



**PROGRAM OF POLICY STUDIES
IN SCIENCE AND TECHNOLOGY**

The George Washington University

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INVENTORIES, MONITORING AND EVALUATION
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TRENDS IN
STATE AND FEDERAL LAND USE LAW
RELATING TO INVENTORIES,
MONITORING AND EVALUATION

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PREFACE

Effective regulation of land usage and urban growth is now necessary more than ever before. The public interest demands that governments help alleviate problems of land utilization, perhaps most commonly seen in suburban sprawl and degradation of areas of critical environmental concern. Thus, it becomes important to understand the degree to which State and Federal statutes promote effective regulation.

One aspect of this subject is addressed herein through a description and analysis of selected State and Federal laws relating to land use inventories, monitoring, and evaluation. These three activities, when capably conducted, have a potential for improving our control over the inevitable development and growth of coming decades. Therefore, the principal question of this paper is: to what extent do State and Federal laws suggest, encourage, or require these activities?

Though less than comprehensive, this study does suggest partial answers to the above question. The degree to which answers are provided is due largely to the assistance of several individuals. They include Tatsuo Fujimoto of the Hawaii Land Use Commission; Robert K. Lane of the Environmental Policy Division, Congressional Research Service; Shelley M. Mark of Hawaii's Department of Planning and

Economic Development; Arthur Ristau of the State Planning Office in Vermont; Philip M. Savage of the State Planning Office in Maine; Philip H. Schmuck of Colorado's Division of Planning; Earl M. Starnes of Florida's Division of State Planning; William C. Jolly and Bryan Thompson of the Center for Natural Areas, the Smithsonian Institution; Stephen Thomson of the Office of Land Use and Water Planning, U.S. Department of the Interior; and James M. Brown, Louis H. Mayo, Dorn C. McGrath, Jr., Arnold W. Reitze, and Ernest Weiss, all of The George Washington University. However, only I am responsible for the study's shortcomings.

Charles M. Lamb
March 31, 1974

CONTENTS

I.	LAND USE PROBLEMS, SOLUTIONS, AND LAWS- - - - -	1
II.	STATUTES CONTROLLING LAND USE IN SELECTED STATES: DIVERSITY AND TRANSITION- - - - -	6
	Hawaii- - - - -	16
	Florida - - - - -	20
	Colorado- - - - -	25
	Vermont - - - - -	30
	Maine - - - - -	34
	Conclusions - - - - -	40
III.	RECENT FEDERAL LAND USE-RELATED LAWS AND A PROPOSAL - -	44
	The Rural Development Act of 1972 - - - - -	48
	The Coastal Zone Management Act of 1972 - - - - -	52
	The Land Use Policy and Planning Assistance Proposal- -	59
	Conclusions - - - - -	72
IV.	LEGAL TRENDS FOR LAND USE CONTROLS, INVENTORIES, MONITORING, AND EVALUATION: AN OVERVIEW- - - - -	75

I. LAND USE PROBLEMS, SOLUTIONS, AND LAWS

The United States faces the distinct likelihood of a land use crisis, perhaps in the next generation, unless forceful action is taken. As explained by one 1973 Senate report, "Sobering statistics suggest that, unless our land use decisionmaking processes are vastly improved at all levels of government, local, State, and Federal, the United States will be faced with a truly national land use crisis."¹ During the last few years most State governments, the Congress, and the Nixon administration have recognized this crucial need for improved utilization of privately owned land. Moreover, the average citizen is reportedly becoming more aware of land use problems.²

Reasons for widespread concern over land use surround the urban American. Uncontrolled large-scale development, demands for additional public services to meet expanding growth, rising taxes, suburban sprawl, deterioration of the environment,

¹ U.S. Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act, S. Rept. 93-197 to accompany S. 268, 93d Cong., 1st sess., 1973, p. 36.

² "The public is finally awakening", Russell E. Train recently observed. Train, Administrator of the Environmental Protection Agency, added that "Over the last three years [it] has been a lonely battle simply to get public attention focused on land use-issues. But that has changed now, as public concern is beginning to coalesce." Train quoted in Kenneth Brede-meir, "Builders Protest N. Virginia Curbs", Washington Post, January 3, 1974, p. A21, col. 1. For similar comments, see Robert H. Marden, "The Management Challenge of Land and Water Resources Planning", 46 State Government 152-153 (1973).

traffic congestion, and related growth traits profoundly affect the quality of life in beleaguered urban areas. Yet, of course, this is not to say that all growth is threatening. Rather, in the words of Robert C. Weaver, "What is menacing is the form growth may take and what it often does to our living and working patterns."³

With increasing awareness and severity of land use problems, solutions have been proposed. One principal means of avoiding this crisis lies in land use inventories, monitoring, and evaluation. As generally defined herein, an inventory is an accurate description and cataloguing of the present status and utilization of land, to include such concerns as growth patterns and critical environmental areas. Monitoring involves carefully observing and recording changes in land usage over time. Next, evaluation is based upon inventories and monitoring, analyzing whether land use and its changes are desirable or undesirable, then suggesting the best future land utilization in the public interest. Inventories and monitoring, in other words, constitute essential steps in describing land usage; evaluation involves analysis and prescription.

By adopting this three-phased approach, the United States should be better prepared to foresee--and perhaps preclude--

³ Robert C. Weaver, "National Land Use Policies--Historic and Emergent", 12 U.C.L.A. L. Rev. 719 (1965). For general discussions of growth-related problems, see Daniel R. Mandelker, Managing Our Urban Environment: Cases, Text & Problems, Second Edition (1971), Chapter 1; Charles R. Adrian and Charles Press, Governing Urban America, Fourth Edition (1972), Chapters 16-17; John C. Bollens and Henry J. Schmandt, The Metropolis: Its People, Politics, and Economic Life, Second Edition (1970), Chapters 7-10.

the future's land use challenge. In this regard, Senator Henry M. Jackson (D-Wash.) has noted that "Our land resources must be inventoried and classified; the nation's goals must be catalogued, and the alternatives evaluated in a systematic manner."⁴ A similar assessment has been offered by Dr. John M. DeNoyer of the U.S. Geological Survey: "An initial land use inventory of the country is a first step toward better land use management. The next step will require monitoring of changes in land use over time."⁵ A systematic evaluation of land use, deciding if changes are desirable, seems to be a third logical step in improved land use decision making. Secretary of the Interior Rogers C. B. Morton seemingly had this general process in mind when last year he wrote that land use planning should be ". . . systematic in its method. . . . Decisions must be based on adequate information and an understanding of the

⁴ Henry M. Jackson, "Foreword: Environmental Quality, the Courts, and the Congress", 68 Mich. L. Rev. 1073 (1970).

⁵ U.S., Congress, Senate, Committee on Aeronautical and Space Sciences, NASA Authorization for Fiscal Year 1974, Hearings, 93d Cong., 1st sess., 1973, Part 2, p. 1108. Dr. DeNoyer's testimony here relates to the use of satellite photography for inventories and monitoring. Experimental projects using data from the first Earth Resources Technology Satellite (ERTS-1) have demonstrated the value of inventories, monitoring, and evaluation for land use planning purposes. For an explanation, see the testimony of Professor Robert B. Simpson at ibid., pp. 1062-1076. Also see "Third ERTS Symposium: Abstracts", December 10-14, 1973, Statler Hilton Hotel, Washington, D.C., sponsored by NASA/Goddard Space Flight Center, papers L 1 through L 16; S. C. Freden and E. P. Mercanti, eds., "Symposium on Significant Results Obtained from ERTS-1", NASA SP-327, May, 1973. On the other hand, field surveys, highway and tax maps, aerial photography, and other traditional sources of information are also used for planning purposes. The future will likely find planners employing these traditional data sources and ERTS data for analyzing land use problems.

environmental . . . impacts of various alternative uses of the land."⁶

Yet these two points--the possibility of a national crisis in land use and the value of inventories, monitoring, and evaluation to help avoid such a crisis--constitute only part of the land use picture in the United States. Equally critical is the legal environment in which land use problems and potential solutions exist. Without an understanding of land use law in this country, one is only aware of impending problems and likely solutions, not what may be accomplished under the law to solve these problems through such activities as inventories, monitoring, and evaluation.

⁶ Rogers C. B. Morton, "Land Use: The National Environmental Strategy", 46 State Government 148 (1973). A 1973 National Science Foundation report explicitly called for research in this general area:

Numerous programs and agencies dealing with environmental quality through various forms of direct and indirect land-use planning operate with little if any knowledge of their effectiveness. Improved methods of monitoring and evaluating ongoing activities in the environmental/land use field by designing, installing, and operating monitoring systems for action agencies should be explored. Among the questions to be answered are: What proportion of a program or agency budget should be allocated to monitoring and evaluation? Who should do the evaluation? Where should the evaluation be lodged in the organization structure of the public system and what relationships should exist between the evaluator, the officials of the program or agency being evaluated, higher levels of government, and the public? How can adverse evaluation results be communicated to program officials in such a way that it will be used in the most constructive manner?

This paper addresses these aspects of land use law by describing and analyzing recent State and Federal statutory provisions relating to land use inventories, monitoring, and evaluation. In pursuit of this objective, broader facets of the laws are often discussed, promoting an understanding of the relative importance of these three activities in the overall effort of controlling land use patterns. To make the study of manageable scope, prominent land use statutes are first surveyed in fifteen selected States, with emphasis on States with the most stringent laws. Then attention is focused on two noteworthy Federal land use measures and a major proposal. The concluding section expresses the view that State and Federal land use law may allow the nation to anticipate and avert land use problems of crisis proportions, but that certain State and Federal legislation is presently best designed to meet this challenge. The paper's contents clearly demonstrate, however, that this is not a comprehensive study of State and Federal land use measures relating to inventories, monitoring, and evaluation. Instead, it is an introduction to that subject, providing a few generalizations and suggesting further research which may be desirable.

II. STATUTES CONTROLLING LAND USE IN SELECTED STATES: DIVERSITY AND TRANSITION.

Just as variety characterizes the States, State governments have authorized varying degrees of land use planning and control over the last decade.⁷ Within the last year, this diversity of land use law in the different States has been examined and explained from several points of view. From the standpoint of State development plans, one recent study evaluated the laws of all fifty States between 1967 and 1972.⁸ It concluded that nine States had adopted a "significant" development plan, nineteen had a "moderate" plan, and in twenty-two plans were "limited." From another standpoint, that survey found that nine States had established "significant" development controls, twelve had "moderate" controls, and in twenty-nine controls were "limited."

