PRESERVATION and MANAGEMENT

of

CALIFORNIA'S COASTLINE

A Critical Analysis of The California
Coastal Zone Conservation Initiative of 1972

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A CRITICAL ANALYSIS OF THE CALIFORNIA COASTAL ZONE CONSERVATION INITIATIVE OF 1972

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Table of Contents

	Page
Introduction	1
THE LEGAL PERSPECTIVE	5
Land Use Planning	5
General	5
National Land Use Planning	5
State Land Use Planning and Regulation	8
Regional and Metropolitan Planning	10
Police Power	12
Basic	12
Zoning	13
Subdivision Regulations	15
Building and Housing Codes	17
Initiative and Referendum	18
Constitutional Limitations	19
Police Power v. Inverse Condemnation	20
Pre-emption	23
Summary	23
SUMMARY OF THE CALIFORNIA COASTLINE INITIATIVE	25
Summary of Provisions	25
Who Would Serve on the Commissions?	25
What Would the Commissions Do?	29
What is the Nature of the California Coastal Zone Conservation Plan?	30
How Would the Interim Permit Procedure Work?	32
General Provisions	32
Specific Review and Appeal Procedures	37
Other Provisions	38
Amendments	38
Termination	38
Conflict of Interest	38
Penalties	39
CURRENT POLICIES AND PROGRAMS FOR LAND USE CONTROL	
The Federal Role	40
Management Programs	41
Bureau of Land Management	42
Fish and Wildlife Service	43
National Park Service	44
Forest Service	44
Transfer of Federal Lands to State and Local Governments	44

Page

Inter- and Intra-Governmental Cooperation 45
Environmental Protection Act. 47

Regulatory Programs. 48
Corps of Engineers. 48
Coast Guard 49
Atomic Energy Commission. 49

Development Programs 50
Transportation. 50
Administration 50
Budget 51
Proposed Changes 51

Water and Sewer 52
Office of Water Programs 52
Department of Housing and Urban Development. 53
Public Facility Loans. 53
Economic Development Administration. 54
Farmers Home Administration. 55
Other Development Programs 56

Planning Programs. 57
701 Planning Program. 57
Authority. 57
Administration 58
State Agencies 58
Budget 58
Proposed Changes 59
Outlook. 59

Water Resources Planning Council. 59
Authority. 59
Administration 60
Budget 60

Bureau of Outdoor Recreation. 60

Economic Development Administration 61

Legislation 61
Land Use Policy and Assistance Act of 1972 (S632). 62
Sanctions 63
Federal Role. 64
Inter-Agency Cooperation. 64
Federal-State Cooperation 64
State-Local Role. 65
Outlook 66

National Land Policy and Management Act of 1972 (HR 7211). 66
Private Lands 66

Page

Public Lands 67
Review of Public Lands 68
Outlook. 68

National Resource Lands Management Act (S2401). 69

National Coastal Zone Management Act (S3507). 69
Administration 70
Budget Authorization 71
Federal-State Cooperation. 71

Coastal Zone Management Act (HR 14146). 71
Outlook. 72

Summary of Legislation. 72

The State Role 76
Introduction. 76
Direct Statewide Control. 77
Hawaii 77
Administration. 77
Controls and Criteria 78
Assessment. 80

Vermont. 82
Administration. 82
Controls and Criteria 84
Assessment. 87

Maine. 89
Administration. 89
Controls and Criteria 90
Assessment. 92

Statewide Criteria and Standards. 94
Colorado 94
Administration. 94
Controls and Criteria 95
Assessment. 97

Direct Statewide Control in Selected Areas. 97
Massachusetts. 97
Administration. 97
Controls and Criteria 100
Assessment. 102

Delaware 103
Administration. 103
Controls and Criteria 105
Assessment. 107

Other States With Selective Controls 107
Critical Areas. 107

Page

Wetland and Shoreland Laws. 109
Power Plant Siting. 111

Statewide Criteria and Standards in Selected Areas. 111
Wisconsin. 111
Administration. 112
Controls and Criteria 113
Assessment. 115

Florida. 117
Administration. 117
Controls and Criteria 119
Assessment. 121

Summary - State Approaches to Land Use Control. 122

The California Experience. 128
Introduction. 128
Cities and Counties 129
Authority. 129
Planning. 129
Zoning. 133
Open Space Planning 135
Subdivision of Land 135
Renewal and Redevelopment 139
Annexation. 140

Program. 140
General Planning Programs 140
Special Planning Programs 143
Preparation of Special Beach, Waterfront, or Coastal Plan 144
Adoption of Special Zoning Ordinances for the Coastal Zone. 144
Preparation of Special Coastal Studies 146
Acquisition and Development. 146

Outlook. 146
Public Initiatives. 147
Actions by Local and State Agencies 148

Regional Agencies 152
Bay Conservation and Development Commission. 153
Authority 153
Program 154
Differences Between BCDC and the California Coastline Initiative 155

Tahoe Regional Planning Agency 158
Authority 158
Program 160
Differences Between the Tahoe Regional Agency and the California Coastline Initiative. 161

Page

Ventura - Los Angeles Mountain and Coastal Study Commission 162
Authority. 162
Program. 164
Outlook. 164

Local Agency Formation Commissions. 165

Councils of Government. 166
Authority. 167
Program. 167
Outlook. 170

State Agencies 171
Office of Planning and Research 171
Council on Intergovernmental Relations/Office of Intergovernmental Management 175
State Lands Commission. 176
Department of Parks and Recreation. 178
Department of Navigation and Ocean Development. 183
Department of Public Works. 185
Department of Water Resources 188
Department of Fish and Game 190
Water Resources Control Board 192
Public Utilities Commission 193
Department of Conservation. 196
Department of Public Health 197
Other 197

ANALYSIS OF INITIATIVE PROVISIONS. 199

What is the Coast?. 201
Exclusion of Urban Areas. 216
Effect on Comprehensive Planning. 219
Effect on Public and Private Development. 231
Representation of Local Areas 243
Lack of Uniformity. 245
Administrative Problems 248
Fiscal Impact 251
Effect on Acquisition and Improvement of the Shoreline. 254
Summary of Proposed Beach and Shoreline Expenditures to 1990 259
Conclusion. 263

CONCLUSION 268

APPENDIX 276
Text of California Coastal Zone Conservation Act Initiative 1
COAP Summary - Coastal Land Use and Ownership 22
City of Long Beach Statistics for Initiative Permit Area. 26

MAPS

	Page
California State Park System	182
Initiative Planning and Permit Areas Los Angeles and Orange Counties	204
Permit Area as Defined by City of Long Beach . . .	206
Difficulties with Definitions of "Planning Area" and "Permit Area"	210
Comparison of BCDC Permit Area with Initiative Permit Area for San Francisco Bay Area	212
Major Rivers and Waterways	213
Comparison of SCAG Boundaries with Initiative Regional Commission Boundaries	228
Comparison of ABAG Boundaries with Initiative Regional Commission Boundaries	229

INTRODUCTION

A National and State policy for land use planning and control is now emerging.

The basic premise of this policy is that land can no longer be treated solely as a commodity to be used only at the discretion of a private owner. Rather, land is now being increasingly viewed as a scarce resource and decisions affecting its use are of public concern because they establish patterns which can have a significant and comprehensive impact on entire regions, the State and the Nation. The control of land use is no longer viewed as the sole prerogative of local government.

It is becoming increasingly recognized that land use decisions are a part of the larger public decision-making process and must be balanced against other broad public goals, whether they be social, economic or environmental.

California voters will be presented in November with a statutory initiative which proposes to preserve California's coastal resources by severely limiting all forms of development.

The Initiative proposes the creation of a Coastal Zone Conservation Commission and six regional commissions to prepare a coastline plan for an irregular "Coastal Zone" and to closely regulate development activities by a permit system applied to a 3000 foot shoreline band as well as bays, estuaries and other areas subject to tidal action, including a 1000 foot strip up many rivers and waterways.

Development as defined in the initiative is not limited. The term would include:

Placement or erection of any solid material or structure;

> Discharge or disposal of any dredged material... gaseous, liquid or thermal waste... extraction of any material;
>
> Change in density or intensity of use of land... including lot splits;
>
> Change in the intensity of use of water;
>
> Alteration of the size of any structure...

Authority to grant permits for all forms of development is limited by stringent environmental criteria.

Most authorities consider the question of land use as extremely complex and involving basic issues of property rights, the proper role and authority of local, state and federal governments, competing public goals, citizen representation, tax policies and maximizing resources for the greatest public benefit.

The Initiative attempts to confront these issues by focusing on a single-purpose approach for resolving them on behalf of the highly desirable public goal of environmental preservation. But the question of how to best manage California's coastal resources remains difficult to answer. Consequently, the voter is being asked to decide some fundamental questions:

> How can California best manage its coastal resources for maximum public benefit? Is it desirable to further complicate public decision-making by adding to the confusing multiplicity of jurisdictions? Is there a better way to ensure that the important and critical questions are resolved to the advantage of regional, statewide and national interests rather than local parochial needs?

What perspectives are relevant to decisions relating to land management. Can they be better integrated into a comprehensive system which brings balance to the priorities of many functional programs and needs of different but related geographic areas?

How can the needs of the environmental crisis be balanced against meeting the resource needs of other crises facing our nation: energy, mass transportation, housing, unemployment, taxation and delivery of essential social services?

What limitations should be placed upon individual property rights of ownership and use in order to achieve a stated "higher public goal"? Since limits on land sharply affect value, what constitutes citizen grievances against "inverse condemnation" and "taking without compensation"?

What are the effects of land use restrictions on the local property tax base? How can revenue losses to local government and school districts be equalized or replaced?

Will California's statewide interests be adequately reflected in land use decisions by regional commissions? Will these decisions be in concert with essential state environmental improvement and resource planning programs now in process?

These questions are of particular importance because of provisions contained in the Initiative which prohibit its repeal and effectively prevent its

amendment by the Legislature.

Answers to questions such as those posed above are important because they provide some indication of the ability of the Initiative to assure additional preservation of California's environmental resources. However, they are also important because they indicate to what extent the Initiative will enhance or detract from the goals and aspirations of all citizens regarding their quality of life in general. Because we are dealing with an increasingly complex and interrelated society each proposal for basic change, such as that represented by the coastal initiative, must be evaluated in terms of what it contributes to or detracts from the achievement of these social goals.

The California Coastal Zone Conservation Act Initiative will be analyzed in subsequent pages. Prior to this, however, an overview of related legal issues and an insight into existing federal, state, and local activities in the coastal area is presented in order to indicate the legal and governmental framework within which coastal programs are presently undertaken.

THE LEGAL PERSPECTIVE

LAND USE PLANNING

GENERAL

Land use planning is concerned principally with the physical environment. Its objective is to provide for the orderly use and development of land in the best interest of the public health, safety and welfare and to facilitate the achievement of social and economic objectives, and the protection of natural resources. Land use planning in the first half of the nineteenth century was almost entirely a function of local governments. The principal sources of land controls have been zoning and subdivision laws enacted under the police power. Other means of regulating land use include the power of eminent domain for acquisition of private land for public use, building and housing regulations, urban renewal and redevelopment laws. More indirectly, but of perhaps even greater importance are the effects of taxation, and annexation and incorporation laws on land use.

In recent years, the extent of land use planning by other levels of government has grown greatly. National, state and regional involvement in land use planning is increasing rapidly and constitutes a major determinant of land use controls. A brief review of the authority of federal, state, and regional entities will provide a perspective within which to examine the legal powers and limitations with respect to the regulation of land development.

NATIONAL LAND USE PLANNING

Although the U.S. Constitution confers no expressed general power on Congress to regulate the use of private lands, the power of the federal government

over land use planning and development is extremely broad. Article IV, Section 3, cl. 2 of the Constitution states that, "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.---" The term "territory" includes lands, and the power of Congress to control federal lands is unlimited. United States v. Gratist, 39 U.S. (14 Pet.) 526 (1840).

Authority of Congress over federally owned lands has been a principal factor in determining land use since approximately one-third of the land in the United States is owned by the federal government. Federal policy with respect to public lands had a strong influence on early planning and development of local communities. The basic grid system of the early federal land survey was followed in local planning. Federal land grants to promote development of roads and railroads, disposition of lands under the Homestead Act of 1862, and now the management of federal lands by such agencies as the Bureau of Land Management, U.S. Forest Services, Bureau of Reclamation, National Park Service, and the Federal Power Commission have had a major impact on land use planning and development.

Principal federal impact on land use has resulted from federal grant and loan programs to encourage state, regional and local planning, such as those programs under the Department of Housing and Urban Development, the several federal housing acts, transportation acts, highway acts, air and water quality acts, and federal urban renewal assistance acts. Authority of Congress in such areas derives principally from the general welfare clause, Article 1. Sec. 8, cl. 1 of the U.S. Constitution, which states that, "The Congress shall have power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States." This power is analagous to the general police power of the states.

Other matters may be regulated by the federal government under the express powers given to Congress over commerce (Art. I, Sec. 8, cl.1) and defense (Art. I., Sec. 8, cl.11-16).

Validly enacted federal laws supercede or pre-empt local laws which are in conflict. Article 6, cl.2 of the Constitution, the "supremacy clause", provides that the Constitution and the laws of the United States which are made in pursuance thereof constitute the supreme law of the land. Therefore, the provisions of a state law are invalid to the extent they are in conflict with applicable federal law. On the other hand, state sovereignty is protected by the Tenth Amendment which provides that the powers not delegated to the federal government, nor prohibited by the Constitution to the states, are reserved to the states, or to the people.

There is an increasing interest in development of a national land use policy. There are presently more than 200 bills before Congress relating to land use policy. Over the last several years Congress has developed numerous widely-differing programs and authorizations for land planning, management, and development. Title VIII of The Intergovernmental Cooperation Act of 1968 contains the Federal Urban Land Use Act, which requires federal agencies to coordinate land acquisition, disposal, and change of use in urban areas with local plans. The provisions of this Act are significant in determining whether state planning legislation is applicable to federal agencies within the planning area.

An example of land use policy likely to be enacted by Congress in the near future, is S. 632 authored by Senator Henry M. Jackson. The bill establishes national land use goals and priorities and requires states to prepare statewide land use plans. Such statewide plans must meet specified criteria and

guidelines. States may delegate to local governments planning and implementation subject to the states' responsibility for approval and coordination of local plans and enforcement procedures. The state plan is subject to federal review and must be consistent with the guidelines contained in the Act. The bill provides for termination of grants available under the bill when land use programs fail to gain federal approval, and further provides for loss by the state of airport funds, highway funds, land and water conservation funds, and other grants-in-aid for failure to have an approved land use program.

