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A SUMMARY OF STATE LAND USE CONTROLS

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INTRODUCTION

Although a land use bill was enacted in Wyoming, 1975 saw a shift in emphasis away from sweeping land use proposals in the states. Only in Michigan does there appear to be a good chance for passage of a state land use measure in 1976. Elsewhere, comprehensive land use proposals have failed to make headway in state legislatures.

As alternatives, many states are now at more limited proposals to protect critical environmental areas, regulate development of flood plains, guide development of key facilities, and require cities and counties to prepare local land use plans.

To date, nine states have adopted some form of state land use program: Colorado, Florida, Hawaii, Maryland, Nevada, North Carolina, Oregon, Vermont, and Wyoming. New York's Adirondack Park Agency, which makes up one-fifth of the state's land area; also exercises broad land use controls. The Utah legislature adopted a state land use program in 1974, but it was rejected later that year by voters in a state referendum.

In a recent study for the U.S. Department of Housing and Urban Development, the Council of State Governments concluded, however, "The concept of land use planning has changed from directly controlling growth to coordinating development consistent with environmental and land use concerns."

Several reasons are given by state officials for the shift in emphasis away from sweeping state land use programs:

- The failure of Congress to pass federal land use legislation in 1974 and 1975 has put a damper on many state efforts to enact land use controls. Without federal aid and sanctions, many state legislators are unwilling to allocate their resources to developing land use programs.

The House Interior Committee killed a proposed federal land use bill in July 1975. The measure would have provided federal grants to states to develop and implement state land use programs.

That defeat means that land use legislation is virtually dead in Congress until 1977. With presidential elections dominating political activity in 1976, there is little chance that a national land use measure can be revived.

One presidential candidate, Sen. Henry M. Jackson, D-Wash., is the sponsor of the 1975 Senate version of the federal land use planning bill. Jackson has pushed a land use bill through the Senate twice before, only to see the House fail to pass a companion bill. Jackson delayed consideration of his 1975 version once, and his presidential campaign may force him to change his plans to revive land use planning in 1976.

- Land use planning on the federal and state levels has failed to produce measurable results in the past. Many state legislators and administrators are unwilling to put more money and manpower into planning programs that offer uncertain returns.

On the federal level, Congress abolished the Department of the Interior's Office of Land Use and Water Planning as an economy move. Another land use program under fire, which could succumb to pressure from the Ford Administration for abolishment, is the Department of Housing and Urban Development's Comprehensive Planning Grants Program (HUD 701). The HUD 701 program requires states, cities, counties, and regional agencies receiving grants, to prepare land use plans by August 1977. The program suffered a cut in funding of $25-million in 1975 and the administration is seeking to eliminate its funding entirely in 1976. In an effort to save the program, Assistant Secretary of HUD David O. Meeker has pleaded with grant recipients for more than a year to show what they have done with their money.

- Many conservative political groups have singled out land use controls as a dangerous threat. Any restrictions on the use of private property is resisted. The groups, notably the American Party and the John Birch Society, have been successful in arousing public suspicion of land use controls. A campaign to gain popular rejection of Utah's land use program was successful in 1974, and similar campaigns are under way in other states, especially Idaho and Oregon.

The U.S. Chamber of Commerce led opposition to federal land use legislation, characterizing the 1975 House bill as a "national zoning ordinance." After defeat of the bill, chamber officials conceded they were wrong, but continued to maintain that passage of any federal land use legislation would lead eventually to more stringent federal controls.

- The "gravy days" are over for environmentalists, as the House of Representatives Environmental Study Conference put it. Environmental groups were the first and foremost proponents of land use legislation in the 1970's, but major pieces of environmental legislation are more difficult to pass now than at the beginning of the decade. Although public support for a clean environment remains, according to a recent poll for the Environmental Protection Agency by Opinion Research Corporation, there is increasing concern that environmental concerns be balanced with other interests.
- Recession, inflation, and economic austerity have meant less emphasis on new programs, and reduction, or at least no expansion, of existing programs.

The Ford Administration deftly avoided taking a position on the merits of proposed federal land use legislation in 1975 by opposing it on economic grounds. The move enabled the President to avoid an open split in the administration: former Secretary of the Interior Rogers C.B. Morton, EPA Administrator Russell E. Train, and Council on Environmental Quality Chairman Russell Peterson favored the measure "in principle." Conservative Republicans, led by Rep. Sam Steiger, R-Ariz., strongly opposed passage of federal land use legislation.

Despite these indicators, the land use scene will remain active. One of the most active spots this year will be the courts, as in 1975. The Supreme Court has agreed to review cases involving exclusionary zoning, referenda on no-growth policies, and efforts to prevent concentrations of pornography shops. The final rulings will set precedents all states must follow.

State courts should also be active. In 1975, landmark decisions were issued banning exclusionary zoning in New Jersey, upholding no-growth policies in California, making local zoning ordinances subject to state court review in Georgia, and requiring local zoning decisions to be compatible with land use plans in Oregon.

In the West, efforts to formulate orderly means of developing energy resources have given impetus to many land management measures such as strip-mining and power-plant siting controls. In the East, increasing pressures of urban growth have spurred widespread growth-management activities. Throughout the country, state legislators are beginning to look seriously at proposals to preserve agricultural lands.

Coastal areas probably will face increased onshore impacts from the speedup of offshore drilling in the Outer Continental Shelf for domestic oil and gas reserves. The speedup is part of the administration's "Project Independence" to decrease reliance upon foreign energy sources.

Two bills (S 586 and S 521) creating special impact funds to help states cope with the facilities and services they might have to provide for sudden buildups near offshore drilling sites have already passed the Senate; a similar measure (HR 3981) is pending in the House Merchant Marine and Fisheries Committee.

Although no federal land use legislation has been passed, several federal land use-related programs will affect state activities. With Congress unable to act on land use legislation, and the administration unwilling, activity at the federal level is primarily in the federal agencies.

Pressed to respond to land use problems without additional legislative or administrative direction, the departments and agencies have turned to coordinating many of their programs through interagency agreements. The agreements have the added aim of answering frequent criticism that no new land use legislation to aid states should be passed until the federal government gets its own house in order.

The main federal programs affecting land use are the Coastal Zone Management program, the Clean Air Act, the Federal Water Pollution Control Act, and the Flood Insurance

Act. Unlike other federal programs, these four affect land use decisions that actually get carried out. They are more than plans, they are management programs.

The Coastal Zone Management program provides federal grants to states to develop and implement coastal land management processes. As the program enters its third year, most states will be using grants to complete development of their programs. Some states, however, will be moving toward the implementation phase. Washington was the only state in 1975 to receive preliminary approval of its CZM program.

Lance Marston, director of the recently abolished Office of Land Use and Water Planning, said success or failure of the CZM program may determine the future prospects for adoption of a national land use program. If the CZM program proves successful, Marston said, there will be an example to guide a federal land use program for interior states.

Clean Air Act controls affecting land use will come out of state plans for air-quality maintenance and plans for prevention of significant deterioration of air quality in presently clean-air areas. Congress has begun working on amendments to the significant-deterioration provision of the act. Once in its final form, the significant-deterioration provisions will indirectly determine land use patterns by spelling out how much deterioration of already clean air will be allowed in different areas of the country. Development will be greatly curtailed, for example, in areas where no deterioration in air quality will be allowed.

Congress also will attempt to extend funding deadlines under the Clean Water Act for the Section 208 Areawide Waste Treatment Planning and Management program. The Section 208 program calls for states to use land use controls to prevent water pollution.

Under the Flood Insurance Act, communities must control land use in flood hazard areas in order to remain eligible for federal flood insurance. The program affects more than 22,000 communities throughout the country.

ALABAMA

A legislative commission on land use established in 1973 recommended "no legislation" in its report to the Alabama Legislature in 1975. State Sen. William King, however, made a minority recommendation that the state enact legislation to protect critical areas. However, the King bill (SB 84) did not get out of committee.

The state legislature passed a new strip mining control bill in 1975. The measure is a compromise bill that would require mined areas to be immediately planted with a grass covering; require prevention of damage or injury to nearby persons or property from the use of explosives during mining operations; prohibit stripping within 300 yards of an occupied dwelling or building except with permission of the owner; and empower the state attorney general to act independently to enforce the act. A provision deleted would have required citizens bring suit under the act to post a $500 bond and be subject to perjury charges for wrong statements. One compromise provision sought by state Attorney General William Baxley, but rejected, would have given the Alabama Surface Mining Reclamation Commission authority to designate environmentally sensitive areas, recreational areas, or historical lands as unsuitable for mining.

Land Use Policy

A detailed analysis of statutes and judicial decisions concerning land use in Alabama concludes that in examining "legislation enabling local and state authorities to regulate land use, one fact is painfully clear. Land use controls are extremely fragmented."

The analysis, "Land Use Law in Alabama" published by the State Planning Division of the Alabama Development Office, places special emphasis on laws and decisions relating to zoning. It finds that "the format and trend of Alabama land use law is certainly not unusual in the country."

The report says: "Although regional planning is authorized, unless all diverse political authorities consent, there are no sanctions forcing joint efforts."

Further, the report says: "Unless all diverse political authorities consent, there are no sanctions forcing joint efforts. Not only does this effect normal day-to-day land use problems, but it also affects airport and flood plain land use controls. There is no statewide sanctioning body and no central control over local authorities."

"It is quite obvious," the report continues, "that the courts in Alabama have not always helped the situation. For example, the cases concerning spot zoning do not aid comprehensive zoning with an overall perspective. The decisions seem to invite all kinds of special-interest pressures on local authorities."

Two bright spots for the state role in land use controls are singled out: new state flood-prone land zoning enactments and new coastal zone management controls. The impetus for these actions, however, comes from recently enacted federal legislation—the Flood Disaster Protection Act of 1973 and the Coastal Zone Management Act of 1972. The report says the kind of "carrot and stick" approach of federal legislation may be what will move the state toward adoption of additional statewide land use controls.

Coastal Zone Management

Alabama CZM officials are in the middle of efforts to gather data and to coordinate coastal planning within the state. They also are ready to begin preliminary efforts to draft a state CZM program. Before such a program can be submitted for federal approval, it must be approved by the state governor and legislature.

The Coastal Area Act was passed in 1974 to enable the state to participate in the federal CZM program. Alabama is in its second year under the federal CZM program, and has received a total of $120,000 for fiscal 1976.

The Coastal Area Act establishes an eight-member board to administer the CZM program. Bills pending in the legislature this year would make minor changes in the composition of the board, which now consists of five agency heads, two county commissioners (one from each coastal county), and one appointee of the governor.

Among coastal zone problems, Alabama officials are concerned with unregulated development in wetlands, storm damage and flooding, shreoline erosion, and increased competition among industrial, commercial, agricultural, and residential developers for a limited amount of coastal land.

In development of its CZM program, Alabama has begun to acquire existing data for 10 key areas: industrial development, commercial development, residential development, recreational resources, mineral extraction, transportation, navigation, waste disposal, fisheries, and agriculture.

The aim of the data-gathering effort will be to develop broad policy goals within each of the 10 activity areas. These can serve as the basis for the state's decisions on such requirements as the designation of permissible uses and priority uses within specific areas.

The goal of the program development effort is to allocate available coastal resources for the economic and social benefit of the state, preserving options and values for future generations. Another objective the state sees is the need to minimize irretrievable commitments of natural resources in the coastal area to the extent feasible.

ALABAMA LAND USE CONTACTS: Bill J. Starnes, Director of State Planning, (205) 269-1831; William H. Wallace Jr., State Planner, (205) 832-6400; Alabama Development Office, State Office Building, Montgomery, Ala. 36104.

ALABAMA COASTAL ZONE MANAGEMENT CONTACT: Rawdon Barnes, (205) 269-7171; Alabama Development Office, State Office Building, Montgomery, Ala. 36104.

ALASKA

A state land use policy to streamline Alaska's complicated land ownership proceedings and to insure protection of the state's natural resources has been proposed by the Federal-State Land Use Planning Commission.

Development of natural resources, and the resulting impact on community growth, is the state's paramount land use issue. Construction of the trans-Alaska oil pipeline has reached a fever pitch, and the U.S. Department of the Interior has announced that offshore areas in the undeveloped Gulf of Alaska will be leased for oil and gas drilling.

The experience of Valdes, Alaska, port city for the Alaska pipeline, demonstrates Alaskans' concern about the impact of growing natural resources development. In the fall of 1974, the city reported a population increase of 400 percent over 1970 (from 550 to 2,500) and a school enrollment increase of 50 percent. Trailer parks have sprung up and housing has tripled in price, and the situation is expected to get worse. Conservative estimates place the city's population at 7,500 in the next few years.

Land Use Policy

Currently, the federal government owns more than 90 percent of Alaskan land. Most of this area is administered by the Interior Department's Bureau of Land Management.

The Federal-State Land Use Planning Commission, created by the Alaska Native Claims Settlement Act of 1971 will, however, make recommendations on land uses in the state to the

governor, state legislature, congressional delegation, and Interior Department. The commission is scheduled to last through 1976, but Alaska Gov. Jay S. Hammon, R, has recommended that its charter be extended through 1978.

The Native Claims Act provides for the selection of 40 million acres of federal land by Alaskan natives to satisfy aboriginal claims. The Secretary of the Interior has set aside 106 million acres from which the 40 million acres will be chosen. The act also requires Congress to consider designating 80 million acres as national parks, national wildlife refuges, and national forests.

Additionally, the Alaska Statehood Act of 1958 provides that 104 million acres of federal land are to be selected for state use by 1984. Currently, 70 million acres have been selected.

These lands are important because of the large amounts of natural resources found there. A large portion of the state selection acres are on the oil-rich northern slope. Under the statehood act, the state will receive 100 percent of energy revenue collected on its own land and 88.2 percent of that collected on lands still under federal ownership.

These complicated land ownership proceedings have prompted the federal-state commission to issue proposed guidelines for the management of the 30 percent of the land in Alaska that will belong to the state by 1984.

The proposed state land use policy recommends:

- A revision in the state land classification system to provide a clear distinction between zoning and land classification; land classification categories that clearly indicate what uses can be made of the land; and a method to encourage cooperative land management agreements.
- The use of the commission's "Alaska Resources Inventory" to provide an information base for state land use decisions.
- The disposal of state land in a manner consistent with state planning goals and after a long range cost-benefit evaluation.
- Cooperation among the state, commission, and the U.S. Department of the Interior regarding regulations that will allow the selection of state land to proceed.
- Consideration of the advantages of waiting until native and federal land ownership is established before going ahead with state selection.
- Encouragement of the development of a system of voluntary cooperative land planning and management with other major landowners.
- The amendment of state laws to allow the state more flexibility to trade land and allow public scrutiny of proposed transactions.

The state's Division of Policy Development and Planning has published two volumes in a six-part series of profiles on Alaska's man-made and natural environment, "Alaska Land Resources Inventory."

Alaska planners consider the profiles to be the prototype for a manual system of data collection. Theey think it will be possible to transfer the data to a computer system in the future.

The first profile, covering the south-central region of the state, was published in September, 1974. The second profile, covering the Arctic region of the state, was published in August, 1975. They provide an inventory of existing public facilities, land uses, history and prehistory, governmental structure, and demographic statistics.

State planners had hoped to have all six volumes published by early 1975, but money shortages caused a delay.

Coastal Zone Management

There is rising concern about the Interior Department's plans to lease offshore areas for oil drilling in the undeveloped Gulf of Alaska. Boom-town growth caused by construction of the Alaska pipeline has made Alaskans wary of the onshore impacts associated with development of offshore resources.

Governor Hammond told the U.S. House of Representatives Ad Hoc Select Committee on the Outer Continental Shelf that the state needs time "to prepare for statewide impacts which we fully expect will dwarf anything we have experienced to date, including the trans-Alaska pipeline."

Legislation to set up a state coastal zone management program failed to pass the state legislature when the house and senate could not agree on a measure. The house passed a bill to set up a comprehensive state CZM program, and the senate considered a more general statement that a coastal zone plan should be created. Governor Hammond criticized the senate bill, saying it "would mean that the administration would be powerless to control onshore development that will come with offshore oil exploration."

Efforts to develop a state CZM process under the federal CZM program will continue although a second-year federal grant was held up because of delays that occurred when responsibility for administration of the program was switched from the state Department of Conservation to the office of the governor. Alaska received a first-year grant of $600,000 for development of a state CZM program.

Alaska's application for a federal grant calls for development of a two-level management program: broad coverage for the entire coastal area and intensive management for urban and industrial areas rapidly becoming developed.

ALASKA LAND USE CONTACTS: Robert B. Weeden, Director, (907) 465-3512; Katherin L. Allred, Senior Planner, (907) 465-3512; Division of Policy Development and Planning, Office of Governor, Pouch AD, Juneau, Alaska 99811.

ALASKA COASTAL ZONE MANAGEMENT CONTACTS: Frederick F. Wright, Coastal Planning Program Coordinator, (907) 465-3574; Ms. Betsey Hastorf, (907) 465-3576; Division of Policy Development & Planning, Office of Governor, Pouch AD, Juneau, Alaska 99801.

ARIZONA

With the Arizona Legislature hopelessly divided on whether to provide compensation for the regulation of land, the state Senate Natural Resources Committee voted in 1975 to kill a state land use bill.

The committee also rejected a proposal to extend the two-year-old Arizona Arizona Environmental Planning Commission (AEPC) to study the problem. The commission developed the land use legislation considered this year.

Failure of the state legislature to reach agreement on a land use measure, coupled with expiration of the AEPC mandate, places future adoption of a statewide land use policy in question.

Land Use Policy

The land use program proposed by the AEPC and considered by the Arizona legislature this year would require the designation of geographic areas of state concern and land use activities of state concern. Local governments would identify the areas and activities, and an Office of Resource Administration, which would be created under the governor, would make the designations.

The proposed Office of Resource Administration would develop guidelines for the identification of areas and activities of state concern. The office also would evaluate local plans and regulations for the areas and activities, and approve, disapprove, or recommend changes in them. The office would impose plans for designated areas where local government fail to do so.

An impasse developed between the house and senate, however, over a section of the bill that would require the state to compensate property owners for a partial taking. Any property

owner would have to be compensated if state regulations resulted in "a significant reduction in the fair market value of such property."

The key part of that section says:

"Whenever the state pursuant to the provisions of this article imposes or approves a restriction or prohibition on the use of, or acquires or obtains interests in real property that are less than fee simple ownership therein, and which result in a significant reduction in the fair market value of such property, the owners of any interest in such real property shall be compensated therefor as their respective interests shall appear."

The bill defines the payment as the difference between the fair market value of the property just before the restriction is placed and the fair market value just after the restriction. The state would use its standard eminent domain procedure to carry out the payment.

The bill (HB 2028) containing the compensation provisions was passed by the house on May 1. But the Senate Natural Resources Committee agreed by a 6-3 vote to hold the house-passed measure, and also agreed by a 7-2 vote to hold an alternative senate measure (SB 1089) that did not include the compensation provision.

State Sen. Morris Farr, D, who led opposition to the house-passed bill, said it was "absolutely unacceptable" because it contained the compensation provision.

Currently, the Urban Environment Management Act of 1973 put into effect new planning, zoning, and subdivision regulations for cities and towns. Municipalities may (but are not required) to prepare a comprehensive general plan. Though a plan has no regulatory authority, zoning regulations must conform to the plan or be subject to nullification. An annual report on the plan must be submitted to the local legislature. Traditional zoning and subdivision regulations are used, but site plan review and planned unit development are possible through designation of areas as conditional use zones.

Counties must prepare long-range comprehensive plans, but they are general in scope and zoning regulations do not have to conform to the plan. Though zoning is a local option, once established it is hard to change.

Because of abuses in the financing of new community development, the General Improvement District Act of 1973 now governs the development of new communities. This requires a comprehensive plan indicating staging and rate of development, estimated cost of development and improvements made, and proof of developers' competence.

Energy Facilities and Lands

Arizona has received $50,000 from the Federal Energy Administration (FEA) to prepare guidelines for energy conservation and environmental protection through comprehensive land use planning. The two- to three-year study will be aimed at the development of a state profile, "Energy, Environment, Growth." Two manuals also are scheduled under the project for distribution to other states: a land use planning handbook and a methodology handbook. FEA and state officials hope the project will produce guidelines for directing future industrial growth in the state, and will identify means to implement the guidelines effectively.

Power companies must now file 10-year plans with a special interagency committee. The committee, made up of representatives from several state agencies and public representatives, then reviews the plans for environmental protection. The committee can require compliance with local plans and ordinances.

ARIZONA LAND USE CONTACTS: Harry F. Higgins, State Planning Director; Dennis Thompson, Associate Director; Dennis Davis, Associate Director; Office of Economic Planning and Development, 1645 W. Jefferson St., Phoenix, Ariz. 85007. (602) 271-5005.

ARKANSAS

When former Arkansas Gov. Dale Bumpers, D, relinquished his office this year to take a seat in the U.S. Senate, most impetus for state land use legislation died.

The current state governor, David H. Pryor, D, sees land use planning as a local issue. Consequently, no action on development of a statewide land use policy is expected in the near future.

Land Use Policy

Cities and counties in Arkansas have broad authority to adopt zoning and subdivision regulations, after adoption of a comprehensive plan including a land use element. But state planners said only 15 to 20 counties have planning commissions and have shown an interest in land use regulation.

The role of the state is limited to giving advice and technical assistance to local governments, primarily through the Division of Community Development in the state Department of Local Services. A Natural Resources Management Program, consisting mostly of a land use information system using remote sensing for making maps, has been developed.

State planning officials have prepared a report based on the work of a land use advisory committee appointed by former Governor Bumpers in 1973 to identify land use problems and propose means of implementing a state land use program if required by federal legislation.

The report points out that Arkansas is less pressed than other states in the need to manage its land resources and, state planners added, adoption of a state land use program is not likely unless mandated by the federal government.

Energy Facilities and Lands

Most state officials do not believe that plans to construct a coal slurry pipeline from Wyoming to Arkansas will ever materialize. The proposal by Arkansas Power and Light Company would have coal mined in Wyoming crushed, mixed with water, and transported by pipeline to Arkansas. Power plants that would burn the coal to generate electricity are already in the construction stages, and are scheduled for completion by 1981-82. State planning officials believe that controversy over the pipeline will force the power company to bring the coal in by truck and rail.

Opposition to the slurry pipeline comes mainly from Wyoming, where state officials fear too much of the state's limited water supplies would be needed to transport the coal. Hearings have been held in the U.S. Congress, where the matter is now pending.

ARKANSAS LAND USE CONTACTS: Ronald Copeland, Director, (501) 371-1211; Tom Herrin, Deputy Director, Community and Regional Affairs, (501) 371-1301; Bert Wakeley, Coordinator, Office of State Planning Coordination, (501) 371-2311; Arkansas Department of Planning, 400 Train Station Square, Victory at Markham, Little Rock, Ark. 72201.

CALIFORNIA

"If you don't know where you're going, a plan is a good way to get there," California's new governor, Edmund G. (Jerry) Brown Jr., said several times during the past year in summing up his opposition to planning programs in favor of "action programs."

Governor Brown's attitude put a damper on hopes of some state officials that land use planning legislation could be passed in 1975. Nevertheless, California remains a center of increasing land use activity.

Chief among the land use activities in California this year were a state Coastal Zone Conservation Commission's completion of a program to manage land use along the coast, and a U.S. Court of Appeals decision finding controversial growth controls adopted by the city of Petaluma to be valid.

The Resources, Land Use, and Energy Committee of the state Assembly has scheduled hearings for January, 1976, on several bills which would increase the state role in land management.

Chief among the bills is AB 2422 that would set up nine regional commissions to oversee the environmental control programs in the state. This move would take planning functions out of the governor's office, where some state planners think they have suffered under Governor Brown's administration.

Another bill (SB 620) introduced in the state senate, and to be considered in 1976, would authorize the state to establish areas of critical concern and prohibit or regulate development of those areas. The bill contains provisions for compensation for regulation of the land, even though it would not be taken by the state.

Land Use Policy

Several programs and pieces of legislation give California parts of a land use policy. The California Coastal Zone Conservation Act of 1972 requires the state legislature to consider in 1976 implementing a CZM plan developed by a special coastal commission. The 1965 Williamson Act, as amended, is designed to protect agricultural, forest, and open space lands from development. And the California State Planning Act of 1970 directed state agencies to list areas of critical environmental concern and key areas of more than local concern. However, there is no legislation to control such areas.

Some regional control of land use around San Francisco has been granted by the legislature to the San Francisco Bay Conservation and Development Commission.

Another piece of state land use control comes from the California Environmental Quality Act. It requires all agencies of state and local government to prepare environmental impact statements for all public and private projects which may have a significant effect on the environment.

Localities and counties have full zoning and planning authority. A 1971 law requires compliance with extensive state requirements before subdivision sales can be made.

In court action, the controversial Petaluma attempt to control growth by limiting housing construction was ruled a valid exercise of the city's authority by the 9th U.S. Circuit Court of Appeals in San Francisco. The suit was brought by four local developers.

The decision reverses a Jan. 17, 1974, ruling by Judge Lloyd H. Burke of the U.S. District Court in San Francisco that the Petaluma approach violates the constitutionally protected right to travel.

James L. Beyers, attorney for the Construction Industry Association of Sonoma County, said the decision probably would be appealed to the U.S. Supreme Court.

The appeals court ruled that "the concept of public welfare is sufficiently broad to uphold Petaluma's desire to preserve its small-town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace."

Several challenges to the Petaluma plan were rejected by the appeals court. The basis on which the builders association could bring the suit was also narrowed.