Other researchers, employing a somewhat different approach, concluded in 1973 that half the States possess laws providing

⁷ For discussions of State land use and planning law during the 1960's and the early 1970's, see Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (1971); Note, "State Land Use Regulation--A Survey of Recent Legislative Approaches", 56 Minn. L. Rev. 869 (1972); "Recent Trends in State Planning Legislation: A Selective Survey", 16 Buffalo L. Rev. 801 (1967); Donald G. Hagman, Urban Planning and Land Development Control Law (1971), pp. 33-35.

⁸ Anthony James Catanese, "Reflections on State Planning Evaluation", in Richard H. Slavin and H. Milton Patton, eds., State Planning Issues (1973), p. 27. This article also rates the fifty States according to "functional planning coordination", "regional planning coordination and resource allocation", "regional and local technical assistance", "planning information systems", "capital and operating budget coordination", "applied planning research", and "planning stimulation and support."

for a State land use plan and nine allow State control over local planning.⁹ By contrast, twenty-three States have sanctioned neither State land use control nor a State plan. According to the same study, a low degree of legislative activism and a high degree of diversity is also obvious from other viewpoints. Only ten of the thirty-one coastal States, for example, have enacted statutes authorizing State review of local coastal zone management, just fourteen legislatures have passed laws establishing State standards for wetland development, and merely seven States explicitly require a State permit for siting power plants and related facilities. On the other hand, twenty-six States regulate surface mining, an area of relatively widespread State control.

As mentioned earlier, the following pages focus upon State land use law from yet another perspective: whether States authorize land use inventories and monitoring as a basis for systematic evaluation. In doing this, it is also necessary generally to discuss State regulatory approaches, to provide a grasp of the exact roles of inventories, monitoring, and evaluation in States' land use control efforts.

Land use law was investigated for fifteen States--Colorado, Delaware, Florida, Hawaii, Indiana, Kansas, Maine, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Utah,¹⁰ Vermont,

⁹ The discussion in this paragraph is based on Stephen Suloway, ed., "A Summary of State Land Use Controls", (Land Use Planning Reports, 1973), pp. 28-29.

¹⁰ According to an official of the Office of Land Use and Water Planning, U.S. Department of the Interior, Utah unexpectedly passed in mid-March, 1974, a comprehensive land use control law. However, a copy of that statute was not received in time to be discussed herein.

and West Virginia. These States were not arbitrarily chosen. Rather, selections were made from all major regions of the nation, from States with both strong and weak land use controls, high and low population densities, and varying degrees of wealth and industrialization. Nonetheless, while these fifteen States represent somewhat of a cross-section of the country, they are not a scientific sample and, therefore, their legislation is not thought necessarily to be representative of that in all fifty States.

Table 1 presents the general results of the legal survey of fifteen States and, an item of related interest, the relative sophistication of the selected States' planning information systems as approximated by another study:¹¹ In brief, five of the fifteen States shown in Table 1 require, encourage, or suggest that the State conduct land use inventories, monitoring, and evaluation for major portions, if not all, the State. Thus, laws of those five States are emphasized in the upcoming pages. Note, however, that for the fifteen States

¹¹ See Catanese, *supra*, n. 8. Professor Catanese defines "significant" as "sophisticated development stage"; "moderate" as "being developed or modest stage"; and "limited" as "initial development stage or none." The comparative model developed by Catanese is not thought to be perfected at this time. Indeed, the possibility exists that his model is oversimplified and that it may inaccurately describe a State's ability to secure reliable information on certain specific land use matters. Catanese's article is also probably based on 1971 or 1972 information. His findings, though, seem generally dependable and are relied on here because of the absence in the literature of more refined comparisons of State information systems.

Table 1
STATE STATUTORY REQUIREMENTS AND INFORMATION SYSTEMS

STATES	LEGAL REQUIREMENTS IN SELECTED STATES FOR STATEWIDE LAND USE INVENTORIES, MONITORING, AND EVALUATION	SOPHISTICATION OF INFORMATION SYSTEMS IN THE SELECTED STATES
Colorado	Colorado's Land Use Commission has been assigned the responsibility for designing a comprehensive land use plan founded on advanced land use planning techniques. And, while the Colorado Land Use Act of 1971 has not been completely implemented, it seems to authorize some form of land use inventories, monitoring, and evaluation. But land use regulation is still locally-oriented in Colorado, and the State's role remains limited.	Limited
Delaware	The Delaware Legislature has passed coastal and wetlands statutes regulating land use in those areas. Too, the State has an overall development plan. However, Delaware has yet to adopt requirements for statewide land use inventories, monitoring, and evaluation.	Moderate
Florida	Significant progress has been made in Florida for controlling development and land use. In particular, the State planning agency is authorized to recommend which areas are of critical State concern and which developments are of regional impact. Inventories, monitoring, and evaluation are being initiated and should be ongoing activities in the future.	Limited
Hawaii	Generally speaking, the most stringent land use control law in the United States was originally passed by the Hawaii Legislature in 1961. When interpreted along with other planning statutes, the 1961 law seems clearly to authorize inventories, monitoring, and evaluation.	Significant

Table 1 (Continued)

STATES	LEGAL REQUIREMENTS IN SELECTED STATES FOR STATEWIDE LAND USE INVENTORIES, MONITORING, AND EVALUATION	SOPHISTICATION OF INFORMATION SYSTEMS IN THE SELECTED STATES
Indiana	This State--unlike its Great Lakes neighbors Wisconsin and Michigan--has made comparatively little progress in land use planning and development controls. Indiana does, however, regulate surface mining.	Moderate
Kansas	While Kansas may soon be stimulated to pass significant land use statutes as a result of Federal encouragement and grants-in-aid, its government has generated only limited and rather weak planning and control requirements.	Moderate
Maine	The core of Maine's land use law consists of three statutes: the Site Selection Act, the Mandatory Zoning and Subdivision Act, and the law establishing the Maine Land Use Regulation Commission. Inventories, monitoring, and evaluation are not specifically authorized but seem to be an integral part of Maine's planning process. For example, these activities are partially implemented in the case of shorelines and land use in "unorganized" areas.	Limited
Mississippi	This Deep South State apparently continues to cling to the concept of local and regional land use planning and control. No Mississippi requirements exist for statewide inventories, monitoring, and evaluation.	Limited
Missouri	Perhaps surprisingly, the Missouri Legislature has enacted few land use development and control measures. Nor has significant support been demonstrated for augmenting the State's land use law.	Limited

Table 1 (Continued)

STATES	LEGAL REQUIREMENTS IN SELECTED STATES FOR STATEWIDE LAND USE INVENTORIES, MONITORING, AND EVALUATION	SOPHISTICATION OF INFORMATION SYSTEMS IN THE SELECTED STATES
Oklahoma	In some areas of land use planning and control, Oklahoma has witnessed active support for moderate regulation. Nonetheless, the State currently remains without legal requirements for statewide inventories, monitoring, and evaluation.	Moderate
Pennsylvania	Concern for land use has surfaced in Pennsylvania, but significant legislation has yet to be passed. It may be, though, that the State's general concern for planning will facilitate legislative action in the near future.	Moderate
Tennessee	While Tennessee maintains a general State planning program, it has yet to establish significant statewide development controls. Surface mining is regulated by the State, however.	Limited
Utah	Proposals for development controls have been considered by the Utah Legislature. But, prior to March, 1974, the State possessed no clear-cut mandate to inventory, monitor, and evaluate land use. This situation may have changed very recently, however (see <u>supra</u> , n. 10).	Limited
Vermont	Vermont's progressive, decentralized stance in land use and development is based on the division of the entire State into seven environmental districts. District commissions, following general State guidelines, administer Vermont's permit system which closely regulates new development. But though minor activities are being conducted, inventories, monitoring, and evaluation are not required by law.	Limited
West Virginia	Minimal progress has been made in West Virginia for statewide planning and control.	Limited

as a whole, statutes usually do not explicitly require these three activities for statewide planning purposes.

In addition to presenting various statutory provisions relating to land use inventories, monitoring, and evaluation, the succeeding discussion will, where possible, pursue five secondary objectives with regard to the five more advanced States. These secondary objectives are to: (a) discuss the general provisions of land use control statutes and to determine the extent to which there is authority for extensive land use control; (b) suggest whether that responsibility has been implemented; (c) ascertain if adequate resources have been appropriated in those five States to carry out that responsibility; (d) speculate as to whether those particular approaches to State land use control seem to have been effective to this point-in-time; and (e) determine the general views of planning officials toward Federal land use legislation, how aware they are of statutory provisions relevant to their control activities, and how they feel those provisions could assist the State in solving its land use problems.

Telephone interviews and correspondence with State planning officials were primarily used in approaching these secondary objectives. Table 2 summarizes the results of those interviews and that correspondence.

TABLE 2
SUMMARIZED FINDINGS ON SECONDARY OBJECTIVES

Hawaii ^a	When contrasted to other States, Hawaii maintains perhaps the most centralized and extensive land use control program of all. This approach seems effective to this point-in-time, and State agencies have assumed the responsibility for implementing the program from the State level. Hawaii's Department of Planning and Economic Development, like most State planning agencies, is unable immediately to carry out its programs to the fullest extent desirable. However, when compared to many States, Hawaii's legislature appears to have adequately funded planning activities, though the planning and Land Use Commission staffs are somewhat small in size. With regard to Federal land use-related legislation, Hawaii officials supported a national land use act and similar legislative initiatives. But presently the State is not receiving a great deal of assistance from Federal programs. A small amount of money has been given to the State under the Rural Development Act of 1972, and Hawaii is now applying for funds under the Coastal Zone Management Act of 1972. As in most States, the primary source of Federal funds, at present, is through the '701 housing program.
Florida ^b	Local governments in Florida have been unable, by and large, to solve their land use problems. The State has therefore assumed a major planning role, primarily through the Land and Water Management Act of 1972. Implementation of this law is a principal responsibility of the Division of State Planning, an agency which seems well on the way toward carrying out its mandate. But in the past a problem with State level land use control in Florida has involved budgetary matters. For 1973 the appropriation for the Division of State Planning was some 30 to 40 per cent below requests. For fiscal 1974-1975 expectations are considerably more optimistic, and unless the State Legislature substantially cuts the Governor's recommendations, the Division should have adequate funds to implement Florida's land use legislation. Regardless

^a Based on interviews with Shelley M. Mark, Director of the Hawaii Department of Planning and Economic Development, Honolulu, Hawaii, March 25, 1974, and Tatsuo Fujimoto, Executive Officer of the Hawaii Land Use Commission, Honolulu, Hawaii, March 23, 1974; and the law and literature surveyed at infra, pp. 16-20

^b Based on an interview with Earl M. Starnes, Director, Division of State Planning, Department of Administration, Tallahassee, Florida, March 15, 1974; and the law and literature surveyed at infra, pp. 20-25.