It appears clear that the California Coastal Zone Conservation Commission and the regional commissions proposed to be created by Proposition No. 20 on the November 1972 California general election ballot would not meet the proposed guidelines for a comprehensive state planning agency, nor comply with the criteria set forth in the proposed federal act.

STATE LAND USE PLANNING AND REGULATION

Primary responsibility and constitutional authority for land use planning and control rests in the state by reason of its police power. Even in those states which grant to cities and counties constitutional home rule, the grant of police power is subject to the states' superior police power, and authority of charter cities over municipal affairs is offset by the states' power over matters which are of "statewide concern". There would seem to be little question that preservation of the coastal shoreline and access to the ocean, regulation of water quality, air pollution, and the like are matters of statewide concern.

In the case of offshore lands, Congress relinquished to the states all rights of the United States to "lands beneath navigable waters", including those lands within three miles seaward from the coastline of each state, by passage

of the Submerged Lands Act in 1953. The definition of "coastal zone" in the California Initiative includes lands beneath navigable waters as defined in the Federal Act. The Submerged Lands Act reserves to the United States, however, all rights of the United States under its constitutional authority to regulate or improve navigation, to provide for flood control, or the production of power. (43 U.S. C.A. 1311(d).) The Act also provides that the United States retains all its rights and powers of regulation and control of such lands and navigable waters for the "constitutional purposes of commerce, navigation, national defense, and international affairs, all of which shall be paramount to, but shall not be deemed to include, proprietary rights of ownership, or the rights of management, administration, leasing, use, and development of the lands and natural resources..." vested in the states. (43 U.S.C.A. 1314)

Historically, states have delegated to cities and counties zoning authority and authority to regulate divisions of land, reserving to itself limited powers in these areas. Similarly, cities and counties are authorized to enact housing authorities and community redevelopment agencies. The reservoir of power rests in the state, however. In California, cities and counties are required to enact general plans containing specified components and to enact zoning ordinances which must be consistent with those plans. The state prescribes the form, powers, and duties of local redevelopment agencies and housing authorities. It enacts statewide building and housing regulations with which local regulations must conform (with some provision for variance), and the scope of authority of cities and counties over the subdivisions is limited by the State Subdivision Map Act, which is a grant of authority, rather than a limitation on local authority.

There is an increasing involvement of states in land use control. A growing

number of states have adopted statewide land use plans since Hawaii led the way in 1961. As indicated above with respect to federal legislation, it appears likely that every state will be required to have a statewide land use plan and to exercise a greater degree of control over actual land use, consistent with a national land use policy. A discussion of the functions of California state agencies having direct and indirect responsibility for land use planning and regulation is discussed elsewhere in this report.

An important provision of the California Constitution in Article XV, Sec. 2, provides:

> "No individual, partnership or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of the State shall be always attainable for the people thereof."

The legislature has enacted legislation which provides that no city or county shall approve a subdivision fronting upon the coastline or shoreline, or upon any lake or reservoir which is owned in part or entirely by any public agency unless there is reasonable public access to such waters. (Business and Professions Code S 11610.5, 11610.7.)

REGIONAL AND METROPOLITAN PLANNING

Planning agencies that have less than statewide jurisdiction are frequently referred to as "regional" agencies. In some cases such area-wide planning

agencies are established by the state, and in others they are authorized by the state. More frequently, such agencies are formed by agreement between local governmental entities and financially supported by the member agencies in the planning area. Almost every state authorizes regional planning. The creation of regional planning entities and councils of government has been given impetus by federal aid programs which require review and approval by such regional bodies.

Few such regional agencies have been given much regulatory power. Their power and authority is that granted to them by the state legislature, or that denied from the agreement or contract between participating entities and limited by the common power which they share. In either case, the scope of their authority and power is that delegated by the state. In California, there are agencies which exercise regulatory power on a regional basis, such as the San Francisco Bay Conservation and Development Commission (Government Code S 66600, et seq), and the Metropolitan Transportation Commission (Government Code S 66500, et seq). State statutes also provide for area planning commissions (Government Code S 65600, et seq), planning districts consisting of two or more counties (Government Code S 66100, et seq), and regional planning districts (Government Code S 65060, et seq). Councils of Government such as the Association of Bay Area Governments and the Southern California Association of Governments have been created pursuant to the Joint Exercise of Powers Act (Government Code S 6500, et seq), which provides that two or more public agencies by agreement may jointly exercise any power common to the contracting parties. The Attorney General has ruled that such joint powers agencies may not exercise zoning authority (Office of the Attorney General, indexed letter, October 13, 1970). There has been no court decision expressly clarifying whether basic legislative powers such as the taxing power may be exercised by the joint entity.

It is clear that there is a trend toward regional planning and to some extent regional regulatory agencies exercising powers pursuant to a statutory grant of power by the state legislature.

POLICE POWER

BASIC POLICE POWER

The term "police power" denotes the power of government in every sovereignty; it is an inherent attribute of sovereignty, necessary to the conduct and maintenance of government (McQuillin, Mun. Corp. 3d Ed. S 24.02). Essentially, the police power is the power of government to regulate the conduct of its citizens and the manner in which they use their property. It is inseparable from legislative power and must be exercised by a legislative body or by the electorate, all legislative power being vested by the Constitution in the people or the legislature. The United States, as a government of enumerated powers, has no inherent general police power. The police power is reserved to the states. (Hamilton v. Kentucky Distilleries and Warehouse Co., 251 U.S. 146.) The federal government in the exercise of its express powers exercises police power as an incident thereto, even though the exercise of such power constitutes an apparent invasion of the states' police power. The police power is not susceptible of definition (Stone v. Mississippi, 101 U.S. 814); it is not rigid and fixed, but flexible. It is the broadest of governmental power, affecting all matters relating to the public health, safety, convenience, order, morals, and general welfare. A characteristic of the police power is that it is a reasonable assertion of public over private interests. Its lawful exercise necessarily interferes with individual rights. The right of an owner of property to use it as he chooses is subject to the police power.

There are limitations on the exercise of the police power discussed more fully below. It may not be exercised arbitrarily and must be exercised for a

valid public purpose, and the means must be reasonably related to the achievement of that legitimate objective. The test is one of public necessity and reasonableness. Its exercise must operate uniformly and without arbitrary or abusive discrimination. It is only when exercise of the police power is arbitrary, unreasonable, or an improper use that it becomes an invasion of constitutional rights.

California Constitution Article II, Sec. 7 provides:

> "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."

Just as the state police power is subject to the paramount authority of the United States Constitution, municipal police power is also subject to the supremacy of state legislation.

The police power includes the power to zone, regulate subdivisions, regulate building and housing, abate nuisances, and prevent and regulate air and water pollution. Land use control generally involves an exercise of the police power.

ZONING

Zoning is an exercise of the police power which is inherent in each state. States by and large have delegated the power to zone to cities and counties. The California legislature has done so in Government Code S 65800. Local zoning is probably authorized under the general grant of police power to cities and counties. (Brougher v. Bd. of Public Works, 205 Cal. 426.) Zoning power may be exercised by a charter city under its constitutional power over "municipal affairs". (Const. Art. XI, Sec. 5.) Whether or not a matter

is a municipal affair or a matter of statewide concern subject to the general law is determined by the courts. (Bishop v. City of San Jose, 1 Cal. 3d. 56.) The zoning provisions of the Government Code expressly excepted charter cities from their application unless adopted by the city (Government Code S 65803) until recently. Certain procedural requirements are now expressly applicable to charter cities.

Zoning is exercised for a number of different purposes. The California statutes contain no statement of purposes for which the zoning power may be exercised. A municipality does not have to support its zoning action by proving a legitimate public purpose. There is a presumption of validity of the legislative action and, except in rare cases, the courts will not question the Purpose so long as reasonable. Zoning may be exercised to provide for orderly growth of the community, to provide for proximity of compatible uses, to control traffic congestion, to maintain property values, to serve aesthetic purposes, to regulate density and prevent overcrowding, to provide for open space, to increase the property tax base, and to provide neighborhood social and economic stability. Zoning has been upheld even though property values may be diminished (Hamer v. Ross, 59 Cal. 2d. 776). The effect of zoning on a particular parcel is generally not determinative of its validity. Complete elimination of the value of property as a result of zoning may be valid if for a legitimate public purpose. (Consolidated Rock Products Co. v. Los Angeles, 57 Cal. 2d. 515.) This however raises the problem of inverse condemnation (see Page 20).

Zoning is a tool for implementation of the general plan and must be "consistent" with the general plan. (Government Code S 658860.) The purposes of zoning then may be more readily seen in terms of the contents and requirements of the general plan.

There are limitations on zoning. "Spot zoning" is invalid where a parcel of

land is singled out for special treatment, or where the zoning is for the benefit of the landowner rather than the public interest generally. "Spot zoning" out low income housing has been held invalid. (G & D Holland Construction Co. v. Marysville, 12 Cal. 3d. 989.) A number of cases in several states have invalidated zoning ordinances which did not provide for apartment dwellings, as a violation of the Equal Protection, on the ground that the effect of the zoning was to exclude one or more classes of persons. (In re Ginsh, 263 A. 2nd. 395 (pa.)). Similarly, some cases have held that a zoning ordinance requiring minimum lot sizes of two and three acres was invalid. (Appeal of Kit-Man Builders; Inc. (1970), 268 A. 2nd. 765 (pa.)). Other cases on similar facts have upheld the validity of zoning ordinances restricting or limiting permissible uses, and questions of large-lot zoning and other alleged "exclusionary" provisions have not been settled.

It is clear that zoning ordinances must constitute a reasonable exercise of the police power to achieve a legitimate public objective.

SUBDIVISION REGULATIONS

Regulations of subdivisions is a land use control based on the police power. Zoning and regulation of subdivisions are the principal land use controls exercised by state and local governments. Like zoning, subdivision regulation is a tool for implementing planning. Recently enacted legislation in California requires that subdivisions be consistent with applicable general and specific plans. (Business and Professions Code S11526, 11549.5.) Subdivision regulation is related to zoning but serves a different purpose. Zoning regulates the uses to which property owners may develop their property, whereas subdivision regulations are concerned with whether property should be divided, the manner in which it should be divided, and the exactions which should be imposed with respect to the total property as conditions of approval of

the subdivision.

The power to regulate subdivisions is based in part on the theory that requirements may be imposed in exchange for the privilege of the subdivider to develop land for his own benefit. Conditions imposed on the subdivider are based principally on the need for public facilities and improvements created by the subdivision and which would otherwise fall as a burden on the rest of the community. Therefore, most state subdivision statututes have long authorized subdivision ordinances to require dedications and improvement of streets and utilities. The trend is to acquire additional exactions such as dedication of lands for school sites and parks, or the payment of fees in lieu of the dedications.

In California the State Subdivision Map Act (Business and Professions Code S11500 et seq.) authorizes cities and counties to regulate the "design" and "improvement" of subdivisions and divisions of land which are not defined as subdivisions so long as such regulations are not more restrictive than the requirements for a subdivision. The Act is a grant of authority and cities and counties may impose only those conditions for approval of subdivisions which are authorized by the state act (Kelber v. City of Upland, 155 C.A. 2d 631).

Recent amendments to the Subdivision Map Act have substantially broadened the authority of local government to disapprove or conditionally approve divisions of land. Definitions of "design" and "improvement" have been expanded to include "such specific requirements in the plan and configuration of the entire subdivision (and the installation of such specific improvements) as may be necessary or convenient to insure conformity to or implementation of applicable general or specific plans---". The constitutionality of the statutory authorization and a local ordinance imposing a requirement for dedication of parkland or the payment of fees in lieu thereof was upheld in the California

SUMMARY OF INITIATIVE

Supreme Court (hearing denied by the U.S. Supreme Ct.) in the case of Associated Homebuilders v. City of Walnut Creek, 4 C.A. 3d 645 (1971).

The subdivision map must be disapproved if the local legislative body determines that the proposed subdivision is not consistent with applicable plans, that the site is not physically suitable for the type or density of development, that the design and improvements are likely to cause substantial environmental damage or serious public health problems, or conflict with public easements for access.

The extent of the authority implicit in the latest amendments of the subdivision statutes has not been clearly defined and will undoubtedly be tested in the courts. It is clear, however, that the relationship between subdivision regulation and planning has been greatly strengthened. The validity of both zoning and subdivision regulations are now measured largely by their consistency with the provisions of comprehensive general plans. Unfortunately, the planning procedure contained in the coastal zone initiative does not provide for consistency between the coastal zone plan to be adopted and the corresponding general plans of cities and counties. Elements of the coastal zone plan may well be contrary to corresponding elements of local plans with the result that development may be denied because it is inconsistent with one of the plans although consistent with the other. The problem illustrates the need for development of comprehensive land use planning, in which the elements of local plans are consistent with the corresponding elements of regional or statewide plans.

BUILDING AND HOUSING CODES

Building regulations are an exercise of the police power and subject to the same constitutional limitations as other exercises of the police power. Permits may be required before any construction is permitted and reasonable conditions

may be attached to the issuance of such permits. Conditions which may be validly imposed are lot line set back requirements, minimum lot size, street or highway access, off-street parking, and the dedication of rights-of-way where reasonably related to the use of the property. (Southern Pacific Co. v. City of Los Angeles, 242 C.A. 2d 38.)

Issuance of a building permit may not be arbitrarily denied. The general rule is that the applicant is entitled to the permit as a matter of right if he complies with the applicable statutory and code requirements. It is settled, however, that a reasonable fee may be imposed for issuance of the permit and reasonable conditions imposed as indicated above.

The California State Housing Law requires the State to adopt rules and regulations imposing the same requirements as contained in specified uniform national codes. Cities and counties must adopt regulations imposing the same requirements as those adopted by the State, except that they may make such changes or modifications as they expressly find to be necessary because of local conditions.

Building codes, although not a land use control as such, are related to planning, zoning and subdivision regulations. Building permits may be denied for failure of the applicant to comply with applicable zoning and subdivision requirements. An example of this is Government Code Sec. 65567 which provides that no building permit may be issued and no subdivision approved unless the proposed construction or subdivision is consistent with the local open space plan.

INITIATIVE AND REFERENDUM

Article IV, Section 1, of the California Constitution reserves to the people the powers of initiative and referendum. The initiative is the power of the

electorate to enact statutes, ordinances and amendements to the Constitution. The referendum is the power of the electorate to nullify or reject statutes and ordinances or parts thereof following their enactment, with specified exceptions. Initiative and referendum powers may be exercised by the electors of cities and counties, and the procedure for general law cities is prescribed by the legislature.

The initiative and referendum apply to matters which are legislative in character and clearly include exercise of the police power. Exercise of the initiative by the local electorate is restricted to legislation which is within the power of the local legislative body to enact. Recent cases have held that the initiative may be used to amend zoning ordinances, although an older state supreme court case holds to the contrary.

