

1974

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### Recommended Citation

Georgina B. Landman, *Land Use Planning in Oklahoma: A Tool for the Protection of the Environment*, 10 Tulsa L. J. 63 (1974).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol10/iss1/9>

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# LAND USE PLANNING IN OKLAHOMA: A TOOL FOR THE PROTECTION OF THE ENVIRONMENT

Georgina B. Landman\*

*The face and character of our country are determined by what we do with America and its resources.*

*Thomas Jefferson*

## INTRODUCTION

“Environment”<sup>1</sup> is not a new word to land use planners; indeed, it is an area which has been of vital concern for many years, but only

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1. Environment is a word virtually as broad as the universe: chemicals in your food; the design of your chair; the climate control in your house or apartment; the purity of the air outside; the dirty water in the river—or in the ocean—several miles away; the balance between vegetation and water runoff; the food cycle of a river estuary or coastal wetlands; the preservation of historic buildings; the conservation of minerals in the earth's crust; the protection of animals threatened with extinction; the heat balance of the earth; cosmic—and man-made—radiation; the capacity of the earth to support human population, and perhaps even the littering of the solar system with wrecked or abandoned space vehicles, these are but a few examples of subjects that fit under the general heading “environment” as it concerns the designer or the conservationist, the scientist or the citizen. HOW TO SAVE URBAN AMERICA 91 (W. Caldwell ed. 1973). See also C. ABRAMS, THE LANGUAGE OF CITIES (1971).

The environment has become a recognized concern of the law, and Environmental Law is now accepted as a distinct legal discipline. V. YANNAcone, JR. *et al.*, ENVIRONMENTAL RIGHTS AND REMEDIES (1972). The emphasis today falls on the establishment of laws that protect not only individual plaintiffs but the public at large. Legislative action addressed to environmental problems falls mainly into two categories. The first category sets standards (or the creation of agencies with standard-setting powers), the establishment of agencies capable of enforcing these standards, and the actual establishment of control mechanisms for the effective enforcement of pollution controls. The second function deals with the establishment of institutions and mechanisms for the positive preservation of the environment—for the conservation of natural, scenic, and environmental resources, and for the development of such resources in a manner that will enhance rather than damage environmental quality. In the first category of environmental law one finds the wide range of regulatory controls for environmental pollution, water pollution, air pollution, pollution by solid wastes, by radiation, by noise, etc. The second category covers the protection and conservation of public land resources and of land resources generally, including parks, wetlands, forest and wild life preservation, and general conservation of natural resources. GRAD, ENVIRONMENTAL LAW (1973).

within the past few years has this concern spread to the general public as well. For, in recent years, the general public has become increasingly aware of the direct relationship existing between land-use decisions and environmental problems.<sup>2</sup>

The way in which our physical environment—and particularly the land—is planned (or is not planned) greatly influences the quality of the environment and, indeed the quality of our lives. It is being increasingly recognized that more effective land-use planning and control are the key to environmental protection and enhancement. This is evidenced by radical changes in land-use planning in some cities, by the “quiet revolution” in land use controls taking place in many of our state governments and by the movement toward a national land-use policy at the federal level.<sup>3</sup>

Given the premise that land use planning is a major factor in achieving and maintaining basic environmental quality, it follows that unless there is some comprehensive approach to land use planning and development, efforts to control any type of pollution, be it from air, water, radiation or waste will not achieve any real degree of success.<sup>4</sup> Without such a comprehensive approach the practitioners who are responsible for environmental and land use planning decisions must

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2. Professor Grad sets the tone for consideration of the author's hypothesis that land use planning is a tool for the protection of the environment.

Closely related to conservationist concerns are major governmental programs that may have either beneficial or adverse environmental impacts, such as highway programs, flood control programs, airport development programs, and housing and urban renewal programs. The legal controls of environmental pollution and the legal authorization for conservation and development programs are tied together by the concept of planning, legally sanctioned and enforceable. Neither pollution control efforts nor conservation and development efforts can succeed by themselves unless they are coordinated in some fashion. Commonly, their interrelationship is established and should be carried out through *land use planning* that relegates particular pollutant producing uses to areas where they will cause the least damage and that will preserve and develop other areas so as to utilize them for purposes that are beneficial without imposing undue burdens on the environment.

GRAD, ENVIRONMENTAL LAW § 1.02(2) (1973) (emphasis added).

3. E. Croke, *An Evaluation of the Impact of Land Use on Environmental Quality* in ENVIRONMENT: A NEW FOCUS FOR LAND-USE PLANNING 217-31 (D. McAllister ed. 1973). See also, BOSSELMAN & CALLIES, THE QUIET REVOLUTION IN LAND USE CONTROL (1971).

4. See LAND USE AND THE ENVIRONMENT (V. Curtis ed. 1973). (Prepared by the American Society of Planning Officials, Chicago, Illinois, under the auspices of The Environmental Studies Division of the Office of Research and Monitoring, The Environmental Protection Agency, Washington, D.C. See in particular, E. Croke, K. Croke, A. Kennedy, and L. Hoover, *The Relationship Between Land Use and Environmental Protection* 69-89, and E. Kaiser, K. Elfers, S. Cohn, P. Reichert, M. Hufschmidt, and R. Stanland, *Land Use Planning: The Cornerstone of Local Environmental Planning and Control* 103-109).

function within jurisdictional boundary lines that make no environmental sense. They must also face intense conflicts of values among their "clients" groups with regard to land uses, and try to find here and now local solutions that are reasonably compatible with the powerful general national forces (technological, social, economic, and political).<sup>5</sup>

The purpose of this article is twofold. First this article will review the current trends in land use planning and control. Secondly, the article will describe where Oklahoma stands in relation to other states and propose a possible direction for future land-use legislation in Oklahoma.

#### TOWARD A DEFINITION OF THE PROBLEM

Traditionally, land use in the United States has been controlled by individual local governments, acting independently and in interaction with other governmental entities, seeking to maximize the local community's tax base and minimize its social problems. The power to control land use is in the hands of the states under the Constitution. Most state power was delegated to local government through planning and zoning enabling acts in the past 50 years. The two model acts prepared by the United States Department of Commerce which attained widespread adoption in the 1920's are perhaps the most important acts in the history of land use in the United States. These acts, the Standard State Zoning Enabling Act (SZEA)<sup>6</sup> and the Standard City Planning Enabling Act (SPEA),<sup>7</sup> were directed at delegating land use control to the local governing body.<sup>8</sup> Under the SPEA and SZEA, it was apparently immaterial to the broader public interest of the state whether any local government actually engaged in planning, whether development took place in accordance with the plan, whether the local plan, if any, in fact promoted the local public interest, and whether the local plan adversely affected the public interest of a larger area such as a region or the entire state. The acts merely authorized action to promote health, safety, morals, and general welfare, all of which were based solely upon local public interest.<sup>9</sup>

The *property owner* provides the key to understanding the effects

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5. ENVIRONMENT: A NEW FOCUS FOR LAND-USE PLANNING 143-80 (D. McAllister ed. 1973).

6. ALI MODEL LAND DEVELOPMENT CODE xiii (Tent. Draft No. 3, 1971).

7. *Id.*

8. BOSSELMAN & CALLIES, *supra* note 3, at 3; RABIN, MODERN REAL PROPERTY LAW 605-06 (1974).

9. *Supra* note 6.

of the SPEA and SZEAL. The property owner has the power to make developmental decisions absent local restrictions, as provided in the SPEA and SZEAL. The SPEA and SZEAL also provides that the public interest is best served if the basic power to regulate private development is lodged with a local governmental unit. The law has never allowed owners to do entirely as they pleased with their land. Regulations however, of any type, have always brought owner resistance.<sup>10</sup>

The weaknesses inherent in the present system of controlling land use in America are particularly relevant to the environmental issues. These weaknesses center around the following:

1. The unrestricted grant of power to the smallest unit of local government (town, village, city) has produced a distortion of metropolitan growth and almost an inability to combat regional problems such as inadequate supply of housing, proper management of the environment, pollution and transportation;
2. The attempt to guide land development by prohibitions and restrictions, without using the power of public acquisition and disposition of land and the power of public spending to secure the desired development, is unlikely to be an effective method of orderly land development;
3. Too many governmental decisions as to regulation or inducement of development are made without forethought as to future development of the entire urban area; and
4. The SPEA and the SZEAL have made no provisions for the possibility of conflicting plans by communities in the same state, or for handling in the impact of development by one local government on the environment of another.<sup>11</sup>

State controls have replaced local and private decision-making over most key land use questions in nine states. In twenty-five other states, the legislature is debating or studying new state powers or a blue-ribbon commission is considering the issue. With federal funding for state programs in land use planning and control foreseeable in the future, several other states have full-time staffs investigating state problems and possible new powers. Presently, in about two-thirds of the states, state land use plans exist or are in preparation.<sup>12</sup>

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10. THE COUNCIL OF STATE GOVERNMENTS, THE STATES' ROLE IN LAND RESOURCE MANAGEMENT (Lexington, Kentucky 1972).