The builders association "easily satisfies the 'injury in fact' standing requirements," the appeals court said, because it has suffered monetary losses. However, the builders association argument that the right to travel is violated was disallowed because:

"The only connection between any of the appellees (the builders) and any of the persons who purportedly are excluded from Petaluma is the possibility that but for the plan they would be parties to a purchase-sales agreement. There exists no special, on-going relationship between appellees and those whose rights allegedly are violated."

The appeals court said the U.S. Supreme Court's recent decision in "Warth vs. Seldon" has "left open the federal court doors for plaintiffs who have some interest in a particular housing project and who, but for the restrictive zoning ordinance, would be able to reside in the community."

On other challenges to the Petaluma plan the appeals court ruled:

- The existence of an exclusionary effect "reflects only one side of the zoning regulation." Although the wisdom of the plan might be questioned, the decision said, it "does not have the undesirable effect of walling out any particular class or racial minority group."
- The city can attempt to preserve its small town character. The appeals court cited the 1974 "Belle Terre" decision by the U.S. Supreme Court that "a quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs."
- It is not necessary for the city to supply its share of the regional housing market needs, as the builders contended, because the plan "is rationally related to the social and environmental welfare of the community and does not discriminate against interstate commerce."

Judge Burke of the district court ruled originally that the limit on housing construction amounts to a population cap, and a city or state is not free to set population limits which would have the effect of closing its borders.

In his 1974 ruling, Judge Burke said, "Any limitation on growth motivated by a desire to exclude residents is unconstitutional."

Attorney Beyers predicted that the cost of housing will be driven beyond the reach of middle-income families if the plan is allowed to stand.

Petaluma Mayor Helen Putnam said, however, that the decision means that a city "can plan for orderly growth, protecting against urban sprawl, and being able to provide adequate facilities."

The Petaluma plan calls for the construction of 2,500 subdivision units during a five-year period. Only subdivisions of five or more units would be affected and they would be judged according to a point system measuring the quality of the development and provisions for public facilities.

Petaluma planning officials said the plan is intended to stem the mass conversion of land to subdivisions. Petaluma is a city of about 30,000, and is 40 miles north of San Francisco.

The Petaluma plan was adopted in 1972, then challenged when the city rejected construction applications for more than 1,600 units in 1973. City officials point out, however, that no permits for the construction of single family homes have been denied since the plan was adopted.

In another noteworthy decision, California developers who take their cases to federal courts instead of state courts in hopes of a more sympathetic decision received a setback.

U.S. District Judge Robert J. Kelleher declined jurisdiction in a key case, ruling that federal courts should not exercise jurisdiction in land use cases until state courts have dealt with the issues.

Judge Kelleher, of the U.S. District Court for the Central District of California, issued the opinion in a suit by a developer, Rancho Palos Verdes Corp., against the city of Laguna Beach. Lawyers for Rancho Palos Verdes Corp. said an appeal would be filed.

Deputy Attorney General of California Larry C. King said he thinks the decision may signal a trend in California. The state attorney general's office filed an amicus curiae brief in the case requesting that the court abstain from exercising jurisdiction over the action.

"State courts have become tougher on land use decisions,"

King said, "and, consequently, developers seeking compensation for newer land use regulations and controls are testing new theories to sue in federal court."

The amicus brief says, "The exercise of federal jurisdiction over disputes such as this one will encourage the recent undesirable trend of forum shopping where disappointed developers and land owners have sought to have state land use questions litigated in federal courts based on tenuous federal causes of action."

Coastal Zone Management

A permanent state agency would be established to maintain state land use control of critical coastal areas under proposals adopted by the California Coastal Zone Conservation Commission.

The proposals comprise the ninth and final element of a coastal zone management (CZM) plan developed by the commission. As the most ambitious state effort to manage land use in the coastal zone, it sets the pace for development of other state coastal zone programs.

The commission recommended designation of a special "coastal resource management area." E. Jack Schoop, chief planner of the commission, said this is the major change from proposals drafted and distributed in July for public review.

The coastal management resource area would vary from the coastal zone designation that now gives the state control over all areas 1000 yards inland while the state CZM plan is developed. The coastal resource management area would extend several miles inland in some cases, but would be less than the 1000 yards now controlled in other cases.

Schoop said the coastal resource management area would be determined by using information identifying the location of natural resources that need to be maintained. He said in the urban areas of Los Angeles and San Francisco the designation would probably not reach inland to the 1000 yard limit now drawn; but in other areas, especially north of San Francisco where urban development has not exhausted the natural resources, the coastal resource management area could reach several miles inland.

In the coastal resource management area, localities would have three years to develop land use plans consistent with state guidelines. Once the proposed state coastal agency approved a local plan, the locality would control development.

The proposed state coastal agency would regulate development in areas failing to draft an approved plan, and would be authorized to impose a construction moratorium until an approved plan could be drafted. The proposed state coastal agency also would oversee local enforcement, hear appeals of local decisions, and monitor effectiveness of the plan in protecting coastal resources.

During the interim period when local plans would be drafted, the proposed state coastal agency would control development in the 1000 yard coastal zone. In parts of the coastal resource management area that extend farther inland, the commission recommended authorizing the proposed coastal agency to control the conversion of prime agricultural lands to other uses, conversion of other agricultural lands of more than 20 acres to other uses, development of major public works such as water, sewer, and highway projects, and development of energy facilities. Proposals for control of floodplains and watersheds were dropped, Schoop said, because they are already covered by other programs.

Also dropped from the element was the recommended purchase by the state of land to forestall development, supply recreational areas, and protect critical resources. Schoop said this section was developed only recently, and the commission plans to hold more public hearings before preparing a separate recommendation.

The proposals adopted will be combined with eight other elements already adopted by the commission and the package will be submitted to the governor and state legislature for approval or rejection in 1976.

The other eight elements present proposed coastal zone policies to govern marine environment, coastal land environment, geology, appearance and design, recreation, energy, transportation, and intensity of development.

Schoop said action by the governor and state legislature was unpredictable. He said major political obstacles to state adoption of the program were an uncertain economy, and possible opposition of organized labor on the basis that restricting development may also restrict job opportunities.

Schoop said the Coastal Zone Conservation Commission will concentrate its efforts in 1976, before its mandate runs out, toward creating pilot projects with willing local governments to test the feasibility of the plan and to determine the best methods of making the plan work.

Schoop said the commission staff and members hope the pilot projects will relieve some of the concern that could lead to rejection of the plan "because it is bold and untried."

California received a federal grant of $900,000 in 1975 for development of its coastal zone management program. The state received a federal grant of $720,000 in 1974.

Agricultural Lands

The California Legislature this year considered a state-imposed ban on all development of prime agricultural lands.

The measure (AB 15) was introduced by Assemblyman Charles Warren. Although not passed, state agricultural experts said the bill had focused some attention on preservation of agricultural lands.

Under AB 15, localities would designate prime agricultural lands on maps under state guidelines, said Gene Varinini, of Warren's office. The state would step in if the localities did not draw the map. The state would review appeals. There would be no state permit procedure.

Officials in the U.S. Agriculture Dept. Economic Research Service said the California proposal would be the most drastic step yet taken by a state to preserve agricultural lands.

In effect now is the Williamson Act, authorizing cities and counties to contract with agricultural landowners to restrict the uses of their land to certain open space uses. Agricultural lands in this context are defined to include lands devoted to recreation, wildlife, as well as other undeveloped areas. The minimum initial contract term is for 10 years. Local governments can pay landowners directly for the restrictive agreements, but the act intends the primary form of compensation to be property tax relief.

CALIFORNIA LAND USE CONTACT: Mr. Preble Stolz, Director, (916) 445-4831; State Office of Planning and Research, 1400 Tenth Street, Room 256, Sacramento, California.

CALIFORNIA COASTAL ZONE MANAGEMENT CONTACT: Joseph E. Bodovitz, Executive Director, (415) 557-1001; California Coastal Zone Conservation Commission, 1540 Market Street, San Francisco, Cal. 94102.

COLORADO

Although newly elected Colorado Gov. Richard D. Lamm, D, criticized the state land use act passed in 1974 as an "unworkable bill," he gave new land use legislation a low priority in 1975. A bill to strengthen the state land use program, consequently, failed to get serious attention from the Colorado General Assembly.

In other areas, however, the general assembly passed a major act dealing with competition for limited water supplies, a primary factor in shaping land use patterns in the West. The bill (HB 1555) requires a municipality to show need before claiming water for its own use. Under the act, municipalities are required

to prepare a growth plan and impact statement before condemning water rights. It is intended to protect water needed for agricultural uses.

The Colorado Open Space Council said some land use proponents opposed the water condemnation bill because they feared it would satisfy the one land use control element that agricultural-oriented legislators want, and its passage would thus jeopardize their support for any future comprehensive land use legislation. However, the council said, environmental groups consider any broad agricultural support for land use legislation to be nonexistent anyway.

Land Use Policy

An act passed in 1974 (HB 1041) gives the state control over development activities of "statewide interest." Under the law, the state establishes criteria for areas and activities of statewide interest, and localities must designate and regulate the areas.

All local decisions in designating areas and activities of statewide interest and the regulation of the areas through local land use controls are to be reviewed by the Colorado Land Use Commission (CLUC).

If the CLUC finds that a locality fails to make a reasonable designation, it can ask the locality to reconsider or it can take local officials to court. The legislature killed a proposal to create a board of appeals with power to act on matters of statewide interest when local governments either fail to act or act irresponsibly.

A moratorium on all development activities in an area takes effect once a local government calls for public hearings on a proposal to designate an area. A moratorium also takes effect if the CLUC identifies an area that a locality fails to designate.

Areas of statewide interest include natural hazards (such as floodplains); mineral resources; historical, natural, and archeological resources; and key facilities (airports, highways, water and sewers, utilities).

Activities of statewide interest include siting of water and sewer facilities, solid waste facilities, airports, mass transit, highways, and utilities; new community development; water projects; and nuclear detonations (tried in the past to free natural gas and possibly to be used in the future to free oil shale).

The broad guidelines set out in the bill were supplemented this year with more specific guidelines and criteria outlined by the CLUC.

The general assembly appropriated $1.5 million to the state Department of Local Affairs to pass on to local governments to implement the act. Further funding depends on whether the local governments adopt model regulations for areas of state interest before June 30, 1976.

Governor Lamm characterized the state land use program as an "administrative nightmare," and in his campaign for governor said it is "worse than no bill at all." He promised to push for stronger legislation, but did not support a measure offered in 1975 that was intended to strengthen the existing program.

The governor's staff is reviewing state land use policies in an attempt to coordinate a multitude of agencies, programs, and regulations dealing with land use.

Many Colorado developers and environmentalists alike have come to think that state land use policies often are conflicting and unwieldy. The staff estimates that as many as 24 agencies may have a say in regulating any given development.

And so far, aides say the current review of policies will not be as far-reaching and comprehensive as when Governor Lamm sought legislation in 1973 and 1974 when he was a member of the general assembly.

First, they say, specific legislation has not yet been decided on, and in fact, may be avoided. They point out improvement in Colorado land use planning can be obtained without new laws by making the present system work more efficiently and effectively.

And secondly, clashes with the Republican-controlled general assembly have injected a spirit of pragmatism into the Lamm administration. Both earlier land use bills supported by Governor Lamm suffered in varying degrees in the general assembly.

The 1973 bill (SB 377), which would have created a central board with land use powers, failed completely. A restricted version of the 1974 bill (HB 1041) passed, but without the central State Land Appeals Board advocated by the governor.

"We don't want to amend the laws unless there is a pretty good chance of arriving at a (bipartisan) consensus," said Lamm aide Roy Romer.

Harris Sherman, director of the Department of Natural Resources, has urged the governor to offer a measure to improve coordination among various state agencies with land use authority. However, Sherman favors a new reclamation act for surface mining and an energy facilities siting bill above the land use proposal.

The governor's environmental adviser, James Monaghan, said, "The land use area remains our top priority, but we hope now that we're taking a more sophisticated view."

The defeated bill (HB 1514) to amend the existing state land use program would have established a definition for guidelines, deleted exemptions for the public utilities commission, and allowed the CLUC to initiate judicial review if a local government rejects CLUC recommendations, designations, or guidelines.

Currently, Colorado cities, towns, and counties have broad zoning and subdivision regulation authority. A bill (HB 1696) killed in the House Local Government Committee in 1975 would have required comprehensive land use planning by local governments, coordinated by a regional planning commission.

Other legislation rejected by the general assembly included a measure to allow local governments to establish development rights districts and set up a transfer of development rights (TDR) system. Also killed was a bill to expand the power of counties to allow them to use land use controls in planning to control floods, a bill to require that a landowner be compensated when his property is reduced in value as a result of governmental regulation, and a bill to coordinate planning in urban areas through an integrated local, regional, and state process.

Energy Facilities and Lands

Development of energy resources in the West could lead to large-scale oil shale production in Colorado. Governor Lamm and his predecessor, former Governor John Vanderhoof, R, have called for the creation of an impact fund, either through state or federal sources, to prepare for the impact of the oil shale projects. The money would go for highways, schools, planing, sewers, and other community services needed to meet the growth needs expected to accompany the projects.

The state general assembly enacted legislation this year (HB 1706) authorizing local governments to require master plans for mining and reclamation of property overlying commercial mineral deposits. An act passed in 1973 prohibits counties from permitting development other than mining on land containing commercial mineral deposits. The general assembly rejected a bill (SB 361) to allow development on such areas already zoned for residential, commercial, or industrial use prior to 1973.

The 1973 Open Mining and Reclamation Act requires reclamation plans for coal strip mining to be filed and reviewed before operations can get underway. A bill (HB 1033) presented in 1975, but rejected, would have expanded the reclamation provisions to include other minerals, including oil shale. It also would have strengthened the process for filing and reviewing reclamation plans.

Agricultural Lands

The water condemnation bill (HB 1555) passed by the general assembly in 1975 amends the process by which a

municipality can condemn water rights. It is important to agricultural interests for protecting water needed for farming. Prior to passage of the bill, the courts simply determined a fair price for the water.

Impetus for the legislation came from proposed condemnation of more than 60,000-acre feet of water by the city of Thornton, Colo. The water is presently used to irrigate 37,000 acres of agricultural land.

Under the new process, a municipality proposing to condemn water rights must prepare a community growth development plan that shows present and projected population, resource uses and capabilities, and projected resource requirements. In addition, the city must prepare a statement describing the water to be acquired and its present use, the environmental, economic, and other effects upon adjacent areas from the change from irrigation to domestic uses; the adverse and irreversible effects of taking the water; and alternative sources of water supply.

The process called for the creation of a three-member, court-appointed commission to review the municipality's growth plan and statement and to recommend against condemnation, for condemnation as proposed, or for condemnation at a later time. After public hearings, the court makes a decision, that does not have to follow the commission's recommendation, whether to allow the proposed condemnation. Municipalities are denied the right to condemn water rights for more than 15 years in the future.

In other action, the general assembly failed to pass a bill (HB 1239) aimed at penalizing speculation on agricultural lands. The bill would reclassify any agricultural land sold for more than 200 percent of the "average selling price" of agricultural land. The bill also would impose a recapture tax that would require the buyer to pay a penalty tax based on the previously assessed value of the land. Currently, agricultural land in Colorado is assessed at 11 percent of its market value, and other land is assessed at 30 percent of its market value. Speculators purchase the agricultural land and take advantage of the tax break while waiting for the value of the land to rise.

Colorado has a preferential assessment law enacted in 1967. Land used for agriculture for the past two years and classified as agricultural for the past 10 years is assessed on its agricultural use based on its earning capacity. There is no penalty if agricultural land is converted to other uses.

COLORADO LAND USE CONTACTS: Philip Savage, Director, (303) 892-2778; State Land Use Commission, 1845 Sherman St., Room 600, Denver, Colo. 80203. Philip H. Schmuck, Director; Ken Baskette, Assistant Director; Colorado Division of Planning, 1575 Sherman Street, Denver, Colo. 80203. (303) 892-2178.

CONNECTICUT

The Connecticut General Assembly in 1975 focused its attention in land use matters on preservation of agricultural lands, but a bill drafted by a special governor's task force on agricultural lands died in committee.

The bill was supported by the state Council on Environmental Quality (CEQ), among others, which said in its annual report that increased state land use planning is a "distinct and urgent need."

Land Use Policy

Former Gov. Thomas Meskill, R, issued an executive order on Sept. 27, 1974, officially recognizing the state's "Plan of Conservation and Development" as state policy.

Executive order No. 28 directs state departments and agencies to refer to the plan "in matters pertaining to land and water resource conservation and development."

The plan is a set of written and mapped policies and recommendations for conservation and development of land and water resources. It sets an increased state role in the land and water use decision-making process to adequately assure the participation of all affected parties."

Under the plan "local and regional planning agencies would set forth the specifics of desirable land use form and the ultimate level and appropriate staging of future development. The varied programs and investments of state government would then be applied in a coordinated manner, working with local programs and private investment."

In the plan, land is categorized as suitable for intensive development, permanent open space, or limited development. Statewide policies include use of the plan by localities in reviewing projects and policies; guiding growth by timing and placement of water and sewer lines and encouragement of large-scale developments; designating and protecting critical resources, especially water; and discouraging encroachment on agricultural and forest lands.

The executive order directs:

- The Planning and Budgeting Division of the Department of Finance and Control to recommend revisions as needed.
- State agencies to use the plan for program development and administration, and for review of applications for state and federal grants-in-aid.
- State departments and agencies to review plans, programs, budgets, and legislation to further the goals of the plan.
- State officials to encourage regional planning agencies and municipal boards and commissions to review plans and regulations in light of the plan.
- Federal and interstate agencies and commissions to consider the plan as official state policy in interstate land and water resource matters.
- State departments to study management needs and recommend further legislative and administrative actions.

The state CEQ said in its annual report that the plan presents an adequate summary of current land use, but its recommendations are "broad and less than specific." The CEQ called for preparation of a detailed state plan covering agriculture, water resources, air quality, transportation, urban development, housing, and open space.

In court action, the city of Hartford, Conn., filed suit against the U.S. Department of Housing and Urban Development (HUD) in August to block the grant of more than $4 million in Housing and Community Development funds to more affluent neighboring suburbs.

The city alleged that seven suburban jurisdictions planned to use the money in ways which reinforce exclusionary land use patterns. The grants have been approved by HUD but the money has not yet been distributed.

The suit was filed in the U.S. District Court in Hartford against the suburbs of Glastonbury, East Hartford, West Hartford, Vernon, Windsor Locks, Enfield, and Farmington. The Suburban Action Institute joined the city in filing the suit.

The city claimed that HUD's approval of the suburban plans violates provisions of the Housing and Community Development Act of 1974 which aim to provide "decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income."

The suit also alleged that HUD's approval of the plans violated the Civil Rights Act of 1964 and the Fair Housing Act of 1968.

A memorandum filed with the suit said, "The city of Hartford has a disproportionate number of residents who are in dire need of subsidized housing compared to its relatively affluent suburbs."

Plans for the suburb of Farmington call for the use of a $154,000 HUD grant for the construction of sewers; and plans for the suburb of Vernon call for the use of a $25,000 HUD grant for park and recreational development. The city's suit noted that Vernon now has five parks.

The Hartford suit is similar to a case in New York ("Evans

vs. Lynn," U.S. District Court for the Second District of New York, Docket No. 74/1793) in which a group of Westchester County minority residents filed suit to block a HUD grant to the town of New Castle, N.Y. They claimed they are unable to live in New Castle because of alleged "discriminatory land use practices."

Coastal Zone Management

Connecticut received a grant of $290,000 this year from the federal Office of Coastal Zone Management for the development of a state CZM program. A grant of $194,285 was received last year, the first year of the program.

Connecticut's second-year work program will be a continuation of a three-year overall project to define the coastal boundary; develop a strategy for coastal land and water uses based on existing land uses; identify geographic areas of particular concern; coordinate the development program with neighboring states; analyze alternative methods for managing the coastal area and roles of major coastal interest groups; and accelerating public involvement in coastal zone decisions.

A forerunner of the CZM program is the Long Island Sound Regional Study by the New England River Basins Commission. The study will produce an inventory of waters and lands of Long Island Sound. The data base available to localities will reduce duplication of information by state agencies.

Related programs include an inventory of all wetlands under 1969 legislation. Dredging and most development in coastal wetlands is prohibited. The Inland Wetlands and Water Courses Act of 1972 regulates development of inland wetlands. Where developments are denied, land is reassessed at a reduced value. The commissioner of environmental protection, who administers wetlands legislation, also approves flood plain development.

Agricultural Lands

A bill (Committee No. 7598) to prevent development of at least 70 percent of the state's farmland was killed in the 1975 Connecticut General Assembly.

In an informal compromise worked out between state legislators and officials of newly elected Gov. Ella Grasso's, D, administration, however, an inventory will be made of the state's available agricultural land. Preliminary criteria also will be prepared to determine what lands may be included in agricultural preserves.

The bill would establish a special state commission to buy the development rights of at least 325,000 acres of Connecticut's remaining 500,000 acres of agricultural land, enough to grow one-third of the state's needed food.

While that goal is almost unanimously endorsed, members of the Joint Committee on Finance balked at a provision to finance the purchase of development rights through a one percent tax on real estate sales. The bill was approved by the Joint Committee on the Environment, 21-0.

State Sen. Audrey P. Beck, D, chairman of the Joint Committee on Finance, led the opposition to the proposed financing scheme in an effort to avoid an additional tax during the current national economic downturn.

Gov. Grasso maintained a neutral position on the issue, but she indicated that the bill would be signed into law if passed by the legislature.

Donald A. Tuttle, director of the state Board of Agriculture, estimated that the real-estate sales tax would provide about $30-million annually. Tuttle said an estimated $500-million at today's values would be need to purchase the development rights over a period of 35 to 40 years.

The bill also would permit the state to sell bonds to provide additional financing. State officials, however, hope they could rely solely on the real estate sales tax.

The bill was drafted by the Governor's Task Force for the Preservation of Agricultural Land. The task force, formed in April 1974, concluded in its final report on Dec. 20, 1974, that 325,000 acres of agricultural land must be preserved to assure sufficient future food production.

The bill would establish the Agricultural Preservation Commission, require it to inventory the state's agricultural lands, and to adopt guidelines for the designation of areas to be preserved and for the acquisition of development rights in those areas.

The value of the development rights would be the difference between the speculative value of the land and the agricultural use value of the land.

Within one year after the commission adopts guidelines, each municipality would be required to make at least 70 percent of its agricultural land eligible for designation. The commission would approve or reject the proposed designations, and, where a municipality fails to identify land eligible for designation, the commission would make the identification and impose a designation.

Once designated, agricultural land would be put in an agricultural land preservation trust, and future development would be prohibited. The state would then begin buying the development rights. Tuttle said 75 percent to 80 percent of the current agricultural land owners are expected to wait for the development value of their land to rise before selling the development rights to the state.

A designation also could be withdrawn by agreement of the land owner, a municipal referendum, and the commission.

Although the Connecticut Conservation Association proposed similar measures to the governor's task force in a white paper titled "The Vanishing Land" in September, 1974, Tuttle said the present recommendations were developed by the commission. The proposal is patterned mostly on the New Jersey *Report of the Blueprint Commission on the Future of New Jersey Agriculture*, he said.

The number of farms in Connecticut has dwindled from 8,266 in 1959 to 4,500 in 1972, according to "The Vanishing Land." The report also says the acreage in farms remained fairly constant until it began to dwindle recently.

Increasing land values are cited as a chief cause for the disappearance of farms in Connecticut: "The average New England farmland shows a 100 percent rise in (land) value since 1967 .... In northern New England the phenomenal increase in second or recreational home building is a key cause. In southern New England, increased housing needs and open space needs have been the principal stimulus."

The paper faults the state's differential tax assessment on agricultural lands for providing insufficient protection. Farm owners' taxes are not kept down, the report says, because the differential is inadequate in the face of soaring land values in an inflationary economy. In addition, taxes on farm buildings "make up some of the differences in reduced land revenue," the report points out.

A differential assessment law was enacted in 1963 and amended in 1972 to authorize collection of a conveyance tax when designated land is sold or changed to another use. Farmland, forests, and open space land are assessed at current value. If sold within 10 years from initial acquisition or classification, the conveyance tax is imposed in addition to a realty transfer tax, and is based on the total sale price. The conveyance tax is 10 percent if land is sold within the first year of classification, nine percent if sold within two years, and so on. There is no conveyance tax after 10 years.

Other problems cited by the report as contributing to the decline in farmland include a decline in farm representation in the general assembly (only four members listed farming as an occupatiion in the 1974 assembly, whereas 22 members listed real estate or construction as their occupation), a shifting emphasis away from agriculture and toward urban problems, development problems, pollution control, and other aspects of environmental management.

Additional measures recommended in the paper to aid in the protection of farmland include marketing assistance, subsidies for the use of farmland for recreational activities,

management assistance, labor assistance, loan assistance, further tax relief, insurance, and educational assistance.

CONNECTICUT LAND USE CONTACTS: Horace H. Brown, Managing Director, Planning and Budgeting Division, (203) 566-4872; Harold I. Ames, Director for Planning, (203) 566-3410; Department of Finance and Control, 340 Capitol Avenue, Hartford, Conn. 06115.

CONNECTICUT COASTAL ZONE MANAGEMENT CONTACT: Charles D. McKinney, (203) 566-7404; Department of Environmental Protection, 71 Capitol Avenue, Hartford, Conn. 06115.

DELAWARE

Land use activity in Delaware has focused on the coastal area, where state officials have come into direct conflict with federal efforts to make the siting of energy facilities easier. The state's Coastal Zone Act of 1971 bans all heavy industry within two miles of the coast.

Land Use Policy

Efforts to establish a statewide land use policy in Delaware have not progressed beyond the study phase, nor is any action expected in the near future. Rather, emphasis on local land controls is expected to continue.

