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COASTAL RECREATIONAL LAND USE: TRENDS, PROBLEMS AND SOME SOLUTIONS*

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INTRODUCTION

Human settlements have historically been situated on water to take advantage of commerce, transportation, water supply and waste dilution opportunities. Most of this nation's major cities are located either on the marine coast or near the Great Lakes with a few notable exceptions. Development has spread along the coasts linking centers of commerce. Therefore, recognizing California's profoundly linear shape, it is not surprising that 85% of California's population lives within thirty miles of the ocean.[1]

On the other hand, Texas appears to be more of an inland state with much of its population not living in or directly accessible to the coastal zone. Texas was, in fact, first penetrated and developed from the interior rather than from the coast. As a result of developing "inside out", development has been slow to reach the coast. As was pointed out in the 1971 Lemmon Report to the Texas House of Representatives, slightly more than half of the state's 1970 12 million population live within 100 miles of the coast.[2] This is a sharp contrast with the California situation and imperative. It is expected that over 12 million will reside in the Texas coastal zone by the year 2000. Nevertheless, today the Texas coastline is relatively undeveloped.

It is not only appropriate that we are discussing recreational land use at a time when the Texas General Land Office is planning for coastal management, but we are fortunate to be able to consider such a wide variety of control alternatives in Texas. In other states where the development pattern has been different, the alternatives are far fewer, with many ruled out entirely.

RELATED TRENDS

The projected growth in residency and/or development can be related to contemporary trends in travel and tourism, outdoor recreation and second home ownership:

Tourism

- About 114 million people, living in 41.3 million households took at least one trip during 1972. These 114 million travelers, in fact, took 237 million trips. They were out-of-town a total of nearly 1,782 million person-nights and traveled about 370 billion person-miles.
- Most travel was taken to visit friends and relatives followed closely by recreation, sightseeing and entertainment. Since the majority of Americans live near water and since waterbased recreation activities are the most regularly pursued, there is a considerable travel and tourism impact on coastal resources.
- Though regional destinations were probed by the U.S. Census, their breakdown was not fine enough to establish the within-region coastal zone tourism impacts. It is clear that the North Central and North East states were the greatest net "generators" of travel while the South with its tropical coastline was the greatest net "attractor".[3]

Outdoor Recreation

- Beginning with the 1962 Report of the U.S. Outdoor Recreation Resources Review Commission and subsequently reported in 1965 and 1970 by the U.S. Bureau of Outdoor Recreation (BOR) the simple recreation activities that require little or no equipment are the most popular.
- Water oriented activities like swimming, fishing, boating, canoeing,

sailing, and waterskiing continue to grow in participation trends. The BOR has reported that swimming, ranked second in 1965 in participation, was becoming so popular that it would be the most participated-in outdoor recreation activity by 1980. Water is the key element in outdoor recreation.[4]

Second Home Ownership

- In 1970, a total of 1.7 million U.S. households owned second homes. Though the trend toward second home ownership has probably declined with the recent economic slowdown, there is little data to reveal the extent of the response.[5]
- Other trends of concern to coastal planners include the conversion of second homes and developments to permanent use and the emphasis on multiple dwelling units and planned unit developments (PUDs) rather than single unit dwellings.[6]

These trends in tourism, outdoor recreation and second home ownership are particularly important in Texas where urban and industrial development have been slow to reach the coast. In other regions, these trends pose opportunities and problems above and beyond conventional coastal development.

PROBLEMS IN COASTAL RECREATIONAL LAND USE

There is a smorgasbord of recreational land use problems documented in the literature and the press. The fact that I am including the following as problems is not necessarily an indication that I consider them problems or that they are problems on the Texas coast, but rather that they are widely discussed coastal recreation land use problems.

The recreational land use problem that has received the greatest amount

of attention in the literature has been the lack of public access to the shoreline. Reflecting on sand as real estate agent Calwin Trillin noted (perhaps correctly) in his U.S. Journal that:

> "The fight for a foothold on Iwo Jima may have been the bloodiest of all, but Martha's Vineyard is no picnic either . . . In a soft economy the only safe investment is in a company manufacturing 'No Trespassing' signs . . . and any citizen can use the beach at East Hampton [Long Island] as long as he is willing to leave his car near Times Square and walk the rest of the way."[7]

These figures speak for themselves. Of the 60,000 miles of shoreline of the 48 contiguous states, only about 1/3 is considered suitable for recreation activities. Only 5.5 percent of this recreational shoreline is in public ownership, with three percent restricted for military uses and 91 percent in private ownership. When the total coastal shoreline of the 48 contiguous states is considered, less than 2 percent is in public ownership. On the entire Atlantic coast only 336 miles of shoreline are publicly owned for recreation, only three percent of the recreational shoreline.[8]