TABLE 2 (Continued)

SUMMARIZED FINDINGS ON SECONDARY OBJECTIVES

Florida (cont.)	of this outcome, though, development in the State is being more effectively regulated than ever before, and the State's general regulatory approach seems relatively effective to this point-in-time. Regarding Federal land use legislation, Florida officials have outwardly supported a national land use bill. They also, for the most part, seem aware of specific provisions of other Federal land use-related statutes. Still, the State has received virtually no Federal funds under such laws as the Coastal Zone Management Act and the Rural Development Act.
Colorado ^c	Broadly speaking, of these five States, Colorado maintains the weakest approach to regulating land use from the State level. This does not appear to be the fault of Colorado law so much as how it has been implemented. The Colorado Land Use Act of 1971 reads like a relatively strong measure for controlling usage of land. But in practice the State has not assumed this responsibility; city and county governments continue to perform this function through zoning and subdivision regulations. Other deficiencies relate to appropriations, for the activities of the State Division of Planning have been inadequately funded in the past. This situation may improve in the coming year, however. On the other hand, State officials seem to feel that many of Colorado's land use problems would definitely be assisted by a national land use measure. Yet, to date, the State has received only nominal funds under Federal land use-related programs, aside from 701 money.
Maine ^d	The responsibility for regulating land utilization from the State level has been accepted in Maine. Practically all of the State comes under the jurisdiction of either the Site Selection Act, the Mandatory Zoning and Shorelines Act, or the law establishing the State Land Use Regulation Commission. Each of these laws are being enforced, but a few problems have developed in implementation. For example, the Land Use Regulation Commission is essentially controlling development attempts of a few major corporations, and a variety of law

^c Based on an interview with Philip H. Schmuck, Director, State Division of Planning, Denver, Colorado, March 21, 1974; and the law and literature surveyed at infra, pp. 25-29.

^d Based on an interview with Philip M. Savage, State Planning Director, State Planning Office, Augusta, Maine, March 11, 1974; and the laws and literature surveyed at infra, pp. 34-39.

TABLE 2 (Continued)

SUMMARIZED FINDINGS ON SECONDARY OBJECTIVES

Maine (cont.)	suits have resulted. Implementation has also been slowed because the State Planning Office has been inadequately funded for several years. Although appropriations have substantially increased recently, they are probably still insufficient to carry out the dictates of the State's land use laws. Yet, overall, Maine's general approach to land use control seems relatively effective. Finally, Federal land use legislation is failing to meet the State's need for assistance in this area. Maine expects to begin receiving some Federal funds under the Coastal Zone Management Act in the near future but has received no assistance under the Rural Development Act. Maine planning officials generally support passage of a national land use law.
Vermont ^e	According to most indicators, Vermont has been a leading State in attacking uncontrolled land usage. Vermont's approach is decentralized in its administration since environmental district commissions administer the permit system for new development. Appeals from this system go to the State Environmental Board. However, this approach to land use regulation has not been entirely implemented. A critical point in Vermont's efforts has been inadequate funds for carrying out control responsibilities. The State Planning Office budget was relatively low in 1973, and that figure has been cut by roughly 20 per cent for 1974. But despite these funding problems, the permit system seems reasonably effective in regulating development which the State Planning Office deemed undesirable. Finally, Vermont officials generally support a national land use law. Other Federal legislation, such as the Rural Development Act, has failed to assist Vermont's program because no Federal funds have been forthcoming. The conclusion seems to be that Federal grants and land utilization guidelines would be acceptable, if not welcomed, in Vermont.

^e Based on an interview with Arthur Ristau, Director of Planning, State Planning Office, Montpelier, Vermont, March 11, 1974; and the laws and literature surveyed at infra, pp. 30-34.

Hawaii

Geographic and economic considerations, plus a heritage of strong central government, largely explain Hawaii's early and progressive approach to land use regulation.¹² The Hawaiian Land Use Law of 1961¹³ established a State Land Use Commission which has divided Hawaiian land--public and private--into four principal land use districts: urban, rural, agricultural, and conservation.¹⁴ Generally speaking, land in those districts can be utilized only for purposes mandated by the Land Use Law or permitted by the Commission.

The Hawaiian Land Use Law created a precedent now being weighed in other States.¹⁵ That precedent assumes that privately owned land is a private commodity and a public resource, ". . . that the state would treat [private] land not merely as a commodity to be bought and sold, but also as a natural resource to be protected."¹⁶ In the early 1960's, this type

¹² See Bosselman and Callies, supra, n. 7, pp. 5-7.

¹³ Hawaii Rev. Statutes §205 (Supp. 1972). The statute was amended in 1963, 1965, 1969, 1970, and 1972. Some suggest that the 1974 legislative session will pass an even stricter land use law. See Shelley M. Mark, "It All Began in Hawaii", 46 State Government 188, 195 (1973). For related statutes in Hawaii, see Hawaii Rev. Statutes §§201, 206, and 223.

¹⁴ Hawaii Rev. Statutes §205-2.

¹⁵ According to some, the Hawaiian approach ". . . is an indication of the general trend in land use control." Robert Bruce Evans, "Regional Land Use Control: The Stepping Stone Concept", 22 Baylor L. Rev. 1 (1970).

¹⁶ James Nathan Miller, "Hawaii's 'Quiet Revolution' Hits the Mainland", 62 National Civic Review 415 (1973). For a more detailed statement of this concept, see Bosselman and Callies, supra, n. 7, pp. 314-318.

of statewide land use control had not been adopted by other States. Rather, authority had been delegated, for the most part, to local governments to plan and zone. By contrast, while Hawaii's counties still make zoning decisions with regard to urban land, the State Land Use Commission and the Department of Land and Natural Resources exercise control over land use in agricultural, rural, and conservation districts. But district boundaries may be changed by the Commission, and individuals may petition the State Commission (and county commissions) for permits allowing land usage other than that prescribed by classifications.¹⁷

The 1961 Hawaiian statute does not explicitly require land use inventories, monitoring, and evaluation. However, as implemented, this and related State planning laws have provided the legal foundation for such activities as part of the State's comprehensive planning process.¹⁸ Hawaii's Land Use Law stipulates that the Land Use Commission's field officers are to be "qualified" in land use analysis. Too, the Act specifies that "Departments of the state government shall make available to the commission such data, facilities, and personnel as are necessary for it to perform its technical duties."¹⁹ After the

¹⁷ See Hawaii Rev. Statutes §205-6.

¹⁸ Telephone interview with Dr. Shelley M. Mark, Director of the Hawaii Department of Planning and Economic Development, Honolulu, Hawaii, March 25, 1974; telephone interview with Tatsuo Fujimoto, Executive Officer, Hawaii Land Use Commission, Honolulu, Hawaii, March 23, 1974. Hawaii now has a statewide information system which provides computerized land use data processing.

¹⁹ Hawaii Rev. Statutes §205-1.

law's passage in 1961, the Land Use Commission was responsible for preparing maps showing the classification of land into the four districts and to ". . . prepare and furnish each county with copies of classification maps for that county showing the district boundaries adopted in final form."²⁰ The law provides that, subsequent to the initial classification, ". . . the land use commission shall make a comprehensive review of the classification and districting of all lands and of the regulations at the end of each five years following the adoption thereof."²¹ Hence, periodic review of the districts would seem to entail a new inventory and evaluation, if not continual monitoring, of statewide land use. Further, in special cases such as "shoreline setbacks",²² if there is a request for land usage ordinarily unauthorized, the Land Use Commission ". . . may require that the plans be supplemented by accurately mapped data showing natural conditions and topography relating to all existing and proposed structures, buildings and facilities."²³

²⁰ Ibid., §205-3

²¹ Ibid., §205-11.

²² Shoreline setbacks are defined as ". . . all of the land area between the shoreline and . . . that line established by the State land use commission or the county running inland from and parallel to the shoreline at a horizontal plane." Ibid., §205-31.

²³ Ibid., §205-35 (a).

Thus, in Hawaii there is ample State authority for progressive land use regulation, and the responsibility has been accepted, by and large. Moreover, land use inventories, monitoring, and evaluation have been pursued under various statutory provisions relating to the State's comprehensive planning process. Such activities should be capably conducted if, as Table 1 indicates, Hawaii possesses a sophisticated information system. Beyond that, much credit belongs to the Land Use Commission, which has played a vigorous role in implementing the State Land Use Law. The Commission has responded to land utilization problems; it has adjusted district classifications to changing conditions; and it has provided high standards for land use by resisting pressures for continuing development. As of late 1970, some 200 petitions had been filed with the Commission to rezone urban districts to include land previously classified for rural, agricultural, or conservation purposes. "The decisions of the Land Use Commission on these applications constitute one of the key elements of the state's land regulatory system."²⁴ And these decisions have, for the most part, favored preserving agricultural lands of the State.²⁵ It should be mentioned, though, that problems have

²⁴ Bosselman and Callies, *supra*, n. 7, p. 8. Also, interviews with Shelley M. Mark and Tatsuo Fujimoto, *supra*, n. 18.

