framework for land use philosophy and regulation in Texas. December 1974 was felt to be an ideal time to hold the Assembly because it was immediately prior to the new Texas legislative session.

Early Texans felt strongly about their land and property rights. This sentiment is prevalent in the policy statement.

Form and Procedure

Although the Assembly's product was a policy statement which can form the basis for a workable approach to land use in Texas, the assembly itself was a nonpartisan educational forum on current affairs, patterned after the American Assembly, affiliated with Columbia University.

The Texas Assembly followed The American Assembly on land use conducted in New York in April, 1974, and the Southeast Regional Assembly on land use conducted in Florida in October. Because Texas has such extensive and diversified land uses the sponsors felt that it constituted a "region" unto itself, and indeed it does.

An Assembly program derives its interest and momentum by simulating the political process. For two days, 107 carefully selected "delegates" representing a cross section of the state's leadership in industry, labor, real estate, ranching and farming, environmental groups, educational and governmental institutions met in subgroups of 20 and addressed themselves to relevant questions concerning land use in Texas. The third day the delegates met in a final plenary session and adopted a draft statement of a policy for land use in Texas.

Although the written statement is the visible product of the Assembly, the real product was the experience of Texans with widely divergent interests and backgrounds interacting with a very high degree of intelligence and humor when called upon to play a responsible role of sponsoring statewide improvement.

Because there never again will be another assemblage of this cross section of men and women representing these viewpoints on land use in Texas, this Assembly was unique. Compared with other Assemblies it was also unique in its representation from both private and public sectors.

**What the
Assembly
Found**

1

Local and state governments should be the focal points of land resource management policy. Federal government should limit its participation to the national interest. The Assembly's recommendations would impose a logical order for land use decisions which, under present governmental management, are unsystematic, haphazard, and often lead to unintended results.

2

The Assembly calls upon the Governor, the chief planning officer of the state, to develop a state land use policy. It also calls upon the people of Texas, through their elected legislators, to provide funds for the study and policy formulation, and to request the Governor to expedite policy recommendations.

3

The Assembly recommended that a comprehensive land resource data system for Texas should be developed immediately, for use in the private as well as the public sector. This is the first step toward a workable approach. The methodology and techniques for developing a system for computerization and retrieval of land resource data are known. It is a technical rather than political process, so there is no reason for delay.

4

Agriculture's importance to the state, the nation and the world should be recognized. Texas ranks third among all states in the production of agricultural products. At this time the export surplus created by Texas and other leading agricultural states is a positive factor in this country's balance of payments and hence, international relations. As the Governor calls on Texas to become number one, then land use policies should aid and abet agricultural production.

5

Consideration should be given to shifting all state and local tax burdens away from land resources, and the property tax system revamped to encourage agricultural productivity.

6

Finally, land use planning must protect private property rights and provide adequate compensation when they are infringed. "The Assembly believes that most Texans place high value upon the right to own land and to determine its use. Any land use management program in Texas must recognize the inherent right to the utilization of the land by its owner and restrict this right only to the extent necessary to safeguard the rights of others in appropriate cases." The Assembly calls for a broader system of court review to protect the owners of property whose use has been restricted. The Assembly also calls for legislation to define the point at which a "taking" occurs and to establish a method for determining compensation for taking less than fee simple interests in real property.

Acceptable Land Use

Early Texans felt strongly about their land and property rights. This sentiment is prevalent in the policy statement formulated by the Texas Assembly on Land Use.

The Assembly said that an acceptable land use policy . . .

- Must be locally based

- Must protect property rights

- Must provide for a comprehensive land resource data system, which should be started immediately

- Must encourage agricultural productivity

- Must provide the means to avoid hazards to human life and property

- Must insure that land uses place no undue cost upon other private or community interests

- Must provide for the development of essential natural resources

- Must provide a balance between economic development and environmental quality

The following report represents general agreement among the members of the Assembly. It should not be assumed, however, that every participant subscribed to every recommendation.

The
Texas
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on
Land Use

A Report

The Texas Assembly on Land Use

The Texas Assembly on Land Use convened at Texas A&M University on December 5, 1974. A group of approximately 100 participants, representing industry, labor, real estate, ranching and farming interests, business, environmental groups, and educational and governmental institutions spent three days deliberating general and specific topics concerning land resource management. This is the consensus report of the Assembly.