The California Constitution provides that an initiative statute becomes effective the day after the election unless the measure provides otherwise, and that the legislature may amend and repeal an initiative statute by another statute only when approved by a vote of the people unless the initiative statute permits amendment or appeal without their approval. The coastal zone initiative authorizes the legislature by a two-thirds vote to amend the act in order to better achieve the objectives stated therein, but it does not authorize repeal of the act without a vote of the people.

A statute or ordinance enacted by initiative is subject to the same constitutional requirements as a statute ordinance enacted by a legislative body. It must yield to conflicting provisions of the State and U.S. Constitutions.

CONSTITUTIONAL LIMITATIONS

The police power is limited by constitutional guarantees. It must not violate

provisions of the United States Constitution or conflict with valid federal laws. A reasonable exercise of the police power, however, does not violate constitutional provisions even though it may interfere with individual personal and property rights.

The principal constitutional guarantees against which state laws regulating land use must be balanced are the provisions of the Fifth and Fourteenth Amendments that no person shall be deprived of life, liberty or property without due process of law, nor private property be taken for public use without just compensation, and the equal protection provisions of the Fourteenth Amendment. The California Constitution contains contains similar guarantees.

The California Constitution provides that private property shall not be taken or damaged for public use without payment of just compensation. Unintended physical injuries to private property may then result in inverse condemnation in violation of the "or damaged" clause of the California Constitution. A possibility of preemption is raised by the provisions of both the United States and California Constitutions that the U.S. Constitution and the laws enacted pursuant thereto are the supreme law of the land.

POLICE POWER V. INVERSE CONDEMNATION

The initial question is whether there is a "taking" of private property for a public use. An exercise of the police power to regulate or restrict the use and enjoyment of land is not compensable. It is only when government action constitutes a "taking" that the power of eminent domain is involved and compensation is required to be paid. The courts have used various theories to determine whether application of a statute constituted a taking. Short of an actual physical invasion of the property, there is no precise formula to determine where regulation ends and taking begins.

A municipal zoning ordinance prohibiting rock and gravel operations on the plaintiffs property was upheld oven though the court found that the property had no appreciable economic value for any other purpose. It held that the zoning ordinance was a proper exercise of the police power in furtherance of the best interests and general welfare of the community. (Consolidated Rock Products Co. v. City of Los Angeles, 57 c. 2d 515.)

In Candlestick Properties, Inc. v. San Francisco Bay Conservation and Development Commission, 11 C.A. 3d 557, the Court of Appeal affirmed a judgement denying the plaintiff a right to fill a parcel of land, holding that the restrictions placed on the use of the land were a valid exercise of the police power and not a taking of property without just compensation. The Court, citing the Consolidated Rock case, stated, "It is a well settled rule that determination of the necessity and form of regulations enacted pursuant to the police power is primarily a legislative and not a judicial function, and is to be tested ---solely by the answer to the question, is there any reasonable basis in fact to support the legislative determination of the regulation's wisdom and necessity?" (11 C.A. 3d 557, 571.) The Court held that the statutes defining the public interest in protecting the bay establish a rational basis for the legislation, and held that, while "an undue restriction on the use of private property is as much a taking for constitutional purposes as appropriating or destroying it," that refusing to allow the property owner to fill his land was not an undue restriction. The Court applied a "balancing test" and found that the public interest was paramount.

By comparison, in Bartlett v. Zoning Commission, (2 E.R.C. 1684 (1971)), the plaintiff was a private landowner challenging the constitutionality of Connecticut's coastal zoning regulations on the grounds that they were so restrictive that they rendered his lands commercially valueless. He had acquired

the land with an intention of filling, but new zoning ordinances forbidding all filling activities were passed soon after his purchase. He then filed suit in the Connecticut Court of Common Pleas for relief from the town Zoning Commission's amendment of the regulations, claiming that these measures were a confiscation of his land without just compensation. Both the trial court and the Connecticut Supreme Court held that the zoning regulations amounted to a taking of plaintiff's property in violation of his constitutional rights. The higher court acknowledged that perservation of the environment with its ecological, healthful, aesthetic and economic benefits was a laudable objective for the ordinances, but noted that the objective itself was not in issue.

The important questions, as the state Supreme Court saw it, was whether this objective could be accomplished in such a manner. Since these regulations left the landowner with no reasonable commercial use for his property, the court concluded that the land was rendered practically worthless. The court also noted that although the state legislature had recognized the importance of environmental preservation, the latter had made no provision for reasonable compensation in cases where takings were necessary. The court therefore concluded that the extreme restrictions of the zoning regulations were an unreasonable and arbitrary exercise of police power, and thus were confiscatory and unconstitutional.

Restrictions imposed with the intent to prevent any increase in the cost of acquisition of lands intended to be acquired or purchased at a later date were held to be unreasonable in Peacock v. County of Sacramento, 271 C.A. 2d 845. In an inverse condemnation action against the county, the court found that a "taking" occurred, where the county, in contemplation of acquiring a private airport for public use, had adopted a height restriction ordinance, rezoned

the property to a more restrictive zone designed for use in airport approach areas, and adopted a general plan for development of the airport. The effect was to essentially freeze development of the plaintiff's property. The Peacock case suggests that certain plans may become, in fact, regulations with consequent legal effects, including inverse condemnation.

PRE-EMPTION

State statutes are invalid if superceded by federal law or attempt to regulate subject matter over which the federal government has pre-empted the field. It is clear that a state law in direct conflict with a valid federal statute must yield under the supremacy clause of the U.S. Constitution. State statutes may also be pre-empted, although not in direct conflict with federal law, if the federal government has fully occupied the field of regulation. Whether or not a federal law leaves no room for state regulation must be determined in light of the whole federal statute and evidence of Congressional intention to occupy the field. State laws may be invalidated where the scheme of federal legislation is so pervasive as to give rise to a reasonable inference that Congress left no room for the states to supplement it, or where the state law presents a serious danger of conflict with the administration of a federal program pursuant to federal legislation covering the same subject matter (Pennsylvania v. Nelson, 350 U.S. 497, 100 L. Ed. 640).

Whether or not a state law is in conflict with federal law is not easily determined. Although not invalid on its face, a state regulation may be held to be invalid as applied to a particular situation in which federal law controls.

SUMMARY

The California coastal zone initiative represents an exercise of the state's

police power through the initiative power reserved to the people by the California Constitution. It provides for the creation by statute of a state commission and six regional commissions to prepare a plan for regulation of the use of the coastal zone. It provides further for a permit procedure and approval of development within the defined zone during the period of preparation of the plan. As an exercise of the state's police power, it is subject to Constitutional limitations in its application. Whether or not one or more of its provisions violates Constitutional due process or property rights can be answered only in terms of the application of such provision to a given factual situation. In some situations, it is clear that the provisions of the statute cannot apply to matters which will be subject to federal regulation.

A principal characteristic of the proposal is that it provides for a separate plan for a limited area in which development must be consistent with its provisions. It creates a conflict with other provisions of law which require the enactment of general plans with specified elements and require zoning and subdivision regulations to be consistent therewith. Questions of inverse condemnation will undoubtedly arise with respect to application of the permit provisions to particular lands and uses.

An unfortunate part of the initiative process is that it leaves no room for amending and clarifying provisions of the measure after it is filed and prior to enactment. Portions of the measure are ambiguous and will probably lead to litigation. An example is the language of proposed section 27404 relating to prior vested rights. A reading of the language of that section can be construed to provide that restrictions of the measure are applicable to persons who have in fact, under the law, acquired vested rights under a valid building permit issued subsequent to April 1, 1972.

SUMMARY OF THE CALIFORNIA COASTLINE INITIATIVE

Responsibility for land use regulation and control in California is shared between various levels of government, although local government continues to assume primary responsibility for the regulation of all land other than that owned by State and Federal agencies.

The California Coastline Initiative would change the existing method of regulating land use through the creation of a statewide California Coastal Zone Conservation Commission and six regional commissions. The statewide and regional commissions would be responsible for developing and submitting to the Legislature for consideration by December 1, 1975, a California Coastal Zone Conservation Plan. In addition, they would inherit strong new regulatory control over essentially all development within a coastal permit area during the time that the California Coastal Zone Conservation Plan is being prepared.

Because of the significance of the proposals contained in the initiative, a detailed summary of its major provisions has been prepared.

SUMMARY OF PROVISIONS

If adopted, the California Coastline Initiative would add a new level of planning and land use regulation to the existing governmental framework. That is, cities and counties would continue to plan and make recommendations for land use within their respective boundaries. However, implementation of their plans and specific land use decisions would be conditioned on the additional approval of the regional and, in some cases, a statewide California Coastal Zone Conservation Commission.

WHO WOULD SERVE ON THE COMMISSIONS?

The statewide California Coastal Zone Conservation Commission would consist of

twelve (12) members. Six would represent, and would be selected by, the regional commissions. The remaining six members would represent the public, and they would be appointed equally by the Governor, the Senate Rules Committee, and the Speaker of the Assembly.

Membership of the six regional commissions would be, as follows:

1. North Coast Regional Commission (Del Norte, Humboldt, and Mendocino Counties)

   Six city and county officials (one city councilman and one supervisor from each county)

   Six public representatives

2. North Central Coast Regional Commission (Sonoma, Marin, and San Francisco Counties)

   Seven city and county officials (one city councilman and one supervisor from Sonoma and Marin Counties; two supervisors from the City and County of San Francisco; one city councilman or supervisor from the Association of Bay Area Governments)

   Seven public representatives

3. Central Coast Regional Commission (San Mateo, Santa Cruz, and Monterey Counties)

   Eight city and county officials (one city councilman and one supervisor from each county; one city councilman or supervisor from the Association of Bay Area Governments; one

city councilman or supervisor from the Association of Monterey Bay Area Governments)

Eight public representatives

4. South Central Coast Regional Commission (San Luis Obispo, Santa Barbara, and Ventura Counties)

   Six city and county officials (one city councilman and one supervisor from each county)

   Six public representatives

5. South Coast Regional Commission (Los Angeles and Orange Counties)

   Six city and county officials (one supervisor from each county; one city councilman from the City of Los Angeles; one city councilman from Los Angeles County from a city other than Los Angeles; one city councilman from Orange County; one city councilman or supervisor from the Southern California Association of Governments)

   Six public representatives

6. San Diego Coast Regional Commission (San Diego County)

   Six city and county officials (two supervisors from San Diego County; two city councilmen from San Diego County, at least one of whom shall be from a city which lies within the permit area; one city councilman from the City of San Diego; one member of the San Diego Comprehensive Planning Organization)

Six public representatives

Supervisors on the regional commission would be appointed by their respective Board of Supervisors, representatives of regional planning agencies would be appointed by their respective agency and, unless indicated otherwise, city councilmen would be appointed by the city selection committee in their respective county.

As with the statewide commission, public representatives on the regional commissions would be selected by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. With respect to public members, the initiative specifically provides, as follows:

> "Each public member of the commission or of a regional commission shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information, to appraise resource uses in light of the policies set forth in this division, to be responsive to the scientific, social, esthetic, recreational, and cultural needs of the state. Expertise in conservation, recreation, ecological and physical sciences, planning, and education shall be represented on the commission and regional commissions."

The initiative provides that all members of the state and regional commissions must be appointed by December 31, 1972. The first meeting of the regional commissions would be held no later than February 1, 1973, and the first meeting of the state commission would be held no later than February 15, 1973. Members of the regional and state commissions would receive no compensation for their services other than actual and necessary expenses. In addition, members who are not employees of other public agencies would receive $50 for each full day

of actual meetings of either the state or regional commission.

WHAT WOULD THE COMMISSIONS DO?

The principal responsibility of the state commission would be to prepare, by December 1, 1975, a California Coastal Zone Conservation Plan for consideration by the Legislature. The state commission would also hear appeals regarding decisions of regional commissions to approve or deny a permit for development within the permit area.

Regional commissions, in cooperation with local agencies, would be responsible for preparing and submitting recommendations for the California Coastal Zone Conservation Plan to the state commission no later than April 1, 1975. The recommendations from regional commissions must include "areas that should be reserved for specific uses or within which specific uses should be prohibited." In addition, regional commissions, on and after February 1, 1973, would be responsible for issuing permits authorizing development within a prescribed "permit area."

Both statewide and regional commissions would be required to meet at least once a month. They would each elect a chairman and appoint an executive director, and would be authorized to employ additional staff and contract for necessary professional services. In addition, any federally recognized regional planning agency would be required to provide staff assistance to the regional commission within its region "insofar as its resources permit," and the staff and budget of the California Comprehensive Ocean Area Plan (presently under the jurisdiction of the State Department of Navigation and Ocean Development) would be assigned to the state commission. The initiative provides that a total of $5 million shall be allocated for operation of the state and regional commissions during fiscal years 1973 to 1976.

WHAT IS THE NATURE OF THE CALIFORNIA COASTAL ZONE CONSERVATION PLAN?

As indicated, the principal responsibility of the state commission is to prepare a California Coastal Zone Conservation Plan for consideration by the Legislature. The initiative defines the coastal zone, as follows:

> "The Coastal zone means that land and water area of the State of California from the border of the State of Oregon to the border of the Republic of Mexico, extending seaward to the outer limit of the state jurisdiction of the state, and extending inland to the highest elevation of the nearest coastal mountain range, except that in Los Angeles, Orange, and San Diego Counties, the inland boundary of the coastal zone shall be the highest elevation of the nearest coastal mountain range or five miles from the mean high tide line, whichever is the shorter distance."

Because the landward boundaries of the coastal zone are related to the mean high tide line of the "sea," this term is also defined in the initiative:

> "Sea means the Pacific Ocean and all the harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through a connection with the Pacific Ocean, excluding nonestuarine rivers and creeks."

The initiative provides that the coastal zone plan shall be "based upon detailed studies of all the factors that significantly affect the coastal zone," and that it shall be consistent with the following objectives:

> (a) The maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.

(b) The continued existence of optimum populations of all species of living organisms.

(c) The orderly, balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.

(d) Avoidance of irreversible and irretrievable commitments of coastal zone resources.

In addition to the objectives listed above, the initiative also provides that the coastal zone plan shall contain at least the following elements:

(a) A precise, comprehensive definition of the public interest in the coastal zone.

(b) Ecological planning principles and assumptions to be used in determining the suitability and extent of allowable development.

(c) A component which includes the following elements:

(1) A land-use element.

(2) A transportation element.

(3) A conservation element for the preservation and management of the scenic and other natural resources of the coastal zone.

(4) A public access element for maximum visual and physical use and enjoyment of the coastal zone by the public.

