

The States' Role in **Land Resource Management**



THE COUNCIL OF STATE GOVERNMENTS

e Council is a joint agency of all the state governments—created, supported and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials and legislators; issues a variety of publications; assists in federal-state liaison; promotes national and state-local cooperation and provides staff affiliated organizations.

HEADQUARTERS OFFICE

Iron Works Pike, Lexington, Kentucky 40505

EASTERN OFFICE

36 West Forty-fourth Street, New York, New York 10036

MIDWESTERN OFFICE

1313 East Sixtieth Street, Chicago, Illinois 60637

SOUTHERN OFFICE

3384 Peachtree Road, N.E., Atlanta, Georgia 30326

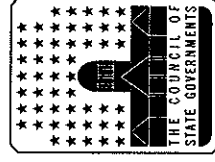
WESTERN OFFICE

211 Sutter Street, San Francisco, California 94108

WASHINGTON OFFICE

1735 DeSales Street, N.W., Washington, D.C. 20036

The States' Role in Land Resource Management



THE COUNCIL OF STATE GOVERNMENTS

Lexington, Kentucky

Contents

FOREWORD	v
PREFACE	vii
Summary	1
1. Historical Aspects	2
2. State Tools and Techniques	6
Current State Involvement	6
What Is Land Resource Management?	7
State Land Resource Management Tools	8
Innovative Uses of the Police Power	8
Major Categories	8
Approach A	9
Statewide Comprehensive Land Use Management	9
Approach B	12
Land Management According to Functional Criteria	12
Approach C	13
Management of Specific Geographic or Critical Areas	13
Approach D	14
State Management of Uncontrolled Areas	14
Summary	15
3. Federal Legislation	16
National Land Use Policy Act of 1971	17
Land and Water Resources Planning Act	18
National Coastal and Estuarine Zone Management Act	19
Urban Growth and New Community Development	20
The Balanced Urbanization Policy and Planning	20
Public Land Policy Act	22
National Resource Land Management Act	22
Summary	22
4. Options for State Action	24
Introduction	24
Land Resource Management Programs	25
Which Level of Government?	26
Actions to Take	27
Conclusion	29
FOOTNOTES	30

Published January 1972 by
THE COUNCIL OF STATE GOVERNMENTS
IRON WORKS PIKE
LEXINGTON, KENTUCKY 40505

Library of Congress Catalog Card Number: 75-187728
Printed in the United States of America
RM-474

Price: \$3.00

Foreword

The States are becoming increasingly involved in land resource management, since this subject is an important aspect of achieving environmental quality. In addition, the States are also following with interest the development of national land use legislation in the U.S. Congress. State officials have recognized the need for federal legislation to establish a national policy, and the States would be expected to play a significant part in any national program. Therefore, the Council of State Governments has undertaken this study of the state role in land resource management. More details are contained in the authors' preface.

The Council is grateful for the excellent work done by the authors, Richard G. RuBino, and William R. Wagner, Planner-in-Residence and Research Assistant, respectively, of the Department of Urban and Regional Planning, Florida State University. We also express our appreciation to the members of the advisory committee and others assisting in the project, who are acknowledged in the authors' preface.

Lexington, Kentucky
January 1972

Brevard Critchfield
Executive Director
The Council of State Governments

Preface

This study focuses on the role and responsibilities of state government in regard to land resource management. It aims to (1) describe the status of state activities in land resource management, (2) present alternate types of state action, and (3) explain the possible effects of proposed federal legislation pertaining to land use.

As the inability of local governments to adequately cope with all aspects of land use becomes increasingly evident, there is increased need for greater state involvement in the management of land in order to ensure the preservation of an acceptable living environment for this and future generations. Correspondingly, there is some indication that the cultural values of America are changing in regard to the best use of land and the limit of rights vested in private land as granted by sovereign States, and that because of this change States must be prepared to initiate new policies in land resource management.

Pressure for such action is already beginning to emanate from a groundswell of public opinion, and although a number of States have begun to respond to this pressure, there is insufficient communication about the progress being made. A major purpose of this report is that this progress should become better known in order to provide data and background knowledge for future development of state and federal programs. National attention is already focusing on this issue (as an important aspect of concern for ecology), and it is likely that Congress will soon act favorably on legislation aimed at assisting States to implement land resource management programs. All States should be alert to their potential role in such programs.

This study of the emerging role of States in land resource management was begun in July 1971 and was completed in November 1971. It included a search of all pertinent information on the subject area and a survey directed at the Governor of each State to determine (a) the degree and orientation of state concern, (b) actions already taken or being taken, and (c) general reaction to two proposed pieces of federal land use legislation. The information gathered from the above sources was supplemented by input from a specially appointed Land Use Study Advisory Committee and from other interested individuals and agencies.

The advisory committee members, all of whom provided valuable input, were: State Representative Stewart Bledsoe of Washington, State Senator William T. Doyle of Vermont, Allen Fornoroff of Case Western Reserve University, State Senator D. Robert Graham of Florida, Governor Tom McCall of Oregon, Robert H. Marden of the Massachusetts Office of Planning and Program Coordination,

Shelley M. Mark of the Hawaii Department of Planning and Economic Development, Joe E. Nusbaum of the Wisconsin Department of Administration, Governor Preston Smith of Texas, and Norman Williams of Rutgers University.

The project was under the direction of George A. Bell of the Council of State Governments. Vincent T. Smith, Jr., also of the Council, provided considerable assistance. Others who added immeasurable aid in the form of constructive criticism included: Fred P. Bosselman of Ross, Hardies, O'Keefe, Babcock, and Parsons (Chicago); Boyd H. Gibbons III and William Reilly of the Council on Environmental Quality; R. Deane Conrad of the Council of State Governments' Office of Federal-State Relations; and Dan S. Petty and Joseph Moseleu of the Texas Division of Planning Coordination.

Appreciation must also be provided to Diane Guthrie, graduate student, for her contribution to Chapter 3; and to Kathleen Deveney, who did a commendable job in typing and retyping the drafts of this report.

Richard G. RuBino, Planner-in-Residence, and William R. Wagner, Research Assistant
Department of Urban and Regional Planning
The Florida State University, Tallahassee

Summary

Land in the United States has historically been used as the property owner desires for his best economic benefit. However, there have always been restrictions to prevent usage which would have ill effects on neighboring property. In recent years, concern for ecological factors has strengthened interest in managing land resources to prevent undesirable environmental effects.

State governments are adopting land use legislation of various types for comprehensive land use management; management of certain functional types of land use, such as commercial developments; management of specific geographic or critical areas; or state management of areas not controlled locally.

In the meantime, federal legislation is being considered in Congress to develop a national land use policy and to assist States in developing and carrying out policy within their borders. One bill is supported by the Administration, and others have major backing. There is a strong possibility that land use planning legislation will emerge from the present Congress.

In view of the growing need and the federal push into this field, it is certain that additional action at the state level will be occurring. The field is new, and there are no sure answers to solving land resource management problems; therefore, flexibility is needed so that experiments can be made with different approaches. Besides various types of control legislation outlined above, States can seek to utilize tax policy, facilities programming and acquisition of land rights in less than fee simple. The role of the States and local governments needs to be delineated, as well as that of regional mechanisms within States. Studies must be made, legislative action taken, an agency assigned functions, and a process developed for land use planning.

Whatever approach is taken, a joint effort of federal, state and local action appears to be needed to ensure that land resource management programs are established and operated for the proper balance of economic and environmental interests.

acres for a \$10.00 filing fee. As has been noted, the purpose of these acts was to provide for the orderly settlement of the West; however, land speculators often abused the laws and perpetuated the impression that land was a speculative commodity.

To encourage westward expansion, the federal government began a subsidy program for the improvement of transportation. Canals and railroads were given public land adjacent to their construction projects. The railroads alone were granted 128.6 million acres, which was almost one-sixth of all the public land available.

