Coastal Zone
Information
Center

10925

report 6

MAY 1977

COASTAL ZONE
INFORMATION CENTER

SEP 19 1977

A Summary of STATE LAND USE CONTROLS

Land Use Planning Report

HD
170
.S89
1977

RAYMOND H. SWAN, Editor • JANE T. CASAZZA, Associate Editor

Land Use Planning Report

PO BOX 1067, Blair Station
Silver Spring, MD 20910

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Copies of this Report 6 are available for $15.00 to subscribers of **LAND USE PLANNING REPORT** and $18.50 to non-subscribers. Library of Congress card no. 4265965. Make checks payable to Business Publishers P.O. Box 1067, Silver Spring, MD 20910.

Copyright 1977 Business Publishers, Inc.

10925

Property of CSC Library

JUL 24 1997

COASTAL ZONE
INFORMATION CENTER

CONTENTS

Introduction..... 20:003
Alabama..... 20:005
Alaska..... 20:005
Arizona..... 20:006
Arkansas..... 20:006
California..... 20:007
Colorado..... 20:008
Connecticut..... 20:009
Delaware..... 20:011
Florida..... 20:011
Georgia..... 20:012
Hawaii..... 20:012
Idaho..... 20:013
Illinois..... 20:014
Indiana..... 20:014
Iowa..... 20:015
Kansas..... 20:015
Kentucky..... 20:016
Louisiana..... 20:016
Maine..... 20:017
Maryland..... 20:017
Massachusetts..... 20:018
Michigan..... 20:019
Minnesota..... 20:020
Mississippi..... 20:021
Missouri..... 20:021
Montana..... 20:021
Nebraska..... 20:022
Nevada..... 20:022
New Hampshire..... 20:023
New Jersey..... 20:023
New Mexico..... 20:024
New York..... 20:024
North Carolina..... 20:025
North Dakota..... 20:026
Ohio..... 20:026
Oklahoma..... 20:027
Oregon..... 20:028
Pennsylvania..... 20:028
Rhode Island..... 20:029
South Carolina..... 20:030
South Dakota..... 20:031
Tennessee..... 20:031
Texas..... 20:031
Utah..... 20:032
Vermont..... 20:032
Virginia..... 20:032
Washington..... 20:033
West Virginia..... 20:034
Wisconsin..... 20:034
Wyoming..... 20:035

U.S. DEPARTMENT OF COMMERCE NOAA
COASTAL SERVICES CENTER
2234 SOUTH HOBSON AVENUE
CHARLESTON, SC 29405-2413

Land Use Planning Report
HD170.S89 1977
#12225839

INTRODUCTION

Despite increasing evidence that Federal land use legislation may not be adopted in the near future, many states considered and adopted numerous land use related proposals in 1976, most of which were aimed at increasing state controls over specific types of development or geographic areas of statewide concern. Some land use commentators are now suggesting that past Federal land use bills have been overtaken by single-function state planning programs, the availability of Federal funds from other sources such as the HUD 701 comprehensive planning program, and changing economic conditions which have slowed housing and other projects and reduced local development pressures.

That view is far from unanimous -- no opinion ever is in the field of land use control -- and other observers have suggested that the proliferation of Federal and state single-function programs only increases the need for coordination which might be provided through land use legislation advocated by Sen. Henry Jackson (D.-Wash.) and Rep. Morris Udall (D.-Ariz.).

As noted at a December 1976 Conservation Foundation conference on state land use policy, the relationship between planning and subsequent regulation is coming under increased scrutiny, particularly at the state level. In several cases, such as California's coastal zone conservation program, initial results of interim regulation have provided important guidance in the development of more permanent plans. However, in most states regulatory programs and proposals are based on prior planning, especially at the local level.

There appears to be broad trend away from comprehensive land use programs, particularly those giving state agencies extensive authority in decision-making. Instead, legislation establishing specific substantive and procedural standards is being emphasized, generally for the protection of certain kinds of lands or the regulation of particular types of development.

Related to this trend is a clear movement toward simplification of state regulatory programs. Wyoming, for example, has adopted power plant siting legislation setting deadlines for decisions on project applications. States are beginning to adopt shorter application forms requiring less paperwork, holding joint hearings by state agencies with overlapping jurisdiction, and improving coordination among those agencies.

Clearly, no state has achieved a true "one-stop shopping" system for controlling major projects, but some states seem to be moving in that direction. States which are considering the adoption of regulatory "sticks" would be well-advised to include "carrots" such as simplified regulatory procedures to gain the support, or at least reduce the opposition, of affected real estate and industry groups. Procedural simplification appears to offer benefits for environmentalists also, particularly those who entering the land use arena at the state and local level for the first time.

Such citizen participation is also gaining increased emphasis. Several states, driven in part by consumer protection advocates, are considering proposals to provide financial and technical aid to private citizens to encourage public participation in land use decision-making procedures. In any event, requirements for citizen participation similar to those in the Coastal Zone Management Act will almost certainly be included in any Federal land use planning assistance bill.

An informal poll of state planners indicates that the "taking issue" does not represent an obstacle to increased land use controls in and of itself, although the issue clearly is an important element of private sector opposition. The taking issue is frequently a point of hot debate in state legislatures, and there are efforts underway in some states to explicitly require compensation for any loss in land values, but so far legal claims for compensation have not fared well in the courts. Some observers suggest, however, that the compensation issue may have to be clarified if Federal legislation is to be adopted.

Largely because of the sharp increase in Federal, state and local land use controls adopted during the 1970s, the body of land use law has expanded dramatically -- and chaotically. Particularly at the state level, there are numerous conflicting concepts regarding the proper role government should play in controlling private development and ensuring the attainment of social goals such as adequate low-cost housing. Within this context, 1976 saw what in our view was a disappointing performance by the U.S. Supreme Court. Through a series of non-decisions coupled with opinions which left many questions unanswered, the court provided little legal guidance in a field which desparately needs consistent concepts as a basis for regulation. It is not only state and local governments which would benefit from such guidance; developers, environmentalists, fair housing advocates and community groups seeking to preserve their local status quo would probably come out ahead in the long run if the court had provided clear ground rules on a number of issues, such as: administrative vs. legislative land use controls; local responsibilities in meeting regional housing needs; and conditions under which governments may withhold public services required by new development.

In February 1976, the Supreme Court refused to review an appeals court ruling which upheld a Petaluma, Calif. ordinance limiting residential development. In upholding the measure, which permits 500 new residential units annually for five years, the appeals panel concluded that "the concept of the public welfare is sufficiently broad to uphold Petaluma's desire to preserve its small-town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace" (**Construction Industry Association of Sonoma County v. City of Petaluma**, 75-923).

In another case, potentially more troublesome in our view, the court refused to review an Eastlake, Ohio charter provision requiring a 55% vote in a referendum before zoning changes could be approved (**City of Eastlake v. Forest City Enterprises**, 74-1563). In that case, Justice Lewis Powell's dissent noted that the procedure "appears to open disquieting opportunities for local government bodies to bypass normal protective procedures for resolving issues affecting individual rights."

While the Petaluma plan, with its criteria for allocating building permits, is at least somewhat rational and allows developers avenues for appeal, the Eastlake referendum procedure permits zoning change applications to be rejected essentially without justification. More disturbingly, the applicable rulings in these cases gave scant consideration to the impact that the local policies might have on regional housing and development. We are not recommending that the courts establish quotas or other goals with which local governments must comply; we are suggesting, however, that the courts should require localities to consider such regional impacts when they devise and implement their growth management strategies.

Efforts to meet low- and moderate-income housing goals suffered a setback in January as the court ruled that local land use controls may not be overturned solely because they tend to exclude minorities and other low-income groups. Intent to discriminate must first be proved, the court said (**Village of Arlington Heights v. Metropolitan Housing and Development Corp.**, CA 7 517 F2d 409). The decision surprised few land use commentators, most of whom expect the decision to force much land use litigation back to the state courts, reversing recent trends which have seen increased Federal legal review. In the absence of clear guidance from the Supreme Court, state jurists will be expected to clarify state and local governments' rights and duties in curbing development.

Whatever else state land use programs may have done, they have surely begun to change the state-local relationship in the regulation of development. Although some local officials no doubt feel that their states are usurping their land use powers, in fact local government is still very much in control in most states. The obvious examples of increased state control such as California, Florida and Hawaii tend to obscure the fact that localities wield the bulk of land use authority.

It is doubtful that a substantive land use program can be adopted, let alone implemented, by most states without at least some support and cooperation on the part of localities. Given the history of land use regulation in the U.S., states will be able to reserve full powers only in cases where there is some clear statewide interest, or where the impacts of proposed projects clearly overwhelm localities' regulatory capabilities.

States seeking to adopt broad guidelines for new local planning should plan on providing meaningful financial and technical assistance to localities. Although some state planners have complained about inadequate support, lack of funding does not seem to pose a major obstacle for most state planning programs. At the local level, however, few jurisdictions are in a position to start new planning opera-

©1977 Business Publishers, Inc.

tions. This is a particularly difficult problem for traditionally rural localities which are confronted for the first time with major impacts from projects such as power plants, mines and other large-scale facilities. Several states are considering new local planning requirements based on state guidelines as a key element of their land use programs. As a practical matter, states taking this course must be prepared to aid localities, particularly those which have done little or no planning in the past. On the other side of the coin, state initiatives have clearly spurred localities to improve their land use plans and planning capability over the last few years.

Many land use commentators expect state actions to become increasingly important, particularly if enthusiasm for Federal legislation continues to wain. As noted by some Congressional aides, national legislation does not enjoy strong support from groups other than professional planning organizations. In addition, government reorganization efforts underway in President Carter's Administration could lead to improved coordination of Federal programs impacting land use, in effect achieving one of the goals of the Jackson-Udall bills.

Congress does not appear inclined to undertake any meaningful review of Federal land use programs to improve coordination. Most legislative efforts so far amount to "mid-course corrections" of existing environmental legislation with little attention being given to unifying current laws. Pending Clean Air Act amendments may make some sense out of the maze of air quality planning programs and requirements, but Congress and the Administration will be hard-pressed to work out compromises to continue current programs, let alone provide real coordination.

The Carter Administration is apparently satisfied with this arrangement, or at least is not aggressively advocating any alternative approaches. Carter will probably reinforce the single-function strategy for land use control, based on initial reports regarding his environmental policies. Carter can be expected to oppose the use of Federal funds for projects which would consume prime farmland, wetlands, and floodplains if alternative sites are available, a policy which conforms with positions taken during his campaign.

Regardless of the prognosis for new Federal land use and environmental proposals, most commentators agree that existing Federal programs require increased coordination. Given the proliferation of laws and the lack of enthusiasm for more stringent controls, environmental protection advocates might do well to consolidate the gains made since 1970 and improve the implementation of current regulatory efforts before embarking on new initiatives.

As noted by the Conservation Foundation, the "quiet revolution" in land use control identified by Fred Bosselman and David Callies in 1971 "is not universal but it is by no means dead." States can be expected to continue reacting to particular land use problems with special purpose programs. But in the long run, it appears that industry and government must reach agreement on unifying currently unrelated programs to provide more rational and efficient regulation.

For more detailed consideration of Federal regulations, state laws and citizen participation, we recommend the following publications, most of which were published in 1976 and early 1977:

Federal Land Use Regulation, Fred P. Bosselman, Duane Feurer, Tobin M. Richter. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019, (212) 765-5700; $35;

Environmental and Land Controls Legislation, Daniel R. Mandelker. Michie Co., P.O. Box 7587, Charlottesville, Va. 22906, (804) 295-6171; $15.50;

Land Use and the States, Robert G. Healy. Resources for the Future, 1755 Massachusetts Ave., N.W., Washington, D.C. 20036; $2.95;

Citizen Involvement in Land Use Governance, Nelson M. Rosenbaum. The Urban Institute, 2100 M St., N.W., Washington, D.C. 20037; $3.50 (URI 11500);

Land Use Controls in the U.S. -- A Handbook on the Legal Rights of Citizens, Natural Resources Defense Council. NRDC, Box B, 15 W. 44th St., New York, N.Y. 10036; $7.95.

©1977 Business Publishers, Inc.

ALABAMA

There was little action on land use related legislation in Alabama during 1976, primarily because of the absence of Federal proposals and special concern over the economic effects of environmentally related legislation. Earlier, a legislative commission on land use had recommended that no new measures be considered.

Strip mining legislation adopted in 1975 "still appears to be a positive mechanism to regulate mining near major lakes and other recreation areas," planning officials say. The act requires revegetation of mined land, although provisions authorizing the state to designate and protect areas unsuitable for mining were deleted.

Land Use Policy

Although the legislature has been reluctant to consider general land use legislation, the state's participation in specialized programs such as the national flood insurance effort has increased markedly. State law authorizes the preparation of comprehensive land management and use plans for unincorporated flood prone areas. County commissions are similarly authorized to meet requirement of the 1968 National Flood Insurance Act, and may develop criteria for land management and use.

So far, 232 communities and 31 countries are participating in the Federal flood insurance program. State participation has increased sharply, "stimulated in large part by initial imposition of Federal sanctions against communities failing to meet their deadlines," according to state officials. Alabama is providing technical assistance to communities, and is working with Federal agencies to obtain flood hazard information "in an effort to maintain an environmentally sound pattern of growth in and around" flood-prone communities. The state has identified priority flood study areas, and is attempting to advance flood-prone localities from the emergency program to the regular phase of the program.

The flood control program is viewed by some state officials as a possible vehicle for court mandated land use controls. "It is not inconceivable that courts will utilize the floodplain zoning situation to demand that different political units work together to achieve comprehensive land use planning and zoning." "Floodplain and Coastal Area Land Use Controls" is available from the Planning Division, Alabama Development Office, State Office Bldg., Montgomery, Ala. 36104.

Coastal Zone Management

Major revisions in Alabama's coastal zone management legislation were adopted in 1976. The state's CZM program was authorized in 1973 with the adoption of Act 1274. The legislation established the Coastal Area Board with authority for developing, coordinating, and maintaining a coastal area program, and provided for the promulgation of regulations for enforcing the act. The state Planning Division was designated to carry out the CZM program.

In response the requests from various coastal area groups, the 1976 legislature repealed Act 1274 and passed an amended coastal area development act which was signed into law Aug. 23, 1976, by Gov. Wallace. Act 534 created an advisory committee composed of 14 citizens representing varied coastal interests, with the advisory committee chairman having voting powers on the CAB. The composition of the board was also changed to provide more representation by local officials and representatives of other state agencies with an interest in coastal management.

Act 534 also defines the Alabama coastal zone as the area lying seaward of the 10-ft. contour line. The measure also provides for CAB staffing and the orderly transfer of authority between the state Development Office and CAB.

Alabama officials say they are continuing to concentrate on unregulated development in wetlands, shoreline erosion, storm damage and flooding and competition among industrial, commercial, agricultural and residential developers for coastal lands.

Data gathering efforts are continuing on the problems of commercial, residential land industrial development, recreational facilities, mining, transportation, navigation, solid waste disposal, agriculture and commercial fishing. Data will be used to develop policy goals within each area. These policies are expected to serve as the basis for determining permissible and priority uses within the coastal zone.

Allocation of coastal resources and a reduction of irreversible resource commitments are prime objectives of the state CZM program.

ALABAMA LAND USE CONTACTS: Bill J. Starnes, Director of State Planning, (205) 832-6400; William H. Wallace, Jr., State Planner, (205) 832-6400; Bill Matthews, (205) 832-6400; Alabama Development Office, State Capitol, Montgomery, Ala. 36130.

ALABAMA COASTAL ZONE MANAGEMENT CONTACT: Luther W. Hyde, Resources Use Planner, (205) 832-6400, Alabama Development Office, State Capitol, Montgomery, Ala. 36130.

ALABAMA FLOOD INSURANCE PROGRAM CONTACT: Sherman Shores, Resources Use Planner (205) 832-6400, Alabama Development Office, State Capitol, Montgomery, Ala. 36130.

ALASKA

Development of natural resources and control of related land use impacts are the main land use issues in Alaska, and Outer Continental Shelf oil and gas development has become the most pressing problem, according to state officials who say the state is not fully prepared to plan and regulate new development associated with energy and mineral projects. The state has been among the most vocal advocates of Federal planning and coastal zone management aid, and state officials say Federal assistance is needed immediately. The state got some relief as the Interior Department agreed to delay OCS lease sales, but officials say they will still be hard pressed to provide public services for new energy development.

Land Use Policy

The Native Claims Act authorized Alaska natives to select 40-million Federally owned acres, and Interior has set aside more than 100-million from which aboriginal claims will be settled. The act also calls for Federal designation of at least 80-million acres for parks, wildlife refuges and national forests.

Conservation groups have recommended preservation of some 100-million acres of wilderness, while the Interior Department has urged Federal ownership of about 83.5-million acres, 19-million of which would be under U.S. Forest Service supervision for logging and mining. Conservation groups including the Sierra Club say their recommendations will permit the protection of "complete ecosystems" and will link near-contiguous land units and permit more efficient management.

Opponents of the conservationists' plan contend that it will "lock up" natural resources and prevent development needed to bolster Alaska's economy.

Under the Alaska Native Claims Settlement Act and Statehood Act, the state is selecting up to 104-million acres of Federal lands which will be placed under state control. Interior officials have granted the state an extension until April 1 to exercise its exclusive preference right to select land. State claims will take precedence over Alaska native claims if there is a conflict.

Coastal Zone Management

Alaska continues to dispute the offshore oil leasing schedule currently established by the U.S. Interior Department, and is negotiating with the agency to slow the pace of future Outer Continental Shelf development, although initial lease sales were held early in 1976. State officials are cautiously optimistic that a "more acceptable lease schedule" can be worked out.

Interior is proceeding with an environmental impact statement on the program, and exploratory drilling activities are now under way in the Gulf of Alaska and the Bering Sea. "The first wave of onshore changes is beginning to touch coastal communities" near planned OCS development sites, according to officials of the state

©1977 Business Publishers, Inc.

Division of Policy Development and Planning.

Coastal management in Alaska, meanwhile, continues in its program development phase. The second round of coastal management bills introduced in the 1976 legislature again failed to pass. However, a resolution was adopted establishing a joint legislature administration committee to review coastal management. The resolution acknowledges the unique qualities of the numerous pressures on coastal resources, opening the door to future legislation to deal with coastal issues, state officials say.

Because of the great expanse and diversity of the Alaskan coastline and because of the varying pressures on the needs for coastal resources, the state is emphasizing the role of local planning in coastal management. State guidelines for local planning are being developed "to allow local flexibility to address the problems of particular relevance in each area," including offshore oil development and other resource management issues.

The Alaskan coastal management program is now being developed with a $920,000 Federal grant for the state's third year of work under the Federal Coastal Zone Management Act. CZM activities are handled by the Division of Policy Development and Planning in the governor's office. The division primarily plans a coordinative role, assisting other state agencies responsible for coastal resources, local governments, and Federal agencies managing coastal resources and lands. The state anticipates completion of its coastal management program in 1978.

Alaska officials envision a two-level management program, including overall management for the entire coast, and "intensive management" for coastal areas faced with rapid urban and industrial development.

ALASKA LAND USE CONTACTS: Robert LeResche, Director, (907) 465-3512; Katherin L. Allred, Senior Planner, (907) 465-3512; Division of Policy Development and Planning, Office of the Governor, Pouch AD, Juneau, Alaska 99801.

ALASKA COASTAL ZONE MANAGEMENT CONTACT: Glenn J. Akins, Coastal Management Program Coordinator, (907) 465-3574; Division of Policy Development and Planning, Office of the Governor, Pouch AD, Juneau, Alaska 99801.

ARIZONA

During 1976, the state legislature virtually ignored a reintroduced bill which would have designated geographic areas and certain land uses of state concern. The legislation was bogged down during 1975 over the issue of compensation for landowners affected by state regulation, and the legislature refused to reconsider the measure during 1976.

There has been speculation that similar proposals will be introduced in the legislature for consideration in 1977, but state officials are uncertain what form the bills will take, or if they will be approved by the legislature.

Land Use Policy

Arizona planning officials are concentrating on coordinating existing planning programs and authorities to develop unified growth policies for consideration by Gov. Raul Castro. The state is attempting to assess the impact of single-function programs in air pollution, water quality, economic development and 701 comprehensive planning. Officials have noted that land use controls "are already there," and must be coordinated.

Energy Facilities and Lands

Arizona voters overwhelmingly defeated a November referendum which would have required legislative approval before new nuclear power plants could be sited in the state. The question was approved for voter consideration after a citizens group, Arizonans for Safe Energy, won a Superior Court test against Arizona Public Service Co., a major utility which sought to keep the proposition off the ballot. APSC and several other concerns are currently planning three large reactor units along the Salt River.

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

ARKANSAS

Under Gov. David H. Pryor's Administration, land use planning is considered a local issue which should not be substantively addressed by state government. State officials are currently preparing to provide mapping and technical assistance to states under constitutional amendments giving counties increased autonomy over issues such as land use.

Land Use Policy

Under state constitutional changes, all 75 Arkansas counties will be granted home-rule authority. Effective Jan. 1, 1977, counties will automatically have the authority to implement programs through legislation, including land use controls, unless prohibited from doing so by state law. County planning legislation has been authorized by the state since the mid-1930s. State officials have expressed hope that "planning will be made a functional part of the overall local governmental process."

Gov. David Pryor has consistently contended that land use planning and regulation is a local issue to be handled either by municipal or county agencies. Pryor has opposed efforts to adopt state legislation, in contrast to his predecessor, Dale Bumpers, who left office to take a Senate seat.

Less than half of the state's counties currently have planning commissions. Most localities have resisted planning either at the state or local level. State officials generally feel that Arkansas is not faced with the kinds of growth and development pressures which have led to the enactment of planning laws in states such as California, Oregon or Florida, and no state legislation is expected unless required by Federal law.

At the state level, technical assistance continues to be the thrust of the Department of Local Services' natural resource management program. As part of that program, local land use and ownership maps are being prepared for distribution to all counties. The maps, a part of the state's natural resources inventory system, are based on the U.S. Geological Survey's land use data analysis program, and are augmented by statistical data.

Energy Facilities and Lands

State officials are currently investigating the usefulness of the vast deposits of lignite, or brown coal, found in Arkansas. U.S. Bureau of Mines estimate of lignite reserves, made in 1954, totaled some 25-million tons, but that has been updated to about 10.5-billion tons by state geologists, and officials say the reserves have attracted the interest of utilities such as Arkansas Power and Light Co.

Because of its relatively low Btu content, officials do not expect Arkansas lignite to be mined immediately, unless the cost of more efficient fuels increases sharply, although lignite development is expected to play an important role in the state's long-term economic plans. Lignite strip mining would consume considerable acreage, since more brown coal would have to be mined to generate the same amount of energy produced by other fuels.