²⁵ See Mark, *supra*, n. 13, p. 191. Nevertheless, under its responsibility to thoroughly review land use district boundaries every five years, the Commission reclassified a considerable amount of land in 1969. See Bosselman and Callies, *supra*, n. 7, p. 10. See also David Meckler, "Hawaii Had a Good Idea . . . But It Failed", *Planning*, Vol. 39, No. 8, September, 1973, p. 20.

been reported concerning the Hawaiian approach: conflict has occurred among various State agencies involved in land use control; the State plan may have been obsolete for a period of time; the Land Use Commission's decision-making process could be improved; and some Hawaiians disagree as to whether the Commission bases its decisions on the "right policies."²⁶ But, combined with Hawaii's successes, these problem-areas seem to have strengthened the innovative land use attitude in the State. As expressed by Shelley M. Mark, Director of the Department of Planning and Economic Development, Hawaii ". . . sees much accomplished, much more not accomplished, and is very busy at the task of improving and building upon what has already been achieved."²⁷

Florida

Within the South, perhaps the greatest advances in State land use regulation have occurred in Florida. The Florida Legislature, faced with a substantial crisis and realizing it could no longer sit on its hands, passed the Florida Environmental Land and Water Management Act of 1972.²⁸ The crisis

²⁶ See Shelley M. Mark, "Hawaii Land Use Planning and Control", HUD Challenge, October, 1973, p. 8; Bosselman and Callies, supra, n. 7, pp. 11-34, passim; Meckler, supra, n. 25.

²⁷ Mark, supra, n. 13, p. 189.

²⁸ Fla. Stat. Ann. §380 (Supp. 1972). Additionally, the Legislature passed the Florida Land Conservation Act of 1972, Fla. Stat. Ann. §259.01; the Florida State Comprehensive Planning Act of 1972, Fla. Stat. Ann. §23.011; and the Florida Water Resources Act of 1972, Fla. Stat. Ann. §373.013.

developed in south Florida, an area of rapid urban growth trends. South Florida's water supply suffered partial depletion due to drought conditions in the late 1960's; this was accompanied by subsequent grassland fires covering seven million acres.²⁹ Fresh water for personal, business, and industrial use was in short supply. Furthermore, the Miami area was periodically beleaguered by smoke from burning grasslands, creating health and transportation hazards. This situation produced not only an awareness of inadequate water management but, also, the recognition ". . . that a water management system could not be effectively implemented until the use of the land was more adequately controlled."³⁰ Governor Reubin Askew appointed a Task Force on Resource Management which drafted a bill. A variety of forces and the State Legislature joined together to support and enact the Environmental Land and Water Management Act.³¹

The 1972 Florida law is more far-reaching in its implications than its title infers. As will be seen, it is not just concerned with land and water management. Instead, the Act partially adopts the 1971 Model Land Development Code designed

²⁹ See Richard G. Rubino, "An Evaluation: Florida's Land Use Law", 46 State Government 172 (1973).

³⁰ Ibid., p. 173

³¹ For other factors that seem to have influenced support for the new law, see William K. Reilly, ed., The Use of the Land: A Citizen's Guide to Urban Growth (1973), pp. 63-64. For more recent land use law developments in Florida, see Land Use Planning Reports, Vol. 2, No. 4, February 25, 1974, p. 9.

by the American Law Institute.³² It is also similar to the proposed Land Use Policy and Planning Assistance bill under consideration in Congress in that the Florida law allows restrictions on developments of regional impact and development in areas of critical environmental concern.

To begin with, the Environmental Land and Water Management Act empowers the State land planning agency to:

. . . recommend to the administration commission [the Governor and the Cabinet] specific areas of critical state concern. In its recommendation the agency shall specify the boundaries of the proposed areas and state the reasons why the particular area proposed is of critical concern to the state or region, the dangers that would result from uncontrolled or inadequate development of the area, and the advantages that would be achieved from the development of the area in a coordinated manner and recommend specific principles for guiding the development of the area.³³

The provision continues by requiring land use inventories-- which were completed in May, 1973--to detect critical areas for State owned lands:

³² See U.S., Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy Legislation, 93d Congress: An Analysis of Legislative Proposals and State Laws, 93d Cong., 1st sess., 1973, pp. 372-479. (Prepared by the Environmental Policy Division; Congressional Research Service, Library of Congress.) Also see David G. Heeter and Frank S. Bangs, Jr., eds., Land Use Controls Annual, 1971, (1972).

³³ Fla. Stat. Ann. §380.05(1)(a). For the limitations upon what areas may be designated as of critical state concern, see ibid., §380.05(2). References to the State land planning agency mean the Division of State Planning in the Florida Department of Administration. See Ruino, supra, n. 29, p. 175; Division of State Planning and Community Affairs, Commonwealth of Virginia, Critical Environmental Areas, (1972), p. 81.

However, prior to the designation of any area of critical state concern by the administration commission, an inventory of lands owned by the state shall be filed with the state land planning agency. The state land planning agency shall request all political subdivisions and other public agencies of the state and federal government to submit an inventory of lands owned within the State of Florida.³⁴

Hence, decisions as to the designation of areas of critical State concern are made by the Governor and his Cabinet. The State planning agency recommends to the Governor and the Cabinet which portions of Florida are critical areas. In turn, local planning offices may make similar recommendations to the State planning agency.³⁵ There is, then, a limited State role with emphasis on local preparation and administration of regulations according to State guidance.

Insofar as developments of more than local influence are concerned, the 1972 Florida Act states that the Governor and the Cabinet shall be advised by the State land planning

³⁴ Fla. Stat. Ann. §380.05(1)(a). This inventory was discussed during a telephone interview with Earl M. Starnes, Director, Division of State Planning, Florida Department of Administration, Tallahassee, Florida, March 15, 1974. According to Mr. Starnes, in conducting this inventory the Department of Geography of the Florida State University researched county records and the files of agencies controlling State lands.

³⁵ Fla. Stat. Ann. §380.05(3). For details regarding relationships between local, regional, and State planning agencies in the process of designating and regulating an area of critical concern, see ibid., §§380.05(3)-(18).

agency as to developments thought to be of regional impact.³⁶ Then, the Governor and Cabinet shall designate developments as having a regional impact after considering their effects upon the environment, transportation, the area's population, the size of the development, further development that may be generated, and any unique characteristics of the area where the development occurs.³⁷

Therefore, in summary, Florida's Environmental Land and Water Management Act of 1972 authorizes a progressive approach to land use control. An inventory of State owned land is required prior to the effectiveness of the critical area sector of the law. However, detailed land use inventories are not required for every individual critical area. State review of local development orders issued in each area of critical State concern and for each development of regional impact is also Florida's technique for monitoring developments of State or regional concern. Yet, generally, Florida's information system is not sophisticated, though its future seems

³⁶ Ibid., §380.06(2). For definitional purposes, "Development of regional impact," as used in this section, means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Ibid., §380.06(1).

³⁷ Ibid., §380.06(2)(a)-(f). For the circumstances under which development may proceed even if it is of regional impact, see ibid., §380.06(5).

promising.³⁸ As indicated in Table 2, other problems may relate to funding and implementation. The fiscal 1973-1974 budget for the Division of State Planning appears to have been somewhat inadequate for thoroughly implementing its responsibilities,³⁹ and State officials have experienced some problems in carrying out the Act.⁴⁰

Colorado

Of the States surveyed in this study, Colorado is unique in a sense. One would assume from reading the Colorado Land Use Act of 1971⁴¹ that the State could and would have taken a progressive regulatory stance. But, in practice, the law has not been strictly implemented. Thus, while Colorado may be ahead of some States in the "quiet revolution," its land use control activities have generally been less effective than in Hawaii,

³⁸ The foregoing discussion is based on the interview with Earl M. Starnes, *supra*, n. 34. Mr. Starnes also explained that eventually the Florida information system will be integrated to include data on wetlands, soils, and other natural systems, and will be capable of relating that data to a computerized State economic model now under development.

³⁹ *Ibid.* However, Mr. Starnes felt that the Governor's budgetary recommendations for the Division for fiscal 1974-1975 would be sufficient for State land use activities.

⁴⁰ Speech delivered by Earl M. Starnes at the National Symposium on Resource and Land Information, Reston, Virginia, November 8, 1973, sponsored by the Council of State Governments and the U.S. Department of the Interior.

⁴¹ Colo. Rev. Stat. Ann. §106-4 (Supp. 1971).

Florida, Vermont, and Maine.⁴²

Colorado's growing concern over land utilization was publicized in November, 1972, when the State's voters rejected hosting the 1976 Winter Olympics.⁴³ Yet, prior to that time, the General Assembly had passed the Land Use Act of 1971. The law was enacted because the State had experienced a substantial influx of second-home residents and vacationers during the 1960's. They were accompanied by intensified development, particularly along the "Front Range" of the Rocky Mountains.⁴⁴ While the resulting land use problems are not expected to be totally solved by the 1971 law, it may provide the means whereby a few solutions will be forthcoming.

The Colorado Land Use Act of 1971 enlarges the membership and increases the responsibilities of the State Land Use Commission.

⁴² Telephone interview with Philip H. Schmuck, Director, State Division of Planning, Denver, Colorado, March 21, 1974. According to Mr. Schmuck, though Colorado is in ways ahead of some States with regard to land use control, ". . . as far as an integrated approach to the whole land use question, Colorado isn't very far ahead of anybody."

⁴³ See "Colorado Denies Olympics Taxes"; New York Times, November 8, 1972, p. A31, col. 1. For a supportive interpretation of this decision, see John D. Vanderhoof, "An Affirmative View: Winter Games: An Olympian Conflict", 46 State Government 136-137 (1973). For a contrasting perspective, see Richard D. Lamm, "An Opponent's View: Winter Games: An Olympian Conflict," ibid., pp. 138-140.

⁴⁴ For one illustration of unregulated, rapid development in Colorado, see the discussion of Summit County in Miller, supra, n. 16, pp. 415-416. For a more general discussion of Colorado's development, see Reilly, supra, n. 31, pp. 44-46; "Colorado Study Shows Rural Land Losses", The Farm Index, November, 1973, p. 10.