The Territories were also given large quantities of the public domain as grants at the time they gained statehood. This land was to be controlled by the new States primarily for revenue purposes to finance public buildings and institutions.

Prior to the Revolutionary War the colonies were under a "savage" system of land tenure which required an oath and a small tribute to an original owner. However, when the Constitution was drafted this system was eliminated, and it was replaced by a system of "allodial" tenure in fee simple, whereby a property owner is vested with considerably more rights to the land than before, although property rights have continually been adjusted to accommodate the economic and social needs of the general public.² Nevertheless, the failure of the federal government to provide effective restrictions is seen as an error by some men as exemplified in this statement.

Perhaps the most fateful and potentially tragic development was the consistent adoption of allodial tenure in fee simple. This conferred on the individual owner a virtually unrestricted right of use and abuse, limited in practice only by the legal doctrine of nuisance, the tenuous application of the police power, and the power of taxation subject to the constitutional principle of "due process."³

It was over one hundred years before the "tenuous application of the police power" began to be utilized. During this period, land was seen as a commodity free to be exchanged in a laissez faire economy. Its use and abuse was a matter to be determined exclusively by the owner. However, as the Nation began to shift from a rural to an urban focus, citizens learned that the crush of city life could actually bring about a decline in the value of property and that measures had to be taken to protect the health, safety and welfare of the general public.

Many of the initial efforts of zoning land use in the larger urban areas were generated to protect residential and "high class" business areas from encroachment by industry and tenements. The restrictions were usually justified as being necessary to protect controlled areas from potential fire danger or health hazards, but in reality it probably was more of a concern for property values.

From 1906 to 1926 the legality of zoning by "block" or "residential area" was debated in the courts; some courts ruling in favor of this procedure and some against. Since land was viewed as an economic commodity and was considered a man's "property," there was an unresolved question as to whether zoning or restricting the use of a man's property could be construed as the taking of

Historical Aspects

The English companies formed to colonize America were in large part real estate companies organized for speculation purposes; their resource was a seemingly endless supply of land which could be sold to potential settlers and to landlords in England. Thus began a tradition of land as commodity that has been reflected throughout this Nation's political, social and economic history.¹

Following independence, all lands claimed but outside the original boundaries of the colonies were given to the Confederation. Superficially this might have appeared as a generous gesture on the part of the new States, but in truth it was a means of settling conflicting claims over the vast tracts of wilderness beyond the Allegheny Mountains. The transfer of these lands provided the national government with one of its first domestic policy problems—what to do with the land?

During the next 100 years, the federal government continued to acquire lands, usually purchased from foreign governments. The land added between 1782 and 1867 amounted to almost 2 billion acres at a cost of less than five cents an acre.

Since it was felt that the spread of population from the Atlantic Coast west to the Mississippi River would guarantee that no other nation would colonize this area, the first formal policy concerning the public lands was established; this was that the public lands be opened slowly under controlled and organized development. Alexander Hamilton and others felt that this land could be useful to the new Nation as a source of revenue and that uncontrolled settlement would not lend itself to this purpose. It was primarily for the reason of opening a new source of revenue that the Northwest Ordinance, which provided the opportunity to purchase 640-acre tracts at \$1.00 an acre, was passed in 1785.

Gradually the concept diminished that the new lands should be sold for the benefit of the public treasury, resulting in land being virtually given away with only weak provisions to ensure permanent settlement by the purchaser. By 1864 six major land acts had been passed; each succeeding act making the terms of purchase more attractive to the settler and speculator. Culminating this legislative activity was the Homestead Act which provided a settler with 160

property without "due process" as secured by the Constitution. In implementing zoning it was, and still is necessary to ensure that the restrictions were not arbitrary with regard to a specific piece of property.

It is important to recognize that all zoning power legally emanates from the State, and that in order for a municipality to use this power it must be granted directly from the State or through a general state enabling act. Implicit in this relationship is the power of the State itself to exercise police power through zoning.

In 1926 the landmark *Euclid v. Ambler Realty Co.* case was heard by the U.S. Supreme Court. In essence the court ruled that:

States are the legal repository of police power. (An) enabling act for zoning is the grant of this power to a municipality for regulating the height, area, and use of buildings, and the use of land. In the exercise of this grant the regulations must be reasonable and not arbitrary or discriminatory. They must have a substantial relation to the health, safety, morals, comfort, convenience, and welfare of the community.⁴

Thus it was established that municipalities did have the right to enact zoning ordinances if authorized by their state government.

The same year that the *Euclid* case went to the Supreme Court, the U.S. Department of Commerce published a "Standard State Zoning Enabling Act" to serve as a model for States to follow. A flurry of state activity in enacting enabling acts followed the publication of this model. Most States preferred the system of delegating this police power directly to the municipalities; one exception was the Massachusetts Legislature which took upon itself the responsibility of zoning the City of Boston.

In the 1940s and 1950s, it was in the rural rather than the urban areas that most States first began to expand their use of the police power with the establishment of conservation districts. Statutory provision was made for a mild form of zoning, often only at the property owner's request. Even this limited power was rarely utilized.

From the tentative beginnings in 1906, 55 years passed before a State actually enacted a comprehensive statewide zoning plan to be administered by the State itself. In 1961, the Hawaii Legislature enacted a state zoning program which divided the State into three classifications: agricultural, conservation, and urban.⁵ A rural district was added two years later. While policy for development was to be decided at the state level, this plan called for state and local cooperation in the administration of the zoning program.

During recent years at least nine additional States have enacted major forms of state land use management: Colorado, Delaware, Maine, Massachusetts, Michigan, New York, Oregon, Vermont and Wisconsin. Broadly speaking, the motivation behind this recent activity stems from an expanding concern about (a) the protection of the environment, (b) management of large scale developments that are beyond the effective control of local jurisdictions, and (c) problems relating to continued urbanization. As has been indicated, early zoning and

land tenure policies were dominated almost solely by economic considerations, but today it is apparent that additional considerations are involved.

When the Nation began to urbanize, regulation of the use of land was found to be necessary to protect the economic interest of citizens. As growth has spread and population densities continue to rise, there has been an increasing public awareness that unguided development is not in the best interest of all citizens. Indeed, new concepts of land use management are emerging with the current awakening of ecological principles and the realization that land is a finite resource. Accompanying this "awakening" has been a trend for States to become more directly involved in matters of land use management in response to a clear public need.

Other reasons for the growing interest in land resource management are: the lack of adequate provision for future land needs of agriculture, forestry, industry, business and residential communities; inadequate protection of water supplies, wildlife, salt water fisheries, and historical areas; inadequate protection from mining damage; need to provide for "new town" development; inadequate local planning and zoning; and adverse development contiguous to public improvements and facilities such as interstate interchanges or parks.

Because planning is usually regarded as an important element in land resource management, the survey asked a series of questions pertaining to the status of land use planning. Seven of the 38 respondents claimed to have statewide land use plans in existence. Hawaii, in 1961, was the first to complete a state land use plan, whereas the land use plans in the 6 other States and Territories (Alabama, Delaware, New York, Rhode Island, Puerto Rico and Guam) were completed in more recent years. Sixteen other respondents indicated that they were currently developing some kind of a state land use plan.

The survey did not attempt to determine the degree to which land use plans were being utilized, nor did it attempt to provide a standardized definition of land use planning or of a land use plan. It is likely that the respondents had varying impressions of what land use planning includes and what constitutes a land use plan.

With or without statewide land use planning it is obvious that the States are beginning to aggressively assert their responsibility in land resource management. Much of this movement presently stems from the association of land resources with matters of ecological concern, especially in the urbanizing States. There is a predominance of state activity in land resource management in the Northeast, although a number of other States have also joined the movement for varying reasons.

What Is Land Resource Management?