Cities, towns, and three counties—New Castle County, Kent County, and Sessex County—have broad zoning and subdivision regulation authority. The controls must be based on a comprehensive plan.

Delaware Gov. Sherman W. Tribbitt, D, joined Govs. Hugh L. Carey of New York, and Gov. Brendan T. Byrne of New Jersey, in asking Congress in 1975 not to appropriate funds to continue the 13-year-old Tocks Island Dam project. The request followed the conclusion of a congressionally authorized study that said there are "technically viable alternatives" to the dam and the 37-mile lake it would create in the Delaware Water Gap National Recreation Area.

A 1973 wetlands law established a permit system for the use of any wetland area in the state.

Coastal Zone Management

Delaware received a federal grant of $345,000 in 1975 to develop a state coastal zone management program. It is the second grant received by the state, which will be eligible for one more for the development of a CZM program. Whether Delaware will ever be eligible for grants to implement the program, however, is uncertain.

Federal officials are dissatisfied with Delaware's ban on the development of energy facilities in the coastal area, and federal CZM regulations would prevent award of implementation grants if the ban is not modified.

The Coastal Zone Act of 1971 bans all heavy industry and port or dock facilities within two miles of the shoreline. It requires a permit from the State Planning Office for all other manufacturing uses or expansion. In reviewing permit applications, the following must be considered: environmental impact, economic effect, effect on neighboring land uses, effect on county and city comprehensive plans, and more.

These steps, especially if followed by other states, could seriously hinder federal plans to develop oil and gas resources in the Atlantic Ocean off the coasts of Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and Maine.

In 1974, state planners began collection of coastal area, and priority uses.

During the present grant period, planners will focus on additional tasks necessary to conduct a management program, including establishment of coastal zone boundaries, development of alternative management methods, and creation of a regulatory package.

The planners are working to accommodate two sets of goals: those of the federal Coastal Zone Management Act of 1972, and those issued by the Governor's Task Force on Marine and Coastal Affairs.

The governor's task force goals are directed toward the preservation and improvement of the quality of life of the state's marine and coastal environment for recreation, conservation of natural resources, wildlife areas, aesthetics, and the health and social well-being of the people.

In addition, the task-force goals call for promotion of the orderly growth of commerce, industry, and employment in the state's coastal zone; and increasing opportunities and facilities in the state for education, training, and research in marine and coastal affairs.

Although vague in nature, these goals have served to guide the more substantive development of a coastal zone management program.

The 1972 Beach Protection Act gives state review powers up to 1,000 feet from the low-water mark, including authority to designate "no construction" zones seaward of dunes. Localities retain authority inland from dunes.

DELAWARE LAND USE CONTACTS: David R. Keifer, Director; Nicholas Fisfis, Director, Capital Improvements Coordinator; David S. Hugg, III, Principal Planner, Natural Resources Policy and Coordination Section; State Planning Office, Thomas Collins Building, 530 South DuPont Highway, Dover, Del. 19901. (302) 678-4271.

DELAWARE COASTAL ZONE MANAGEMENT CONTACT: Bob McPherson, (302) 678-4271; State Planning Office, Thomas Collins Building, 530 S. Dupont Highway, Dover, Del. 19901.

FLORIDA

Florida Gov. Reubin Askew, D, signed into law in 1975 a bill directing massive reorganization of the state's environmental departments.

The act establishes two departments, the Department of Natural Resources and the Department of Environmental Regulation (DER).

DER will be in charge of all environmental permit activities in order to streamline the old decentralized system.

The Natural Resources Department will manage state parks and lands, and handle natural resources functions such as geographic mapping.

Relatively untouched by the reorganization is the State Planning Office in the Department of Administration. It will continue in the governor's office (with the lieutenant governor running the department) and will continue to regulate areas of critical concern and development of regional interest under the Land and Water Conservation Act of 1972.

One of the year's important judicial decisions came in January when Judge William O. Mehrtens of the federal district court ordered a Miami developer to restore a 50-acre mangrove swamp he had dredged before obtaining a permit.

The ruling is the first of its kind in the nation, and Judge Mehrtens said it would serve notice that "anyone who digs or dredges without a permit is doing so at his own risk." Previously, obtaining a permit was a formality often acquired as an afterthought.

Land Use Policy

The Land and Water Management Act of 1972, setting up Florida's land use policy, concentrates on areas of critical state concern and developments of regional impact. Areas of critical concern are designated by the governor and cabinet on the recommendation of the Division of State Planning in the Department of the Administration. No more than five percent of the state can be so designated. Areas of critical state concern are environmental, historic, natural areas of more than local importance; major public facilities; and areas of major development potential. After an area is designated, localities write land development regulations based on state guidelines. After the regulations are approved by the state, localities administer them subject to state review.

In July, 1973, the state adopted guidelines and standards for identifying developments of regional impact. In general such developments would be those having a substantial effect upon the health, safety, or welfare of residents in more than one county. When an application for a development permit is made to a locality, the locality must insure that the project conforms to the state development plan.

The act also designates the governor and cabinet as the Land and Water Adjudicatory Commission to hear appeals by local governments of development orders for both critical areas and regional impact developments.

In the fall of 1974, the commission voted unanimously to enforce the state's control over developments of regional impact by reversing a local decision to grant development of a large, new town project in Lake County, Fla.

Under the "Local Government Comprehensive Planning Act," passed in 1975, all counties and municipalities in the state must prepare comprehensive plans.

The plans, which must be completed by July 1, 1979, must include general elements of internal consistency, economic feasibility, intergovernmental coordination, and implementation. Specific elements of the plans must include a future land use plan, a traffic circulation plan, public service and water use plans, and mass transit plans. Optional specific elements include a public building plan, community design plan, and commercial-industrial development plan.

If a city fails to designate a planning agency and to prepare the plan, counties are authorized to do the planning for the city and bill the city for it. The state is authorized to take over planning for counties that fail to do it, and bill the counties for it, also.

Under other legislation passed in 1975, broad incentives will be extended to developers in Florida willing to undertake planning, financing, and construction of new communities.

The new law, the New Communities Act of 1975, takes effect at a time when the federal government is retreating in its commitment to the development of new communities.

The act creates "the mechanism of granting to private developers certain limited status as special improvement district in order to operate and finance the cost, delivery, and maintenance of necessary predevelopment capital improvements of water, sewer, road, and drainage systems and community facilities consistent with existing local facilities."

Developers would be able to petition county governments to establish special new community districts. As a prerequisite, a developer also would have to have his proposed project approved under the development of regional impact (DRI) section of Florida's Land and Water Management Act, which would set state development guidelines.

In addition, a developer would have to comply with the following standards in order to qualify as a special district:

- The project must be 1,000 acres or more (unless part of it lies within the boundaries of a city).
- The developer must control at least 75 percent of the district area.
- The developer must show his capability to build the proposed new community facilities.
- Residential construction must include five-to-25 percent low-to-moderate income housing units annually.
- The developer must make a commitment to comply with all "ecological, environmental, economic, and other governmental, procedural, and policy requirements."

Once the special district is approved, developers would be granted "all the powers necessary or convenient to carry out and effectuate the purposes for which it was established."

The special district governments would be authorized to borrow money, issue bonds, levy taxes and special assessments, and to raise money through user charges or fees. They would have the power to condemn land through the right of eminent domain for development of facilities related to water, sewer, roads, and drainage.

The special district governments also would provide most other traditional local government services: fire, police, road-building, public transportation, etc.

A five-member board of supervisors would be the governing body of the district. Two members of the board would be appointed by the county in which the district is located. The other three board members would be appointed by the developer "to insure completion of the project."

Coastal Zone Management

In the shakeup of Florida's environmental and planning departments, the state Coastal Coordinating Council was abolished and its functions moved to the Department of National Resources, Division of Resource Management. The state has received a federal grant this year of $450,000 for the development of its coastal zone management program. An additional $246,000 has also been granted for the study of onshore land use impacts of offshore oil and gas development.

The first in a series of prototype coastal maps of Florida has been completed, according to the state Department of Natural Resources. Refinement of the state's coastal atlas is a primary objective of the early stages of Florida's coastal zone program.

Underway are several studies to develop an organizational format for Florida's management of coastal activities, and to recommend laws and ordinances necessary to implement a comprehensive management plan.

FLORIDA LAND USE CONTACT: R. G. Whittle Jr., Assistant Director, (904) 488-1115; Division of State Planning, 660 Apalachee Parkway, Tallahassee, Fla. 32304.

FLORIDA COASTAL ZONE MANAGEMENT CONTACT: Ms. Mary Lou Stursa, (904) 488-8614; Coastal Coordinating Council, 309 Office Plaza, Tallahassee, Fla. 32301.

GEORGIA

In the major land use action in Georgia this year, the state supreme court ruled that local zoning ordinances in the state are subject to court review to determine whether they are consistent with the public welfare. Two dissenting justices said the September 16 decision was "a sharp departure from the view taken historically," and could lead to "a floodtide of litigation."

Land Use Policy

Although there is no statewide land use policy, localities and counties in Georgia have full authority under the state constitution to plan and zone.

Local officials fear that the recent state supreme court decision may inject the courts into local zoning decisions as a "super zoning authority." Officials of Cobb County, which was

involved in the case, said they will seek a review of the decision.

The ruling upheld a lower-court decision in a case in which the Cobb County commissioners were challenged for refusing to rezone a parcel of land from residential to commercial use.

The county officials argued that their decision, although it imposed an economic setback on the landowner, should be upheld because it was based on the county land use plan, and the community's safety, morality, and welfare.

The state supreme court, however, found in a 5-2 split that the commission's decision was "arbitrary and unreasonable." The court noted that the county land use plan is a policy statement only, and not legally binding.

"Plainly, the commercial development of this land can pose absolutely no threat to the community's safety or morality," the court said.

"As we consider the community welfare," the court continued, "we find it merely the board of commissioner's policy determination that the county already has enough commercially zoned property."

The two dissenting justices, G. Gordon Ingram and Robert H. Jordan, said, "What the court is holding is that it will now review any local zoning decision based on conflicting evidence to determine whether it bears a substantial relation to the public health, safety, morality, or general welfare."

Justices Ingram and Jordan said, "The implication is that every local zoning authority in Georgia must now justify to the court every disputed zoning decision it makes."

Further, they said, "The great danger inherent in this ruling is that it will necessarily substitute the court's judgment for the local governing authority's judgment when the evidence is in conflict, as in the present case."

Coastal Zone Management

Georgia received a federal grant of $349,250 in 1975 for the development of a state coastal zone management program. The state received a grant of $188,000 in 1974, its first year in the program.

The first-year effort was designed to gather and analyze data on natural resources, land use and economic development, etc.; to raise public awareness about the need for coastal zone management; and to identify major issues.

During the second year, planning principles and methods will be developed, policies for permissible uses and areas of particular concern formulated, a tentative coastal zone boundary adopted, and local land use plans developed.

The Coastal Marshland Protection Act of 1970, as amended, requires a state permit for dredging, draining, removing or altering marshlands within an estuarine area. The Department of Natural Resources can also develop rules and regulations and institute court action to enforce the act.

GEORGIA LAND USE CONTACTS: James T. McIntyre Jr., Director (404) 656-3820; Richard B. Cobb, Deputy Director; Joe Water, Director, Planning Division; Office of Planning and Budget, 270 Washington St. SW, Atlanta, Ga. 30334. (404) 656-3861.

GEORGIA COASTAL ZONE MANAGEMENT CONTACT: Roberta Carney, address above. (404) 656-3832.

HAWAII

Land use classifications in Hawaii will have to be consistent with a new Land Use Guidance Policy, as a result of a major revision to the state's land use law enacted by the 1975 legislature.

Hawaii enacted the first state land use program in the nation in 1961. It is still the strongest. Unlike mainland states, which delegated land use powers to local governments in the 1920's and 1930's, Hawaii has a tradition of central (territorial) government. The entire state is zoned by the state Land Use Commission into one of four categories: urban, rural, agricultural, and conservation.

Land Use Policy

The state land use program is run for the most part by the state Land Use Commission (LUC) consisting of seven private citizens, the director of the Department of Land and Natural Resources, and the director of the Department of Planning and Economic Development. The four types of districts determine how land use is regulated.

- Urban districts consist of all urban land and reserve land to accommodate urban growth for 10 years. County zoning regulations determine uses permitted. However, rezonings of agricultural land, for instance, to urban lands are done by the LUC.
- Rural districts include low-density residential development of half-acre lots. This classification has been used sparingly. LUC regulations determine land uses in this district.
- Agricultural districts protect agricultural land, on which the state's economy was and is based, from an economic boom that had already begun. Prime agricultural lands cover about 400,000 of the state's four million acres. However, agricultural districts include many more acres of cropland, grazing land, and sugar mills and other agricultural industries. LUC regulations also govern use of agricultural lands.
- Conservation districts are regulated by the Board of Land and Natural Resources, the governing body of the Department of Land and Natural Resources.

The Land Use Guidance Policy, a state land development plan, must be prepared by the Department of Planning and Economic Development and adopted by the state legislature. Until it is adopted, an Interim Land Use Guidance Policy will govern land use district classifications.

Under legislation enacted in 1975, established land use district boundaries are retained, the state land use commission is expanded from seven to nine members (representing counties rather than senatorial districts as before), and the Interim Statewide Land Use Guidance Policy is created.

Changes in the established district boundaries will require approval of six of the nine commission members, in another change made this year.

The interim policy, according to nationally known land use expert Prof. Daniel R. Mandelker, "permits new urban district classifications only when reasonably needed to accommodate new urban growth, prohibits urban scatteration, and contains an explicit preference for lower income housing developments."

The revisions also establish a new judicial-type procedure to replace the previously used legislative-type procedure for consideration of proposed changes in the land use district boundaries.

Coastal Zone Management

Hawaii received a federal grant of $400,000 in 1975 for the development of a state coastal zone management program. A grant of $250,000 waas received in 1974, the first year of the program.

Noting that pressures for various new land uses along the shoreline have been mounting steadily in recent years, Hideto Kono, director of the state planning agency, said major problems facing Hawaii in its coastal area include water quality, resources use and conservation, preservation of unique areas, the siting of major marine facilities, and limited shoreline availability for recreational use.

The state, in 1974, began preparation of a coastal management program designed to solve these and other problems, accumulating data and creating a planning structure.

During the second year of planning, Hawaii will begin identifying geographic areas of particular concern because of use demands or which are unique or fragile in nature, developing a

procedure for determining permissible land and water uses, establishing priorities of uses, and creating a method of controlling land and water use.

The state will be eligible for a third planning grant in 1976, and upon completion of the management program can receive implementation funds from the federal government if the program meets criteria established by the Coastal Zone Management Act.

HAWAII LAND USE CONTACTS: Hideto Kono, Director, (808) 548-6914; Frank Skrivanek, Deputy Director, (808) 548-3034; Shoji Kato, Planning Division Head, (808) 548-4610; Department of Planning and Economic Development, State of Hawaii, P.O. Box 2359, Honolulu, Hawaii 96804.

HAWAII COASTAL ZONE MANAGEMENT CONTACT: Dick Poirier, (808) 548-3042; State Planning Division, 250 South King St., Honolulu, Haw. 96813.

IDAHO

The Idaho Legislature in 1975 rejected a statewide land use program for the fourth straight year when the state senate voted to kill three key measures proposed by Gov. Cecil D. Andrus, D.

The bill to establish a state planning process was included in a package of seven land use bills sponsored by Gov. Andrus. The state legislature passed only one of the pieces of legislation: a bill to require cities and counties to develop and implement comprehensive plans according to state guidelines.

Land Use Policy

The Local Planning Act of 1975 (SB 1094) requires all cities and counties in the state to develop and implement comprehensive plans according to state guidelines. The bill also provides for consistency of state plans with city and county plans; balanced representation on planning commissions; prohibiting public officials from participating in proceedings where they have an economic interest; a permit and appeals process; moratorium on issuance of local permits where health, safety, or welfare is threatened.

The Idaho Homebuilders Association opposed a provision to require cities and counties to negotiate to prevent suburban sprawl.

The Association of Idaho Cities and the Idaho Association of County Commissioners and Clerks strongly supported the provision. A compromise provision agreed to require cities and counties to identify areas of urban impact by 1977, and to regulate development in those areas.

Other bills proposed by Andrus, but rejected by the state legislature, include:

- The State Assistance Bill (SB 1095) would provide for state technical assistance to city and county governments, state review and comments on local plans, but no veto authority.
- The Areas of Statewide Concern Bill (SB 1096) would provide for the designation of such areas by the state, subject to veto by the state legislature. The bill is intended to recognize national, interstate, and statewide concerns. Localities would adopt plans for the regulation of designated areas within six months, or the state would impose regulations.
- The Regional Impacts Bill (SB 1097) would require hearings by local governments on developments of regional impact if requested. Plans to handle large-scale developments would be prepared by the local government having immediate jurisdiction and with consideration of regional impacts, and subject to appeal.
- The definition of a Subdivision Bill (SB 1098) would redefine the definition of a subdivision to protect agricultural lands. Under the bill, three lots, not five, would constitute a subdivision, and an exemption for large lots (five or more acres) would be eliminated.
- The State Planning Process Bill (SB 1099) would designate the state Division of Budget and Policy Planning as the agency to coordinate the state land use program.

Energy Facilities and Lands

In addition to the land use measures, the Idaho Legislature rejected a bill to regulate power plant siting. Under the proposed bill, requested by the governor, a seven-member council appointed by the governor would decide on each application based on energy needs and impacts on land use, water resources, air quality, solid waste, radiation, and noise.

Only one known proposal to build a power plant in Idaho exists, but the Idaho Power Company's projected $400-million plant would have had to pay a $1.5-million fee just to file had the measure passed. The funds would be used to finance the council's activities. The Idaho Water Resources Board expects the construction of four new power plants by 1985 and 14 by the year 2020.

Nevertheless, the leaders of the Republican-controlled legislature said that power plant siting legislation is unnecessary in Idaho.

IDAHO LAND USE CONTACTS: H. W. Turner, Administrator, (208) 384-3387; Robert N. Wise, Chief, Bureau of State Planning, (208) 384-2287; Division of Budget, Policy Planning, and Coordination, State House, Boise, Idaho 83720.

ILLINOIS

Illinois has no statewide land use program or policies, and none are envisioned in the near future. Consideration of a statewide policy for guiding growth and development in the state, one of the most urbanized in the nation, has never gotten beyond the study phase. State officials say there is still plenty of available land for new suburbs, and agricultural lands are so extensive citizens are not concerned about development on them. Control over coastal land bordering Lake Michigan, however, has been undertaken.

Land Use Policy

Cities, towns, and counties in Illinois have been granted broad zoning powers, and some subdivision controls. There are, however, no requirements for the preparation of comprehensive plans as zoning and subdivision guides.

A long list of exemptions applies to the subdivision regulation enabling acts. In cities, exceptions to subdivision controls apply to lots of more than five acres without roads, lots of less than one acre without roads, lots created by sales of adjoining lands, single lots of less than five acres, and public utilities and railroads.

Municipalities, not counties, have control over locations, widths, and courses of local streets; facilities relative to water distribution, and other local facilities.

Coastal Zone Management

Illinois was awarded a federal grant of $384,000 in 1975 for development of a state CZM program. The grant is the second to be awarded Illinois and will be administered by the State Department of Transportation. The first grant, awarded in 1974, totaled $206,000.

Illinois will use the second grant to develop a comprehensive program for allocating its Lake Michigan shoreline in a

sound, rational manner. Illinois' 59-mile shore is confronted with such problems as beach and bluff erosion, limited beach access, and competing and conflicting use by public and private developers.

The state sees as its objective the protection and, where possible, the restoration of the natural resources of the shore of Lake Michigan. The state program aims to encourage and assist the local jurisdictions along the lake to exercise their responsibilities to guide future lakeside activities.

The second year of Illinois' work program will include determining the needs for future industrial, commercial, and residential development; sampling lake-bottom sediment; studying the environmental impact of the coastal-management plan; and developing a system for storing, retrieving, and distributing coastal-zone information.

ILLINOIS LAND USE CONTACTS: Leonard Schaeffer, Director, (217) 782-4520; Lawrence Malone, Acting State Planning Director, (217) 549-4520; Illinois Bureau of the Budget, 108 State House, Springfield, Ill. 62706. Thomas Langford, Assistant Director, (217) 549-4520; Growth and Development Planning, 216 East Monroe Street, 3rd Floor, Springfield, Ill. 62706.

ILLINOIS COASTAL ZONE MANAGEMENT CONTACT: Ralph O. Fisher, (217) 782-4636; Department of Transportation, 2300 South Dirksen Parkway, Springfield, Ill. 62706.

INDIANA

Work on a statewide land use policy in Indiana has not progressed beyond the study stages. However, state officials did move in 1975 to take advantage of the federal Coastal Zone Management program.

Indiana was the last state eligible to participate in the CZM program. State officials hope that development of a successful CZM program will encourage efforts to create a statewide land-management program.

Land Use Policy

Localities and counties have been delegated full planning, zoning, and subdivision control authority by the state. Only five of the state's 92 counties have not established planning organizations, and 17 regional planning districts have been formed.

Comprehensive plans for cities, towns, and counties are not required for zoning purposes, but a master plan must be adopted before subdivisions may be regulated.

Agricultural land is taxed on its use value.

A 1967 law, amended in 1972, requires a surface mining operator to obtain a permit annually. To obtain a permit the operator must pay a fee plus $15 per acre, file an adequate performance bond, and submit a proposal for reclamation. Reclamation is to be done concurrently with the strip mining. Regulations specify maximum slope angles during reclamation consistent with intended uses of the land after the strip mining is concluded.

Coastal Zone Management

Indiana received a federal grant of $220,000 in 1975 to develop a state coastal zone management program.

Gov. Otis R. Bowen, R, designated the State Planning Services Agency to administer the program.

Indiana will use the grant to develop "a comprehensive program for allocating the shoreline among users in a sound and rational manner." The state's shoreline contains one of the heaviest industrial and population centers in the country, and a mounting number of problems.

The need for more energy facilities along the coast is growing, but there appears to be no place to locate them. About one-half of the shoreline is already committed to commercial and industrial use, and the other half to residential use. The commercial and industrial uses vie for the same land and water resources as recreational, housing, and other uses. In addition, private development conflicts with demands for public access to the shore.

Other major problems are erosion, flooding, and sedimentation.

In accordance with the federal Coastal Zone Management Act, Indiana's grant will be used to identify its coastal boundary, define permissible land and water uses in the area, designate areas of particular concern, consider priority uses, determine methods to control land and water uses, and build an organization to implement the management program.

INDIANA LAND USE CONTACTS: Theodore (T. "Ted") Pantazis, Director, Planning and Research Group; David Woll, Assistant Director, Local and Regional Planning; Eugene Waterstraat, Assistant Director for State Planning; 143 West Market Street, Third Floor, Harrison Building, Indianapolis, Ind. 46204. (317) 633-4346.

INDIANA COASTAL ZONE MANAGEMENT CONTACT: Theodore T. Pantazis, 143 West Market Street, Indianapolis, Ind. 46204. (317) 633-4346.

IOWA

For the second straight year a state land use bill died in the Iowa Legislature in 1975. Just as in 1974, the bill was passed by the house but did not make it through the senate.

The threat of strip mining to the state's vast agricultural lands prompted the state legislature to pass new surface mining controls.

Land Use Policy

The defeated land use bill (HF 58) considered by the legislature was a watered-down version of the proposal rejected in 1974. The bill, which state planners hoped would be a start toward broader land use legislation, would establish a 13-member state land use commission, would require localities to develop land use plans under state guidelines, and would set up a state permit system for areas of critical concern, key facilities, and large-scale developments.

Cities, incorporates towns, and counties in the state have broad zoning authority, which must follow a comprehensive plan as a guide. Subdivision regulatory authority, however, is more limited.

Cities and incorporated towns with populations exceeding 25,000, or with planning commissions, may review subdivision plats. Cities have broad authority to regulate subdivisions, but counties may approve only plans for water, sewage, and electric power lines for rural subdivisions.

The Iowa Supreme Court ruled that the approval of the residents of an area to be annexed by a neighboring city is not necessary. Citizens of an area near the city of Altoona, Iowa, asked the court to overturn the annexation of their area by the city on the grounds that Iowa law requires approval of the residents in the area to be annexed. The court ruled that the combined vote of the citizens of the city seeking to annex and the citizens of the area to be annexed determines whether the action is valid.

Agricultural Lands

Iowa agricultural land comes under a preferential tax system in which it is assessed according to its current use value and net earning capacity. Farmland within municipal boundaries can be taxed at a limited rate only for city street projects.

IOWA LAND USE CONTACTS: Robert F. Tyson, Director, (515) 281-5888; Kenneth C. Henke, Director, Division of Municipal Affairs, (515) 281-3861; Robert L. Case, Director, State Planning Division, (515) 281-3789; Office for Planning and Programming, 523 East 12th St., Des Moines, Iowa 50319.

KANSAS

Although land use legislation in Kansas has been studied by a special legislative committee since 1974, the state legislature is not expected to act in the near future.

Preservation of agricultural lands has emerged as the main land use issue in the state, but it will be the voters, not the state legislators, who will decide whether to take the steps to protect farmlands.

Land Use Policy

Localities and counties have full planning and zoning authority, and are advised by regional planning bodies. In one county, however, the courts took over administration of the county planning office. A three-judge panel for the Platte County Court told county planning and zoning commissioners that the court was assuming administration of the office. Citing poor supervision of the office, unopened mail, and unpaid bills, Presiding Judge Henry Miller said the court would not fund the position of county planner. Instead, a zoning enforcement officer would be hired. The zoning enforcement officer would advise the planning and zoning commissioners, but would be supervised by the court.

City and county zoning regulations must be in accordance with a comprehensive plan or a land use study. Subdivision regulations must be preceded by a comprehensive plan.