In Texas, gulf, bay and estuary shores total 2,498 miles at mean high tide line. Of this 2,498 miles, 82 percent is privately owned with the remainder in public ownership. The Gulf coast is a different story: while only 108 miles of Gulf shoreline is in public ownership (and this includes 80 miles of Padre Island National Seashore beach), the public enjoys the right to laterally utilize 270 miles of Texas shoreline. This is almost as much as is in public ownership on the entire Atlantic coast . . . where such lateral use rights don't exist.[9]

In addition to a general lack of shorelands in public ownership, there exists the problem of lack of perpendicular public access through riparian

private lands adjacent to public shorelands. Therefore, it is possible for coastal beaches to be in public ownership or for public rights established under an Open Beaches Act, and use to be severely restricted due to the inability to legally penetrate riparian lands. The extent of this problem in Texas with our Open Beaches Act will be discussed today by Congressman Eckhardt.

In addition to physical access, there is the problem of visual access to shorelands. In the Recreation Element recently prepared by the South Coast Regional Commission in response to Proposition 20 (California), it was noted that "roughly 20 miles of the 110 mile coast of mainland Orange and Los Angeles Counties have views blocked totally by structures".[10] For the large number of individuals who are not participants in water based activities, this lack of visual access is particularly critical. The lack of shoreland access, both physical and visual, is in my judgement, the major factor that insured the broad popular support necessary to pass Proposition 20 in California.

Competing resource uses often preclude coastal recreation. As the ORRRC Shoreline report pointed out:

> "Recreation and commerce, recreation and housing, recreation and industry, recreation and transportation . . . in most cases cannot be carried out in the same place. The practical and aesthetic requirements of clean water, adequate land area, safety and pleasant surroundings, and necessary recreation developments can rarely be assured in conjunction with commerce, industry, and transportation."[11]

Just as there are potential conflicts between recreation and other coastal resource uses, there are conflicts between different types of recreationists that are important to recognize and deal with. Many coastal recreation activities are not compatible and need to be planned apart through

facility development (and location) and/or activity zoning. This problem is partially the result of the lack of data available on coastal recreation activity. Data acquisition has heretofore only been carried out for national and statewide populations. These trends cannot be extended to the coastal zone and shoreland resources forged accordingly. Resources need to be carefully evaluated to determine the nature and extent of recreational activities they will support.

In addition to whether or not a recreation resource development decision is indicated, the development process is important. Often shoreland sites are practically destroyed during development. Vegetation is removed leading to erosion and other problems . . . natural systems are interfered with . . . insufficient waste treatment is provided . . . and usually a structure that is more compatible with an urban setting is constructed. The public sector has been guilty of much of this environmental manipulation and only with the recent passage of the National Environmental Policy Act (NEPA) are public development decisions being more carefully considered.

Consider the trade-offs between the larger planned unit developments (PUDs) and a checkerboard of private individual properties with dwelling units. Generally, PUDs are favored because of the public interest requirements they must meet prior to development. Private individuals are often exempted from these requirements - their development goes undetected and unregulated. Developers are responding, if only initially to get the necessary state permits. But in the long run, developers are recognizing that it cannot be business as usual when coastal shorelands are involved.

Lastly, there is the problem of the relationship of private enterprise and the public sector in providing coastal recreation opportunities. Many

feel that the state should not only declare the beaches open to the vegetation line, but that the state should purchase extensive riparian properties in fee simple to assure public access, even if the land is taken off the tax rolls . . . Many feel private developers and the recreation/tourism developments they create are inherently bad and seek to regulate them out of business . . . Many feel that only public agencies can provide for the public and provide public opportunities . . . Many developers feel that agencies are over-regulatory, making it difficult to make a profit and difficult for them to provide services. These attitudes need to be examined and changed if coastal resources are to be judiciously utilized and allocated for the public good.

SOME SOLUTIONS

Shoreland Access

In 1959, the Texas Legislature passed the Open Beaches Act. This Act established public rights in and to the area between mean low water and mean high water and established an easement in the public area up to the vegetation line. However, if there is no clearly discernable vegetation line or if it begins more than 200 feet from the mean low water line, the easement only extends 200 feet from mean low water. Also, this statute applies only to beaches on the Gulf side of an inland or tract. The public has thusly acquired a prescriptive right to lateral ingress or egress in the area. The littoral or riparian owner cannot exclude the public from this lateral access. It should be clear that nothing in the statute prevents a littoral owner from refusing ingress or egress over his land to reach the "public use zone" created by statute. This requirement is satisfied by existing or future public ways to be provided by county government.