11. ALI MODEL LAND DEVELOPMENT CODE xiii-xv (Tent. Draft No. 2, 1970).

12. The following table is reproduced in part from THE COUNCIL OF STATE GOVERNMENTS, THE STATES' ROLE IN LAND RESOURCE MANAGEMENT 10-11 (Lexington, Kentucky 1972).

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

State	Program description	Reference	First enacted	Administered by
Colorado	Colorado Land Use Act. Provides temporary emergency power over land development activities and authorizes model resolutions. Authorizes State to prepare subdivision regulations in counties where no regulations exist.	Ch. 106-4, C.R.S. 1963	1971	Colorado Land Use Commission
Delaware	Coastal Zone Act. State management of shore zone industrial development.	Ch. 106-2, C.R.S. 1963 Ch. 70, T. 7	1971	Colorado Land Use Commission State Planning Office
Hawaii	Land Use Law. State management of land by broad categorical districts.	Ch. 205	1961	State Land Use Commission
Maine	State management of all lands in unorganized or deorganized townships.	Title 12, s. 681-689	1969	Land Use Regulation Commission
Massachusetts	Approval of large-site industrial or commercial developments potential polluters, and residential sites over 20 acres. "Critical Area" program to provide for management of all shoreland areas 250 ft. from high water mark. "Critical Area" program for protection of coastal and inland wetlands.	Ch. 3, s. 481-88  Ch. 424, s. 4811-4814  Ch. 130, s. 27A, 105 and Ch. 131, s. 40, 40A  Ch. 774, s. 1-2	1970  1971  1963	Environment Im- provement Commission Department of Natural Resources  Department of Community Affairs Department of Natural Resources  Governor
Michigan	Zoning Appeals Act. To ensure dispersion of low-income housing. Shorelands Management and Protection Act	Act No. 245, Public Acts of 1970  S. 10, 1969	1970  1969	Department of Natural Resources  Governor
Oregon	Governor shall prepare land use plans and enforce zoning on all areas not subject to local regulation.	Ch. 151, 6001	1970	Environmental Board
Vermont	Approval of site development in accordance with state land use plan. Shoreline Zoning Act. Zoning to prohibit all construction within 500 ft. of shoreline at all bodies of water larger than 20 acres.	Act 281	1970	Department of Water Resources
Wisconsin	Shoreline Zoning Law. "Critical Area" program for management of lands around lakes and waterways.	Ch. 614- 8588	1965	Department of Natural Resources

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

## TRENDS IN LAND USE PLANNING ON THE FEDERAL LEVEL

Last June, by vote of 64 to 21, after defeating an amendment to impose sanctions against noncomplying states, the Senate passed the Land Use Policy and Planning Assistance Act of 1973 (S.B. 268).<sup>13</sup> This measure will provide a billion dollars over eight years for grants to states to develop land use plans and regulations. Eligible states would have to institute state control over areas of "critical environmental concern," "development of key facilities," and "development of local significance." Similar legislation was introduced in the House. In essence these acts culminate three years of hearings and committee action.<sup>14</sup>

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13. S. 268, 93d Cong., 1st Sess. (1973) (Land Use Policy and Planning Assistance Act; passed Senate June 21, 1973); See Senate Comm. on Interior and Insular Affairs, Report to Accompany S. 268, S. Rep. No. 93-197, 93d Cong., 1st Sess. (1973); 4 ENVIRONMENTAL REP. 123 (1973).

14. The land-use planning bills considered by Congress during the past three years contained variations on a "carrot-and-stick" theme. They would provide grants to help the states with land-use planning and management. The grants would be withheld—along with funds from other federal programs, under some versions—from states not meeting certain criteria.

*S 268, HR 2942:* These bills are identical to the legislation that passed the Senate last September 19 under the sponsorship of Sen. Henry M. Jackson, D-Wash. As introduced this year, Jackson's bill provided for \$170 million in grants to states over five years. Sanctions for non-compliance were not included. (However, the most recent Senate Interior and Insular Affairs Committee version of S 268 provides \$800 million over eight years and contains sanctions in the form of cuts in airport, highway and land and water conservation funds for non-complying states.) The House sponsor is C.W. Bill Young, R-Fla.

*S 924, HR 4862:* This is the Administration proposal, which authorizes \$170 million over five years in grants and contains sanctions in the form of cuts in airport, highway and land and water conservation funds for non-complying states.

*S 792:* Introduced by Sen. Edmund S. Muskie, D-Maine, on Feb. 7, this bill would require the Environmental Protection Agency to oversee a permit program for proposed development sites. Permits would be granted by states or localities and would be based on specific planning criteria contained in the bill. Local governments would be reimbursed for property-tax revenue lost through state land-use decisions. The bill would authorize \$600 million over three years, half for program grants and half for reimbursements for local property tax losses. States not qualifying for the program would lose EPA waste-treatment construction grants and would not receive extensions of federal air quality control deadlines.

*HR 91:* This is the same as the original Administration bill in the 92nd Congress. Introduced by Rep. Charles E. Bennett, D-Fla., on January 3, it authorizes \$100 million over five years for state land-use planning and management grants. It does not contain sanctions.

*HR 6460:* This bill was introduced by Rep. John P. Saylor, R-Pa., on February 27 at the behest of environmentalists. It establishes substantive federal policies for "areas of critical environmental concern" and requires state permits for "substantial development" in those areas. Grants to states would total \$800 million over eight years; sanctions are included.

*HR 7233:* Introduced by Rep. Lloyd Meeds, D-Wash., on April 19, this bill would provide \$300 million over five years for grants to states. Its sanctions cover all pro-

The federal role in land use planning and control is to persuade states and localities to set up processes which will resolve land use conflicts in a simpler fashion than they are being resolved today. Federal legislation is designed to provide assistance when there is state-wide implementation. The federal role is simply to provide the necessary resources, which do not at present exist, and to define balanced national growth goals. The purpose of this legislation is to insure that the policy of the federal government in land use planning and control would be of assistance to states and local governments. This assistance is intended to meet indigenous needs by requiring states and local governments to begin planning for land use in their respective states.

Some of the main features of the federal legislation are that it urges states to control development in "critical environmental areas" and "to implement state controls on any type of large scale development or development with regional impact"; "requires states to review the environmental impact of key facilities such as highways, airports and power plants"; and "allows states to provide for development of regional needs by making it impossible for localities to block such development."<sup>15</sup>

The Land Use Policy and Planning Assistance Act of 1973 (S.B. 268) as passed by the Senate provides for the following:

1. Up to ninety percent of the cost of developing a state land use program will be provided in five annual grants.
2. Two thirds of the administrative costs of developing a state land use program will be provided for in three subsequent grants.
3. Every year for eight years, \$100 million may be appropriated, for allocation according to the following bases:
  - (a) state's resource base,
  - (b) population,
  - (c) growth pressures,
  - (d) environmental problems, and
  - (e) financial needs.

The funds are to supplement, not replace, existing state and

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grams that have "substantial impact" on land use, as determined by the Secretary of the Interior. Grants under these programs could be halved after three years and cut off completely after five years.

15. *Supra* notes 6 and 11.



federal funding, and cannot be used to acquire property.

4. Up to \$15 million may be appropriated annually, for eight grants to coordinate land use planning, or implement land use policies through new or existing agencies.
5. Two million dollars may be appropriated annually for eight years for grants to colleges and universities for theoretical or practical research on land use planning and management, and related student training.<sup>16</sup>

Any state, in order to qualify for the millions of dollars available in assistance under the Act, must, within three years, develop a land use planning process.<sup>17</sup> This land use planning process must:

1. establish a land use planning agency (designated by law or executive order) with authority to develop a state land use program;
2. compile a data base;
3. coordinate its activities with state and federal planning and pollution control agencies;
4. prepare inventories of land and natural resources;
5. prepare data on population;
6. prepare data on economic and environmental conditions and growth trends;
7. prepare data on projections of land needed and suitable for various types of development to meet economic and social needs;
8. provide for public participation and education;
9. prepare a program to regulate land sales and development projects of 50 or more units located more than 10 miles from a Standard Metropolitan Statistical Area or a state-approved local regulatory agency.

Each program must be evaluated as to:

1. consistency with other state public service programs either in existence or planned;
2. effects on open space, natural beauty and soil erosion;
3. financial capability of the developer; and

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16. S. 268, 93d Cong., 1st Sess. §§ 301, 302, 302(a), 303, 304, 402 (1973).