Introduction

Land is a finite resource. An ever-increasing population is placing accelerating demands upon the nation's land resources. Needs for public and private development must be satisfied without causing excessive harm to the environment. Adequate agricultural and recreational lands must be protected to satisfy the food, fiber and leisure time requirements of this expanding population. The effect of the energy crisis on land use has yet to be determined, but it will probably be substantial.

During the past five years, federal laws have been passed which affect land development and land use. Federal regulations concerning air and water pollution controls have dramatic land use implications. A federal statute which provided funding preceded the Texas Coastal Zone Management Study. Amendments to the Federal Flood Insurance Act of 1973 penalize local areas where governments fail to regulate development in flood prone areas. The proposed National Land Use Policy Act would encourage states to adopt a state and local planning process which regulates land uses of greater than local concern.

Texans are concerned about the future of their state with or without federal laws. Texas needs to address the land resource management issue and decide who will make land use decisions and how these decisions will be implemented. They want the best possible use of their land resources. Land management must take into account the regional differences of this large state, and the wholesome preference for preserving private property rights along with promoting the public interest.

The Texas Assembly on Land Use

Report

Our purpose, then, is to state the basic values that should govern land use decisions and to prescribe a responsible course of action for federal, state and local governments in land resource management.

To be acceptable, a land use program for Texas must be locally based, protect private property rights and embrace at least four related but distinct concepts. First, it must provide a means for avoiding hazards to human life and property that are inherent in certain types of land, such as flood plains and subsidence areas. Second, it must ensure that land uses do not place undue costs upon other private or community interests. Third, it must provide for husbanding and developing essential natural resources for the sustenance, and ultimately the preservation, of the nation. Fourth, it must provide a balance between economic development and environmental quality.

How do we design a program to achieve these objectives? What values should such a program embrace and enhance? Texans have a commitment to the preservation of private property rights. Any responsible land use policy or program must always seek to achieve a just balance between the rights of the individual and the interests of the community.

Texans believe in the efficacy of the private market. Most land resource management decisions can best be made through a system that optimizes reliance on the productive benefits of the free enterprise system and minimizes governmental interference. Local and state land management policy should be built upon the cornerstone of private property rights and free enterprise.

The conclusions and recommendations of the Assembly address the issues of governmental responsibility in land use, the influence of tax policy on land use, and the protection of private property rights and the public interest.

A Responsible Role for Government

The federal government has been involved in land resource management for many, many, years. Recently, federal laws protecting the environment have begun to affect private property in a direct and costly way. The federal government has had difficulty in the direct administration of land use controls.

Federal law should continue to encourage local and state assumption of these responsibilities wherever possible. The federal government should limit its participation in land use management (a) to the clear and precise definition of the national interest, including the

national interest in defined critical areas of environmental concern; (b) to the setting of performance guidelines on matters of national interest to be met by local and state governments, as opposed to the imposition of prescribed bureaucratic procedures for accomplishing those guidelines; and (c) to providing financial and technical assistance for support of local and state government land management policy.

Local and state governments should be the focal points of any land resource management policy. The state has significant influence on land use practices through facility construction, resource development, environmental protection and economic regulation.

The Governor, the chief planning officer of the state, should develop a state land use policy, and, if appropriate, recommend a local and state system for making and enforcing land use decisions. In making his study and recommendations, the Governor should be cognizant of the significant regional variations characteristic of Texas and the varying land use problems characteristic of them. Any proposed local and state land management system should, to the extent practicable, vest land use decisions and implementation of those decisions in local governments. Procedures for appeal of local decisions, particularly those involving state or national standards, must be a component of the local and state system.

Any proposal for substantial modification of governmental activities should be accompanied by a public information and participation component. Recent Texas history tells the story of the effect of minimal citizen participation better than pages of rhetoric. The legislature should assure the public that it will heed the lessons of history and guarantee support for a broad based program of citizen input into the development of a land use policy for Texas. Texas colleges and universities, both public and private, should be called upon to continue to provide resources for this task.

Finally, any future land resource management system must be based upon sound, reliable information. The state government should continue developing a land resource data system available to both private and public interests for making land management decisions. The information-gathering entity should, to the extent possible, be restricted to the information-gathering function, with the policy formulation and enforcement functions of land use management reserved to local agencies and the state regulatory and land use appellate agencies.

Further, adequate flexibility for variables should be included within the statewide information-gathering system. An adequate system should include (a) regional inventories of land capabilities, particularly in areas recognized for their critical environmental, unique historical, natural and economic importance; (b) a means for user analysis of the environmental, social and economic impacts of projected developments; and (c) a means for public dissemination of information on land resource capability. Such a system should maximize available data resources which would be expanded only where demonstrable need exists and thus not become a massive proliferation of duplicative bureaucracy.