The Commission is given the duty of ". . . [developing and holding] hearings upon state land use plans and maps and related implementation techniques."⁴⁵ More specifically, the Commission is assigned the "temporary emergency power"

. . . to develop, hold hearings upon, and submit to the general assembly a progress report by February 1, 1972, an interim plan by September 1, 1972, and a final land use planning program by December 1, 1973. All such submittals shall relate to a total land use planning program for the state of Colorado and shall include related implementation techniques, which may include but need not be limited to an environmental matrix, management matrix, growth monitoring system, and impact model. In developing the land use planning program, the commission shall utilize and recognize to the fullest extent possible, all existing uses, plans, policies, standards, and procedures affecting land use at the local, state, and federal levels and particularly note where, in its opinion, deficiencies exist. The land use planning program shall also specify development policy and procedures for the future.⁴⁶

This provision for a growth monitoring system, if forcefully implemented, would have been a particularly progressive step. But the problem has been a lack of implementation. According to Philip H. Schmuck, Director of the State Division of Planning, the Commission had originally foreseen an elaborate growth monitoring system, but as time passed this anticipated program

⁴⁵ Colo. Rev. Stat. Ann. §106-4-1(2). In carrying out its responsibilities, the statute states that: "The commission is authorized to utilize its own staff or to contract for services in the performance of its duties. The departments and agencies of state and local government shall make available to the commission such data and information as are necessary to perform its duties." Ibid., 106-4-2(3).

⁴⁶ Ibid., 106-4-3(1)(a).

". . . just sort of went by the boards."⁴⁷

In designing the State's land use planning program, the Commission is directed to proceed with decentralized decision-making processes in mind. That is, the Commission is to

". . . recognize that the decision-making authority as to the character and use of land shall be at the lowest level of government possible, consistent with the purposes of this article."⁴⁸

Where it discovers that land developments ". . . [constitute] a danger of irreparable injury, loss, or damage of serious and major proportions to the public health, welfare, or safety . . . ,⁴⁹ the Land Use Commission is required to notify the board of county commissioners in counties involved. If the board of commissioners fails to respond adequately within a "reasonable time," the State Land Use Commission may bring the land developments to the Governor's attention, who may--after a review--direct the Land Use Commission to issue a cease and desist order.⁵⁰ If the Land Use Commission issues a cease and desist order, or if an injunction is issued by an appropriate court, it is the Commission's responsibility ". . . immediately to

⁴⁷ Interview with Philip H. Schmuck, supra, n. 42.

⁴⁸ Colo. Rev. Stat. Ann. §106-4-3(1)(b). Nevertheless, "roles, responsibilities, and authority" of the various governmental units involved in Colorado's land use planning are to be designated by the Commission's planning programs.

⁴⁹ Ibid., 106-4-3(2)(a).

⁵⁰ Ibid.

establish the planning criteria necessary to eliminate or avoid such danger."⁵¹ One would think that this cease and desist provision would give the law its teeth. But, in fact, the power has never been invoked.⁵²

So, the Colorado approach to regulating land utilization is generally less effective and centralized than that of Hawaii and Florida, notwithstanding the fact that the State has adopted a law which recognizes the need for an advanced monitoring system. For the present, land use control is carried on in Colorado, as it is in most other States, through city and county zoning and subdivision regulations. Any collection and analysis of land use data occurs in a very limited, piecemeal manner by local governmental units.⁵³ Only time will tell whether Colorado's information system will be developed at the State level and whether sufficient funds will be allocated for inventories, monitoring, and evaluation.⁵⁴

⁵¹ Ibid., 106-4-3(2)(b).

⁵² Interview with Philip H. Schmuck, supra, n. 42. In a few cases this procedure has formally been initiated, but the Governor has yet to issue an order prohibiting scheduled development.

⁵³ Ibid.

⁵⁴ In this regard, it is important that rural sentiment in Colorado currently opposes further State regulation of development, sentiment intense enough to defeat additional land use proposals before the General Assembly in 1973. See Suloway, supra, n. 9, p. 6. For recent developments in proposed Colorado land use legislation and for 1974 recommendations by the State Land Use Commission concerning future programs to control land usage from the State level, see Land Use Planning Reports, supra, n. 31, pp. 8-9.

Vermont

Vermont, too, is a State that has assumed a progressive stance in land use, particularly through its Land Use and Development Act of 1970.⁵⁵ Aptly put by one writer, ". . . in 1970 Vermont, hit by a second-home boom of alarming proportions, took the bit in its teeth and authorized a land-use plan governing the entire state."⁵⁶ Scenic Vermont, a recreational paradise for skiers and outdoorsmen, experienced during the 1960's an influx of persons with leisure time, mostly from the nearby Eastern megalopolis. Land prices soared because developers and speculators competed for Vermont's rural and farming areas. As Vermont Governor Thomas P. Salmon has observed, "By the late 1960s it had become all too evident that the State was in the grip of new economic and social forces with which it was powerless to cope."⁵⁷

The response of the Vermont General Assembly was swift, decisive, yet somewhat unique. Rather than establishing a centralized system of land use regulation, as in Hawaii, Vermont's

⁵⁵ Vt. Stat. Ann. tit. 10, §§6001-6091 (Supp. 1972). For a legal analysis of this Act and its application, see J. Jackson Walter, "The Law of the Land: Development Legislation in Maine and Vermont", 23 Maine L. Rev. 316-331 (1971); Note, "State Land Use Regulation", supra, n. 7, at 883-884.

⁵⁶ Miller, supra, n. 16, p. 415.

⁵⁷ Thomas P. Salmon, "Vermont: Public Support for Land Use Controls", 46 State Government 197 (1973). Also see Bosselman and Callies, supra, n. 7, pp. 54-55; State Planning Office, Montpelier, Vermont, Vermont's Land Use Plan and Act 250 (1974), p. 1.

law is founded on a decentralized permit system requiring high levels of citizen participation. Essentially, according to Vermont's Director of Planning Arthur Ristau, the State is regulating growth first and will wait later to plan. Put otherwise, Vermont decided to ". . . implement a permit system without a planning framework."⁵⁸ This is accomplished through the Land Use and Development Act.

Popularly known as Act 250, this measure created an Environmental Board⁵⁹ and originally divided the State into seven environmental districts, each overseen by a district environmental commission.⁶⁰ The major purpose of the district environmental commissions is to manage Vermont's permit system which is based on the following regulatory provision: "No person shall sell or offer for sale any interest in any subdivision located in this state, or commence construction on a subdivision or development, or commence development without a permit."⁶¹ The critical importance of citizen participation stems from the fact that laymen are the district environmental commission

⁵⁸ Telephone interview with Arthur Ristau, Director of Planning, State Planning Office, Montpelier, Vermont, March 11, 1974.

⁵⁹ Vt. Stat. Ann. tit. 10, §6021.

⁶⁰ Ibid., §6026. Two districts have been added more recently. Interview with Arthur Ristau, supra, n. 58.

⁶¹ Vt. Stat. Ann. tit. 10, §6081. For requirements concerning conditions for permits, denial of applications, duration of permits, renewals, and related matters, see ibid., §§6082-6091. A subdivision is defined by the Act as a tract of land divided into ten or more lots to be resold. See ibid., §6001. Generally speaking, a development is defined in terms of ten or more acres. But if there are no zoning ordinances in the municipality having jurisdiction, development is defined in terms of one acre. Ibid.

members. In the words of Governor Salmon, "In contrast to the approach taken by other States and the American Law Institute in its Model Land Development Code, Vermont relies most heavily not upon professional input and administration but upon its tradition of citizen-centered government."⁶² Hence, citizens throughout Vermont play decision-making roles as to land use, though decisions of district commissions may be appealed to the State Environmental Board.⁶³ This general approach, as assessed in 1971 by one writer, ". . . is the most effective existing attempt at bringing the state's police power to bear on the problem of improvident land-use."⁶⁴

The State Environmental Board also bears the responsibility for developing Vermont's land use plan. Initially, an interim land capability and development plan was completed in mid-1971 after an inventory of land use and resources.⁶⁵ The interim plan described land use at that time and assessed

⁶² Salmon, supra, n. 57, p. 197. For a discussion of the local, citizen-oriented character of these commissions, see Bosselman and Callies, supra, n. 7, pp. 59-71.

⁶³ Vt. Stat. Ann. tit. 10, §6089.

⁶⁴ Philip Weinberg, "Regional Land-Use Control: Prerequisite for Rational Planning", 46 N.Y.U. L. Rev. 795 (1971).

⁶⁵ Interview with Arthur Ristau, supra, n. 58. As explained by Mr. Ristau, this physical inventory consisted of base mapping, highway department maps, tax department aerial photography, and other traditional sources of land use information. Also see Division of State Planning and Community Affairs, Commonwealth of Virginia, supra, n. 33, p. 83; Bosselman and Callies, supra, n. 7, p. 72.

" . . . in broad categories the capability of the land for development and use based on ecological considerations. . . ." ⁶⁶

Then, the Board created a Capability and Development Plan

" . . . with the general purpose of guiding and accomplishing a coordinated, efficient and economic development of the state. . . ." ⁶⁷ Lastly, and even more important, the Environmental Board is authorized to adopt a final Land Use Plan. But this Plan will not be founded on an exhaustive inventory and evaluation of the State's land use, and Vermont is in fact only at the early stages of conducting inventories, monitoring, and evaluation. ⁶⁸

In brief, Vermont has established State authority for progressive land use regulation; the responsibility is starting to be accepted at both the State and local levels; Vermont's approach to land use planning and control seems to be working-- at least to the present point; and the permit system is generally restricting undesirable growth. However, points for improvement

⁶⁶ Vt. Stat. Ann. tit. 10, §6041.

⁶⁷ Ibid., §6042. This plan became law in April, 1973. See Governor Salmon's comments, supra, n. 57, pp. 197-200, passim; Suloway, supra, n. 9, p. 25. For details, see State Planning Office, Montpelier, Vermont, Vermont's Land Use Plan and Act 250, supra, n. 57; State Planning Office, Montpelier, Vermont, Vermont's Land Use and Development Law (1973).

⁶⁸ Interview with Arthur Ristau, supra, n. 58.

in the Vermont approach are apparent. There are no explicit requirements in Vermont land use law for inventories, monitoring, and evaluation. Only a single inventory--the one for the interim plan--has been conducted at the State level. Nor, as shown in Table 2, have sufficient funds been appropriated by the legislature for land use control activities. And Vermont's data base has not been developed so as adequately to conduct inventories and monitoring. These seem to be strategic issues which must be dealt with in Vermont's future land use control program.

Maine

In Vermont's neighboring State of Maine, significant strides have also been taken in land use control. Three statutes constitute the principal measures used to control development from the State level: the Site Location of Development Act of 1970,⁶⁹ the Mandatory Zoning and Subdivision Control Act of 1971,⁷⁰ and the 1969 law establishing the Maine Land Use Regulation Commission.⁷¹ While all three of these statutes are

⁶⁹ Me. Rev. Stat. Ann. tit. 38, §§481-488 (Supp. 1973).