17. *Id.*

4. local and regional need for the proposed projects.<sup>18</sup>

The Senate Bill 268, further requires that any state must develop a land use program within five years. The land use program is basically the same as the land use process described above. However, the land use program does specifically require the following:

1. a statement of land use policies and objectives.
2. methods to control use and development of land in areas of critical environmental concern. These areas include historical or ecologically fragile lands, lands subject to flooding or other natural disasters, and regionally significant agricultural and watershed lands "where uncontrolled or incompatible development could result in damage to the environment, life or property or the long term public interest which is of more than local significance."
3. methods to control the use of land which is or may be impacted by key facilities—public facilities that tend to induce development or urbanization of more than local impact, including airports, highway interchanges, recreational areas and energy facilities.
4. methods to control private large-scale development of more than local significance due to its size, environmental impact, or potential to generate traffic or further growth.
5. methods to assure that local regulations do not "arbitrarily or capriciously" exclude development of public facilities, housing, or utilities of regional benefit.
6. methods to influence the location of new communities and control surrounding land use.
7. methods to assure that none of the above activities violate or will stimulate violations of the goals, policies, or standards of federal, state or local pollution laws.
8. participation by local officials, property owners, users of the land and the public in developing, implementing and revising the program.
9. coordination where applicable with federal agencies, state agencies, Indian tribes and other states.<sup>19</sup>

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18. *Id.*

19. *Id.*

## TRENDS IN LAND USE PLANNING ON THE STATE LEVEL

Reviewing current state involvement in land use planning, a definite shift in the power base is apparent. We have seen that the power to control land use is in the hands of the states under the Constitution, and this power was delegated to local governments through enabling legislation. *The states are gradually withdrawing this delegated power from the local government and choosing to exercise this power on a state level.*

The most recent and wide sweeping example of state involvement in land use planning and control is seen in the state of Florida. Florida passed legislation requiring state review of all local decisions for conformity with a comprehensive state land use plan. The Florida Environmental Land and Water Management Act of 1972<sup>20</sup> which went into effect July 1, 1973, requires not only state review of local decisions, but state regulations over developments of regional impact.

Certainly the state of Florida has problems in land use planning that are not indigenous to the state of Oklahoma. However, in a recent study conducted by the Council of State Governments it is seen that Colorado, Delaware, Hawaii, Maine, Massachusetts, Michigan, Oregon, Vermont and Wisconsin have taken innovative action in state land use management.

In order to properly assess Oklahoma's role in future land use planning legislation on the state level, a review of the current developments of statewide programs is presented in the appendix of this article.<sup>21</sup> Although the state can and does exert a broad influence over

20. FLA. STAT. ANN. § 380.012 *et seq.* (1960).

21. Trends in land use planning on the state level is illustrated by the following chart. (A detailed description is provided in the appendix.)

TABLE OF EXISTING AND PROPOSED STATE LAND USE POWERS

	Land Use Planning	Land Use Controls	Coastal Zone Management	Wetlands	Power Plant Siting	Surface Mining
Alabama	Adopted	Proposed				Enacted
Alaska	Proposed					
Arizona	Adopted	Proposed	n.a.			
Arkansas		Under Study	n.a.			Enacted
California	Adopted	Proposed	Enacted		Proposed	
Colorado	Adopted	Enacted, & Proposed	n.a.			Enacted
Connecticut	Adopted	Under Study	Enacted	Enacted	Enacted	
Delaware	Adopted		Enacted	Enacted		
Florida	Adopted	Enacted		Enacted	Enacted	
Georgia	Adopted	Proposed	Enacted	Enacted		Enacted

the development of its land use resources, the author submits that statewide, comprehensive planning of land uses must not be under-

Hawaii	Adopted	Enacted, & Proposed	Enacted		
Idaho		Proposed	n.a.		
Illinois		Proposed, & Under Study		Proposed	Enacted
Indiana		Proposed, & Under Study			Enacted
Iowa		Proposed, & Under Study	n.a.		Enacted
Kansas		Proposed	n.a.		Enacted
Kentucky	Proposed		n.a.		Enacted
Louisiana		Enacted	Under Study	Enacted	
Maine	Adopted	Enacted	Enacted		Enacted
Maryland	Adopted	Proposed, & Under Study		Enacted	Enacted
Mass.	Adopted	Proposed, & Under Study	Proposed	Enacted	
Michigan	Adopted	Proposed, & Under Study	Enacted	Enacted	Enacted
Minnesota	Adopted	Enacted	Enacted		Enacted
Mississippi			Under Study		Enacted
Missouri			n.a.		Enacted
Montana	Adopted	Proposed	n.a.		
Nevada		Under Study	n.a.		
N.H.	Proposed	Proposed		Enacted	
New Jersey		Proposed	Proposed	Proposed	
New Mexico		Proposed	n.a.		Enacted
New York	Adopted	Proposed		Enacted	
N.C.		Under Study		Enacted	Enacted
N.D.		Proposed	n.a.		Enacted
Ohio	Adopted	Enacted			Enacted
Oklahoma	Proposed	Proposed	n.a.		Enacted
Oregon	Adopted	Enacted	Proposed, & Under Study	Enacted	Enacted
Pa.	Proposed	Proposed			Proposed
R.I.	Proposed	Under Study	Enacted	Enacted	Enacted: for Coastal Zones
S.C.	Under Study	Under Study	Under Study	Under Study	
S.D.	Under Study	Under Study	n.a.		Enacted
Tennessee	Adopted		n.a.		Enacted
Texas	Adopted	Proposed	Adopted	Proposed, & Under Study	
Utah	Adopted	Proposed	n.a.		
Vermont	Adopted	Enacted	n.a.		
Virginia		Proposed		Enacted	Enacted
Washington	Adopted	Proposed	Enacted	Enacted: for Coastal Zone	Enacted
W. Va.	Adopted		n.a.		Enacted
Wisconsin	Adopted	Proposed		Enacted	
Wyoming		Proposed	n.a.		

## KEY:

Explanation of the column headings:

Land Use Planning: A state-prepared land use plan (advisory unless accompanied by controls).  
Land Use Controls: An enabling law for state review of local plans or direct state controls for critical areas or large-scale development.

Coastal Zone Management: An enabling law for state review of local plans or direct state control of land use in the coastal zone.

Power Plant Siting: State permit authority for siting of power plants and related facilities.

Surface Mining: State regulation of surface mining.

Wetlands: State standards for and review powers over wetland development.

Explanation of column entries:

Proposed: Under consideration by the state legislature, or scheduled for introduction in 1974.

Under Study: Under study by a Governor's committee.

n.a.—not applicable.

taken solely by the state, but by some joint arrangement between the state and local governments.

#### LAND USE PLANNING LEGISLATION IN OKLAHOMA<sup>22</sup>

Land use planning legislation in Oklahoma is at its conceptualiza-

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22. A review of the information contained in notes 12 and 20, *supra*, reveal that Oklahoma has no land use planning legislation. The author submits that some form of land use planning legislation would provide a "handle" on the entire process of land utilization. Take for example the city of Tulsa, Oklahoma. If one were to conceptualize a possible land use in the Tulsa area, one would search for weeks to find the following list of sources that should be reviewed for consideration.

Bennison, Allan P. and Phillip A. Chenoweth. *Guide Book, Geology of the Tulsa Metropolitan Area*. Tulsa, Oklahoma: Tulsa Geological Society, 1968.

Bigda, Richard. *Potential Chemical Processing Industry Sites in the Arkansas River Basin*. Norman, Oklahoma: Oklahoma Economic Development Foundation, Inc., 1970.

Breisch Engineering Company, Murray Jones Murray, and Community Planning Associates. *Oklahoma Outdoor Recreation Plan*. Tulsa, Oklahoma: Oklahoma Industrial Development and Parks Commission, 1966.

Breisch Engineering Company. *Tulsa County Parks, A Study of Existing Facilities and Future Needs*. Tulsa, Oklahoma: Tulsa County Park Board. Undated.

City Demonstration Agency. *Tulsa Model Cities Program*, Parts I, II, III, Addenda III, and Appendix. Tulsa, Oklahoma: Tulsa Model Cities, 1969.

Community Planning Associates. *A Comprehensive Plan for Owasso*. Tulsa, Oklahoma: Owasso Planning Commission, 1969.

County Program Planning and Resource Development Council. *An Agricultural Economic Development Program for Tulsa County*. Tulsa, Oklahoma: Tulsa County Agency of United States Department of Agriculture, 1963.

\_\_\_\_\_. *An Overall Resource Development Program for Creek County*. Sapulpa, Oklahoma: Creek County Agency of United States Department of Agriculture, [1964].

\_\_\_\_\_. *An Overall Economic Development Program for Osage County*. Pawhuska, Oklahoma: Osage County Agency of United States Department of Agriculture, 1965.

\_\_\_\_\_. *An Overall Economic Development Program for Rogers County*. Claremore, Oklahoma: Rogers County Agency of United States Department of Agriculture, 1964.

Downtown Tulsa Unlimited, Inc. *Annual Report, 1969*. Tulsa, Oklahoma: Downtown Tulsa Unlimited, Inc. [1970].

Erling Helland and Associates. *Comprehensive Plan for the City of Claremore-Rogers County Metropolitan Area*. Tulsa, Oklahoma: The City of Claremore-Rogers County Metropolitan Area Planning Commission, 1967.