Reliance on counties for the protection of critical areas was criticized in a report, "Kansas 2000: By Choice, Not by Chance," by the University of Kansas Institute for Social and Environmental Studies. The report concluded that counties have not done an adequate job protecting critical areas and that state land use legislation was needed for the protection of fragile and disaster-prone lands.

Agricultural Lands

Kansas may become the 39th state to permit tax differentials for agricultural lands. The state legislature agreed to submit an enabling constitutional amendment to the voters in the 1976 general election to allow for the taxation of farmland on the basis of use value rather than its potential development value.

State officials say that preservation of agricultural land is the principal state land use issue, although sprawl in the Kansas City-Topeka-Manhattan-Fort Riley corridor is an increasing problem.

KANSAS LAND USE CONTACTS: Dr. Herman Lujan, Director, Division of State Planning and Research, (913) 296-3481; 1258-W State Office Building, Topeka, Kan. 66612. Mr. Dennis McCartney, Director, Planning Division, (913) 296-3485; Department of Economic Development, State Office Building, 1st Floor, Topeka, Kan. 66612.

KENTUCKY

Creation of a limited statewide land use planning process has been recommended by two groups formed by the Kentucky General Assembly to study state land use planning.

The 22-member Kentucky Land Use Council recommended that a state agency be created to coordinate local, state, and federal land use activities.

The 36-member Action Council, said that Gov. Julian M. Carroll, D, should set up a land use work group in the Office of State Planning "to coordinate decisions presently being made at the state level which affect the use of land and to make explicit Kentucky's policy on these issues."

Land Use Policy

Of Kentucky's 120 counties, 70 have planning commissions. However, many of them are not very active, according to state officials. The 16 Area Development Districts are active, although they have no enforcement authority. They have drafted land use plans for the entire state and have also drafted sewer and water plans.

Cities and counties in Kentucky have broad general zoning and subdivision control authority, based on an adopted land use element of a comprehensive plan. State facilities, public utilities, and agricultural lands greater than five acres are exempted from the controls.

The Kentucky Land Use Council's recommendations do not call for development of a state land use plan, but rather strengthening of local planning. Three major areas of recommendations include:

- Creation of a state-level land use "mechanism" to coordinate and to provide a decision-making process on major land use development issues. The council envisioned an agency close to the governor to coordinate cabinet-level decisions on land use. This recommendation closely parallels that of the Action Council for creation of a statewide land use planning process to be guided by a land use work group under the governor.
- Employment of a professional staff of planners and government experts to staff the proposed agency. The staff would provide advice and technical assistance to local and state officials. The Action Council suggested that such a staff could direct a process to inventory the state's land, then classify areas for development, agricultural use, or others on the basis of the inventory.
- Establishment of a citizen's council to assure public participation in the land use decision-making process.

State planners hope that adoption of an improved state land use planning process can be used to make the state less affected by federal land use related decisions. A particular aim is to make localities less suceptible to what are seen as federal directives on land use, under the threat that U.S. funds would be withdrawn if the state and localities do not comply.

A bill (HR 127) has been pre-filed for the 1976 session to set up a permanent state Environmental-Economic Council to deal with conflicts between growth and environmental protection.

Energy Facilities and Lands

A 1974 Kentucky state law that went into effect requires surface owners' consent for strip mining. The state court of appeals ruled, however, that the law was unconstitutional. The court action served to reinstate contracts known as broad-form deeds which granted mineral rights owners use of the surface land, even if they did not own it. Most of these deed were signed at the turn of the century, before strip mining became widespread. The state law voided the contracts, but the court said state and federal constitutions prohibit the voiding of such

contracts. The law did not prohibit or limit strip mining for environmental reasons.

The court action served to highlight controversy in the state over enforcement of strip mining regulations.

In another case, a Frankfort court ruled that Kentucky must ban strip mining on public lands even though rights to the underlying coal are privately owned. Circuit Judge Squire N. Williams ruled that the Greenwood Land and Mining Co. could not be granted a permit for strip mining operations in the federally owned Daniel Boone National Forest. Greenwood owns the mineral rights to 25,000 acres of land in the national forest. In barring the operations, Williams cited a state law prohibiting mining that "constitutes a hazard to public property."

Kentucky laws require return of strip-mined area to original contour. Reclamation must be done concurrent with the strip mining. Before a surface mining permit is issued, the applicant must have an erosion and silt control plan or a separate drainage permit.

KENTUCKY LAND USE CONTACTS: Robert D. Bell, Director, (502) 564-7240; Damon W. Harrison, Assistant State Planner, (502) 546-3450; Laurel True, Assistant State Planner, (502) 564-3450; Office of State Planning, Governor's Office, State Capitol, Frankfort, Ky. 40601.

LOUISIANA

Land use activity in Louisiana has focused on development of a state coastal zone management (CZM) program in the past year.

State planning officials, who hope to have legislation proposing a state CZM program ready for consideration by the governor and state legislature in 1976, said the program will highlight local control.

Land Use Policy

A "Growth and Conservation Policy" drafted by the State Planning Office was completed, but state planning officials chose not to develop a legislative package. Planning officials think passage of statewide legislation is still several years away.

The growth study suggests state guidelines and policies for critical environmental areas and areas where growth generally should be encouraged. It also recommends preparation of environmental-impact assessments on major projects, and assessment of the state role in determining land use patterns. It has been used to help redefine the organization of the State Planning Office.

The State Planning Office redefined its activity to correspond to a reorganization of the state government under a new state constitution adopted in 1974. Under the reorganization, the State Planning Office is one of 19 state agencies under the governor.

The State Planning Office, using the growth study as a guide, established seven divisions within the office: natural resources, economic planning, growth patterns, housing, information services, management and operations, and transportation.

The natural resources division has begun to gather information to provide a comprehensive overview of land-resource, water-resource, and other management activities of state agencies.

Localities and parishes have long had local and county zoning authority, and continued to hold such authority under the new state constitution. State planning officials said there are increasing instances of cooperation among local governments in response to federal programs such as the U.S. Environmental Protection Agency's air and water pollution control programs.

Coastal Zone Management

Four coastal zone management bills (SB 148, HB 585, HB 794, HB 1028) were introduced in the Louisiana legislature this year, but all died in committee. The Louisiana State University (LSU) Sea-Grant Legal Program reported: "Lawmakers believed the bills premature, several (legislators) commenting that the legislature should await the comprehensive coastal management program being formulated by the State Planning Office."

State planning officials said they hoped to have a bill or a package of several bills, ready for the legislature to consider in 1976. Louisiana has been awarded a $342,000 second-year grant under the federal CZM program. The state received a $260,000 first-year grant.

During the past year, the State Planning Office undertook an inventory of the state's coastal area to determine boundaries and resources of the coastal zone, programs already in effect in the area, and gaps in existing state and local authorities for management purposes.

Louisiana's coastal area is burdened with many of the problems common to other coastal states, but to a larger extent. For example, more than one-half of all permits issued nationally by the Army Corps of Engineers are issued by the New Orleans office, 70 percent of harbor dredging (by volume) occurs in the Gulf of Mexico, more than one-third of important wildlife habitats are found in Louisiana's coastal area, and one-fourth of the nation's total wetlands acreage is in Louisiana. In addition, the Louisiana coast is the scene of heavy commercial, sports, shellfishing, port activities, second-home developments, and offshore oil and gas drilling—all competing for the limited shoreline and marine resources.

Two LSU opinion surveys conclude that there is strong support for coastal zone management in the state. According to a survey by the LSU Center for Agricultural Sciences and Rural Development, prominent community leaders replied "yes" unanimously when asked whether planning could enhance the coastal area. Twenty percent said they favored as little federal control over the coastal areas as possible. A survey by the Louisiana Coastal Law Program of coastal and marine scientists showed that they agreed the state must recognize the need to regulate the coastal area.

In the courts, three recent decisions have significance.

- In "National Audubon Society v. White, October 1974," the Louisiana Court of Appeals ruled that the public may be denied the use of private, man-made canals for hunting and fishing, even though the canals are navigable and connect to public waterways. The LSU Sea-Grant Legal Program said: "This decision may have significant effects in southern Louisiana where the marshes are criss-crossed with thousands of such canals and where recreational hunting and fishing are often linked to them."
- In "Placid Oil v. State of Louisiana, June 1974," the Louisiana Supreme Court issued a ruling that assures the state of ownership of almost 100,000 acres of land along lakes. The state supreme court ruled, in effect, that many bodies of water are lakes, rather than rivers or streams, assuring state ownership of adjacent shore lands. In Louisiana, any land naturally built up along a shore (accretion lands) belongs to the state along lakes, but belongs to private landowners along rivers or streams.
- In "Gulf Oil Corporation v. State Mineral Board, July 1975," the Louisiana Supreme Court ruled that beds of navigable waters belong to the state. The LSU Sea-Grant Legal Program said: "This ruling is sure to be the catalyst for further litigation since the state had regularly granted title to areas of the state, including waterbottoms, during the late 19th and early 20th centuries."

LOUISIANA LAND USE CONTACTS: Patrick W. Ryan, Executive Director; Paul R. Mayer Jr., Assistant Director; Louisiana State Planning Office, 4528 Bennington Ave., P.O. Box 44425, Capitol Station, Baton Rouge, La. 70804. (504) 389-2494.

LOUISIANA COASTAL ZONE MANAGEMENT CONTACT: Joel Lindsey, State Planning Office, (504) 389-7041; P.O. Box 44425, Baton Rouge, La. 70804.

MAINE

The Maine Legislature turned back several attempts in 1975 to weaken the state's control over land use, but opponents of the regulations showed strength and promised to try again in 1976.

Newly elected Gov. James B. Longley, I, ordered a review of all state land use activities to see where gaps or overlapping regulations existed.

Governor Longley also directed state planning officials to redraft a portion of the state coastal zone management plan they had hoped to submit for federal approval. The governor's action came after the draft environmental-impact statement for the mid-coast section of the state drew widespread local criticism.

Land Use Policy

All bills proposing to weaken environmental controls in Maine were defeated in the legislature, contradicting predictions of "environmental backlash." The bill considered by environmentalists to be the most serious threat would have banned Land Use Regulation Commission controls over the location of industry in the state wildlands; would have forbade the state Department of Environmental Protection from imposing air and water controls more stringent than required by federal law; and would have eliminated site-location permits for industry from the department's control. Most of Maine's air- and water-pollution standards are somewhat stronger than federal requirements. State Assistant Attorney General John Paterson issued an opinion that said the measure would, if passed, change Maine from a state of comprehensive environmental protection measures to a state with almost no controls.

Four state programs, taken together, now constitute elements of a state land use program.

- The Site Location of Development Act requires a license from the Department of Environmental Protection for any major commercial, residential, or industrial development. Before licensing, the state considers four principal criteria: financial capacity, traffic, environmental impact, and soil suitability.
- The Mandatory Shoreline Zoning and Subdivision Control Act requires communities to adopt zoning and subdivision controls for land within 250 feet of major bodies of water. More than two-thirds of the state's cities and town's have had shoreline zoning ordinances approved by a board of the state Department of Environmental Protection and the Land Use Regulation Commission. Towns not complying with the act have had development moratoriums placed upon them.
- A Land Use Regulation Commission regulates planning, zoning, and subdivision controls in all unorganized areas, which comprise 51 percent of the state's land. The commission has developed a plan to protect wilderness areas in Maine by zoning 5 million acres to maintain its present wilderness state. Portions of the plan were approved by Governor Longley, but in a letter to state Conservation Commissioner Donaldson Koons, the governor said, "You should be advised that this action is not taken without reservations. The plan is acceptable as evidence of a process, but it does not meet my complete approval as a planning document." The governor directed the commission to submit revised plans for his complete approval.
- Register of Critical Areas Act provided $30,000 in 1974 to initiate an inventory of important scenic, scientific, and historic areas, as well as critical natural areas. Within six months of listing, localities must develop plans for the protection of the areas designated.

In addition to these four programs, the 1967 Wetlands Protection Act gives the State Wetlands Control Board authority to regulate development of wetlands in order to protect the public interest. A permit for activities requires the approval of the board and the municipality involved.

Coastal Zone Management

Maine received a second-year grant of $328,000 from the federal Coastal Zone Management program for the development of a state CZM process. The first-year grant was $230,000. State planners said it was unlikely they would complete development of a plan by the time the current grant period expires at the end of February 1976, and they would probably apply for a third, and final, CZM program development grant.

A plan for the mid-coast section of the state was completed by the State Planning Office, and a preliminary application was submitted to the federal Office of Coastal Zone Management for grant money to implement the program. In response to widespread local criticism, however, Governor Longley directed the planning office to rework the plan with more local input. The governor's approval of the plan is required under the federal CZM Act.

The application for federal aid to implement the mid-coast plan was withdrawn, and the state planning office said new plans for the mid-coast area probably would be included in plans for the rest of the coast.

Plans for the mid-coast section of the state were prepared before other areas because that is where most of the Maine population is centered, where most competition for land exists, and where most coastal data is available. With the delay in approval of the mid-coast plans, state planning officials said progress on other areas of the state had a chance to catch up and they expected to abandon the segmented approach.

State planning officials said they would now focus on improving local government involvement in setting up a coastal zone decision-making process. They were weighing alternative means of enabling local governments to set priorities and to take initiatives in coastal zone planning and management.

On the basis of inventories, mapping, and other land use analyses, state plans were aimed toward classifying the coast into four basic areas: critical areas with overriding state concern, resource protection areas, resource management areas, and development areas.

Proposed development of an oil refinery, and other onshore land use effects associated with offshore oil development, was expected to be a continuing issue in the state. The Maine Board of Environmental Protection voted in March to approve an oil refinery and pier in Eastport, but rejected a plan for delivery of crude oil to the facility. The vote means the applicant, Pittson Co., must apply again with an alternate method of shipment before proceeding with the project.

Maine took the lead in 1975 in challenging federal claims to offshore resources beyond the three-mile limit of state waters. However, the U.S. Supreme Court ruled in May ("U.S. v. Maine") that state claims to the area, based on colonial charters, were invalid. Had Maine won the suit, it would have cleared the way for states to control the development of offshore energy resources.

MAINE LAND USE CONTACT AND COASTAL ZONE MANAGEMENT CONTACT: Allen Pease, Director, (207) 289-3261; State Planning Office, Executive Dept., 189 State St., Augusta, Maine 04330.

MARYLAND

Maryland is one of only nine states that have enacted statewide land use legislation. The Maryland measure, however, is not as comprehensive as the legislation of some other states. It calls for an inventory of state land resources, formulation of a state land use policy, and identification of critical land areas.

One of the major actions of the state legislature in 1975 dealt with the anticipated effects of expected offshore oil and gas development on onshore land use. A bill was passed to give both the state and local governments authority to approve construction of proposed coastal energy facilities.

Under regulations to be issued by the Maryland Department of State Planning, areas that local governments can designate as critical include natural resources such as rivers, beaches, rare vegetation,[1] or rare-animal habitats; areas of social concern such as reservoirs, floodways, slopes, seismic zones, or public water-supply areas; areas of special economic concern such as prime agricultural and industrial sites, forestry and mining lands; and areas of historic or cultural significance.

Localities can designate the critical areas as suitable for preservation where development would be prohibited; areas suitable for conservation where development would be strictly regulated; or areas where development would be encouraged and accommodated.

All counties and municipalities have planning and zoning authority. The enabling act for chartered counties is specific in spelling out what the county must include in its comprehensive plan. For noncharter counties the authority is broad. All counties have functioning planning processes. State officials hope all counties also will have completed their comprehensive plans soon and will exert full zoning authority.

Land Use Policy

Legislation passed in 1974 provides for the designation of critical areas. There is, however, no provision for state regulation of the designated areas.

Under the Maryland critical areas act, the secretary of state planning provides definitions of areas of critical concern through advisory guidelines. Areas include critical environmental areas, key facilities, and large-scale developments.

Local governments and regional agencies then identify critical areas and forward their recommendations to the secretary of planning. The law is silent on whether the state can alter localities' selections of areas. State officials believe they can add areas to the list. The secretary of state planning then submits the list to the governor who distributes it to the legislature.

The secretary also forwards recommended regulations for critical areas to the governor.

When localities take a zoning or subdivision action or other action on a critical area, they notify the secretary. The secretary intervenes to the extent that he has the right of standing in any judicial or administration process. However, he doesn't have a direct veto power over local decisions.

The secretary has a further influence over local actions by making recommendations on capital expenditures in a critical area.

Coastal Zone Management

Maryland received a $400,000 grant in 1975 from the federal Office of Coastal Zone Management for the development of a state CZM program. The state received a first-year grant of $280,000 in 1974.

Maryland officials hope to complete a draft management program that will be refined under a third-year grant in 1976. The state Water Resources Administration will work on an inventory of coastal areas, a means to coordinate activities with other agencies involved in the coastal zone, and development of an information-management system.

Maryland planners are especially concerned about the loss of valuable wetland areas from agricultural drainage, solid waste disposal, and erosion; the diversion of the flow of fresh water into the Chesapeake Bay, and the threat to ecologically valuable coastline by unplanned commercial and industrial development.

Energy Lands and Facilities

The Maryland General Assembly passed a bill in 1975 giving the state and localities authority to block construction of refineries and other offshore oil-related facilities on the coast.

Under the legislation, minimum standards for the facilities would be set, and state and local approval of the siting of proposed facilities would be required. The legislation was passed in response to federal plans to develop offshore oil resources off the Atlantic coast. The area has been untouched.

Agricultural Lands

The Maryland General Assembly rejected a bill for the purchase of development rights for agricultural lands. Under the plan, the state would pay farmers who banded together to preserve their land for farming. The money would come from an increase in the transfer tax on real-estate sales.

Farmers who testified at legislative hearings on the proposal said it would succeed in preserving agricultural land where the state's preferential tax assessment has failed, and that it would help keep food prices down. Developers said the proposal would drive home costs up.

Maryland has a use-value assessment law with a deferred taxation provision. The law also covers planned development lands, country clubs, and woodlands. Land assessed as agricultural must be used as such for three years after it was last taxed as agricultural unless the owner wants to pay an amount equal to twice the difference between use-value assessment and full-value assessment. Land to be assessed and taxed as planned development land must be zoned for development and approved in the master plan. The zoning classification must have a comprehensive site development plan considering land use, transportation needs, water and sewers, industrial use, job opportunities, recreation, and civic life. The tract must be contiguous and be at least 500 acres. If a portion of the land is further subdivided, it gives up its special assessment, but the rest of the project does not. However, if the owner initiates a rezoning classification not approved in the master plan, then the special assessment is forfeited and back taxes must be paid.

MARYLAND LAND USE CONTACT: Vladimir A. Wahbe, Secretary of State Planning, (301) 383-2451; 301 West Preston Street, Baltimore, Md. 21201.

MARYLAND COASTAL ZONE MANAGEMENT CONTACT: Greg Welsh; Scott Brumburgh; Coastal Zone Program, Tawes State Office Building, Annapolis, Md. 21401. (301) 267-1458.

MASSACHUSETTS

Gov. Michael S. Dukakis, D, established a new Office of State Planning in 1975 and launched a review of state growth policy.

During the coming year the basis of the review of state growth policy will be a paper prepared by the new planning office, "Towards a Growth Policy for Massachusetts." The paper points to the state itself as a major contributor to costly and inefficient development.

Land Use Policy

The state government of Massachusetts has contributed, primarily through investment programs, to "inefficient (use of) land resources, the deterioration of older centers, (and) the inequitable distribution of cost and opportunities," concludes the Office of State Planning in its report on growth.

The study also outlines four proposed goals for a statewide planning policy. The goals would be to promote:

- More efficient use of physical and natural resources.
- Revitalization of urban centers.
- Greater choice and equity among communities, households, and workers.
- Higher levels of economic growth and residential investment.

Regional planning, reduced reliance on the property tax as a primary source of income for municipalities, and a simplified project review and permitting system also are recommended.

The study covers programs for school building construction; school transportation reimbursement; highway construction; development of recreational resources; wastewater facilities construction; economic development; and low to middle income housing.

The policy paper concludes that these and other programs contributed to fringe rather than central development; promote the use of unnecessarily large tracts of land; treat energy as an inexpensive and readily available commodity; and help to place a low priority on maintaining existing town centers.

The paper suggests curtailing of waste-water treatment plant construction in small municipalities, discouraging strip development near major highways by emphasizing limited access roads, and acquiring more open space in cities. It says these steps would bring state investment policy in line with proposed growth policy.

Under existing legislation, Massachusetts cities and towns have broad zoning and subdivision authority. There are no requirements, however, for zoning and subdivision regulation to follow comprehensive plans.

The unique Massachusetts Anti-Snob Zoning Law, which uses land use controls to promote low-income and moderate-income housing, is beginning to pay off, according to state officials.

The 1969 law has struggled through several administrative, legal, and environmental problems. But now 15 developments with 2,000 units are under way, according to John Carney, general counsel to the Community Housing Assistance Section of the Department of Community Affairs, which administers the program.

Carney said that state officials and others are now promoting an amendment to ease the pressure on localities to meet housing quotas established in the law. The amendment would allow communities to zone areas for low- and moderate-income housing (multifamily dwellings) so that a town could meet its housing quota itself without having to react to development proposals over which the town would have little control.

Carney said he would recommend the Massachusetts Anti-Snob Zoning Law, with the amendments, to other states.

Under the present law, only public agencies, nonprofit organizations, and limited-dividend organizations may apply for permits to build. Their applications are handled by the local zoning board of appeals, which, after the standard review procedure, issues a single comprehensive building permit.

If the local board denies the permit or grants the permit under conditions that make building too expensive, the applicant may appeal to the state five-man Housing Appeals Committee.

The committee, once it has received the appeal and the locality's decision, has 50 days to hold a hearing and render a decision.

A denial by the local board will be upheld if it is reasonable in view of the regional need for low-income and moderate-income housing considered with the number of low-income persons in the locality; or if it is consistent with local needs as determined by a complex formula. The principal criteria is whether 10 percent or more of the town's existing housing is low-income or moderate-income.

Elsewhere, efforts to guide development on Martha's Vineyard, a popular vacation island off the southern coast of the state, moved into their first full year under an act passed in 1974.

The act established a Martha's Vineyard Commission to work with local and state governments to regulate development of regional impact.

As a first step, the act directed a one-year moratorium on almost all building on the island.

The passage of the state bill gave added impetus to a federal bill to help preserve Nantucket Sound being supported by Sen. Edward Kennedy, D, Sen. Edward Brooke, D, and Rep. Gerry Studds, D, whose district includes Martha's Vineyard.

The thrust of the federal bill would be to preserve open space and resource lands, mostly through a $25-million appropriation for acquisition and development.

The key to the state-passed Martha's Vineyard program is a 21-member commission, consisting of elected and appointed officials, state officers, and—if the federal bill goes through—a representative of the Interior Department. The commission would write the standards for identifying critical planning areas and then write standards for controlling land use. The state has approval authority over the standards, but does not have a direct vote. Once the standards are approved, the state's role is ended.

The six towns on the island already have their own zoning laws. The towns will be affected only when a critical area or proposed development of regional impact falls in their area and the commission tells the community to revise its zoning laws. If a town does not revise its zoning laws in six months the commission will step in and regulate those areas.

When the Massachusetts legislature was first considering the Martha's Vineyard Commission proposal in 1974, it was part of a bill (H 5567) that included the establishment of a statewide land use planning program. However, the Martha's Vineyard portion was broken out and the statewide program left to die.

Coastal Zone Management

Massachusetts was awarded a grant of $382,000 this year under the federal Coastal Zone Management program for development of a state CZM program. It is the state's second year of participation in the program. State officials will have one more year to develop a program under the federal act. After that, additional federal funds will be available only to implement the program developed.

A portion of the grant will be used in Martha's Vineyard to determine how resource planning and land use programs at several governmental levels can complement each other. The Martha's Vineyard effort is being jointly funded by the federal HUD 701 Comprehensive Planning Grants program under a cooperative agreement with the U.S. Department of Housing and Urban Development.

According to Massachusetts' CZM proposal, second-year work will be directed mainly toward developing measures to implement the program once it is completed; defining the coastal boundary; and determining critical areas such as estuaries, and flood hazard areas within that boundary; and preparing guidelines on priority uses within the coastal boundary.

Also, during the second year, Massachusetts will determine how to control land and water uses within the coastal zone, and coordinate its development program among federal, state, and local agencies, public interest groups, and among neighboring states.

The state has been divided into 13 regions to aid public participation in the 87 towns and cities in the coastal area.

MASSACHUSETTS LAND USE CONTACT: Frank T. Keefe, Director, (617) 727-5066; Office of State Planning and Management, 100 Cambridge St., Room 909, Boston, Mass. 02202.

MASSACHUSETTS COASTAL ZONE MANAGEMENT CONTACT: Marc Kaufman, (617) 727-2808; Executive Office of Environmental Affairs, 18 Tremont St., Boston, Mass. 02108.

MICHIGAN

Gov. William G. Milliken, R, has made passage of a statewide land use measure a priority item for his administration, and, responding to that call, state legislators have given serious consideration to proposed legislation.

The bill (HB 4234) is a trimmed-down version of a measure offered in the past two sessions of the legislature. It has been greatly changed during the drafting process in order to gain sufficient diverse support for passage. However, passage of the measure is not assured. Some environmentalists contend that it has been weakened too much during the drafting process, and they may no longer support it.

Land Use Policy

Local governments in Michigan have broad zoning and subdivision authority. The zoning and subdivision regulations must be consistent with an adopted comprehensive plan. The state, however, reviews proposed subdivisions to assure access to highways, onsite waste disposal, and flood-plain management. The state also must approve proposed changes in natural flood-pplain areas.

The nature of the revised land use bill considered by the Michigan legislature is exemplified by its title, which has been changed from "State Land Use Act" to "State Land Use Planning Act."