The designation of a public zone and attendant public rights have historically been the cornerstone of state-funded access development programs - without such programs the public will be left wanting in their effort to exercise their public beach rights.

Texas, Oregon and California are fortunate to have "Open Beaches Acts" which establish the public's prescriptive rights to beach zones. The same concept is reflected in the pending National Open Beaches Act (HR 10395, HR 3088, HR 2120, and companion bills) now before Congress. These bills would recognize the public's right to use the dry sand area of the Nation's beaches up to the vegetation line or 200 feet inland where there is no vegetation line.

In those situations where perpendicular access to the public zone is limited and the public is only able to reach a selected public beach by making a long trek along the shoreline. There are several solutions:

1. Perpendicular public beach access across private property can be regained through law suit though each decision would apply to the specific parcel under question.
2. Public access can also be assured through the subdivision and development control process. Public access to the shoreline could be a condition in the approval of permits issued by a state or regulatory agency.
3. A good deal of private resistance to increased public access, particularly perpendicular access across private land, can be eliminated through grants of immunity for grantors of access easements to public entities.
4. Other means of increasing access include exercising the right of

public domain (though these powers are in jeopardy in many states), initiating legal action to enforce access rights, and fee payment in lieu of access dedication. Fees collected could then be utilized by public bodies to purchase fee simple access.

5. The private sector can help as well. To avoid sealing off parts of the coast for exclusive residential use while still allowing for living near the sea, hotel-motel lodgings, restaurants, and campgrounds should be given priority over second home development or at least those second home developments where rentals are not possible. These alternatives would allow a wider segment of the public to enjoy the coast and minimize potential degradation at the same time.

Environmental Impacts of Development

The National Environmental Policy Act (NEPA) was signed into law January 1, 1970 and requires all federal agencies to develop a detailed environmental impact statement for all major federal actions significantly affecting the quality of the human environment. Many states have responded with NEPA-like legislation pertinent to state development actions. In Wisconsin, for example, the State Bureau of Environmental Impact, an agency within the Department of Natural Resources, may require private interests like recreation developers to submit a detailed environmental impact statement prior to the granting of necessary permits. Within this framework, developers have responded with many progressive shoreland development proposals.

Shoreland Zoning

Shoreland zoning has been a legal device adopted in state programs in Michigan, Wisconsin and Vermont within the past 5 years. Shoreland Protection

Programs basically require every county in the state to have regulations for the protection of shorelands. County regulations must meet state guidelines. Attention is usually paid to 1) health and safety conditions for water recreation, 2) water surface demands, 3) requirements for waste disposal, 4) building setbacks, 5) preservation of shore growth and cover, and 6) conservancy uses for lowlying lands. While the rhetoric of the statute is often progressive, the states often lack enforcement power. The power to insure compliance with the zoning ordinance often lies in the hands of the local district attorney or county counsel and is often not exercized. Without making a case for state control of zoning, there appears to be a role for a regional authority in the regulation of shoreland zoning.

Coastal Recreation Planning

The Texas Department of Parks and Wildlife has nearly completed their recent statewide outdoor recreation demand study. There will be a coastal recreation volume. This is the beginning of a new focus in statewide outdoor recreation planning - a focus on the coastal zone. To deal with the available supply and demands exerted within the coastal zone, additional data sources and considerably more research will be required. It is difficult to guide coastal marina development, for example, when we don't know 1) how many marinas are on the Texas Gulf Coast with how many slips, 2) how many registered boats utilize the coast with what regularity and 3) how many sailboats are operating in coastal waters since sailboats are unregistered as such in Texas. The planning point should be clear. Without clear understanding of coastal recreation resources (supply) and the demand for these resources, planners are unable to realistically project resource and facility needs.

CONCLUSION

There are many more problems and solutions that can and should be considered in guiding coastal recreation land use. The Coastal Zone Management Act of 1972 (PL 92-583) establishes state governments as the focal point of coastal zone management. Specifically, states are directed to establish permissable land and water uses, inventory and designate particular areas, identify controls over land and water uses and guidelines on priority of uses.

Proposition 20 has gotten California off and running in the formulation of their coastal management policy. Their regional recreation planning elements are an excellent indication of the kind of recreation planning and management directions that must be considered if coastal resource use is to be optimized in the future. Also, worthy of mention are the numerous opportunities open to the public to comment prior to the recreation element going to the state level - even at the state level, there are several opportunities for public comment and involvement.

The very fact that this conference is being held and that you are here attest to the critical importance of recreation and tourism in upcoming coastal management deliberations. This is the first of many discussions on this topic - discussions that will bring private enterprise and public sector representatives closer in search of solutions.