The variety of land resource management programs which have already been initiated by some States demonstrates the complexity and individuality of state interest and needs. To an overwhelming degree the design of a specific approach depends on a State's heritage and how this heritage has led to the current status and ability of the State to cope with land resource questions. Direct state implementation of land resource management is a recent phenomenon, but it promises to be an activity in which States will become heavily involved during the next decade. Exposure to the variety of existing approaches to state involvement in land resource management should be useful to all States for they then can examine the procedures of other States before developing or expanding a program designed around their own particular needs.

Land resource management can imply many meanings, but as used in this report it includes the formulation of policies relating to the general use of land, the preparation of land use plans reflecting these policies, the coordination of

State Tools and Techniques

Current State Involvement

Growing dissatisfaction with inadequacies in present state and local institutional arrangements for land use planning and for regulating the use of land is apparently manifesting itself in a trend to provide a more viable interest for state government in land resource management. This enthusiasm is becoming closely allied to the wave of ecological concern that is presently sweeping the Nation. Despite recognition that the impact of effective land resource management spans far beyond pure ecological considerations, the need generally is being couched in terms of its direct association with ecological concerns; an association which appears likely to result in a growing number of state land resource management efforts. Although most of the current activity is occurring at the national, state and areawide levels of government, reform of local responsibilities is also needed and is sure to follow.

A survey conducted as part of this study⁶ indicates that the States appear to be assuming greater responsibility for land resource management than had heretofore been the case. Nearly all States reporting indicate a high degree of interest in problems of land management.

The States have identified several problems which are factors in generating a need for an increased state role in land resource management.

The factors receiving the most attention were: (1) the lack of adequate provision for future recreation needs, (2) rapid, uncoordinated and piecemeal development, and (3) the lack of unified criteria upon which to measure developments proposed for critical areas. A major concern appears to be the preservation of the environmental character of particular scenic or well-located undeveloped areas for ecological and recreational purposes. There is also concern resulting from excessive development in areas without land use controls. Politically, such control is extremely difficult to activate locally because of traditionally more limited perspectives and dependence on a tax structure which usually dictates seeking the highest return from land and not necessarily the best use of land. Therefore, it appears quite logical that these factors were identified as prime situations which could benefit from state involvement. Another factor receiving considerable attention was the need for protection of scenic areas, which is also related to ecological interest.

efforts relating to land resources among state agencies and between various levels of government, and the administration of programs and implementation of mechanisms in support of the policies. This report seeks to focus on some of the innovative tools being used by States to respond to problems of the use of land.

State Land Resource Management Tools

Tools of practical application for implementing a land resource management program may take many forms, such as:

- (1) tax policies, implemented by means of tax assessment, incentives, deferrals, special levies, etc.;
- (2) facilities control, exercised by a sliding scale of fiscal support for public facilities depending on their location or by regulating the location of public facilities upon which land development is so dependent;
- (3) police power, through such forms as subdivision regulations, zoning, density controls, etc., designed to protect the health, safety, and welfare of the general public; and
- (4) rights-less-than-fee-simple, such as easements, acquisition of development rights, covenants, etc., all of which can be used to supplement any of the above mentioned tools.

As William H. Whyte has stated, "No one of these devices is worth very much isolated all by itself. Together, however, they have great potential."⁷

This report focuses on procedures which fall under "police power." Under this power, for example, the States can undertake or develop:

- (1) issue analysis and action as problems occur,
- (2) state criteria or guidelines for local zoning,
- (3) state or regional review of local planning and zoning,
- (4) state control over critical areas (wetlands, etc.),
- (5) state control over lands above a minimum acreage,
- (6) state control over lands uncontrolled by local government,
- (7) statewide planning and zoning.⁸

Innovative Uses of the Police Power Major Categories

Although a wide variety of tools can be utilized in implementing a State's land resource management program, the intent of this report is to focus upon only certain selected prominent and innovative efforts which might be included under a general heading of use of the police power. These efforts might be categorized, going from the most complex to the more simple, as follows:

- (A) Statewide comprehensive land use management.
- (B) Management of statewide land use according to functional criteria.

(C) Management of specific geographic or critical environmental areas (e.g., wetlands, shorelines, scenic highways).

(D) State management of uncontrolled areas.

Admittedly, the categories are somewhat artificial in that they are not exclusive of each other. They should be recognized and used only as identifiable highlights of a continuum having a fundamental common character. Some of the more prominent and innovative state efforts which have been undertaken to date are briefly described and listed according to the above categorical arrangement in Table 1 on pages 10-11.

Approach A Statewide Comprehensive Land Use Management

Several States have initiated statewide programs of land resource management characterized by the development of a statewide comprehensive plan. When such a planning tool is utilized in association with police powers (such as zoning or subdivision laws), the State can exert a broad influence over the development of its social, economic and physical environment.

In this type of approach the State typically exercises its constitutionally granted police and regulatory powers through a long-range, comprehensive land resource plan of its own design. The administration of land resource regulations may be undertaken solely by the State or, as in most instances, by some joint arrangement between the State and local governments.

The most noted example of this approach has been the 1961 Hawaii State Land Use Law. Many factors, some possibly stemming from its history of Polynesian feudalism, placed the State in an advantageous position to experiment with statewide zoning. For many years agriculture had been the leading economic resource in Hawaii; but as the agricultural industry began to lose ground to rapid urban and resort growth, the State found that it had to act to preserve this most important component of its economic base.

Hawaii, therefore, enacted the State Land Use Law and created a nine-member State Land Use Commission. This body was given the responsibility for classifying all land into agricultural, conservation and urban districts. A fourth district, namely rural, was added two years later. Within the districts, regulations were established by either the commission, the Department of Land and Natural Resources, or the county government. In urban districts the commission's classifications are regulated and administered by the county governments. In the rural and agricultural districts the responsibilities are divided between the State and the counties. Conservation districts have been placed under the aegis of the Department of Land and Natural Resources which both develops regulations and enforces them.

To ensure effectiveness it is essential that a statewide program be accompanied with adequate powers of implementation. If the State only creates plan and leaves implementation to local levels of government, the effectiveness

EXAMPLES OF INNOVATIVE ACTION IN STATE LAND USE MANAGEMENT
(1961-71)

Table 1

State	Program description	Reference	First enacted	Administered by	Category*
Colorado	Colorado Land Use Act. Provides temporary emergency power over land development activities and authorizes model resolutions.	Ch. 106-4, C.R.S. 1963	1971	Colorado Land Use Commission	A
	Authorizes State to prepare subdivision regulations in counties where no regulations exist.	Ch. 106-2, C.R.S. 1963	1971	Colorado Land Use Commission	D
Delaware	Coastal Zone Act. State management of shore zone industrial development.	Ch. 70, T. 7	1971	State Planning Office	C
Hawaii	Land Use Law. State management of land by broad categorical districts.	Ch. 205	1961	State Land Use Commission	A
Maine	State management of all lands in unorganized or deorganized townships.	Title 12, s. 681-689	1969	Land Use Regulation Commission	C
	Approval of large-site industrial or commercial developments, potential polluters, and residential sites over 20 acres.	Ch. 3, s. 481-88	1970	Environmental Improvement Commission	B
	"Critical Area" program to provide for management of all shoreland areas 250 ft. from high water mark.	Ch. 424, s. 481-4814	1971	Environmental Improvement Commission	C
	"Critical Area" program for protection of coastal and inland wetlands.	Ch. 130, s. 27A, 105 and Ch. 131, s. 40, 40A	1963	Department of Natural Resources	C
Massachusetts	Zoning Appeals Act. To ensure dispersion of low-income housing.	Ch. 774, s. 1-2	1969	Department of Community Affairs	B
Michigan	Shorelands Management and Protection Act	Act No. 245, Public Acts of 1970	1970	Department of Natural Resources	C
Oregon	Governor shall prepare land use plans and enforce zoning on all areas not subject to local regulation.	S. 10, 1969	1969	Governor	D
Vermont	Approval of site development in accordance with state land use plan.	Ch. 151, 6001	1970	Environmental Board	A
	Shoreline Zoning Act. Zoning to prohibit all construction within 500 ft. of shoreline at all bodies of water larger than 20 acres.	Act 281	1970	Department of Water Resources	C
Wisconsin	Shoreline Zoning Law. "Critical Area" program for management of lands around lakes and waterways.	Ch. 614-8588	1965	Department of Natural Resources	C

Note: This chart presents examples of recent state action and does not pretend to be inclusive of all such action.