The revised bill includes:

- Land Use Commission: A nine-member state land use commission would be appointed by the governor under geographic and political guidelines established in the bill. The commission would make rules to implement the program, prepare a state land use plan, and review the program every two years.
- Local Plans: Each county would develop a land use plan within three years after passage of the proposed legislation. If a county does not act, a regional planning commission or district would prepare the plan. In developing the plans, the county or regional commission would have to use land use plans submitted by localities unless they vary from the policy requirements of the bill. Localities could appeal any decisions to the state commission. The state commission would have review authority over county or regional plans, but could reject a part of a plan only if it varied from the policy requirements of the bill.
- Interim Regulations: While local governments are developing their land use plans, the state land use commission would control developments by state government agencies (highways, etc.); state and federally funded projects (sewer, drainage, water); and utility siting (power plants, transmission lines, etc.). The revised bill eliminates all direct state controls over private development during this period. Land zoned other than agricultural, conservation, or open space by Jan. 1, 1977, would be exempted from interim designation of critical land areas.
- State Plan: The state plan would consist of the county plans and plans developed by state agencies. If a county plan is not received in time, the commission would use municipal land use or master plans instead. Both the governor and the legislature would have to approve the state plan.
- Critical and Essential Resource Lands: Following adoption of a state land use plan, public and private development would be controlled on critical lands, such as agricultural lands, wetlands, natural areas, and archeological sites. Public development would be controlled on essential resource lands, such as mineral and forestry lands. In essential resource lands, the state would be able to assure orderly growth by granting or withholding needed utilities while still assuring owners of timber and mineral properties the right to develop the land for their business purposes without state regulation.
- Activities of State or Regional Concern: The bill would require the commission to prepare reports on land use problems relating to developments of state or regional impact and make recommendations to the state legislature.

A report by the state Department of Natural Resources, "Michigan's Future Was Today," outlines a process for the identification and investigation of land use problem areas that merit state concern.

The report is not a completed plan, but it identifies a number of activities undertaken in the land use area pending enactment of state land use legislation.

The report indicates that much of a land use program will be developed and ready to go into effect when a state land use measure is enacted.

The report says "...a land use program cannot be a 'no growth' program. A modern land ethic embraces the principle of the wise use of land based on sound scientific information subject to periodic review and amendment. All projections point to some growth, albeit different levels."

Activities outlined in the report include:

- The preparation of an inventory of the natural resource base and conditions which influence land use. A system for displaying natural determinants of land use has already been developed. A tentative matrix relating land development activities to physical factors has also been developed.
- Development of criteria to assist local governments in estimating and anticipating development costs, especially in public service costs.
- Initiation of an urban-urbanizing task force to explore urban land use alternatives.
- Preparation of rules and regulations for implementation of the Farmland and Open Space Preservation Act of 1974.
- Acceleration of technical assistance to localities and counties.

Despite the lack of a comprehensive land use planning act, Governor Milliken authorized development of a land use program in 1973. Executive Order 1973-2 directed the consolidation and transfer of state land use activities to the Department of Natural Resources. The Department was directed to "...assume complete responsibility for the development of a state Land Use Plan and to prepare legislative proposals to effectuate that program."

Section 18 of the state's Farmland and Open Space Preservation Act, also authorized the development of a state land use plan to be submitted to the legislature by January, 1976.

(For copies: Office of Land Use, Department of Natural Resources, Lansing, Mich. 48913.)

Coastal Zone Management

Michigan received a $400,000 grant in 1975 under the federal Coastal Zone Management Act for development of a state CZM program. It was the second federal grant received by the state; one of $330,486 was received in 1974.

The main goal in developing the state CZM program is to protect the overall integrity of the state's shorelands, while providing for the orderly development of resources.

Under the Shorelands Management Act of 1970, local planning and zoning along the Great Lakes shores of the state must conform to state guidelines, or the state can impose regulations. The approach proposes to limit development to specifically designated shoreland locations, to require developments to be environmentally compatible, and to foster and facilitate public acquisition of significant shoreland environmental areas.

Agricultural Lands

Faced with the loss of nearly 35,000 acres of farmland a year to development pressures, Michigan last month placed the first 200 acres of agricultural land in a preservation program.

Under the Farmland and Open Space Preservation Act passed in April 1974, agricultural landowners may receive special tax considerations by volunteering for the program. Participants must agree to keep the land in agricultural production for 10 or more years and must sign a contract with the state restricting nonagricultural development.

The 200 acres entered in the program is a farm located in Clinton County, which is facing rapid growth and development from Michigan's capital city of Lansing.

The state Office of Land Use, which is administering the program, has received more than 450 applications for the program, representing more than 65,000 acres of agricultural land in production.

Increasing property tax rates, coupled with the growing market for land, has encouraged the conversion of land to more intensive uses. A prime factor is the increasing development of recreational facilities in northern Michigan.

The Farmland and Open Space Preservation Act was passed to substantially reduce financial incentives to sell land for development by lowering the tax burden.

A participant is entitled to a credit against Michigan's income tax equal to the amount of property taxes which exceed seven percent of the individual's income, and to an exemption from special assessments for sewers, water, lights, or other nonfarm public improvements.

Michigan has more than eight million acres of essential agricultural land the state would like to see protected.

Karl R. Hosford, Chief of the Office of Land Use, said the start of the program "... is a drop in the bucket as far as total acreages are concerned, but we must begin somewhere, and the 450-plus applications received in the past few months is a good indication that people have started thinking about the necessity to retain these natural resources which provide basic needs for people."

Michigan is one of more than 30 states with preferential tax treatment for agricultural and open space lands and its program is considered one of the most comprehensive.

MICHIGAN LAND USE CONTACTS: Gerald H. Miller, Director, Department of Management and Budget, (517) 373-1004; Thomas Clay, Director, Bureau of the Budget, (517) 373-7560; 1st Floor Lewis Cass Building, Lansing, Mich. 48913. Karl R. Hosford, Office of Land Use, Department of Natural Resources, Lansing, Mich. 48913. (517) 373-3328.

MICHIGAN COASTAL ZONE MANAGEMENT CONTACT: Dick Lehman, (517) 373-1214; Department of Natural Resources, Stevens T. Mason Building, Lansing, Mich. 48926.

MINNESOTA

Although some other states have attracted more attention as pace setters in land management, Minnesota has moved deliberately to deal with land use problems. The main piece of state legislation is the Critical Areas Act of 1973 designed to protect sensitive lands. With the aid of grants under the federal Coastal Zone Management program, state planning officials also are developing a more comprehensive land management program for coastal areas. In the management of urban growth, the Twin Cities Regional Council has seen an expansion of its authority, although it is still limited primarily to a guiding, rather than a controlling, role.

Land Use Policy

The County Zoning Act, amended in 1974, authorizes all counties in the state to adopt a comprehensive plan, zoning ordinances, and other controls to "further the purposes" of the plan. Townships may continue to plan and zone after adoption of county controls, but the township controls must not be inconsistent with or less restrictive than the county controls.

The Critical Areas Act of 1973 authorizes the state to identify areas that would be ddamaged by uncontrolled development. Local plans for areas identified must then be reviewed by a regional development commission, or, where none exists, by the state Environmental Quality Council (EQC). The council, created by the Environmental Quality Council Act of 1973, has prepared criteria for designating critical areas, and is authorized to prepare plans for local governments that fail to do so.

The Commission on Minnesota's Future was also created by the legislature in 1973 to develop alternative growth strategies for the state.

The Minnesota Critical Areas Act is based on Article 7 of the American Law Institute model land development code. As such, it is a means for interim or emergency protection of an area while local governments prepare plans for enforcement of state policy. Local regulations will probably be more flexible than the interim restriction imposed by the state.

Minnesota Gov. Wendell R. Anderson, R, issued an executive order in late 1974 designating the Lower St. Croix River National Scenic Riverway as a critical environmental area, the first under the Critical Areas Act.

Development restrictions accompanying the designation will block eight developments along the river, said John L. Robertson, planning director of Minnesota's critical areas program. Two counties and 10 municipalities are covered by the restrictions.

The stringent development regulations were implemented to "protect the existing scenic and recreational values to the extent feasible and practicable, to maintain proper relationships between various land use types and to prohibit new residential, commercial, or industrial uses that are inconsistent with the Federal Wild and Scenic Rivers Act."

Development restrictions set minimum lot sizes at 2.5 acres in rural areas and one acre in urban areas without public sewer systems. Where sewers are available, lots must be at least 20,000 square feet. Construction on slopes and flood plains is also prohibited, and utility transmission corridors must not cause environmental damage.

Permitted new land uses must qualify as conservancy, agriculture, single-family dwellings, highway waysides and rest areas, or government structures used as information centers or for resource management.

The Minneapolis-St. Paul Twin Cities Metropolitan Council also recommended designating the Mississippi River corridor as a critical area. If designated, planning for the area could be done on a regional basis, the council pointed out.

The council said the river should be managed as a critical area in order to preserve its natural, cultural, and historical features.

The Twin Cities Regional Council, serving seven counties and half of Minnesota's population, completed a master plan "developmental framework" in 1975 that may lead to regionally directed land use planning in the area.

A bill (HF 1530, SF 1653) rejected by the state legislature in 1975 would have given more teeth to the master plan by requiring all localities in the region to prepare developmental plans that conform to the regional framework.

The council was established in 1967 specifically to solve regional problems around Minneapolis-St. Paul. The council began with the intent of guiding growth; with these lates initiatives it is moving into controlling growth.

Under the Metropolitan Reorganization Act of 1974, the Twin Cities Metropolitan Council was directed to develop guidelines for controlling projects of metropolitan-wide significance.

The developmental framework itself provides considerable authority to the council. It gives the council, in effect, power to govern the availability of such services as sewers, limited access highways, public transit, and parks. The intent of the framework is to direct, but not restrict growth over the next 15 years.

The framework divides the seven counties into rural and urban service areas. The framework also describes five policy

areas with each targeted to accept different levels of growth. Those areas are downtown Minneapolis and St. Paul, mature central cities and the first ring of suburbs, developmental fringes, rural, and free-standing growth centers—13 communities outside the urban-suburban area.

Within the framework the council also is preparing policy plans for land use, transportation, sewer, and open space. The transportation and sewer plans are completed and going through public hearings now.

Coastal Zone Management

Minnesota received a federal grant of $150,000 in 1975 to develop a state coastal zone management program.

During the next 12 months the state will prepare a summary of the first year's findings and conduct special studies on shore damage erosion, septic systems and wells, soils, and geology. The state will also study the Duluth Superior Harbor and the St. Louis Estuary, and develop criteria to designate areas of particular concern.

The federal Coastal Zone Management Act requires states to identify the boundaries of their coastal zone, develop a process to determine appropriate land and water uses in the zone, establish priority uses within specific areas of the zone, determine intergovernmental arrangements needed to conduct an effective management program, and evaluate the adequacy of existing regulations for proper land and water use management.

Under the Shoreland Management Act of 1969, coastal counties have developed zoning ordinances for unincorporated shorelands according to guidelines set by the Department of Natural Resources. The state supervision was extended to municipal shorelands in 1973.

Agricultural Lands

Late in 1974, the Minnesota Supreme Court upheld the state's Green Acres Law allowing farmland in urban areas to be assessed at a rate lower than its potential market value. The court noted that the legislature was empowered to classify property for tax purposes and the state constitution required only that taxes be uniform upon the same class of subjects.

Minnesota enacted a deferred tax law in 1967 and amended it in 1969 and 1973. Private recreational, open space, and park land—including land used for golfing and skiing—are also eligible for deferred taxation, provided the land is at least five acres and either open to the public, operated by firms for the benefit of employees and guests, or operated by private clubs with a membership of at least 50 people. Agricultural land must be a family farm of at least 10 acres in order to qualify for the special valuation. Land that qualifies is taxed according to use value, but market value is noted. If the land is sold, deferred taxes equaling the difference between market value and use value for the last three years must be paid.

MINNESOTA LAND USE CONTACTS: Peter L. Vanderpoel, Director, State Planning Agency, (612) 296-4933; A. Edward Hunter, Deputy Director, State Planning Agency, (612) 296-6662; James Solem, Director, Office of Local and Urban Affairs, (612) 296-3091; 101 Capitol Square Building, 550 Cedar Street, St. Paul, Minn. 55101.

MINNESOTA COASTAL ZONE MANAGEMENT CONTACT: Steve Reckers, Coastal Zone Program, (612) 296-2884; State Planning Agency, 550 Cedar St., St. Paul, Minn. 55101.

MISSISSIPPI

Despite a prevailing attitude of suspicion toward the term "land use," Mississippi officials are progressing cautiously toward development of a coastal zone management program, with an emphasis on local land controls.

Land Use Policy

Cities, towns, and counties have broad zoning and subdivision regulation authority, and zoning must follow a comprehensive plan. No change of emphasis from the present dominance of local land controls is anticipated.

The state's Division of Planning and Coordination advises local governments and provides technical assistance. The division is currently pursuing programs for data collection, and a land use mapping and classification system through the use of remote sensing techniques. A Task Force on Growth was established within the division in 1974 to provide policy advice.

Coastal Zone Management

Mississippi received a grant of $127,038 in 1975 under the federal Coastal Zone Management program to develop a state CZM program. The state received a grant of $101,564 in 1974, its first year in the program, and will be eligible for one more program development grant. Then, only grants for implementation of the program will be available.

Mississippi's second-year work program is an extension of the first year's and includes identifying its coastal boundaries, defining permissible land and water uses, designating areas of particular concern, determining priority uses of the coastline, describing how the state will exercise control over land and water uses, and building an organization to implement the development program.

Another important objective will be to educate and inform citizens about the coastal management plan through a series of public workshops and informal meetings.

The state Marine Resources Council administers the CZM program.

The council also directly regulates development in state-owned tidelands through the Coastal Wetlands Protection Act of 1973 (Act 140-1973), and cooperates with the Gulf Regional Planning Commission, which is studying development of a regional plan for the coastal counties for open spaces, recreation, and aesthetics.

MISSISSIPPI LAND USE CONTACTS: William M. Headrick, Coordinator; Warner C. Snell, Planning Coordinator; Federal-State Programs, Suite 400, Watkins Building, 510 George St., Jackson, Miss. 39201. (601) 354-7570.

COASTAL ZONE MANAGEMENT CONTACT: Sylvia Minor, Coastal Zone Coordinator, P.O. Box 497, Long Beach, Miss. 39560. (601) 864-4602.

MISSOURI

In a landmark decision, the 8th U.S. Circuit Court of Appeals in St. Louis struck down a recently adopted Black Jack, Mo., zoning ordinance because "it has a discriminatory effect."

The decision, which the U.S. Supreme Court refused to review, will have a major impediment to restrictive zoning practices not only in Missouri, but throughout the country.

Land Use Policy

The Black Jack case has drawn national attention as a test of efforts to block exclusionary land use patterns by challenging them under Title VIII of the Civil Rights Act of 1968.

The court of appeals, in reversing a district court decision,

ruled that under Title VIII "the plaintiff need make no showing whatsoever that the action resulting in racial discrimination in housing was racially motivated," only that "it has a discriminatory effect."

Judge James Meredith of the U.S. District Court for Eastern Missouri ruled in March, 1974, that the zoning ordinance was valid because it did not seem to be racially motivated.

The appeals court said there was no compelling government interest demonstrated by the city that could justify the discriminatory effect of the zoning ordinance.

A St. Louis suburb of single-family homes, Black Jack was incorporated as a city in 1970 and a zoning ordinance excluding multi-family residential development was adopted immediately. As a result, plans to build a 210-unit low-income housing project financed by the Department of Housing and Urban Development were blocked.

The city said the zoning ordinance was needed to prevent overcrowding of schools, devaluation of single-family homes, and problems of providing roads and traffic control.

The appeals court ruled "there is no factual basis for the assertion that any one of the three primary interests asserted by the city is in fact furthered by the zoning ordinance."

"The ultimate effect of the ordinance was to foreclose 85 percent of the blacks living in the metropolitan area from obtaining housing in Black Jack," the court said.

Cities, villages, and unincorporated towns in Missouri have broad zoning and subdivision regulation authority. All zoning regulations must follow a comprehensive plan.

Zoning authority for counties in the state, however, varies according to classification based on assessed property values. Major counties enjoy the same zoning authority as cities, villages, and towns. Zoning regulations for other counties must be approved by referendum.

Only 22 of 114 counties in the state have enacted planning or zoning ordinances.

In addition, the zoning authorities for all counties contain many exemptions for strip mining, commercial buildings, farmlands, and public utilities.

On the state level, regulation of land use has not progressed beyond the study phase. The Office of Statewide Planning in the Department of Administration has recommended steps to direct growth by the siting of sewer facilities, and other public services and facilities. The state's primary role, however, remains the provision of advice and technical assistance to localities.

A measure of the sentiment toward land use controls in the state can be seen in the opposition led by U.S. Sen. Thomas F. Eagleton, D-Mo., to the federal flood-insurance program.

The flood-insurance program, administered by the U.S. Department of Housing and Urban Development, provides for land use and construction controls to minimize losses in flood-hazard areas. It is one of only four federal programs affecting state and local land use decisions that actually are put into effect. (Other federal programs directly affecting state and local land management are the coastal zone management program of the Department of Commerce, and the air and water pollution control programs of the Environmental Protection Agency).

Senator Eagleton's opposition to the flood-insurance program reflects strong pressure from constituents who contend that the program restricts their rights to use their land as they wish.

MISSOURI LAND USE CONTACTS: Bill R. Cramer, Director, (314) 751-3925; Stephen Bradford, Assistant Director, (314) 751-2073; Division of State Planning and Analysis, Office of Administration, P.O. Box 809, Capitol Building, Room B-9, Jefferson City, Mo. 65101.

MONTANA

Montana moved to establish property taxation as the basis of a statewide land use system in a law signed May 13 by Gov. Thomas L. Judge, D.

There is some question, however, whether the law will work. Richard M. Weddle, land use attorney in the state planning division, said, "Technical and legal problems inherent in it may be staggering."

The Montana legislature also enacted measures to expand coverage of the Utility Siting Act of 1973, to require the consent of surface owners before underlying state-owned coal or uranium can be mined, to protect water quality and water-users rights, and to require subdivisions to be in the public interest.

In addition, Governor Judge signed an executive order in August designating the State Division of Planning as the agency responsible for overseeing state land use planning activities.

Land Use Policy

In a law enacted in 1975 (HB 672), local governments are required to classify land in broad categories, such as residential, commercial, etc. Property tax rates will then be based on the classifications.

Once land classifications have been made by local governments, property owners must indicate how their land will be used. If it varies from the land classification, the property tax rate will vary also. To gain the best tax rate, property must be used according to the land classification.

The system provides for both lower and higher evaluations than presently used, based on a complex formula within each classification.

Except for those localities that specifically vote to defer the concept for one year, all counties and municipalities must abide by it.

The state department of revenue will have final review power over the local classifications and changes to it. The new Montana system appears to be the only statewide approach of its kind.

Localities will have until Jan. 2, 1978, to classify their lands into six broad categories—agricultural, recreational, open space, industrial, residential, and commercial—within a land use plan. At local option, voters can elect to have the classification plan put off for one year. Otherwise it must be implemented.

After hearings the state Department of Revenue will make the final classifications. Then land owners will have two years to place land into a subsclassification within each broader classification.

Each subclassification comes with a formula for determining evaluation of the property for tax purposes. In an area classified as agricultural, for example, a land owner agreeing to keep his land in agricultural use for 25 years receives a 20-percent reduction in the assessment of the property value. If the land is put to another use, however, there would be no reduction in the assessment, and there could be an increase in the assessment with a corresponding increase in taxes paid.

Proposals for statewide land use legislation were rejected by the state legislature. The main measures were drafted by the Division of Planning, and by the state Environmental Quality Council (EQC).

The bill drafted by the Division of Planning, and backed by Governor Judge, would create a seven-member state land use commission appointed by the governor. The commission would develop detailed criteria for local and county governments to follow in the regulation of designated areas of state concern. The regulations would be subject to review and change by the state legislature.

Areas eligible for designation as areas of state concern would include significant resource areas (agricultural, historical, etc.), areas with significant development potential, areas suitable for new town development, hazard areas such as flood plains,

and areas affected by major public facilities and public investment.

Local governments would have one year to develop plans and regulations for areas of state concern. The state would be authorized to impose plans and regulations if localities failed to do so. The bill also provided for termination of a designation. Planners estimated a cost of $250,000 for the first two years of a program.

The bill drafted by the EQC staff was based on the EQC's recent "Montana Land Use Policy Study." The study concludes that any concept of statewide zoning would be inappropriate in the state. A flexible review and designation process was proposed for areas of state concern and developments of greater than local impact.

The EQC and Planning Division bills were similar in most respects. In fact, the Planning Division worked closely with the EQC staff in developing early drafts of a bill and drew extensively from the EQC study.

However, the EQC bill contained toughter environmental-protection provisions, including provision for an automatic moratorium on development once an area has been nominated as an area of state concern.

Early drafts of the EQC bill applied to developments of greater than local concern as well as areas of state concern. But the EQC rejected the staff proposals three times and the provisions for regulation of large projects were dropped.

(For information about the EQC "Montana Land Use Policy Study": EQC, Box 215, Capitol Station, Helena, Mont. 59601.)

Under amendments to the Subdivisions and Planning Act of 1973, developments must be "in harmony with the natural environment." Future subdivision developments will be judged on the basis of need, public opinion, and effects on agriculture, taxation, the natural environment, wildlife and wildlife habitat, and public health and safety.

The Subdivision and Planning Act applies to all subdivisions of 20 acres or less. It requires all local subdivision regulations to conform with state guidelines. The state is authorized to impose regulations when local governments fail to institute their own. A set of model regulations has been developed by the State Division of Planning.

Energy Facilities and Lands

The Montana legislature expanded coverage of the state Utility Siting Act to include any plant that converts to energy at least 500,000 tones of coal per year. The Utility Siting Act of 1973 required utilities to obtain a permit from the Department of Natural Resources prior to development of a project. A large application fee produced revenue used to plan for and meet the impact of new utility construction. The department has authority to reject projects not in the public interest.

The impact of energy resources development is a critical issue in Montana, as in other western states faced with large-scale development of energy resources in previously undisturbed areas. To stem the loss of agricultural lands affected by energy resources development, the state legislature approved measures to prohibit the transfer of agricultural water rights to any other use, and to require applicants for large water appropriations to show that they will not adversely affect existing water users. These bills will directly affect energy resources developments, such as strip mining, that require large amounts of water.

MONTANA LAND USE CONTACT: Harold M. Price, Administrator, Planning Division, (406) 449-3757; Department of Intergovernmental Relations, 1424 Ninth Ave., Helena, Mon. 59601.

NEBRASKA

Two land use laws cleared the Nebraska legislature in 1975, and were signed into law by Gov. J. James Exon, D, in May. The first act (LB 317) requires counties with large populations to prepare and enforce comprehensive land use plans after July 1, 1977. The second act (LB 410) clarifies ambiguities that arose in the guidelines for preparation of the county land use plans.

Land Use Policy

Small cities or villages in Nebraska failing to enforce zoning and subdivision regulations will forfeit land use planning and regulatory powers to county governments under the new state law.

Counties with cities of over 5,000 population are required to prepare and enforce comprehensive land use plans under the law (LB 317). It becomes effective July 1, 1977.

The State Planning and Programming Office is directed to examine land use regulatory programs of all counties and municipalities in Nebraska by July 1, 1977, and to reexamine the programs annually. It also has authority to determine the adequacy of the local programs.

After the law was signed by Governor Exon, it was criticized by the state attorney general's office for uncertain guidelines on determination of compliance and for lacking provision to appeal adverse rulings by the planning office.

The right to appeal is statutory under Nebraska law.

Amendments to a subsequent land use bill (LB 410) attempted to clarify the compliance guidelines and inserted the appeal process into the law.

The measure also contained an extra-territorial notice provision that required notice within a three-mile radius of proposed construction activity by a local government. State Planning Director W. Don Nelson said that was a recognition that actions taken in one area affect other areas as well.

Another new law requires a permit from the director of the Department of Water Resources for construction within a flood plain.

Action on several land use study commission bills were postponed until the legislature reconvenes in January, 1976.

The legislature amended the state's comprehensive planning enabling legislation in 1974 to add one important sentence: "The comprehensive development plan shall be used only as a guide by the planning commission and the municipal legislative body in all matters to which such comprehensive plan applies."

The change means that state legislation enabling localities to undertake comprehensive planning cannot be interpreted to require compliance of zoning ordinances. In a decision delivered in 1972 by Judge Robert R Moran of Nebraska's 16th District Court, a North Platte city zoning ordinance was invalidated because it was not in compliance with the city's comprehensive development plan.

NEBRASKA LAND USE CONTACTS: W. Don Nelson, Director, State Office of Planning and Programming, (402) 471-2414; Robert D. Kuzelka, Comprehensive Planning Coordinator; Box 94601, State Capitol, Lincoln, Nebraska 68509.

NEVADA

A law to provide preferential tax treatment for agricultural and open-space lands was passed by the 1975 session of the Nevada legislature. A November, 1974, referendum approved a constitutional change that allowed the legislature to pass the act.

Land Use Policy

The agricultural and open-space law provides a tax break for farm land that meets qualifications outlined in the law. The break is given only if applied for. The law also allows counties to set criteria for open-space tax breaks. The designation of open space must be tied to a comprehensive plan and local zoning ordinances.

Nevada passed a land use planning act in 1973 that required all counties in the state to develop comprehensive land use plans by July 1, 1975. The State Land Use Planning Agency (SLUPA), created by the law, is now in the process of reviewing those plans.