The impact of the additional mining might be more severe, since mining would take place near areas more densely developed than regions such as those in Wyoming which have experienced mining-related growth.

©1977 Business Publishers, Inc.

ARKANSAS LAND USE CONTACTS: Ronald Copeland, Director, (501) 371-1211; Tom Herrin, Deputy Director for Community Development; Department of Local Services, Suite 900 -- First National Building, Little Rock, Arkansas, 72201; Bert Wakely, Coordinator, (501) 371-2611; Office of State Planning Coordination, American Foundation Bldg. Fourth and Ringo St., Little Rock, Ark. 72201.

CALIFORNIA

Despite signs that environmental enthusiasm is waning somewhat, California retained its position as one of the states most active in land use planning and regulation. Coastal zone management legislation was finally adopted after some initial setbacks for advocates of state controls, indicating that concerns over regulation's impact on the economy, especially the construction industry, are strong.

The state Supreme Court also upheld localities' authority to adopt virtual bans on new construction if public facilities are inadequate, although that issue must still be resolved by the U.S. Supreme Court.

Broad state land use policies are being finalized, aimed at concentrating new development near existing urban areas and revitalizing older urban centers. Farmland preservation legislation, rejected by the state legislature, will be reintroduced, and may prove to be the primary land use issue for 1977.

Land Use Policy

Gov. Jerry Brown's Office of Planning and Research is in the process of drafting a report recommending land use policies and specific actions that state, regional and local government agencies will be called upon to implement. Included in the report are proposals requiring industry to use urban facilities and sites approved by regional and state agencies; local redevelopment agencies to undertake or finance new construction for private use largely with state funds and ensuring decent housing for low-income residents; taxes to discourage rural land speculation; and cities to share property and sales tax revenues.

OPR Director William Press said the plan is based on the fact that California "has become the world's symbol for urban sprawl... and we can no longer continue to grow that way. We've got to move toward a more compact urban form and revitalize existing urban areas." The areas that will be most affected by the plan are Los Angeles, San Francisco, San Diego, Sacramento, Fresno and Bakersfield, where more than 90% of the state population lives, Press noted.

To achieve this more compact urban form, the report advocates rebuilding deteriorating inner city areas, utilizing vacant urban land and development of new areas adjacent to existing urbanized areas, with no leapfrog development. Press said he expects opposition to the plan from growth-oriented organizations, but contended such opposition will be ill-found. The study is "not a no-growth report, it's a managed growth report. It just says it makes more sense to build 'here' than it does to build 'out there.'"

Copies of the report will be available from the California Office of Planning and Research, 1400 10th St., Rm. 256, Sacramento, Calif. 90254.

The state Supreme Court has upheld a Livermore referendum and ordinance which prohibits new home construction until schools, sewage disposal facilities, and water supplies meet certain standards to support new development. The land use controls, upheld 5-2, were challenged by area developers (**Associated Homebuilders of the Greater Eastbay, Inc., v. City of Livermore**, SF-23222). Plaintiffs contended that the city did not comply with a state law requiring localities to hold public hearings before imposing construction ban. The case was remanded to the trial court for consideration of the ordinance's possible impacts on the city and region.

Writing for the majority, Justice Mathew O. Tobriner wrote that such controls "are constitutional if they are reasonably related to the welfare of the region affected by the ordinance". The court recognized "the growing conflict between the efforts of suburban communities to check disorderly development with its concomitant problems of air and water pollution and inadequate public facilities," and the increasing public need for adequate housing opportunities.

Dissenting, Justice Stanley Mosk contended that "it cannot be seriously argued that Livermore maintains anything other than total exclusion," scoring "elitist" suburban communities for building "a mythical moat around their perimeter, not for the benefit of mankind, but to exclude all but its fortunate current residents." Mosk said the city had not prepared a timetable for providing adequate public services, adding that there is "no inducement" for existing residents to upgrade public facilities to accommodate new growth.

The Livermore case was considered a major test case by California localities, as was the Petaluma case, in which a Federal appeals court upheld the town's right to impose an annual limit of 500 new housing units. U.S. District Court originally struck down Petaluma's plan in 1974, and after the appeals panel reversed the trial court ruling, the U.S. Supreme Court refused to review the case, in effect upholding the appeals decision.

In other litigation, the state Supreme Court ruled that coastal land developers must obtain permits from the state Coastal Zone Conservation Commission even though work on their projects may have started before the enactment of original coastal legislation in 1972. Orange County officials had granted Avco Community Developers, Inc., a rough grading permit and had approved a subdivision map for the company's 74-acre project prior to the act's passage, but the court ruled that a state coastal commission permit was still required.

Avco has appealed the ruling to the U.S. Supreme Court, arguing that it had a vested right in the project beginning construction before the coastal act was adopted (Supreme Court docket number 76-888; Calif SupCt 17 Cal3d 785, 18 Cal3d 177b, 132, 132 CalRptr 377, 553 P2d 537; **Avco Community Developers, Inc. v. South Coast Regional Commission**).

Coastal Zone Management

After several false starts, the legislature adopted a measure creating a permanent Coastal Zone Conservation Commission to regulate development along the coast. CZCC's jurisdiction includes a 1,000-yd. strip of coastal land, which expands to almost five miles in environmentally critical areas. In urbanized areas, CZCC's jurisdiction is minimal, but the agency will control coastal development until localities bring their plans into conformance with state guidelines.

Advocates of the legislation, led by Sen. Anthony Beilenson, encountered their first major roadblock in June 1976 when the Senate Finance Committee refused to approve the CZM bill, largely in response to opposition from business and labor interests. The bill, as debated by Finance, would have established broad guidelines for localities to follow in regulating growth, such as concentrating new development near existing urbanized areas and protecting "sensitive" areas such as estuaries, beaches and wetlands.

Revised legislation, utlimately passed, was prepared by Sen. Jerry Smith, and included a narrower coastal zone than than envisioned in Beilenson's bill. Other concessions included reduced CZCC authority over coastal farmlands and more specific guidelines for controlling coastal development. The revised bill also limited CZCC's authority to reduce opposition from other state agencies and localities.

Several weaker alternative coastal bills, proposed by Assemblymen Barry Keene and Mike Cullen, were rejected by the Senate Natural Resources Committee in August, representing a major setback for industry and local government advocates seeking to block Smith's bill. Final passage came in late August, followed by the enactment in September of a $1.747-million appropriation to fund initial CZCC operations. The new legislation officially eliminates the six regional coastal commissions established under Proposition 20 in 1972, although they may be revised if the CZCC determines that the permit review workload requires additional personnel.

During 1976, California was embroiled in several controversies over the siting of energy facilities in the coastal zone to handle crude oil from Alaska. Exxon Corp. proposed an onshore oil processing facility for crude produced at its Santa Barbara Channel lease tracts, but opted for an offshore facility beyond state jurisdiction when the state attempted to impose conditions on the plant's operations aimed at protecting the environment.

©1977 Business Publishers, Inc.

The dispute with Exxon is considered crucial by state officials, who believe the case will test California's power "to regulate facilities and operations with the state's territorial jurisdiction that are required to support exploration, production and development of oil and gas in Federal waters."

California is also contesting a Standard Oil of Ohio plan for a $45-million supertanker terminal at Long Beach, plus a pipeline across southern California to Texas. The plan will have major air quality impacts, according to local officials and environmentalists. The issue of coastal energy development was complicated in 1976 by a tanker explosion in Los Angeles Harbor which has prompted pressure for additional curbs on coastal siting of energy facilities.

Agricultural Lands

Legislation aimed at preserving prime farmland was blocked for the second year in a row, but advocates of the plan are optimistic that the 1977 legislature will approve the measure.

During 1976, a state Senate committee killed a measure authored by Assembly Land Use and Energy Committee Chairman Charles Warren which would have created a 12-member commission made up of public, municipal, county and state representatives empowered to veto local zoning decisions which would lead to urbanization of farmland tracts exceeding 80 acres. Real estate, farming and construction interests strongly opposed the bill, while environmental groups supported it.

Warren said the measure would have protected some 18,000 acres of prime farmland, and would have prevented further declines in state agricultural production, in addition to curbing urban sprawl. California has lost some 30 square miles of farmland annually in recent years, Warren said.

In 1965, the state adopted the so-called Williamson Act, which grants tax breaks for landowners who maintain agricultural lands as open space under 10-year contracts. Critics of the act complain that it has only temporarily delayed land conversions while giving large landowners and speculators short-term tax windfalls.

Warren's bill, narrowly passed by the Assembly, is expected to be reintroduced intact in 1977, but it will face competition from another proposal advocated by Sen. George N. Zenovich and Assemblyman Daniel E. Boatwright, Chairman of the powerful Ways and Means Committee. The Boatwright-Zenovich bill, prepared largely by the state Chamber of Commerce, would require cities and counties to develop agricultural land preservation plans by April 1979, with a state review board having final approval authority. Localities would be authorized to channel review board decisions in court. All locally designated lands would come under Williamson Act provisions for 10 years.

Warren's bill includes a concession to the California League of Cities permitting municipalities to proceed with existing development plans for 10 years, after which urban expansion must be curbed. That provision angered county officials, who contended that cities would be given excessive influence over county land use decision-making. Battle lines are already being drawn, as county and city officials seek to consolidate their traditional power bases in the state Senate and Assembly, respectively.

Gov. Jerry Brown has taken no position on the farmland preservation controversy, and aides have adopted an officially neutral stance, although Warren and his allies have expressed concern that Brown will side with Boatwright and Zenovich in advocating a relatively weak preservation bill.

CALIFORNIA LAND USE CONTACT: William Press, Director, (916) 445-4831; State Office of Planning and Research, 1400 10th St., Rm. 256, Sacramento, California 95814.

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

©1977 Business Publishers, Inc.

COLORADO

Having criticized current land use law as too weak and "unworkable," Gov. Richard Lamm's Administration is developing amendments for consideration by the 1977 legislature. Initial proposals receive little attention during 1975 and 1976.

Efforts to control growth by restricting the availability of sewers and similar facilities were sharply curtailed by a state Supreme Court ruling ordering the city of Boulder to extend sewer lines to areas beyond the urban boundary.

Land Use Policy

Passed in 1974, Colorado's land use law calls for the designation and regulation of areas of "statewide interest," subject to review by the Colorado Land Use Commission. The law (H.B.1041) includes criteria to guide localities in the designation of such areas.

The act has come under fire from a variety of interests. Gov. Lamm has contended that Colorado's reputation in land use planning "exceeds the realty." The state has made progress, "especially in terms of reinforcing local governments' powers," Lamm says, "but in other areas, such as energy and preserving agricultural land, we're weak."

H.B.1041 has also been criticized by state land use commissioners for giving LUC little flexibility in dealing with land use problems. Some environmental groups have advocated legislative changes to give the state more substantive power over land use issues traditionally handled by local governments, although some state legislators doubt that such proposals could win approval.

LUC officials developing the Lamm Administration's proposals are expected to include tax incentives for preserving prime farmland and open space. They are also considering recommendations to coordinate the land use act with another measure, S.B.35, which sets minimum standards for subdivisions.

Based on a series of public hearings, LUC concluded in a December 1976 report to Gov. Lamm that primary authority for land use regulation should remain at the local level, with the state providing technical and financial assistance for planning. At present, "local governments feel that they are not receiving the amount and quality of assistance from the state that is needed to fulfill their land use responsibilities," the report said.

The existing structure of state government "hinders the delivery of state services," the report continued, largely because some 20 agencies scattered in five major departments provide land use related services independently with little policy guidance, a problem which has been cited by Lamm.

In addition, state regulatory decisions are made "without full knowledge or consideration of all interrelated environmental and land use factors." Commission officials noted that they are frequently called in to resolve disputes at the "eleventh hour" because land use factors were not considered during initial planning, adding that there are no mechanisms for resolving interjurisdictional disputes.

Based on hearing testimony, LUC concluded that the state's key land use acts, S.B.35 and H.B.1041, are functioning adequately but must be coordinated and simplified. S.B.35 lacks strong enforcement authorities to deal with violators of subdivision regulations, and imposes needless burdens on small-scale developers, the report found. H.B.1041 has encouraged local involvement in land use planning and regulation but is procedurally complex, and has not been funded adequately. The report cited considerable testimony urging changes in "matters of state concern," which are covered in H.B.1041, although no apparent consensus developed regarding the extent of state involvement.

In the Boulder case, the state Supreme Court ruled that the city must extend sewer and water service to newly developed areas outside the city limits. If the land conforms to regulations and requirements, the city may not refuse sewer service simply to control growth, the court said.

Boulder had refused to approve service to an area five miles beyond the city limits, contending that the project did not coincide with phased development plans for the region. The Boulder comprehensive plan identifies areas to receive urban service by 1990, with other areas not expected to be serviced until after that time.

Pre-1990 areas included Boulder and a developed area outside the city limits known as Gunbarrel Hill, which is currently served by sewers. The disputed property lies between the city and the Gunbarrel Hill area. The developer met city land use regulations including maintenance of open space, and his request for service was approved by the Boulder Water and Sanitation District. However, the city refused to approve a service contract because the project would violate the phased development timing envisioned in the comprehensive plan.

The state Supreme Court ruling upheld a decision handed down by a lower court. The Supreme Court also ruled Boulder County officials, and not the city, must make the final decision to approve the disputed project. In the court's view, county commissioners had found the proposed project in conformance with the comprehensive plan.

In an effort to reverse the court ruling, Boulder voted 18,180-17,749 to adopt a growth control policy patterned after the Petaluma, Calif., program upheld in the Federal courts. In addition to carrying out the comprehensive plan, the voter-approved policy is aimed at avoiding major tax increases. The policy sets an annual 450-unit limit on the number of residential building permits which can be issued over the next five years, a restriction which applies only to projects of five or more units. The program also directs the city council to adopt a "system for evaluating proposed projects and allocating building permits among builders on the basis of merit." A two percent annual growth rate is specified.

The restrictions do not apply to subsidized housing projects for which commitments have already been made, but apparently do apply to future low-income housing proposals.

Energy Facilities and Lands

Colorado officials, along with other Western states, have resisted Federal plans to expand coal production through strip-mining until the Interior Department agrees to enforce state reclamation rules, which are more stringent than Federal regulations. State leaders are concerned that Federal requirements are vague and give mine operators excessive leeway in determining the extent to which reclamation is practical.

During 1976, the state Land Reclamation Board adopted regulations requiring mining permit applications to be accompanied by revegetation and land restoration plans for proposed strip mining sites.

The state legislature considered, but failed to pass, a bill which would have extended state regulatory authority to all surface mining operations. As approved by the House, mine operators would be required to submit mining plans to obtain permits, and state officials would be empowered to take court action to stop unauthorized mining, for which fines of $100 to $1,000/day could be levied.

The state Senate debated a weakened version of the House bill, adopting several amendments granting exemptions for small strip mine operators. Some state officials criticized the Senate bill as being weaker than Federal standards.

Colorado voters followed the nationwide pattern by rejecting a referendum proposal which would have required legislative approval of nuclear power plant siting decisions to insure plant safety. In other energy related developments, the legislature rejected Gov. Richard Lamm's proposed bill which would have given the state authority to consider social, environmental and economic impacts of a proposed facility before making site selections. State officials contended that Colorado lacks comprehensive facility siting policies, although opponents of the bill said the proposal would have led to excessive state regulation.

COLORADO LAND USE CONTACTS: Wil Ulman, Director, (303) 892-2778; State Land Use Commission, 1313 Sherman St., Rm. 415, Denver, Colo. 80203; Philip H. Schmuck, Director; John McLucas, Assistant Director; Colorado Division of Planning, 1313 Sherman St., Rm. 520, Denver, Colo. 80203, (303) 892-2351.

CONNECTICUT

Efforts to conserve agricultural lands received emphasis in 1976, with state officials preparing legislative proposals calling for the acquisition of development rights for some 325,000 farmland acres. Similar proposals have been defeated by the state legislature.

State officials are also implementing legislation mandating expanded conservation and development planning, and are concluding the second phase of their coastal zone management program.

Land Use Policy

In 1976, the state legislature adopted PA 76-130, mandating the preparation of a conservation and development plan covering land and water resources, transportation, air quality and energy. The plan is to be completed for legislative consideration by 1979.

The plan would be advisory, although state agencies would be required to review proposed programs to determine whether proposals conform to the plan. The plan would include proposed state land acquisitions, public service improvements exceeding $100,000, purchase of public transportation equipment or facilities exceeding $100,000, and similar plans required by other state and Federal laws.

The plan envisioned in the legislation is an expanded version of an earlier proposed document prepared by the now-defunct state Department of Finance and Control. That plan, presented to the legislature in 1973 and adopted as executive policy in 1974, included a series of land and water use policies designed to guide where and at what densities development should occur. The land use policy map divided the state into categories: 25% suitable for urban development, 50% for limited development and 25% for permanent open space. The plan also included water use policies, indicating opportunities for new and expanded use of water resources.

The legislature has also adopted a measure consolidating state planning functions into a Department of Planning and Energy Policy. The department is responsible "for formulating plans for transmittal to the state planning council concerning the physical, social and economic development of the state." Department plans are reviewed by the council and transmitted to the Legislative Committee on State Planning and Development. Plans may be developed in conjunction with other agencies. The department also integrates the provision of social services and statewide water resources, and assists other agencies in developing planning capability.

Primary emphasis of the department involves continuing work on the state plan of conservation and development with new activities in air, transportation and energy in addition to on-going land and water policy planning.

The department also provides staff support for the state Planning Council, and participates in transportation and coastal zone management planning. The department designates planning regions, provides funds and assistance for regional planning, administers certain Federal planning aid, reviews Federal grant applications, and oversees the preparation of environmental impact statements.

In court action, a Federal judge enjoined the Department of Housing and Urban Development from distributing some $4-million in community development funds to the suburbs of Hartford, concluding that the jurisdictions would use the funds to maintain existing exclusionary land use policies. The suit was brought by the city.

Judge M. Joseph Blumenfeld of the U.S. District Court in Hartford found that HUD exceeded its authority by informing CD grant applicants that low-income resident projects were not necessary, in spite of statutory requirements that such planning be undertaken. HUD had contended that the requirement was waived because the information was too difficult to obtain.

Hartford officials said 90% of the region's low-income persons were forced to live in the city becasue of exclusionary policies pursued by the suburban jurisdictions. Little low-income housing was available outside Hartford, city officials said. Hartford sought to force the suburbs to provide low-income housing, so that the city would not be forced to spend its CD funds for such projects. The suburbs had programmed the HUD funds for sewers, parks and other services.

©1977 Business Publishers, Inc.

In his decision, handed down in late January, Blumenfeld said the low-income resident projects were a key element of the 1974 Community Development Act, noting that Congress intended to reduce the existing concentration of low-income residents in central cities.

"The statute clearly has, as one of its objectives, the spatial deconcentration of lower-income groups, particularly from the central cities," Blumenfeld said. "Congress apparently decided that this was part of the solution to the crisis facing our urban communities." Blumenfeld said the subruban jurisdictions could reapply for Federal funds if they included the required low-income resident projections, emphasizing that HUD would be expected to weigh the data carefully in making grant decisions.

Agricultural Lands

The state has completed an overall inventory of farmland, dividing acreage into tillable acres, pasture, woodland, and other kinds of land which are a part of a farm unit. The inventory has been done for all eight counties, and data are available for total county acreage.

The state is now planning to gather more detailed information about agricultural land uses based primarily on random sampling of farmers. The state is also planning to poll farmers on the issue of selling development rights to the state as part of a program to conserve agricultural lands.

State agriculture officials plan to reintroduce farmland preservation legislation that was rejected in 1975. The farmland inventory was carried out as a compromise between the legislature and Gov. Ella Grasso. The legislation would have authorized a state commission to acquire at least 325,000 acres, or some 70% of the state's farmland. The goal enjoyed considerable support in the legislature, but the one percent additional tax on real estate sales proposed to finance the program was opposed. The state legislature includes numerous developers and builders.

State officials are hoping that the poll of farmers will demonstrate support for the development rights purchase program. About $30-million would be generated by the real estate sales tax envisioned by state officials. That amount would be augmented by bonding authority, although it is hoped that the real estate tax alone will be adequate.

Efforts to stem farmland urbanization in Connecticut have received mixed reviews over the last several years. Differential assessment legislation, Act 490, was passed in 1963 and was amended in 1972. The measure has been generally unable to halt development of farmland, primarily because land prices have increased sharply, according to a report by the Connecticut Conservation Association.

A more recent study prepared by the state Department of Environmental Protection concluded that Act 490 has been successful but recommended additional steps to insure long-range preservation of farms and open space. "Uncontrolled urban growth or sprawl which creates a myriad of social, economic and environmental problems is becoming increasingly evident" in Connecticut, DEP said, but Act 490 has worked in slowing unplanned growth in many towns and has encouraged farmland preservation by giving tax breaks to farmland owners.

The legislative proposals for farmland preservation are based largely on a report prepared by the Governor's task force which recommended protection of 325,000 acres, the amount needed to meet one-third of Connecticut's food supply needs. The task force urged local zoning authorities to designate agricultural reserves in consultation with other jurisdictions and citizen groups. "The land within the reserves should be preserved for growing food by the state purchase of development rights. The value of these rights is the difference between the value of the land for agriculture and its value for other uses."

Development rights purchase should be initiated by farmers, who should retain all ownership rights, the task force said. The report recommended issuing bonds to finance the land acquisition program, although state officials generally agree that there is insufficient political support for such a financing approach.

©1977 Business Publishers, Inc.

Coastal Zone Management

Connecticut received grants totaling $486,083 from the Federal Office of Coastal Zone Management for the second year of state CZM program development. The second program phase is nearing completion, and has covered some 15 months.

Planning work for Connecticut's CZM program is being carried out by a special unit within the Department of Environmental Protection's environmental quality division, with assistance from other state agencies, coastal regional planning agencies, and citizen members chose from among diverse interest groups.

Principal CZM activities include identification of critical geographic areas, including wetlands, recreational areas and harbor improvement sites, for special attention in the program and definition of a management boundary which outlines the inland limit of the coastal zone. Eight proposed boundaries are now under study, and will be discussed in a series of public hearings.

In addition, Connecticut is developing a land and water use strategy by reviewing existing plans and governmental functions for their relevance to the state coastal problems. Specific local programs undergoing review include zoning regulations, subdivision regulations, and controls on development of inland wetlands. At the state level, review is underway on the regulation of tidal and inland wetlands, structures and dredging, and stream channel encroachment. The state analysis will attempt to determine the cumulative impact and degree of overlap, and to develop a more coordinated system for managing coastal resources.

Connecticut is also studying drilling impacts to forecast how the coastal zone will be affected by development of oil and gas on the Outer Continental Shelf. Sites suitable for OCS development are being inventoried, and a method for siting large scale facilities is also under study. A model for determining net benefits and costs of proposed projects is being prepared, and is expected to be completed soon.