(5) A recreation element.

(6) A public services and facilities element for the general location, scale, and provision in the least environmentally destructive manner of public services and facilities in the coastal zone. This element shall include a power

plant siting study.

(7) An ocean mineral and living resources element.

(8) A population element for the establishment of maximum desirable population densities.

(d) Reservations of land or water in the coastal zone for certain uses, or the prohibition of certain uses in specific areas.

(e) Recommendations for the governmental policies and powers required to implement the coastal zone plan including the organization and authority of the governmental agency or agencies which should assume permanent responsibility for its implementation.

HOW WOULD THE INTERIM PERMIT PROCEDURE WORK?

GENERAL PROVISIONS

During the time that the California Coastal Zone Conservation Plan was being prepared, regional commissions would be granted broad regulatory authority over development in a prescribed "coastal permit area," which is defined, as follows:

> "Permit area means that portion of the coastal zone lying between the seaward limit of the jurisdiction of the state and 1,000 yards landward from the mean high tide line of the sea subject to the following provisions:
>
> (a) The area of jurisdiction of the San Francisco Bay Conservation and Development Commission is excluded.
>
> (b) If any portion of any body of water which is not subject to tidal action lies within the permit area, the body of water

together with a strip of land 1,000-feet wide surrounding it shall be included.

(c) Any urban land area which is (1) a residential area zoned, stabilized and developed to a density of four or more dwelling units per acre on or before January 1, 1972; or (2) a commercial or industrial area zoned, developed, and stabilized for such use on or before January 1, 1972, may, after public hearing, be excluded by the regional commission at the request of a city or county within which such area is located. An urban land area is "stabilized" if 80 percent of the lots are built upon to the maximum density or intensity of use permitted by the applicable zoning regulations existing on January 1, 1972.

Tidal and submerged lands, beaches, and lots immediately adjacent to the inland extent of any beach or of the mean high tide line where there is no beach shall not be excluded.

Orders granting such exclusion shall be subject to conditions which shall assure that no significant change in density, height, or nature of uses occurs.

An order granting exclusion may be revoked at any time by the regional commission, after public hearing.

All persons (any individual, organization, partnership, and corporation, including any utility and any agency of federal, state, and local government) would be subject to these additional permit requirements with respect to essentially any proposed "development" within the permit area. The initiative defines development in the following broad, all-encompassing terms:

"Development means, on land, in or under water, the placement

or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste, grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, sub-division of land pursuant to the Subdivision Map Act and any other division of land, including lot splits; change in the intensity of use of water, ecology related thereto, or of access thereto, construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility, and the removal or logging of major vegetation. As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

More specifically, the initiative provides that "on or after February 1, 1972, any person wishing to perform any development within the permit area shall obtain a permit authorizing such development from the regional commission and, if required by law, from any city, county, state, regional or local agency." No permit shall be issued unless the regional commission has first found both of the following:

(a) That the development will not have any substantial adverse environmental or ecological effect.

(b) That the development is consistent with the objectives of the initiative.

In addition, the initiative provides that all permits shall be conditioned in order to ensure that:

(a) Access to publicly owned or used beaches, recreation areas, and natural reserves is increased to the maximum extent possible by appropriate dedication.

(b) Adequate and properly located public recreation areas and wildlife preserves are reserved.

(c) Provisions are made for solid and liquid waste treatment, disposition, and management which will minimize adverse effects upon coastal zone resources.

(d) Alterations to existing land forms and vegetation, and construction of structures shall cause minimum adverse effect to scenic resources and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

The issuance of a permit would require the affirmative vote of a majority of the total authorized membership of the regional commission, with the following exceptions:

(a) No permit may be issued for any of the following purposes without the affirmative vote of two-thirds of the total authorized membership of the regional commission, or the state commission on appeal:

(1) Dredging, filling, or otherwise altering any bay, estuary, salt marsh, river mouth, slough, or lagoon.

(2) Any development which would reduce the size of any beach or other area usable for public recreation.

(3) Any development which would reduce or impose restrictions upon public access to tidal and submerged lands, beaches and the mean high tideline where there is no beach.

(4) Any development which would substantially interfere with or detract from the line of sight toward the sea from the state highway nearest the coast.

(5) Any development which would adversely affect water quality, existing areas of open water free of visible structures, existing and potential commercial and sport fisheries, or agricultural uses of land which are existing on the effective date of this division.

(b) No permit is required for the following types of development:

(1) Repairs and improvements not in excess of seven thousand five hundred dollars ($7,500) to existing single-family residences; provided, that the commission shall specify by regulation those classes of development which involve a risk of adverse environmental effect and may require that a permit be obtained.

(2) Maintenance dredging of existing navigation channels or moving dredged material from such channels to a disposal area outside the permit area, pursuant to a permit from the United States Army Corps of Engineers.

(c) The regional commission may provide for the issuance of permits by the executive director in cases of emergency or for repairs or improvements to existing structures not in excess of $25,000 and other developments not in excess of $10,000. (Non-emergency permits would not be effective until after reasonable public notice and adequate time for review of such issuance had been provided. If any two members of the regional commission request at the first meeting following the issuance of such permit, the

issuance shall not be effective and the application shall be set for normal public hearing).

(d) If, prior to the effective date of the initiative, any city or county has issued a building permit, no person who has a vested right in that permit shall be required to obtain an additional permit from the regional commission, providing that no substantial changes are made in any such development. Any person shall be deemed to have a vested right if, prior to April 1, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for necessary work and materials.

SPECIFIC REVIEW AND APPEAL PROCEDURES

After an application for a development permit has been made, the initiative provides that the regional commission shall give "written public notice of the nature of the proposed development and of the time and place of the public hearing." The hearing must be set no less than 21 nor more than 90 days after the application has been filed, and the regional commission must act upon the application within 60 days after the conclusion of the hearing. Such action shall become final after the tenth working day unless an appeal is filed within that time.

Once a decision on the application has been made by the regional commission, it may be appealed by any party to the state commission. The state commission "may affirm, reverse, or modify the decision of the regional commission." The state commission may also decline to hear appeals that it determines raise no substantial issues. If the state commission fails to act within 60 days after

a notice of appeal has been filed, the regional commission's decision becomes final. Appeals heard by the state commission shall be scheduled for a de novo public hearing and shall be decided in the same manner and by the same vote as regional commissions.

In addition to the above appeals procedure, any party may petition for judicial review of decisions made by the state or regional commission. Any party may also seek injunctive relief, or maintain an action for the recovery of civil penalties. It is not necessary to post a bond prior to seeking injunctive relief, and any person who is successful in obtaining a restraining order or who prevails in an action to recover penalties is entitled to a personal award for costs, including reasonable attorneys' fees.

OTHER PROVISIONS

AMENDMENTS

A 2/3 vote is necessary for the Legislature to amend any of the initiative provisions.

TERMINATION

All initiative provisions terminate 91 days after the final adjournment of the 1976 Regular Session of the Legislature.

CONFLICT OF INTEREST

The initiative includes specific conflict of interest provisions designed to restrict the participation of commission members and employees, former members and employees of one year or less, and certain business associates from participating in any official commission deliberations or other official matters on their personal behalf. Current members and employees are further prohibited from participating in an official capacity in any matter in which they, their

family, or certain business associates have any financial interest.

PENALTIES

A civil fine of up to $10,000 could be imposed for violation of any of the initiative provisions. An additional fine of up to $500 per day could be imposed for each day an unlawful development "persists."

CURRENT POLICIES AND PROGRAMS FOR LAND USE CONTROL

THE FEDERAL ROLE

CURRENT POLICIES AND PROGRAMS FOR LAND USE CONTROL

THE FEDERAL ROLE

Most federal agencies with domestic functions exercise some type of influence on land use controls and management. This section focuses on four types of federal programs that have a direct or indirect impact on land use. These four categories of federal programs are: programs which manage federally owned land; programs which regulate some type of land use; grants for certain types of development; and grants for land use planning. This section also analyzes proposed federal legislation which authorizes financial assistance for state land use agencies and state coastal management agencies.

Perhaps the most important role the federal government plays in land use control is the ownership and management of its property and installations. The impact of federal lands extends beyond their boundaries. The location and management of federally-owned properties influences the land uses of the surrounding areas and often has regional impact.

Several federal agencies have permit regulations which affect coastal areas. These agencies include the Corps of Engineers, the Coast Guard and the Atomic Energy Commission.

The federal government finances a large portion of the development of public facilities, including water and sewer facilities and transportation facilities. These two types of facilities determine land use to a great extent and these programs have delineated the land use patterns in many metropolitan areas.

The most important planning program is the Section 701 program administered by the U.S. Department of Housing and Urban Development. Several other programs provide a small level of support for planning efforts. These planning programs have had a limited impact on land use control. The planning functions supported

by the federal programs have been administratively separated from the implementation and control mechanisms at the state and local level.

The proposed federal legislation requires states to establish control over areas having environmental importance and the bills set up sanctions if the states fail to comply. These bills support and encourage greater state involvement in land use planning but do not preempt local regulations.

These areas do not cover the complete federal role in land use. The federal income tax policy has a critical influence on land development. Federal income tax provisions on depreciation and property tax deductions have encouraged home construction. Depreciation regulations have also created strong interest in subsidized housing. However, federal taxation regulations sometimes conflict with each other and these regulations can conflict with the goals of federal programs. The overall impact of these regulations is not clear.

There are also many other federal programs that have an indirect impact on land use. One study lists over 100 federal programs that relate to land use in some way. Many of them have only a limited impact on land use and are clearly beyond the scope of this report. Each of these program agencies, however, are required to specifically report on the environmental effects of their activities according to the terms of the National Environmental Protection Act of 1970.

MANAGEMENT PROGRAMS

The federal government owns approximately one-third of the land in the U.S. Out of 2.3 billion acres, including Alaska and Hawaii, the U.S. government administers about 762 million acres.

The federal lands in California compose 44.8 per cent of the total acreage

(44,903,872 acres out of a total of 100,206,720 acres). The bulk of this land is owned by the Forest Service and the Bureau of Land Management.

The following table lists the major land holding agencies and the acres they control in the U.S. and in California.

Agency	Acres	
	U.S.	California
Interior Department	540,326,592	20,921,372
Bureau of Land Management	451,043,353	15,584,932
National Park Service	30,124,006	4,165,888
Fish and Wildlife Service	27,970,161	65,966
Bureau of Reclamation	8,751,140	1,104,534
Bureau of Indian Affairs	5,033,849	200
Agriculture Department	186,888,833	20,051,304
Forest Service	186,472,236	20,050,572
Defense Department	30,599,503	3,906,238
Army	11,348,385	966,125
Air Force	8,377,360	472,741
Corps of Civil Engineers	7,259,973	86,528
Navy	3,613,785	2,380,844

The four most important federal land management agencies are the Bureau of Land Management, the Fish and Wildlife Service, the National Park Service and the Forest Service.

BUREAU OF LAND MANAGEMENT

(BLM) located in the Department of Interior, classifies, manages and disposes of the public lands and their related resources according to the principles of multiple use management. It also administers the mineral resources connected

with acquired lands and the submerged lands of the Outer Continental Shelf.

BLM typically controls lands of less value than those held by the other three key agencies. It is responsible for the management of 60 per cent of the federal lands, and the BLM lands cover 20 per cent of the total land base in the U.S. Lands under its jurisdiction are located primarily in the far West and Alaska.

Public land resources managed by the Bureau include timber, minerals, wildlife habitat, livestock forage, public recreation values and open space. BLM is responsible for the survey of federal lands and maintains public records. It is also responsible for mineral leasing on land held by other federal agencies.

FISH AND WILDLIFE SERVICE

Located in the Department of Interior, oversees the production and distribution of hatchery fish, the operation of a nationwide system of wildlife refuges, the regulation of migratory bird hunting, the management of fish and wildlife populations by scientific research and methods, and the improvement and protection of a quality environment for fish and wildlife resources to exist.

Most of the lands managed by the Fish and Wildlife Service are wildlife refuges. The National Wildlife Refuge System includes 330 refuges and game ranges managed for migratory birds, protection of endangered species, public enjoyment of natural resources, and economic benefits from sales of land products and concessions.

The Fish and Wildlife Service also studies environmental impact statements and water use projects proposed by federal or private agencies for the probable effects of such projects on fish and wildlife resources and recommends measures for their conservation and development. It places emphasis on conservation of

estuaries and development of comprehensive river basin plans which consider future needs based on fish and wildlife.

NATIONAL PARK SERVICE

Located in the Department of Interior, manages an extensive system of national parks, recreation areas and monuments. Its purpose is to conserve the scenery and the natural and historic objects and the wildlife of the park areas. Park areas are divided into three categories: natural, historical and recreational. The Park Service works to develop the full potential of each area for the public's enjoyment and education and to protect the natural and cultural resources in those areas.

FOREST SERVICE

Located in the Department of Agriculture, manages 154 national forests and 19 national grasslands in 41 states. The Forest Service manages these lands on the principles of multiple use and sustained yield. It balances the large demand for wood and paper products with other resources and benefits such as recreation, wildlife habitats, livestock forage and water supplies.

The Forest Service protects these lands from fires, erosion, floods and water and air pollution. Timber harvesting methods are used which will protect the land and streams, assure rapid renewal of forests and have minimum impact on scenic and recreation values. Some 14.5 million acres are set aside for wilderness and primitive areas where timber will not be harvested.

Major technical support has been provided by the Forest Service to the Tahoe regional planning agencies in preparing the multi-purpose land use plan and strategy for the entire Basin.

TRANSFER OF FEDERAL LANDS TO STATE AND LOCAL GOVERNMENTS

The federal government is currently surveying its property and turning over selected parcels to state and local governments. These excess parcels are primarily lands managed by the Defense Department.

The transfers are usually designated for parks and open space. So far, 144 tracts in 39 states have been converted to parks. This program, known as the Legacy of Parks program, began two years ago. The first transfer was at Camp Pendleton in California. The Defense Department leased six miles of the 17 mile coastline of Camp Pendleton to the State of California.

The Property Review Board, which is the operating agency for this program, intends eventually to survey all federal lands. At the present time it is focusing its efforts on military bases making up 58 million acres.

The Board has turned up major problems in the management of federal property. Donald Rumsfield, director of the Board, stated: "It was apparent that many thousands of acres of federal real estate throughout the country were being wastefully managed, while other vast areas were unnecessarily fenced off, their enjoyment denied to the American people to whom they belong."

INTER- AND INTRA-GOVERNMENTAL COOPERATION

The extent of federal ownership of land poses a major difficulty for land use agencies in California and other Western states. It is difficult for the land use agencies in these states to plan for non-federal lands because they are unable to obtain sufficient information on federal land management activities. The state and local governments do not have any input into federal decisions and they are not consulted before the decisions are made. The problem for state agencies is compounded by the fact that federal lands are often scattered in checkerboard fashion.