Under the law, counties over 100,000 in population must include population projection elements in their plans, along with conservation, water needs, and pollution control as critical or limiting factors in planning for growth.

Nevada's land use legislation requires development of a statewide land use planning process and designation of critical environmental areas. It does not grant authority to regulate large-scale developments or facilities with significant environmental impact.

SLUPA, which is part of the state Department of Conservation and Natural Resources, is developing methods to inventory lands and resources; identify demographic trends and the impact assessment of large-scale development; project land use needs; and inventory needs and financial resources for the private and public sectors. The agency is responsible for review of the required county comprehensive plans.

The state is also involved in the joint California-Nevada Tahoe Regional Planning agency, which administers the Lake Tahoe resort area.

In August 1974, the Nevada Supreme Court reaffirmed the legality of the bi-state agency by dismissing various legal challenges filed by Douglas County, Nevada, the county in which the lake is located on the Nevada side. Douglas County contains most of the gambling casinos in the lake area.

In September, 1975, California adopted a development plan for its side of the lake area that established water and air quality standards, reduced previous plans for subdivision density, and provided for development of new sewage facilities.

NEVADA LAND USE CONTACTS: Bruce D. Arkell, Planning Coordinator, Planning Board, (702) 885-7073; State Capitol, Carson City, Nev. 89701. John Meder, State Land Use Planning Agency, (702) 885-4363; Department of Conservation and Natural Resources, Carson City, Nev. 89701.

NEW HAMPSHIRE

Concern for local control over land use regulation was a major factor in defeating several land use planning bills in the New Hampshire legislature in 1975.

Land Use Policy

Although growth pressures on New Hampshire increased with the implementation of development controls in the neighboring states of Vermont and Maine, Gov. Meldrim Thomson, R, did not introduce or support a land use planning bill in 1975. The governor's support was considered crucial for passage of any such legislation.

Three land-use-related bills were introduced in the New Hampshire legislature. One (HB 519), drafted by a nonprofit corporation, The Study Group, Inc., would have strengthened local planning and zoning powers, while giving the state a veto over local decisions. HB 519 was opposed by environmentalists, among others, because it did not deal with placement of highways, power plants, oil refineries, and sewage-disposal plants. A version of HB 519 with amendments covering the objectives was introduced as HB 658. Both HB 658 and HB 519 provided for a statewide plan and designation and regulation of critical areas. A bill (HB 681) dealing only with critical areas was also introduced.

All three bills died in the house; HB 658 and HB 681 on the house floor in extremely close votes.

Coastal Zone Management

New Hampshire received two grants of $78,000 and $120,000 from the federal Office of Coastal Zone Management to continue its second year of planning for the state's 15-mile coastline.

The state Office of Comprehensive Planning, the agency responsible for CZM in New Hampshire, hopes to have a unified and comprehensive plan ready for presentation to the legislature next year. The plan will emphasize three areas: inventorying biological populations and mineral and petroleum resources; ways of assessing the impact of various land and water uses; and development of policies regarding the use of the coastal zone based on the impacts of those uses.

NEW HAMPSHIRE LAND USE CONTACTS: George E. McAvoy, Director, (603) 271-2176; Office of Comprehensive Planning, State House, Concord, N.H. 03301. James E. Minnoch, Director of State Planning, (603) 271-2176; State House Annex, Concord, N.H. 03301.

NEW HAMPSHIRE COASTAL ZONE MANAGEMENT CONTACT: John L. Dickey, (603) 271-2155; Office of Comprehensive Planning, State House Annex, Concord, N.H. 03301.

NEW JERSEY

One of the most important decisions in the country relating to land use came in March, 1975, when the New Jersey Supreme Court ruled that the township of Mt. Laurel, N.J. must revise its zoning ordinances to prevent exclusion of low- to moderate-income residents.

As Arthur J. Levin, executive president of the Potomac Institute, noted, the decision marked "the first time that a high court imposed an affirmative inclusionary zoning obligation on local government, based on regional housing needs." The Potomac Institute is an independent nonprofit group engaged in analysis of public policies affecting lower-income groups and racial minorities.

In other state land use activity, Gov. Brendan T. Byrne, D, held back on his intended introduction of a bill to provide for state review of regional development.

State planning officials said the governor's bill may be introduced for consideration of the 1976 Legislature. Poor fiscal conditions were cited by Byrne for his decision to hold up on introducing the measure this year. As in the past several years, the state legislature rejected a proposed state income tax, which leaves the state coffers low.

Although Byrne's bill, the proposed Development Review Act, has not yet been made public, state officials have indicated that it would cover state review of regional development, such as large-scale energy, industrial, and commercial facilities. Specific guidance on residential projects would probably have to be included in separate legislation, state planning officials said.

Land Use Policy

The New Jersey Supreme Court ruled that restrictive municipal zoning ordinances excluding low- to moderate-income

housing from a community violated the state constitution.

The court outlawed such practices as large-lot zoning and bans on apartments unless a community had provided its share of a region's low- to moderate-income housing.

Further, the court said communities must take positive action in their land use regulations to insure that housing is provided for every economic and social class in its region.

For the immediate future in New Jersey, the decision was expected to cause confusion among municipalities over how to plan for regional housing needs.

The supreme court upheld a 1972 superior court decision that struck down a local zoning board ruling because it excluded housing for lower-income groups, contrary to the state constitution's equal-protection and due-process guarantees.

The court said, "We conclude that every such municipality must, by its land use regulations, presumptively make realistically possible an appropriate variety in choice of housing. More specifically, presumptively it cannot foreclose the opportunity of the classes of people mentioned for low- and moderate-income housing, and its regulations must affirmatively afford that opportunity, at least to the extent of the municipality's fair share of the present and prospective regional need."

Levin, of the Potomac Institute, said, "The importance of the Mount Laurel decision is that it sets up a new principle of judicial review in determining whether a local zoning ordinance promotes the general welfare, in effect reversing a whole line of previous influential New Jersey court decisions upholding exclusionary practices."

The court said historically many New Jersey communities used zoning to keep out all but the wealthiest families. The motive in the Mt. Laurel case was to prevent any housing except that which would provide enough taxes to pay its own way, the court said.

Another case pending before the New Jersey Supreme Court could expand on the Mt. Laurel decision. In a Madison Township case, a plaintiff was prevented from building low- to moderate-income housing by large lot zoning. The community rezoned, but the plaintiff came back to the courts, still unable to obtain the zoning he wanted from Madison Township. The state supreme court has been asked to decide whether mandating a case back to the community provides sufficient relief, or whether the state must provide relief.

In another case of importance to land use planning and management in New Jersey, the state supreme court ruled that the city of Trenton must compensate landowners for losses in property value caused by urban renewal projects even though their property was not condemned by the city.

The unanimous 6-0 decision stems from the requirement of the Fifth Amendment of the U.S. Constitution that citizens be compensated when a government authority takes their property.

The court said: "We hold that where the threat of condemnation has had such a substantial effect as to destroy the beneficial use that a landowner has made of his property, then there has been a taking of property within the meaning of the Constitution."

In reversing its past standards, the court said the state can no longer rely on "the physical invasion of property by the government" as a guide in determining when compensation is needed.

The court said the physical invasion standard is "too narrow a standard to identify all instances of compensable taking."

The city of Trenton argued that since the property in question was never condemned, there was no taking and the landowner was required to bear any loss.

In the suit ("Washington Market Enterprises, Inc. v. The City of Trenton, N.J.," Supreme Court of New Jersey, July 28, 1975), a city realtor claimed that the annual rent from one of his buildings declined from $160,000 in 1963 to $6,300 in 1973 as a result of urban-renewal activity in the area.

In 1967 the area near the building was designated by the city as a blighted area and scheduled for urban renewal. But the city abandoned redevelopment plans in 1973. The realtor contended that the designation of the area as blighted actually discouraged potential tenants from renting in his building.

The state supreme court ordered a trial to determine the amount of compensation to which the realtor was entitled. The court said he would have to show "what the property would have been worth had there been no declaration of blight and had the ensuing and related activities of the city not occurred."

The general assembly passed a bill that would enable New Jersey communities to enact transfer of development rights (TDR) ordinances. The state senate did not act on the measure.

The bill (AB 3192) would allow development rights in areas a community does not want developed to be separated from the rights to own the land, and to be used in other designated areas.

The bill would require municipalities to establish a commission to determine the feasibility of adopting a TDR ordinance. The feasibility study would have to include an analysis of existing land uses, identification of land to be preserved and land to be included in a "transfer zone," growth projections, national, state, and regional trends, and identification of existing and anticipated capital facilities such as sewers.

Where a commission recommends adoption of a TDR ordinance, and the municipality accepts that recommendation, the ordinance would have to:

- Delegate responsibility for implementation of a TDR ordinance to the municipal planning board.
- Designate a preservation zone. The land would have to be "substantially undeveloped or unimproved farmland, woodland, floodplain," or similar; be a "unique and distinctive aesthetic or historic" area; or be an area "substantially improved or developed in such a manner so as to represent an integral economic asset."
- Prohibit all development in the preservation zone—except that already approved.
- Provide for the total number, allocation, and distribution of development rights in the preservation zone.
- Designate transfer zones, which may be scattered. Transfer zones would be the areas "to which development rights generated by the preservation zone may be transferred and in which increased development may be permitted." Transfer zones would be required to be areas suitable for additional development, and areas where there would be greater incentive to develop at higher densities with TDR certificates than at a lower density.

All local and county governments in New Jersey now exercise broad zoning and subdivision controls, which must be in accordance to a comprehensive plan. The Hackensack Meadowlands Development Commission has broad authority over development of 19,700 acres of heretofore undeveloped salt water lowlands extending through 14 separate municipalities. The commission was created in 1968, and has the authority to develop and implement a master plan and to adopt and enforce regulations to carry out the plan.

To control community growth and development, the Department of Community Affairs recommended limiting the state's contribution to local sewage projects to 15 percent to stop "uncontrolled growth." The recommendation was made in response to the tendency of municipalities to encourage development by building the largest sewage treatment systems possible.

A report by the Department of Community Affairs, "Secondary Impact of Regional Sewerage Systems," presented the department's recommendations. The report concluded, "Sewers are the critical ingredient and the guiding force for growth in New Jersey. As the cost of land and construction rises, more townhouses and multi-family units will be built in proportion to single family homes. Sewers are essential for this higher density construction. As a result, the role of sewers as a growth determinant will become even stronger in the future."

The report also concluded, "The federal construction grants program for water pollution is proving to be a powerful stimulus for growth in the less-developed areas of the state." The federal grants "are viewed as windfall, one-shot endeavors by local officials," the report said.

"The current policy of 90 percent grants for sewerage facilities," the report continued, "virtually removes local in-

centive to control costs or to associate the size and cost of a project with actual current sewerage needs and the development future of the community."

"In the absence of a state land use program, the best course of action is to keep development options open for the future as much as possible, rather than locking the state into configurations dominated by sewerage plans," the report said.

Coastal Zone Management

The first phase of New Jersey's coastal land use planning, an environmental inventory, has been compiled by the state Department of Environmental Protection (DEP).

The inventory outlines boundaries and character of the coastal zone and presents a discussion of the economy of the region, land and water uses in the area, and problems facing increased use of the area. The inventory does not propose answers to those problems.

Completion of the inventory is one of the requirements of the state's Coastal Area Facility Review Act of 1973 (CAFRA). That law also requires preparation of an interim coastal management plan by September, 1976, and a final management plan for the coastal zone by September, 1977.

The inventory was submitted for approval to Gov. Brendan T. Byrne, D, and the state legislature on September 19.

Under CAFRA, DEP is already engaged in land use regulation in the coastal zone, through a permitting process. With these permits, DEP regulates industrial use and residential development of a certain size between the shoreline and observable roads. A permit from DEP is also required before construction in a wetland area.

The CAFRA requirements are compatible with the federal Coastal Zone Management program. However, CAFRA defines a specific eight-county area of concern, whereas the federal program is broader, including all 17 New Jersey counties with tidal or saline waters.

The state inventory includes information pertinent to the 17-county coastal zone, but focuses on the statutory CAFRA area.

In the state report energy facility siting is viewed as one of the major pressures facing the coastal area. New Jersey is expecting three principal types of offshore energy resource development—Outer Continental Shelf oil and gas, deepwater ports for oil supertankers, and a floating nuclear power plant—and onshore impacts caused by this development.

The DEP report sees two key areas for focus in further energy planning: where will staging-supply areas be placed, and what conflicts between the offshore development and the natural and constructed environment will arise.

Other areas of special concern in the inventory are the questions of public access to the coast, how to strike a balance between economic development and the environment, and maintaining air and water quality.

The 125-page inventory also catalogues maps, studies, photographs, and existing statutes affecting the coastal area in a series of one-page reference profiles. Each profile contains a citation, location of the article, a quick condensing of the material, and an explanation of the value to coastal zone management.

The material ranges from aerial photographs of coastal wetlands and regional development plans to reference works on wildlife, marine research, and coastal ecosystems.

New Jersey has been awarded a $470,750 second-year grant under the federal Coastal Zone Management program. The state received a $227,105 first-year grant.

The state CZM program calls for protecting ecologically sensitive and fragile areas from inappropriate development; establishing permissible land and water uses compatible with the environment; providing for social and economic growth within the coastal zone; developing environmental safeguards for the design and construction of coastal facilities; defining and prohibiting land and water uses that contribute to environmental degradation or resource depletion; and defining and permitting multiple land and water uses that contribute to economic and environmental diversity.

NEW JERSEY LAND USE CONTACTS: Sidney L. Willis, Assistant Commissioner, Housing and Urban Renewal, (609) 292-3252; State and Regional Planning, Department of Community Affairs, 363 West State St., P.O. Box 2768, Trenton, N.J. 08625. Richard A. Ginman, Director, (609) 292-2953; Division of State and Regional Planning, 329 West State St., P.O. Box 2768, Trenton, N.J. 08625.

NEW JERSEY COASTAL ZONE MANAGEMENT CONTACT: Alex Corson, (609) 292-2994; Department of Environmental Protection, Office of Public Information, P.O. Box 1390, Trenton, N.J. 08046.

NEW MEXICO

The New Mexico Legislature passed a measure in 1975 creating an energy resources board—a permanent state agency charged with writing an energy plan for the state, and conducting an inventory of energy resources. No other major legislation dealing with land use planning was passed by the 1974-1975 legislature.

Land Use Policy

Several bills affecting land use planning in New Mexico were proposed, but none were enacted. The state senate passed a bill that proposed changing the method of providing compensation for taking of land by the government. The bill, which was defeated in the house, said that any law or ordinance restricting a property owner from the use of his property, if restricted for the protection of the public health, safety, or welfare, "shall be deemed a taking or damaging of private property for public use, and the owner shall be entitled to just compensation."

A state environmental quality bill was rejected by the house, 36-27. The bill would have required state agencies to prepare environmental-impact statements on proposed projects. A law passed in 1972, the state Environmental Quality Act, provided for the preparation of impact statements on proposed state projects, but it was repealed in 1974 and an attempt was made to adopt a weaker substitute, similar to the bill considered in 1975. Rather than see the law weakened, however, supporters of the legislation helped to kill it entirely. Incoming Gov. Jerry Apodaca, D, made a November 1974 campaign pledge to support reinstatement of the act.

An 11-member Land Use Advisory Council appointed by the legislature in 1973 folded in 1975 with "no substantial achievements," according to the state planning office. The council's two-year enabling authority was not renewed by the legislature. The council had most of its suggestions, including creation of a data-bank information-system for land use purposes, defeated in the legislature.

Counties and municipalities in the state have broad zoning authority, and counties have power to zone in special districts if they wish. The statewide Subdivision Act of 1973 extends authority to counties to regulate subdivisions of more than five lots. The act establishes guidelines for subdivision control that counties must follow, requiring them to consult with the state Environmental Improvement Agency (EIA) to minimize adverse environmental impact. EIA has authority over pollution-control regulation of air, water, and solid waste disposal.

Energy Facilities and Lands

The legislature passed a bill (SB 186) establishing a permanent Energy Resources Board in the state. The board is charged with preparing an energy plan to include siting for fuel and power plants. However, the board does not have enforcement or implementation powers. A bill to give the board such powers was considered in 1975, but did not pass. A spokesman for the Energy Resources Board said there was probably "less than a 50-50 chance" of the board receiving such siting powers because of the traditional conservatism of New Mexico landowners, and because power production is such a large industry in the state.

NEW MEXICO LAND USE CONTACTS: Graciela Olivarez, State Planning Office; Robert Landmann, Deputy State Planning Officer; Robert Toberman, Administrative Assistant; State Planning Office, Executive-Legislative Building, Santa Fe, N.M. 87503. (505) 827-2315.

NEW YORK

Gov. Hugh L. Carey, D, submitted a package of 10 land use and conservation bills to the New York legislature in 1975. Two were passed: a bill to require state and local governments to prepare environmental-impact statements on proposed projects; and a bill directing the state Department of Environmental Conservation (DEC) to inventory the state's wetlands.

Two New York state communities were the focus of separate federal court decisions on exclusionary zoning this year: the Rochester suburb of Penfield ("Warth v. Seldin") and the Westchester County Town of New Castle.

Land Use Policy

Two Carey-sponsored conservation bills became law this year. The first requires environmental-impact statements on proposed state and local government projects, and would expand opportunities for citizens to sue to prevent environmental damage. The second requires a statewide inventory and map of the state's 800,000 acres of fresh-water wetlands, and requires the development and implementation of land use regulations and permit programs by local governments, counties and the state DEC.

Among other bills in the package that did not gain passage was a critical resources management act, which would provide for the identification and regulation of all areas in the state that could be damaged by "uncontrolled or incompatible development." The bill would direct the commissioner of environmental conservation to identify critical areas; the governor then would have 90 days to designate those areas as critical. Local governments would have six months to adopt land use regulations consistent with state guidelines.

A bill (A 7685) intended to focus attention on land use planning in New York state has been introduced by Assemblyman Herbert A. Posner, D, chairman of the Assembly Committee on Environmental Conservation.

The bill has been introduced as a study measure, which means it will not be actively pushed for passage.

Although Posner thinks that land use planning is "needed in New York," he is realistic about his measure's chances for adoption. "New York State is not ready for a bill like this," he said, predicting that a land use planning bill would not pass the state legislature "next session, and probably not for five or 10 years."

Posner's bill would establish an overall state planning policy, coordinating the presently separate state plans for transportation, energy, recreation, housing, and the environment.

It also would require governments to establish a local or intermunicipal planning and development agency; to adopt a local land management plan; and to comply with the overall state land use policy.

The bill also would create an office of land resource management in the state executive department. The office would administratively coordinate state programs and provide assistance to localities in development of comprehensive planning programs.

The office of land resource management would formulate goals and guidelines for management of land for agricultural use, housing, recreation, and transportation, among others. The office also would designate areas of critical state concern, such as energy facility sites.

Posner thinks it more likely that sections of his bill will be adopted as separate measures than that the bill will be adopted as a whole.

Two federal exclusionary zoning cases decided in 1975 involved New York state communities.

In a five-to-four decision, the U.S. Supreme Court ruled that challenges in federal courts to exclusionary land use practices are limited to a narrow category of people who can allege "with specific, concrete facts" that they are directly injured.

The decision affirmed a lower court decision dismissing a claim that the town of Penfield, N.Y. (a suburb of Rochester) had through its zoning ordinances excluded low-to-moderate income people. ("Warth v. Seldin," No. 73-2024.)

In a strong dissent in the "Warth v. Seldin" case, Justice William J. Brennan, Jr., said the majority opinion, "which tosses out of court almost every conceivable kind of plaintiff who could be injured by the activity claimed to be unconstitutional, can be explained only by an indefensible hostility to the claim on the merits."

The majority opinion, written by Justice Lewis F. Powell, Jr., found that five different groups of plaintiffs failed to demonstrate sufficient reason to bring suit. Justice Brennan said "at least three of the groups of plaintiffs have made allegations, and supported them with affidavits and documentary evidence, sufficient to survive a motion to dismiss for lack of standing."

The first group of plaintiffs, several minority low-to-moderate income Rochester residents, claimed that Penfield's zoning practices prevented them from moving there. They claimed that out of a 1970 population of 23,782 there were only 60 blacks living in Penfield.

Justice Powell wrote, "We hold only that a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the courts' intervention."

Justice Brennan responded, "To require them to allege such facts is to require them to prove their case on paper in order to get into court at all, reverting to the form of fact-pleading long abjured in the federal courts."

A second group of plaintiffs, the Rochester Homebuilders Association Inc., claimed that Penfield's zoning restrictions deprived some of its members of "substantial business opportunities and profits." Powell said that any injury suffered is peculiar to the individual member concerned, and requires individualized proof of the fact and extent of the injury.

Justice Brennan responded, "Again, the court ignores the thrust of the complaints and asks petitioners to allege the impossible .... And the merits of the exclusion of this or that project is not at the heart of the complaint; the claim is that respondents will not approve *any* project which will provide residences for low- and moderate-income people."

Brennan's remarks apply to the third group of plaintiffs also, the Housing Council of Monroe County Area Inc. The Housing Council, a nonprofit corporation consisting of a number of organizations interested in housing problems, claimed on behalf of Penfield Better Homes Corporation that a zoning variance was denied for construction of a housing project designed for moderate-income people. Powell dismissed this because it was no longer a live issue.

Other groups denied standing were Metro-Act of Rochester,

a nonprofit corporation for alleviating low-to-moderate income housing shortages, and several individual Rochester taxpayers.

Despite the setback to the broad standing interpretation for bringing an exclusionary zoning case in federal courts, the decision does not represent a setback for the merits of challenging exclusionary land use practices.

In a case involving New Castle, N.Y., the U.S. Court of Appeals for the Second Circuit ruled that federal agencies are obligated under the U.S. Civil Rights Acts of 1964 and 1968 to deny grants for community development projects in areas with exclusionary land use patterns.

Further, the court decided, minority residents of an area may challenge such federal grants even though the residents do not live in the community affected and cannot show that they are directly injured.

The decision, a two-to-one split of the three-judge appeals panel, reversed a lower-court ruling by Judge Milton Pollack, of the U.S. District Court for the Second District of New York.

In the case ("Evans v. Lynn," Docket No. 74-1793), a group of minority residents of Westchester County claimed they were unable to live in the town of New Castle (in Westchester County) because of alleged "discriminatory land use practices."

Since they were prevented from living in the community as a result of the alleged discriminatory practices, they claimed that under Section 2000d of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 the town of New Castle should be denied federal assistance from the Department of Housing and Urban Development (HUD) for the construction of a sewer system. They also challenged a federal grant from the Interior Department's Bureau of Outdoor Recreation (BOR) for the acquisition of a swamp.

Section 2000d requires "federal agencies affirmatively to effectuate its anti-discriminatory policy in programs receiving financial assistance," and "Title VIII requires similar effectuation of its fair housing policies."

Delivering the majority opinion, Judge James L. Oakes said, "So that our decision may be very clearly understood, we hold only that appellants have standing as to the federal agencies to challenge the particular grants in question. We do not do so on the basis that they have a sufficient connection with the community to or for the benefit of which the grants are made. We do so purely and simply because one important method of enforcement of the congressional policy set forth in Title VIII is by the agencies' administration grants related either to housing or urban development.'

Oakes noted further that the town of New Castle "is predominantly white (98.7 percent) and a well-to-do enclave, 90 percent of which is zoned for single family, residential development on parcels of more than one acre, with a median value of single-family homes in 1970 in excess of $50,000."

The decision would extend the right to challenge federal grants for housing and community development projects to a greatly increased number of minorities. It also would force federal agencies to more carefully assess development policies of communities for possible discriminatory effects. Judge Oakes said HUD in a 1972 grant and BOR in a 1973 grant "did very little" to assess New Castle's development policies in light of affirmative actions to prevent discrimination.

Judge Leonard P. Moore's dissent case was based on the practical fact that the town will be unable to build a much-needed sewer or create a much-needed park. The two projects, he said, have no discriminatory effect even though the community's overall development policies do.

Coastal Zone Management

Coastal planning in the state slowed somewhat in 1975 when the Office of Planning Services, the agency responsible for CZM, was abolished in a state reorganization in March.

The delay has pushed back New York's first-year planning until March 1976. The Division of State Planning in the Department of State has assumed coastal planning responsibilities.

New York received $550,000 as a first-year grant.

NEW YORK LAND USE AND COASTAL ZONE MANAGEMENT CONTACT: Henry G. Williams, Director, Division of State Planning, (518) 474-7210; Department of State, 162 Washington, Ave., Albany, N.Y. 12231.

NORTH CAROLINA

North Carolina's 1974 Land Policy Act created a Land Policy Council charged with creating a state land use policy and a means of implementing that policy. The plan is due in July 1976.

Land Use Policy

The Land Policy Council released a draft policy paper in October and hopes to have a full policy and implementation paper ready for public review in February.

North Carolina elects a new governor in 1976 and 10 of the 14 members of the council have been mentioned for governor or lieutenant governor. The present governor cannot succeed himself.

Since the Land Policy Council's report to the governor is due after the 1976 session of the legislature, it won't come up for legislative consideration until the new governor has been elected.

The council is composed of eight cabinet heads, the lieutenant governor, the house speaker, another house member, a senate member, a representative of the Association of County Commissioners, and a representative from the League of Municipalities.

Under the requirements of the 1974 act, the council has developed guidelines for classification of land for local governments to use as a planning framework. The council hopes the classification system will help the localities determine how to accommodate growth and define critical areas.

The council is supplemented by a 24-member advisory commission composed of 12 local officials and 12 members of interest groups. The commission's primary function is to ensure public participation in the planning process.

A Mountain Areas Management Act similar to a coastal zone act in scope, died in committee for the second year. The proposal was strongly opposed by the residents of the area.