Structures for managing the coast at all levels of government are being developed, and will be proposed for public review and comment. Citizen participation and information efforts are also proceeding, including the preparation of a "developers handbook" summarizing DEP regulatory programs. A summary of Long Island Sound resources is also being published.

As a basic approach, "Connecticut's CZM program is following the management option of shared state-local authority with the state developing specific policies and standards for local implementation and maintaining an oversight function." Related state programs include: (1) regulation of structures and dredging in coastal waters; (2) tidal wetlands regulation; (3) state and local regulation of inland wetlands; and (4) limited floodplain regulation.

CONNECTICUT LAND USE CONTACT: Lynn Alan Brooks, Commissioner (203) 566-2800; David Harrigan, Deputy Commissioner (203) 566-2800; Department of Planning and Energy Policy, 340 Capitol Ave., Hartford, Conn, 06115.

CONNECTICUT AGRICULTURAL LANDS CONTACT: Don Tuttle, Director, (203) 566-7173, Board of Agriculture, State Office Bldg., Rm. 269, Hartford, Conn. 06115.

CONNECTICUT COASTAL ZONE MANAGEMENT CONTACT: Charles McKinney, (203) 566-7407; Department of Environmental Protection, 71 Capitol Ave., Hartford, Conn. 06115.

DELAWARE

The potential impact of Outer Continental Shelf oil and gas development represents the major land use issue in Delaware, state officials say, and attention continues to be focused on the coastal zone, where industrial sitings are limited to areas already urbanized. These restrictions may be relaxed somewhat in the future, according to state officials.

Land Use Policy

Rep. Pierre du Pont, the incoming Republican governor, is generally rated highly by environmental groups, and was a key participant in negotiations leading to the enactment of Coastal Zone Management Act amendments in 1976, so state officials expect him to continue current policies calling for protection of the coastline.

Rep. du Pont supported Federal land use legislation on the House floor in 1974, but most officials agree that comprehensive land use legislation will remain in the planning stages in Delaware for the foreseeable future. Continued emphasis on local planning and controls is anticipated. Localities have conventional zoning authority, but controls must follow locally developed comprehensive plans.

Coastal Zone Management

Wetlands are designated and permits required for development under regulations issued by the state Department of Natural Resources and Environmental Control. The regulations, based on 1973 legislation mandating the protection of wetlands and the regulation of development, requires developers to submit applications for construction permits, including plans for proposed projects. The permit application must specify reasons for siting facilities in coastal areas, giving priority to coastal-dependent projects.

Department officials say the regulations will tend to discourage applications for projects requiring the filling of wetlands for projects which could be located elsewhere.

The regulations have been opposed by developers, some of whom claim the department lacks the authority to promulgate stringent development controls, but no formal court challenge is expected, partly because the U.S. Army of Corps of Engineers' expanded dredge and fill permit program already imposes strong curbs on building, reducing the immediate impact of the state regulations.

The regulations, in the drafting stage for more than two years, were promulgated as former Gov. Sherman W. Tribbitt prepared to leave office. Some state observers were surprised that the regulations were issued, since state Natural Resources Secretary John C. Bryson had said earlier that they would be delayed to give the incoming administration an opportunity to review them. Environmental groups, however, urged that the regulations be adopted without further delay. Tribbit said he did not order the adoption of the rules, but supported them, contending that "they should have been adopted long ago."

Some state officials said the regulations were delayed during the 1974-75 recession, when development activity slowed, easing pressure to convert wetlands to urban uses.

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

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

FLORIDA

1976 was the first year of implementation of the Local Government Comprehensive Planning Act, which was approved in 1975 by the state legislature. Under the law, all counties and municipalities must prepare comprehensive plans by July 1979. One possible growth control tool to back up those plans was partially removed during 1976, as a state court overturned a population and living unit "cap" imposed by Boca Raton.

Land Use Policy

The only specific requirement for 1976 under the comprehensive planning act was the designation by localities of planning agencies. About 426 designations were made by local governments, and plans or portions of plans were received from 19 localities for review by the state.

The legislature also considered, but failed to enact, a bill amending the state Land and Water Management Act's provisions dealing with regulation of developments of regional impact (DRI). Since the DRI program was initiated in July 1973, procedural ambiguities have developed, state planners say. The proposed amendment would have established procedures for evaluating substantive changes in previously approved development orders.

The legislation also would have created a process for reviewing long-term projects comparable to planned unit developments. The Division of State Planning and major developers supported the legislation, which passed the House but failed in the Senate.

The 1976 legislature adopted another DRI amendment to require an analysis of the demand for or use of energy as an element of state review of proposed projects.

Despite initial problems, the DRI program "continues to provide an effective means for balancing the local, regional and state interests in determining the present and future land use decisions in Florida," according to state officials. More than 200 DRIs have been reviewed by the state, mostly residential projects, covering some 750,000 dwelling units.

The use of population and dwelling unit "caps" as a growth control tool was limited during 1976 by a state court ruling which overturned such restrictions imposed by Boca Raton. The controls, adopted under city charter amendments, violate equal protection and due process clauses of the U.S. Constitution, state Judicial Circuit Judge Thomas Sholts ruled, in response to landowners' suits.

The suits were filed in 1973 after a city charter amendment was adopted by referendum in November 1972 establishing a population limit of 105,000 and a dwelling unit cap of 40,000. The population limit was adopted as recommended in a report on "The Problems of Growth" prepared by local environmentalists in June 1972.

Sholts said both the cap and implementing ordinance violated Federal and state constitutional guarantees of due process for landowners seeking changes in allowable land use. In his ruling, Sholts specificed that he did not question the concept of the cap as a growth control tool provided that it would "rationally promote public welfare without unnecessary and unreasonable consequences to private property rights." Sholts found the Boca Raton restrictions "without benefit of professional or scientific study," adding that the caps were "crude and repugnant to the court's concept of orderly legislative action."

Consultants initially had recommended dwelling unit limits ranging from 47,000 to 61,000. Those recommendations were lowered after the 40,000 cap was already adopted. To implement the cap, the city adopted an across-the-board 50% reduction in multi-family zoning districts, with an additional 10% reduction adopted later.

Sholts emphasized that the concept of a growth control cap was not questioned. "If a fixed limit on housing substantially and rationally promotes welfare, it may well pass constitutional muster," Sholts said, noting that the cap might have withstood a court test if the city had been more methodical in developing supporting data, or if it had adopted a dwelling unit cap in the 47,000-61,000 range as recommended by consultants.

Sholts' ruling came in two consolidated cases: **Boca Villas Corp. v. Pence**, and **Keating-Meredith Properties, Inc. v. City of Boca Raton** (consolidated C.A. No. 73-106/540, Palm Beach County Circuit Court, Sept. 30, 1976).

©1977 Business Publishers, Inc.

Following what some state officials call the worst cases of land sales fraud in Florida's history, the legislature amended existing laws to increase the state's land sales regulation powers. Legislation provides for inspection of property, refunds, uniform accounting reports from developers, tighter restrictions on escrow accounts, and other measures to protect land purchasers.

Coastal Zone Management

The Division of Resource Management within the Department of Natural Resources continues as the lead agency for CZM programs. During the second year of funding under the Federal Coastal Zone Management Act, the majority of the inventory and primary data collection work on which the state's program will be based was completed. A state interagency coastal zone management committee, nine regional citizens' advisory committees on coastal zone management and nine regional planning councils worked with the Bureau of Coastal Zone Planning on the development of proposed policies for the state's CZM program.

Florida received a $722,496 program development grant from the Office of Coastal Zone Management for work during the third program year. The grant will be used to develop a master plan for guiding future coastal uses.

Third-year tasks, state officials said, will emphasize county involvement in the CZM process, and will be aimed at encouraging citizen participation. The state also plans to identify the potential problems caused by onshore oil and gas activity related to Outer Continental Shelf development, and recommend possible solutions.

The Department of Natural Resources will administer the third-year funds and will allocate portions to the nine regional planning councils and three other state agencies for assistance in conducting the work program.

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

FLORIDA COASTAL ZONE MANAGEMENT CONTACT: Bruce Johnson, Chief, (904) 488-8614; Bureau of Coastal Zone Planning, 202 Blount Street, Tallahassee, Fla. 32304.

GEORGIA

State land use policies are being developed by a government task force to define areas of responsibility among state and local governments. State officials are also weighing the impact of constitutional changes allocating authority for land use planning and control.

Land Use Policy

The Georgia Office of Planning and Budget is preparing a statewide land use policy plan for recommendation to the governor with a grant from the U.S. Department of Housing and Urban Development. The plan will be implemented through state functional plans and the A-95 review process.

The plan will identify and describe quantitatively the major issues confronting state government in coordinating physical and economic development, and will consider long-range solutions to state problems. The plan will also outline a planning and research program to increase the state's ability to detect and resolve growth related problems. In addition, the plan will determine the proper roles and responsibilities for state and sub-state agencies in planning for and affecting growth.

On Nov. 2, state voters approved an "edited" state constitution prepared by a legislative committee to revamp the existing constitution. The revised document includes provisions which have created some controversy regarding the state's role in land use planning and control. Some observers have contended that the new constitution gives the state authority to adopt certain land use controls, while others say that the edited constitution maintains existing local zoning authorities. The amendments give the state legislature authority "to provide general restrictions upon land use in order to protect and preserve natural resources, the environment, and vital areas."

However, "the General Assembly shall not, in any manner, regulate, restrict or limit the power and authority of any county, municipality or any combination thereof, to plan and zone," according to the amendments. State officials expect the controversy to continue until the amendments are tested in the courts.

Land use litigation in Georgia did not increase significantly in 1976 following a state Supreme Court ruling which subjects virtually all local zoning decisions to court review to determine whether those decisions are consistent with the public welfare. Dissenting justices had contended that the ruling would substitute local judgement for that of the courts, and would lead to a sharp increase in suits challenging land use decisions. State officials said no such increase has occurred.

Coastal Zone Management

Georgia is now working with the governor's CZM Advisory Council to develop a CZM program. The council, appointed in May 1976, includes business, environmental, local government, and state representatives. Ultimately, the council will recommend to the governor a preferred CZM strategy, along with legal, administrative and organizational mechanisms needed to implement the plan.

Georgia received a $67,000 supplemental grant for its second year CZM work program related to Outer Continental Shelf oil and gas exploration. The OCS element has been integrated into the state's overall CZM program.

State officials are developing planning principles and methods, along with policies for permissible coastal uses and areas of particular concern. A tentative coastal boundary will be adopted, and local land use plans in coastal areas will be developed. The state is also implementing the Coastal Marshland Protection Act, which requires state permits for marshland alterations in estuarine areas.

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

GEORGIA COASTAL ZONE MANAGEMENT CONTACT: James H. Dodd, address above. (404) 656-3832.

HAWAII

In recent years, Hawaii's Land Use Law has been changed considerably, primarily with the shifting of the state Land Use Commission from a legislative to a judicial body. Legislation enacted in 1975 also eliminated requirements calling for mandatory five-year review of state land use district boundaries, and provided interim land use guidance policies to guide the commission in decision-making.

Under its current quasi-judicial function, the LUC considers petitions for district boundary amendments using contested case procedures, resembling proceedings in a court of law.

Land Use Policy

Since the passage of Act 193 in 1975, the commission has adopted new rules and regulations, and has conducted about 20 hearings under its new procedures. Planning Department officials acknowledge that the procedures have come under criticism by restricting public participation in land use decision-making, lengthening the process of gathering information and increasing costs by requiring participants to fully justify requested changes. To date, possibly because of public unfamiliarity with the procedures, there have been relatively few requests by private individuals and organizations to participate in LUC proceedings, although all timely intervention requests received so far have been granted.

©1977 Business Publishers, Inc.

The commission's rules and regulations, formally adopted in December 1975, set standards for classifying lands as urban, agricultural, conservation and rural. The rules are designed to concentrate new growth near existing urbanized areas, contain sprawl and encourage development aimed at meeting low and moderate income housing needs.

Areas are classified as urban if they have "city-like" population densities, proximity to services and employment centers, and land reserves to accommodate growth for 10 years. Tracts are favored for urban classification if they are adjacent to developed areas, will not encourage "spot development," and will not require "unreasonable investment in public supportive services." The commission's rules discourage development of steep slopes.

Agricultural districts include productive farmlands and adjacent land which may not be highly productive. Lands may not be taken out of agricultural use unless such conversion will not substantially impair production of adjacent lands. Conversion is also permissible to accommodate reasonable urban growth.

Conservation districts include watersheds, floodplains, erosion-damaged areas, parks, scenic, historic or archeological sites, wilderness, beach preserves and wildlife habitat. Steep slope areas and wetlands are all included in conservation areas unless specifically placed in other classifications.

Rural districts are primarily made up of small farms and low-density residential development. Minimum lot size of one-half acre is prescribed for rural areas adjacent to urban districts, and five-acre lots are required for rural areas next to agricultural zones.

Also during 1976, Hawaii's land use control program was assessed in a study prepared for the Conservation Foundation by Phyllis Myers, who concluded that the program is a useful model for other states to follow. Hawaii's basic Land Use Law, passed in 1961, "was useful even if less than perfect," the report said. Enactment of the state law has encouraged the development of land use planning capabilities by counties, according to CF's assessment. Report is available from the foundation at 1717 Massachusetts Ave., N.W., Washington, D.C. 20036.

Coastal Zone Management

Hawaii's participation in the coastal zone management program was mandated in 1973 by the state legislature. The State Department of Planning and Economic Development received a Federal grant of $500,000 in 1976 for a third year of planning under the Coastal Zone Management Act of 1972 to develop its final CZM program for submission in 1977.

During the second year of planning work, extensive contact was made with the public, interest groups, scientists, and county, state and Federal agency representatives to identify problems within coastal areas. These problems were divided into six major categories: (1) natural resources; (2) historic and cultural resources; (3) natural aesthetic resources; (4) coastal recreation resources; (5) tsunami and storm wave hazards and freshwater flooding hazards; and (6) shoreline development.

An "areas of particular concern" concept was developed to provide a flexible management tool to address statewide problem areas of significant and continuing concern. State CZM policies and proposed implementing legislation are being submitted to the Governor for his approval along with the development of Hawaii's CZM program application prepared under Section 306 of the CZM Act. Legislation implementing the program, to include CZM policies, the designation of coastal zone boundaries and CZM agency, and the delineation of areas of particular concern, will be considered by the state legislature early in 1977. Citizen and agency advisory committee review will also continue during the final drafting of the state CZM plan.

If the program meets criteria established by the CZM Act, the state expects to be eligible for Federal implementation funds by late 1977.

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

HAWAII COASTAL ZONE MANAGEMENT CONTACT: Dick Poirier, (808) 548-4609; State Planning Division, 250 South King St., Honolulu, Hawaii 96813.

IDAHO

Following the pattern set in 1975, the state legislature defeated a series of land use bills proposed by Gov. Cecil D. Andrus which would have required localities to develop regional impact statements for major developments, protected prime farmland, and provided technical assistance to cities and counties in developing comprehensive plans.

The legislature also narrowly rejected efforts to "gut" the 1975 Local Planning Act, one of the few pieces of land use legislation to be approved by the conservative Idaho legislature. The state House approved an amendment to the 1975 bill which would have required owner permission before a tract could be included in a local comprehensive plan. The state Senate rejected the bill.

Land Use Policy

In 1976, state land use activity centered on implementing the 1975 Local Planning Act which requires all cities and counties to prepare comprehensive plans according to state guidelines. The legislation also calls for state agencies to comply with local plans, restricts possible conflicts of interest in land use decision-making, establishes a permit and appeals process, and prohibits local permit approval where public health, safety or welfare is threatened. Compromise provision also requires localities to identify areas of urban impact by 1977 and regulate development in those areas to curb urban sprawl.

Since passage of the planning legislation, virtually all localities have become involved in either updating or developing an ongoing planning process. The Idaho Bureau of State Planning and Community Affairs has prepared a "Planning Handbook for Local Government," including step-by-step planning procedures. The handbook also summarizes planning and zoning laws, explains the development of comprehensive plans, recommends plan implementation strategies, and provides model subdivision and zoning ordinance guidelines.

Although local officials' attitudes vary, state officials said there has been widespread acceptance of the planning guidelines. Most local officials have welcomed the guidance, according to state planners who concede that Idaho planning and zoning laws were vague prior to passage of the 1975 law. Until recently, there has been considerable confusion over what constituted comprehensive planning in Idaho, state officials said.

Energy Facilities and Lands

Legislation which would have given the state authority to control virtually all energy-related development died in 1976, as did similar legislation the year before. The state Public Utilities Commission maintains jurisdiction over regulated projects such as major power plants. PUC rejected a proposed $400-million coal-fired power plant planned by Idaho Power Co., although the company is expected to propose another scaled-down version.

PUC officials generally agree with Idaho Power that additional generating capacity is needed in the state. The utility's facilities are located in adjacent states closer to coal sources and there has been considerable debate over the issue of siting facilities in the state. Officials are less concerned about regulating strip mining in Idaho, which has little coal.

IDAHO LAND USE CONTACTS: H.W. Turner, Administrator, (208) 384-3900; Shirl C. Boyce, Jr., Chief, Bureau of State Planning and Community Affairs; Division of Budget, Policy Planning and Coordination, State House, Boise, Idaho 83720.

©1977 Business Publishers, Inc.

ILLINOIS

No statewide land use policies or programs have been undertaken, although the state has become increasingly active in the management of the Lake Michigan coastal zone, which faces heavy development pressure from competing land uses.

Urbanization of farmland is generally not considered a problem, and efforts to guide growth at the state level are at the study phase.

Land Use Policy

Localities retain virtually all land use powers, including zoning and some subdivision controls, but there are no requirements for comprehensive planning to guide land use controls.

Several bills have been introduced in the legislature, although they have received little attention. H.B.800 would require counties, townships and municipalities to prepare comprehensive plans, establish procedures for exercising land use authority, and repeal several existing land use laws. Other legislation, S.B.157, would create a Land Use Study Commission to determine if a state land use policy is needed. The commission would be charged with considering environmental, economic and population factors, and would make recommendations on the relationship between state and local regulatory authority.

Other measures would provide grants from the state Department of Revenue to owners of open land based on property taxes paid and the income of the land owner as an incentive to discourage development (H.B.1927), and would create a Division of Land Use Planning and Management within the state Department of Local Government Affairs, and establish requirements for land use planning to be followed by state agencies (H.B.1491).

In legal action, the state Supreme Court rejected localities' authority to use their zoning powers to impose environmental curbs more strict than those required by a state agency. In **Carlson v. Village of Worth** (62 Ill.2d 406), the court overturned the village's requirement that a landfill comply with local zoning. The landfill was granted a permit to operate by the state Environmental Protection Agency.

The U.S. Supreme Court has ruled that an Illinois community's exclusionary zoning decisions may not be overturned unless there is proof that the locality was motivated by racial discrimination. In **Village of Arlington Heights v. Metropolitan Housing and Development Corp.**, the court upheld the city's action denying rezoning for a low- and moderate-income housing project, including townhouses, in an area zoned for single-family residential units.

The decision reversed the Seventh U.S. Circuit Court of Appeals, which had found that a zoning action which has the effect of discriminating against minorities may be overturned, regardless of intent. "Disproportionate impact" of a zoning action on minorities "is not the sole touchstone of invidious racial discrimination," according to Supreme Court Justice Lewis Powell's decision. "Proof of racially discriminatory intent or purpose is required to show a violation of the equal protection clause" of the U.S. Constitution's 14th Amendment.

Fair housing advocates said the case was not a total loss, however. The court returned the case to the appeals court to determine whether the zoning action violated the Fair Housing Act of 1968.

The case involved an 80-acre tract owned by a Roman Catholic order which contracted with MHDC for the development of a 15-acre parcel bounded on two sides by single-family homes. MHDC agreed to provide subsidized housing, including 190 townhouses, with financing provided under Section 236 of the 1968 Housing and Urban Development Act.

The tract was orginally zoned for single-family homes, and a rezoning request was filed with the city commission, which urged the city council to reject the proposal. According to the city's comprehensive plan, which had been in effect since 1959, land could only be zoned for multi-family units if a buffer zone were included between the project and adjacent single-family units. The city council rejected the proposal.

U.S. District Court Judge Thomas R. McMillen upheld the city, concluding that established procedures had been followed and the proposal had been rejected for valid reasons. The appeals court saw no evidence of discrimination, but also found no "compelling public interest" to justify the rezoning denial, noting that the decision perpetuated patterns of segregation.

Coastal Zone Management

Illinois was awarded a Federal grant of $336,000 in 1976 for development of a state CZM program. The grant is the third to be awarded to the state and will be administered by the Department of Transportation. The first grant, awarded in 1974, totaled $206,000, while the 1975 grant amounted to $384,000.

The third grant will be used to develop a comprehensive program for allocating Illinois' Lake Michigan shoreline in a sound, rational manner. The state's 59-mile shore is confronted with such problems as beach and bluff erosion, limited beach access, and competing and conflicting use by public and private developers.

Illinois sees as its objective the protection and, where possible, the restoration of the natural resources of the Lake Michigan coast. The state is also assisting local jurisdictions along the lake to exercise their responsibilities to guide future lakeside activities.

During the CZM program's third year, Illinois will refine the CZM policies developed earlier, and secure the necessary state authorities, including legislation, to insure program implementation.

The state will also be providing financial and technical resources to localities to assist in the development of CZM policies. The completion of several on-going coastal geological studies and the continuation of erosion protection assistance is also planned for the third year of CZM activity.

ILLINOIS LAND USE CONTACTS: Leonard Schaeffer, Director, (217) 782-4520; Illinois Bureau of the Budget, 108 State House, Springfield, Ill. 62706; Jack Brizius, Deputy Director, (217) 782-5414; Illinois Bureau of the Budget, 108 State House, Springfield, Ill. 62706.

ILLINOIS COASTAL ZONE MANAGEMENT CONTACT: Peter Wise, Department of Transportation, Division of Water Resources, Marina City Office Building, Room 1010, 300 N. State St., Chicago, Ill. 60610.

INDIANA

State officials do not envision the development of statewide land use policies, although protection of state-designated critical areas is under consideration. "Land use is a dirty word" in Indiana, at least at the state level, planning officials note, and efforts to substantially increase state powers at the expense of localities would almost certainly be rejected.

Land Use Policy

Local governments retain full authority for planning, zoning and subdivision regulation in Indiana. Most of the state's 92 counties do not have formal planning agencies. Master plans must be adopted by localities exercising subdivision control authority, although there are no state requirements for the development of local comprehensive plans.

During 1976, the state began a study of critical areas, and is considering a policy under which guidelines would be developed by the state for implementation by local governments. Although the policy is in the formative stages, state officials expect the program to cover wetlands, archaeological and historic sites, and similar areas. The program would not infringe on existing local powers, planning officials say.