The size and diversity of Texas suggest that an adequate state land resource data system should be composed of regional information systems developed in cooperation with local and state agencies; public and private users should have access upon payment of nominal costs for reproduction. Availability and use of regionally stored data should improve the quality of public decisions and increase the efficiency of the private sector in providing housing and other developments to accommodate the state's anticipated growth.

The most appropriate role for regional planning commissions in implementing a land resource management system may lie in collecting and maintaining data for planning purposes. They have adequate statutory power to perform this function and to meet existing regional planning needs. Other appropriate agencies may include river authorities and soil and water conservation districts.

Counties do not have general power to regulate land uses. Thus, there is very limited governmental authority over land uses in unincorporated areas. If counties are to participate significantly in land resource management, they need more power. One alternative is to grant counties power, on a local option basis, to adopt and enforce general ordinances.

Home rule cities have adequate power to regulate land uses within their boundaries, although some may not exercise it fully. The Assembly believes that public and regulatory land use decisions should be made by the lowest appropriate level of government. This includes the right of cities not to regulate land uses through traditional zoning ordinances. Special attention should be paid to development in areas of extraterritorial jurisdiction, and measures should be taken to ensure that both city and county interests are protected.

The Texas Assembly on Land Use

Report

Towards a Reasonable Tax Policy

Federal tax policies are not based on land and have a random effect on land uses, encouraging some and discouraging others. For example, federal estate taxes accelerate the breakup of family farms, presumably an unintended effect of federal law. Nevertheless, federal, state, and local tax policies have a direct impact on land uses, and these influences must be calculated in any statewide resource management system.

The property tax has a special significance in Texas because it is a major tax source for local governments. In some cases, the tax discourages improvements to land, thus encouraging spread development. Its effects are not uniform and equal among taxpayers even in the same jurisdiction. Property tax administration in Texas is often inefficient and inequitable, and needs to be improved. State government should provide leadership in redefining the tax base and in improving local government assessment practices.

As a general principle, the state should consider shifting all state and local tax burdens away from land resources. This may be especially appropriate for agricultural lands. Texas' great capacity for agricultural production is important to the future of the state, the nation, and the world. Texas state government should adapt its property tax system to encourage agricultural productivity. Two possible strategies include: (a) taxation based on the land's capacity for agricultural production; and (b) a reduced ad valorem tax on agricultural land coupled with tax recapture penalties for conversion to non-agricultural uses. Such penalties would only apply to land that has been a recipient of such a tax reduction.

Marine areas and industrial buffer zones should be treated in a similar fashion to that recommended for agricultural lands.

Tax incentives should also be used as a tool to maintain adequate urban and suburban open space.

Protection of Property Rights

The Assembly believes that most Texans place high value upon the right to own land and to determine its use. Any land use management program in Texas must recognize the inherent right to the utilization of the land by its owner and restrict this right only when and to the extent

necessary to safeguard the rights of others in appropriate cases. Equitable compensation to the restricted property owners should be an integral part of this policy.

Public regulations often reduce the value of private property by restricting its use. In such cases, property owners may sue in an effort to establish that the regulations are unconstitutional. However, courts do not often review governmental decisions as to the wisdom of a given regulation but whether it meets minimum statutory and constitutional requirements. If land use regulations become more complex, then a broader system of court review may be required. Courts are reluctant to change their traditional roles. Even if they were willing to undertake a broader scope of review, the increased court load might cause undue delay in land use cases. Accordingly, creation of a special land use court to handle these matters may be in order.

In addition to judicial review, landowners in appropriate cases should be given the right of administrative appeal to a higher level of authority when acts of local or state governments are unduly burdensome.

Some regulations reduce the value of private property below the point of profitability to the owner. In such cases, the state or local government should be able to compensate the landowner for taking of less than a fee simple interest. Legislation should be passed which defines the point at which a "taking" occurs, and establishes a method for determining compensation for taking less than fee simple interests in real property.

Communities often do not define clearly what the "community interest" is when they pass a regulation. Communities should be encouraged to define clearly what they perceive as the public interest to be promoted by the regulations.