The lack of intergovernmental cooperation in land use decisions also poses problems for the federal land management agencies. Unplanned or badly planned land use patterns on the periphery of federal lands threaten the quality of national parks, wildlife refuges and wilderness areas. These problems could be avoided or alleviated with better intergovernmental cooperation and coordination.

Federal land management agencies often fail to coordinate decisions among themselves, but lack of intra-governmental cooperation is usually unintentional. The decision makers are often unaware of the land use impacts of their decisions.

A recent report from the Senate Committee on Interior and Insular Affairs highlighted this problem.

> We have conducted too many of our programs and activities in inexcusable ignorance of their often contradictory and deleterious effects. Illustrative of this was the Everglades Jetport controversy. In the Senate Interior Committee hearings in June 1969, three prestigious federal agencies were...(found to be) undertaking activities--flood control, airport development, and national parks and recreation programs--in compliance with their mission-oriented guidelines but with little appreciation of the contradictory, self-defeating, and environmentally destructive land use impacts of those activities.*

Another major problem in federal land use management is the lack of an adequate data base for land use planning or for decisions having an important land use impact. Another Senate committee report focuses on this problem.

> Four years ago, Congress wrestled with a final decision on the issue of whether dams would be constructed in the vicinity of the Grand Canyon. Last year, this Committee held a series of hearings on the Four Corners power question, considered by many to present an equal or greater threat to the environment. The issues involved were much the same--growing West Coast energy needs and environmental protection--but in neither case, when the first decisions were made, were the issues properly addressed with data sufficient to identify the

*National Land Use Policy Background Papers, Committee on Interior and Insular Affairs, U.S. Senate, April 1972, p. 7.

various options and their potential environmental, economic and social consequences.*

The use, management and disposition of the federal lands obviously is extremely important in California. Several recent events and current proposals illustrate this fact. The National Park Service established the Point Reyes National Seashore in 1962. This park covers over 64,000 acres of coastal area. The Defense Department recently leased six miles of beach area in Camp Pendleton to the State of California. The Defense Department is reviewing all its holdings in California, and the state will have an opportunity to purchase any lands that are declared excess property. Congress is considering a Golden Gate National Seashore which would encompass 8,000 to 16,000 acres at the entrance to the San Francisco Bay.

ENVIRONMENTAL PROTECTION ACT

The National Environmental Protection Act (NEPA) was designed to make environmental protection a part of the mandate of every federal agency. NEPA requires each agency to thoroughly evaluate the environmental impact of its decisions.

In particular, if an agency is involved in federal activity that significantly affects the quality of the environment, it must file a detailed statement which discusses the following topics:

1. the environmental impact of the proposed action;
2. any adverse environmental effects which cannot be avoided should the proposal be implemented;
3. alternatives to the proposed action;
4. the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

*Land Use Policy and Planning Assistance Act of 1972, Report of the Committee on Interior and Insular Affairs, June 19, 1972, p. 40.

5. any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

REGULATORY PROGRAMS

While a number of federal agencies have a direct or indirect regulatory role in land use decisions, three of them are of particular importance to coastal areas. These agencies require permits for certain uses in and around waterway areas and regulate specific land or water uses.

CORPS OF ENGINEERS

The Corps has responsibility for planning, programming and budgeting for the improvement of rivers, harbors and waterways for flood control and related purposes. It constructs, operates and maintains developments such as dams and causeways in navigable waterways. It also administers the laws for the protection and preservation of these waters.

The Corps conducts studies of the most suitable methods of beach protection and restoration. It provides assistance to states, counties and municipalities for determining appropriate locations for recreation facilities. Congress and the courts are interpreting the statutory authority of the Corps to include consideration of public access, recreation, and protection of ecological and environmental values in its projects and in waterways under its surveillance.

The Corps has provided considerable support to management and planning efforts directed at the California Coastline as evidenced by their National Shoreline Studies published in 1971. These reports focused on a "California Regional Inventory", "Shore Management Guidelines" and "Shore Protection Guidelines".

The Corps' role is particularly important in coastal areas because it regulates

all types of development which affect the navigable capacity of waterways. No one can discharge refuse into navigable waters without a permit from the Corps. Finally, anyone building a pier or bulkhead, dredging or drilling must obtain a permit from the Corps. The Corps can fine violators and obtain injunctions against them.

COAST GUARD

The Coast Guard is the federal maritime law enforcement agency. Its activities include search and rescue missions, boating safety, merchant marine safety and navigation aids.

Perhaps the most important function of the Coast Guard that affects land use is the regulation of bridges. Any governmental or private agency building a bridge over navigable waters must receive approval from the Coast Guard. The Coast Guard oversees the location, clearance and lighting of bridges. It also can alter or remove bridges that obstruct navigable waterways.

ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was established to provide and administer programs for research and development in atomic energy uses, international cooperation, production of atomic energy and special nuclear materials and the dissemination of scientific and technical information. It has responsibility to protect the safety of the public and to regulate the control and use of nuclear materials.

The AEC regulatory functions include licensing and regulation of the civilian use of nuclear materials. It issues permits for the construction of nuclear power plants and any other nuclear facilities. In carrying out these regulatory functions, it negotiates agreements with states for their assumption of

certain licensing and regulatory authority for atomic energy activities. Environmental impact review is required by AEC prior to the issuance of approval of any proposed nuclear power plant site.

DEVELOPMENT PROGRAMS

The federal government has set up a large number of grants, loans, and other forms of assistance to state and local governments for development projects. The two types of development projects which have the greatest impact on land use are transportation and water and sewer construction. The two major transportation programs are the Interstate Highway System and the ABC program which finances primary and secondary roads. Four different agencies finance the planning and construction of water and sewer facilities.

TRANSPORTATION

Federal aid to assist states in road construction began in 1916. The first federal assistance to urban highway programs was in 1944. The inter-state highway program, started in 1956, produced a three-to-fourfold increase in federal expenditure for transportation assistance. Congress enacted extensive requirements and physical standards in 1962.

ADMINISTRATION

The U.S. Department of Transportation has numerous transportation programs including such items as beautification and mass transit. The two largest programs are the interstate highway program and the ABC program. The federal government pays ninety per cent of the cost of the interstate system which will total 43,000 miles when completed. The program pays fifty per cent of the cost with the remaining share covered by the state governments.

Congress has established the formulas for apportionment of funds for these two programs. Monies for interstate highways are apportioned to each state on the basis of the state's estimated share of the total financing required to complete the system. The ABC program distributes funds according to each state's relative share of population, land area and road mileage.

The funds for highway programs are disbursed to state highway departments. Each state submits a plan, specifications and cost estimates. DOT approves a state transportation system and then provides funds as the states complete approved individual projects within that system. Federal funds can be used to reimburse planning, design and construction.

BUDGET

The primary source of financing for both programs is the Highway Trust Fund. A four cent tax on gas, oil, and rubber produces the money for the fund. Congress makes authorizations for expenditures on the basis of the amount in the fund.

Total annual authorizations for the fund increased markedly in the late 50's from $575 million in 1955 to $3.4 billion in 1960. Authorizations totaled $5.4 billion in 1972. Interstate System authorizations represent about three-fourths of the 1972 figure or $4 billion.

PROPOSED CHANGES

Several important changes will probably take place in federal transportation policy in the next few years. The 1972 National Highway Needs Report recommends that a Single Urban Fund be established to fund urban highway and mass transit projects. The purpose of this change is to provide increased resources to deal with the problems of transportation in our major metropolitan

areas and to provide an assured pattern of program growth by funding both highway and mass transit projects from the highway trust fund. The Interstate highway program would be continued as a separate program.* Apparently DOT will place increasing emphasis on solving urban transportation as the interstate system nears completion.

WATER AND SEWER

Four federal programs make grants to states and localities for water and sewer projects. The following agencies administer these programs: Environmental Protection Agency, Department of Housing and Urban Development, Farmers Home Administration and Economic Development Administration.

OFFICE OF WATER PROGRAMS

This agency is located in the Environmental Protection Agency and provides funds for the construction of wastewater treatment works, including intercepting and outfall sewers. Collector (residential sewer systems) are not eligible for grant assistance.

The program assisted approximately 9400 public facilities between FY 1957 and FY 1969. EPA took over the program in December 1970 when EPA was established. Although EPA has many grant programs to assist pollution control, the wastewater treatment works construction grant program accounted for $2 billion of the $2.4 billion appropriated to EPA in FY 1972.

The agency distributes funds to the state principally on a population formula, thereby favoring more populous states. The federal share currently may not exceed 55 per cent of the planning and construction costs. The matching provisions are complex and the federal contribution is dependent on the state share and the local share. For example, if the state share is 25 per cent and the project conforms to enforceable water quality standards, the federal

*Part 1 of 1972 National Highway Needs Report, 1972, p. VII.

share may go up to 50 per cent. Between FY 1968 and FY 1971 appropriations increased from $203 million to $1 billion. The appropriation in this program essentially doubled in FY 1972 to $2 billion. Pending legislation in Congress would raise the funding to a level of $5 billion in FY 1975.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

This department administers two community facilities programs which provide grants for 1) basic water and sewer facilities and 2) public facilities loans. The basic water and sewer program provides direct grants of up to 50 per cent of the cost of construction. Eligible projects include those providing for the storage, treatment, purification and distribution of water, as well as those for the collection and transmission of storm and sewer water. The sewage grants cannot be used for waste treatment facilities and are primarily designed to support construction of collector lines. The grants serve to complement the grants EPA awards for wastewater treatment works.

In order to receive federal assistance, a project must be consistent with an officially coordinated or unified program for an areawide water or sewer facilities system as part of the planned development of the area. Local public bodies, state and interstate agencies, and boards or commissions established by state law to finance water and sewer improvement projects are eligible for grants.

Congressional appropriations for this program totaled $350 million in FY 1971 and approximately $500 million in FY 1972. However, despite the large demand for water and sewer funds at the state and local level, the Office of Management and Budget has allowed expenditures of only $150 million per year for several years.

PUBLIC FACILITY LOANS

HUD also grants public facility loans to help finance public facility construction when credit to support such projects is not otherwise available on reasonable terms. Loans may be made to municipalities and other political subdivisions having populations under 50,000 but priority is given to communities with less than 10,000 inhabitants needing funds to construct water, sewer and gas distribution systems.

The public facility loans which were authorized by the Housing Amendments of 1955, must be of sound value or adequately secured so as to provide reasonable assurance of repayment. Interest rates are set by statute at either 0.5 per cent above the rate on all interest-bearing obligations comprising the federal debt or 3 per cent whichever is higher. Maturities on these loans are limited to 40 years.

Loan assistance is concentrated in areas with credit shortages, chiefly in Southeastern and Southwestern states. In intra-regional terms, the assistance goes chiefly to very small, poor, rural communities. There is virtually no flow of funds to metropolitan areas or growth centers. Net loan approvals were $40 million in FY 1971.

ECONOMIC DEVELOPMENT ADMINISTRATION

The principal EDA assistance program affecting water and sewage line construction is the grant/loan program for public works and development facilities. Grants and direct loan funds are used to assist communities whose economic growth is lagging behind the rest of the nation to construct or improve the basic public services and industrial infrastructure required to attract growth-generating enterprise.

Eligible communities are in areas designated by EDA according to the rate of unemployment, population loss, low income, and areas experiencing a sudden

rise in unemployment 50 per cent above the national.

Direct loans and two types of grants are available under the program. Basic grants provide up to 50 per cent of the project cost, and supplementary grants can raise the federal share to 100 per cent of the total cost. Grants account for approximately 65 per cent of the program's funds.

Although this program is authorized up to $500 million, Congress has appropriated about $160 million for each of the past several years. Approximately 60 per cent of the funds go for water and sewer facilities, about half expended for plants and the other half for collection or distribution lines.

FARMERS HOME ADMINISTRATION

This U.S. Department of Agriculture agency has more than 20 major loan and grant programs. Its soil and water program provides loans and grants to non-profit organizations to construct community water and sanitary sewer systems.

Public or quasi-public bodies and corporations not operated for profit which will serve rural areas of up to 5500 population may receive financial and technical assistance in planning, developing and improving or extending water and waste disposal systems. Loans and grant funds may be used to cover costs related to water supply pipelines and sewer lines.

A borrower's total indebtedness for assistance may not exceed $4 million at any one time. Grants may be made to help finance up to 50 per cent of the development cost of a water or waste disposal system when grants are needed to reduce to a reasonable level the charges the users will pay.

The funding level for rural water and waste disposal grants was $41 million in FY 1971. Direct loans totaled over $32 million the same year.

OTHER DEVELOPMENT PROGRAMS

The U.S. Department of Housing and Urban Development funds up to 50 per cent of the total cost of acquisition and development of open space land in urban areas. Development costs may include roadways, basic utilities, recreational facilities, improvements of acquired structures and preservation of historic and architecturally significant structures.* Only urban areas are eligible to receive the grants.

The federal obligation in FY 1971 was $75 million and this level increased to an estimated $100 million in FY 1972. During FY 1972, HUD approved 551 open space grants.

Other federal programs having an impact on land use are home mortgage insurance and urban renewal. HUD's mortgage insurance program enables homebuyers to obtain mortgages with relatively low down payments. In FY 1971 HUD extended mortgage insurance through its non-subsidized Section 203(b) program to approximately 220,000 homes valued at over $4.6 billion. This program has been a major factor in the development of suburban areas around the large central cities.

The urban renewal program provides grants for surveys and planning, land acquisition and clearing, rehabilitation of existing structures and installation of public improvements in areas designated for renewal. These grants cover two-thirds of the project costs. The federal obligations for this program in FY 1971 were $551 million. The program is proposed to be folded into revenue sharing in 1973.

Airport grants, available for the Federal Aviation Administration, fund 50 per cent of the cost for land acquisition, site preparation and runways,

*Catalog of Federal Domestic Assistance, Office of Management and Budget, 1972, p. 397.

lighting utilities and other basic facilities. Federal obligations totaled $170 million in FY 1971 and are estimated at $280 million for FY 1972. FAA also provides planning grants for the development of airport master plans and system plans.

The Department of Transportation assists in financing the acquisition, construction and improvement of facilities and equipment for urban mass transportation systems. Grants are made for not more than two-thirds of project costs. Grant obligations were $284 million in FY 1971 and increased to an estimated $510 million in FY 1972.

PLANNING PROGRAMS

Four federal programs provide grants to state governments which are earmarked for planning purposes. These programs are designed to increase the states' planning capability and to enable the states to meet legislative requirements for receipt of development funds. The Section 701 program has played a major role in the establishment of state and local planning agencies all over the country. However, the other three programs have had a rather limited impact partly because of the low level of funding.