Indiana has also begun an inventory of state-owned lands. During 1977, legislation is expected to be introduced calling for the preservation of prime agricultural lands, although prospects for passage are uncertain.

©1977 Business Publishers, Inc.

Coastal Zone Management

Due to a conflict with the Federal Office of Coastal Zone Management, Indiana's CZM program has been suspended, although state officials expect to continue to participate, and say they are commited to completing a program for final OCZM approval. The state has received no OCZM grants since a $220,000 award was approved in 1975, but Indiana officials expect to apply for second year funding during 1977.

During the first year, "technical difficulties" were encountered, Indiana officials say. OCZM said funding requests were denied during 1976 because the state did not provide sufficient detail to document progress made under the first-year grant. State officials say energy facility siting remains a critical problem in the coastal zone, which is currently dominated by existing commercial, industrial and residential development, with few sites left for major energy facilities. Flooding, erosion and sedimentation are also major coastal zone problems, state officials say.

When program funding resumes, Indiana plans to use funds to set its coastal zone boundary, define permissable land and water uses, designate areas of particular concern, establish methods of controlling coastal uses, and create organizational structures to implement management programs.

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

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

IOWA

For the third year in a row, the Iowa legislature rejected comprehensive land use legislation in 1976. As in passed years, a proposal received state House approval, but a similar bill was blocked in the Senate.

The legislature adopted other measures authorizing state control of major energy facility siting, and designation, with local consent, of historical preservation districts.

Land Use Policy

Legislation (HF 505) implementing statewide land use planning with counties retaining primary authority was defeated by the state Senate, despite earlier approval of a stronger bill by the House.

Senate debate centered on amendments approved in committee which diluted original state authority for land use planning, and which specified that counties would retain zoning controls. The bill's sponsors in the Senate accepted the weakening amendments, hoping to restore the original provisions during conference negotiations with the House. Bill sponsor Sen. Steve Sovern had recommended that state and local commissions be given authority to set general policy to preserve prime farmland and natural resources.

Although the weakening amendments were intended to reduce opposition from conservative legislators, the bill was defeated on a 33-14 vote, essentially duplicating actions taken during the 1973-74 legislature.

Sovern attributed the legislation's defeat to delays in reporting the bill out of committee, suggesting that the proposal was used by Republican opponents to influence voting on other issues.

Although land use legislation was endorsed by both state political parties and Gov. Robert Ray, a concensus on similar proposals "is not likely for the forseeable future," according to state planning officials. Iowa will probably continue to control land use through the "incremental approach," officials predict, adopting policies for specific resources instead of taking a more comprehensive approach as envisioned in HF 505.

On the issue of Federal land use legislation, state officials have expressed concern that such proposals may not take into account diverse land use systems in the various states. "Highly restrictive guidelines" for state planning "would not be appropriate or acceptable," Iowa planners contend.

Energy Lands and Facilities

The legislature adopted HF 1470 giving the Iowa Commerce Commission authority to approve the siting of electrical generating plants producing over 100 megawatts. The bill establishes a one-step process for certification with other agencies which report to the commission, and requires a public hearing in the county most heavily impacted by a proposed plant. Plants must be required to meet present or future needs. Construction and operation must cause minimal "environmental upheaval" and adverse land uses.

Strip mining legislation went into effect in July 1976, requiring mine operators to plan for the disposal of coal wastes and restore affected land to at least its original vegetation capability. Mine operators must also register with the state Department of Soil Conservation.

IOWA LAND USE CONTACTS: Robert F. Tyson, Director (515) 281-5888; David A. Discher, Planning Director (515) 281-3861; James Lynch, Program Administrator (515) 281-3704; Office of Planning and Programming, 523 E. 12th St., Des Moines, Iowa 50319.

KANSAS

Land use legislation in Kansas has been studied by special legislative committees since 1974 but, to date, no comprehensive land use process has been enacted. The depletion of groundwater has emerged as the main land use issue in the state, which will face significant alterations in its land use patterns if groundwater depletion continues at its present rate.

Land Use Policy

Cities and counties have full planning and zoning authority and are advised by regional planning bodies. This authority is discretionary, but the elements of the comprehensive plan are established by state. Cities are not bound to the plan unless the city commission adopts the plan by a majority vote. City and county zoning must be in accordance with a comprehensive plan or a land use study, if no plan has been adopted. Subdivision regulations must be preceded by a comprehensive plan. Less than half of the municipalities in the state have adopted zoning ordinances. However, the vast majority of the cities, with populations greater than 200, have such regulations.

Cities may also adopt extraterritorial zoning for land up to three miles beyond the city limits. Restrictions may not be placed upon land exclusively for agricultural purposes and if the county or township adopts zoning regulations for the same territory the city must relinquish its control.

Several proposed amendments to the existing planning enabling statutes will be studied by an interim legislative committee. Included in the amendments are changes in the planning commission composition and meeting requirements; requirements for regional and state review of local plans; revised requirements for the granting of special use permits; and requirements that all public improvements must be in conformance with the comprehensive plan.

With the assistance of state agencies, the Division of State Planning and Research has begun to identify environmentally sensitive areas in the state. Two studies currently underway will identify state and local natural resource management options and the development potential and needs of each regional planning areas in the state.

Meanwhile, in response to the increasing depletion of groundwater in western Kansas, Gov. Bennett has appointed a task force to study the problem and make recommendations toward solving the depletion problems. Task force will represent the interests of a broad sector of the state's population including citizens, universities, state

©1977 Business Publishers, Inc.

agencies, the legislature, business and industry. Recommendations of this task force may significantly affect the land use pattern in the western portion of the state.

Agricultural Lands

Kansas has become the 39th state to permit tax differentials for agricultural lands. A Constitutional amendment to allow the taxation of farmland on the basis of use value, rather than its potential development value, was presented to the voters in the 1976 general election. Measure, overwhelmingly passed, is expected to be implemented by the 1978 legislature after considerable study this year.

KANSAS LAND USE CONTACT: H. Edward Flentje, Director, Division of State Planning and Research, 501 Mills Bldg., 109 W. Ninth St., Topeka, Kan. 66612, (913) 296-3496.

KENTUCKY

Land use activity in the state has been very minimal, according to members of various land use-related agencies. The Office of State Planning is currently under the Secretary of the Cabinet in the office of Gov. Julian M. Carroll.

Land Use Policy

In 1976, land use legislation, S.14, modeled after the Oregon land use bill, was introduced. Measure would have called for the development of guidelines for designation of critical areas and means of preserving open spaces and agricultural, forest, and natural lands.

However, the Senate rejected the measure. Bill sponsor, state Sen. John Lackey (D.-Richmond) then introduced a substitute proposal based on the recommendations of the state Council of Land Use Planning. Substitute bill called for development of county land use plans and the creation of a 15-member Land Use Coordination Council. Council, with a $50,000 operating budget, would have the power to coordinate the county plans with state and Federal land use activities.

Senate objected to the proposal permitting the council to intervene in county planning activity and further restricted the council's authority to no more than advising on the designation of critical areas. Senate did retain a provision in the bill mandating counties to enact land use plans under guidelines established by the council should the Federal government adopt a national land use plan. As amended, the Senate passed the measure 18-17.

House voted first to rescind the $50,000 authorization for the council, then to make it bear the cost of any activity it required of local governments, and to make the entire measure ineffective unless a Federal land use plan was enacted. Finally, the House killed the measure by a 2-1 margin.

Meanwhile, the state Supreme Court ruled that local laws must comply with comprehensive land use plans or the communities may be without authority to manage growth. Decision resulted from a suit brought by developer Robert R. Hoff against the city of Erlanger in Kenton County. Hoff had sought a permit to build a service station on a shopping center lot. Permit was denied because the zoning ordinance did not allow such development.

At the time of the permit request, however, the city was still in the process of adopting zoning ordinances that would comply with the Kenton County comprehensive plan, as required by the Revised Statutes of 1966, which gave communities five years, or until June 16, 1971, to revise their zoning ordinances. At that time, the law said, all organizations, plans, and regulations were to conform with the planning and zoning laws contained in the statutes. Statutes did include a requirement for development of a comprehensive land use plan.

Since the city had not met the requirements of the law, the Supreme Court held that the Kenton County Circuit Court was correct in ruling that Erlanger officials had acted arbitrarily in denying the permit. Court also ruled that readoption of existing ordinances until new ordinances were formulated did not meet the requirements of the revised statutes. Erlanger officials were in the process of reenacting the zoning ordinances when Hoff applied for his permit.

According to David Schneider, an attorney in the case, the decision will affect other communities that have not adopted comprehensive land use plans and have not revised their zoning ordinances since 1966.

Energy Facilities and Lands

In another land-related court action, the U.S. Supreme Court recently let stand a state Supreme Court decision prohibiting strip mining on the property of some Muhlenberg County residents under three 1906 mineral deeds. State court ruled that the method of producing coal anywhere in the state depends on the language of the individual deed, since some have allowed use of the surface of the land and some have not.

State court said that the language of the deeds "is such that it must be readily realized that there was no grant of rights necessary for removing the coal by the open pit or strip method, but rather the language expresses the granting of rights which are primarily those necessary in the conducting of an underground mining operation."

The Commerce Union Bank owns the coal, which is leased to the Island Creek Coal Co. The Badgett Mine Stripping Corp. is a sublessee. In their appeal the companies said one of the coal seams cannot be mined at all by the underground method and in another seam only half the coal can be recovered in this way.

KENTUCKY LAND USE CONTACT: Gordon Duke, Director, Office of Policy and Management, 209 Capitol Annex, Frankfort, Ky. 40601, (502) 564-7300.

LOUISIANA

Louisiana's involvement in land use policy is directed primarily through the U.S. Department of Housing and Urban Development 701 Program and Coastal Zone Management Act, and in the future through Section 208 of the Water Pollution Control Act. State has existing laws and permitting procedures which are indirectly land use oriented, but there is no comprehensive state initiated land use policy.

Land Use Policy

State Planning Office completed a study in 1974, entitled "Growth and Conservation Policy," that is currently under reconsideration for use in policy development for the HUD 701 program. It is envisioned that a task team will study the policies for possible modification and applicability on the state level. Policies will subsequently be presented for review to several state-level bodies for further analysis, after which executive endorsement will be considered.

Other developments in the area of land use include a use value assessment tax mandated in the new constitution which precludes taxing of agricultural, horticultural, marsh and timber lands at fair market value. Buildings of historic architectural importance may also be included. This law is intended to protect valuable land resources and critical areas.

State Planning Office now has in operation a functional land use information and data analysis system with graphic and statistical capability. System provides a means of integrating and associating spatial and geographic data such as land use, soil associations, flood hazard areas, populations and socio-economic data. Hopefully, the system will function as a decision-making tool for state level projects and programs.

In land-related court decisions, the most significant is a recent judgment to prevent construction of the Interstate-410 loop in the New Orleans area based on its environmental impact to the coastal wetlands. Funds for this project have since been diverted for construction of a north-south expressway in Louisiana which will achieve interstate status.

©1977 Business Publishers, Inc.

Coastal Zone Management

Three bills were introduced by the state legislature in an attempt to fulfill the requirement of the Coastal Zone Management Act of 1972 that each state develop a management program for its coastal zone.

House bill 1315 delineated the inland coastal zone boundary at the five ft. countour line for land and at a point where the influence of sea water and occurence of marine fish and shell-fish were no longer significant. Bill established the Office of Coastal Resources Management within the Department of Wildlife and Fisheries. However, parish government interests opposed H.B.1315 and it was never reported out of the committee.

House Committee on Natural Resources proposed an iternative bill that greatly reduced the area to three miles inland from the coastline and "three geographical miles inland from the landward boundary of those bays or other similar water bodies which are immediately adjacent to such modified coastline." The unnumbered bill eliminated the OCRM and transferred the Louisiana Coastal Commission from the Wildlife and Fisheries to the Office of the Governor. Bill, like its predecessor, was not reported out of committee.

Another substitute bill, H.B. 1512 was passed by the legislature and signed by the governor. Bill extends the planning phase of such a program for another year under the direction of the Louisiana Coastal Commission. Legislation changed the commissions membership by adding one member to represent Orleans Parish and one member to represent users of solid minerals. Commission is re-required to report proposed legislation to the natural resources committees of both houses by March 1, 1977, that will set boundaries, establish permit programs, and provide for enforcement "all in relation to a state and local coastal zone management program." Commission now becomes the third such agency mandated to review and resolve the state's coastal zone problems.

LCC committee recently proposed to define the coastal boundary as being three miles inland from the coastline, including first bays or similar water bodies. However, several parishes prefer a five-ft. contour boundary, citing possible loss of energy impact funds.

LOUISIANA LAND USE CONTACTS: Patrick W. Ryan, Executive Director, Louisiana State Planning Office, 4528 Bennington Ave., Baton Rouge, La. 70808, (504) 389-7041.

LOUISIANA COASTAL ZONE CONTACTS: Joel Lindsey, Louisiana State Planning Office, 4528 Bennington Ave., Baton Rouge, La. 70808, (504) 389-7041.

MAINE

State legislature enacted amendments to the farmland and open space tax legislation to increase the attractiveness of the incentives offered under this program. Also, the Department of Agriculture, in cooperation with the Soil Conservation Service, is conducting an inventory of prime agricultural lands in the state.

Land Use Policy

Purpose of the farm productivity and open space land law is to encourage the preservation of farmland and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state to conserve the state's natural resources.

Included in the changes, a farm may be one that has produced an income of $1,000 on 10 acres in one of the last two years as well as in three of the last five. Also, the owner may be provisionally granted the tax relief subject to proof that the farm produced the required income during the current or second tax year.

Land between 10 and 20 acres must produce an additional $100 per acre but $2,000 is the maximum required for all lots of 20 acres or more. Value of commodities produced for consumption may now also be included in meeting income requirements. The Agriculture Commissioner will be responsible for determining an average 100% productivity for good cropland, orchard, and pasturelands in each county in the state. This information will in turn be used by the assessors. The state tax assessor will determine similar values for open space lands.

Amendments completely changed the recapture provisions and now if the land use is changed the owner will pay a penalty equal to a percentage between farm use assessment and the so-called fair market assessment. Penalties will be 10% of the difference in valuations if the land has been under the law for less then five years; 20% for five-10 years; and 30% if the land has been under the law for more than 10 years. These provisions apply to the part or parts of the farm that change. Also included in the law are appeal procedures.

Maine was the recipient of several Federal land use-related grants including $373,750 from the Department of Housing and Urban Development; $57,400 from the Water Resources Council; and $100,000 for 208 water quality planning from the Environmental Protection Agency.

Coastal Zone Management

Maine received several major grants for coastal zone management in 1976 totaling $357,967, with an additional grant for the Outer Continental Shelf of $146,000. The state is actively pursuing the development of a 306 application to cover its entire coast. The coastal planning program has been redirected to place a greater emphasis on the role of local government and a balanced approach to planning which considers economic and social as well as environmental objectives.

MAINE LAND USE CONTACT AND COASTAL ZONE MANAGEMENT CONTACT: Allen Pease, Director, State Planning Office, Executive Dept., 189 State St., Augusta, Me., 04333 (207) 289-3261.

MARYLAND

Maryland has recognized the need for coordinated, comprehensive planning on the state level since 1933 when the State Planning Commission was established by the legislature, providing a model according to which many other states established such boards. In 1959 the State Planning Commission was succeeded by the State Planning Department in response to the growing need for expanded planning functions on a statewide level, as a result of population increases and economic development in the state. The enabling legislation for the Department is Article 88C of the Annotated Code. The State Planning Department was reorganized into the Department of State Planning in 1969. The General Assembly extended the role of the department in land use planning under the Land Use Act of 1974.

Land Use Policy

The Department of State Planning is currently involved in the preparation of a generalized land use plan because of the increasingly complex problems and responsibilities facing the state. The plan is based on the following four premises: 1) the generalized land use and planning process can establish an effective basis for solving land use and related problems in the state; 2) the plan and process can strengthen and maintain intergovernmental cooperation, coordination, and management in the conservation and development of the state's land resources; 3) the plan can provide for the conservation and optimization of expenditures by guiding orderly land use arrangements and promoting sound public investment patterns; and 4) the plan and process can have a substantial impact upon the future quality of life in the state.

The many work activities are coordinated through the "Study Design for the Maryland Generalized Land Use Plan" which sets forth a structure for continuing research, analysis, and data collection, as well as a process for intergovernmental and public participation. The design specifies a methodology for formulation, evaluation, selection, and recommendation of the state land use plan. Background

©1977 Business Publishers, Inc.

and special studies have been undertaken to assure that a broad perspective and range of consideration are incorporated into the state planning effort. Special studies are being concluded on the topics of real estate development and state land use policy; key facilities in the state; fate and future of older urban areas; statewide land use issues drawn from a survey of state and sub-state goals and objectives; and survey of Federal laws and regulations.

The relationship between employment opportunities and changes in population have been used as the basis for a mathematical model which projects population levels for each county. Projection was carried out in five-year increments to the year 2000. Model, containing both a demographic and economic sub-model, has the capacity to provide detailed information on the age, race and sex characteristics of each county's population, labor force and employment.

Department of State Planning received a grant from the National Aeronautics and Space Administration to establish the Maryland automated geographic information system. MAGI is a computer-based system designed to store geographic data in a consistent and coordinated manner. Information stored in this system can be displayed via computer maps in a manner similar to standard map graphics. Background studies are released in the form of a series of technical reports. To date, nine volumes of text and two dozen different data maps have been prepared.

The land use technical report series includes manuals on natural soils groups; geology, aquifers and minerals; topographic slope, forest vegetation; public lands; existing land use and its classification; and the compendium of natural features. Over 3,600 manuals and 2,500 maps have been distributed, often with an accompanying staff explaination on the use of the materials.

A two-part framework has been chosen for the organization of goals and policies necessary for the success of the state land use plan. "Natural resources" is a broadly defined category which incorporates the views that the natural environment provides those elements necessary for supporting human life such as clean air and water and suitable land for residence and that it provides certain resource commodities that are used in the production of goods and services used in our modern society such as mineral resources for energy; raw materials; forest and forestlands for fiber; agricultural land for growing crops and livestock. "Settlement and growth" is the second category and it encompasses man's activities which have or will change the natural environment. Settlement refers to the historic use of land which has produced a pattern on the landscape which reflects the values of past generation and exerts strong influences on future land decisions and growth refers to future changes in land use as a result of such things as population increases and changes in employment opportunities.

A series of alternative land use plans have been prepared and will be evaluated and in the process of selecting the final plan. After employing the results of evaluation and receiving comments the recommended generalized state land use plan will be submitted to the governor and General Assembly.

Legislation enacted this year included the flood control-watershed management act and creation, continuation and administration of the scenic rivers program. The flood control legislation provides a procedure for determining interim flood hazard areas, a system for developing rules and regulations governing uses within flood hazard areas, penalties for violations and enforcement measures. The scenic rivers legislation is to protect the water quality of state rivers or portions of them and related adjacent land areas possessing outstanding scenic, fish, wildlife and other recreation values.

Coastal Zone Management

Maryland, like the 29 other states bordering the oceans or Great Lakes is in the process of developing a coastal zone management program. In 1976, the state Department of Natural Resources Energy and Coastal Zone Administration revised its request for assistance under Section 305 of the Coastal Zone Management Act of 1972. Major emphasis in the third-year program is on Federal, state, and local government as well as general public involvement in refining the program.

©1977 Business Publishers, Inc.

Energy Lands and Facilities

No applications have yet been made under the Coastal Facilities Review Act, although there are existing facilities such as the LNG terminal at Cove Point and the storage tanks at Piney Point that would have been subject to CFRA review if they had been proposed after CFRA was passed. Just prior to enactment of the legislation, St. Mary's County prevented expansion of the Piney Point facilities to include a refinery. Denial of building permits for this facility was upheld in both the district and appelate courts in the case **Steuart Petroleum Co. v. Board of County Commissioners of St. Mary's County.**

Agricultural Lands

Included in the recent land use related legislation was the authorization of an Agricultural Lands Preservation Foundation. It is the intent of the state to preserve agricultural land and woodland in order to provide sources of agriculture products within the state for the citizens. Legislation is an attempt to control the urban expansion which is consuming the agricultural land, curb the spread of urban blight and deterioration, and protect agricultural land and woodland as open space.

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

MARYLAND COASTAL ZONE MANAGEMENT CONTACT: Scott Brumburgh, Coastal Zone Program, Tawes State Office Bldg., Annapolis, Md. 21401, (301) 269-3382.

MASSACHUSETTS

Studies summarizing the status of land use controls in the state and outlining strategies needed to encourage economic development have been published by the Office of State Planning. Copies of "Status and Future Actions Report on Land Use Planning and Implementation Efforts in the Commonwealth of Massachusetts" and "An Economic Development Program for Massachusetts" are available from the Office of State Planning, John W. McCormack Bldg., Rm. 2101, One Ashburton Place, Boston, Mass. 02108, (617) 727-5066.

Land Use Policy

"Status and Future Actions Report on Land Use Planning and Implementation Efforts in the Commonwealth of Massachusetts," financed in part through a comprehensive planning assistance grant from the U.S. Department of Housing and Urban Development under the provision of Section 701 of the Housing Act of 1954, is divided into four major sections. First section describes the state's institutional framework for planning, regulation and intergovernmental coordination and decision-making. Section II summarizes the most important state, regional and local planning and implementation efforts including:

1. **Air quality maintenance program,** which is being undertaken by the Department of Environmental Quality Engineering in the Executive Office of Environmental Affairs. Program, authorized by the Federal Clean Air Act of 1970, involves the development and implementation of an AQM plan, which will address each pollutant and select strategies for preventing violations of established standards;
2. **Solid Waste Management Plan,** which was financed in part through grants from the U.S. Environmental Protection Agency under the Federal Solid Waste Disposal Act. Plan recommends the establishment of privately financed, constructed and operated resource recovery facilities in various parts of the state;

3. **Comprehensive Outdoor Recreation Plan**, which requires the state to prepare, and periodically update, a statewide comprehensive outdoor plan in order to receive Federal funds for land acquisition and development projects;
4. **Historic Preservation Program**, which consists basically of local historic inventories and plans;
5. **EPA 208 Water Quality Management Program**, which is authorized and funded under the Federal Water Pollution Control Act Amendments of 1972. Under the act, the state is required to establish an integrated approach for planning and control over such activities as municipal and industrial wastewater, storm and combined sewer run-off, nonpoint source pollutants, and land use as it relates to water quality;
6. **Energy Programs**, which are under the direction of the Energy Policy Office in the Executive Office of Consumer Affairs. EPO has developed and is in the process of implementing programs involving energy conservation, off-shore exploration and coal exploration in the southeastern part of the state. Recommendations are being developed regarding nuclear power, solar energy and natural gas pricing;
7. **Agricultural Planning**, which supports the preservation and protection of agriculture in the state. Recommendations in a policy statement, prepared by the state Department of Food and Agriculture and endorsed by the governor as the official policy of the administration, include designation and mapping of state farmlands, utilization of publicly owned agricultural lands, and development of legislation for the purchase of development rights of farmlands.