- *A. Management of general land uses within the State.
- B. Approval of land use development within the State in accordance with functional criteria (e.g., environmental, housing).
- C. Management of land uses within geographically specified critical areas (e.g., wetlands, shorelines, scenic highways).
- D. State enactment of zoning or subdivision authority in the absence of a local ordinance or regulation without reference to state-wide plan or standards.

of the program can be considerably impaired. This point was emphasized by Governor John A. Love of Colorado when he appeared before the Committee on Interior and Insular Affairs and stated, "Planning without power...turns out to be extra expense...and bureaucracy, unless it is tied in with the power to act."⁹

Two other States having "Approach A" programs are Colorado and Vermont (see Table 1). A 1970 Vermont act confers upon the State Environmental Board and district environmental commissions the power to regulate the use of land and to establish comprehensive state capability, development and land use plans. The Colorado act provides the State temporary emergency power over land development activities.

Approach B Land Management According to Functional Criteria

A number of States have accepted responsibility for the management of land resources as a means of controlling unregulated large-scale development. A vast sea of recreation or second-home subdivisions has threatened the aesthetics of numerous wilderness areas. Commercial and industrial development has eroded valuable agricultural lands and polluted scenic coastal areas. In an alarming number of cases large-scale development is occurring where there is little or no regulatory authority.¹⁰ Because of the size of many developments, local municipalities have been incapable or unwilling to manage land use where these projects are taking place.

Rather than attempt to prepare a land resource management plan for the entire State, several States have implemented control along functional lines. In the functional approach the act is aimed at a specific type of development (e.g., commercial, industrial, etc.) or at achievement of such aims as improved environmental quality or greater dispersion of low-income housing.

Typical of this approach would be authority vested in a state agency to approve or disapprove large-scale developments. Its most positive advantage is flexibility, since the requirement imposed by the regulatory agency can be specifically designed for the site and the type of development. Each site of development can be evaluated for a particular proposed use.

Maine is a prime example of this approach. Its coastal areas were being seriously endangered by proposed development of potentially polluting industries, oil refineries, and deep-water ports. Accompanying this probable despoliation of the Maine coastline was a rapid expansion of second-home subdivisions around inland lakes. The Legislature reacted in 1970 with the passage of the Site Location Law, as one of several environmental protection acts passed that year.

The law empowers the Environmental Improvement Commission with the authority to place conditions upon the use of particular sites or to prohibit the use of a site entirely if the potential effect on the environment warrants such actions. With few exceptions (notably public works projects) the law applies to all commercial or industrial developments consisting of 20 acres or more, or any

size development that may be a potential pollution source. "Commercial" also includes residential developments greater than 20 acres.

This approach provides a State with the opportunity to manage land resources of functionally defined problem areas without becoming involved in a more comprehensive program. High-priority needs can be immediately met, but it is likely that most States utilizing this approach will eventually find it necessary to develop overall guidelines through a comprehensive, statewide plan.

Massachusetts also has a program which falls into this approach, in which the State is empowered to override local zoning codes to bring about dispersion of low-income housing.

Approach C Management of Specific Geographic or Critical Areas

Some States contend that the need for land management responsibility above the local municipal level exists in only a portion of the State. The area may be geographically definable, such as a coastal, estuarine, or interior wetlands area. To date this type of management program has proven to be the most popular form of state activity. Twelve States have enacted legislation for regulation of wetlands and/or coastal and estuarine zones: California (San Francisco Bay area), Connecticut, Delaware, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, Rhode Island, Vermont and Wisconsin. This approach and the functional approach (Approach B) are similar in most respects, except that this approach is more definable on a geographic basis.

Delaware in 1971 enacted a very strong Coastal Zone Act (Ch. 70), which was urged by Governor Russell Peterson. Under the act all new heavy industry is banned from the coastal zone, a one- to six-mile strip along the Delaware Bay coast and the State's Atlantic Coast. Light industry is allowed by permit only. This action will have the effect of preserving the coastline for recreation and tourism.

Vermont has an interesting feature in the guidelines which are to be established for utilization of the lands and environment of the State. The State has determined that all residential, commercial or industrial development projects which are proposed for areas above 2,500 feet in elevation could endanger the quality of this area, and therefore must be reviewed by a district environmental commission for approval. This is in addition to the control of larger developments described earlier. Thus they have tied the statewide approach (see Approach A) together with the geographic or critical areas approach. The joining together of two or more systems of management is quite common.

Although oriented to target or high-priority problem areas, this approach might be criticized as being piecemeal in scope. States enacting legislation of this nature must ensure that they are not simply moving pollution and overdevelopment problems to another unregulated area of the State.

Approach D State Management of Uncontrolled Areas

In some States, the principal reason for direct state involvement in matters of land resource management is a result of the lack of involvement in such responsibilities by local governments. When zoning or subdivision authority has been ineffectively operated or perhaps totally lacking at the local level of government, some States have opted to create and enforce a set of minimum state standards for the uncontrolled or undercontrolled areas. Under this type of approach a State usually administers land use controls in all or a portion of unregulated county and municipal lands until such time as the county or municipality enacts regulatory legislation of its own.

The "Approach D" Colorado law is based on a clear distinction between local and state concerns for land management. It is assumed that counties and municipalities can best control use and development at the local level. However, where there is an absence of local land resource controls in the municipalities and counties where the 1976 Olympic games will take place, the Colorado Land Use Commission is empowered to promulgate regulations until such time as regulations of equal standards are adopted locally.

Oregon has enacted legislation which also vests temporary planning and zoning responsibility in the State. The State, through the Governor's office, is authorized to develop a comprehensive land use plan and zoning regulations for any land, "whether or not within a city," which is not regulated. In the event that a county or city governing body enacts regulations which meet or are stronger than the state standards, then the local regulations supersede those of the Governor.

This type of state activity is a positive program and effectively regulates previously unmanaged or undermanaged areas, but unless it is related to a more encompassing program, this approach is likely to be only a temporary solution to land resource problems, particularly in the more urbanized States. It avoids resolving two of the most basic concerns: (1) how to regulate projects of greater than local impact, and (2) how to avoid parochial planning practices which are harmful to areas outside the local jurisdiction.

Vermont, on the other hand, has also included this approach as part of its comprehensive land use law which was referred to in both Approach A and C. The act carries an incentive for localities to adopt a local plan, zoning ordinance or subdivision regulation. A definition of development states that when a municipality has adopted a permanent zoning ordinance and subdivision regulation, then a permit system would apply only to commercial and industrial developments of 10 acres or more. However, in the absence of local controls, a permit system would apply to commercial and industrial developments of one acre or greater.

Summary

In facing the need for greater state responsibility in the management of valuable land resources, States have devised several new tools in response to the problem. Some States reason a comprehensive approach to the problem is inevitable and more logical, whereas other States approach the issue somewhat more incrementally by focusing their efforts on more immediate functional or geographic problems. In some instances, States are attempting to improve local participation through state standards and the potential threat of state enforcement. The most effective way for a State to move is likely to be dependent on the existing need for state involvement and on its political readiness to take action against the scars of existing misuse, and the threat of impending misuse and pollution of its land.

It is apparent that many States are actively and viably testing new ideas in government. If and when the federal government enacts legislation on land use, it shall find that many States have already made significant efforts upon which effective intergovernmental land resource management can be built.

S. 77); the Power Plant Siting Act (Magnuson-Staggers Bill, H.R. 5277, 5389 and S. 1684); and the Development Bank Act (Patman Bill, H.R. 14639). This list is not inclusive, but does serve to illustrate the emphasis being placed on the subject area by Congress.