Harland Bartholomew and Associates. *Zoning Report, Tulsa, Oklahoma*. St. Louis, Missouri: [Tulsa] City Plan Commission, 1930.

Hudgins, Thompson, Ball, and Associates, Inc. *Bixby, Oklahoma, The Comprehensive General Plan*. Tulsa, Oklahoma: Bixby Planning Commission, 1967.

\_\_\_\_\_. *Preliminary Sketch Plan, River Lakes Park*. Tulsa, Oklahoma: Tulsa Metropolitan Area Planning Commission, 1967.

\_\_\_\_\_. *Sapulpa Parks, A Supplement to the Planning Document*. Tulsa, Oklahoma: City of Sapulpa, [1969].

\_\_\_\_\_. *Eastern and South Central Oklahoma Recreation and Tourism Study*. Tulsa, Oklahoma: Muskogee Area Office, Bureau of Indian Affairs, 1965.

Institute of Community Development. *A Plan for Development: Bristow, Oklahoma*. Norman, Oklahoma: University of Oklahoma Press, 1959.

tion stage. Governor Hall has recently established a Land Use Advisory Committee for informational purposes. No state enabling legislation exists for any type of state or regional land use planning.

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- Mayor's Committee on Recreation. *Consultant's Report on Tulsa's Recreation*. (Unpublished), 1957.
- Miami Valley Regional Planning Commission. *State of the Region: A Report on Conditions in the Miami Valley Region with Suggested Interim Guidelines*. Dayton, Ohio: The Commission, 1966.
- Midwestern Planning Associates. *Osage County, Oklahoma, Comprehensive Water and Sewer Study*. Tulsa, Oklahoma: Osage County Planning Commission, 1968.
- Northeast Counties of Oklahoma Development District. *Overall Economic Development Program*. Vinita, Oklahoma: Undated.
- Oklahoma Center of Urban and Regional Studies, University of Oklahoma Research Institute. *Master Plan Study: Sapulpa, Oklahoma*. Norman, Oklahoma: City of Sapulpa, 1964.
- \_\_\_\_\_. *A Planning Manual for New Mannford, Oklahoma*. Norman, Oklahoma: City of Mannford, 1961.
- Oklahoma Department of Highways. *Sapulpa Urban Area Transportation Study: Recommended Transportation Plan (Preliminary), 1966-1986*. (Unpublished and undated).
- Oklahoma Employment Security Commission. *Economic Base Report, Rogers County*. Oklahoma City, Oklahoma: The Commission, 1966.
- \_\_\_\_\_. *Handbook of Oklahoma Employment Statistics, 1939-1968*. Oklahoma City, Oklahoma: The Commission, 1967.
- \_\_\_\_\_. *Indians in Oklahoma: Social and Economic Statistical Data*. Oklahoma City, Oklahoma: The Commission, 1966.
- \_\_\_\_\_. *Tulsa Metropolitan Area Labor Market Review, XXIV* (January-December, 1969).
- Oklahoma Industrial Development and Park Department. *Study, Revision, and Codification of State Planning Laws in Oklahoma*. Oklahoma City, Oklahoma: The Department, 1970.
- Oklahoma State Department of Health. *Public Health Statistics, State of Oklahoma. Part II, Births and Deaths 1964*. Oklahoma City, Oklahoma: The Department, 1964.
- Oklahoma State Regents for Higher Education. *Junior College Education in Oklahoma*. Oklahoma City, Oklahoma: Oklahoma State Regents for Higher Education, 1970.
- Owen, Mansur & Steele and Pate Engineering Company. *Storm Drainage Studies*. Tulsa, Oklahoma: Tulsa Metropolitan Area Planning Commission, 1963.
- Parker, James, Parker, and Associates and Central Oklahoma Economic Development District Staff. *Overall Economic Development Program, Economic Development Administration*. Washington, D.C.: U.S. Government Printing Office, 1967.
- Peach, W. Nelson; Richard W. Poole; and James D. Tarver. *County Building Block Data for Regional Analysis: Oklahoma*. Stillwater, Oklahoma: Oklahoma State University, 1965.
- Rogers County Soil and Water Conservation District. *Long Range Program*. Rogers County, Oklahoma: The District, 1968.
- \_\_\_\_\_. *Recreation Potential Appraisal*. Rogers County, Oklahoma: The District, 1968.
- Sacramento Regional Area Planning Commission. *Preliminary Regional Plan*. Sacramento, California. The Commission, 1969.
- Scheer, Lorraine, H. *A Plant Location Decision-Making Study of the Greater Metropolitan Tulsa Area, 1958-1969*. Tulsa, Oklahoma: The Economic Development Commission of Tulsa, 1970.
- Tulsa Area CAMPS Committee. *Tulsa Area Comprehensive Manpower Plan, Fiscal Year 1970*. Part A. Tulsa, Oklahoma: The Committee, 1969.

For advisory purposes only, Oklahoma has been divided into Sub-State Planning Districts.<sup>23</sup> These districts are: Northeast Counties of Oklahoma (NECO); Eastern Oklahoma Development Association (EODA); Kiamichi Economic Development District of Oklahoma (KEDDO); Southern Oklahoma Development Association (SODA); Central Oklahoma Economic Development District (COEDD); Indian Nations Council of Governments (INCOG); Northern Oklahoma Development Association (NODA); Association of Central Oklahoma Governments (ACOG); Southwestern Oklahoma Development Au-

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Tulsa County Soils and Water Conservation District. *Recreation Potential Appraisal*. Tulsa, Oklahoma: The District, 1968.

Tulsa Metropolitan Area Planning Commission. *Comprehensive Plan for the City of Collinsville, Oklahoma*. Tulsa, Oklahoma: City of Collinsville, 1961.

\_\_\_\_\_. *Comprehensive Plan for the City of Sand Springs, Oklahoma*. Tulsa, Oklahoma: City of Sand Springs, 1964.

\_\_\_\_\_. *Comprehensive Plan for the City of Skiatook, Oklahoma*. Tulsa, Oklahoma: City of Skiatook, 1964.

\_\_\_\_\_. Tulsa, Oklahoma: The Commission:

*Annual Report, 1969, Continuing Transportation Program, 1970.*

*Comprehensive Plan: Tulsa Metropolitan Area, 1960.*

*Land Use: A Procedural Manual for Collection, Storage, and Retrieval of Data, 1965.*

*Industrial Development Plan 1990, 1969.*

*Metropolitan Development Guidelines 1990, 1969.*

*Metropolitan Economic Analysis, 1969.*

*Metropolitan Land Use, 1965.*

*Metropolitan Mass Transit Study: Metropolitan Tulsa Transit Policy, 1970.*

*Metropolitan Tulsa Commercial Land Needs, 1959.*

*Metropolitan Tulsa Goals for Growth, 1958.*

*Metropolitan Tulsa Industrial Land Needs, 1958.*

*Metropolitan Tulsa Program for Community Renewal, General Development Plan, 1963.*

*Metropolitan Tulsa Public Recreation Land Needs, 1960.*

*Metropolitan Tulsa Public School Needs, 1960.*

*Metropolitan Tulsa Residential Land Needs, 1959.*

*Metropolitan Tulsa Residential Land Needs, Statistical Supplement, 1960.*

*Metropolitan Water and Sewage Facilities Plan 1990, 1969.*

*Projection of Trip Generation Factors, Research Supplement No. 1, 1966.*

*Proposed Metropolitan Major Street and Highway Plan, Research Supplement No. 6, 1968.*

*Supplement to 1975 Metropolitan Tulsa Public Financial Capacity, 1961.*

*Transportation Study: Vol. I, Inventory Findings and Analysis; Vol. II, Transportation Plan 1966-1985, 1967.*

*Tulsa Metropolitan Area Open Space Plan, 1968.*

U.S. Federal Housing Administration. *Analysis of the Tulsa, Oklahoma, Housing Market as of July 1, 1969*. Washington, D.C.: U. S. Government Printing Office, 1969.

U.S. Soil Conservation Service. *Soil Survey, Creek County, Oklahoma*. Washington, D.C.: U.S. Government Printing Office, 1959.

\_\_\_\_\_. *Soil Survey, Rogers County, Oklahoma*. Washington, D.C.: U.S. Government Printing Office, 1966.

23. State Interlocal Cooperation Act, OKLA. STAT. tit. 74 §§ 1001-1008 (Supp. 1974).

thority (SWODA); Oklahoma Economic Development Association (OEDA).

Actually Oklahoma is in an excellent position to develop land use legislation which could avoid the criticisms that have been leveled at the legislation passed in other states. The Oklahoma legislation, then, unlike much of the recently enacted legislation in other states, which is generally directed at specific problem areas, could become a comprehensive statewide land use planning and control measure. It will be important to base its conceptual origins on several important sources.