Section III of the report presents a description of the relationship of the proposed HUD-701 program to past and present planning and implementation programs in the state. Final section describes how the state will satisfy the land use element requirements prior to application for HUD 701 assistance after Aug. 22, 1977.

Second report, "An Economic Development Program for Massachusetts," prepared by Gov. Michael S. Dukakis, is a working document focusing on economic growth. Included in the report are sections regarding off-shore oil and gas development, housing construction, transportation, and port development.

In another land-related matter, ownership of Mashpee, a town of 16,000 acres valued at over $175-million, is being claimed by a tribe of Indians who have posted notice with the registry of deeds. Title to the town's land is clouded by the action; no mortgages are being written on its property, and some mortgage and construction loans are being recalled. Mashpee's entire economy is threatened, and the town was recently unable to market a $14-million school bond issue.

Coastal Zone Management

Gov. Michael S. Dukakis recently presented a draft of the first comprehensive plan for controlling commercial and recreational use of the state's 1,200-mile coastline to Robert Knecht, chief of the Commerce Department's Office of Coastal Zone Management. Program, comprised of 33 specific policies and still subject to revision, is an attempt to preserve natural and recreational areas, such as marshes and beaches, while at the same time specifying where commercial development will be permitted under present state laws.

Program, which would be administered by the state Office of Environmental Affairs, generally encourages economic growth in those areas that are already developed, protecting undeveloped areas. Construction which would generage additional development in flood-prone areas is discouraged, but port and harbor development is strongly supported. Policies affecting commercial development include requiring a review of the appearance of buildings to be constructed within the coastal zone and urging inland siting of oil facilities and power plants wherever possible. If the program is approved, the state will receive up to $1-million in Federal funds a year.

During 1976, the state received two coastal planning grants from the National Oceanic and Atmospheric Administration. One of the grants, totaling $200,000, will be used to prepare for onshore impacts of Outer Continental Shelf oil and gas production. Coastal management of Martha's Vineyard will be funded by the other NOAA grant of $22,000, in addition to funds from the U.S. Environmental Protection Agency and the Department of Housing and Urban Development. This is the first time that three Federal agencies have provided funds to assist a local government in coastal planning.

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

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

MICHIGAN

Office of Land Use, Department of Natural Resources has been reorganized, expanded and given a new name. Renamed the Division of Land Resource Programs, the office will continue its previous responsibilities of guiding the implementation of Gov. William G. Milliken's executive order 1973-2 which directed the Department to "assume complete responsibility for the development of a state land use plan and to prepare legislative proposals to effectuate that program."

Division of Land Resource Programs will continue to administer the Farmland and Open Space Preservation Act and the County Rural Zoning Act. New program responsibilities transferred to the division include the state's coastal zone management efforts; natural rivers and natural areas programs; inland lake management unit; and Shorelands Management Act of 1970 and Soil Erosion and Sedimentation Control Act of 1972. General inquiries may be sent to the Division of Land Resource Programs, Department of Natural Resources, Box 30028, Lansing, Mich. 48909.

Land Use Policy

Despite strong support from Gov. Milliken, H.B.4234 is expected to die in committee with no carry over provisions from this legislative session. This land use bill, originally introduced in February 1975, was referred to the House Committee on Urban Affairs from which it was reported out with substitute. It was next referred to the House Appropriations Committee where it was tabled. Bill's primary sponsor, Philip O. Mastin, did not run for reelection this year but similar legislation is expected to be introduced in the next session.

Meanwhile, the Zoning Advisory Committee of the Division of Land Resource Programs, Department of Natural Resources has prepared a report entitled "Michigan's Zoning Enabling Acts -- Recommendation for Revision" that presents a two-part strategy for revision of the state's zoning enabling acts. First part presents recommendations which should be given immediate legislative consideration to clear up high-priority problems or grant essential powers which will help local units of government in their use of zoning. The second component of the report suggests the initiation of a concurrent effort to comprehensively revise enabling statutes with serious consideration given to the creation of a new single zoning enabling act which would authorize zoning at the city, township, county and village levels of government.

In a related matter, the Michigan Supreme Court is considering the question of whether rezonings are administrative or legislative in character. Oral arguments have been held and a decision on the **Zaagman, Inc. v. City of Kentwood, Turkish v. City of Warren** is expected shortly.

New legislation introduced this year was the Kammer Recreational Land Trust Fund Act (Public Act 204 of 1976) which designates the revenue from oil and gas royalties on certain state lands be used to create a state recreational land acquisition trust fund. A five-member board will administer the trust. Funds generated for the purchase of land or rights in land are expected to be sizable.

©1977 Business Publishers, Inc.

Coastal Zone Management

State Department of Natural Resources received a third-year grant of $436,308 from the National Oceanic and Atmospheric Administration to complete development of a coastal zone management program. State will provide matching funds of $218,154 which was approved by the legislature. Program is being coordinated by the DNR with state and regional planning commissions, the general public, and NOAA's Office of Coastal Zone Management. Ten of the fourteen state planning and development regions are participating in the program. A 15-member Citizens Shorelands Advisory Council has been appointed to advise DNR. Program is built on existing state authorities with an emphasis on the strengthening of the role of local government. Statewide information meetings will be held early in 1977 and public hearings in April 1977.

Gov. Milliken signed the Sand Dune Protection and Management Act into law on July 30, 1976. Law, to be administered by DNR's Geological Survey Division, requires (a) comprehensive study and inventory of Great Lakes sand dune areas in the state; (b) permit requirements for mining in designated sand dune areas; (c) environmental impact statements; (d) operational and reclamation plans for mining; (e) 15-year mining plans; (f) fees on sand mining; (g) surety bonds; and (h) penalties.

Agricultural Lands

Under the state's Farmland and Open Space Preservation Act of 1974, farmland and certain other property owners may receive special tax considerations by voluntarily entering into a 10-year development rights agreement on easement.

Operational since May 1975, the act has had 758 applications approved by local governing bodies with 500 receiving state approval by Dec. 31, 1975. This represents 114,000 and 31,000 acres respectively. It is estimated that by the end of 1976, near 900 applications for tax relief will have received state approval.

In a related matter, a technical report has been prepared by the Michigan Farm Bureau, the Cooperative Extension Service and Center for Rural Manpower and Public Affairs and the Division of Land Resource Programs. Report, entitled "The Use of Zoning to Retain Essential Agricultural Lands," reveals that the retension of essential agricultural lands for agricultural purposes is a proper public goal and zoning when backed by a strong public commitment and sensitive application can assist in reaching that goal.

MICHIGAN LAND USE CONTACTS: Karl R. Hosford, Chief, Division of Land Resource Programs, Department of Natural Resources, Box 30028, Lansing, Mich. 48909, (517) 373-3328.

MICHIGAN COASTAL ZONE MANAGEMENT CONTACT: Merle Raber, Department of Natural Resources, Stevens T. Mason Bldg., Lansing, Mich. 48926, (517) 373-1214.

MINNESOTA

"Minnesota, like other states, does not have a specific policy that is identified as 'a land use policy.' Instead, land use policy is comprised of a large number of policy statements that the legislature has enunciated in the statutes dealing with a variety of subjects that affect the use of land," according to a report prepared by the State Planning Agency. Report was prepared by the agency's Environmental Planning Assistance Program, authorized by Section 701 of the 1954 Housing Act. For copies of "Program, Policies and Legal Authorities Affecting the Use of Land in Minnesota: Land Use Planning Report No. 1" contact the State Planning Agency, 100 Capitol Square Bldg., 550 Cedar St., St. Paul, Minn. 55101, (612) 296-4933.

Land Use Policy

According to the report by the State Planning Agency, the state's land use planning and regulatory authority, granted by law to bring about more orderly land patterns in both urban and rural areas and to protect the indiscriminate use of natural resources, exists among the many levels of government. Such authorities as taxation and zoning, which has a direct relationship to the land, can encourage or discourage certain types of land use and the rate of development.

The state legislature has granted municipalities and counties the power to develop comprehensive plans and to implement these plans through the adoption of such measures as zoning, subdivision regulations, and official maps. Land use planning in townships must first be approved by the voters of the township. If approved, the state legislation provides guidelines for the preparation of a comprehensive plan and the adoption of zoning regulations. Certain towns, known as "urban towns" have the same powers as municipalities.

Special purpose districts, including 92 soil and water conservation and 33 watershed districts, have been established by state law. Minnesota also has 12 regional development commissions which have comprehensive planning authority, but cannot regulate the use of land. However, in addition to their planning role, the regional development commissions coordinate the activities of local governments and the plans of independent boards, commissions or agencies which affect several communities or the entire region. Members of the regional development commissions are elected officials from local governments or school boards. In the Twin Cities metropolitan area, the Metropolitan Council whose members are appointed, has land use authority.

State agencies have the authority to plan and regulate the use of certain lands. This authority is distributed among the so-called "functional" agencies which administer programs relating to natural resources management, pollution control, economic development and transportation. These activities are coordinated through the development of comprehensive plans, but not regulated, by the State Planning Agency. In most cases, regulatory authorities of state agencies exist in the form of permits, standards, and direct land acquisition, management and improvement.

Legislation was passed in 1973 allowing the state to locate certain types of development such as power plants; directly assist in the planning for certain "critical areas"; and to require environmental impact statements. The 1973 legislature also created an Environmental Quality Council and a Commission on Minnesota's Future, which is responsible for developing strategies for legislature review.

In other land use-related legislation, the last legislative session approved a land use planning assistance program of grants for local government units to be administered by the State Planning Agency. By law, these grants cannot exceed 75% of the cost of the land use planning program, except those grants made within a designated critical area may be as much as 100% of the total cost of the program. A total of $2,500,000 was appropriated from the general fund, with $300,000 designated for critical areas. H.F.1026, effective July 1, 1976, stated that the appropriation will be available until June 30, 1977.

Coastal Zone Management

Minnesota received a $120,000 grant to continue development of a coastal zone management program from the National Oceanic and Atmospheric Administration. State had received $150,000 in 1975 from the Federal government to prepare a summary of the first year's finding and to conduct special studies on shore erosion damage, septic systems and wells, soils, and geology.

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

Coastal counties have developed zoning ordinances for unincorporated shorelands according to guidelines set by the Department of Natural Resources under the Shoreland Management Act of 1969. State supervision was extended to municipal shorelands in 1973.

Agricultural Lands

Regarding agricultural lands, Minnesota enacted a deferred tax law in 1967 and amended it in 1969 and 1973. Private recreational, open space, and parkland, including land used for golfing and skiing, are also eligible for deferred taxation. However, the land must be a least five acrea and either open to the public; operated by firms for the the benefit of employes and guests, or operated by private clubs within membership af at least 50 people. Agricultural land must be a family farm of at least 10 acres, in order to qualify for the special valuation. Qualified land is taxed according to use value;

©1977 Business Publishers, Inc.

however, the market value is noted. If the land is sold, deferred taxes equal to the difference between market value and use value for the last three years must be paid.

In 1974, the state Supreme Court upheld the law permitting farmland in urban areas to be assessed at a lower rate than its potential market value. Court ruled that the legislature was empowered to classify property for tax purposes and that the state constitution required that taxes be uniform upon the same class of subjects.

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

MINNESOTA COASTAL ZONE MANAGEMENT CONTACT: Steve Reckers, Coastal Zone Program, State Planning Agency, 100 Capitol Square Bldg., 550 Cedar St., St. Paul, Minn. 55101, (612) 296-2884.

MISSISSIPPI

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

Land Use Policy

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

Coastal Zone Management

Mississippi entered its third and final year of planning for coastal zone management in December of 1976 when it received a $136,168 grant from the U.S. Department of Commerce. State received a Federal grant of $127,038 in 1975, and $101,564, in its first year in the program.

Planning for the state's coastal zone management plan is coordinated by the Mississippi Marine Resources Council and is a culmination of the first and second years of planning. It will include an identification of the state's coastal boundaries; a determination of areas of particular concern, as well as priority uses for the coastline; a description of how the state will exercise control over land and water uses; and how it will organize itself to implement the development program. Final plan will be submitted to the 1978 session of the state legislature.

During the first two years of the program, several series of public workshops and informal meetings were held to educate and inform citizens about the coastal zone management plan. Audio-visual presentations were made to over 80 interested civic and social groups. A public opinion survey was conducted during the fall of 1976 to determine attitudes and opinions of local citizens concerning the state's coastal resources.

MRC directly regulates development in state owned tide lands through the Coastal Wetlands Protection Act of 1973 (Chapter 27, Mississippi Code 1972), and cooperates with the Gulf Region Planning Commission, which is studying development of a regional plan for the coastal counties for open spaces, recreation and esthetics.

MISSISSIPPI LAND USE CONTACT: Milton Baxter, Ed.D., Director, Governor's Office of Planning & Coordination, 1503 Walter Sillers Bldg., Jackson, Miss. 39201, (601) 354-7018.

MISSISSIPPI COASTAL ZONE MANAGEMENT CONTACT: J.E. Thomas, Director, Mississippi Marine Resource Council, P.O. Drawer 959, Long Beach, Miss. 39560, (601) 864-4602.

MISSOURI

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

In 1976, the state contracted with the U.S. Geological Survey to prepare the Land Use and Data Analysis Program for the state. Project is scheduled for completion in June 1977.

Land Use Policy

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

Zoning authority for counties in the state vary according to classification based on assessed property values. Major counties enjoy the same zoning authority as cities, villages and towns. Building codes cannot be adopted unless planning/zoning is adopted. Zoning regulations for other counties must be approved by referendum. Only 22 of 114 counties in the state have enacted planning or zoning ordinances.

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

A measure of the sentiment toward land use control in the state can be seen in the opposition led by U.S. Sen. Thomas F. Eagleton (D.-Mo.) to the Federal flood insurance program. His opposition to the program reflects strong pressure from constituents who contend that the program restricts their rights to use their land as they wish.

As a result of this feeling, the city of Cape Girardeau has joined with other cities in a court challenge of the constitutionality of the flood insurance law. The state government has not taken any active position on the issue.

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

MISSOURI LAND USE CONTACT: Stephen Bradford, Director, Division of State Planning and Analysis, Office of Administration, P.O. Box 809, Capitol Bldg., Rm. B-9, Jefferson City, Mo. 65101, (314) 751-2073.

MONTANA

In 1975, the state enacted legislation (H.B.672) that was designed to promote good land use by employing tax incentives. However, the state taxation subcommittee decided not to take any action on the Montana Economic Land Development Act which was never implemented because two state departments, the Department of Community Affairs and the Department of Revenue, considered it unworkable. Bill sponsors are preparing a report of MELDA to be presented to the new legislature.

Land Use Policy

DCA Planning Division has prepared a working draft, still subject to revision, regarding areas of state concern bill that will be presented to the next legislative session. The purpose of this act would be to establish a process by which the state and local governments may jointly and cooperatively identify areas of mutual concern and share

©1977 Business Publishers, Inc.

the responsibility for planning and management in a way consistent with the interests of the state and the local community. Draft also proposes the establishment of a commission for areas of state concern.

In order for an area to be designated a state concern, it must be found to be an area which contains irreplaceable natural or cultural characteristics that are of major concern to the state or an area where state policy permits or encourages resource development, and where such development could result in undesirable community and environmental impact. Working draft presents the necessary procedures for area nomination, public hearings and development of planning guidelines for the area.

Planning Division also will attempt to amend the Subdivision and Platting Act to allow greater control of the subdivision process and to change the "Greenbelt" Law. The purpose of the "Greenbelt" Law is to use the taxation power of the state to keep land in agricultural production and discourage it conversion to residential use by not classifying subdivided land as agricultural and also by assessing an additional tax payable when the use of the land is changed from agricultural to another use, or a "roll-back" tax. However, under the present interpretation by the state attorney general, the law does not have its intended effect and can promote undesirable changes in use, rather than inhibiting them, and it penalizes conversion of marginal land more harshly than prime agricultural land.

Planning Division intends to propose the repeal of the "roll-back" tax and amend a section of the law to provide that the filing of a subdivision plat changes the tax classification from agricultural to residential. The division also plans to request allocation of one-half of onepercent of coal tax monies to a discretionary fund for local planning. Fund would be controlled and distributed by the DCA and its use would be solely to meet local needs caused by anticipated Federal default.

State Commission on Local Government, established by the last legislature, has proposed a comprehensive recodification of all state laws which relate to the authority and responsibilities of local governments. If the proposal, which is supported by DCA, is passed, it would replace four separate state laws which authorize cities and counties to plan and zone.

In a related matter, Montana Supreme Court is expected to reconsider a July 22 decision which upheld citizens' right to file suit against the state to challenge the adequacy of environmental impact statements. Decision is being interpreted more broadly than had been intended, according to several court justices.

MONTANA LAND USE CONTACT: Judith H. Carlson, Director, Montana Department of Community Affairs, Capitol Station, Helena, Mont. 59601, (406) 449-3494.

NEBRASKA

State officials are preparing to implement legislation approved by the legislature and signed by the governor in 1975 that requires counties with large populations to prepare and enforce comprehensive land use plans after July 1, 1977. Another land use measure, also passed in 1975 clarifies ambiguities that arose in the guidelines for preparation of the county land use plans.

Land Use Policy

Under the 1975 law (L.B.317), cities and villages in metropolitan counties in the state failing to enforce zoning and subdivision regulations will forfeit land use planning and regulatory powers to county governments. Four of Nebraska's ninety-three counties are considered metropolitan. These counties, having cities with populations of 5,000 or more are required to prepare and enforce zoning and subdivisions by July 1, 1977.

The State Office of Planning and Programming is directed to review the land use programs of all counties and municipalities in the state by July 1, 1977, and to reexamine the programs annually in order to insure that the procedures and practices under the land use regulatory programs are consistent with state law. After L.B.317 was signed into law by Gov. Exon, the state's attorney general's office criticized it claiming the law contain unclear guidelines on determination of compliance and lacked a provision to appeal adverse rulings by the planning office, a right which is statutory under state law.

Amendments were passed which attempted to clarify the compliance guidelines and inserted the appeal process into law. Amendments also contained an extra-territorial notice provision requiring notice within a three-mile radius of proposed construction activity by a local government.

Nebraska has legislation designed to preserve agricultural lands by taxing the land at its actual value for agricultural use rather than at its value for other types of uses. In order to qualify for this agricultural use assessment, the land must be used for agricultural purposes and must be zoned for agricultural use by the local government with zoning jurisdiction. The attorney general's office has ruled that in order to qualify for the assessment, the agricultural use zone must be zoned exclusively for agriculture with no other uses allowed.

If land that is given the special agricultural assessment is taken out of agricultural production, it will be assessed for taxes at the higher value for the five years preceding its removal from agricultural use. Interest of six percent must be paid on these additional taxes. State law also requires that a permit be obtained from the director of the Department of Water Resources for construction within a floodplain.

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

NEVADA

No significant modifications have been initiated in 1976 to the legislation providing preferential tax treatment for agricultural and open space lands passed in 1975, since the state legislature meets every two years. However, staff members of the state Land Use Planning Agency, Department of Conservation and Natural Resources, are optimistic that land use-related legislation will be forthcoming in the next legislative session beginning in January.

Land Use Policy

In summary, the state has legislation providing a tax break, for which application must be made, for farmland that meets outlined qualifications. Counties are permitted to establish criteria for open space tax breaks and the designation of open space must be tied to a comprehensive plan and local zoning ordinances.

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

Under the law, counties over 100,000 in population must include population projection elements in their plans, along with conservation, water needs, and pollution control as critical or limiting factors in planning for growth. Nevada's land use legislation requires development of a statewide land use planning process and designation of critical environmental areas. It does not grant authority to regulate large-scale developments or facilities with significant environmental impact.

State Land Use Planning Agency is also involved in developing methods to inventory lands and resources; identifying demographic trends and the impact assessment of large-scale development; projecting land use needs; and inventorying needs and financial resources for the private and public sectors.

The state is also involved in the joint California-Nevada Tahoe Regional Planning Agency, which administers the resort area of Lake Tahoe. In a related matter, the Nevada Supreme Court reaffirmed the legality of the bi-state agency in 1974 by dismissing various legal challenges filed by Douglas County, Nev., where the lake and gambling casinos are located.

©1977 Business Publishers, Inc.

NEVADA LAND USE CONTACTS: Bruce D. Arkell, Planning Coordinator, Capitol Complex, Carson City, Nev. 89710, (702) 885-4865; Addison Millard, State Land Use Planning Agency, Department of Conservation and Natural Resources, Capitol Complex, Carson City, Nev. 89710, (702) 885-4363.

NEW HAMPSHIRE

Since the state legislature meets biannually, there has been no change in the status of land use controls or proposed legislation. In 1975 several land use planning bills were defeated because of growing concern for local control over land use regulations and no support from Gov. Meldrim Thomson.

Land Use Policy

Office of Comprehensive Planning has prepared an Overall Program Design for fiscal years 1977-1979 and an application for comprehensive planning assistance program funding July 1, 1976 to June 30, 1977, from the Department of Housing and Urban Development. OCP is attempting to deal with the statewide issues of policy and program development, land use and water resource planning, and housing planning. Regarding land use, the goal of the OCP is to complete a program which will serve as a unifying force for state actions regarding growth and development and resource use and conservation.

Coastal Zone Management

OCP is also responsible for coastal zone management in the state and is in the process of preparing a comprehensive plan to be presented to the legislature. Plan will emphasize inventorying biological populations and mineral and petroleum resources; ways of assessing the impact of various land and water uses; and development of policies regarding the use of the coastal zone based on the impacts of those uses.

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

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

NEW JERSEY

Several pieces of land use related legislation were introduced in the state Legislature during 1976. The "Agricultural Preserve Demonstration Program Act," appropriating funds from the State Recreation and Conservation Land Acquisition and Development Fund for programs to acquire and conserve lands for recreation and conservation purposes, was approved. Rules and regulations for the program, designed to preserve agricultural open space and to retain such activities, have been adopted and the demonstration program is currently underway. However, both the "Development Review Act," Senate Bill 1013, relating to planning and the review of land use decisions regarding large-scale development, and the "Municipal Development Rights Act," Assembly Bill 1118, regarding planning and zoning, have not yet been adopted.

Land Use Policy

Division of State and Regional Planning, within the Department of Community Affairs has been in the process of preparing a draft plan for state development. Plan indicates where development is appropriate and should be encouraged and where major resource and open space preservation efforts should be focused. Present data indicate that much of the state's projected population growth can be accommodated within areas well served by existing transportation networks and other public facilities.