701 PLANNING PROGRAM

AUTHORITY

The National Housing Act of 1954 set up the Section 701 planning program. The legislation stipulates that grants to state agencies are authorized for the provision of planning assistance to municipalities of less than 50,000 population and to counties without regard to population. However, if a county has a population greater than 50,000 and is located within a metropolitan area, its planning must be coordinated with a program of comprehensive planning

being carried out for the metropolitan area. Regional planning agencies and planning agencies in cities of over 50,000 can apply for grants directly to HUD.

ADMINISTRATION

The U.S. Department of Housing and Urban Development administers the Section 701 program. The program is designed to promote sound local, areawide and statewide development through comprehensive planning. It provides grants of up to two-thirds of the cost of a planning project in most cases. All applicants must have an overall program design and they have to make application to HUD annually.

Eligible activities under the program include the preparation of development plans, policies and strategies; implementation measures; and the coordination of related plans and activities being carried on at various levels of government. A broad range of subject may be considered in the course of the comprehensive planning process. They include land development patterns, housing, community facilities, the development of human resources and the development and protection of natural resources.*

STATE AGENCIES

The activities carried out by state planning agencies vary from state to state. Generally, these agencies conduct a statewide planning program and provide technical assistance to small communities. Some state agencies focus on statewide planning while a few limit their activities to providing technical assistance.

BUDGET

*Catalog of HUD Programs, HUD-214-SP, July 1971.

The funds authorized for the program have increased markedly since the program's inception. In 1955 Congress authorized $1 million, in 1964, $21 million and in 1970, $50 million. In 1971, HUD merged the Community Renewal Program which provided planning grants to cities over 50,000 population with the 701 program. As a result of this merger, the authorization for the 701 program in 1972 fiscal year totaled $100 million.

PROPOSED CHANGES

Several changes are currently taking place in the administration of the program. HUD is now emphasizing that the 701 grants are for planning and management assistance. HUD apparently is focusing on management because many agencies have developed plans rather than setting up a planning process. In line with this emphasis, HUD is aiming to support the chief executive of state and local governments in formulating and coordinating community development strategies.

The proposed 1972 Housing Act increases the authorization for the program from $100 million to $200 million. It also replaces the federal two-thirds matching grant with an 80 per cent-20 per cent matching ratio.

OUTLOOK

The major contributions of the program have been the development of a state planning capability in virtually every state and the support of areawide planning agencies, COG's (Council of Governments). In the next four years, the program should improve the management capability of state and local governments.

WATER RESOURCES PLANNING COUNCIL

AUTHORITY

Several other federal programs provide monies to state agencies for planning purposes. The Water Resources Planning Council prepares a continuing inventory of water resources throughout the country. It is an independent agency set up in 1965 by the Water Resources Planning Act. The two main functions of the Council are to establish and assist river basin commissions* and to administer federal financial grants to states for water and related land resources planning.

ADMINISTRATION

All states are eligible to receive the planning grants. A designated state agency, usually the state agency dealing with natural resources, must submit an application that indicates the intended use of the funds. The planning effort should be aimed at the conservation, development and utilization of water and other related land resources in a manner which protects the public interest. The grants cannot be used for construction. Otherwise, the states have extensive flexibility in using the funds.

The appropriated monies are distributed on the basis of several criteria. Sixty per cent of the grant money is determined by state population, land area and income. The remaining forty per cent is distributed on the basis of need.

BUDGET

The original legislation authorized $5 million per year for ten years beginning in 1967. Appropriations have been relatively low, however, reaching some $3.7 million for FY 1971.

BUREAU OF OUTDOOR RECREATION

*Seven commissions have been created thus far. Their jurisdictions cover most of the northern half of the country.

The Land and Water Conservation Act of 1962 established the Bureau of Outdoor Recreation. This bureau, located in the U.S. Department of Interior, supplies grants to states for the planning, acquisition and development of outdoor recreation areas. In order for a state to receive acquisition or development grants, it must develop a comprehensive statewide outdoor recreation plan and update and refine it on a continuing basis. The plans identify the capital investment priorities for acquiring, developing and protecting significant outdoor recreation resources within a state. The 50-50 matching grants cover planning, acquisition and development.

ECONOMIC DEVELOPMENT ADMINISTRATION

EDA is an agency of the Department of Commerce. It has authority to provide grants and direct loans to non-profit organizations for the planning and construction of public works, industrial parks and vocational educational facilities and in general to organize projects designed to stimulate economic growth and employment.

EDA supplies planning grants to a county or multi-county organizations. These grants enable the local EDA organization, composed of elected officials and private individuals, to employ a full time staff. The staff must submit an Overall Economic Development Program for the area before it is officially designated as an EDA district.

The fiscal year 1972 appropriation for EDA planning grants was $5.5 million. EDA distributed these funds to 124 districts.

LEGISLATION

Congress is considering a number of bills which would have a direct impact on state land use controls. Several of these bills would return control for

developments with regional impact from local government to the states. Other bills support state regulation of coastal areas. Overall, these pieces of legislation reflect a growing support in Congress for improved state control over large-scale development and over areas of environmental importance.

LAND USE POLICY AND PLANNING ASSISTANCE ACT OF 1972 (S 632)

This Act requires the states to set up a state-wide land use planning process. Each state's land use planning program would focus only on those land use decisions which have an effect outside of the local land use regulatory agency. The American Law Institute estimates that only 10 per cent of all land use decisions fall into this category.

The state planning process is designed to develop a data base on the state's land and natural resources, and its population and economic trends, and projections of the quantity of land needed for various uses. The states are required to have a staff and an appropriate planning agency three years after enactment.

The bill places emphasis on the implementation of the state land use programs rather than their substance. It requires state land use programs to exercise determinative state authority over areas of critical environmental concern, large-scale developments of more than local significance and key facilities and to assure that local regulations don't unreasonably restrict developments of regional benefit.* The legislation requires that a land use program dealing with these four areas be developed within five years.

The proposed program sets up both carrot and stick for states. The annual authorization is $100 million for eight years. Under the bill, the U.S. government would fund 90 per cent of the state costs for the first five years

*Land Use Policy and Planning Assistance Act of 1972, Report of the Committee on Interior and Insular Affairs, U.S. Senate, 1972, p. 52.

and two-thirds of the cost for the next three years.

SANCTIONS

If the states do not meet the requirements in the legislation, the federal government cuts off a portion of the state's funds in three federal grant-in-aid programs. The proportion is 7 per cent the first year and increases to 21 per cent by the third year. The three programs are the 1970 Airport and Airway Development Act, the Land and Water Conservation Act of 1965 and various federal highway programs excluding the Interstate Highway System.

"The three programs for which funds would be withheld are deemed to have the most significant long-range and irreversible impacts upon land-use patterns because of the exceptional influence they have over public and private development."*

The Interior Department estimates that the three programs on which sanctions would be imposed provide $1,756,775,000 to the states. California is the state that could be affected most by the sanctions in the event of noncompliance. It now receives $125 million from the programs. About $9 million could be withheld under the 7 per cent penalty and over $26 million could be withheld under the 21 per cent penalty. Thus, there is substantial incentives for a state to participate in the land use program.

If a state is declared ineligible, it may appeal to a three-man board. The board is composed of a governor and an impartial federal official selected by the President and an impartial citizen selected by the other two board members.

*Land Use Policy and Planning Assistance Act of 1972, Report of the Committee on Interior and Insular Affairs, U.S. Senate.

FEDERAL ROLE

While most of the bill's requirements deal with the ability to implement the land use planning process, rather than the substance of the activities, it does leave the door open for federal review of areas designated to be of critical environmental concern. The states cannot exclude from the areas of critical environmental concern any substantial areas which are of major national significance and require special planning and management. If a state requests, the federal government will indicate those areas of major national significance before the five-year deadline for submission of a land use program. Areas of critical environmental concern, according to the Senate report, include coastal wetlands; marshes; other lands inundated by tides; beaches and dunes; significant estuaries; shorelands; flood plains of rivers, lakes and streams; scenic areas, forest and related land which require long stability for continuing renewal, etc. In effect, the federal government can control the designation of these areas and will guide the states in selecting them.

INTERAGENCY COOPERATION

The administration of the program comes under the Assistant Secretary for Planning in the Department of Interior. However, nine other federal agencies must participate in the federal review of the state programs and the determination of grant eligibility. In addition, HUD not only makes general recommendations, but also indicates if it is satisfied with the large-scale development, developments of regional benefit and key facility components of the state land use program.

FEDERAL-STATE COOPERATION

Federal grant and loan programs such as water and sewer construction must be consistent with the approved state land use programs. The state land use

agency must indicate its views on applications from state and local governments. These applications to be reviewed should have significant land use components in an area or areas subject to the state land use program.

The bill sets up two requirements for federal and state coordination in controlling land use in federally-owned lands and in the areas adjacent to federal lands. The federal agencies owning land within a state must coordinate their plans, programs and policies for their lands with the state land use agency. If a federal agency plans any changes in the use of their lands, it must publish a statement outlining the consistency of the proposed changes with the state and local land use programs. Second, the states must try to ensure that federal lands are not degraded because of adjacent land uses. This requirement applies particularly to national parks and wilderness areas.

The Secretary of Interior, on his own authority or at a governor's request, can set up ad hoc committees to deal with specific conflicts that arise in the management of federal lands and adjacent areas. Representatives of federal and state agencies, local governments and user groups will sit on the committees.

STATE-LOCAL ROLE

While the states must exercise determinative authority over the four land use areas, they have the option of either directly planning for these areas or letting local agencies carry out the planning. If a state chooses the latter option, it must establish guidelines and controls for the local agencies to follow.

The Senate report says: "The Act does not require or contemplate radical or sweeping changes in the traditional relationship and responsibility of local government for land-use management. It does, however, require that the states

play an active role in major land-use planning and management decisions which are of regional, state or national concern."

OUTLOOK

Several Senate committees want to review the bill. Both the Public Works and Banking, Housing and Urban Affairs Committee chairmen will probably request changes. This process of committee review may take several weeks or several months. Once the bill is finally put up for a vote, it should pass but committee reviews may delay passage this session.

NATIONAL LAND POLICY AND MANAGEMENT ACT OF 1972 (HR 7211)

This legislation is sponsored by Wayne Aspinall, chairman of the House Interior and Insular Affairs Committee. A section dealing with state land use control of private lands and a section dealing with the management of public lands are both included in the bill (HR 7211).

PRIVATE LANDS

The private lands section is similar to the Land Use Policy and Planning Assistance Act (S 632). The primary difference is the funding level for the state land use programs. The House bill authorizes $204 million spread over five years. The amount and federal share decrease over the five years. The authorization for the first year is $54 million with the federal share at 90 per cent; for the next two fiscal years, $45 million and a federal contribution of 75 per cent, and for years following $30 million with a 50 per cent federal payment.

The controls, sanctions and administration of the state land use programs are almost identical to those outlined in the Senate bill. It requires the state land use planning programs to establish control over areas of environmental

concern, large-scale developments, key facilities and developments of regional benefit.

If a state does not establish an acceptable planning process, federal funds for airport, highway and land water conservation are withheld on a graduated scale of 7 per cent, 14 per cent and 21 per cent over three years. The Senate bill designates that these funds are to be held in escrow and given to states when they obtain or regain eligibility. The House bill is more severe and stipulates that the withheld funds will be distributed to eligible states.

The Assistant Secretary for Land Use Policy and Planning in the Department of Interior will administer the program. The House bill sets up a National Land Use Policy and Planning Board to coordinate the land-use activities of federal agencies and three national land-use citizen advisory committees for federal agencies, and it encourages citizen advisory councils of 10-15 members for regions, states, districts and localities.

PUBLIC LANDS

The public lands section of the House bill is in part based on the 1970 report of the Public Land Law Review Commission. Mr. Aspinall was largely responsible for initiations of the commission's six-year study of the use of public lands.

This section requires all federal agencies which manage public lands to draw up land use plans. The objective is to establish uniformity in the acquisition and management of federally-owned land, for mining and mineral leasing claims, animal grazing leases, timber harvesting, recreational activities and other uses. In order to achieve this objective, the bill provides for retention of federal ownership of the bulk of public lands, transfer of public lands to non-federal ownership for purposes designated by statute, the management

of such lands in a manner that protects the environment, the coordination of regional, state and local land management plans, and public participation in all procedures leading to the classification of any public plan.*

REVIEW OF PUBLIC LANDS

Under the legislation, Congress will review land set aside by executive withdrawals which includes most national forests in the western part of the country most wildlife refuges and some national monuments. Congress would not review lands that it has given public status such as national parks and wilderness areas.

The Secretary of Interior will have to examine each withdrawal and submit legislation detailing its purpose and necessity. However, the withdrawals will remain in effect unless they terminate or are revoked by Congress.

When land tracts of more than 25,000 acres are to be sold or classified for a use that would exclude other uses for more than a year, the agencies involved would have to seek permission of the Senate and House interior committees. Both panels must approve.

OUTLOOK

Environmentalists are strongly opposing the bill. The review of public lands would encompass almost all lands now managed by federal agencies including the Bureau of Land Management. It could lead to a change in usage or sale of areas already set aside as national forests or wildlife refuges.

The Administration is also opposing the bill, and efforts are being made to separate the public lands section and the private lands section. If the private lands section is split off, it will most likely pass the House. Because

*Norman Beckman, "Toward Development of a National Urban Growth Policy," Journal of American Institute of Planning, July 1972, p. 246.

this section is quite similar to the Senate bill (S 632), a Senate-House conference on the two bills would face little difficulty and congressional enactment would probably follow.

However, Wayne Aspinall opposes splitting his bill. If it is not split, environmentalists and the Administration are expected to move to defeat it. In that event, legislation dealing with state land use programs covering private lands would not come out of Congress this year.

NATIONAL RESOURCE LANDS MANAGEMENT ACT (S 2401)

The Senate is also considering a public lands bill. The National Resource Lands Management Act (S 2401) gives the Bureau of Land Management a firm operating charter. It does not deal with public lands managed by other federal agencies.

Unlike the Aspinall bill, this legislation uses existing procedures for executive withdrawals such as national parks, monuments or forests. It declares that the federal government should continue to own the lands administered by the Bureau of Land Management (BLM). However, the Secretary of Interior can sell or dispose of these lands after considering environmental management and public objectives. Finally, the bill requires the Secretary of Interior to make an inventory of all BLM lands giving priority to areas of critical environmental concern and potential wilderness.