The most influential source is the American Law Institute's Model Land Development Code, Tentative Draft Number Three, Articles Seven and Eight.<sup>24</sup> Other sources should include the report to the Council on Environmental Quality entitled, "The Quiet Revolution in Land Use Control" by Fred Bosselman and David Callies;<sup>25</sup> the National Land Use Policy and Planning Assistance Act which was passed in the United States Senate as S.B. 268 in the 1973 session;<sup>26</sup> Florida's Environmental Land and Water Management Act of 1972;<sup>27</sup> and the working papers compiled by staffs in individual states from Washington to Alabama prior to introduction of land use legislation in their respective states.<sup>28</sup> All of these sources suggest an expanded state role in land use planning and regulation.<sup>29</sup>

Initially a state land use planning agency would have to be created. The agency's first task would be to compile data—make an inventory of land use in Oklahoma. The agency would coordinate its work with state and federal planning and pollution control agencies, prepare data on economic and growth trends, estimate land needs to meet economic and public needs and hold open hearings to allow for citizen participation.

The author submits that a crucial feature of the Oklahoma Act must be to retain the concept of local responsibility over land use con-

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24. ALI MODEL LAND DEVELOPMENT CODE xiii-xv (Tent. Draft No. 2, 1970); xiii (Tent. Draft No. 3, 1971).

25. BOSSELMAN & CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (1971).

26. S. 268, 93d Cong., 1st Sess. (1973); *see also* material cited in note 14 *supra*.

27. FLA. STAT. ANN. § 380.012 *et seq.* (1960).

28. *See, e.g.,* W. McLEOD, III, *LEGAL PERSPECTIVES OF ENVIRONMENTAL HEALTH IN SOUTH CAROLINA* (1973). (Mr. McLeod is general counsel for the South Carolina State Board of Health.)

29. *THE COUNCIL OF STATE GOVERNMENTS, THE STATES' ROLE IN LAND RESOURCE MANAGEMENT* (Lexington, Kentucky 1972).



trol and at the same time allow the state to establish certain policies and guidelines which must be followed by local government. The legislation must provide for procedures whereby the state can intervene in local regulation decisions involving certain limited types of development, or development in certain areas, if the local government has not followed the state-established guidelines in reaching its decision. The author further submits that it is crucial that Oklahoma's legislation not discourage development; nor establish a specific development plan. The proposed legislation must encourage the use of innovations and at the same time provide techniques that allow for a *flexibility of approach*.<sup>30</sup>

### CONCLUSION

It is apparent that the zoning laws promulgated in the 1920's were not designed to meet contemporary social and environmental problems, and do not provide the means with any *flexibility of approach* whereby solutions to these problems may be effectuated. A review of the federal trends in land use planning legislation as well as the state trends in this area reveal that instead of leaving land use control decisions entirely up to the local governments, which often make decisions without regard to other governmental entities, without adequate information or technical advice, and without standards and policies reflecting the complex problems facing our modern society, a means must be adopted whereby there is a coordinated planning and regulation process involving the entire state.

Oklahoma finds itself at the crossroads today. A systematic and orderly development of the state may be ensured if legislation is passed which provides for overall state land use coordination and at the same time allows a *flexibility of approach* whereby the local governing body remains active in the planning and decision making process. Only in this manner will the future citizens of Oklahoma live in a state where the agricultural, industrial, urban and undeveloped areas of the state are coordinated in a manner so as to provide the greatest benefit to the greatest number of Oklahoma citizens.

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30. Conclusion of author.

## APPENDIX

## TRENDS IN LAND USE PLANNING ON THE STATE LEVEL

*Alabama*

The Alabama Development Office has advisory comprehensive planning authority for the state. Presently pending in the Alabama legislature is a bill closely modeled after Florida's 1972 Land and Water Management Act. The two coastal counties cooperate in regional planning, and are the only counties in the state that have used flood plain zoning authority under the 1971 state enabling legislation. Also currently pending is legislation to broaden the county zoning authority and to establish a mandatory minimum state building code.

*Alaska*

The Land Use Planning Committee in the Governor's office is preparing state strategy for a land use planning process. Legislative action is planned this year to establish a regulatory and planning agency. At present, the committee is accumulating data on land and coastal resources and their use. Recommendations for coastal zone management may also be prepared by the committee.

Ninety-seven percent of the land in Alaska is owned by the federal government. The joint Federal-State Land Use Planning Commission established in 1971 is overseeing the transfer of 103 million acres of federal land to state ownership. Under the Alaska Native Claims Settlement Act of 1971, Eskimos and Aleuts will receive 80 million acres of publicly-owned land. The Secretary of the Interior is examining 40 million acres for inclusion in the national wilderness system for permanent preservation.

*Arizona*

The Environmental Planning Commission was authorized by legislation in May 1973, and is expected to be named by Governor Williams by late summer. Three ex-officio members from each house of the legislature will sit with nine gubernatorial appointees charged with preparing a land use plan for submission to the 1975 legislature. Interim recommendations on land use policy are to be required in 1974. The 1973 law mandates the Office of Environmental Planning to coordinate planning activities of state agencies.

Unique to Arizona is the sophisticated Arizona Trade-Off Model (ATOM), completed in early 1973. The model provides a comprehensive evaluation of policy alternatives for economic growth and the environment by indicating changes that would result from particular decisions. This model includes data describing the population, industry and environment, effects on employment, public services and environmental indices for any specific development or general policy that may be proposed.

*Arkansas*

A forty-four member Advisory Committee, established by the Governor in May 1973, is conducting public hearings throughout the state to obtain input on land use problems and possible solutions. The committee hopes to prepare draft legislations for further public hearings and submission to the 1974 General Assembly.

*California*

California's State Coastal Commission and six Regional Coastal Commissions, constitute the most powerful regulatory agency in the state, and are in full operation seven months after voters endorsed the Coastal Zone Conservation Act (Proposition 20). Staffing is nearly completed; red tape was slashed to provide quick manpower for the commissions' three-year mandate of blanket permit authority and development of a land use plan for the coastal area. Permit authority extends 1,000 yards inland from mean high tide, while the plan, due in 1976, will cover the area five miles inland and three miles seaward along the coast for the length of the state.

Funding is the major problem for the planning phase. The state had initially counted on fiscal 1973 and 1974 Federal Coastal Zone grants, but Washington has so

far offered no money under the new program. Structure and guidelines for the planning process were adopted June 6.

Permit authority, which became operational in February retroactive to November 8, 1972, had been exercised in 882 cases as of May 1. Eleven applications were denied, while many of the permits granted required modification of proposed development. Another 1444 cases were pending May 1. Claims of exemption from the Act, due to substantial investment or completion prior to November 8, are also heard by the commissions. Of 345 claims filed by May 1, 165 had been granted and 45 denied.

The South Coast and San Diego Regional Commissions, covering the coast south of Los Angeles, have tended to allow development as originally proposed. The State Commission has acted on about a dozen appeals, which has meant a new hearing and decision in each case, rather than just a judicial-style review of Regional Commission action.

Legislative authors of the coastal program are pleased with the speedy start and well-informed decision-making process that has evolved in the commissions. They predict a slowdown in coastal development, but not a moratorium.

Consideration of broad factors—impact on physical infrastructure components and overall carrying capacity of resources—has made the case-by-case procedure into a planning process as well. Commissioners have commented that permit experience will prove valuable in the preparation of the final plan.

A \$500 billion lawsuit over the constitutionality of the law has been filed, but most observers, including the State Attorney General, give the challenge no chance of defeating the significant portions of the program.

Pending legislation includes bills to:

1. Create the State Land Use Commission to designate areas of critical state concern based on environmental considerations, key facilities, development of regional impact, subject to an as yet unspecified acreage limitation; the Commission is to review the plans of local agencies affecting designated areas and to override them if they do not comply with state plans for the protection of these areas.
2. Appropriate \$50 million to acquire land located within the coastal zone established under the Coastal Zone Conservation Act of 1972.
3. Create the State Open Space Commission to administer a fund for state and local agency purchase of park and open space lands generated by a 1.1 percent real estate transfer tax.
4. Establish for any citizen legal standing to sue any other party for environmental protection, without having to demonstrate direct interest. (Present laws allow such suits against state agencies.)
5. Create the Electrical Power Facilities Siting Council to review and regulate siting of designated thermal power plants and electrical transmission lines.
6. Create the California-Tahoe Conservancy Agency and appropriate \$20 million for purchase of highest priority Basin lands; provide for a Bi-State Conservancy Compact upon agreement with Nevada; restructure the membership of the existing Tahoe Regional Planning Agency, increasing non-local public participation and repealing existing requirement for local tax support of the agency.
7. Create the Bay Area Regional Planning Agency with authority to veto actions of local governmental agencies that conflict with regional plans in the areas of open space, air pollution, solid waste management, and transportation.
8. Create a full-time State Environmental Quality Board comprising all existing planning, land use, and environmental agencies, and reorganize all existing state agencies within the board.