Development plan also delineates areas where agricultural uses should be maintained, open space be preserved and development be limited to current levels. Plan is not designed to duplicate the planning activities of other public agencies or to replace any function performed now by these agencies. Development within the state will be determined by public policy and the dynamics of the private sector. Plan is intended to describe the general direction and goals of the state development policy and to encourage coordination among all participants in the development process.

Division of State and Regional Planning has prepared, by executive order of Gov. Brendan Byrne, a preliminary draft of a statewide housing allocation plan. Plan includes a housing needs study and state housing goals to guide municipalities in adjusting their municipal land use regulations in order to provide opportunity for development of a variety of housing to meet the needs of state residents. Public hearings have been conducted regarding the housing allocation plan and it is currently being reviewed. For further information contact the Division of State and Regional Planning, Bureau of Urban Planning, P.O. Box 2768, Trenton, N.J. 08625.

In related matters, Gov. Brendan Byrne signed legislation prohibiting discrimination in granting home mortgages and forbidding the practice of redlining, refusing to grant mortgages in less desirable neighborhoods. Under the new law, fines of up to $5,000 in each case where a lending institution refuses to grant a mortgage for arbitrary reasons based on geographical location can be levied by the state banking commissioner. New law requires that lender file reports with the state disclosing mortgages that are either granted or refused and permits class-action suits by residents of the affected areas.

Following its decision in **Mt. Laurel** that all localities in developing areas must help meet their fair share of regional low- and moderate-income housing needs, the state Supreme Court has ordered a locality to rezone specific tracts to provide subsidized housing. Court stopped short of establishing a specific formula for allocating fair share housing in the Middlesex region, but said it would do so if municipal advisors "deemed it useful." Rezoning order, applicable specifically to Madison Township, came in a 4-3 decision which the court apparently made reluctantly. According to Justice Robert Clifford, the decision was made with "fingers crossed."

The state courts took similar action in another case under the **Mt. Laurel** doctrine, with a county court ordering Montville Township to provide low- and moderate-income housing to meet its share of the region's housing needs. Suit was successfully brought by developers and individuals challenging a large-lot zoning ordinance which designated large areas of the township for one to three acre single family residential development. The trial court stopped short of mandating specific remedies for meeting low- and moderate-income housing needs.

Coastal Zone Management

Permanent injunction by the U.S. District Court in Brooklyn to block exploration for oil and gas in offshore tracts in the Atlantic Ocean off the New Jersey coast is being sought by the Natural Resources Defense Council, along with Nassau and Suffolk Counties of Long Island. Plaintiffs obtained a temporary restraining order Aug. 13, four days before the U.S. Interior Department had scheduled lease sales of 154 of the coastal trackts, but the decision of Judge Jack B. Weinstein was overturned.

Lawsuit contends that Interior's environmental impact statement on the lease sale was inadequate because it overlooked the possibility that local shore communities might bar installation of pipelines that would carry oil inland. Without pipelines, NRDC argues, oil companies

©1977 Business Publishers, Inc.

would be forced to transport oil by tanker, a development which would greatly increase chances of an oil spill. In oral arguments, the state's mayors, planning directors, and other local officials testified that their communities intend to use zoning powers to prohibit oil-related activities. U.S. Geological Survey estimates that the leased tracts may contain as much as 1.4-billion barrels of oil and up to 9.4-trillion cubic ft. of natural gas.

Interim coastal development guidelines were also prepared during 1976 by the state Department of Environmental Protection to accommodate growth and protect the natural resources of the coastal zone. Utilizing the guidelines, DEP's Division of Marine Services will review applications for construction permits for projects under the Coastal Area Facility Review Act.

CAFRA, enacted in 1973, authorizes DEP to prepared environmental protection programs and policies for the state's coastal areas while providing new development that is economically and socially beneficial to the area and the state.

The guidelines categorize sites where development is to be "encouraged," "restricted," and "discouraged." Local master plans and municipal zoning regulations will not be preempted by the guidelines. The DEP policy will serve "as a guide to citizens, developers, local and county governments, and other state agencies," according to DEP Commissioner David Bardin. "The written guidelines will aid in the processing of CAFRA permits for projects such as single-family development, high-rise housing, hotels and motels, campgrounds, marinas, and commercial and industrial facilities."

New Jersey recently received a third-year grant of $690,000 from the National Oceanic and Atmospheric Administration to continue developing a coastal management program. Funds will be used to develop guidelines for future uses of the coast for recreation, transportation, industrial development, beach home construction, energy facility siting, and various other competing activities. State will provide matching funds of $172,616 to the Commerce Department grant.

Office of Coastal Zone Management, Department of Environmental Protection, has prepared and submitted to the governor and legislature a report of alternate environment management strategies for the state's coast. Department will consider and evaluate strategies regarding quality and pollution of tidal water; wildlife management; public access and privacy; recreation and tourism; energy sitings; residential development and transportation systems. For copies of the report, "Alternative for the Coast," contact the OCZM, DEP, Box 1889, Trenton, N.J. 08625.

NEW JERSEY LAND USE CONTACT: Richard A. Ginman, Director, Division of State and Regional Planning, 329 W. State St., P.O. Box 2768, Trenton, N.J. 08625, (609) 292-2953.

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

NEW MEXICO

No land use legislation was considered in the state's 1976 legislative session. However, the legislature's energy committee, established during 1976, is studying energy problems of the state and will introduce a number of bills in 1977. The prospective measures will include energy facility siting, grants to energy-impacted communities, and increased taxes on extraction of coal and uranium.

Land Use Policy

To assist in policy planning, the state is preparing a critical area analysis and a study of growth areas. State must prepare land use planning elements in order to meet the Department of Housing and Urban Development's 701 comprehensive planning guidelines. A historic impact review process is also being prepared.

Counties and municipalities of the state have broad zoning authority, and counties have power to zone in special districts.

©1977 Business Publishers, Inc.

Authority to regulate subdivisions of more than five lots is granted to counties under the Subdivision Act of 1973. The act establishes guidelines for subdivision control and requires localities to coordindate controls with the state environmental improvement agency.

In 1975, the state legislature rejected an environmental quality bill which would have required state agencies to prepare environmental impact statements on proposed projects. A similar bill was passed in 1972, but it was repealed in 1974. The 1975 bill, which was considerably weaker than the 1972 version, was opposed by many supporters of the concept who considered the measure inadequate. Incoming Gov. Jerry Apodaca, made a November 1974 campaign pledge to support full reinstatement of the act.

A bill providing compensation to any property owner denied use of his property by public regulation failed in 1975 and was not reintroduced in 1976.

Energy Facilities and Lands

An energy resources board, charged with preparing an energy plan for power plant and mine siting, still lacks implementation powers. A bill giving the board such authority was considered in 1975, did not pass and was not reintroduced in 1976. A spokesman for the ERB said that there is probably "less than a 50-50 chance" of the board receiving the authority because of the traditional conservatism of state landowners, coupled with the power of the state energy industry.

The Legislative Energy Committee has supported energy policies including: nuclear reactors, offshore drilling, coal slurry pipelines, interstate regulation of natural gas prices, loan guarantees for synthetic fuel plants and coal development on Federal lands.

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

NEW YORK

Several land use disputes centered on the Adirondack Park Agency in 1976, resulting in court rulings upholding APA's authority to impose regional land use controls on aesthetic grounds and permitting restrictions to be enforced without compensation to affected landowners.

An innovative farmland preservation program was initiated in Long Island's Suffolk County, including the purchase of development rights to maintain existing agricultural uses. After initial disputes over funding, the county approved the program, which is expected to serve as a national model.

Land Use Policy

Several court decisions in 1976 affirmed the Adirondack Park Agency's authority to regulate regional development. APA authority to consider aesthetic and scenic values in reviewing project applications was confirmed by the Appellate Division of the State Supreme Court, which upheld APA's right to block the construction of a boathouse. In affirming an earlier Supreme Court ruling the court concluded that "it is now well-established New York law that aesthetics is a valid subject of legislative concern and that legislation aimed at promoting the governmental interest in preserving the appearance of an area is permissable exercise of the polic power." The original decision, noted that the creation of APA was "the most ambitious attempt by the state legislature to control the use of land." It is obvious, the court said, "that one of the prime concerns of the legisltaure was to preserve the aesthetic and scenic value of the part."

Additional support for APA's authority came in another ruling which dismissed a $36-million damage suit brought by Horizon Andirondack Corp., owner of more than 24,000 acres in the park.

Horizon claimed that the APA Act's development controls deprived the corporation of almost all economic use of its property, and thereby constituted a "taking" for which compensation was required under the U.S. Constitution.

Horizon purchased the land in 1972 for about $2.3-million, and planned to construct almost 7,000 dwelling units in an area which APA said could support only a maximum of about 1,600 units.

In dismissing Horizon's claim, the Court of Claims concluded that "aesthetic, open space and environmental considerations are valid bases for regulation in the Adirondack context." The court conceded that the regulation of private land uses in the region "is a matter of concern to residents of the Adirondacks, but such regulation "is no less than has been required of urban, suburban and even rural property owners in the context of zoning law... The Adirondack Park is a resource of greater than local concern, and has been so declared by the legislature. As such, it is only appropriate that the state, together with the local interests which are also affected, be given some degree of control." APA authority is also being challenged in 11 other damage suits totaling about $28-million. In two other court actions, Wambat Realty and Ton-Da-Lay Associates are also challenging the constitutionality of the APA Act.

In APA's annual report to the legislature, chairman Robert F. Flacke conceded that the agency is a long way from gaining unanimous support from local officials and citizens, but contended that "there is evidence of greater understanding and acceptance of regional land use planning than ever before." To capitalize on the increased public acceptance of APA, the state should provide greater funding for local planning assistance grants and agency operations, APA recommended.

APA regulations "are not stifling the Adirondack economy... but are in fact safeguarding the very basis of this economy -- forestry, tourism, farming and second home development that is compatible with the Adirondack environment," APA said. New growth and development are possible within the constraints of the APA Act, and "more and more local governments are perceiving the advantage of local land use planning" within the regional framework of the legislation, according to Flacke.

"It is our hope," APA said, "that the lessons learned from the experience of APA, from our mistakes as well as successes, will prove instructive," particularly in demonstrating the effectiveness of state/local cooperation in land use planning. APA's annual report is available from APA, P.O. Box 99, Ray Brook, N.Y. 12977.

Agricultural Lands

After several false starts, Suffolk County officials approved a program calling for the purchase of development rights for farmland in the eastern portion of Long Island in an effort to curb sprawl and prevent urbanization of those areas. Private landowners will retain title to the land, but will be subject to use restrictions.

The program, which envisions the initial preservation of some 3,800 acres, was almost killed by the county legislature because of funding problems. With land prices ranging from $4,400 to $12,000/acre, the program is expected to cost about $21-million at first, with about $60-million expected to be needed eventually to protect 15,000 acres.

To finance the first $21-million development rights purchase, the county has approved a 30-year bond issue, although opponents of the program contend that the county's bonding authority will be overburdened. Some county legislators have contended that speculators have driven up land values in anticipation of the program's approval by transferring targeted properties at artificially high prices between dummy corporations, thus making the land appear to be more valuable. Opponents have also complained that the program will benefit only the still-rural eastern portion of the county, while all residents will have to help pay off the bonds. In any event, the Suffolk County program is seen as a prototype by many planners who expect it to be used as a model by other states and localities.

County officials are currently conducting preliminary studies to support the program, including economic and market analyses to determine agricultural value of the targeted lands. Contrary to initial fears, land prices have actually dropped since the program was adopted, county officials report. Because of the county's lack of mass transit and energy shortages, development pressures in the eastern portion of the county have decreased, and owners of larger developable tracts have had difficulty selling their property. Reappraisals are underway to more accurately determine existing land values. For information on the Suffolk County program, contact: Margaret Tschiember, Suffolk County Executive's Office, Executive-Legislature Bldg., County Center, Hauppauge, N.Y. 11787.

Coastal Zone Management

Following delays caused by the 1975 abolition of the Office of Planning Services which originally served as the lead CZM agency, the Department of State was designated to supervise development of CZM plans. A broad coastal planning area has been delineated, comprising 28 "coastal" counties including all of New York City, Long Island, jurisdictions along the tidal Hudson River and the coastline counties along the St. Lawrence River, Lake Ontario, the Niagara River and Lake Erie. The state program is focusing on communities and local areas in relatively close proximity to the shoreline, permitting the state to work closely with local governments and regional planning groups.

As the CZM program has progressed, state officials report an increase in interest among local governments and planning agencies seeking to participate in the development of CZM policies. "This positive reaction indicates a growing awareness of coastal zone management and an interest in formulating the second year CZM work program," officials said.

In the spring of 1976, New York received a second year development grant from the Office of Coastal Zone Management of $799,666, which was combined with state aid to provide almost $1.2-million in total funds. The second year program emphasizes public participation, identification of geographic areas of particular concern, permissible and priority land uses, Federal coordination and consistency, and segmentation. Funds have been allocated to conduct initial studies to identify GAPCs and permissible land uses aimed at identifying methods and findings which can be applied to similar situations statewide.

New York is also accelerating its segmentation program to enable eligible geographic areas to proceed with final Section 306 approval. Segmentation efforts are being undertaken on Long Island and along the St. Lawrence River.

New York also received a $373,000 Outer Continental Shelf supplemental grant to determine OCS development impacts on the coastal zone, make plans for those impacts, and provide policy guidance for the governor and legislature. State officials see the CZM program as "an opportunity for Federal, state and local governments and the public to work together to find workable solutions to the important problems facing the state's coastal land and waters."

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

NORTH CAROLINA

North Carolina 's 1974 Land Policy Act created a Land Policy Council empowered to develop and implement a state land use program. Final recommendations of the LPC for a statewide land resources program are to be presented in early 1977 to the governor and general assembly.

The recommendations are expected to include a land policy, a planning process, land resource information systems, and property tax reform.

Land Use Policy

The state is preparing a land classification system based on 10-year plans prepared by local governments as a basis for future planning programs. Plans will constitute local statements of intent, indicating where urban services will be provided and where future growth will be channelled. Completed plans are to serve as guides

©1977 Business Publishers, Inc.

for investment of public funds.

LPC will propose legislation for General Assembly consideration during 1977. The LPC includes eight cabinet members, the lieutenant governor, the speaker of the House, a second House member, a Senate member, and representatives of city and county groups.

Coastal Zone Management

North Carolina's coastal zone management program has completed its first phase during which local governments in coastal counties are to prepare land classification plans to identify interim areas of environmental concern. The Coastal Resources Commission is currently initiating a second phase program which focuses on those areas of environmental concern. CRC is also determining what areas meet the state enabling legislation's criteria for AECs. Following a process of formal designation, special development standards will be enforced by both local and state agencies.

The LPC is working with coastal planners, and the two units frequently exchange staff, state officials say. Land classifications employed in preliminary coastal zone plans were developed, in part, by the LPC staff.

Energy Facilities and Lands

An energy conservation plan and an emergency energy program has been adopted by the North Carolina Energy Council which has created by the legislature in 1975. Both documents will be presented to the 1977 session of the general assembly. The proposals give the governor authority to impose measures adopted on a voluntary basis during 1973-74.

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

NORTH CAROLINA COASTAL ZONE MANAGEMENT CONTACT: Ken Stewart, Executive Secretary, Coastal Resources Commission; (919) 829-4918; Department of Natural and Economic Resources, Post Office Box 27687, Raleigh, N.C. 27611.

NORTH DAKOTA

Gov. Arthur A. Link has proposed several bills to organize and coordinate state environmental protection functions and unify local land use controls. The state is also implementing strip mine legislation enacted in 1975 to deal with massive coal development anticipated in the near future.

Land Use Policy

In a message to the legislature early this year, Link called for the adoption of comprehensive land use legislation. Present statutes governing township, county, and city planning, currently "confusing and in potential conflict," should be "clarified and harmonized," Link said. State aid to localities must also be provided for land use planning, "both in terms of minimum guidelines and procedures and staff assistance," according to the governor.

Link also called for a "general purpose, critical areas land use planning statute," including procedures for land development and land uses "that have a greater than local impact."

State officials are also seeking legislative approval for a plan to redefine the powers and duties of the state Natural Resources Council. "Natural resources are of primary importance to the state and its people," Link noted. "Coordination of agencies dealing with energy development, land use, conservation of soil, water, air, game and fish management, and recreation and parks is a sound proposal for the state of North Dakota."

The state NRC and legislature considered several proposals in 1976 and 1977, but most have been shelved or defeated. For some time NRC has been considering critical areas legislation which would establish minimum planning standards to be met by local governments but no action is anticipated on the proposal in the near future. Similarly, more comprehensive growth management measures have been dropped.

The legislature considered and defeated several measures to amend local zoning and planning enabling acts. One measure, S.2379, would have forced townships to relinquish unused zoning and planning authority to counties after July 1979. Another measure, S.2229, was adopted authorizing townships to voluntarily surrender their authorities to counties.

The legislature also defeated bills which would have: (1) created a state housing finance agency, H.B.1431; (2) allowed cities to override county ordinances regarding extraterritorial zoning, H.B.1582; and (3) created a permanent state energy agency, H.B.1068.

Principle land use authority rests with local government, and municipalities can exercise zoning controls as far as two miles beyond their borders. Counties are authorized to adopt property tax levies to fund planning if approved by voter referendum. The legislature approved enabling legislation for regional planning organizations but no appropriations were included.

The legislature also agreed to provide $2-million to implement the state regional environmental assessment program (REAP), plus $1-million for a computerized resource data system. For information on REAP, contact: William Johnson, (703) 224-3700. In other action, the legislature defeated two resolutions which included provisions calling for land use studies.

Energy Facilities and Lands

North Dakota is currently implementing strip mine control and energy facility siting legislation adopted in 1975, although minor modifications to the strip mining bill are under consideration by the Natural Resources Council.

According to state planning officials, the legislature is at an impasse on the issue of coal severance taxes to generate revenues for communities impacted by energy projects. Oddly enough, one of the issues slowing enactment is the distribution of Federal revenue sharing funds. Initially, coal taxes and revenue sharing were considered separate issues, but they have been linked and the dispute has become intensely partisan.

Republican legislators are backing an increase of the existing 50¢/ton tax to 70¢, a levy which opponents say will not cover the full costs imposed by disruptive energy development. Instead, Democrats are backing a tax based on 33% of the price of coal.

Under the facility siting act, the state Public Services Commission will review proposed projects and prevent the scattering of facilities.

NORTH DAKOTA LAND USE CONTACTS: Austin Engel, Director; Russell Staiger, Planning Administrator; Oscar Lund, Land Use Coordinator; North Dakota Planning Division, Ninth Floor, State Capitol Bldg., Bismarck, N.D. 58501, (701) 224-2818.

OHIO

The Ohio joint legislative Land Use Review Committee, created in August 1975, has held several public hearings and has issued an interim report.

Meanwhile, the United States Supreme Court, on June 21, 1976, upheld an Eastlake, Ohio charter provision requiring that land use changes be approved by 55% of those voting by referendum.

Land Use Policy

The Land Use Review Committee is expected to make a final report to the General Assembly in January 1977. Public hearings were held by the LURC to assist with preparation of the report.

With a membership composed of seven members of the house of representatives, seven state senators, and an apointee of the governor, the LURC was created in 1975 and given a two-year bud-

©1977 Business Publishers, Inc.

get of $275,000. The LURC is organized into six issue-oriented subcommittees: agency coordination, large-scale development, significant lands, local enabling legislation, taxation and land use, and review procedures.

The Policy and Program Coordination Section of the Governor's office was created by executive order on June 30, 1976. Charged with coordinating the planning and policy making of state agencies, the section is headed by a program coordinator, who also represents the governor on the Land Use Review Committee.

Groundwork for state planning activities was laid in a series of reports prepared by the interagency land use policy work group which were published in 1975 by the state Office of Budget and Management. Reports analyze state land use goals and discuss possible programs. (For information about these reports contact William Didge, listed below.)

The United States Supreme Court, on June 21, 1976, upheld a charter provision of the city of Eastlake, Ohio, which required that zoning changes be approved by 55% of the electorate. In "City of Eastlake v. Forest City Enterprises" (74-1563), the court ruled that the suburban Cleveland jurisdiction's referendum procedure does not violate constitutional guarantees to due process. Case stemed from a suit brought in state court by the company, whose request for a zoning change from industrial to multi-family residential was approved by city planning officials, but rejected by residents.

Although the referendum procedure was upheld by the trial court and by the state court of appeals, the measure was struck down by the state Supreme Court, which concluded that the referendum subjected zoning requests to voter "whims" and deprived applicants of "fair and rational" procedures.

Chief Justice Warren E. Burger, in the majority opinion, contended that the referendum procedure does not represent an improper delegation of legislative authority since "all power derives from the people." Referendum "is a means for direct political participation, allowing the people the final decision, amounting to a veto power, over enactment of representative bodies," the court said. The practice, Burger added, "is designed to give citizens a voice on questions of public policy."

Neither the suit nor the Supreme Court's ruling, addressed the reasonableness of the industrial zoning classification, and neither discussed the use of referendum procedures to support exclusionary zoning practices. Burger noted, however, that if a referendum-backed zoning decision is "arbitrary and capricious, bearing no relation to the police power," that decision may be overturned by legal action.

The court's decision was disputed by Justices John Paul Stevens, William J. Brennan, and Lewis F. Powell, Jr. Drawing a distinction between approval of general zoning policies and approval of changes affecting a specific piece of land, Stevens conceded that an initiative or referendum is a legitimate tool for deciding "questions of community policy." However, "it is equally clear that the popular vote is not an acceptable means of adjudicating the rights of individual litigants." The court should have forced Eastlake to consider the application on its own merits, said Stevens who was joined in his dissent by Brennan.

In a terse separate dissent, Powell acknowledged the legality and properiety of "submitting generally applicable legislative questions, including zoning provisions, to a popular referendum." But, such a procedure is "fundamentally unfair" when applied to specific zoning change applications, Powell said, because it gives the applicant "no realistic opportunity... to be heard, even by the electorate." The "spot" referendum technique "appears to open disquieting opportunities for local government bodies to bypass normal protective procedures for resolving issues affecting individual rights," Powell said.

The decision was generally criticized by developers and fair housing advocates. Local officials have access to sufficient information to make reasonable decisions and need not delegate that authority to the voters, said the National Association of Homebuilders. "The effect of this kind of requirement is going to chill the efforts of any builders who may put up any low- or moderate-income housing," contended a spokesman for the National Committee Against Discrimination in Housing.

On the other hand, environmentalists and community activities generally praised the decision. "The referendum is an effective method of public participation," said a spokesman of the Conservation Foundation, who added that "we are not fully satisfied to leave these matters to the experts." A representative of the National Center for Urban Ethnic Affairs, which is involved in grassroots community organizing, believes that "the ruling takes zoning decisions out of the hands of those who may have a vested interest and puts it into the hands of neighborhoods where everyone has a vested interest."