The bills most relevant to state involvement in land resource management will be discussed in brief in order to highlight features of significance to state government.

National Land Use Policy Act of 1971

The National Land Use Policy Act of 1971 (H.R. 4332, 4337, 4703, and S. 992),¹¹ introduced by Representatives Aspinall, Bennett, and Broomfield, and Senator Byrd, is an Administration bill. It proposes a national land use policy which would be implemented by the States. This bill is concerned with assisting the States, in cooperation with local governments, in developing land use programs including unified authorities, policies, criteria, standards, methods, and processes for dealing with land use decisions of more than local significance.

At the federal level, the bill would be administered by the Secretary of the Interior in coordination with the Secretary of Housing and Urban Development according to guidelines to be issued by the Council on Environmental Quality. Flexibility is provided to state governments; the responsibility would be assigned to a state agency designated by the Governor, but the agency must have the authority to regulate and to compel the implementation of plans prepared either by itself or by another state agency when local plans are unacceptable to the State. The Secretary of the Interior would be authorized to make annual grants for not more than two years to each State to assist in the development of a land use program and to make annual grants indefinitely for program management.

Each State would be required to implement a land use program which would provide: (1) a process for inventorying and designating areas of critical environmental concern (including the coastal zone, shorelands of major lakes and rivers, and scenic and historic districts) and areas impacted by key facilities (including major airports, highway interchanges, and recreational developments); (2) a method for exercising state control over the use of land within such areas through authority for state review and approval of plans affecting these areas; (3) a method for assuring that local regulations do not restrict development and land use of regional benefit; (4) a state policy for influencing the location of new communities and a method for assuring appropriate controls over the use of land around new communities; (5) a method for controlling proposed large-scale development having a significant adverse effect upon the environment; and (6) a state method for requiring review of the impact of all major federal and state actions significantly affecting the quality of the human environment. In addition, each State would be required to: (1) implement a system of controls and regulations pertaining to areas and development activities which are designed

Federal Legislation

Coinciding with the state legislative activity in land resource management has been the introduction of several bills to both houses of the 92nd Congress in 1971. These bills speak of the need for greater state involvement in land resource management, whether implemented by the more comprehensive bills which would provide an incentive for all States to participate or by bills somewhat more limited in scope, such as the coastal zone legislation. In each instance, the proposed legislation encourages States to play a greater role in the management of land within their jurisdiction; among other things this generally means some utilization of the police powers traditionally delegated to local governments. At a minimum, the bills would require participating States to adopt mechanisms to provide for effective coordination of policies and programs of land resource management at and between all levels of government.

The most comprehensive bills are directed toward the establishment of a national land use policy which would be implemented by the States; these include the National Land Use Policy Act (Aspinall-Bennett-Broomfield-Byrd Bill, H.R. 4332, 4337, 4703, and S. 992; and the earlier version bearing the same title, H.R. 2449) and the Land and Water Resources Planning Act (the Jackson-Meeds Bill, S. 632 and H.R. 2173). At this writing, it appears that the Senate Interior Committee may draft another bill combining features of these two.

In addition, a number of other bills have been introduced which if passed would have a direct or tangential impact on land resource relationships. These include: the National Coastal and Estuarine Zone Management Act (Hollings-Lennon Bill, S. 582, and H.R. 2943, 9229, and an earlier version bearing a similar title, H.R. 2492); the National Land and Water Inventory Act (Dingell Bill, H.R. 659); the Urban Growth and New Community Development Act (Ashley-Sparkman Bill, S. 3640 and H.R. 16647); the Balanced Urbanization Policy and Planning Act (Muskie-Dwyer Bill, S. 3228 and H.R. 13217); the National Coastal Zone Management Act (Tower Bill, S. 638); the Public Domain Lands Organic Act (Jackson Bill, S. 921); the Public Land Policy Act (Jackson Bill, H.R. 7211); the National Resource Land Management Act (Kyl Bill, H.R. 10049); the Mined Area Protection Act (five separate sponsors, H.R. 4704, 4967, 5689 and S. 993, 1176); the Mined Lands Restoration Act (Nelson Bill,

to assure that any source of air, water, noise or other pollution will not be located where it would result in violation of an applicable pollution standard; (2) provide a method for periodically revising and updating the state land use program; and (3) develop a detailed schedule for implementing all aspects of the program. The bill also provides for annual submission of the program to the federal government for review of eligibility for further assistance.

States complying with the bill would be required, as part of their land use program, to control, directly or indirectly, coastal zones and other shorelines, major growth inducing public developments, and other large-scale developments having more than local impact. The bill proposes to allow the States flexibility in the direction of implementation and at the same time provide incentives, without penalties, to induce state compliance.

A major characteristic of the bill is its stress on implementing a state land use program through any one or a combination of the following general techniques: state establishment of criteria and standards subject to judicial review and judicial enforcement of local compliance and implementation; direct state land use planning and regulation; and state administrative review of local land use plans, regulations and implementation with full powers to approve or disapprove. The national land use policy would also call for a consistency of federal programs with state land use programs.

Land and Water Resources Planning Act

The proposed Land and Water Resources Planning Act of 1971 (S. 632 and H.R. 2173), often referred to as the Jackson Bill, takes a somewhat different approach to land use planning and control than the Administration bill. One such apparent difference evolves from the fact that this proposal is an amendment to the existing Water Resources Planning Act (79 Stat. 244). Another difference is that this bill appears to place a greater emphasis on the preparation of a statewide land use plan.

More importantly, the Land and Water Resources Planning Act specifically declares the elements of a national land use policy. The policy would be to: (1) favor patterns of land use planning, management, and development which encourage the wise and balanced use of the Nation's land and water resources; (2) foster beneficial economic development in all States; (3) influence population distribution in a manner such that scenic, environmental, and cultural amenities are available to all people; (4) revitalize existing rural communities and encourage new communities; (5) assist state government in assuming land use planning responsibilities; (6) facilitate coordination of federal programs so as to encourage desirable patterns of land use planning; and (7) systematize the exchange of information to assist all levels of government in the development and implementation of the policy.

Under the bill a Land and Water Resources Council, composed of the Vice President and other members of the President's Cabinet and executive staff,

would be created. It would require, to some extent, the preparation of a national land use plan by requiring an inventory and continuing study of the land resources of the United States. The council would be required to review periodically provisions of statewide land use plans, state water resources planning programs, and interstate agency studies and plans. The bill would authorize the council to make land use planning grants to an appropriate single agency of the State which has statewide land use planning responsibility and any interstate agency which is authorized by federal law or interstate compact to plan for land use. Land use planning grants would be provided for the preparation of an inventory of the State's land and related resources, and compilation and analysis of information and data on various demographic, economic, ecological and developmental characteristics of the State. Further federal guidelines and requirements would be established in order for the State to retain eligibility for statewide land use planning grants after the end of five complete fiscal years. Similar requirements and provisions would be established for state water resources planning grants. A significant role for river basin commissions has been written into the bill.

As with the previously discussed national land use proposal, federal grants would be offered as incentives for state compliance. However, should a State not comply with the requirements of the act after five years, no federal agency could propose or undertake any new action, or financially support any new state administered project (airports, highways, water and sewer facilities, and other public works) which may have a substantial adverse environmental impact or would tend to irreversibly commit substantial land or water resources in that State, without thorough review to ensure that the project does not conflict with the objectives of the act.

National Coastal and Estuarine Zone Management Act

When reviewing federal legislation that would have a major impact on the role of state governments in land use management, the coastal and estuarine zone bill must also be considered (S. 582 and H.R. 2943, 9229).¹² The language of this bill, which would establish a national policy to assist coastal States in the management of their coastal zone, has recently been rewritten to conform to the general language of the Administration's land use bill. At the federal level, it would be administered by "the department in which the National Oceanic and Atmospheric Administration is operating." Grants would be available to States for planning and administration.