Summary and Conclusions

Assuring that the management of land resources is consistent with the public interests in protecting the environment, in protecting the health and well-being of our life and property, in accommodating orderly growth, and in the wise use of natural resources, is and will remain a major function of government in partnership with the private economy of a modern industrial nation. Even now, government decisions affecting land management and uses are unsystematic,

haphazard, and often lead to unintended results. The Assembly's recommendations would impose a logical order for these decisions. They would minimize the federal government's role in land management (while protecting the national interest), establish local and state governments as the focus of public policies for land resource management, and retain in local government the authority to make and enforce land use controls.

The Assembly calls upon the Governor, the chief planning officer, to develop a state land use policy and to implement a land resource data system. The Assembly also calls upon the people of Texas, through their elected legislators, to provide funds for the study and to request the Governor to expedite rapidly the study and policy recommendations. An effective procedure for citizen participation must be provided. These cornerstones of responsible state action would prepare the state to negotiate with federal authorities from a position of strength while meeting prevailing requirements for state action in environmental protection.

The Assembly also recognizes the unique role of agriculture and marine resources in Texas and the importance of these vital industries to the state, the nation, and the world. Reasonable and progressive property tax policies would go far toward ensuring that our children and our grandchildren will have an opportunity to share in this abundance.

Finally, individual rights in property would be enhanced by developing administrative review procedures prior to utilizing the judiciary and by encouraging the legislature to examine closely the need for clear standards for paying property owners who suffer losses due to the complex and subtle changes brought by public actions.

This Assembly believes Texas land use policy should lead to constructive progress, not negative incumbrances; progress that deliberately increases value, efficiency, and citizen satisfaction; and progress that emphasizes the use of existing means and the potential goodwill, evident but not frequently tapped, among Texans of all walks of life.

If this Assembly succeeds in accomplishing nothing else, it has made clear that men and women with widely divergent interests, from many distant areas of Texas, can work together with intelligence and humor when called upon to play a responsible role in the continuing process of fostering statewide improvement.

The Texas Assembly on Land Use

Members

****William G. Adkins, Research Division Head**
Texas Real Estate Research Center
Texas A&M University
College Station, Texas 77843

Frank Anderson, Director of Research and Services
Institute of Urban Studies
University of Texas at Arlington
Arlington, Texas 76019

Bert Anson, III, Project Coordinator
Southwest Center for Urban Research
1200 Southmore
Houston, Texas 77004

***Philip W. Barnes, Consultant on Public Affairs**
703 The High Road
Austin, Texas 78746

Allen O. Baylor
Department of Business
University of Texas at El Paso
P. O. Box 61
El Paso, Texas 79968

Hub Bechtol
Hub Bechtol & Associates, Realtors
2207 Hancock
Austin, Texas 78756

Don Bouchelle
Don Bouchelle & Co., Inc.
1259 Jackson-Keller Road, Suite 103
San Antonio, Texas 78213

Katherine C. Boyd
Katherine Boyd & Associates, Inc.
1515 East Division-Highway 80
Arlington, Texas 76011

D. E. Brune, President
Texas Soil & Water District Conservation
1011 First National Building
Temple, Texas 76501

****Glenda Callaway, Research Associate**
Southwest Center for Urban Research
1200 Southmore
Houston, Texas 77004

Pete Cantu, Realtor
P. O. Box 5522
San Antonio, Texas 78201

V. A. "Bill" Clements
1215 Judson Road
Longview, Texas 75601

Allen B. Cluck, Attorney
Environmental Law
Tenneco, Inc.
P. O. Box 2511
Houston, Texas 77001

*Subgroup Discussion Leader
**Rapporteur

Ralph W. Conant
Southwest Center for Urban Research
11841 Bayhurst Drive
Houston, Texas 77024

Robert Cornish, Vice President
Gulf Southwest Chapter
American Institute of Planners
Department of Urban & Regional Planning
Texas A&M University
College Station, Texas 77843

****Edwin B. Daniel, Executive Director**
Nortex Regional Planning Commission
1914 Kemp Boulevard
Wichita Falls, Texas 76309

Seymour J. Dreyfus
Dreyfus & Kost Realty
8103 Broadway
San Antonio, Texas 78209

****Bart Eleveld, Research Associate**
Texas Real Estate Research Center
Texas A&M University
College Station, Texas 77843

Thomas W. Finney
8 Willow Wood
Dallas, Texas 75205

William E. "Bill" Fleming, Vice President
Kittrell, Inc., Realtors
7900 Callaghan Road at IH 10, Suite 200
San Antonio, Texas 78229

D. B. "Dennis" Ford, Dean
College of Business Administration
Texas A&I University
Kingsville, Texas 78363

Robert E. Fowler, President
Fowler Realty Company
435 West Elizabeth Street
Brownsville, Texas 78520