Availability of subsidies rather than awarding of increased densities serves to predicate development, said a city planning consultant to Glouchester, Mass., John Howard, who disagreed with the claim that the ruling will inhibit development of lower income housing in areas which adopt referendum procedures.

Coastal Zone Management

Ohio is currently operating in the second year of its coastal zone management program, financed by $419,000 in Office of Coastal Zone Management monies, and matched by $220,000 in state funds.

The second year program includes land capability analyses and studies covering topics such as: islands, energy, fish, sand, historic sites, natural areas, wetlands, flood plains, and erosion areas. An expanded public involvement program, including newsletters and movies, is being initiated, and a public advisory committee is being established.

OHIO LAND USE CONTACTS: Jeff Cabot, Program Coordinator, (614) 466-7461; Program Coordination Section of the Governor's Office, Rm. 2401, State Office Tower, 30 E. Broad St., Columbus, Ohio 43215. Peter H. Henderson, Staff Director, (614) 466-6836; Ohio Land Use Review Committee, 20 E. Broad St., Columbus, Ohio 43215.

OHIO COASTAL ZONE MANAGEMENT CONTACT: Bruce McPherson, Supervisor, (614) 466-4768; Shoreline Management Unit, Division of Water, Ohio Department of Natural Resources, Fountain Sq., Columbus, Ohio 43224.

OKLAHOMA

State officials are concentrating their efforts on achieving passage of a bill which would increase state controls over development in areas adjacent to scenic rivers and similar waterways. The issue has gained increased attention in Oklahoma in the wake of an unsuccessful suit which sought to halt development of a recreational project along the pristine Illinois River. State environmentalists tried to force the preparation of a full environmental impact statement by the Federal Office of Interstate Land Sales Registration.

Land Use Policy

The scenic rivers legislation would provide for increased planning and management of river areas through the creation of a state Scenic River Planning and Zoning Commission, made up of state and local officials. The commission would resolve conflicts between jurisdictions over river development, and would identify and regulate construction in designated critical areas.

State officials say the proposal would not result in "strict preservation," nor will it lead to a total loss of local authority. The bill demonstrates "the public concern and the lack of control" over development in remote scenic areas, state officials note. Some environmental groups are only half-heartedly supporting the bill, contending that it provides inadequate state controls. Chances for passage are uncertain in the legislature, which is dominated by local interest groups.

State officials have tried unsuccessfully to reform enabling measures for local planning and zoning, but strong opposition persists in the legislature. Rather than continue to press for comprehensive reforms, state planners will seek minor changes to remedy specific problems in local land use control.

Currently, cities and incorporated towns have broad zoning powers. Counties have numerous exemptions, including farmlands, oil and gas facilities. Requirements for zoning to conform to comprehensive plans

©1977 Business Publishers, Inc.

apply only to cities with more than 500,000. The State's largest municipalities appear to be satisfied with existing authorities, state planners say.

OKLAHOMA LAND USE CONTACT: Bob Burke, Director, (405) 840-2811; Department of Economic and Community Affairs, 5500 N. Western St., Oklahoma City, Okla. 73118.

OREGON

Statewide planning goals and guidelines for Oregon, are mandated by a 1973 land use law passed by the state legislature. Under its provisions, which became effective January 1975, land use plans are required from cities, counties, special districts, and state and Federal agencies.

The Governor's 1977-79 budget, submitted to the legislature in January 1977, requests $11.8-million to fund coordinated, comprehensive planning activities in Oregon. Of the total, $8.2-million will be passed through to local governments in three categories of grants: coordination, planning assistance, and maintenance/update.

In last November's general election, Oregon's voters rejected a ballot measure that would have repealed the state's land use planning legislation's requirement that local governments develop comprehensive plans meeting statewide goals. The ballot measure was rejected by a 57-43% margin, while it was orginally enacted by only a 55-45% vote.

Land Use Policy

A land use planning process and policy framework has been established in Oregon with the adoption of statewide planning goals and guidelines by the state Land Conservation and Development Commission (LCDC). Under the goals, all cities, counties, special districts, state and Federal agencies are required to develop land use plans that "shall be the basis for specific implementation measures." Plans are submitted to the LCDC for review.

Land use guidelines developed by the LCDC serve as "suggested directions that would aid local governments in activating the mandated goals." Localities, therefore, are able to develop alternative means of achieving statewide planning goals.

The guidelines suggest the preparation of plans and implementation measures. Areawide planning goals, identification of critical areas and future planning are among the provisions requested in the guidelines.

Suggested implementation measures include the use of traditional mechanisms such as zoning, public facilities planning, and capital improvement budgets. All jurisdictions must provide mechanisms for involving citizens in land use decision making.

Other goals provide for conservation of: agricultural lands, shorelines, forest lands, open space, and natural lands. The goals also provide for preserving environmental quality, planning for an efficient transition from rural to urban land uses, meeting housing needs, and conserving energy resources.

Oregon's Supreme Court, in "Baker v. Milwaukie," established the principle that comprehensive plans are the controlling land use documents of the state. Therefore, community zoning ordinances must conform to comprehensive plans, even when the plan is adopted following a site's zoning designation.

In "Baker," the court ruled that zoning has a "servient relationship" to planning; the document "must be given preference over conflicting prior zoning ordinances." The case involved a 3.8 acre site's 1968 zoning designation for a maximum density of 39 units per acre, when a comprehensive plan adopted by the city about a year later set a maximum density of 17 units per acre on the site. When a building permit allowing 26 units per acre was issued for the site, Jean Baker, a local homeowner, filed suit and won.

The state Supreme Court in "Green v. Hayward" established procedural guidelines for use in preparation of comprehensive plans and for application of finalized plans to zoning decisions. Local governments must supply evidence that zoning decisions are consistent with comprehensive plans, under the ruling. Furthermore, the court found that zoning decisions must be justified by detailed findings of fact. "Green" broadened the definition of comprehensive plans by establishing that "framework" plans, specifying general land use catagories for rural areas, constitute comprehensive plans within the meaning of Oregon law.

Voters of Oregon may utilize initiative and referendum powers to reject comprehensive plans or general zoning ordinances. according to a Court of Appeals decision, "Allison v. Washington County." The case extends the initiative and referendum process to all local land use decisions that are legislative in nature; the court defined legislative matters as those involving general policymaking as opposed to judicial questions regarding specific parcels. However, land use legislation, which is statewide rather than local in character, such as measures involving sewage rather than zoning, is not subject to referendum. The court held that the electorate's powers are no greater than those of its local legislative body.

Coastal Zone Management

In December 1976, the LCDC adopted statewide planning goals addressing coastal resources -- estuaries, shorelines, beaches and dunes. The standards will be submitted to the Federal Office of Coastal Zone Management, and the state will apply for funding to implement coordinated management of coastal resources.

Once certified by OCZM, Oregon's coastal management program will make available an estimated $1.5-million to cities and counties in fiscal 1978-79. Another form of state assistance to local coastal planning efforts will be the provision of inventory data necessary for comprehensive plan preparation.

Under goals set by the 1973 state planning law, the state's coastal zone management plan was due for completion by Jan. 1, 1975. At that time it was expected that Oregon's plan would be among the first in the nation. Delays pushing back the completion date received severe criticism from 1,000 Friends of Oregon, a citizen watchdog organization.

The south slough of Coos Bay was the first estuarine area to be acquired for preservation under provisions of the National Estuary Sanctuary Act. Combined efforts of the state land use, the Nature Concervancy, the LCDC, and interested citizens accomplished this goal.

OREGON LAND USE CONTACTS: Harold F. Brauner, Director, Department of Land Conservation and Development, 1175 Court St., N.E., Salem, Ore. 97310, (503) 378-4926.

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

PENNSYLVANIA

Control of major development has been identified as the "centerpiece" of the land use program proposed by Pennsylvania's Office of State Planning and Development. This policy is outlined in an April 1976, report, "A Land Policy Program for Pennsylvania." The study was commissioned in 1973 by Gov. Milton J. Shapp.

Land Use Policy

Adoption of a state growth policy for guiding large-scale development projects was suggested in the study which asserts that "state land use planning and management need not be costly" due to the availability of Federal grant monies.

The draft and other state planning studies recommend adoption of policies and initiation of additional studies in the following areas of land policy:

- Urban Growth: Construction of major private developments would be paced to match construction of sewers and other support-

©1977 Business Publishers, Inc.

ing infrastructure. The state would attempt to guide development through public investment policies, impact analyses, and state standards.

Additionally, a survey of land use impacts of sixty state programs is currently being undertaken by the planning office. The effort attempts to develop a body of knowledge which would be useful in the preparation of policy recommendations, land use legislation, and administrative changes.

- Urban Land Use: The report contends that continuation of present metropolitan development trends will make achievement of important land use objectives "unlikely."
- Property Taxation: Fundamental restructuring of the property tax is suggested. Report, which sets a primary aim of discouraging land speculation, cites the Vermont capital gains tax, designed to decrease short-term land speculation by increasing the tax rate as profits for land held only a short time increase.

A related study of growth management mechanisms for highway interchange areas is currently underway; it examines a number of taxation mechanisms designed to achieve land use objectives and to recapture for the public value added to land by transportation system investments. A legal, social and economic evaluation of the development rights transfer concept is also part of the effort. The state envisions employing, on a "site specific basis," some of these techniques in an effort to "balance entrepreneur profits and the public interest."

- Agriculture and Rural Development: Citing the importance of rural areas, the major study recommends formation of agricultural zones in areas subject to urban development pressures. Such a zone would discourage nonfarm-related activities. Report recommends preservation of prime agricultural lands, through direct investment, in areas subject to urban development pressures. State purchase of development rights to the lands would be the likely mechanism for direct public investment.

A study, now in preparation, attempts to formulate a policy considering all aspects of the economy and land use of rural areas. The premise that improving rural conditions will have a positive impact on the state's agricultural base is central to the effort.

- Managing Forest Resources: Preparation of guidelines for the management and use of public and private forest lands, is recommended by the planning office. Moreover, a series of 26 separate forest capability maps have been designed to enable the user to determine potential uses and levels of productivity.
- Critical Resource Areas: The report says that priority concerns include the future of a proposal to link public and private efforts to preserve natural areas, and the need to protect wetlands, cultural sites, and archeological areas.

An ongoing state study is examining the relationships between the state's land and water planning programs. Activities studied include: environmental master plan requirements; comprehensive water quality management; and water and coastal zone planning.

- Hazard Areas: "Local communities should be given every opportunity to lead in developing and carrying out effective hazard reduction programs," the study said, adding that "if local governments do not act, the state must."
- Mineral Development and Land Use: A state land use policy could help avoid "collisions between mining and other land uses" by guiding urban development away from areas of valuable mineral deposits, and excluding mining in critical areas, the major study said.

To organize and operate a state land use program, the study recommends that the state planning board work closely with the state planning office and that a special land use committee be formed. These bodies would be charged with drafting guidelines and coordinating land use activities of state agencies.

To publicize the land use strategies, the state planning office has prepared informational mechanisms including a film, a slideshow, five brochures, and land use study outlines for students.

In other state departments, the citizens advisory council of the Department of Environmental Resources supported enactment of Federal land use legislation in the first of a series of recommendations to the department. Other suggestions included support of flood control legislation and creation of a natural areas program.

The citizens advisory council to the Department of Natural Resources has announced support of a proposal to organize a policy advisory committee to guide state land use planning efforts.

Coastal Zone Management

Pennsylvania has completed an analysis of coastal land and water use impacts, existing legal authorities, recreational deficiencies and ecologically sensitive areas, under a $225,000 grant from the Office of Coastal Zone Management. The state has received $292,000 in third-year Office of Coastal Zone Management monies.

Pennsylvania's third-year work schedule calls for delineation of management boundaries, assignment of permissible land and water use priorities, adoption of a coastal zone policy framework, and development of a method and organizational structure to implement the management program. Formulation of a viable management program will involve state interaction with private citizens, industry, and local governments.

Agricultural Lands

The Agricultural Advisory Committee, a state mechanism to improve communication between the DER and farming communities on environmental questions, has been organized into several work groups to formulate recommendations and to disseminate information manuals. Functioning work groups include: waste management, erosion and sedimentation control, education and training, and air quality management.

Committee's major project has consisted of drafting, editing and reviewing a manure management manual, and committee proposals have included a resolution supporting delay in implementation of erosion and sedimentation controls because of financial hardships placed on farmers.

Preferential tax assessments are accorded to Pennsylvania farms of at least 20 acres, forestland of at least 50 acres, and open space of at least 10 acres. Eligible land must be designated for one of the three uses in a master plan adopted by the planning commission of the municipality in which the land is located.

PENNSYLVANIA LAND USE CONTACT: Robert Benko, Chief of Long Range Planning, (717) 787-2086; Office of State Planning and Development, Finance Building, Room 503, Box 1323, Harrisburg, Pa. 17120.

PENNSYLVANIA COASTAL ZONE MANAGEMENT CONTACT: George E. Fogg, Coordinator, Coastal Zone Management Program, Department of Environmental Resources, P.O. Box 1467, Harrisburg, Pa. 17120. (717) 787-4053.

RHODE ISLAND

During 1976, the state legislature failed to adopt Gov. Philip Noel's proposed statewide land use policy which was based largely on a state planning report prepared in 1075. The legislation would have provided overall standards for development of urban, transitional, and rural areas. State planning officials plan to press for passage during the current legislative session.

State officials also hope to gain final approval of coastal zone management plans during 1977 once revisions to initial plans are completed.

Land Use Policy

Statewide land use legislation was introduced by former Gov. Philip Noel during 1976, but no action was taken. A new proposal is expected to be introduced in 1977 incorporating comments from the public and local officials, although passage is not anticipated until 1978, state officials say.

Last year's bill would have established state land use policies and provided three avenues for state land use control. The state would have been authorized to establish administrative land use standards governing the adequacy of public facilities and the carrying capacity of the land. The state would also have designated

©1977 Business Publishers, Inc.

critical areas, and would have also controlled developments of regional impact, a concept patterned after the program being implemented in Florida.

The 1976 bill would have created a land appeals board to resolve disputes between the state and localities, and would have consolidated and modernized state land use enabling laws for local zoning, subdivision control and other powers, some of which have not been revised since the 1920s. Many of the proposed revisions were based on the American Law Institute's model land use code.

Just before he left office, Noel created a task force to review the legislation in cooperation with local officials and representatives of interest groups. The task force is expected to endorse a revised bill creating legislative standards governing development of steep slopes, flood-hazard areas, wetland, shallow soil areas, poorly drained areas, and coastal beaches. The bill would also give the General Assembly authority to designate critical areas. Localities would be required to designate zones of varying development density in an effort to coordinate development with the availability of adequate public facilities, a key policy of Noel.

The revised bill is expected to reduce the state's administrative land use powers compared to the 1976 version, with the legislature playing a more direct role. The new bill will retain the state appeals board but will limit its powers. The board will not deal with individual local land use decisions, but will ensure that general local ordinances comply with state guidelines.

Standards for designating DRIs will also be softened, with the state serving mainly in an advisory capacity. The state will still oversee certain types of major development, however, but will only supplement, not replace, existing local functions. Farmland preservation activities will remain a local responsibility, although the state may become involved in farmland protection through the bill's critical areas designation program.

The 1976 bill was introduced with little hope of passage primarily as a starting point for a debate, state officials said. The legislature probably will not be able to enact a bill during 1977, although state officials plan to press for passage next year.

Coastal Zone Management

Rhode Island officials are currently revising their CZM plan for submission to the Federal Office of Coastal Zone Management in 1977. Rhode Island is one of several eastern states for which OCZM hopes to grant final implementation approval this year. Major changes in the plan will include an explicit statement of needs and goals, "a more generous inland boundary for planning purposes," and the designation of "preferred areas" for conservation and development.

Rhode Island has also completed its environmental inventory, covering such topics as resource assessment for marine and terrestial systems and existing land and water uses; and impact assessments for marine activities, potential land uses and environmental alterations.

In January, Rhode Island was awarded a six-month supplemental grant of $238,000 to assist in preparing a coastal management plan by OCZM, to be matched by $59,500 in state funds. The new funds will be used to refine the draft CZM program presented at public hearings. The grant will also be used to develop new elements required under the CZM Act amendments of 1976 for coastal energy facility planning, shoreline erosion control and shoreline and beach access.

Rhode Island received an initial $154,000 grant from OCZM in 1973, and another award of $304,000 in 1975. The latest grant came in addition to an earlier $192,779 grant in 1976. Since 1971, the state Coastal Resources Management Council has been overseeing Rhode Island coastal resources by issuing permits for all shoreline and state water activities. The council is made up of 17 citizens appointed by state and local officials.

Rhode Island had been planning to submit its CZM plan for Federal approval by March 1976, but that timetable was delayed by Federal requests for additional information.

RHODE ISLAND LAND USE CONTACT: Daniel W. Varin, Chief, (401) 277-2656; Rhode Island Statewide Planning Program, 265 Melrose St., Providence, R.I. 02907.

©1977 Business Publishers, Inc.

RHODE ISLAND COASTAL ZONE MANAGEMENT CONTACT: Stephen Olsen, Coastal Resources Center, University of Rhode Island, Kingston, R.I. 02881, (401) 792-6224.

SOUTH CAROLINA

During 1976, coastal zone management legislation was twice approved by the legislature but was vetoed by Gov. James B. Edwards. Those vetoes were sustained in the legislature on four separate votes, according to state planners.

Land Use Policy

State officials do not anticipate adoption of any comprehensive state land use policies or programs. Recommendations made in 1975 by a gubernatorial land policy study committee have been rejected, reflecting a general "lack of support" for land use programs in both the governor's office and legislature, according to state officials. The study committee's recommendations included proposals for resolving environmental and economic conflicts, establishing land use policies, and encouraging community development.

Most routine zoning is handled at the city level in South Carolina although all counties and municipalities have full planning and zoning authority.

Coastal Zone Management

Legislation adopted in 1976 would have created a coastal management council with authority to regulate critical areas such as sand dunes, beaches and tidal wetlands. The council would have been authorized to issue or deny permits for development, and would have prepared CZM plans within two years, subject to legislative approval.

The legislation was rejected by Gov. Edwards as an unwarranted exercise of state controls at the expense of local governments. Administration officials also opposed the bill because it lacked provisions validating state ownership of tidal wetlands, an issue which has been tied up in state courts for some time.

Compromise legislation currently being worked out by Administration and legislative negotiators is expected to call for a locally-oriented CZM program with state guidelines giving state tidal ownership. Some form of coastal legislation will be adopted this year, although the details must still be worked out, state officials say.

During 1976, South Carolina received a third-year grant from the Federal Office of Coastal Zone Management of $417,000 supplemented with $208,000 in state funds. So far, South Carolina's CZM program has received some $1.3-million in Federal, state and Outer Continental Shelf impact grants.

Late in 1976, a coastal zone council was established by executive order, including representatives of coastal counties, large municipalities and environmental interests. A CZM Advisory Committee was also formed made up of private industry, university, and regional planning groups. These units will provide coordination for CZM programs. State officials currently expect to enter the final stage of CZM plan implementation in 1978.

SOUTH CAROLINA LAND USE CONTACT: Joe Wickel, Director of Community Development, 1205 Pendleton St., Columbia, S.C. 29201, (803) 758-3306.

SOUTH CAROLINA COASTAL ZONE MANAGEMENT CONTACT: Dr. Wayne Beane, Wildlife and Marine Resources Dept., 1116 Bankers Trust Tower, Columbia, D.C. 29201, (803) 758-8442.

SOUTH DAKOTA

The deadline for completion of county comprehensive plans, July 1, 1976, was removed by the South Dakota assembly during the 1976 legislative session.

Land Use Policy

Legislature passed an erosion and sedementation control law providing for regulation of land-disturbing activities. The state Conservation Commission is to develop guidelines by July 1, 1977, and conservation districts will then have until July 1, 1978 to adopt standards. Although neither the commission nor the districts issue permits, all permit-issuing authorities must consider erosion rulings and standards in decisionmaking.

A concurrent resolution of the legislature authorized an interim study of need for energy facility siting legislation. Several executive branch agencies are also preparing energy siting legislation which includes procedures to mitigate social and economic impacts of energy development. Siting legislation will be considered during the legislature's 1977 session.

SOUTH DAKOTA LAND USE CONTACTS: Dan R. Bucks, Commissioner; Steve Merrick, Deputy Commissioner; State Planning Bureau, State Capitol, Pierre, S.D. 57501, (605) 224-3661.

TENNESSEE

The Agriculture, Forest, and Open Space Act, passed by the Tennessee State Legislature in 1976, allows land owners relief on property taxes in return for a decision to keep land as open space.

Land Use Policy

The majority of land use planning in Tennessee is performed in-house by the state planning department, which is currently preparing a series of issue papers on wetlands, critical areas, energy facilities and second home development. The papers will provide an information bank on state land use.

The planning office is also preparing an index of maps depicting state land use between 1965 and 1975. Information on statewide land cover and other data is available on computer program. The conservation department manages several acts which seek to preserve land: the Scenic Rivers Act and the Scenic Trails Act.

Cities, incorporated towns, and counties of Tennessee have broad zoning authority which includes specific reference to flood control. Community planning commissions may be formed for unincorporated areas. Regional planning commissions, formed by the state, have subdivision control power in unincorporated areas.

TENNESSEE LAND USE CONTACTS: Mr. Jack Strickland, Special Assistant for Policy Planning, (615) 714-3800; Ground Floor, State Capitol, Nashville, Tenn. 37219; Niles C. Schoening, Director, Tennessee State Planning Office, (615) 741-1676; John Wilson, Director of Natural Resources; (615) 741-1676; Capitol Hill Building, Room 660, 301 7th Ave., N, Nashville, Tenn. 37219.

TEXAS

General statewide land use legislation stands little change of enactment in Texas, but the outlook for legislation giving counties authority to adopt ordinances, including land use controls, is better than in past years, "about 50-50," according to state planning officials. "Reason goes out the window" when "land use" is mentioned in Texas, officials note, and no major increase in state authority is expected.

The state Railroad Commission has adopted regulations implementing controversial strip mining legislation which was enacted in 1975. The Sept. 20, 1976, deadline for companies to file for coal, lignite and uranium mining permits was met with few difficulties, and hearings are underway on those permit requests.

Land Use Policy

Strip mining regulations, promulgated by the state Railroad Commission, require mine operators to present evidence on the capability of the proposed mine site to support alternative activities both before and after mining is completed. Mine applications must include projected post-mining land uses for sites, descriptions of anticipated reclamation procedures, estimates of reclamation costs per acre, and steps to be taken to comply with air and water pollution standards.

Land must be restored "to the same or a substantially beneficial condition" taking into account past land uses and the mine operator's declared future land use plans. Topsoil must be segregated and replaced after mining is completed.