⁷⁰ Me. Rev. Stat. Ann. tit. 12, §§4811-4814.

⁷¹ Me. Rev. Stat. Ann. tit. 12, §§683-689 (Supp. 1973). For general discussions of land use legislation in Maine, see Philip M. Savage, "Toward a State Land Use Policy, The Maine Experience", in Slavin and Patton, eds., supra, n. 8, pp. 5-10; Walter, supra, n. 55, at 332-339; Bosselman and Callies, supra, n. 7, pp. 187-199.

essential in the Maine approach, the latter is focused upon here.

The Maine Legislature established the Maine Land Use Regulation Commission in 1969 to guide land utilization in "unorganized" and "deorganized" areas. Land use control in these regions of Maine, before this Act, was virtually non-existent. As recently explained by Philip M. Savage, Maine's State Planning Director, there were usually no local governments in these areas, and the State Legislature was prompted to take action to control development, particularly that by large corporations.⁷² Hence, since 1969 the Maine law has provided a legal foundation for land use regulation in these undeveloped regions constituting 51 per cent of the State, 90 per cent of which is private property.⁷³

The seven-member Maine Land Use Regulation Commission was authorized to classify the State's "unorganized" and "deorganized" areas into protection, management, or development districts.⁷⁴ Further, the Land Use Regulation Commission, ". . . acting on principles of sound land use planning and

⁷² Telephone interview with Philip M. Savage, State Planning Director, State Planning Office, Augusta, Maine, March 11, 1974. See also Note, "State Land Use Regulation", supra, n. 7, at 875-876.

⁷³ Walter, supra, n. 55, at 339.

⁷⁴ Me. Rev. Stat. Ann. tit. 12, §685-A(1).

development, shall prepare land use standards prescribing standards for the use of air, lands and waters."⁷⁵ Prior to deciding upon district boundaries and land utilization standards, the Commission was directed to ". . . adopt and enforce interim land use standards for temporary districts whose boundaries shall be determined and delineated on interim land use maps."⁷⁶ And prior to the adoption of interim land use standards, these maps--as well as the proposed standards--were required to be available for public inspection before commencement of public hearings.⁷⁷ Then, after district boundaries and land use standards were established, the Act stipulates that they shall be periodically reviewed:

At the end of each 5 years following initial adoption of permanent land use standards and districts, the commission shall make a comprehensive review of the classification and delineation of districts of the land use standards. The assistance of appropriate state agencies shall be secured in making this review and public hearings shall be held in accordance with the requirements set forth in subsection 7.⁷⁸

The Land Use Regulation Commission is also vested with the

⁷⁵ Me. Rev. Stat. Ann. tit. 12, §685-A(3).

⁷⁶ Ibid., §685-A(6).

⁷⁷ Ibid., §685-A(7).

⁷⁸ Ibid., §685-A(9).

responsibility of reviewing and approving development in unorganized or deorganized areas.⁷⁹

Another principal aspect of Maine's 1969 Act is the requirement of a comprehensive land use guidance plan to be completed and adopted by January 1, 1975.⁸⁰ This plan will provide a Commission guide for deciding on land use standards and district boundaries in unorganized and deorganized areas. "The plan may consist of maps, data and statements of present and prospective resource uses which generally delineate the proper use of resources, and recommendations for its implementation."⁸¹ Beyond that, the Commission is assigned the duty-- "from time to time"--of producing, maintaining, and distributing a land use guidance and planning manual.⁸² Among other things, this manual will include "Examples of land use planning policies, standards, maps and documents . . ." and "Other explanatory material and data which will aid landowners in the preparation of their plans. . . ."⁸³

These statutory provisions, plus additional powers assigned to the State under the Site Selection Act and the Mandatory

⁷⁹ Ibid., §685-B(1). The one exception here is where the State Department of Environmental Protection reviews and approves the development under the Site Location and Development Act of 1970, Me. Rev. Stat. Ann. tit. 38, §§481-488 (Supp. 1973).

⁸⁰ Me. Rev. Stat. Ann. tit. 12, §685-C(1).

⁸¹ Ibid.

⁸² Ibid., §685-C(2).

⁸³ Ibid.

Zoning and Subdivision Act, seem to be essential legal steps toward authorizing inventories, monitoring, and evaluation. According to Philip M. Savage, Maine's Planning Director, the State is gradually adopting this general approach. For instance, through an inventory the State is attempting to continually revise its standards for protecting shorelines. Furthermore, Maine officials are considering various technological breakthroughs which may allow them to update maps and to establish a monitoring system.⁸⁴ One might well agree, therefore, that "The State of Maine, at least in the area of State level land use legislation, is one of the leading states in the 'Quiet Revolution in Land Use Control.'"⁸⁵ But only the future can tell whether Maine will maximize its potential for inventories, monitoring, and evaluation of land use. Problems may result from the fact that the State information system is not highly developed.⁸⁶

⁸⁴ Interview with Philip M. Savage, supra, n. 72.

⁸⁵ Savage, supra, n. 71, p. 5.

⁸⁶ Philip M. Savage, "Designing a State Land Use Program",
46 State Government 163 (1973). Mr. Savage writes that:

A major need in Maine and many other States is a complete Geo-Information System, a system in which data will be referenced in a manner which will allow retrieval, analysis, and display on spatial criteria. A Geo-Information System contains data with location identifiers. Data are manipulated and retrieved on geographical criteria and the output is in the form of graphical presentation. This system would provide a basis for statewide land planning, management and regulation at all levels of government, and be computerized for the automatic storage, manipulation and retrieval

Too, adequate funds may not be forthcoming from the State Legislature. At the present time, according to Mr. Savage, the Commission has insufficient monies to carry out all its duties.⁸⁷ Still, overall, the law ". . . [provides] for workable, long-range planning and establishes an excellent framework within which one-half of Maine may be able to develop sensibly and prosperously."⁸⁸

of data. It should include all social, economic, resource and fiscal information essential to the comprehensive planning process and should also provide for an integrated system modeling function.

Savage continues by describing progress along these lines in Maine:

The State Planning Office is assisting two State Departments of Inland Fisheries and Game and Sea and Shore Fisheries in developing the Maine Information Display Analysis System (MIDAS) and English Language Information Assembly System (ELIAS) to establish a computerized information system in the natural resources area. MIDAS is an interagency data flow network and ELIAS is a sophisticated, user-controlled, computer supported, information system for processing, analyzing, retaining and displaying the information. We hope that these two systems will serve as a model for a statewide system to include all functions in addition to natural resources. This information system should be tailored to meet the needs of administrators and decision-makers at all levels of government: state, regional and local.

Ibid. These points are discussed further in Philip M. Savage, "The 'National Interest' in Coastal Planning--As Seen From the State of Maine", paper delivered to the National Conference on Coastal Zone Management, Charleston, South Carolina, March 13-14, 1974.

⁸⁷ Ibid., p. 157; Savage, supra, n. 71, p. 6; interview with Philip M. Savage, supra, n. 72.

⁸⁸ Walter, supra, n. 55 at 343.

Conclusions

By means of a selective survey, the preceding pages have shown that diversity still characterizes State land use law. At the same time, some States are undergoing a transitional legal phase, a "quiet revolution", which will probably result in less diverse land use controls throughout the nation. It seems safe to say that the United States during the 1970's will almost certainly experience a narrowing of the extremes in State land use controls: far more States will adopt stringent guidelines for development; few, if any, States will continue to ignore land utilization issues, their impact upon everyday life, and their effect on future generations.

Of the fifteen States surveyed herein, Hawaii, Vermont, Maine, Florida, and--to a lesser extent--Colorado have imposed major legal controls over land usage. To varying degrees, the statutes of those States also directly require or indirectly infer that the State initiate evaluations based on land use inventories and monitoring. These requirements were necessitated by certain common conditions in the States during the 1960's and early 1970's. For instance, all five States serve as recreational and vacation attractions, a fact that spurred extensive development and that required legal control. Likewise, three of these are coastal States, and coastal problems alerted these State legislatures to statewide land use needs. And, for the most part, each State has accomplished similar

results--more coordinated use of the land.

It is somewhat hazardous, nonetheless, to generalize about these five States, for their land use laws and regulatory programs are profoundly different. In Hawaii land use control is relatively centralized; in Vermont it is administratively decentralized. In Colorado the old land use commission was simply reorganized and assigned additional responsibilities; in Maine an entirely new land use regulation commission was created.⁸⁹ In Colorado there is, at least on paper, a provision for a growth monitoring system in the final State land use program; in Florida no such system is specifically mandated although the legislature does require some land use inventories. In Vermont inadequate funds have usually been appropriated to the State Planning Office for carrying out its responsibilities; in Florida funding problems seem less critical, by and large. In Maine the power to regulate land use is derived from several statutes; in Hawaii most regulatory power stems from one law. Generalizations are also risky with regard to these States because of varying degrees of implementation of statutory provisions. And regarding evaluation, broad discretionary power rests with particular administrations and State planning officials since most State laws fail to mention how evaluation

⁸⁹ These two general approaches are common in many State environmental programs. See Elizabeth H. Haskell, "State Governments Tackle Pollution", Environmental Science and Technology, Vol. 5, No. 11, November, 1971, pp. 1092-1097.

is to be conducted, based upon inventories and monitoring.

Another important point is suggested by Table 1: there seems to be little correspondence between a State's statutory provisions relating to inventories, monitoring, and evaluation on the one hand, and the sophistication of a State's information system on the other. According to the study cited for Table 1, Hawaii has developed a "highly sophisticated" information system, but systems in Colorado, Florida, Maine, and Vermont are "limited." Until these two factors--the law and the technology--coexist at sophisticated levels, even States like Colorado, Florida, Maine, and Vermont will be unlikely to attack optimally their land use problems.

Other States examined in this paper--Delaware, Indiana, Kansas, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia--have passed neither land use laws controlling statewide development nor requirements for evaluation based on inventories and monitoring. Yet in view of likely Federal legislation, discussed in the following section, many States are seriously considering exercising their State police power to supplement codes with more up-to-date land use laws.⁹⁰

⁹⁰ As of September, 1973, for example, six State legislatures (including those of Oklahoma and Pennsylvania) were considering passage of proposals for land use plans; two additional States had such proposals under study in the executive branch. More importantly, in twenty-eight States (including Indiana, Kansas, Oklahoma, Pennsylvania, and Utah), proposals were before the legislatures for State controls over local land use planning, and thirteen States were seriously studying this type of an approach. See Suloway, *supra*, n. 9, pp. 28-29.