This bill, because it is more limited in geographic coverage, can be considered in either or both of the following ways: (1) as a bill oriented toward resolving land use problems in an area of high priority—the highly urbanized coastal areas—or (2) as a bill which is but an incremental step toward eventual implementation of an overall, national land use policy.

Considering that most of the Nation's population resides in the coastal

zones, the bill can be of assistance in combating problems of unguided urbanization which lead to ecological imbalance. Metropolitan areas such as Boston, New York, Philadelphia, Miami, New Orleans, Houston, Los Angeles, San Francisco, Seattle, and even Chicago all lie within these zones. But unfortunately the problems of other highly urbanized areas such as Pittsburgh, Cincinnati, Atlanta, St. Louis, Kansas City, Dallas-Fort Worth, Denver, and Phoenix would not be eligible for consideration under the bill. It would seem that a second bill designed to contend with the land use problems of the urbanizing areas of the interior would be needed to follow enactment of coastal and estuarine zone legislation.

If Congress sees fit to only provide a program covering a limited area, then perhaps this bill is a proper first step. However, if Congress recognizes that the problem of land resource management is not limited to any specific geographic area and determines that, if left unattended, the problem will only continue to grow worse, then one of the two more broadly based bills is likely to be enacted. Should the latter occur, the many positive elements of the Hollings Bill would be of assistance in providing for a more concentrated effort in the coastal zones. The congressional committees handling these different, but not totally conflicting approaches, could amend any of the bills to ensure that they would reflect the positive elements of the others.

Table 2 provides a brief comparison of the two major land use policy bills and the coastal zone bill.

The following bills relate less directly to the issue of the role of the State in land resource management than any of the previously discussed bills, therefore they will be referred to very briefly. As should be noted, these represent only a selected few of the numerous bills that were listed earlier.

Urban Growth and New Community Development

The Ashley-Sparkman Bill (S. 3640 and H.R. 16647) would establish an urbanization policy development organization in the executive branch, provide assistance for planning for population growth and urban development, establish a national urban development corporation to aid and undertake urban development projects, and provide assistance for land acquisition to control growth.

The Balanced Urbanization Policy and Planning

Under the Muskie-Dwyer Bill (S. 3228 and H.R. 13217), an urbanization policy development organization would be established in the executive branch and Congress. It would institute a comprehensive planning and coordination assistance program for States and local governments replacing the present 701 planning assistance program, and would amend existing planning requirements for grant-in-aid programs in an effort to eliminate inconsistencies and overlapping.

Table 2

COMPARISON OF SELECTED ASPECTS OF THREE
MAJOR LAND USE BILLS—92nd CONGRESS
(H.R. 4332, S. 632, and S. 582)
September 1971

Title	National Land Use Policy Act	Land and Water Resources Planning Act	National Coastal and Estuarine Zone Management Act
Bill Number	H.R. 4332 H.R. 4337 S. 992	H.R. 2173 S. 632	S. 582 (Print No. 2)
Sponsors	Rep. Aspinall Rep. Bennett Sen. Byrd	Rep. Meeds Sen. Jackson	Sen. Hollings
To be administered by	Secretary of the Interior, with HUD participation according to CEQ guidelines	Land and Water Resources Council	Secretary of the department in which the National Oceanic and Atmospheric Administration is located
State aid formula	1/1	9/1	2/1
Time element associated with federal funding	Program development funds for 2 years; program management funds thereafter	Federal share will be reduced to 2/3 after first 5 years from enactment	No program development funds 4 years after enactment
Requires some state authority over land management	Flexible; in all areas or only in critical areas	In all but major metropolitan areas	Coastal zones (including Great Lakes)

Public Land Policy Act

This Aspinall Bill (H.R. 7211) proposes to lay a foundation for implementing many of the recommendations of the Public Land Law Review Commission. It declares that the public lands of the United States shall be retained and managed, or disposed of, in a manner to provide maximum benefit for the public. The bill would set statutory goals and provide management principles of multiple use, sustained yield, and dominant use. The administration of the act would be coordinated by the Secretary of the Interior, and each public land agency would be required to pursue a program of land use planning. Further planning and coordination would be undertaken by federal public land use coordinating committees in each of 10 regions, and by regional interstate land use coordinating commissions for purposes of intergovernmental coordination. Planning and operational grants would be made available to States that establish a land planning commission and join a regional commission.

National Resource Land Management Act

This Administration bill, introduced by Mr. Kyl, treats the same subject matter as the bill just mentioned, except that it deals only with public domain lands and not all federal properties. Although it would provide for the sale of lands under extremely limited conditions, its emphasis is on retaining most public domain lands under principles of multiple use and sustained yield (which is also an underlying philosophy of the Aspinall Bill). The act would be administered by the Secretary of the Interior, who would be responsible for developing a land resource inventory and land use plans for public lands, with priority given to lands in critical environmental areas. The bill also provides for the enforcement of laws and regulations relating to the protection of public resource lands.

Summary

Considerable federal legislation has recently been proposed which would attempt to enhance or maintain the natural environment while fostering controlled development which follows proper ecological principles. Essentially, the basic premise behind the major land use bills is that a greater degree of coordination of policies and programs would solve many of our current economic, social and environmental problems and eliminate much of the existing waste of natural resources and duplication of effort.

Two major bills, the National Land Use Policy Act and the Land and Water Resources Planning Act, have been proposed which attempt to establish broad national land use policies for all geographic and functional areas. In both of these, state government would become the principal vehicle to implement the purposes of the bill. Basically, they each would (1) give authority to a federal

body to encourage States to develop land management policies and programs by offering grant-in-aid support, (2) seek to improve coordination of land use policies and programs at all levels of government, (3) protect environmentally critical areas, (4) control development for the greater future benefit of all, and (5) reduce the possibility of waste, despoliation of land and the inadequate provision for public facilities being caused by too narrow a geographically defined area of land management.

Several other bills have been proposed which would attack future growth problems of the Nation. Each has a limited scope bounded either geographically or functionally. The National Coastal and Estuarine Zone Management Act is a program designed to meet the needs of the coasts and estuarine areas of the Nation, but is a partial approach to a national land use policy and is reactive to critically endangered areas rather than a comprehensive approach to solve an overall problem. Numerous other bills exist that also have desirable elements which would be helpful in resolving specific problems, but they lack the comprehensiveness and/or geographic breadth necessary to fully contend with a rate of national urbanization and change which has no bounds.

The proposed federal legislation offers the States the opportunity to assume responsibilities in land resource management which properly belong to the States but which, except for a handful of States, have not been exercised. Most States appear ready to act, and with federal assistance new ways may be found to solve old problems.

incremental so that States can act in areas of greatest need and experiment in determining the most effective role of each level of government. As experience grows, then the capability of all the States to view comprehensively the use of land will increase.

Options for State Action

Introduction

A Flexible Approach Is Needed

If a federal land use act is passed by Congress which requires the States to actively become involved in land resource management, then the provisions of the act which refer to the role of the States should be flexible enough to permit a variety of state approaches to the task. The need and the degree of state involvement in land resource matters varies considerably from State to State, as does the cultural heritage and constitutional authority of the States. A rigid federal provision would force a condition upon the States with which they could not politically, administratively or financially comply. The meaningful purposes behind such an act would therefore be unachievable.

The States must have the time and opportunity to test the feasibility of a variety of approaches to land resource management. Because no State has the same degree of need and type of need as its neighbor, no proven way presently exists which is applicable to all States. For example, the upcoming 1976 Winter Olympics and the related development that the event is sure to spawn will create a greater need for state involvement in Colorado than perhaps in Kansas; and social demands dictate a different type of need in Massachusetts than the ecologically oriented needs which have been the apparent forerunner of Vermont's involvement. A flexible federal act which would provide the States with the necessary opportunity to experiment with a variety of ways to meet their particular needs is needed at this point in time. Despite the severity of the need for reorganization of responsibilities in land resource management, an overall lack of expertise dictates that much still remains which can be learned only through experiment and experience.