Edward C. Fritz
Texas Committee on Natural Resources
4144 Cochran Chapel Road
Dallas, Texas 75209

James H. Glanville
Glanville-Mabray & Associates
316 Eastern Airlines Building
One Greenway Plaza Drive East
Houston, Texas 77046

L. A. "Al" Greene, Jr., Attorney
Medical Towers Building
Suite 519
Houston, Texas 77025

Billy C. Griffin, Assistant State Conservationist
U.S. Department of Agriculture
Soil Conservation Service
P. O. Box 648
Temple, Texas 76501

J. Kent Hackleman
First Financial Properties
4429 Hazelton
Houston, Texas 77035

Ruby Jo Halden

1001 Elizabeth Boulevard
Fort Worth, Texas 76110

C. Robert Hale, III

Hale & Edmondson
Attorneys at Law
5959 West Loop South, Suite 313
Houston, Texas 77401

Wayne Hamilton

P. O. Box 187
LaPryor, Texas 78872

Mary Harding

League of Women Voters of Tarrant
County
7040 Valhalla
Fort Worth, Texas 76116

Billy L. Harris

Texas Agricultural Extension Service
Texas A&M University
College Station, Texas 77843

Joe B. Harris

Office of the Governor
Natural Resources Section
Division of Planning Coordination
Capitol Station
Austin, Texas 78711

Robert Hartsfield, AIP

2022 Albans
Houston, Texas 77005

James H. Harwell, Executive Director

Texas Industrial Commission
P. O. Box 12728
Capitol Station
Austin, Texas 78711

Kingsley E. Haynes

LBJ School of Public Affairs
Sid Richardson Hall
University of Texas
Austin, Texas 78712

Herb Helbig, Vice President and Trust Officer

Corpus Christi National State Bank
501 North Water
Corpus Christi, Texas 78401

Reese Henry, Realtor

4907 Walzem Road
San Antonio, Texas 78218

Terry Hershey

One Longbow Lane
Houston, Texas 77024

Raymond Hicks

P. O. Box 307
Bandera, Texas 78803

Bobette Higgins, Chairman

Land Use and Solid Waste
League of Women Voters of Texas
1712 Highland Park Road
Denton, Texas 76201

Mazie Sale Hill, President

San Antonio Board of Realtors
6714 North New Braunfels Avenue
San Antonio, Texas 78209

Leland A. Hodges

Leonard Investments
P. O. Box 1718
Fort Worth, Texas 76101

Lawrence M. Hoffman

2821 Walton Avenue, Apt. 210
Fort Worth, Texas 76133

Ray Holbrook, County Judge

Galveston County Courthouse
Galveston, Texas 77550

Milton Holland

Route 1
Wheelock, Texas 77882

Robert G. "Bob" Honts

Travis County Commissioner
P. O. Box 772
Austin, Texas 78767

Wilbur W. Hurt, Director

Community Services
Coordinating Board
Texas College and University System
P. O. Box 12788
Austin, Texas 78711

William Irwin

Southwest Center for Urban Research
1200 Southmore
Houston, Texas 77004

C. Gordon Jackson, Jr.

Gordon Jackson Co., Realtors
4505 North Central Expressway
Dallas, Texas 75205

Harold B. "Hal" Jennings

Institute of Advanced Environmental Studies
306 West 29th
Austin, Texas 78705

Ercell Jeter, Crop Manager/Agronomist

Chocolate Bayou Company
P. O. Box 1305
Alvin, Texas 77511

Garner Jones

Texas Water Quality Board
Lowich Building
Austin, Texas 78701

Ron Jones, Director

Coastal Management Program
General Land Office
200 East 12th Street
Austin, Texas 78701

Roscoe H. Jones, Director

City Planning Department
City of Houston
Houston, Texas 77001

Don Kennard, President

Texas Environmental Coalition
401 Ridgewood Road
Austin, Texas 78746

Rex Kennedy

Department of Agricultural Economics
Texas Tech University
Lubbock, Texas 79409

Key Kolb, AIA, President

Omniplan Architects Harrell & Hamilton
1700 Republic National Bank Tower
Dallas, Texas 75201

Paul R. Kramer, Director

Texas Forest Service
Texas A&M University
College Station, Texas 77843

Chester W. Kyle

Kyle Realty
1306 South 14th Street
Kingsville, Texas 78363

M. L. Lefler, Jr., Realtor/Appraiser

3395 McFaddin Street
Beaumont, Texas 77706

Therese C. Lucas, Project Director

Rice Center for Community Design &
Research
400 Parkway Tower
1929 Allen Parkway
Houston, Texas 77019