Coastal Zone Management

The Land Policy Council is working closely with the coastal planners, with a frequent interchange of staff. A land classification system in preliminary CZM plans was developed in part by the Land Policy Council.

The North Carolina CZM agency hopes to have a draft of its plan ready by May or June. The state is presently in the second of three years of planning and received a $503,000 second-year grant from the federal Office of Coastal Zone Management.

Energy Facilities and Lands

The North Carolina legislature passed a law in 1975 creating an Energy Policy Commission. The commission is developing an emergency short-term energy policy for the state and will propose energy-conservation and energy-management plans for the state that may include an assessment of the need for an energy facilities site selection process.

NORTH CAROLINA LAND USE CONTACT: Stephen Thomson, Director of Land Policy, (919) 829-4131; Department of Administration, Administration Building, Raleigh, N.C. 27611.

NORTH CAROLINA COASTAL ZONE MANAGEMENT CONTACT: Betsy Warren, (919) 829-4918; Department of Natural and Economic Resources, P.O. Box 27687, Raleigh, N.C. 27611.

NORTH DAKOTA

Facing massive coal development, the North Dakota legislature in 1975 passed a bill to regulate strip mining and an energy facilities siting act.

Although adoption of a statewide land use policy and program has received little support, the State Planning Division has undertaken to formulate a proposed policy statement on growth in the state. Planning officials hope to have it ready for consideration during the 1977 session of the state legislature. The North Dakota Legislature meets every two years.

Land Use Policy

Criteria for the designation of critical land areas are being developed by North Dakota University for consideration during the next legislative session, but state planners do not anticipate any action on the proposal.

In the absence of an adopted state land use policy and program, the State Planning Division has begun an inventory of existing land use information in the state. The division plans to combine the information with maps also being made for a broad picture of the existing land use situation in the state. Officials estimate that the process will take two years to complete.

The State Planning Division also is in the process of developing elements of a public-investment policy. Together with the profile of state land use, the public-investment proposals will be submitted to the governor and state legislature for consideration.

Existing legislation gives North Dakota cities, counties, and towns general zoning enabling authority based on a comprehensive plans. Cities also have broad authority to regulate subdivisions. Cities must adopt a street plan before enforcing subdivision controls.

Energy Facilities and Lands

The state's new strip-mining legislation requires reclamation of mined areas, but environmentalists contend that it is not strong enough. Passage of the act marks a continuation of the legislature's efforts during the 1973 session to strengthen controls over strip mining.

Whether additional strengthening of the controls will be attempted in the future is uncertain. State planning officials said they are waiting to see the results of measures adopted thus far. Reclamation has not been attempted previously on a large scale in the state, and the results may depend on the amount of rainfall, planning officials said. Rainfall for the past year has been above average in the state, so unbiased results are not yet in, they said.

The state legislature passed, and the governor signed, a measure requiring proposals for new energy facilities to be examined and approved by the state Public Services Commission. The commission is directed to develop guidelines to prevent scattering of new sites.

State planners are concerned about proposals for the development of coal gasification plants in the southern part of the state. They are also concerned about handling the boom-town growth expected to accompany the projects.

NORTH DAKOTA LAND USE CONTACTS: Jack Neckels, Director; Russell Staiger, Planning Administrator; Bonnie E. Austin, Associate Planner; North Dakota State Planning Division, 4th Floor, State Capitol, Bismarck, N.D. 58501. (701) 224-2818.

OHIO

An act creating a committee to review state land use policy and to propose new legislation was passed by the Ohio General Assembly and signed into law in August by Gov. James A. Rhodes, R.

Meanwhile, the Ohio Supreme Court ruled that city charter provisions requiring referendums to approve land use changes are a violation of constitutionally protected rights of due process.

Land Use Policy

The new legislation in Ohio established a joint legislative Land Use Review Comittee, composed of seven house members, seven senate members, and one member appointed by the governor. The law authorizes $275,000 to fund the committee's work through June 1977.

The committee must present a report with findings and specific legislative proposals by June 30, 1976, and a final report by Jan. 31, 1977. The committee must also hold public hearings throughout the state.

Other work of the committee will include review of present land use laws, programs, and systems of land use controls at state, regional, county, and local levels; existing means of coordinating decisions by state agencies affecting land use; large-scale development activities and regulations; management and protection of agricultural and environmentally significant lands; adequacy of existing enabling legislation through which local governments plan and exercise subdivision controls; the effect of taxation on desirable land use patterns; and citizen participation in major public capital investment and private development proposals.

Groundwork for the committee's work already has been laid in a series of reports prepared by an interagency land use policy work group and published in 1975 by the state Office of Budget and Management. The reports are:

- "Land Use Policy and Public Mood" concludes that there is "concern that existing communities be protected as well as a recognition of the need for cooperation." The report also says that "critical environmental areas are recognized as, to some extent, taking precedence over market forces."
- "A Study of Public Knowledge and Awareness Concerning Land Use in Ohio," a survey, finds that "almost one individual in three (29 percent) believe the state should not have much influence in local land use decisions. The most frequent reason (45 percent) given for this line of thinking is that the state agencies don't understand the local situation." The report also concludes that "strip mining and park facilities appear to be the major state level problems relating to land use," although "a large segment of the Ohio population apparently have a superficial knowledge and awareness of land use issues and problems."
- "A Proposal for an Advisory Commission on Ohio's Land" says that a state land use commission should be established to bring together executive and legislative authorities in a single forum; to deal with land use issues in the open; to propose a process to develop a state land use policy; and to provide a clear direction for protecting Ohio's land resources.
- "A Proposal for State Land Use Grants to Local Governments" calls for $2-million in state grants to local governments to identify problems in the land use decision process and to make improvements.
- "Determining the Impact of State Capital Projects on

Ohio's Land: A Proposed Review Procedure" recommends "a capital project review procedure which provides local governments and state agencies with an opportunity to assess the land resource impacts of proposed state capital projects."

● "State Land Use Controls in Ohio: Their Extent and Effectiveness" concludes that "in many smaller communities, some officials are unaware of the existence or content of local land use regulations." However, the report continues, "land use controls currently in use in Ohio are generally viewed by local public officials as adequate to regulate land use."

(For information about these reports contact William R. Dodge Jr., Deputy Director, Office of Budget and Management, Suite 1301 East Broad St., Columbus, Ohio 43215; (614) 466-3085.)

In a 5-2 decision delivered March 19, the Ohio Supreme Court struck down provisions in the Eastlake city charter requiring a 55 percent majority in a city referendum to approve proposed rezonings.

In the majority opinion, the court said, "Due process of law requires that procedures for the exercise of municipal policies are resolved by a responsible organ of government."

"The Eastlake charter provisions ignored these concepts and blatantly delegated legislative authority," the court concluded, "with no assurance that the result reached thereby would be reasonable or rational."

In a concurring opinion, four of the justices said, "there can be little doubt of the true purpose of Eastlake's charter provision—it is to obstruct change in land use by rendering such change so burdensome as to be prohibitive. The charter provision was apparently adopted, specifically, to prevent multi-family housing.

The concurring opinion continued: "In the suburbs surrounding the city of Cleveland, the requirement of mandatory referendums for approval of zoning changes has been adopted by over a dozen communities; some of these communities have provisions which specifically apply to any zoning change to permit multi-family or low-income housing. The inevitable effect of such provisions is to perpetuate the de facto divisions in our society between black and white, rich and poor."

The case ("Forest City Enterprises, Inc. v. City of Eastlake") centers on the Eastlake Planning Commission's approval of an application by Forest City Enterprises to rezone an eight-acre parcel from industrial to residential, highrise. The city council approved the rezoning, but the 55-percent referendum majority was not met.

Coastal Zone Management

A federal CZM official said no application has been received from the state of Ohio for a second-year program development grant. But federal officials expect a grant application to be made and approved by the end of the year. Ohio received a first-year grant of $200,000 in 1974.

Ohio's effort to develop a program has two components: first, policy development and problem identification; and second, technical plan and management program development.

State planning officials have initiated an inventory of coastal zone resources, including an assessment of economic, social, and environmental implications of existing and future land uses.

OHIO LAND USE CONTACTS: Howard Collier, Director, Office of Budget and Management, (614) 446-3085; Paul E. Baldridge, Deputy Director, Department of Economic and Community Development, (614) 466-5863; 30 E. Broad St., Suite 1301, Columbus, Ohio 43276.

OHIO COASTAL ZONE MANAGEMENT CONTACT: Olga Gault, (614) 466-7803; Department of Natural Resources, Shoreland Management Section, Fountain Square Building E, Columbus, Ohio 43224.

OKLAHOMA

A federal court decision on land sales was the only significant land-use-related action in Oklahoma in 1975. A U.S. Court of Appeals ruled that an environmental impact statement (EIS) must be prepared before the Department of Housing and Urban Development (HUD) can approve a project filed under the interstate Land Sales and Full Disclosure Act. The decision was prompted by an Oklahoma case.

In November 1974, several state interests, including cattlemen and other rural-oriented groups, began pushing for a state land use planning law. No action was taken in the Oklahoma legislature.

The groups, which had previously vigorously opposed federal land use legislation, hoped to protect farming and ranching lands in the state from encroachment by the federal government or private interests by passage of a state law.

Land Use Policy

In July, the 10th U.S. Circuit Court of Appeals ruled an EIS must be prepared before HUD can approve an interstate land sale.

In delivering the decision, the appeals court upheld a landmark decision by Judge Luther Bohanon of the U.S. District Court for the Eastern District of Oklahoma. ("Scenic Rivers Association and Illinois River Conservation Council v. James T. Lynn, et al.," 74-131 ED Okla.)

Judge Bohanon ruled that it constitutes a major federal action and requires an EIS when developers register a project with HUD's Office of Interstate Land Sales Registration (OILSR).

HUD claimed that because the interstate land sales registration act is only a full disclosure law, an EIS could have no impact. HUD said even if environmental damage was demonstrated, a developer would only have to disclose that fact to comply with the land sales act.

The appeals court said, "The consequences of the government's approval of the (developer's) statement in terms of ease of obtaining funds and in terms of the ultimate direct consequences on the environment of the building of houses lead to the conclusion that the district court was correct in holding that major federal action significantly affecting the quality of human environment was present."

In a statement that could bring a halt to many projects developed for an interstate market, the appeals court said, "There is nothing in the statute which prohibits the agency (OILSR) from suspending a statement of record pending the preparation and filing of an impact statement."

The Oklahoma case arose in a proposed project of 3,000 lots along the relatively pristine Illinois River in east-central Oklahoma. An environmental group called The Scenic Rivers Association of Oklahoma protested and took the developer to court.

Currently in local land controls, cities and incorporated towns in Oklahoma are granted broad general powers to zone. Counties have a variety of exemptions to zoning statutes, including agricultural lands, oil and gas facilities, public service facilities, and industrial and commercial development.

Cities, towns and counties of over 500,000 population must confirm to comprehensive plans.

The state has no flood plain regulations.

OKLAHOMA LAND USE CONTACT: William Free, Administrator, (405) 840-2811; Office of Economic and Community Affairs, 5500 N. Wester, Oklahoma City, Okla. 73118.

OREGON

Statewide planning goals and guidelines for Oregon, mandated by a 1973 land use law passed by the state legislative assembly, became effective Jan. 1, 1975. Under the program, land use plans are required from cities, counties, special districts, and state and federal agencies.

Money to assist local governments in conforming with the guidelines and to administer the program was approved by the assembly and by Gov. Robert W. Straub, D, in June. More than $5.9-million was appropriated.

State land use policy also was determined by the Oregon Supreme Court, which ruled 6-1 that zoning ordinances in Oregon communities must conform to comprehensive plans.

Land Use Policy

A land use planning process and policy framework has been established in Oregon with the adoption of statewide planning goals and guidelines.

The goals, adopted by the state Land Conservation and Development Commission (LCDC), require all cities, counties, special districts, and state and federal agencies to develop land use plans that "shall be the basis for specific implementation measures." Under the goals, the land use plans will be mandatory, not merely advisory.

Land use guidelines developed by the LCDC are, however, only "suggested directions that would aid local governments in activating the mandated goals." Localities will be able to develop alternative means for achieving the goals.

The guidelines suggest the preparation of plans and implementation measures setting forth broad processes and identifying general problems and issues. Development of specific provisions is recommended for dealing with the problems and issues.

The guidelines also recommend including in the local plans areawide planning goals, identification of critical areas, identification of areas needing special attention, and a schedule "reflecting the anticipated situation at appropriate future intervals."

Suggested implementation measures include the use of such traditional mechanisms as zoning, guiding development through public facilities plans, capital improvement budgets, state and federal land use regulations, and others.

The goals and guidelines went into effect Jan. 1. The 1973 legislation under which they were developed (SB 100) requires the state legislative assembly to be informed, but the goals and guidelines have the full effect of regulations without further legislative action.

In addition to the specific land use section, other land-use-related goals provide for the conservation of agricultural lands, shorelands, forest lands, open space, and natural lands. The goals also provide for preserving environmental quality, efficient transition from rural to urban lands, meeting housing needs, and conserving energy resources.

The Oregon Supreme Court ruled in April that community zoning ordinances must conform to a comprehensive plan, even if the comprehensive plan was adopted subsequent to the zoning. The immediate impact of the decision will be to force counties and cities to rezone to conform to the master plan. The court's decision in "Jean Baker v. the City of Milwaukie" raises again the question of whether a comprehensive plan is a guide for the future or, as the Oregon court ruled, is "permanent" and "legislative" in nature.

The court ruled that zoning has a "servient relationship" to planning, which "must be given preference over conflicting prior zoning ordinances."

In "Jean Baker," a 3.8-acre site was zoned by Milwaukie in 1968 for a maximum density of 39 units per acre. About a year later, the city adopted a comprehensive plan allowing a maximum density of 17 units per acre to the site, but a building permit was issued by the city for 26 units per acre. Jean Baker, a local homeowner, took the city to court.

The Oregon legislature also passed a law in 1975 to facilitate project approval when the project needs a permit from two or more state agencies to construct or operate.

The so-called one-stop permitting process is applicable to any new public or private activity, expansion, or addition to an existing facility in the state.

The law (SB 903) was passed to simplify the permit procedure, accelerate decision-making, make available permit application information for state government at one place, and encourage federal and local government participation in the process, as well as public participation.

Although the law can be used for any project that meets the requirements, it is most frequently considered in energy facility siting.

Coastal Zone Management

Under the 1973 state law (SB 100), the Oregon Coastal Zone Management (CZM) plan was due to be completed by Jan. 1, 1975.

The federal Office of Coastal Zone Management, and the responsible state agency, the Oregon Coastal Conservation and Development Commission (OCCDC) had expected the Oregon plan to be one of the first completed plans under the federal program, and a model for planning in other coastal states.

However, delays pushed back the date, first to July 1, 1975, and now, "hopefully April or May of 1976," according to a state spokesman.

OCCDC, which was phased out early in 1975, and its successor, LCDC, have been harshly criticized for their handling of the state CZM program by a citizen watchdog organization headed by former Gov. Tom McCall.

The organization, 1000 Friends of Oregon, charged that failure by the commissions prevented Oregon from obtaining CZM program implementation grants from the federal government in fiscal 1975.

The organization also accused OCCDC and LCDC of failing to carry out their legislative mandates.

The charges came in the 1000 Friends of Oregon testimony on LCDC's proposed application for program implementation grants (Section 306) under the CZM program. 1000 Friends of Oregon was established as a watchdog of state and local land use controls.

The 1000 Friends of Oregon said that, before it was phased out, the OCCDC failed to meet statutory deadlines, failed to provide LCDC with adequate materials, failed to take action on "areas of particular concern" necessary to qualify for Section 306 grants, and failed to conduct all necessary inventories.

The LCDC, for its part, inadequately supervised the work of the OCCDC, the 1000 Friends of Oregon said, and because of that, Oregon lost out on fiscal 1975 Section 306 money from the federal CZM program.

LCDC is now applying for a third six-month program development grant (Section 305) from OCZM, to wind up the planning process.

Oregon had received two previous six-month grants; one in February, 1975, for $158,811, and one in June, 1975, for $140,000. Oregon received a first-year grant of $250,132.

LCDC expects the completed CZM plan to incorporate 42 policies considered necessary to protect Oregon's coastal zone. These include providing for multiple use of natural resources in the area; managing urban growth through comprehensive planning on the local level; regulating flood hazard areas; and maintaining wetlands through comprehensive planning, among others.

OREGON LAND USE CONTACTS: William H. Young, Administrator; Richard A. Jentzsch, Acting Supervisor; Intergovernmental Relations Division, 240 Cottage St., SE, Salem, Ore. 97310. (503) 378-3732.

OREGON COASTAL ZONE MANAGEMENT CONTACT: James Ross, Land Conservation and Development Commission, 1175 Court St., Salem, Ore. 97310. (503) 378-4926.

PENNSYLVANIA

Control of major development is identified as the "centerpiece" of a state land use program to be proposed by the Pennsylvania Office of State Planning and Development.

The recommendation for control of major development is contained in a draft report, "A Land Policy Program for Pennsylvania," prepared by the state planning office to identify key land use issues and to suggest policies for addressing them.

Robert Benko, chief of physical planning, said the report would be finalized and released in the near future. Gov. Milton J. Shapp, D, directed the state planning office in 1973 to prepare the study.

Another recent study, "A Land Use Strategy for Pennsylvania: A Fair Chance for the Faire Land of William Penn," was prepared by the Western Pennsylvania Conservancy under contract from the state planning office as part of the project.

Land Use Policy

The state planning office draft report recommends adoption of a state growth policy to guide development of large-scale projects and key facilities.

"State land use planning and management need not be costly," the draft says. And it points out that federal assistance would help meet much of the cost through programs such as the HUD 701 Comprehensive Planning Assistance Grants program, the Coastal Zone Management (CZM) Program, air and water pollution control programs, various highway aid programs, and others.

"As a general principle,' the draft says, "no level of government should require action by another level which it is not prepared to support financially."

The draft recommends adopting policies and making additional studies in several areas of land use concern:

- Urban Growth: Construction of major private developments would have to be paced to match the construction of sewers and other public facilities. The state would also guide growth through the development of key facilities, public investment policies, impact analyses, and state standards.
- Urban Land Use: The draft says, "Continue present metropolitan development trends and it is unlikely that important land use objectives can ever be achieved." But, the draft says, 'Major shifts in lifestyles and patterns of urban population distribution seem unlikely under present conditions."
- The Property Tax: The draft recommends a basic restructuring of the property tax with a primary aim of discouraging land speculation. It cites the Vermont Capital Gains Tax adopted in 1973, which is designed to control short-term land speculation by increasing the tax rate as profits increase for land held only a short time.
- Agriculture and Rural Development: The draft says, "Rural areas of the state hold the key to a state land use program." It recommends formation of agricultural zones in areas not subject to urban development pressures to discourage nonfarm activities. It recommends preservation of prime agricultural lands in areas subject to urban development pressures. It recommends direct public intervention, such as state purchase of development rights, in areas where urban development pressures are severe.
- Managing Forest Resources; The draft recommends preparation of guidelines to guide the management and use of public and private forest lands.
- Critical Resource Areas; The draft says priority concerns are whether the state will have a wilderness system, the need to link public and private efforts to preserve natural areas, the need to protect wetlands from urban and agricultural development, and the need to preserve historic, cultural, and archeological areas.
- Hazard Areas: The draft says, "Local communities should be given every opportunity to lead in developing and carrying out effective hazard reduction programs (for areas such as flood plains). However, if local governments do not act, the state must."
- Mineral Development and Land Use: The draft says a state land use policy could help avoid "collisions between mining and other land uses" by guiding urban development away from areas of valuable mineral deposits, and excluding mining in critical areas.

To organize and operate a state land use program, the draft recommends that the State Planning Board work closely with the state planning office, and that a special land use committee be formed. These bodies would be charged with drafting guidelines and coordinating land use activities of state agencies.

In other state departments, the Citizens Advisory Council to the Department of Environmental Resources supported enactment of federal land use legislation in the first of a series of recommendations in a report to the department. Other recommendations included support of state flood control legislation and creation of a natural areas program.

The Citizens Advisory Council to the Department of Natural Resources announced support of a proposal to organize a Policy Advisory Committee (PAC) to guide state land use planning efforts.

Coastal Zone Management

Pennsylvania has completed data collection and mapping of its Lake Erie and Delaware Valley coastal areas, and has received a $225,000 second-year grant under the federal Coastal Zone Management program. Pennsylvania received $150,000 under the CZM program in 1974.

Pennsylvania is faced with a number of problems in its coastal zone, according to a grant proposal submitted by the state's Department of Environmental Resources. Included are conflicts concerning the use of coastal waters for waste disposal, the issue of water quality, the matter of public access for recreational use, the need for a balance between urban-related and environment-related needs, and shoreline erosion along Lake Erie.

Agricultural Lands

The Pennsylvania Department of Environmental Resources appointed an agricultural advisory committee to improve communication with the farming community in the state on environmental protection regulations. The committee also will be consulted on the formulation of rules and regulations concerning agriculture, and wil suggest educational programs for farmers and the public.

A farm in Pennsylvania is now eligible for a preferential tax assessment if it is at least 20 acres in size (50 acres for forest land and 10 acres for open-space land). The land must be designated as farm, forest, water supply, or open space in a plan adopted by the planning commission of the municipality, county, or region in which it is located.

PENNSYLVANIA LAND USE CONTACTS: A. Edward Simon, Director, (717) 787-2086; George Kasparek, Deputy Director for Policy, (717) 787-3798; Office of State Planning and Development, Finance Building, Room 503, Box 1323, Harrisburg, Pa. 17120.

PENNSYLVANIA COASTAL ZONE MANAGEMENT CONTACT: W. N. Frazier, Department of Environmental Resources, P.O. Box 1467, Harrisburg, Pa. 17120. (717) 787-4053.

RHODE ISLAND

Rhode Island's comprehensive statewide land use planning bill, which has been 10 years in the planning, was approved in 1975 by the State Planning Council. Gov. Philip W. Noel, D, said he would introduce it into the 1976 General Assembly.

The plan calls for the legislature to approve a state land management program in which localities and the state would share decisions for major developments.

The Environmental Protection Agency (EPA) approved a plan, proposed by Governor Noel in April, for an areawide waste treatment program that will encompass the entire state of Rhode Island, plus two tiny communities in Massachusetts. Rhode Island received $2.3-million to carry out a two-year program to develop land use controls under the water pollution control program.

Land Use Policy

A state land use plan designed to guide growth in Rhode Island for the next 20 years was approved unanimously by the State Planning Council.

The 250-page "State Land Use Policies and Plan" is a key part of Rhode Island's state guide plan, an overview of development in the state that consists of plans for transportation, public facilities, economic development, creation and historic preservation, as well as land use.

The land use plan is divided into four parts: discussion of land use goals; explanation of the land use plan, including methodology, categories, and correlation with existing plans; statement of land use policies; and proposals for implementing the policies and plans.

The plan recommends:

- A population ceiling of 1.5 million people, based upon limiting urbanization to no more than half the state's total land area.
- Compact, directed growth as opposed to extensive sprawl.
- Cluster zoning, using existing urban centers as nuclei.
- Power delegated to the state to deal with issues not readily met through local efforts (water supply problems, among other regional issues).
- Reduced reliance on the local property tax. The plan calls this tax "fiscal zoning" or overzoning for revenue producing uses such as industry to solve financial problems. Property taxation produced more than 65 percent of municipal revenue in 1970 in Rhode Island.

Coastal Zone Management

Rhode Island is aiming for March 1, 1976, as the completion date for submission of its CZM plan to the federal Office of Coastal Zone Management (OCZM) for final approval. The state Coastal Resources Management Council had an 18-chapter CZM policy and plan approved by the State Planning Council in May, buan on-site visit by federal officials directed a change in the plan. Rhode Island officials are now working on an expanded five-part plan, which OCZM says will place the state in a favorable position for final approval of its program.

That program includes identifying organizational structures and boundary definitions involved in the coastal zone, including an inventory of all laws influencing the coastal zone; definition of areas of national interest; identification of areas of particular concern, including a state environmental inventory; documentation of public participation in the planning process; and a list of permissible uses of the coastal zone areas, including a list of priority of uses.

Rhode Island received a federal second-year grant of $304,440 in fiscal 1975 to complete its CZM plan. The state received $154,415 in federal aid for its first-year grant.

RHODE ISLAND LAND USE CONTACT: Daniel W. Varin, Chief, (401) 277-2656; Rhode Island Statewide Planning Program, 265 Melrose St., Providence, R.I. 02907.

RHODE ISLAND COASTAL ZONE MANAGEMENT CONTACT: Walter J. Gray, Director, (401) 792-4602; Marine Advisory Service, University of Rhode Island, Kingston, R.I. 02881.

SOUTH CAROLINA

South Carolina has no statewide land use policy. A governor's study commission is now considering recommendations for such a policy.

Land Use Policy

The governor's Special Study Committee on Land Policy has submitted three general policy recommendations to the governor. The recommendations include economic and environmental conflicts, land use policies and community development.

Counties and municipalities have full planning and zoning powers, although most zoning is done at the municipal level.

Coastal Zone Management

Facing probable outer continental shelf (OCS) oil and gas drilling sometime in the near future, the state legislature passed a resolution in July urging that federal funds be provided to states to accelerate coastal planning and provide support services.

In a concurrent resolution, the legislators cited the state's growing energy demand, declining domestic production of oil and gas, and the "significant quantities of (outer continental shelf) oil and gas which can be developed consistent with state and national environmental policies," as reason to begin exploration of the outer continental shelf.

The resolution also asked that the program be "conducted so as to protect, insofar as possible, onshore social, economic, and environmental conditions of the coastal area . . . ."

The coastal planning in South Carolina is conducted by the governor's Coastal Zone Planning and Management Council.