Unique to California is the state supreme court decision in *Friends of Mammoth v. Board of Supervisors of Mono County*, 104 Cal. Rptr. 761, 502 P.2d 1049 (1972) wherein the California Supreme Court held that an environmental impact statement is required on private as well as public projects where significant impact is possible. Regulations implementing this significant decision defined nearly all construction and development as potentially of significant impact.

*Colorado*

Controversial legislation to specify state land use policy and provide state control over hazardous areas, activities of state-wide concern, and municipal annexations and state review of local and regional plans was defeated in June 1973, after two months of debate in the legislature. Special state powers in the densely populated Front Range were included in the rejected legislation.

Rural counties, fighting state-regulation of development, led the opposition to the legislation.

Also defeated this year were bills to provide interim state land use policies, state land sales regulation, revised farm land assessment, and surface mining regulation.

Governor Vanderhoof is expected to press for further legislative study or action on land use policy, which Governor Love did not do.

The Land Use Commission has outlined general state development goals. Under 1972 law, counties must develop subdivision regulations requiring developers to have adequate water supply and plans for sewer, utilities, and social services.

*Connecticut*

A series of state policies for land and water use and a map classifying the state into urban, limited development and open space regions were proposed for public adoption in early 1973 by the Office of State Planning. The proposed Plan of Conservation and Development is already being implemented by state agencies as a guide for actions affecting development. Public hearings and legislative consideration are expected in 1974.

Using existing development as a basis, the Land Use Policy Map of the proposed plan allocates about half the state's land as suitable for urbanization and about a quarter of the land as suitable for limited development, reserving the remaining quarter for open space. The proposed policies include: (1) utilizing timing and placement of water and sewer lines and allocation of state and federal aid for major urban services in order to direct urbanization to suitable areas; (2) within areas suitable for urbanization, promotion of staged, contiguous development through water and sewer authority, encouragement of large-scale private development projects, and efforts to insure development at sufficient density for economic provision of public services; (3) continuation of major agricultural and forest uses; (4) consideration of uses for ground water supply, mineral extraction, and solid waste disposal purposes before decisions precluding such uses are made; (5) encouraging state, regional and local agencies to use the proposed plan as a guide in reviewing projects and policies.

The Department of Environmental Protection (DEP) regulates by permit all construction and dredging in wetlands and tidal, coastal or navigable waters. DEP is gearing up for coastal zone management in line with federal legislation.

Tax rates for farm, forest and open space land decrease as the period of ownership increases.

*Delaware*

State land use controls in Delaware are limited primarily to the coast. There the state must issue permits for any industrial development and since 1973, any alteration or development of wetlands.

Defeated this year was a bill to expand the two-year-old Coastal Zone Industrial Control Board to a comprehensive management agency with permit powers over residential (three or more units) and commercial (over 10,000 square feet on more than one acre) development. The proposed Coastal Zone Management Act (H.R. 268) would have required preparation and adoption of a coastal zone plan.

Regulations are being completed by the Department of Natural Resources under the 1972 Beach Protection Act. State review powers will apply up to 1,000 feet from the low water mark, including authority to designate "no construction" zones. Local jurisdictions will retain authority inland from the dunes. Delaware law bans all new heavy industry within two miles of the coast, as well as offshore bulk transfer terminals.

A State Comprehensive Development Plan is under development in the State Plan-

ning Office. An initial document outlining alternative strategies for land management will be available for public examination in 1974.

#### *Florida*

Florida's Environmental Land and Water Management Act of 1972 went into effect July 1, 1973, with issuance of state regulations designating developments of regional impact. The Division of State Planning will review local decisions for conformity with a comprehensive state land use plan.

A single detailed application form has been drawn up for developments of regional impact and areas of critical state concern. Up to five percent of the state (about 500,000 acres) may be designated critical by the Governor and his cabinet.

A 1972 bond issue gave the Department of Natural Resources \$240 million to acquire land or development rights in environmentally endangered coastal or recreational areas.

The 1973 legislature named the Big Cypress area as critical, granted state regulatory powers, and appropriated \$40 million for state acquisition. This law functions as a supplement to the five-percent limit on critical areas and the \$240 million acquisition program.

No comprehensive state coastal zone regulatory powers exist in Florida, but the state's advisory Coastal Coordinating Council has planned and classified the entire coastal zone and has earned the respect of developers and local officials. The Council divides coastal land into areas suitable for large-scale development, limited development, and no development.

Power plants and related facilities are subject to one-stop state certification under 1973 law. Oil and gas leasing is prohibited within a mile of the coast. The state has review power under a 1972 law for federal offshore leasing.

The Environmental Land Management Study Committee created by the Land Water Management Act reports regularly to the governor and legislature on strategies for such issues as local land division regulation, new communities, land sales, development rights, land banking and tax policies.

#### *Georgia*

The Georgia legislature will receive recommendations this year from the newly created Vital Areas Council concerning designation and state standards for protection and orderly development of vital areas. The coastal zone, mountain areas, and rivers and streams were named as areas for consideration by the Council, which was appointed by the governor and the legislature with special representation from coastal and mountain areas.

Defeated in 1973 was legislation to empower the Office of Planning and Budget to designate vital areas and develop standards for them. Major highways and airports and hundred-year floodplains were included in the proposed general authority for vital area protection, as well as the coast, mountains, rivers, and streams.

Under a 1972 state law, Atlanta's Chattahoochee River corridor must be planned for by the Atlanta Regional Commission. The plan will have the force of law and must meet certain floodplain protection standards specified in the 1972 law. The pristine river corridor had been sewered and rezoned for residential development shortly before the law was enacted.

The Chattahoochee approach, where the state plays no direct role but a regional commission subject to state guidelines does, may foreshadow future "vital area" regulation proposals in Georgia. Eighteen Area Planning and Development Commissions cover the state, but have usually concentrated on development so far and receive no state funding.

The 1970 Coastal Marshlands Protection Act requires state permits for dredging, filling, or construction in tidelands.

#### *Hawaii*

The first and strongest state land use control program in the nation was enacted in 1961 shortly after Hawaii attained statehood. Unlike the older mainland states,

which delegated land use powers to local governments in the 1920s and 1930s, Hawaii still had a tradition of central (territorial) government. The state also faced the immediate problem of urban encroachment on its economic base of prime agricultural land and scenic areas.

The State Land Use Commission has zoned the entire state into urban, rural, agricultural and conservation districts and regulates all agricultural and rural land uses. Another state agency controls conservation districts. Urban districts, once designated by the commission, are regulated by the four county zoning agencies. Key decisions have centered on rezonings for urban use, which must be granted if "need" is demonstrated.

Legislation proposed in 1973 (S.B. 614) and slated for reintroduction in 1974 would have rewritten the land use law to: (1) provide for state-developed general policy guidelines; (2) authorize the state to designate areas of critical state concern and to exercise direct control over development in those areas; (3) strengthen the policy of preserving agricultural lands by introducing a competing *consideration of damage* factor to be balanced against the prior standard of "need" in reclassification proceedings; (4) authorize assessment of agricultural land on the basis of agricultural use rather than on development potential, with a partial, retroactive rollback of the tax advantage if the land is reclassified; (5) empower the state, when reclassifying land for housing development, to require that the owner extend to the state an option for sites for low- and middle-income housing, or enter into a joint agreement for such housing; and (6) authorize the state to designate low-income housing areas as areas of critical state concern to assure direct state control.

#### *Idaho*

A thorough public education program by the State Planning and Community Affairs Agency and public hearings this year by an interim legislative committee all lead up to 1974 legislative consideration of state land use controls.

Under discussion is a proposal, introduced as Senate Bill 1111 this year and referred to the interim committee, providing for state designation of critical areas and developments of regional benefit and impact (basic industry, transportation systems, power facilities and water and solid waste systems). The bill would enable state review of local controls for the designated areas and types of development.

#### *Illinois*

Two bills for direct state land use controls are under study by an interim subcommittee of the Illinois House of Representatives and will be reintroduced in 1974. House Bill 1123 is closely patterned after the Federal Senate-passed land use bill. House Bill 1057, sponsored by the State Department of Agriculture, emphasizes agricultural needs and focuses on "land disturbing" activities.

#### *Indiana*

No state land use controls have been proposed. The state was divided into fourteen planning and development regions in 1970. The advisory regional planning bodies are not fully organized. The Division of Planning is inventorying state resources.

#### *Iowa*

The Land Use Commission named this year by the Governor under legislative mandate, will develop specific policy recommendations next year. The Office of Planning and Programming is surveying existing laws and regulations and their effects on land use.

#### *Kansas*

The Governor's Special Committee on Land Use Planning and Management will report to the governor and legislature sometime in 1974.

#### *Kentucky*

Legislative proposals in response to federal land use bills may be developed for 1974.

*Louisiana*

Louisiana is developing a state coastal zone management program, preparing proposals for statewide land use planning, and using existing authority to regulate natural and scenic rivers and some development in the Atchafalaya Basin.