Action on Greatest Need

Unfortunately, the luxury of a completely comprehensive approach to statewide land resource management supported by full-scale statewide planning is not now politically, administratively, or financially adaptable to each and every State. In many instances, planning and legislative action may have to be

Land Resource Management Programs

Recent State Actions

Experience is increasing, as is indicated by the variety of different approaches being undertaken by a number of States in implementing land management efforts. The States of Hawaii (1961), Massachusetts (1963), Wisconsin (1965), Maine (1969), Oregon (1969), Michigan (1970), Vermont (1970), Colorado (1971), and Delaware (1971) have all taken major and innovative actions. New York State should also be mentioned here since the law which authorizes the activities of its Urban Development Corporation contains a provision (authority to override local zoning) related to state land management responsibilities. The New York constitution also protects the usage of a sizeable portion of the Adirondack Mountain area under a "forever wild" clause. It remains that all these experiences be adequately communicated among the States in order that each State may build upon the knowledge of its peers.

Types of Programs Available

Although most recent state efforts appear to center on the use of the police power, this is actually only one of an arsenal of techniques which might be employed in implementing a state land resource management program. As mentioned in an earlier chapter, some of the techniques which should be considered fall into the general classification of tax policies, facilities programming, and acquisition of land rights in less than fee simple. A State may choose to employ any one or any combination of these in developing its policy and plan, and in implementing its program. A State might also consider policies which would attempt to bring about a deployment of population or industry. It is important to realize that use of the police power is not the only route of implementation that might be considered.

Very little attention has been focused on tools such as preferential assessments, tax incentives, tax deferrals, special rates and special levies, but any State considering a land resource management program should consider these as alternatives. Reform of property tax procedures would bear a direct relationship to land use practices and should receive considerable attention.

A land resource management program might also include the use of a permit system which may be designed to: (1) control large-scale development by state permit, (2) control classes of development by state permit, (3) control development in certain critical areas by state permit, and (4) provide temporary control of development by permit until implementation of a comprehensive land resource plan by the State.

Which Level of Government?

All Levels Are Involved

An effective state land resources management program must involve all levels of government: national, state, regional or areawide, and local. In the fervor to act and be innovative, the States must not lose sight of the fact that the majority of land resource management responsibilities must of necessity still rest in the hands of local government. Ways must also be found upon which local land resource management techniques and tools can be improved.

Each State will have to determine if it wishes to ultimately assume the responsibility of land development in the State or if this should be left in the hands of local government. If the latter choice is desired, the State has the option of developing a temporary system of controls for the entire State or a portion thereof until such time as local controls are enacted or brought up to standard. This approach is particularly suited for sparsely developed States with few critical areas, and where the actions of one municipality have very little effect on another settled area.

Role of Sub-State Regions

Reform in land resource management is not solely a state-level responsibility, for regional approaches also merit considerable attention. Numerous possible adaptations for meeting specific needs on a regional basis undoubtedly remain to be uncovered. Existing programs obviously just scratch the surface in terms of potential types of regional or areawide action. The most prominent existing approaches are: (1) the Hackensack Meadowland Development Commission (New Jersey) which has control over the use of land in an area of meadows encompassed within 14 separate governments; (2) the San Francisco Bay Conservation and Development Commission which can control development within 100 feet of the bay; and (3) the Twin Cities Metropolitan Council which can suspend plans which are inconsistent with a metropolitan development guide for the Minneapolis-St. Paul area.

One of the members of the Council of State Governments' Land Use Study Advisory Committee suggests that:

In a state which is geographically large and diverse, regional organizations probably would be better able to respond to the peculiarities necessary for the development and implementation of a land use plan. Since there are regional agencies in being in most large states, they would provide a means of moving expeditiously into a land use management policy at a level above that of local government.¹³

Actions to Take

Study of State Needs

It might be helpful for interested States to assign a study commission or task force to assess the depth of the land management problem; to study the constitutionality of the issue; to determine if any, part, or all areas should fall under some form of state management; to determine the areas of responsibility of the state, regional and local governments; and to consider the best operational and structural means to institute a land resource management program. The study may or may not be coextensive with temporary land management controls. Any such study should point out those areas of the State that might be so obviously endangered that to delay a year or more while studying the problem more thoroughly would allow irreparable damage to occur. Under these conditions the study might suggest actions designed to temporarily meet these priority needs, as well as develop a longer range program.

Legislative and Executive Action

The initial impetus for a concentrated effort in land resource management can come from either the legislative or the executive branches of state government. A Governor may initiate some limited actions (e.g., task force studies, land use policy formulation and planning) merely by executive order. However, to establish a firm legal base and to ensure adequate funding States will find it necessary to enact legislation for the establishment of a permanent program, no matter how narrow or how broad in scope. The Intergovernmental Relations Committee of the National Legislative Conference has already come to the position that each State should:

1. Set policy and establish guidelines for land use within its borders, with particular emphasis on environmental considerations and balanced usage.
2. Direct the implementation of comprehensive local land use plans in conformance with such guidelines.
3. Reserve for itself direct determination of land use only in instances which it deems of impact or importance beyond the scope of a single locality to determine.
4. Set policy with regard to the creation of new communities.¹⁴

What Agency?

If a program is initiated, it must be resolved whether the function should be placed in an existing agency or whether a new agency should be created. It should be recognized that given the powers that are required in the pending national land use legislation, the agency to be vested with that authority will

likely play a major role in the determination of the future urban and rural development patterns of the State. Great caution must be exercised in the placement of such authority. If the parent agency is too single focused, then the potential of a broad program may never be realized. On the other hand, a more narrowly focused program (e.g., a wetlands act) might be adequately handled by a single-focus agency (e.g., a department of water resources). Another alternative might be for the authority to be decentralized, with the responsibility for land resource policy formulation to be assigned to a State's central planning office or another staff level agency and the responsibility for program administration resting with a special land management agency or one or more operating agencies.

If a new agency is to be formed, should land use be its only function or should it have broader responsibilities? In the former case, implementation may be more quickly realized, whereas in the latter case, a greater degree of comprehensiveness and overall effectiveness might be achieved. A State's existing organizational structure will partially dictate the answer to many of these questions.

A Plan or a Planning Process?

Although one of the major federal land use bills discussed in Chapter 3 places heavy emphasis on land use planning and the necessity of having a land use plan, the other bill seems to tone down the idea of a plan and perhaps attempts to stress planning as a process. In reality, planning includes both, for a plan is but one point in a planning process and is subject to continual change. Whether a State chooses to concentrate its efforts on critical areas or take a broader approach, it should still operate under the guidance of a relatively comprehensive policy, establish strategic coordinative mechanisms, and consider all possible options for implementation—and this takes planning. One note of caution, however, is that planning is not an end in itself and should be used to facilitate effective implementation. It should never be permitted to become so cumbersome that it retards implementation.