These ten States, therefore, in the near future, may also require this three-phased approach for planning purposes. And since Delaware, Indiana, Kansas, Oklahoma, and Pennsylvania already possess "moderately developed" information systems, they may soon be in a position to handle effectively some of their land use problems through inventories, monitoring, and systematic evaluation. By contrast, Mississippi, Missouri, Tennessee, Utah, and West Virginia may experience less success in controlling land use because they have neither statutory provisions nor the data base which may be necessary to conduct such activities effectively.

III. RECENT FEDERAL LAND USE-RELATED LAWS AND A PROPOSAL

Piecemeal, short-run land use planning is currently recognized as a serious national problem, one which must largely be identified with the Twentieth Century. True, much American land was cleared and settled decades earlier. Yet not until the rapidly spreading urbanization and industrialization of the Twentieth Century did the importance of regulating land use become widely apparent.

Implicit in the Tenth Amendment of the United States Constitution is the power of the States to regulate land use within their boundaries. This power has traditionally been delegated to local governments. In response, many cities adopted zoning plans during the 1920's to protect the "public health and safety."⁹¹ The United States Supreme Court subsequently upheld this local exercise of the State police power in the landmark 1926 case of Village of Euclid v. Ambler Realty Company.⁹² However, since that time, zoning and related controls have proven all too often inadequate for broad-scale, coordinated land use planning purposes. And, as the preceding pages demonstrated, many States have failed to respond to land use

⁹¹ See the Standard State Zoning Enabling Act (SZEA) and the Standard City Planning Enabling Act (SPEA), in U.S., Congress, Senate, Committee on Interior and Insular Affairs, supra, n. 32, pp. 480-492.

⁹² 272 U.S. 366 (1926).

problems which city and county governments could not, or did not, solve.

The Federal government therefore gradually assumed the role of passing basic legislation affecting planning, urban problems, and land utilization in the States.⁹³ Now, by the 1970's, when environmental questions are of major Federal concern, broader land use issues have become hotly debated at the national level, and additional Federal land use law seems inevitable. To be sure, the Federal government's responsibility will be indirect; local and State governments will continue to bear the primary burden in controlling land utilization. But, in the words of one study, "The fact that Federal responsibility is indirect . . . makes it no less necessary and important."⁹⁴

At least sixty Federal laws and programs of the last thirty years have affected land use.⁹⁵ A partial list of those statutes enacted since 1961 is provided in Table 3. Two statutes on that list and one additional proposal are among the most noteworthy

⁹³ For the scope of these type activities, see generally, Dorn C. McGrath, Jr., "Implementing National Policies: Bigger Carrots, Bigger Sticks", in Land-Use Policies (1970), pp. 29-37; U.S., Congress, Senate, Committee on Interior and Insular Affairs, supra, n. 32, pp. 99-114.

⁹⁴ American Society of Planning Officials, Problems of Zoning and Land Use Regulation (1968), p. 72.

⁹⁵ Hagman, supra, n. 7, p. 24; U.S., Congress, Senate, Committee on Interior and Insular Affairs, supra, n. 32, pp. 23-37.

Table 3

SOME FEDERAL LAND USE-RELATED STATUTES, 1961-1973*

Housing Act of 1961, P.L. 87-70
Food and Agriculture Act, 1962, P.L. 87-703
Federal-Aid Highway Amendments Act, 1963, P.L. 88-157
Urban Mass Transportation Act of 1964, P.L. 88-365
Housing Act of 1964, P.L. 88-560
Land and Water Conservation Fund Act, 1964, P.L. 88-578
National Wilderness Preservation System, 1964, P.L. 88-577
Ozark Scenic Riverways, 1964, P.L. 88-492
Appalachian Regional Development Act, 1964, P.L. 89-4
Public Works and Economic Development Act, 1964, P.L. 89-136
Department of Housing and Urban Development created, 1964, P.L. 89-174
Housing Act of 1965, P.L. 89-117
Highway Beautification Act of 1965, P.L. 89-285
Water Resources Planning Act, 1965, P.L. 89-80
The Federal Water Project Recreation Act, 1965, P.L. 89-72
Rural Water Systems, 1965, P.L. 89-240
Demonstration Cities and Metropolitan Development Act of 1966, P.L. 89-754
Department of Transportation created, 1966, P.L. 89-670
Amendments to the Urban Mass Transportation Act of 1964, 1966, P.L. 89-562

* Source: U.S., Congress, Senate, Committee on Interior and Insular Affairs, supra, n. 32, pp. 23-37.

Table 3 (continued)

SOME FEDERAL LAND USE-RELATED STATUTES, 1961-1973

Rent Supplements and Model Cities, 1967, P.L. 90-121
Housing and Urban Development Act of 1968, P.L. 90-448
National Trails Systems, 1968, P.L. 90-543
Wild and Scenic Rivers System, 1968, P.L. 90-542
Land and Water Conservation Fund, 1968, P.L. 90-401
National Water Commission, 1968, P.L. 90-515
Housing and Urban Development Act, 1969, P.L. 91-152
National Environmental Policy Act, 1969, P.L. 91-190
Housing and Urban Development Act of 1970, P.L. 91-609
Airport and Airways Development Act, 1970, P.L. 91-258
Federal-Aid Highway Act of 1970, P.L. 91-605
Resources Recovery Act of 1970, P.L. 91-512
Federal Assistance for Resource Conservation and Development,
1970, P.L. 91-343
Agriculture Act of 1970, P.L. 91-524
Land and Water Conservation Fund Act Amendments, 1970,
P.L. 91-485
Alaska Native Claims Settlement Act, 1971, P.L. 92-203
Rural Development Act of 1972, P.L. 92-419
Coastal Zone Management Act of 1972, P.L. 92-583

recent Federal attempts to provide assistance to States for controlling and improving use of private land. The first two of these are the Rural Development Act of 1972⁹⁶ and the Coastal Zone Management Act of 1972.⁹⁷ The other is the proposed Land Use Policy and Planning Assistance Act.⁹⁸ All three are pertinent to this paper since they contain provisions relating to inventories and monitoring as a basis for more systematic land use evaluation.

The Rural Development Act of 1972

When thinking of land use problems, one normally envisions high density populations, uncontrolled urban growth, inadequate metropolitan housing and services, environmental pollution, transportation tie-ups, and expansive suburbs surrounding large cities, to name a few. Yet rural areas of the United States

⁹⁶ P.L. 92-419, 86 Stat. 657.

⁹⁷ 16 U.S.C. 1434-1464.

⁹⁸ The Senate version of this proposal, S. 268, is focused upon in the following discussion, rather than the House bill, H.R. 10294, introduced by Representative Morris K. Udall (D-Ariz.). In the end, it is expected that most of the provisions of the Senate version will become law. Nonetheless, the final legislation will differ from S. 268 because of House members and lobbyists who oppose certain provisions. See "House Fight Near on Land Use Bill", New York Times, November 4, 1973, p. A40, col. 1; Land Use Planning Reports, Vol. 1, No. 18, November 5, 1973, pp. 1-3. For the 1973 version of the House bill, see U.S., Congress, House, supra, n. 28.

also have profound land use-related problems.⁹⁹ Rural water and sewer systems are generally less adequate than those in urban areas. Agriculturally-related water pollution is not uncommon. Transportation routes are poorly maintained in many instances, and alternative modes of transportation are frequently nonexistent. Over half of all substandard housing in the nation is found in rural America. Ambulance and fire protection services in these areas are often below par.

To help alleviate these and other problems, the Rural Development Act was signed into law in 1972. It is a multifaceted statute designed to provide grants and loans to revitalize rural America. Of most importance here is Title III of the Act as it amended the Bankhead-Jones Farm Tenant Act of 1937.¹⁰⁰ The Bankhead-Jones measure authorized and directed the Secretary of Agriculture ". . . to develop a program of land conservation and utilization in order thereby to correct maladjustments in land use. . . ." ¹⁰¹ In order to better

⁹⁹ See 2 U.S. Code Cong. & Adm. News, 3148-3150; U.S., Congress, Senate, Committee on Government Operations, Toward A National Growth and Development Policy: Legislative and Executive Actions in 1970 and 1971, 92d Cong., 2d sess., 1972 (prepared by the Congressional Research Service, Library of Congress); U.S., Congress, Senate, Toward A National Growth Policy: Federal and State Developments in 1972, 93d Cong., 1st sess., 1973 (prepared by the Congressional Research Service, Library of Congress). Most States have generally received no funds under the Rural Development Act, though a few may have received nominal grants for limited pilot projects. Interview with Earl M. Starnes, supra, n. 34; interview with Philip H. Schmuck, supra, n. 42.

¹⁰⁰ 7 U.S.C. §1000.

¹⁰¹ Ibid., §1010.

effectuate this stated objective, the Rural Development Act amended the 1937 law in three principal ways.

These three amendments were intended to facilitate the execution of land conservation and utilization plans.¹⁰² First, the Secretary of Agriculture was authorized "To provide technical and other assistance, and to pay for any storage of water for present or anticipated future demands or needs for rural community water supply included in any reservoir structure constructed or modified pursuant to such plans. . . ."¹⁰³ In the second place, the 1972 amendments gave the Secretary the power "To provide, for the benefit of rural communities, technical and other assistance and such proportionate share of costs of installing measures and facilities for water quality management, for the control and abatement of agriculture-related pollution, for the disposal of solid wastes, and for the storage

¹⁰² Section 1011(e), ibid., authorizes the Secretary:

To cooperate with Federal, State, territorial, and other public agencies and local nonprofit organizations in developing plans for a program of land conservation and land utilization, to assist in carrying out such plans by means of loans to State and local public agencies and local nonprofit organizations designated by the State legislature or the Governor, to conduct surveys and investigations relating to conditions and factors affecting, and the methods of accomplishing most effectively the purposes of this subchapter, and to disseminate information concerning these activities.

¹⁰³ P.L. 92-419 §301(1). For conditions placed on this assistance, see ibid.

of water in reservoirs, farm ponds, or other impondments, together with necessary water withdrawal appurtenances, for rural fire protection. . . ."104 As a result of these two provisions, assistance may now be provided to rural areas with some of the land use-related problems previously mentioned.