The Advisory Commission on Coastal and Marine Resources, created in 1971, will release for public examination a coastal zone management plan in 1974. Input from diverse interest groups, citizens, and scientists will be stressed in the designation of environmental management units; criteria for assessing impacts of and regulating land and water uses; and corridors suitable for industrial, commercial, residential, and transportation development. The proposed plan will be submitted to the 1974 legislature.

The Commission's 1973 progress report recommends legislative authorization and appropriation sufficient to qualify for federal coastal zone management assistance, and legislative support of the Sea Grant Program and other research facilities.

The Governor's Office of State Planning is drafting a "Growth and Conservation Policy" as an initial step toward a state land use plan. The document will suggest state guidelines and policies for critical environmental areas; areas where growth generally should or should not be encouraged; a system for environmental impact assessment; and possible state roles in determining land use patterns, including the development of new communities and the designation of growth areas.

The 1970 law declares 31 streams "natural and scenic rivers" along which channelization, clearing and snagging, dredging, and reservoir construction are prohibited. Preservation of any potential natural and scenic rivers—those in almost original natural condition—must be given full consideration in any planning for water use and development; state concurrence in local or federal planning that does not include such consideration is prohibited.

The law encourages private owners of land along state-designated natural and scenic rivers to grant scenic and surface easements to the State Wildlife and Fisheries Commission.

*Maine*

Maine adopted a series of state land use controls in 1971 covering large-scale development, shorelands and wetlands, and unzoned areas. Specific endangered areas received individual treatment from the 1973 legislature.

The 1970 Site Selection Act requires a permit from the Department of Environmental Protection for commercial, industrial, or residential development covering over 20 acres, structures exceeding 60,000 square feet of floor area on a single parcel of land, and mining or drilling operations. Applicants must show minimized adverse environmental effects, financial capacity, and adequate traffic and soil management plans.

Maine maintains the right to deny permits on grounds of environmental degradation. Legislation to amend the Site Selection Act to include greater consideration of economic factors was referred this year to a study committee and will be considered in 1974.

The 1971 Mandatory Zoning and Subdivision Control Act requires localities to zone and establish controls for land within 250 feet of navigable water. The deadline for compliance was recently extended a year to July 1974.

The Land Use Regulation Commission is developing zoning and controls for the unorganized territories covering the northern half (51 percent) of the state. If local governments take over in the future, their regulations must be at least as protective as the replaced state policies.

A state-funded study group is drafting a plan for legislative consideration covering a 500,000-acre area in the western mountain region, where development pressure is growing. The 1973 legislature passed legislation enabling a commission of local governments to zone the Saco River corridor for preservation, limited development and development.

*Maryland*

Governor Mandel named a 27-member Study Commission in July in an attempt to set the stage for 1974 passage of state land use controls.

The Commission, composed of legislators, local officials and private citizens, are charged to present a proposal for the 1974 legislature.

State Senator William Goodman saw no action in 1972 on his "development rights" proposal. The concept, which is attracting interest in several other states, would divide the state into development areas and set the optimum level of potential development for each. Landowners would receive fixed amounts of development rights in proportion to their holdings. Anyone applying for an upward rezoning for development would have to buy up development rights of other landowners first.

Already on the books are laws providing state review of local development regulations for wetlands, and limiting power plants to state-owned sites where state permits have been granted.

#### *Massachusetts*

State land use controls over critical areas and major development over the coastal zone are being debated in the Massachusetts legislature this year. Studies of land use and methods of control are under way in the Department of Community Affairs.

Massachusetts has enacted laws requiring state permits for alteration or development of coastal wetlands and non-agricultural uses of inland wetlands. Pending legislation would extend inland wetland regulation to major agricultural activities.

The Land Bank Commission, a joint legislative body, is entering its third year of consideration of state enabling legislation for land use planning. The bill (H 2327) emphasizes substate management, establishing 12 regional Resource Committees, along existing regional planning boundaries. Critical environmental areas and large scale development would come under direct regulation, subject to state guidelines and review powers in a new land management agency. Each committee would include six members named by the regional planning agency and five gubernatorial appointees.

#### *Michigan*

The Department of Natural Resources was declared the state planning agency by executive order in April 1973, and an Office of Land Use was established. The office is concentrating on developing broad policy legislative proposals; coordinating state programs; studying special problems, such as subdivision and taxation; and obtaining and analyzing land use data.

Action may begin this fall on House Bill 5055, patterned after the Federal Senate-passed bill, requiring state guidelines and review powers for development in areas of critical environmental concern and of interjurisdictional impact. Controls would be administered largely through 13 regional planning and development districts. The Towns and Counties Committee is expected to redraft the bill on the basis of input from local officials and the public. Also under legislative consideration is House Bill 4244, a bill requiring tax assessment at actual use value. The House has approved the measure.

Under the Shoreland Management Act, local planning and zoning along the Great Lakes shores must conform to state guidelines or the state has the authority to step in. The Department of Natural Resources is studying possible areas of critical environmental concern within 1,000 feet of the shoreline.

The Inland Lake and Streams Act requires state permits for dredging, filling or construction. Floodplain development is also subject to state permits. State law requires local subdivision controls over division into four or more parcels of less than ten acres.

#### *Minnesota*

This year's legislature provided Minnesota with greatly strengthened planning and regulatory authority over land use. The newly established Environmental Quality Council (EQC), chaired by the State Planning Director, including several cabinet officers and some citizens, will consider environmental problems of interdepartmental concern and state projects significantly affecting the environment. A citizens' advisory commission was also established. The Council is to prepare annual long-range plans and programs to achieve state environmental policy.

The State Planning Agency received \$1.8 million for mapping, inventorying, and, in a few specific areas, providing control and protection. Included is a study of poten-



tial state land use planning processes. The agency is oriented toward preparation of state land use policies and programs and the political and technical tools for implementation.

The 1973 Critical Areas Act directs state identification of unique areas that would be irreparably damaged by uncontrolled development. Regional Planning Commission (RPC) review of local plans for such areas is required, or, where no regional body exists, EQC review. The state is authorized to assist and cooperate with local units of governments in planning and regulating use and development in critical areas. Designations are to be made by the Governor, with concurrence within three years by the Legislature or the Regional Planning Commission.

Previously authorized development can not be affected by state designations under the Act. The 1973 Power Plant Siting Act requires EQC certification of all electrical power generation plants and transmission lines. Annual fifteen-year forecasts are required from all utilities, and a council inventory of potential sites and corridors is to be completed by 1975.

The new Subdivision Land Sales Practices Act requires registration and licensing of salesmen in offerings outside municipal jurisdictions of fifty or more lots within twelve months. The law allows purchasers or lessors fourteen days to void any contract, unless the subdivision was illegally unregistered, in which case there is no time limit on the right of rescission.

Pending for 1974 consideration are bills to allow administrative appeal of any state action by any citizen on matters of environmental concern (legal standing already exists for citizen judicial appeal); and to establish a state outdoor recreation system.

The Metropolitan Council of the Twin Cities Area, created in 1967, has review power over plans of independent commissions, boards, and agencies which construct or operate facilities serving the entire Minneapolis-St. Paul region; plans of cities and counties; and, as the A-95 clearinghouse, plans of agencies in the region applying for federal funds. Water, sewer, transportation, recreation, and housing planning authority are included. Specific policy statements have been adopted covering those areas as well as orderly growth, preservation of land that should not be developed, and compatible development.

#### *Mississippi*

The Mississippi Marine Resource Council, created in 1972, will propose a plan for the coastal zone to the 1974 legislature for possible adoption.

#### *Montana*

Land management took the limelight in Montana this year as the legislature gave the state new authority to review local subdivision regulations, approve public utility sites, and regulate strip mining.

Held over for 1974 was Senate Bill 449, a proposal for state designation of areas of state and regional concern. The bill calls for local land use regulation under state guidelines in designated areas, with direct state control where localities fail to act.

#### *Nebraska*

Public hearings are in progress this year on Senate Bill 465, a proposal for state controls over critical areas and large-scale development. Legislative action is planned in 1974. The Office of Planning and Programming is studying state articles relating to land use.

#### *Nevada*

A state land use planning agency was designated this year with the passage of Senate Bill 333. In 1975 the Department of Conservation and Natural Resources will report to the legislature on possible regulatory mechanisms, including the critical area large-scale development approach.

#### *New Hampshire*

The Office of Comprehensive Planning is beginning to formulate land use control proposals for possible submission to the 1975 legislature. The six regional planning districts are working with the state in developing a data base. The State Bulk Power

Site Evaluation Committee must approve new power generation and transmission facilities.

#### *New Jersey*

The nation's most urban state is approaching state planning authority through legislative proposals and a gubernatorial task force. New state review power over coastal development supplements earlier wetland and flood plain laws.