South Carolina received $230,000 for second-year planning from the federal CZM program and a special grant of $51,065 to help plan for and manage potential OCS impacts.

The OCS supplemental grant will be used by South Carolina to integrate OCS planning activities into the development of its coastal management program. That program hopes to preserve coastal ecosystems, while achieving wise development of coastal resources for housing, recreation, industry, transportation, mineral mining, agriculture/aquaculture, and energy production.

To develop its coastal management program, South Carolina received a first-year grant in June, 1974, for $198,485. The state is eligible for a third program development grant under terms of the Coastal Zone Management Act of 1972.

In the grant application submitted to NOAA's Office of Coastal Zone Management, South Carolina indicated it will use the OCS funds to help local governments, especially in the areas of Jasper and Georgetown, develop the technical capability of planning for and dealing with onshore developmental pressures resulting from OCS activities. In addition, the state proposes to identify corridors appropriate for pipelines.

SOUTH CAROLINA LAND USE CONTACTS: Jerry W. Branham, Director, (803) 758-2946; Division of Administration, Edgar Brown Building, Room 470, 1205 Pendleton Street, Office of the Governor, Columbia, S.C. 29201. Joe Wickel, Director, (803) 758-3306; Physical and Economic Development Unit, Division of Administration, Edgar Brown Building, 3rd Floor,

Room 308, 1205 Pendleton Street, Columbia, S.C. 29201.

SOUTH CAROLINA COASTAL ZONE MANAGEMENT CONTACT: Louis Hern, (803) 795-6350 Ext. 276; Coastal Zone Planning Office, Marine Resources Center, P.O. Box 12559, Charleston, S.C. 29412.

SOUTH DAKOTA

The South Dakota senate passed a bill in 1975 to require designation of critical state areas, but the house defeated the measure.

Land Use Policy

The critical areas bill, as passed by the state senate in February, would have required the State Planning Commission to study and recommend critical areas to the legislature by Jan. 1, 1977. The commission would have adopted rules and criteria for the designation of critical areas of statewide significance.

State planning officials are drafting legislation on erosion and sediment control, area water quality control, and will push for minor language changes in existing local land control legislation.

That legislation requires comprehensive plans for all counties by July 1, 1976. Counties and municipalities have full zoning and planning authority with municipalities more active.

SOUTH DAKOTA LAND USE CONTACTS: Dan R. Bucks, Commissioner; Harley T. Duncan, Deputy Commissioner; State Planning Bureau, State Capitol, Pierre, S.D. 57501. (605) 224-3661.

TENNESSEE

A bill to create a Tennessee Land Use Study Commission died in legislative committee in 1975. A state planning official said no similar bills would be proposed by the administration for the 1976 session of the legislature.

Land Use Policy

The majority of land use planning in the state is done in-house by the state planning department, which is preparing a series of issue papers on wetlands protection, critical areas selection, energy facility siting problems, and second home development planning, among others. The papers will provide an information bank on land use for Tennessee, and will be available to the legislature if needed.

The state planning office also is preparing an index of land use maps of the state from 1965 to 1975 and has information on statewide land cover and other data available on a computer program.

Cities, incorporated towns, and counties in Tennessee have broad power to zone, with specific flood language and a provision relating to the federal flood insurance program. Community planning commissions may be formed for certain unincorporated areas.

Cities and incorporated towns are granted broad subdivision control powers. Regional planning commissions formed by the state have subdivision control power in unincorporated areas.

TENNESSEE LAND USE CONTACTS: Mr. Jack Strickland, Special Assistant for Policy Planning, (615) 741-3621; 1025 Andrew Jackson Building, Nashville, Tenn. 37219. Niles, C. Schoening, Director, Tennessee State Planning Office, (615) 741-1676; Donald G. Waller, Director, Local Planning Division, (615) 741-2211; Capitol Hill Building, Room 660, 301 7th Ave. N, Nashville, Tenn. 37219.

TEXAS

Although delegates to the Texas Assembly on Land Use recommended that "the governor develop a state land use policy and implement a land resource data system," both issues died in the state legislature in 1975.

A bill for wetlands preservation suffered the same fate.

In all, of 58 bills that could be classified as land use related, only six were passed.

However, the legislature did adopt statewide controls for surface mining and a measure to protect the state's bays and estuaries.

Land Use Policy

The most important and most controversial piece of land use legislation adopted by the Texas legislature in 1975 was SB 55, the Texas Surface Mining and Reclamation Act. The bill was signed by Gov. Dolph Briscoe, D, on June 21, and became effective Jan. 1, 1976. The act establishes statewide controls for surface mining of coal, lignite, and uranium. The act requires a permit prior to mining and also requires that land be reclaimed to its original or a "substantially beneficial" condition. Operators must file a performance bond to insure completion of the reclamation work and may not mine in areas designated by the regulatory agency, the Texas Railroad Commission. Most environmental groups have strong reservations about the Railroad Commission as a regulatory agency since railroads own large deposits of coal in the state. The shift of many utility and industrial companies from natural gas to coal power has rapidly accelerated strip mining in the state.

A bill was passed giving preferential tax treatment for agricultural lands in order to assist farmers in resisting pressures to sell their lands for urban development, but its implementation is subject to the adoption of the finance article of the proposed state constitution.

All cities of more than 2,500 population have full authority for planning and zoning in incorporated areas. In unincorporated areas—which may extend as many as five miles from the city line—the cities have no zoning authority, no taxing authority, no authority over housing and building codes. The city may, however, regulate subdivisions there. Counties have no ordinance-making powers and thus no real planning role.

Many bills relating to land use did not get out of committee this year. These bills included HB 63, a bill authorizing county zoning and land use management in unincorporated areas; HB 45, a bill to allow cities to extend full zoning and land use authority into their extra-territorial jurisdictions; and HB 1694, a bill to authorize general county ordinance-making power. Two proposals for a state land resource management program failed to get out of committee: HB 496, which called for a state land resource commission and the establishment of criteria for local decisions concerning various land use problems; and HB 1148, which provided for a state land resource study commission to conduct a land resource inventory and prepare a plan.

Coastal Zone Management

A measure to protect bays and estuaries in Texas was passed by the legislature. The act establishes a state policy of

protection and maintenance and provides that the Texas Water Rights Commission consider fresh-water inflow needs of bays and estuaries in considering applications for water-right permits.

Coastal laws in the state establish public ownership of the state's beaches up to the vegetation line and require permits for activities threatening dunes or vegetation. They also authorize limited leasing of coastal lands for public purposes and establish a permit system for construction, maintenance, and use of private structures on coastal islands and submerged lands.

In the federal coastal zone program, Texas is in its second year of planning. The state received $620,000 in federal funds for fiscal 1976 and $360,000 in fiscal 1975.

TEXAS LAND USE CONTACTS: General James M. Rose, Director, (512) 475-2427; Walter G. Tibbitts III, Assistant Director, (512) 475-2427; Division of Planning Coordination, Capitol Station, P.O. Box 12428, Austin, Tex. 78711. Dennis Thomas, Assistant Director, (202) 223-3265; Office of State-Federal Relations, 1019 19th St. NW, Suite 730, Washington, D.C. 20036.

TEXAS COASTAL ZONE MANAGEMENT CONTACT: Ron Jones, Director, (512) 475-6902; Coastal Management Program, General Land Office, State Office Building, Austin, Tex. 78701.

UTAH

Utah voters turned down a state land use program in the November 1974 elections by a three-to-two margin. The program had been scheduled to go into effect in April 1974, but a petition filed by the John Birch Society made the referendum mandatory.

The Utah vote went against a general trend in the West in the 1974 elections where at least three governors—those of Colorado, Wyoming, and California—were elected on platforms emphasizing restraint in development of natural resources.

Land Use Policy

In a referendum held in November 1974, Utah voters decisively turned down a proposed state land use program. The proposal would have created a State Land Use Commission and appropriated $306,000 to assist counties in planning. The commission would have helped fit county plans into an overall state plan.

The proposal also would have required the commission to submit to the legislature a method for protecting areas designated by local authorities as critical. However, the state commission would have been given no regulatory powers.

A bill (HB 23) to create a state procedure to protect the Great Salt Lake was signed by the governor and became effective in July. The lake and adjoining area is rich in mineral resources and is a highly desirable spot for recreational and second-home development.

The law creates a board of supervisors and a special division in the state department of natural resources to coordinate the various levels of government with authority over the lake area.

The board consists of the five county commissioners from lake counties, six members of various divisions with the natural resources department, and the department head.

The division and board are responsible for drawing up a comprehensive plan for controlled development of the Great Salt Lake. They are currently involved in a determination of their exact legal authority to enforce the plan as the law is ambiguously worded.

Energy Facilities and Lands

Three utility companies—Southern California Edison, San Diego Gas and Electric Company, and the Arizona Public Services Company—have proposed building a 3000 megawatt power project in southern Utah. The proposed plant, the Kaiparowits Power Generating Project, would have a coal fired generating station, and four underground coal mines to feed it. The plant would be located on the Kaiparowits plateau near Grand Canyon National Park, among other parks and scenic and recreational areas.

The Department of the Interior released a draft environmental impact state (EIS) on the project on July 30, which said, among other things, that a town of 14,000 people would develop near the plant if the project is approved.

UTAH LAND USE CONTACT: Burton L. Carlson, State Planning Coordinator, (801) 533-5245; 118 State Capitol, Salt Lake City, Utah 84114.

VERMONT

For the second consecutive year, the final part of a three-part land use plan was defeated in the Vermont General Assembly. And Gov. Thomas P. Salmon, principal proponent of land use legislation, said in July he would not press for new legislation during the 1976 session of the general assembly.

"Land use planning is a word that arouses fear and loathing in the hearts of our people," Salmon said. He now appears to be leaning in favor of legislation aimed at dealing with specific land-use-related issues, including property assessments, public facilities planning, and open-space preservation.

House Ways and Means Committee Chairman Peter Guiliani predicted that any legislation which hints at statewide zoning "will be stone cold dead" in 1976.

Land Use Policy

Vermont began to work toward a comprehensive land use plan with the passage of the Land Use and Development Law in the spring of 1970. Planning under the law was to proceed in three phrases. The first phase, the development of an Interim Land Capability and Development Plan, was accomplished with little controversy. It described the present uses of land and the capability of the land for development. The second phase, a Capability and Development Plan, has also been adopted. It was approved by the governor and general assembly in April 1973. It described planning principles for economic development, natural resources, transportation, and conservation of energy. The Capability and Development Plan is used now as a guideline for regulating development.

Phase Three as initially introduced into the general assembly (Act 250) would have mapped the state into five areas: urban, village, natural resource, conservation, and rural. Local governments in turn would have adopted land use plans for urban and village districts. However, if local governments had failed to act, maps prepared by the State Planning Office would have gone into effect. The plan would have been the second most extensive in the nation, next to Hawaii's, and was strongly opposed by Republican leaders for this reason.

A weaker version of the bill, endorsed unanimously by the House Natural Resources Committee, was censored 6-2 by the House Agriculture Committee and was stalled in the House Ways and Means Committee.

Last October, Vermont planning officials, with implementation of a state land use plan in doubt, launched a project aimed at guiding growth through public capital expenditures.

The planners hope to produce a final package that localities

can use to review proposed projects to determine whether they will be consistent with state planning principles for guiding economic development, use of natural resources, transportation, and conservation of energy.

The first step in the project centered on a study of techniques to assess the growth generated by public investment in sewage facilities, roads, public buildings, etc. Officials of the State Planning Office said they are examining arithmetical, statistical, and case studies documenting what will happen when a public investment is made.

Despite these efforts, Governor Salmon said a growth policy to guide new development through public investments cannot take the place of a state land use plan.

Salmon said a public investment policy "is a very significant mechanism that moves toward a land use policy." "But," he said, "it cannot replace a state land use policy" and his administration will abandon support of a state land use policy.

A plan to enable industries to obtain a single land use permit to locate in designated industrial districts was approved by the Vermont Environmental Board in January. The plan, proposed by the State Economic Development Commission, would authorize municipalities to invite industries to locate in designated areas where only a single-stop permit would be needed. The development commission hopes the plan will overcome the reluctance of industries to locate in a state with strict environmental controls.

Energy Facilities and Lands

On March 31, the legislature passed one of the nation's toughest atomic power control bills.

It would require legislative approval before any new nuclear power plants could be built in Vermont. No new plants are planned in the state in the near future.

VERMONT LAND USE CONTACTS: Leonard Wilson, Director; Bernard D. Johnson, Assistant Director; State Planning Office, Pavilion Office Building, Montpelier, Vt. 05602. (802) 828-3326.

VIRGINIA

The Virginia General Assembly in 1975 approved a law requiring all localities in the state to establish planning commissions. And although the general assembly adopted a resolution against a federal land use bill earlier in 1974, the state government in September 1974 established two committees to study and make recommendations on state land use policy.

In judicial action, the U.S. Supreme Court refused to hear two appeals made by Fairfax County, Va., a Washington, D.C. suburb, on the county's controversial attempts to control growth. A growth moratorium established as part of the county's Planning and Land Use System (PLUS) was taken to court by resident landowners.

The PLUS system also was rejected in the November 1975 elections as county board of supervisor incumbents campaigning for no-growth and limited-growth policies were defeated.

Land Use Policy

In other land use action, the General Assembly approved a bill that requires all localities to establish planning commissions. Prior to passage of the bill, all localities with planning commissions were required to adopt a land use plan, but the commissions were not required.

Localities also must adopt subdivision ordinances and comprehensive land use plans by July 1, 1980.

In September, 1974, a state Land Use Council, made up of officials from 18 state agencies, seven legislative committees, and one member each from the Municipal League and the Association of Counties was formed by the Department of Commerce and Resources at the governor's direction. A parallel land use advisory committee was formed from some 20 citizen organizations.

The committees were endorsed by the Virginia Chamber of Commerce. The National Chamber of Commerce has actively opposed national land use legislation for several years.

The council is engaged in analyzing land use plans, current and proposed at both federal and state levels; determining the impact, especially environmental, of land use activities on sensible development; and reducing its findings to recommendations for implementation in Virginia.

The November 1975 Supreme Court decision not to hear two Fairfax County rezoning decisions left standing two Virginia Supreme Court decisions. In 1974, in two separate cases, the Fairfax County's building moratorium was challenged in the county circuit court by landowners who had been refused rezoning requests.

The landowners argued they had been denied equal protection under the 14th amendment because nearby land had been granted similar requests before the growth slowdown was imposed.

The Virginia Supreme Court ruled in favor of the builders, saying in one case that the county must grant rezoning applications that are in accord with county master plans, regardless of the moratorium.

Coastal Zone Management

Responsibility for coastal zone related programs in Virginia is spread among several state agencies because the programs have been initiated on an ad hoc basis in response to perceived needs, according to state officials.

The lead agency is the Division of State Planning and Community Affairs which has contracted work to the Virginia Institute of Marine Science and the Marine Resources Commission.

The state general assembly has also appointed an 11-member coastal study commission which is preparing a policy determination report for the assembly.

Virginia received a first-year grant of $251,044 from the federal Office of Coastal Zone Management, and has applied for second-year planning and Outer Continental Shelf grant money.

State CZM officials view the Virginia program as one with an emphasis on coordination among coastal interests and on local responsibility.

VIRGINIA LAND USE CONTACT: Charles A Christopherson, Director, (804) 770-3784; Division of State Planning and Community Affairs, 1010 James Madison Building, 109 Governor St., Richmond, Va. 23219.

VIRGINIA COASTAL ZONE MANAGEMENT CONTACTS: B. C. Leynes Jr.; William Bolger; Division of State Planning and Community Affairs; 1010 Madison Building, Richmond, Va. 23219. (804) 786-7652.

WASHINGTON

Although supporters of land use legislation in Washington state included Gov. Daniel R. Evans, R, consideration of several land use planning bills sputtered to a halt in April.

The primary bill considered (HB 168) would have created a Land Conservation and Development Commission to oversee the development of land use plans by local and county governments. It also would have required local plans to curtail any future

development of agricultural, forest, or mineral-resource lands that would harm the productivity of those lands.

Work on the bill halted in April when its chief sponsor, Rep. Joe Haussler, stopped pushing it. He said he thought the bill would be opposed for financial reasons at a time when the state legislature was seeking funds to keep Washington schools open.

Land Use Policy

Counties and localities are empowered with traditional planning and zoning authorities. All 39 counties have some kind of planning effort, and an estimated 25 have zoning ordinances. The state has some regional planning agencies, including county-wide planning bodies that serve as planning staffs for both a county and its municipalities.

The bill (HB 168) considered in 1975 to expand land use regulation in Washington, was defeated for several reasons.

First, economic opposition made funding of a new state land use program unlikely even if passage of the measure was gained.

Second, the bill called for a voter referendum, considered necessary for the legislation to pass. However, some state planning officials doubt whether voters would approve a land use program.

Finally, negative reaction to Washington's Shoreline Management Act increased opposition to state land use proposals. The Shoreline Management Act regulates land use within 200 feet of all shorelines.

HB 168 contained these provisions:

- It was oriented primarily toward preservation of agricultural land. Localities would have the principal role in preparing comprehensive land use plans, using standards established in the bill. Reaction to the Shorelines Management Act soured the legislature on giving extensive land use authority to state agencies, state planning officials said.
- Localities would have six months to adopt interim designations of agricultural, forest, and mineral lands. Localities then could not grant development permits on that land which would "(a) constitute urban growth or (b) probably lead to urban growth." The interim regulations would last until the local land use plan was certified.
- An 11-member commission would be appointed by the governor with the lands commissioner an ex-officio member. It would recommend designation of activities of state concern, certify local land use plans, and impose land use plans in areas where localities fail to adopt plans.
- The bill lists 16 items that local plans must address, such as agricultural land, transportation, housing, and environmental concerns. It also requires each plan to provide for conservation of agricultural, forest, and mineral lands.
- Certification from the commission would have to be obtained in four years. The locality would have another 1½ years to develop regulations to implement the plan.
- The commission would recommend designations to the legislature, which presumably would make the designations. Five categories of activities of state concern were defined as in the bill: new or enlarged airports, new or enlarged ports, large power plants and lines, sewage treatment plants and sewer lines, and new water supply systems. Localities would regulate land use for such activities, but the governor could objective and refer disputes to the Shorelines Hearing Board for a decision.
- The Shorelines Management Act would retain its present jurisdiction.
- There was no money in the bill, but one estimate put administrative costs at $1-million. State officials hoped the money would come largely from the then-proposed federal land use legislation.
- The bill listed 13 goals that the local plans would reflect, such as conservation of energy resources, assurance of orderly and balanced economic growth, etc. The governor also may add to those policy goals by making recommendations to the commission by Aug. 1, 1976. The legislature would have to approve the goals.
- A referendum on the bill would be held.

Coastal Zone Management

Washington became the first state in the federal Coastal Zone Management Program to be granted preliminary approval of its state coastal area management program.

Then-Secretary of Commerce Rogers C. B. Morton said the Washington program was largely in compliance with substantive requirements of the Coastal Zone Management (CZM) Act of 1972.

The state still has not fully developed either its legislative authority or organizational network. It is still working on:

- Further development of the state's organizational network and capabilities to deal with state-federal, as well as state-local management issues on a continuing basis.
- Completion of local master programs.
- Consultation with relevant federal agencies regarding specialized concerns.
- Further detailing of policies and systems by which the state will exercise the consistency provisions of the act.

In August, Washington received a $500,000 second-year federal CZM grant to complete its program, a process expected to take nearly six months. In 1974, Washington received a CZM grant of $189,469.

WASHINGTON LAND USE CONTACTS: Lee M. Buffington, Director, (206) 753-5450; John Current, Senior Assistant Director, (206) 753-1022; and Nicholas D. Lewis, Assistant Director, (206) 753-5297; Office of Program Planning and Fiscal Management, House Office Building, 2nd Floor, Olympia, Wash. 98504.

WASHINGTON COASTAL ZONE MANAGEMENT CONTACT: John A. Biggs, Department of Ecology, State of Washington, Olympia, Wash. 98504. (206) 753-6886.

WEST VIRGINIA

The West Virginia Legislature enacted a measure in 1975 to enable the state to participate in the federal flood-insurance program. The program requires counties to adopt land use controls in flood-hazard areas to be eligible for federally insured flood insurance.

The legislature also adopted a resolution to limit strip mining in the state's 55 counties.

Land Use Policy

A new Department of Resource Development and Planning was created in the governor's Office of Federal-State Relations. The new office is issue-oriented and acts as a coordinating body for programs such as the Comprehensive Planning Program of the federal Department of Housing and Urban Development.

The Department of Resource Development and Planning is also responsible for land resources development.

A private group of federal, state, and local officials, and private citizens called Mountaineers for Rural Progress do background and research on land use and are currently studying land use changes in West Virginia counties since 1970.

Although zoning and subdivision enabling legislation exists, only six of 55 counties have adopted zoning ordinances, and seven of the 55 have adopted subdivision controls.

WEST VIRGINIA LAND USE CONTACTS: Bill L. Coffindoffer, (304) 348-3562; Ed Long, Director of Land Resource

Development, (304) 348-8853; Governor's Office of Federal-State Relations, State Capitol, Charleston, W.Va. 25305. Dr. Dale Colyer, Director Resource Management, (304) 293-3231; College of Agriculture and Forestry, West Virginia University, Morgantown, W.Va. 26506. (Mountaineers for Rural Progress).

WISCONSIN

A second try at an energy facility siting law succeeded in 1975 when Gov. Patrick J. Lucey, D, signed a measure giving the state Public Service Commission (PSC) broad authority to review and approve power plant siting. A similar measure passed both houses of the legislature in 1974, but a conference committee was unable to agree on a compromise measure, and both bills died.

Land Use Policy

Cities, villages, and towns with village powers are granted broad zoning powers including interim zoning powers. Use of most zoning powers is not mandatory; however, city, village, and county shoreland and flood plain zoning must meet state standards.

Adjournment of the legislature cut off work on two land use-related bills. The first (AB 1082) dealt with preferential assessment and taxation of open space—a concept approved by Wisconsin voters in an April 1974 referendum. The bill underwent committee hearings during the last session. The second measure, a bill to regulate and protect wetlands (AB 604), received committee approval. Further work on both bills stopped until the legislature reconvenes in January.

Energy Facilities and Lands

Governor Lucey signed an energy facilities siting bill (AB 463) on Sept. 24, 1975, saying, "Up to now, Wisconsin citizens, local governments and the state have had little or no say on where utilities place giant power plants or high tension transmission lines. This law not only puts the people back into the planning process, but guarantees that important private property rights are protected."

The law's major provision requires utilities to file 10-year plans with the PSC. The long-range plans must outline a utility's proposals for construction of power-generating facilities and transmission lines.

The first 10-year plans will be due July 1, 1976. The PSC staff will prepare an environmental assessment of a utility's proposal—and state agencies, local governments, and private citizens will comment on the plan.

After review, public hearings, and comment, the commission will approve or deny a plan, or return it to the utility for changes.

Utilities, state agencies, counties, towns, or persons whose rights may be adversely affected by a proposed plan will have the right to cross-examine one another at the hearings. Appeal to the state courts also is assured under the state's Administrative Procedure Act.

In addition to provisions throughout the act for consideration of the rights of landowners, protection of the environment, and preservation of prime agricultural lands, the act also guards against delays in power plant siting. It prohibits last-minute local ordinances from blocking construction of power facilities; it requires the PSC to act promptly; and it allows site investigations and testing to proceed without interruption.

Coastal Zone Management

Wisconsin's Coastal Zone Management area is composed of the 15 counties adjoining Lakes Michigan and Superior. Under state guidelines and review, those counties have zoned unincorporated shoreland areas. Additionally, the coast is zoned into conservancy, recreational-residential, or general-purpose areas. Commercial development is prohibited in the conservancy areas, and requires special permits in the recreational-residential areas. Industrial plans are allowed only in general-purpose areas. Among other coastal zone problems, Wisconsin is concerned about shoreline erosion and flooding, and the competitive position of its Great Lakes ports. The state received a second planning grant of $340,600 in May from the federal Office of Coastal Zone Management.

WISCONSIN LAND USE CONTACT: Stephen M. Born, Director, (608) 266-7958; State Planning Office, Department of Administration, 158 Wilson St., Room B-130, Madison, Wis. 53702.

WISCONSIN COASTAL ZONE MANAGEMENT CONTACT: Allen Miller, (608) 266-3687; State Planning Office, 158 Wilson St., Madison, Wis. 53702.

WYOMING

Wyoming is the only state to enact a statewide land use planning law in 1975. The law creates a permanent state land use commission and provides protection for critical environmental areas.

Land Use Policy

Under the state land use planning law (HB 321A), the nine-member land use commission appointed by the governor will have six months to establish land use goals and guidelines and 2½ years to develop a statewide plan.

The counties will have a year after the state plan is approved to develop their own guidelines and another six months to complete their plans.

The law includes an appropriation of $460,000 spread over two years to assist counties in their planning. Each of the 23 counties in the state would receive $10,000 per year.

The law also provides for the designation and regulation of critical areas, and directs the commission to operate a hotline on land use information and a center for natural resource information.

The legislature also passed statewide subdivision regulations this year. Previously, cities, incorporated towns, and counties were authorized, but not required, to adopt subdivision regulations.

Energy Facilities and Lands

Another major piece of legislation enacted in 1975 covers industrial plant siting, including power plant siting. The law creates a seven-member industrial siting council to review and grant permit applications for construction of plants; to set maximum times for considering major projects; to set filing fees for proposed project builders to cover the costs of studying the project; and to allow the council to delay a project until the community is capable of handling the influx of workers brought in by the project.

WYOMING LAND USE CONTACT: Michael York, Chief of State Planning, (307) 777-7284; 720 West 18th St., Cheyenne, Wyo. 82202.