NATIONAL COASTAL ZONE MANAGEMENT ACT (S 3507)

This Act, which has already passed in the Senate, authorizes the Secretary of Interior* to make grants to coastal states for management programs covering

*The Act originally placed this program under the Secretary of Commerce. However, the House version of this bill authorizes the Secretary of Interior to administer the program.

the land and water resources in coastal areas. The coastal states are those bordering on the Atlantic or Pacific Ocean, Gulf of Mexico and the Great Lakes. The outer limit of the coastal zone is the limit of states' legal authority; the inner limit is flexible. It extends inland only far enough to allow the management program to control the lands whose use has a direct impact on the coastal water. Coastal waters include harbors and estuary-type areas such as bays and marshes.

ADMINISTRATION

The development grants to the coastal states cannot exceed two-thirds of the cost of a state management program, and no state is eligible to receive more than three annual grants. Once the Secretary of Interior approves a state's coastal zone management program, it is eligible for annual administrative grants covering up to two-thirds of the cost of administering the program. A state may pass-through some of these funds to local, areawide or interstate agencies.

To be eligible for an administrative grant the bill specifies that a state must establish one of the following methods to control land use: (1) state establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance; (2) direct state land and water use planning and regulation; or (3) coastal state administrative review for consistency with the management program of all development plans, projects, or land and water regulations, including exceptions and variances thereto proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings."*

*National Coastal Zone Management Act of 1972, Report of the Senate Committee on Commerce, April 19, 1972, p. 13.

The bill also establishes grants for the acquisition, development and operation of estuarine sanctuaries. The grants are designed to create national field laboratories to gather data and make studies of the natural and human processes occurring within and directly affecting the estuaries.

BUDGET AUTHORIZATION

The authorization for the program development grants is $12 million for FY 1973 and the necessary sums until the end of FY 1977. The funding for the administrative grants is $50 million to be distributed as necessary each year until expended. The bill allocates $6 million for the estuarine sanctuary grants.

FEDERAL-STATE COOPERATION

The Act sets up several requirements for intergovernmental and interagency cooperation. Federal agencies must administer programs in the coastal zones so that their activities are consistent with the state management programs. A federal agency cannot undertake a development project in a coastal zone that is inconsistent with a state program unless the Secretary of Interior finds the project is consistent with the objectives of the legislation. State and local applications for federal grants for programs impacting coastal areas must include the coastal management agency's statement on the relationship of the proposed program to the state management program.

The Act requires applicants for a federal license or permit to conduct any new activity in a coastal zone to submit a state certification that the proposed activities comply with the state's approved management program.

COASTAL ZONE MANAGEMENT ACT (HR 14146)

The House has recently passed a Coastal Zone Management Act which is similar to the Senate bill. It sets up two-thirds development and administrative grants for state coastal management agencies and 50 per cent grants for

acquisition and development of estuarine sanctuaries.

The House bill outlines the characteristics of the state management programs in greater detail. Each program must include: (1) an identification of the boundaries of the portions of the coastal state subject to the program; (2) a definition of what will constitute permissible land and water uses; (3) an inventory and designation of areas of particular concern; (4) an identification of the means by which the state proposes to exert control over land and water uses; (5) broad guidelines on priority of uses in particular areas; and (6) a description of the organizational structure proposed to implement the management program.

The bill also authorizes the Secretary of Interior to designate marine sanctuaries. These areas would be set up to preserve or restore their conservational, recreational, ecological or esthetic values. They would be areas located outside the coastal zone and superjacent to the subsoil and seabed of the continental shelf.

OUTLOOK

There was little opposition to the coastal zone legislation in the House. Since the Senate and House bills are similar, final approval for a coastal zone management act will probably come in the next few months. A Senate-House conference is now considering the two bills.

SUMMARY OF LEGISLATION

The table below outlines the major aspects of the proposed congressional legislation discussed in this section.

Congressional Land Use Proposals

Non-Federal Lands

	S 632	HR 7211
Purpose	Provides federal grants-in-aid to assist states develop land use programs.	Provides assistance to states for land use programs and establishes public land policy (see below).
Administration	Places control within Department of Interior under new office of land use policy administration.	Places control within Department of Interior under new office of land use policy administration.
Planning Process	Requires states to develop land use programs, within five years for areas of critical environmental concern, key facilities, developments of regional benefit and large-scale developments.	Requires state to develop land use plans for areas of critical environmental concern, key facilities, developments of regional benefit, large-scale developments, new subdivisions, new communities.
Sanctions	If state does not develop an approved program within five years, federal grants-in-aid (for airport development, highways and land and water conservation fund) are withheld at an increasing rate of 7%, 14% and 21% over three years. Funds held in escrow until state qualifies.	If state does not develop acceptable program by July 1, 1976, federal grants-in-aid (for airports, highways and land and water conservation fund) are withheld at 7%, 14% and 21% over three years. Funds revert to U.S. Treasury to be distributed to qualified states.
Grants	Authorizes $100 million annually for eight years, with federal share 90% for first five years and two-thirds for last three years.	Authorizes $204 million over five years: $54 million the first year with 90% federal share, $45 million the second and third years (75% federal share), $30 million the last two years (50% federal share).
Appeals	If a state is declared ineligible for grants, the President must name an ad hoc hearing board which must rule within 90 days.	No provisions for appeals.
Inter-Governmental Cooperation	Requires federal-state coordination and cooperation in planning and management of federal and adjacent federal lands.	Sets up national land use policy and planning board, national committees and advisory councils to coordinate federal and non-federal land use planning.

Federal Lands

	S 2401	HR 7211
Coverage	Deals only with lands administered by the Bureau of Land Management (BLM).	Applies to all federal lands.
Classification	Requires the Department of Interior to inventory all BLM lands with priority to areas of critical environmental concern and potential wilderness.	Requires federal agencies to inventory all public lands and classify for uses of maximum public benefit.
Disposal	Authorizes Department of Interior to sell or dispose of BLM lands after considering environmental management and public objectives.	Authorizes disposal of any federal lands meeting certain criteria.
Withdrawal	Uses existing procedures for executive withdrawals of federal lands for national parks, monuments, forests, etc.	Requires House and Senate Interior Committees to review all executive withdrawals over 25,000 acres.

Coastal Zone Management

	S 3507	HR 14146
Purpose	Provides financial assistance to coastal states to develop a management program for the coastal zone.	Provides assistance to states for the management, protection and development of the land and water resources of the nation's coastal zone.
Administration	Places control of the program under the Secretary of Interior.	Places control of the program under the Secretary of Interior.
Grants	Authorizes $12 million annually for program development grants (federal share 2/3), and $50 million annually for administrative grants (federal share 2/3). Also authorizes 50% federal grants for purchase of estuarine sanctuaries ($6 million annually).	Authorizes $15 million annually to 1975 for program development grants (federal share 2/3), and $50 million for 1974 and 1975 for administrative grants (federal share 2/3). Also authorizes 50% grants for purchase of estuarine sanctuaries ($6 million annually).
Sanctions	Termination of grant.	Termination of grant.

This proposed federal legislation indicates a strong trend toward state regulation for land use decisions with regional impact. The purpose of the legislation is to assist the states in developing a land use process which promotes

economically and environmentally sound uses of the nation's resources.

The California Initiative differs from the basic trend indicated in these bills in several respects. The Initiative seeks to control all types of development. S 632 and HR 7211 focus on large-scale developments, key facilities and areas of critical environmental concern. The Initiative aims at a land use plan for the coastal area whereas S 632 and HR 7211 emphasize the development of an effective land use planning process.

The proposed legislation requires that the federal assistance go to a state agency established by the governor. This agency must coordinate its activities with other state, regional and local agencies. The Initiative sets up a commission which is not appointed by the governor, and does not require the commission to coordinate its activity with other governmental agencies.

THE STATE ROLE

INTRODUCTION

THE STATE ROLE

INTRODUCTION

States have the constitutional authority to control the use of land within their jurisdiction, but they have typically delegated this authority to the local level. The state role, up until recently, has been limited to ownership and management of lands, the location and development of major facilities and tax incentives.

The impact of state land ownership is not limited to state lands. The location of these lands and their use can influence and in some cases determine the uses on surrounding properties. The location of government centers and capital facilities guide growth patterns and are the result of state policy. Finally, through the use of tax incentives, states can indirectly influence the expansion of urban areas and can support preservation of agricultural and open space lands.

However, the importance of these functions is limited in comparison to the role played by the local government. The local government through zoning and subdivision legislation has direct control over the location of land uses.

In recent years, a number of states have taken steps to recover some of their power over land use control. The section is a detailed examination of this type of land use legislation which states have enacted over the last ten years. It is the focus of this discussion of the state role for several reasons. First, the California Coastline Initiative is an example of this type of legislation, and comparisons can be made between it and legislation already enacted by other states. Second, several bills before Congress implicitly require states to establish land use control legislation.

The state laws passed during the last decade on land use fall into four categories:

(1) direct statewide control of land uses
(2) statewide criteria and standards for land use decisions by local governments
(3) direct state control of land uses in selected areas
(4) state criteria and standards for local land use decisions in selected areas

A summary of state legislative requirements and their relation to the California Coastline Initiative is included at the end of the four sections.

DIRECT STATEWIDE CONTROL

Three states have enacted legislation which establish statewide land use controls. The tool for carrying out these controls is a statewide comprehensive planning process. When this type of process is used along with police powers (such as zoning and subdivision laws), the state has an opportunity to influence economic and physical development.

Typically the state draws up its comprehensive plan. However, the administration of the plan may be solely in the hands of the state, or as is usually the case, it may be under a joint arrangement between the state and local governments.

Three states utilize the statewide approach. The most important example is the State of Hawaii.

HAWAII

ADMINISTRATION

The Hawaii State Land Use Law of 1961 gave the state much greater control than any other state had previously held over land use. The law set up a state Land Use Commission and instructed the commission to divide the entire state into four districts: conservation, agricultural, rural and urban. The land in the urban district could be used for whatever purpose local zoning regulations allowed. Land use in the agricultural and rural districts had to comply with the regulations of the State Land Use Commission, while land use in the conservation district had to meet the regulations of the state's Department of Land and Natural Resources.

Several factors provided the impetus for the Hawaii land use legislation. These were the economic importance of agriculture, the imminence of development pressures and associated threats of urban sprawl and the tradition of a strong, centralized government.

During the law's ten years of operation, three basic policies have guided the administrators. (1) The commission should preserve prime agricultural land for agricultural use. (2) It should encourage tourist-attracting development without disturbing the attraction of the natural landscape. (3) It should provide compact and efficient urban areas where people can live at reasonable cost.

The state Land Use Commission membership is composed of seven private citizens plus the director of the Department of Land and Natural Resources and the director of the Department of Planning and Economic Development. The commission has carried out the instructions of the statute by dividing the state into four districts: urban, rural, agricultural and conservation.

CONTROLS AND CRITERIA

The urban districts include urban areas and enough land to accommodate urban growth for ten years. Rural districts generally contain low-density residential development on lots of at least one-half acre. The agricultural districts cover both crop and grazing land as well as agriculturally-oriented industry. Two-thirds of the conservation districts are publicly-owned Forest and Water Reserve Zones. The other third is private land primarily in mountainous areas.

The commission controls urban growth by designating the boundaries for the urban districts. Intensive development can only occur in these areas. In effect, both state and county approval are necessary for development in urban areas. Uses permitted in the urban districts are under county zoning regulations, and a county could zone a portion of an urban district for agricultural uses.

The use of lands in the rural and agricultural districts is governed by Land Use Commission regulations. The commission decides on requests for boundary changes and special permits under a tight time schedule established by statute. The appropriate county planning agency must review each petition and the commission holds public hearings in the county where the land is located. Counties may issue special use permits in these districts subject to final approval by the commission.

The Department of Land and Natural Resources has sole regulation over use in the conservation districts. Currently, the department divides the conservation area into two general subzones, a Restricted Watershed zone and a general use zone. Uses allowable in the general use zone include residences, resorts, hotels, golf courses, marinas, etc. The governing body of the department passes on all applications for special use permits in the conservation zones.

ASSESSMENT

The commission does not have guidelines from a master plan to aid its decision-making process. Hawaii adopted a state plan in 1960. However, the rapid population growth and economic changes that have taken place since then have made the 1960 plan obsolete. The state completed a revision of the plan in 1967, but the planners specifically avoided setting land use policies.

The state planners indicated that the commission was responsible for land use planning. However, while the commission has been directed to plan, it has not been given any planning capability. The commission's planning activity is largely limited to setting boundary lines for the rural and agricultural districts.

The commission's staff is quite small and the staff size limits the enforcement capability. The commission does not attempt to follow up on permits to see that conditions and restrictions are obeyed, and it does not check on development undertaken without a permit. The statute directs the counties to carry out enforcement, but it is difficult to determine the degree of enforcement.

Violations of the law are punishable by a fine of not more than $1,000. Each day of the violation is considered a separate offense.

The tax policies and land use policies of the state often appear to conflict with each other. Hawaii has two tax laws which affect land use policies. Land is taxed at a higher rate than buildings, to encourage improvement of urban land. This approach is consistent with the narrow urban limits policy of the Land Use Commission but it may have contributed to excessive congestion.

The tax laws allow a land owner to obtain lower assessments by dedicating his

property to agricultural use. To obtain this classification an owner must submit a request to the Department of Taxation. The determination of the request is based "upon the productivity ratings of the land in these uses for which it is best suited, a study of the ownership, size of operating unit and present use of surrounding similar lands and other criteria as may be appropriate."

Land in proximity to existing urban areas is the only land likely to be dedicated. Dedication of this type of land may limit the commission's ability to control orderly urban expansion. "Unless land is dedicated the statutory direction that the assessors give consideration to the land use classifications set by the Land Use Commission has apparently had little effect. In addition, the tax laws have been criticized for permitting the dedication of land for agricultural purposes in districts zoned urban by the Land Use Commission, thus defeating the purpose of the Land Use Law."*

Tourism and urbanization have had an important impact on implementation of the law. The law has been administered to strongly encourage the development of tourist facilities in many natural or agricultural areas of the state. The state has attempted to guide this development to preserve the natural environment.

The commission has tried to limit other types of new development to areas next to urban zones. This policy has prevented urban sprawl. However, it has also produced a rapid increase in housing costs. This policy has created a shortage of land and forced development into areas where site improvement costs are high. "The land shortage has furthermore resulted in an absence of competition, thereby encouraging each segment of the housing industry to increase its profit margin. The overall consequence is that housing costs

*Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control, Council on Environmental Quality. 1972, p. 32.

in Hawaii are most than double the national average."*

Hawaii's present situation causes strong conflicts between development and conservation. The Land Use Law provides a method for the state to resolve these conflicts on the basis of a statewide policy. "The decision-making process would probably be more effective, however, if more closely-tied to a state planning process that provided the regulators with more current data and better analysis of the relevant policy considerations."**

VERMONT

ADMINISTRATION

In 1970, the Vermont legislature passed an act requiring statewide land use planning to govern all essential aspects of growth. The Land Use and Development Act, known as Act No. 250, is designed to promote environmental objectives as well as social and economic aims. It sets up an Environmental Board and nine district commissions to draft and enforce a plan. The plan is enforced by use of permits, which are required for subdivisions of ten or more lots and for commercial and industrial developments.