Significant pending legislation includes three general planning bills: (1) a Community Planning Law to establish a State Planning Council with regulatory authority, including review of local and county plans, over development in critical areas and flood plains, and near major highway interchanges, airports, and recreation areas; the bill would also recodify and clarify enabling legislation for planning and zoning; (2) a Voluntary Balanced Housing Act to set state housing goals with guidelines for proportional allocation to cooperating counties, which could then set allocations for constituent cities and towns; distribution of low- and middle-income housing would be stressed; formulas would depend on each area's construction ability, employment opportunities, subsidy systems, and existing plans; and (3) a Community Planning Corporation Act, to set up a state development agency similar to New York's Urban Development Corporation.

Also pending is the proposed Major Energy Facilities Review Act, to provide for state purchase of all sites available for power plants, as in Maryland's 1971 law.

The Coastal Area Facilities Review Act enacted in June 1973 allows the Department of Environmental Protection (DEP) to regulate industrial use and residential development of 25 or more units between the shoreline and navigable road courses. DEP must cooperate with the Departments of Labor and Industry and Community Affairs.

Protective zoning for more than 5,000 miles of state regulated "floodways" and locally regulated flood plains, including parts of several large cities, is required as of December 1972. DEP will step in on the flood plains after one year if localities do not act.

The state is asserting ownership of a substantial portion of the Hackensack Meadowlands under riparian rights extending from a grant by the King of England 200 years ago. The Meadowlands, located in the greater New York City area, are a scene of battle over the state's 30-year development plan for the area, which includes a 75,000-seat sports arena and 4.5 million square feet of office space.

Thirty-two maps delineating state claims based on original tidal flows have been released by DEP. Claims, including the proposed sports arena site and some land that has been paved or built on, would be sold for fair-market value, with proceeds to go to the Public School Fund.

The 1964 Agricultural Assessment Act has significantly slowed the rate of urbanization of farmland through allowance of taxation at actual-use value on land in agricultural production. A two-year rollback of the tax break occurs when the land is sold or developed.

#### *New Mexico*

A legislative advisory council is studying land use policy and holding hearings, with a report to the legislature due sometime in 1974. Comprehensive state subdivision control guidelines, exempting only those with fewer than five lots from county regulation were enacted in 1973.

#### *New York*

A court test of the Adirondack Park Agency's new land use controls is expected in light of the August 1, 1973, rejection of a proposed large residential development. The state constitution provides that the Park shall remain "forever wild".

The Agency's land use and development plan for the 3.7 million acres of privately-owned land in the park was armed in May 1973 with legal review power over development of more than five acres. Twenty-four local zoning authorities exist in the Park, which covers about a fifth of the state.

State commissions are developing proposals to protect other key areas of the state including the Catskills, the Tug Hill Plateau, the St. Lawrence River-Lake Ontario area and the Hudson River Valley.

*North Carolina*

State agencies are developing proposals for land use planning and coastal zone management for legislative consideration in late 1974 or early 1975.

*North Dakota*

A legislative study committee is conducting public hearings and will draft a state land use control measure for submission to the 1975 legislature. State planning activities center on the development of the eight authorized planning districts covering the state. As leasing of strippable coal reserves accelerated in the western part of the state, North Dakota's surface mining law was strengthened last spring to include stricter reclamation requirements.

*Ohio*

A legislative commission study of land use policy will be completed late this year. Several state agencies are considering the issue.

*Oregon*

State and local planning in Oregon was strengthened this year by passage of a state land use planning law. In late May, enactment of Senate Bill 100 created the Department of Land Conservation and Development. The Department has responsibilities in the following areas:

(1) establish statewide planning goals and guidelines by January 1, 1975, emphasizing coastal and wetland areas, agricultural and wilderness land, and land adjacent to freeway interchanges; (2) review county and city comprehensive plans for conformity with state goals and guidelines after one year; (3) issue permits for activities of statewide significance, including public transportation, sewer and educational facilities; (4) recommend areas of statewide concern for legislative designation; and (5) coordinate all decisions with the new Joint Legislative Committee on Land Use.

The law centralizes sub-state comprehensive planning authority in counties and classifies comprehensive plans as firm policy statements. Preparation of county plans had been required under 1969 law.

Other new laws recodify county (H.B. 2548) and city (H.B. 2965) planning enabling legislation, specifying that planning commission members serve at the pleasure of the governing body, spelling out and prohibiting conflicts of interest, and providing procedures for public adoption of plans.

A 1973 revision of subdivision controls (S.B. 487) requires city and county review of all land divisions, with an eye to environmental, economic and public facility impacts. (Previous state-required authority covered only four or more divisions by one owner in one year.) Counties must zone land not zoned by other local governments under the 1969 law.

*Pennsylvania*

A statewide land use conference is scheduled for 1974.

*Rhode Island*

The 1973 preliminary report on the State Land Use Policies and Plan, now in circulation among interested officials and citizens, will eventually undergo public review and adoption by the State Planning Council. The report classifies the state into land use categories (residential, industrial, commercial and recreational) and outlines overall policies for environmental protection, economic development, urban growth and government action.

*South Carolina*

The 1974 legislature will receive a state land use control proposal from the Governor's Special Study Committee on Land Planning. Several coastal zone management bills are also expected, including reintroduction of a bill based on the 1972 federal law and a new proposal from a large coastal development corporation.

*South Dakota*

The Special Joint Committee on Land Use Planning, created this year by the leg-

islature, will hold public hearings and meet with local officials this fall. Legislation to grant selective authority to a state land use agency will be proposed in late 1974.

#### *Texas*

The 1973 legislature enacted a series of laws broadening state control over coastal lands. The statutes, based on federal guidelines and on recommendations of the Texas Coastal Resources Management Program, provide for the following: (1) preservation of dunes by requiring local permits for activities threatening dunes or vegetation. The State's General Land Office will identify critical dune areas and assume review powers for permits in those areas; (2) establishment of new underground conservation districts to combat surface subsidence in coastal zones by regulating ground water withdrawal and well locations; (3) prohibition of the sale of submerged public lands to navigation districts (permitting only the leasing of such lands) and prohibition of the resale (except back to the state) of such lands previously acquired from the state; (4) tightening of regulatory powers over industrial activities in coastal zones to ensure that the estuarine environment is not jeopardized; (5) development of a continuing coastal zone management plan in response to the Federal Coastal Zone Management Act of 1972; (6) prohibition of cities and counties from removing or authorizing the removal of sand from beaches in their jurisdictions; and (7) provision for state funding for a number of coastal-related research programs.

#### *Utah*

Legislative debate on state land use controls may be revived as early as next year's budget session. Governor Rampton and many local officials have indicated support for a state study and recommendations.

#### *Vermont*

Vermont's 1971 land use control program includes three phases: an interim state land use plan, a capability and development plan stating land use goals and objectives, and a final land use plan.

The capability and development plan was ratified in 1973 by the Governor, the legislature and the eight planning districts after public hearings. Public hearings are now in progress on the final plan, which classifies all land as urban, rural residential, agricultural conservation (prime agricultural land), resource and agricultural conservation (secondary agriculture and forest lands) or reserve.

State permits are required for development of ten acres or more and subdivisions of ten or more lots. Permits are contingent on provision of adequate utilities, social services, and environmental safeguards. Under 1972 revisions to the subdivision law, sewer permits must be obtained whenever two lots are sold. Exempted are lots of more than ten acres under 1,500 feet elevation and lots of more than twenty acres over 2,500 feet elevation. Any development over 2,500 feet elevation requires the approval of the district environmental commission.

#### *Virginia*

An advisory legislative committee is reviewing a state study of critical environmental areas and methods for their regulation. Legislation for state controls may emerge in 1974. The Wetlands Act enacted in 1972 requires local permits subject to state review for any alteration or construction.

#### *Washington*

Senate action may begin this fall on House Bill 791, the state land use control measure passed by the House last spring. The State Land Planning Commission, created by the legislature in 1971, drafted the measure. The Commission has moved to the Governor's Office of Community Development as the State Land Planning Project and is concentrating on public education and working with state agencies and local officials, as well as gathering state land use data.

The bill would empower the state to designate areas of critical environmental concern, and developments of greater-than-local impact, and to review local regulations

concerning them. Interim state policies are included to restrict developments on floodplains and agricultural lands. A one-stop local permit process is specified.

The Shoreline Management Act, approved by referendum in 1972, requires local comprehensive plans to be prepared under state guidelines and permit authority subject to state review. Permit authority must cover development worth over \$1000 within 200 feet of streams, wetlands, lakes and the ocean. The Department of Ecology administers the act. Siting of thermal power plants is certified by a committee chaired by the Governor, after state study, public hearings, and an environmental impact statement.

#### *Wisconsin*

The Assembly Environmental Quality Committee is holding public hearings around the state on Senate Bill 882, a state land use control bill patterned closely after the Federal Senate-passed land use bill. The Committee is expected to redraft the bill to more clearly define critical areas and provide stronger assurances for local authority. Legislative action in 1974 is predicted.

#### *Wyoming*

The Wyoming Conservation and Land Use Study Commission, created this year by the legislature will report on possible state land use policies in 1974.