The Natural Resources and Environmental Management Committee of the National Governors' Conference has stated that state land use planning is needed because:

Across the Nation, a failure to conduct sound land use planning has required public and private enterprise to delay, litigate, and cancel proposed public utility and industrial and commercial developments because of unresolved land use questions, thereby causing an unnecessary waste of human and economic resources and a threat to public services, often resulting in decisions to locate utilities and industrial and commercial activities in the area of least public and political resistance, but without regard to relevant environmental and economic considerations.¹⁵

Conclusion

Control of land use has historically been one of the more local functions in the federal system of government, but local responsibilities have failed or been unable to contend with the land use pressures of a rapidly urbanizing Nation. State governments are being called upon to assume a new responsibility in land use management, and they have embarked on a period of experimentation with the issue. The proper role of the State is yet to be identified, and it is certain to vary from State to State, dependent on a State's overall need and current environment. The question of which tack a State should take when embarking on a land resource management effort is dependent on the type of need a State is experiencing, the political recognition and desire to respond to this need, and constitutional restraints. The latter factor is of extreme importance in determining, as an advisory committee member puts it, "the ability of the state to intervene in establishing land use policy, especially in any case involving the full faith and credit of the state."¹⁶

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

1. The historical information in this section is drawn from Aaron M. Sakolski, *Land Tenure and Taxation in America* (New York: Robert Schackback Foundation, 1954); V. Webster Johnson, *Land Problems and Policies* (New York: McGraw-Hill Book Company, 1954); V. Webster Johnson, "Planning the Use of Land Resources," and Raymond J. Penn, "Public Interest in Private Land," in J. F. Timmonds and W. G. Murray (eds.), *Land Problems and Policies* (Ames: Iowa State College Press, 1950); Roy M. Robbins, *Our Land Heritage, the Public Domain, 1776-1936* (Princeton, N.J.: Princeton University Press, 1942); Marion Clawson and Bunnell Held, *The Federal Lands: Their Use and Management* (Baltimore, Md.: The John Hopkins Press, 1957); and Richard F. Babcock, *The Zoning Game* (Madison: University of Wisconsin Press, 1966).
2. Allen Fonoroff, *The Preservation of Roadside Scenery Through the Police Power* (Montpelier: Vermont Central Planning Office, 1966), p. 15.
3. Johnson, *Land Problems*, p. 57.
4. Edward M. Bassett, *Zoning* (New York: Russell Sage Foundation, 1936), pp. 27-28. Some of the information in the following paragraph is also drawn from this source.
5. Chapter 205 (1961), Laws of Hawaii.
6. The report of the survey covers 38 jurisdictions of the 54 queried. Details will be published separately by the Council of State Governments.
7. William H. Whyte, "Easements and Other Approaches," *The Maine Coast, Prospects and Perspectives* (Brunswick, Maine: Center for Resource Studies, Bowdoin College, 1966), p. 68.
8. A number of studies have recently been completed which speak to the issue of varying state approaches to the exercise of police powers and other tools in land resource management. Among these are Elizabeth H. Haskell, *Managing the Environment: Nine States Look for New Answers* (Washington, D.C.: Woodrow Wilson International Center for Scholars, Smithsonian Institution, May 1971). This report principally treats the question of state environmental planning and in the course of so doing also covers existing state techniques to manage land resources. The report speaks of five techniques, listed here in order of weakest to strongest:
 - (1) Tax incentives to preserve open space.
 - (2) State criteria which local zoning authorities must follow.
 - (3) State controls over endangered areas or particular problem sources.
 - (4) State controls over land above a minimum acreage.
 - (5) Statewide land use planning and zoning.

Another set of alternative actions was developed in a recent report prepared by the Washington State Planning and Community Affairs Agency, *Toward a State Land-Use Policy for the 70s* (Olympia, Washington: Office of the Governor, January 1971). The report stresses the need for remedial state land resource legislation and examines critical areas where proper control mechanisms are failing or lacking. The following are suggested legislative alternatives:

- (1) Individual issue analysis: this alternative presents the possibility of continuing to act on one issue at a time in a relatively unrelated way.
 - (2) State or regional review: place new responsibilities for land use planning and control on local governments together with a new state (or regional) review (or approval) system.
 - (3) State guidelines: require the State to establish areas of critical concern together with guidelines for land uses within them; local government to plan and administer land uses in areas of critical concern but plans to be subject to a state review system before becoming effective.
 - (4) State land use commission: a proposal to establish a State Land Use Commission which would designate settlement, conservation and agricultural districts.
- A recently completed study by the Pennsylvania State Planning Board, *Land Resources, Policies and Programs* (Harrisburg, Pennsylvania: Governor's Office, August

1971), identifies three measures to influence or control the use of land. The report is a resume of land development, use and management statutes, regulations and practices. The identified measures are as follows:

- (1) Tax incentives: to encourage preservation of agricultural and open space lands and to indirectly influence the expansion of urban areas.
- (2) Establishment by the State of criteria for local government to implement: including (a) statewide criteria (as in the cases of Colorado and Oregon) and (b) selective criteria (i.e., floodplain and shoreline zoning, exclusionary zoning appeals, new communities).
- (3) Direct control by the State: including (a) statewide control (as in Hawaii, Vermont, and Maine) and (b) selective control (e.g., coastal zones and wetlands, drainage control, power plant siting, new communities and land assemblage, wilderness areas, strip mines, waste disposal, mobile home parks, and scenic easements).

A series of drafts is being prepared by the American Law Institute (Philadelphia) which deal with the subject of "A Model Land Development Code." One of the drafts ("Tentative Draft No. 2," April 1970) is basically a codification and modification of past planning and zoning law, whereas another ("Tentative Draft No. 3," April 1970) deals with the role of state interests in land planning and other land resource management matters.

A recently completed technical report by Eckbo, Dean, Austin and Williams, "A Comparative Analysis of Land Use Controls—A Summary," (San Francisco, August 1971), adds a new perspective in that, among other things it compares the planning and land use regulation system used by the State of Hawaii with significant planning and land use control efforts in other countries. The final report will contain conclusions made from a panel discussion on the subject of planning and land use held at the 1971 Annual Conference of the American Institute of Planners.

Although not attempting to establish an overall classification, the Council on Environmental Quality, in its second report, *Environmental Quality* (Washington, D.C.: U.S. Government Printing Office, August 1970) discusses regulation of land resources with particular emphasis on protecting wetlands and other key areas, restricting harmful development, and facilitating desired development. The latter item, despite its importance to the whole issue of land resource management, is often a forgotten consideration. It is as important a consideration as any other, and every State which embarks on any type of land resource program should be cognizant of this concern.

Finally, another report is close to completion which speaks to the issue of "the quiet revolution in land use control." The report, being written for the Council on Environmental Quality by Fred P. Bosselman, will provide a detailed description of the experience under some of the recent state legislation discussed in this report. It will be published by and available from the Council on Environmental Quality in early 1972.

Numerous other bodies are also beginning to focus attention on the role of the States in land resource management. As examples, the Federation of Rocky Mountain States has been concentrating on this issue for quite some time and there are reports that even the National Science Foundation is beginning to exhibit an interest in the subject.

In part, most of the above reports attempt to categorize state techniques in land resource management in order to clarify the relationship of one approach to another. Although the terminology may differ from study to study, most of the categorizations are classified in order of the weakest type of action to the strongest. The important aspect of any of these categorizations is that those state and even local decision-makers who are interested in land use reform have an opportunity to visualize the options available to them. Their commitment to pursue one technique or another will be dependent on a varying degree of factors existing in their State at any given time.

9. John A. Love before the Committee on Interior and Insular Affairs, 91st Congress, 2nd Session, *National Land Use Policy* (Washington, D.C.: U.S. Government Printing Office, 1970); as cited by Mike McCollum in *Zoning and Land-Use Policies: A Summary* (Cheney: Center for Urban and Regional Planning, Eastern Washington State College, April 1971), p. 292.

10. Russell E. Train. From a statement before the Senate Committee on Interior and Insular Affairs, May 18, 1971. (Mimeographed.)

11. This title also appears in H.R. 2449, introduced by Representative Aspinall, but the bill is an early draft, and is not likely to be advanced.

12. The definition of coastal and estuarine zone means the land, waters, and lands beneath the waters near the coastline (including the Great Lakes) and estuaries. There is no clarification of what is meant by "near" the coastline and estuaries.

13. Letter dated October 14, 1971.

14. National Legislative Conference, Intergovernmental Relations Committee, *Policy Positions and Final Report* (Washington, D.C.: Office of Federal-State Relations, August 1971), p. 27.

15. National Governors' Conference, *Policy Positions of the National Governors' Conference* (Washington, D.C.: Office of Federal-State Relations, September 1971), p. 36.

16. Letter dated August 13, 1971.