Travis McBride, Chairman

Department of Political Science
West Texas State University
Canyon, Texas 79016

George L. McGonigle, Vice President & Operations Manager

Friendswood Development Company
P. O. Box 2180
Houston, Texas 77001

George R. McVay, General Manager

Hunt Properties
1940 First National Bank Building
Dallas, Texas 75202

Christopher C. Mathewson

Department of Geology
Texas A&M University
College Station, Texas 77843

John Mixon, Professor of Law

Bates College of Law
University of Houston
3801 Cullen Boulevard, Room 218
Houston, Texas 77004

Jack R. Mogle

Mogle Realtors
P. O. Box 186
Midland, Texas 79701

Manny C. Morales, Alderman

City of El Paso
500 East San Antonio
El Paso, Texas 79901

Joe C. Moseley, II, Executive Director
Texas Coastal and Marine Council
P. O. Box 13407
Austin, Texas 78711

Robert L. Murray
2323 Pearl Avenue
Fort Worth, Texas 76106

Clifford C. Nelson, President
American Assembly
Columbia University
New York, New York 10027

E. L. Oakes
Texas A.F.L.-C.I.O.
3821 Old College Road
Bryan, Texas 77801

***John E. Orr, President**
Communities Development Corporation
2509 West Berry Street, Suite 20
Fort Worth, Texas 76109

Don Osborne
Osborne Co., Realtors
4501 Avenue Q
Lubbock, Texas 79412

***George Oser**
Southwest Center for Urban Research
1200 Southmore
Houston, Texas 77004

Robert L. Pardue
R. L. Pardue & Company
2911 Brazos
Houston, Texas 77006

Catherine Perrine
7616 Royal Place
Dallas, Texas 75230

***Glen Provost**
Institute for Urban Studies
University of Houston
Houston, Texas 77004

Walter H. Richter, Director
Government Relations
The Assoc. of Texas Electric Coop., Inc.
P. O. Box 9589
Austin, Texas 78766

Margret Rimmer, Director, TML
Councilwoman, Fort Worth
City Council/City Hall
1000 Throckmorton Street
Fort Worth, Texas 76102

Eugene W. Robbins, President
Texas Good Roads Association
Vaughn Building, Suite 310
Austin, Texas 78701

Barry Robinson
LBJ School of Public Affairs
Sid Richardson Hall
University of Texas
Austin, Texas 78712

George W. Sandlin
Sandlin & Company
308 West 15th Street
Austin, Texas 78701

Y. C. Shamblee
925 South Freeway
Fort Worth, Texas 76104

Billy R. Shirley
Shirley Cattle Company
P. O. Box 65
Marfa, Texas 79843

D. E. Simmons, Vice President
Environmental & Inter-Utility Affairs
Houston Lighting and Power Company
P. O. Box 1700
Houston, Texas 77001

Ben O. Sims
Sims Ranch
Paint Rock, Texas 76866

****Evelyn Kay Smith**
Texas Transportation Institute and
Department of Economics
Texas A&M University
College Station, Texas 77843

Pat Smith, Director
State Affairs, Texas Farm Bureau
307 East 14th Street
Austin, Texas 78701

E. Coy Stanphill, Director
Industrial Development
Texas Power & Light Company
P. O. Box 6331
Dallas, Texas 75222

Bernard M. Starner, Technical Manager
Aluminum Company of America
P. O. Box 472
Rockdale, Texas 76567

Sharron Stewart
Texas Environmental Coalition
102 Carnation
Lake Jackson, Texas 77566

Lloyd F. Stimson
3587 Cromart Street, South
Fort Worth, Texas 76133

Horace G. Stubblefield, Jr., President
Sabine Investment Company of
Texas, Inc.
P. O. Drawer V
Diboll, Texas 75941

William L. Telford, President
Gulf Southwest Chapter
American Institute of Planners
Groves, Fernandez, Barry, Telford
& Associates
9030 Wurzbach Road
San Antonio, Texas 78240

James R. Toal, Senior Planner
Urban Design Section
Department of City Planning
3567 West 4th Street
Fort Worth, Texas 76107

Fernando G. Torgerson, Dean
Graduate School of Social Work
University of Texas at Arlington
P. O. Box 19129
Arlington, Texas 76019