The regulations also call for the Railroad Commission to designate lands unsuitable for surface mining based on petitions from private citizens. Lands may be designated if reclamation is not feasible, or if mining operations would cause "significant damage" to natural, historic, archaeological or cultural sites. Mining may also be blocked if it would substantially reduce water supplies and timber resources, cause flooding, endanger public facilities, or disrupt aquifer recharge zones.

Texas municipalities with populations exceeding 2,500 have full authority for planning and zoning in incorporated areas, although they have virtually no powers to control develop in unincorporated areas. In such cases, cities wield only subdivision powers.

Texas also plans a program aimed at encouraging farmland preservation through preferential tax treatment, but that program is awaiting the adoption of constitutional amendments.

Coastal Zone Management

Texas is now in its third year of the development phase in planning a coastal program. The state has received over $1-million in Federal funds for fiscal 1977. The state General Land Office has recommended legislation aimed at improving intergovernmental policy coordination and implementing an innovative technique for assessing in advance the probably impacts of specific coastal activities. "Use of the proposed activity-assessment routine points out very clearly the expected consequences of proposed activities," state officials say. The coastal management program has been developed in cooperation with numerous special interest groups and enjoys "strong support from all groups, including industrial and environmental," CMP director Ron Jones said.

Four coastal management bills, based on Land Office recommendations, have been introduced in the state legislature by Sen. A.R. Schwartz and Rep. Pike Powers. The recommendations were developed over three years in conjunction with a 40-member advisory committee representing affected interest groups.

Legislation would create a Natural Resources Council; authorize state acquisition of essential and endangered coastal wetlands from private owners; and permit the state to assume some of the jurisdiction now exercised by the U.S. Army Corps of Engineers over dredge and fill activities in wetlands adjacent to navigable rivers. The new NRC would replace the existing interagency Council on Natural Resources and the Environment and would advise the governor and legislature of particular coastal problems.

General Land Office Commissioner Bob Armstrong backed the legislation, contending that it will not require new state regulations or additional spending. "We need new legislation because the present law is too expensive, time consuming, and doesn't do what it is supposed to do – protect renewable resources and at the same time encourage economic growth," Armstrong said.

TEXAS LAND USE CONTACTS: James M. Rose, Director, (512) 475-2427; Walter G. Tribbitts III, Assistant Director; Division of Planning Coordination, Capitol Station, P.O. Box 12428, Austin, Tex. 78711. Dennis Thomas, Assistant Director, (202) 223-3265; Office of State-Federal Relations, 1019 19th St., N.W., Suite 730, Washington, D.C. 20036.

TEXAS COASTAL ZONE MANAGEMENT CONTACT: Ron Jones, Director, (512) 475-6902; Coastal Management Program, General Land Office, State Office Building, Austin, Tex. 78701.

©1977 Business Publishers, Inc.

UTAH

State's Air Conservation and Environmental Coordinating Committee has taken the first step toward reclassification of large areas of land as either class I or II under non-significant deterioration regulations promulgated by EPA. Formal recommendations on reclassification are expected in early 1977, following January hearings.

Land Use Policy

Utah voters rejected by a three-to-two margin a state land use program put to referendum in November 1974. A referendum on the program, which had been scheduled to go into effect April 1974, was initiated by a John Birch Society petition. The Utah vote went against the general trend in the West that year during which three governors were elected on platforms emphasizing conservation of natural resources.

The defeated land use proposal would have authorized creation of a state Land Use Commission and would have appropriated $306,000 to assist county planning efforts. The commission would have worked to fit county plans into an overall state plan.

Submission to the legislature of critical areas legislation, covering lands designated by local authorities, was required by the proposal. However, the commission would not have been given regulatory powers.

An agency to protect the Great Salt Lake was, however, created by a 1975 bill (HB 23) and established in July 1975. State officials report that the lake, after receding for generations, is rising and that continued improvement is predicted. The agency is currently grappling with problems relating to economic impact of the land use regulations designed to protect the lake. Lake-based recreation and industrial enterprises are clearly threatened by the regulation.

HB 23 creates a board of supervisors and a special division of the state department of natural resources to coordinate various levels of government with authority over the lake area. The board consists of five county commissioners from lake counties and seven representatives of the state natural resources department.

Both the special division and the board share responsibility for preparing a comprehensive plan for controlled development of the lake area. They are currently determining their exact legal authority to enforce the plan.

Energy Facilities and Lands

A state energy policy will be recommended for consideration by the 1977 state legislature. It will contain broad guidelines for state evaluation of proposed energy resource development projects, but no land use or site-regulation authority. Designation of rural areas of the state suitable for energy resource development will be one aspect of the policy.

Utah has chosen to exercise in-lieu land selection rights to the oil shale area of the Uinta Basin. The matter is currently being contested in court, but the state expects swift resolution of the matter.

A 300 megawatt power project in southern Utah, proposed by three utility companies, has failed. The proposed plant, the Kaiparowits Power Generating Project, would have involved construction of a coal-fired generating station and of four underground coal mines to feed it. The plant would have been located on the Kaiparowits plateau near Grand Canyon National Park, among other recreational areas.

An Interior Department environmental impact statement stated that the project would have generated development of a 14,000-person town. Following failure of the power project proposal, holders of the coal leases began advancing a coal gasification proposal, however little interest has surfaced to date.

UTAH LAND USE CONTACT: James Edwin Kee, State Planning Coordinator, (801) 533-5245; 118 State Capitol, Salt Lake City, Utah 84114.

©1977 Business Publishers, Inc.

VERMONT

During 1976, Vermont's general assembly considered but failed to adopt three alternative land use bills. One of the proposals, the product of the House natural resources committee, was passed by the House of Representatives but died in the Senate agriculture committee as the session ended.

Further legislative initiative regarding land use will rest with newly elected Gov. Richard A. Snelling, who has not yet indicated his intentions.

Land Use Policy

Vermont began working to develop a comprehensive land use plan with passage of the Land Use and Development Act in 1970. Planning under the act was to proceed in three phases: development of interim and permanent land capability and development plans, and designation of general land use areas for the state.

The interim and permanent land capability and development plans were developed and adopted with little controversy. The permanent plan was adopted in April 1973. However, the third phase engendered considerable opposition, particularly from Republican legislators.

Phase three initially introduced to the general assembly as Act 250, would have mapped the state into five areas: urban, village, natural resource, conservation, and rural. Local governments, in turn, would have adopted land use plans within the districts. In the absence of local initiative, state plans would have gone into effect. This process would have been one of the most extensive planning procedures in the nation, second only to that of Hawaii.

To implement the policies of the state capability and development plan, the Vermont planning office has developed a set of guidelines to be used by regional planning commissions. Furthermore, state-sponsored planning seminars are held each month. At such seminars, planners have asked for greater coordination of functional plans and programs to assure consistency with Vermont's land use policies, rather than just Federal guidelines.

The state planners also have launched a program aimed at guiding growth through control of public infrastructure expenditures. Assessing growth generated by sewage facilities, public buildings and roads is the first step in achieving this goal.

Despite the hope that proponents of land use planning place in this effort, former Governor Thomas Salmon, himself a strong land use advocate, feels that infrastructure coordination, despite being "a very significant mechanism that moves toward a land use policy, cannot replace a state land use policy."

A plan to enable industries to obtain a single land use permit to locate in designated industrial districts was approved by the state environmental board in 1975. The plan, proposed by the Vermont economic development commission, would authorize municipalities to allow industries to locate in designated areas where only a single-stop permit would be needed. It is hoped that the procedure will overcome the reluctance of industries to locate in Vermont due to the state's strict environmental controls.

VERMONT LAND USE CONTACTS: Leonard Wilson, Director; Bernard D. Johnson, Assistant Director; (802) 828-3326; State Planning Office, Pavilion Office Building, Montpelier, Vt. 05602.

VIRGINIA

With the exception of the coastal zone management program, most state land use-related efforts are being run on a "low-profile basis," according to some state planning officials. The CZM has gained third-year funding and is progressing according to expectations, planners say. The legislature has been reluctant to approve major land use bills, and in 1976-77 adopted only part of a package of key facilities proposals. The state is also attempting to encourage localities to adopt comprehensive plans as provided under a 1975 act.

Land Use Policy

A series of key facilities bills was introduced in the state legislation in 1976, although only a few of the more specialized proposals were adopted. One proposal, H.B.783, calls for the state Corporation Commission to consider environmental, social and economic impacts in the location of airports. A second proposal, H.B.783, requires environmental impact review for major state facilities.

The legislature rejected several other key facility proposals, however, including a bill which would have authorized the state Council on Environment to coordinate the state's review of permit requests for major facilities such as power plants, transmission lines and similar projects. That review would have included land use, environmental, economic and social impacts. Another bill would have coordinated COE impact review for major highways, but the state Highway Department succeeded in blocking the bill. Similar proposals for impact analyses on water and dam projects were also rejected.

Efforts to consolidate existing state environmental agencies under a single Natural Resources Office failed, but proponents expect similar legislation to be reintroduced.

The legislature also adopted a proposal, H.B.949, authorizing localities to create special agricultural districts which would qualify for tax breaks to discourage urbanization. Districts would be created on the recommendations of planning commissions and special advisory committees. The legislation may be vetoed by Gov. Mills Godwin, planning aides say, a prospect which has caused some animosity among Republican minority leaders in the legislature who backed the bill.

State officials are providing technical assistance to localities seeking to comply with a 1975 act requiring the establishment of local planning commissions and the preparation of local comprehensive plans by 1980. Most localities are making a good faith effort to meet the requirements, state planners say, although a few jurisdictions are apparently postponing active planning until the deadline draws nearer.

Some state officials are skeptical that the act will generate significant new local planning, since no sanctions or penalties are provided against jurisdictions which fail to create commissions or prepare new plans. Where land use and development problems are most serious, critics say, localities have already initiated their own planning programs. Planning officials at the local level complain that the state provided no funds to aid localities in meeting the new planning mandates, a problem which state planners concede has reduced the program's effectiveness.

Coastal Zone Management

Development of Virginia's coastal zone program will continue into the third year with a $480,448 grant from the Federal Office of Coastal Zone Management, to be matched with $120,112 in state funds.

Virginia's management program seeks to preserve the coastal ecosystem, while simultaneously permitting various land and water activities in appropriate locations. Virgina has been developing its program since 1974, when the state received an initial grant of $251,044 from OCZM. The present grant is being administered by the state Office of Commerce and Resources in conjunction with other state agencies, local units of government, and the general public.

During the third program year, according to state program manager Don Budlong, Virginia will develop guidelines to help local governments determine the areas where land uses have a direct impact on coastal waters and plan for the use of lands within those areas. Guidelines will be prepared to help communities manage those activities known to have a harmful effect upon coastal waters.

Also during the third year, Virginia will develop a method for designating areas of particular concern, including historic coastal sites, ecologically fragile areas, and similar regions. The state will also develop mechanisms by which localities can control development having multi-jurisdictional impacts.

Other aspects of the program will include developing methods to increase public access to beaches, preparing guidelines for controlling shoreline erosion, and determining the impact and location of onshore energy facilities as required under the 1976 CZM Act Amendments.

Virginia officials expect the CZM program to "serve as a guide in an effort to reduce conflict among a growing number of interests which often compete for the same shoreline area."

VIRGINIA LAND USE AND COASTAL ZONE CONTACT:
Don W. Budlong, Assistant for Planning, (804) 786-7652, Office of Commerce and Resources, Fifth Floor, Ninth St. Office Bldg., Richmond, Va. 23219.

WASHINGTON

Gov. Dixie Lee Ray is expected to de-emphasize general land use activities at the state level in favor of continued local control, although her Administration is backing legislation to increase the state's role in power plant siting. Comprehensive land use legislation aimed primarily at discouraging new development on food, fiber or resource producing lands through local controls was rejected in 1976 and again faces strong opposition in the legislature.

Land Use Policy

State land use legislation, S.B.65, would create a Land Conservation and Development Commission to oversee the preparation of plans to curb development which would reduce the productivity of agricultural, forest, or resource lands. Localities would have six months to adopt interim regulations for those lands, and would be prohibited from granting permits which would encourage new growth. LCDC would approve local plans, recommend the designation of certain activities of state concern, and adopt plans where localities fail to act.

LCDC certification would have to be obtained for local plans within four years, subject to 16 statutory criteria such as farmland preservation, housing, and environmental protection. The bill also includes several broad goals for land use plans, including orderly growth, energy conservation, and balanced economic expansion. LCDC would recommend major projects requiring substantive state control such as airports, ports, power plants and transmission lines, and sewer and water facilities. Localities would be authorized to regulate land uses near such facilities but the state could appeal local decisions to the Shorelines Hearing Board.

Earlier legislation, H.B.168, failed because of local opposition, sparked mainly by the Shorelines Management Act, which local officials say has reduced their land use authority. The legislation is expected to be defeated again in 1977.

Energy Facilities and Lands

Although Gov. Ray's administration has opposed sweeping statewide land use legislation, energy facility siting proposals have been recommended giving the state more power. In her message to the legislature, Ray contended that the state "should take more initiative" in the siting of nuclear facilities. S.B.2910 would reduce localities' authority to handle siting issues, and would authorize the state to pre-empt local zoning devisions impacting proposed energy facilities.

The bill is designed to "streamline" the facility approval process, and enjoys the support of oil companies who fear procedural and regulatory roadblocks which can be erected by localities. Washington is currently considering several superport and pipeline proposals. Local government groups opposed to the siting bill are expected to concentrate their efforts in the state House, which is generally more sympathetic to local problems than the Senate, which usually favors more state controls.

Coastal Zone Management

In June 1976, Washington became the first state to gain full Federal approval for its CZM plan. The state received a $2-million Federal Office of Coastal Zone Management grant for plan implementation, matched by $1-million in state funds. So far, Washington

©1977 Business Publishers, Inc.

CZM funding has totaled more than $4.7-million, including OCZM, state, and OCS impact planning grants.

Just undertaking the transition from planning to program implementation, Washington will concentrate on increasing the role of local governments in program administration and enforcement. Local master plans and programs must also be revised to conform with state plans. Washington is also conducting studies on problems of particular concern to individual localities, and is designing mechanisms for resolving conflicts with Federal agencies and improving Federal coordination. Coastal resource data is also being standardized, and model ordinances are being developed to guide coastal jurisdictions.

Washington's coastal management area includes a "two-tier" concept. The "primary tier" includes the resource boundary designated by the state Shoreline Management Act of 1971, the basic CZM enabling legislation. The primary tier covers the marine waters, associated wetlands, and an upland area at least 200 feet inland from the ordinary high water mark. The second tier, the "planning and administrative boundary" includes all of the 15 coastal counties which border tidal waters. The second tier is intended to be the maximum extent of the coastal zone and as such is the context within which coordinated coastal policy planning will be undertaken, state officials say.

The state plans to reach agreements with Federal land management to determine the impact of the state program on parcels of Federal land or private holdings within Federal lands.

The state Department of Ecology is the lead coastal agency, and is authorized to regulate shoreline uses and acquire coastal land and adjacent wetlands. Under the state SMA, local governments formulate master programs to guide proposed activities in the coastal zone. Preparation of CZM goals and resource inventories is followed by adoption of specific shoreline environmental designations -- natural, conservancy, rural and urban -- and use regulations. *The regulatory system is administered locally, subject to state review.* Local decisions are appealed to the Shorelines Hearing Board, which includes representatives of pollution control and public lands agencies and local government groups.

WASHINGTON LAND USE CONTACT: Dr. Jay Moore, Senior Policy Advisor, Office of Community Development, 400 Capitol Center Building, Olympia, Washington 98504. (206) 753-2222.

WASHINGTON COASTAL ZONE MANAGEMENT CONTACT: Rod Mack, Department of Ecology, Olympia, Wash. 98504, (206) 753-6879.

WEST VIRGINIA

After considerable initial controversy, the state legislature adopted a bill setting strip mine reclamation standards, and allowed a strip mining moratorium to lapse. Meanwhile, state planners are again preparing proposals which would create a joint state/local commission to develop land use policy recommendations.

Land Use Policy

As envisioned by state planning officials, the Land Resource Management Study Commission would be made up of state legislators, heads of agencies with land use responsibilities, and representatives of local government groups. The commission would propose legislation to establish statewide land use policies. Currently, state land use activities are undertaken largely in response to specific Federal planning requirements or under the HUD 701 planning program, state officials say. A bill to establish the policy commission was rejected early in 1976, and the outlook for similar proposals in 1977 is unclear.

State enabling legislation authorizes counties to employ full subdivision and zoning authority, although only a handful have adopted such controls, state officials note. Legislation to establish guidelines for planning/zoning or make such activities mandatory has been contemplated but is not expected to be enacted in the near future.

Energy Facilities and Lands

Strip mining legislation was adopted in the final days of the regular legislative session, including requirements that land be restored to the approximate original contour with the elimination of highwalls, requirements similar to those anticipated in Federal strip mine legislation. Numerous other strip mine-related bills were considered but most failed to move out of committee, including proposals which would have: halted strip mining in counties where no mining occured before 1970; extended the mining moratorium in 22 of the state's 55 counties; and increased corporate taxes on large land holdings, primarily by timber and mining companies.

Agricultural Lands

West Virginia also joined the growing list of states which have adopted tax measures favoring existing agricultural land uses. Under H.B.1494, the legislature called for farmland property tax assessments to be based on current use values, not the value of the property if developed.

WEST VIRGINIA LAND USE CONTACT: Tom Sumter, Housing and Land Use Specialist, Resource Development/State Planning Division, Office of Federal-State Relations, Capitol Bldg., R-150, Charleston, W.Va. 25305, (304) 348-2246.

WISCONSIN

Comprehensive land use legislation is not expected to be considered in Wisconsin in the near future, although state officials anticipate legislative debate on a number of specialized proposals for preserving open space and wetlands. State planners are also implementing a power plant siting bill which was adopted in 1975 after an initial defeat.

Land Use Policy

In 1977, legislation is expected to be introduced to encourage the preservation of farmland and open space through preferential taxation. Anticipated proposals will include "circuit breaker" provisions which link property taxes to household income, limiting total taxes to a maximum percentage of that income. The legislature is also expected to continue work on a bill to protect and regulate wetlands which was passed in one house of the legislature last year. State planners say there is considerable support for the bills but chances for passage are uncertain.

Wisconsin cities, villages and towns wield extensive, through not mandatory, zoning authority. While most land use controls are voluntary, all jurisdictions must exercise controls over shorelines and floodplains consistent with state guidelines.

The state Department of Natural Resources has implemented a program restricting the installation of new sewers in areas with currently inadequate treatment facilities. These restrictions are relaxed somewhat for localities which have firm plans to upgrade sewage treatment plants.

Energy Facilities and Lands

Power plant siting legislation adopted in 1975 is currently being implemented, and state officials expect amendments to the basic bill to increase the state's authority to override local actions blocking siting decisions. Some localities have attempted to block proposed *facilities by purchasing choice sites, state officials say.*

The siting law requires utilities to submit 10-year plans with the state Public Service Commission, including long-term facility construction plans. Initial plans, filed under the act's July 1976 deadline, are being reviewed and environmental assessments are being prepared

©1977 Business Publishers, Inc.

by PSC for comment by localities, other state agencies, and private citizens. Local governments adversely affected by 10-year plans may present information at hearings to block siting proposals.

The siting bill is generally supported by utility groups because of provisions requiring expedited consideration of facility proposals. The bill also calls for the protection of farmland.

Coastal Zone Management

Wisconsin officials are currently revising draft CZM plans which they expect to submit for Federal approval in February 1978. Key CZM issues include inadequate beach access, the increasing demand for land and support services by tourism and recreational uses, shoreline erosion, and the need for economic development balanced against "irretrievable commitments of natural resources."

Wisconsin's coastal zone includes 15 counties along Lakes Michigan and Superior, with land zoned for conservation, residential/recreation, and general purpose uses. Regional planning commissions are inventorying land ownership, uses, and local zoning controls along the coast, and the University of Wisconsin is preparing recommendations for identifying coastal activities which should be subject to regulation.

The Wisconsin CZM program is also dealing with residential encroachment in environmentally sensitive areas, natural hazards caused by flooding and shore erosion, and economic losses suffered by state ports and commercial fishermen.

Legislation has been proposed to allow counties to designate geographic areas of particular concern after consulting with citizens, local interest groups and state coastal managers. State CZM officials are currently developing criteria for designating GAPCs to be reviewed by the state CZM Coordinating and Advisory Council, followed by public hearings.

In addition to a $340,000 second-year grant in 1975, Wisconsin received a $219,800 supplemental award, matched with more than $100,000 in state funds. Since the first grant in June 1974, a total of almost $1.2-million in Federal and state funds has been committed to the Wisconsin CZM program, Federal officials said.

WISCONSIN LAND USE CONTACT: Stephen M. Born, Director, (608) 266-7958; Office of State Planning and Energy, Department of Administration, One West Wilson St., Madison, Wisconsin 53702.

WISCONSIN COASTAL ZONE MANAGEMENT CONTACT: Allen Miller, (608) 266-3687; Office of State Planning and Energy, Department of Administration, One West Wilson St., Madison, Wisconsin 53702.

WYOMING

Wyoming is in the process of implemeting a statewide land use planning act which was enacted in 1975. The law creates a permanent state land use commission and provides for protection of critical environmental areas.

Land Use Policy

State Land Use Commission, a nine-member body appointed by the governor, has established land use goals within a six-month deadline set by the legislation. A state land use plan must be developed within two and one half years of the bill's enactment, following preparation of county plans.

Land use grant funding to counties is now in the second year of a two-year appropriation of $460,000. Counties must prepare preliminary plans by June 1977 and final plans by December 1977. Many of the jurisdictions hope to continue planning with an extension of funding.

Pursuant to the act's direction, the commission has initiated a critical areas protection program. Assistance to local governments will be provided under the program in which the LUC will have authority to designate areas. Any state resident can recommend a potential area for LUC consideration.

LUC operates a center for natural resources information which is linked to the community by a toll-free telephone line. The data base for the center, still in the development stage, should be completed this year.

The legislature also passed statewide subdivision regulations in 1975. Previously, cities, incorporated towns, and counties were authorized, but not required, to adopt subdivision regulations.

Energy Facilities and Lands

Another major piece of legislation enacted in 1975 covers industrial plant siting, including power plants. The law created a seven-member industrial siting council to review and grant permit applications for construction of plants; to set filing fees for builders of proposed projects to cover study costs; and to allow delay of projects until the community is capable of handling the influx of project-generated growth.

WYOMING LAND USE CONTACT: Michael York, Chief of State Planning, (307) 777-7284; 720 West 18th St., Cheyenne, Wyo. 82202.

©1977 Business Publishers, Inc.

COASTAL ZONE
INFORMATION CENTER

DATE DUE			
GAYLORD No. 2333			PRINTED IN U.S.A.

NOAA COASTAL SERVICES CENTER LIBRARY
3 6668 14105 7754