At the time the law was passed there was little local zoning in Vermont. Developments over one acre require a permit if they are located in an area with no local zoning. This feature of the legislation is an incentive to local governments to define their land use objectives and set up zoning controls. The law establishes a state/local partnership in which the state controls the larger developments and those areas outside local government jurisdiction. It encourages the local governments to control the smaller, in-town developments.

*Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control - Summary Report, Council on Environmental Quality, p. 6.

**Bosselman and Callies, op. cit., p. 7.

The lack of local zoning in Vermont probably played an important role in enactment of this legislation. Local governments were not regulating the large-scale developments of vacation homes.

The legislature was already concerned about the overall physical growth within the state when a proposed large-scale land development in southern Vermont became the focus of public interest. In response to citizens' objections, the Governor of Vermont appointed a study commission, known as the Governor's Commission on Environmental Control. The Commission's report, put out in January 1970, found that land development by large corporations had become a major activity in the state and posed an immediate threat to the state's environment. Act No. 250, passed later that year, in part adopted the recommendations of the Commission.

An Environmental Board and nine district commissions administer the Act. The Board is made up of nine members, all appointed by the governor. The Chairman of the Board serves two years and the other members serve four years. The Act does not require that members represent any particular social or economic group.

The nine District Environmental Commissions are sub-agencies of the Environmental Board. The jurisdictions of the district commissions follow county boundaries. Each commission has three members and these are also appointed by the governor.

The Environmental Board sets policy and serves in a quasi-judicial manner to review the decisions of the district commissions. The district commissions carry out the day-to-day responsibilities.

The Environmental Board may appoint a full-time executive officer and other

professional and administrative staff that it needs and can afford. The total amount spent annually on the land use program is $100,000.

The legislation directs the Environmental Board to prepare three plans. The Interim Plan simply describes the present land uses and natural resources. The Capability and Development Plan is to be a guide to the coordinated, efficient and economic development of the state including distribution of population and uses of the land. Finally, the Land Use Plan will be a map indicating the results of the Capability and Development Plan.

CONTROLS AND CRITERIA

A permit system for commercial and industrial developments as well as subdivisions is designed to ensure implementation of the land use plans. The Act states that business, individuals and government agencies must get a permit for:

(1) The construction or improvement on a tract or tracts of land owned or controlled by a person, involving more than 10 acres of land within a radius of five miles of any point on any involved land, for commercial or industrial purposes,

(2) The construction of improvements for commercial or industrial purposes on more than one acre of land within a municipality which has not adopted permanent zoning and subdivision bylaws,

(3) Any housing or multi-family dwellings, condominiums or trailer parks which involve ten or more units and are owned or controlled by a person within a radius of five miles of any point on any involved land, or

(4) Construction or improvements on a tract of land involving more than ten acres of land which is to be used for municipal or state purposes.

(5) Construction or improvements for commercial, industrial or residential use above the elevation of 2,500 feet.

Permit applications are filed with one of the nine district commissions. The state Agency of Environmental Conservation and the County Foresters review all permit applications. The Agency of Environmental Conservation formulates its policy on each application and files a statement of its views with the appropriate district commission.

A hearing is held after the Agency of Environmental Conservation gives the district commission its pre-hearing position paper. The commission must hold a hearing if anyone required to receive notice requests a hearing. Also an adjoining landowner may request a hearing.

The law requires the permit applicant to give notice of his filing to any municipality where the land is located, any municipal or regional planning commission affected, any adjacent Vermont municipality, municipal or regional planning commission of the land is located upon a boundary. The applicant must also publish a notice in the local newspaper.

The commission may choose to order a hearing on its own. If no one requests a hearing and the commission does not order one, the commission must act on the application within 60 days after the application is filed, or the application is automatically approved.

An applicant may appeal the commission's decision to the Environmental Board. The state appellate court would review any appeal from the Board's decision.

The legislation states that before issuing a permit the district commission or board must find that the subdivision or development:

(1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level;

and in relation to the flood plains, the nature of soils and sub-soils and their ability to adequately support waste disposal; the slope of the land and the effects of effluents; the availability of streams for disposal of effluents; and the applicable health and water resources department regulations.

(2) Does have sufficient water available for the reasonably foreseeable needs of subdivision or development.

(3) Will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

(4) Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

(5) Will not cause unreasonable highway congestion or unsafe conditions with respect to use of the highways existing or proposed.

(6) Will not cause an unreasonable burden on the ability of a municipality to provide educational services.

(7) Will not place an unreasonable burden on the ability of local governments to provide municipal or governmental services.

(8) Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.

(9) Is in conformance with a duly adopted development plan, land use plan or land capability plan.

An application cannot be denied solely for criterion (5), (6) and (7). However, the law clearly gives the Board and commissions wide discretion in attaching conditions to the permit.

Either public or private landowners may petition for variances from adopted

land use plans. Applicants request variances from the appropriate commission, which will hold a hearing if someone requests it.

"No variance from the final Land Use Plan may be granted unless the Petitioner shows that:

(1) the land is needed for a different use;

(2) the land is useable for the proposed use; and

(3) conditions and trends of development have so changed since the adoption of the existing classification as to warrant reconsideration."* The Environmental Board will set out more detailed regulations on the basis of these criteria.

The commissions act on the petitions for variances on the basis of the Board's regulations. The applicant can appeal a denial to the Board and can subsequently appeal to Vermont's highest appellate court.

ASSESSMENT

There are several problem areas in the law and its implementation including exemptions from the law, the interaction of planning and regulation and policy implementation. The law does not cover pre-existing development plans and this factor means that unregulated development will continue in some areas of Vermont. The large acreage requirements do not take into account the potential damage from strip development. Other types of exemptions do not bear any relation to the potential for damage. Even primitive recreational development requires a permit, but farming and forestry do not.**

*Elizabeth Haskell, et. al., Managing the Environment, Woodrow Wilson Center for Scholars, 1971, p. 304.
**Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control, Council on Environmental Quality, 1971, p. 80.

The creation of new planning agencies has been one of the successes of the law, but the law does not specify which plans have priority. The Environmental Board's policy positions do not become a part of the state plans. The district commissions can comment on the plans, but they do not play any role in their preparation.

Most of the planners view the plans as flexible instruments which must adopt to changing needs. However, many involved in the review process see the state and regional plans as zoning maps. Commission members and developers apparently will use the land use map just as a zoning map would be used. "The difference between planning in its traditional sense and planning having the augmented status provided by the Environmental Control Law accounts for considerable friction in the permit review process and for the deliberate pace at which the organization of the statewide planning process is proceeding."*

The sophistication of local parties to a hearing affects the nature of the adversary proceedings. One result of the law may be greater use of zoning controls and urban planning at the local level since the law doesn't apply to developments under acres in zoned towns and town planning is a requirement for permit issuance.

"The Environmental Control Law has been part of a massive holding action by the State of Vermont, opposing unplanned random development until the state's policies and priorities could be revised to deal with the pressures. The effort began with expanded local powers, and when pressure continued to build without substantial local response, the Environmental Control Law and various administrative rulings... resulted."**

*Ibid., p. 82.
**Ibid., p. 89.

Since the law's inception, the commissions have been evaluating development according to standards suggested by state agencies on a case-by-case basis. They have applied broader policies on the local and regional level and in some cases have enforced statewide policies. However, longer range plans must give the overall direction.

"Despite its problems, the administration of the Law seems to be progressing well. The critical process, however, is the preparation of state plans that can provide both flexible guides for developers and standards for the regulators. The presentation of these plans in 1973 will provide the real test of Vermont's land regulatory system."*

MAINE

ADMINISTRATION

Maine has also established a set of statewide land use controls. In 1970, a statute gave the states' Environmental Improvement Commission extensive power to regulate land developments. Any development of 20 acres or more come under the jurisdiction of the Commission.

Maine, like Vermont, has not had extensive local zoning and developers did not face restrictions in the way they used land. Recently, there has been a large increase in the number of developments, and second-home industry threatened to alter some of Maine's scenic areas. In addition, several companies proposed heavy industries near some of Maine's most valued natural sights. These two factors created the impetus for the legislation.

The Governor appoints ten members to the Environmental Improvement Commission for a period of three years. The membership must be made up of two representatives of manufacturing interests, two from municipalities, two

*Ibid.

representing conservation interests, two representing the "public," and two must be knowledgeable about air pollution.

The law authorizes an administrative staff and a director. It also encourages the Commission to utilize the skills and knowledge of other state agencies. Total appropriations for the Commission in FY 1971 were just over $1 million. These appropriations included $85,000 specifically for land use control.

The Commission's responsibilities other than land use control are:

(1) Recommendation of new water quality standards to each legislature;
(2) Supervision of the waste treatment plant construction program and provision of technical assistance on waste control to industries and towns;
(3) Promulgating ambient air and emission standards for the legislature to act on;
(4) Enforcement of all regulations under its jurisdiction;
(5) Establishment and maintenance of standards for the operation of municipal waste treatment plants;
(6) Approval of plans for proposed municipal drainage systems;
(7) Rule on applications for variances from air and water quality standards;
(8) Register sources of air contamination; and
(9) Undertake research in waste disposal.

CONTROLS AND CRITERIA

In land use control, the law instructs the Commission to control the location of large developments so that "such developments will be located in a manner which will have a minimal adverse impact on the natural environment of their surroundings." The statute justifies state level control by stating that "many developments because of their size and nature are capable of causing

irreparable damage to the people and the environment in their surroundings ... and... that the location of such developments is too important to be left only to the determination of the owners of such developments."

The method for achieving control over proposed developments is the permit system. The Commission requires a permit from the following types of development:

(1) A commercial or industrial development occupying 20 acres or more; and
(2) A development which includes drilling or excavating of natural resources.

The Act excludes logging which is Maine's major industry. However, it clearly includes industrial facilities such as factories, major commerce such as shopping centers and large housing developments. The Act is not clear whether a development by a public agency requires a permit.

A developer with plans coming within the statutory jurisdiction must file a permit application with the Commission. Within 14 days, the Commission must either call for a hearing or approve the application. The Commission's discretion is limited to four factors:

(1) "The financial ability of the developer to fully complete the project, including facets such as solid and liquid waste disposal and water supply;
(2) "The ability of the project as planned to avoid the hindrance of traffic movement and provide adequate parking and loading areas;
(3) "The proposed development has made adequate provision for fitting itself harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, natural resources or property values in the municipality or in adjoining municipalities; and
(4) "That the development will be consistent with the type of soil involved."*

*Elizabeth Haskell, Managing the Environment, p. 326.

An applicant can appeal the Commission's decision to the Supreme Judicial Court within 30 days. The law does not deal with the question of appeal from orders placing conditions without a hearing.

The statute appears to permanently preclude any heavy industry or deep and surface mining from previously undeveloped areas. Mining and heavy industry cannot locate in an area without adversely affecting "existing uses, scenic character,... or property value in.. adjoining municipalities." Documented legislative history does not clarify the meaning of this language. The legislature may have intended to limit heavy industry and mining to areas already contaminated by such activity. The statute defines natural environment to include: "the character, quality and uses of land, air, and waters in the area likely to be affected by such development, and the degree to which such land, air and waters are free from non-naturally occurring contamination." However, "if the legislature did intend to limit future heavy industry or mining to their present locations, and preserve those areas where the environment is now 'free from non-naturally occurring contamination,' then the statute does not make this clear."*

ASSESSMENT

The Commission has assigned only one staff member and an assistant to processing the permit applications. Because of the limited budget, the Commission does not have staff to investigate information in permits nor to follow up on enforcement of conditions in permits it issues. However, the staffs of other state agencies assist the Commission during the permit review process.

The law has created much public interest; and, because of this, the Commission generally learns of new development activity. The Commission is apparently limiting its focus to particular areas and types of development. It

*Ibid., p. 326.

processed only 136 applications in its first 15 months. The small number indicates the Commission's selectivity. "Thus, for example, waste-discharge licenses for emissions into existing sewer systems have been required only where the effluent increased the load 'significantly,' i.e., by 25 per cent or more. In general the Commission is exercising its jurisdiction within urban areas only to a limited degree."*

The primary control problem is the lack of a check procedure once the Commission issues permits. The failure to verify that conditions attached to permits have been met has made it difficult for prospective real estate buyers. They cannot determine if the property has been developed according to the law.

There have been only a few proposals for heavy industry. The State's Department of Economic Development encourages light industry rather than heavy industry to come to Maine. Consequently, the Commission's real workload has been the processing of permits for residential subdivisions. As of August 5, 1971, 83 per cent of the applications processed by the Commission have been for the construction of housing, about half of these for seasonal housing."**

The Commission's decisions on permits may be aggravating the state's housing shortage. Mobile home sales are leading permanent home sales three to one.

Some friction has developed between the Commission and local reviewing agencies when the locality thought it was more capable of evaluating an application. Normally, however, the state and local agencies have not come into conflict. "The existing harmony between state and local government undoubtedly stems from the fact that much of Maine is wholly without land use controls.

*Fred Bosselman and David Callies, op. cit., p. 196.
**Fred Bosselman and David Callies, op. cit., p. 198.

Only one-third of Maine's townships are 'organized' into municipal corporations, and of these, only 15 per cent are zoned."*

Finally, there is no overall state plan. "The major question for the future is whether the state can expand the Site Location Law into a more comprehensive land regulatory system that leaves the local issues to local governments but deals with major development proposals in the framework of a broader conception of state planning than the current Law contains."**

STATEWIDE CRITERIA AND STANDARDS

Several states have enacted legislation which guide the land use decisions of local agencies. In effect, the state sets up the criteria on which local agencies base their decisions or the state draws up land use controls for those areas of the state which are not regulated. Three states that have taken this approach are Colorado, Oregon and Washington.

COLORADO

ADMINISTRATION

The state legislature passed three bills in 1971 collectively called the Colorado Land Use Act. The bill passed because there was considerable concern over new construction of recreational and second-home development.

The legislation did several things to increase the effectiveness of planning in Colorado. The Land Use Commission was created in 1970. This Act increased the Commission's membership from seven to nine, and it established an advisory committee made up of representatives from commerce, industry, agriculture, conservation and natural resources together with four members of the General

*Ibid., p. 198.
**Ibid., p. 199.