James P. Valentine, Urban & Regional Planner
Texas Department of Community Affairs
Division of Community Services
611 South Congress
Austin, Texas 78701

Daniel E. Van Petten
Department of Urban & Regional
Planning
Texas A&M University
College Station, Texas 77843

Donald Van Sickle
Turner, Collie & Braden, Inc.
P. O. Box 13089
Houston, Texas 77019

E. G. "Jerry" Wermund, Coordinator
Bureau of Economic Geology
The University of Texas
University Station
Austin, Texas 78712

Donald L. Williams, Executive Director
Rice Center for Community Design
& Research
400 Parkway Tower
1929 Allen Parkway
Houston, Texas 77019

MacGruder Wingfield
S.I. Morris Associates
Architects & Planners
P. O. Box 22715
Houston, Texas 77027

David Witte
Texas & Southwestern Cattle Raisers
Assoc.
1000 Empire Life Building
Dallas, Texas 75201

***Thomas H. Wolfe, Director**
Institute of Advanced Environmental Studies
306 West 29th
Austin, Texas 78705

Max Wollam
P. O. Box 153
Danbury, Texas 77534

Samuel L. Wyse, III
Shanahan/Wyse Associates
1160 Campbell Centre
Dallas, Texas 75206

**The
State
and
YOU**

The State . . .



The Assembly recognized the role of the state in land use planning — primarily in partnership with local governments.

Local and state governments should be the focal points in any land resource management policy.

Procedures for appeal of local decisions, particularly those involving state and national standards, must be a component of the local and state system.

The size and diversity of Texas suggest that an adequate state land resource system should be composed of regional information systems developed in cooperation with local and state agencies.

As the chief planning officer of the state, the Governor should develop a state land use policy and, if appropriate, recommend a local and state system for making and enforcing land use decisions. Just as the Assembly recognized the right of home rule cities not to regulate land uses through traditional zoning ordinances, the Assembly did not mandate that the Governor should extend present state powers over uses of land resources.

The Assembly, after considering other approaches such as special commissions, recognized a fact of life — the Governor is the Chief Executive of the state government. Since he is in the best position to initiate a workable system, a workable system would be highly improbable without his active support.

The Assembly recognized that it is unlikely that any system which might be copied from other states would work in Texas. Because of its size and diversity and the strong feelings of people about their land, a system would have to be tailored to meet Texas needs.

Finally, the Assembly said that any workable program for Texas should be preceded by public information and participation.

To be objective about land use in Texas requires an organized approach. Benefits can be great because leaders react more constructively to an enlightened citizenry.

Many Texans already have achieved some degree of knowledge in land use. Some are in positions of influence and can articulate their points of view. They have a special opportunity now to help shape effective land use policy. YOU can help too, by becoming informed and voicing informed opinions.

The key is information, and being able to articulate that information.

The responsibility of YOU, the reader, in formulating a workable land use policy for Texas includes . . .

Reading information concerning all issues involved in land use
Joining organized groups studying land use
Participating in continuing education courses and seminars
Asking to be placed on mailing lists of involved agencies

Address information on any of the following are available from the Texas Real Estate Research Center:

Involved Agencies

| | |
|--|---|
| Texas Real Estate Research Center | Texas Highway Department |
| Environmental Protection Agency, Dallas Office | Texas Industrial Commission |
| The Office of the Governor | Texas Parks and Wildlife Dept. |
| Bureau of Economic Geology | Growth Policy Committee of the Southern Governor's Conference |
| General Land Office | Southwest Center for Urban Research |
| Soil Conservation Service | Rice Center for Community Design and Research |
| Texas Air Control Board | U.S. Chamber of Commerce |
| Texas Department of Agriculture | Texas A&M University |
| Texas Forest Service | University of Texas at Austin |

Books and Reports

| | |
|--|--|
| The Good Earth of America: Planning Our Land Use | Economic Growth and Environmental Decay |
| The Quiet Revolution in Land Use Control | Managing Urban Growth — An American Policy Dilemma |
| The Greening of America | |

Organized groups may include The League of Women Voters and other civic organizations. Continuing education courses and seminars are offered by Texas Universities and Colleges and, especially for rural areas, the Texas Agricultural Extension Service.

. . . and YOU



The Texas Assembly on Land Use

On December 5, 1974, 107 Texans met at Texas A&M University in College Station for the Texas Assembly on Land Use. As principals in their respective spheres, including industry, labor, real estate, ranching and farming, business, environmental groups, educational and governmental institutions, these individuals came from all regions of the state to consider land use in Texas.

In small groups, they spent two days discussing past and present land use practices and programs. On the third day, in plenary session, they adopted the consensus statement published here. The statement represents general agreement; however, it should not be assumed that every participant subscribed to every recommendation.

During the course of the Assembly, formal addresses were given by John Mixon, Bates College of Law, Houston, Texas; Stewart Udall, Washington, D.C.; and William P. Gramm, Texas A&M University, College Station, Texas.

General background for the discussions consisted of **The Good Earth of America: Planning Our Land Use**, edited by C. Lowell Harriss, and published by the American Assembly, Columbia University. Specific background papers relating to land use issues in Texas, available upon request from TRERC, were prepared under the supervision of JD Smith, Jr., Research Associate, Texas Real Estate Research Center, Texas A&M University, and are as follows:

Land Use Management in Texas: Policy Framework and Legal Basis, H. L. Cowden, Kingsley E. Haynes and Barry P. Robinson, Lyndon B. Johnson School of Public Affairs, The University of Texas, Austin, Texas.

Land Management: How to Do It Without "Zoning" Texas, Donald L. Williams, Rice Center for Urban Design and Research, Houston, Texas.

The Role of the Environmental Protection Agency in Land Use, John Mixon, Bates College of Law, Houston, Texas.

Land Use Planning: The Market Alternative, William P. Gramm and Robert B. Ekelund, Jr., Department of Economics, Texas A&M University, College Station, Texas.

Management Techniques for Coastal Resources, Therese C. Lucas, Rice Center for Urban Design and Research, Houston, Texas.

A Statewide Land Information System, T. E. Avery, Department of Forest Science, Texas A&M University, College Station, Texas.

As a nonpartisan educational forum on current affairs, the Texas Assembly on Land Use was sponsored by the Texas Real Estate Research Center, Texas A&M University, in association with the Institutes of Urban Studies, University of Houston and University of Texas at Arlington, and the Southwest Center for Urban Research, Rice University and the University of Houston.

The findings in the report are those of the participants in their private capacities, and the opinions in the background papers belong to the authors themselves. The sponsoring organizations take no official stand on the report of the Texas Assembly on Land Use. Nor is the Division of Community Services, Coordinating Board, Texas College and University System, which generously supported this program, to be associated with the views in the papers or this report.

The American Assembly

The American Assembly was established by Dwight D. Eisenhower at Columbia University in 1950. It holds nonpartisan meetings and publishes authoritative books to illuminate issues of United States policy.

An affiliate of Columbia, with offices in the Graduate School of Business, the Assembly is a national educational institution incorporated in the State of New York.

The Assembly seeks to provide information, stimulate discussion, and evoke independent conclusions in matters of vital public interest.

The American Assembly initiates at least two national programs each year. Authorities are retained to write background papers presenting essential data and defining the main issues in each subject.

About sixty men and women representing a broad range of experience, competence, and American leadership meet for several days to discuss the Assembly topic and consider alternatives for national policy.

All Assemblies follow the same procedure. The background papers are sent to participants in advance of the Assembly. The Assembly meets in small groups for four or five lengthy periods. All groups use the same agenda. At the close of these informal sessions, participants adopt in plenary session a final report of findings and recommendations.

Regional, state, and local Assemblies are held following the national session at Arden House. Assemblies have also been in England, Switzerland, Malaysia, Canada, the Caribbean, South America, Central America, the Philippines, and Japan. Over one hundred institutions have cosponsored one or more Assemblies.

Home of The American Assembly and scene of the national sessions is Arden House, which was given to Columbia University in 1950 by W. Averell Harriman. E. Roland Harriman joined his brother in contributing toward adaptation of the property for conference purposes. The buildings and surrounding land, known as the Harriman Campus of Columbia University, are fifty miles north of New York City.

Arden House is a distinguished conference center. It is self-supporting and operates throughout the year for use by organizations with educational objectives.

The background papers for each Assembly program are published in cloth and paperbound editions for use by individuals, libraries, businesses, public agencies, nongovernmental organizations, educational institutions, discussion and service groups. In this way the deliberations of Assembly sessions are continued and extended.



The Texas Real Estate Research Center

Texas A&M University

Dr. A. B. Wooten
TRERC Director

Dr. William G. Adkins
Research Division Head

Wm. Douglas Moore
Education Division Head

Bob Robinson, Editor
Real Estate Men!
TRERC Reports
Mass Media

James Harp, Editor
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