For this paper, though, the third provision is even more important because it directly requires a land use inventory and monitoring program. Section 302 of the 1972 Rural Development Act reads:

In recognition of the increasing need for soil, water, and related resource data for land conservation, use, and development, for guidance of community development for a balanced rural-urban growth, for identification of prime agriculture producing areas that should be protected, and for use in protecting the quality of the environment, the Secretary of Agriculture is directed to carry out a land inventory and monitoring program to include, but not be limited to, studies and surveys of erosion and sediment damages, flood plain identification, and utilization, land use changes and trends, and degradation of the environment resulting from improper use of soil, water, and related resources. The Secretary shall issue at not less than five-year intervals a land inventory report reflecting soil, water, and related resource conditions.¹⁰⁵

Therefore, the Rural Development Act, while of limited scope, provides assistance for some rural land use-related problems. In particular, it establishes new loan and grant programs

104 Ibid., §301(2).

105 Ibid., §302.

for nonmetropolitan areas, strengthens watershed protection resource conservation and development programs, supports improved rural fire protection, promotes rural development programs and research, and generally assigns additional authority to the Department of Agriculture to improve life in rural areas.¹⁰⁶ Too, it requires the use of inventories and monitoring for collecting information on soil, water, and related resources. Next, attention is focused on another Federal land use law, one which seems to possess less stringent inventory and monitoring provisions but which, nonetheless, will have more of an effect on land use patterns and practices surrounding the urban American.

The Coastal Zone Management Act of 1972

A basic fact clearly surfaces when one examines land use law: conditions in coastal areas are often among the first to be recognized by lawmakers as constituting land use problems. For example, of the fifteen States surveyed in the preceding discussion, five have passed relatively stringent land use laws. And of those five, three are coastal States. Much of the support for progressive land use statutes in those States--Florida,

¹⁰⁶ For details and how the Act has been implemented, see Federal Register, Vol. 38, No. 201, October 18, 1973, pp. 29020-29061; U.S., Congress, Senate, Committee on Agriculture and Forestry, Guide to the Rural Development Act of 1972, 93d Cong., 1st sess., 1973.

Hawaii, and Maine--was related to, or evolved from, a concern for coastal conditions.

Likewise, Federal land use law now reflects the necessity of protecting and managing development in coastal areas. The nation's coasts have historically been important for industrial, commercial, and recreational purposes, but by the 1970's development and overcrowding in coastal areas was seriously threatening land and water resources. Congressional recognition of that threat prompted passage of the Coastal Zone Management Act of 1972, a piece of legislation whose origins may be traced back to at least 1966.¹⁰⁷

The 1972 Act declared the nation's policy to be as follows:

(a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations. (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to

¹⁰⁷ For the Act's legislative history, see 3 U.S. Code Cong. & Adm. News, 4776-4825 (1972); U.S., Congress, House, Committee on Merchant Marine and Fisheries, Coastal Zone Management, Hearings, 92d Cong., 1st sess., 1971; U.S., Congress, Senate, Committee on Commerce, Coastal Zone Management, Hearings, 92d Cong., 1st sess., 1971. For a general account of the statute and the politics behind its passage, see James A. Noone, "New Federal Program Seeks to Aid States in Control of Coastal-Area Exploitation", National Journal, December 9, 1972, pp. 1889-1898. States are just now beginning to receive funds under the Coastal Zone Management Act. Interview with Earl M. Starnes, supra, n. 34; interview with Philip M. Savage, supra, n. 72; Land Use Planning Reports, Vol. 2, No. 6, March 18, 1974, p. 3.

needs for economic development. (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this chapter, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.¹⁰⁸

A State "management program" is specified by the Act to include ". . . but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communications,

¹⁰⁸ U.S.C. §1452. The "coastal zone" was broadly defined as:

. . . the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

Ibid., §1453(a).

prepared and adopted by the state in accordance with the provisions of this chapter, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone."¹⁰⁹ The Secretary of Commerce is assigned the role of authorizing management development program grants for eligible States.¹¹⁰ To qualify for these matching grants, State management programs are required to contain six elements:

- (1) an identification of the boundaries of the coastal zone subject to the management program;
- (2) a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;
- (3) an inventory and designation of areas of particular concern within the coastal zone;
- (4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions;
- (5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;

¹⁰⁹ Ibid., §1453(g).

¹¹⁰ Ibid., §1454(a). The first three annual grants cover up to two-thirds of management program costs. Subsequent grants are dependent on the State "satisfactorily" developing a management program. Ibid., §1454(c). Federal administrative authority over the coastal zone management programs was given to the National Oceanographic and Atmospheric Administration. The President and the Office of Management and Budget had supported the Department of Interior for that administrative role, but they recently ended those efforts. See George C. Wilson, "Commerce Wins Fight Over Control of Coastal Zoning", Washington Post, October 2, 1973, p. A2, col. 7.

(6) a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.¹¹¹

Especially important for this study is the land use inventory requirement for portions of the coastal zone "of particular concern."

In addition to management development program grants, there is also authorization for State administrative grants under the Coastal Zone Management Act. Up to two-thirds of State costs for administering its management program may be covered by these grants.¹¹² For States to qualify for administrative grants, the Secretary of Commerce must make several determinations. These determinations include, among other things, that the coastal State has a program of coastal management meeting the

¹¹¹ Ibid., §1454(b).

¹¹² Ibid., §1455(a). These are matching grants, as are the management development program grants. The allocation of administrative grants is ". . . based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors: Provided, however, that no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section." Ibid., §1455(b). It should be mentioned, too, that the 1972 Act authorizes a third type of grant program to cover not more than half ". . . of the costs of acquisition, development, and operation of estuarine sanctuaries for the purpose of creating natural field laboratories to gather data and make studies of natural and human processes occurring within the estuaries of the coastal zone." Ibid., §1461. For provisions relating to appropriations, see ibid., §1464.

guidelines of the Secretary; that the State's coastal zone management program has been coordinated with local, regional, and interstate plans within that portion of the coastal zone; that there be an "effective mechanism" for continuing such coordination; that public hearings have been held within the State concerning the management program to be created; that such a program has been reviewed and approved by the State's Governor, who must have "designated a single agency to receive and administer the grants"; and that the State have adequate organization and authorities to implement coastal zone management programs.¹¹³ Furthermore, to establish eligibility, State law must authorize such a management program,¹¹⁴ acceptably provide ". . . general techniques for control of land and water uses within the coastal zone",¹¹⁵ and ". . . not

¹¹³ Ibid., §1455(c)(1)-(9). For the Secretary's authority for developing and promulgating rules and regulations for carrying out the statute, see ibid., §1463. Under the 1972 Act, the Secretary of Commerce is also ". . . authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone." Ibid., §1460(a).

¹¹⁴ See ibid., §1455(d).

¹¹⁵ Ibid., §1455(e)(1). These techniques may be one or a combination of three:

- (A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;
- (B) Direct state land and water use planning and regulation; or

unreasonably restrict or exclude land and water uses of regional benefit."¹¹⁶

The 1972 Coastal Zone Management Act promotes land use cooperation and coordination not only among State, regional, and local governmental units, but also between State coastal zone programs and "interested" Federal agencies. In this regard, the Secretary of Commerce is directed to ". . . consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies."¹¹⁷ Where "serious" disagreements occur between States and Federal agencies in coastal zone management programs, the Secretary--cooperating with the Executive Office of the President--functions as a mediator.¹¹⁸ On the other hand, Federal projects or activities which affect coastal zones are to be ". . . to

(C) State administrative review for consistency with the management program of all development plans, projects or land and water use 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.

¹¹⁶ Ibid., §1455(e)(2). Any financial assistance to the States may be terminated by the Secretary ". . . if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state had been given notice of the proposed termination and withdrawal for altering its program." Ibid., §1458(b).

¹¹⁷ Ibid., §1456(a).

¹¹⁸ Ibid., §1456(b).

the maximum extent practicable, consistent with approved state management programs."¹¹⁹

In short, the Coastal Zone Management Act encourages and assists the States in developing and implementing land use control programs in coastal regions, while promoting governmental cooperation in these areas. Pursuing these objectives, States may secure Federal grants-in-aid so long as they meet certain minimal requirements for coastal management programs. One of these requirements is that States inventory land use in coastal zones and employ that inventory for designating areas of particular land use concern. These activities will soon be expanded into non-coastal areas if a measure, now before the Congress, becomes law. This measure is the Land Use Policy and Planning Assistance proposal.

The Land Use Policy and Planning Assistance Proposal

Though significant, the Rural Development Act and the Coastal Zone Management Act are relatively narrow statutes when contrasted to the proposed Land Use Policy and Planning

¹¹⁹ Ibid., §1456(c)(1)-(2). Each November the Secretary is responsible for preparing and submitting an annual administrative report to the President, to be transmitted to the Congress. Among other things, this report is to summarize intergovernmental cooperation and coordination relating to protection and management of the coastal zones. Ibid., §1462(a)(7). For other required components of this report, see ibid., §1462.

Assistance bill, S. 268.¹²⁰ The latter proposal, which has been under serious consideration in Congress for four years, is intended to function as an "umbrella measure", establishing nationwide land use planning processes and programs.¹²¹ Because

¹²⁰ For general accounts and assessments of S. 268, see Note, "The Land Use Policy and Planning Assistance Act of 1973: Legislating a National Land Use Policy", 41 Geo. Wash. L. Rev. 604-625 (1973); American Enterprise Institute for Public Policy Research, "Land Use Policy and Planning Bills", October 8, 1973, pp. 1-36; "Land Use Law (I): Congress on Verge of a Modest Beginning", Science, November 16, 1973, pp. 691-696; David S. Broder, "Land Use Bill: 'Important as Watergate'", Washington Post, August 1, 1973, p. A26, col. 3; Gladwin Hill, "Land Use: A Tide Turns--Where?" New York Times, September 9, 1973, p. E18, col. 1; "Congress: Much Ado About Land Use", Environmental Science and Technology, Vol. 7, No. 4, April, 1973, pp. 298-299; Richard H. Slavin, "An Interest Beginning", 46 State Government 201 (1973).

¹²¹ For discussions of earlier versions of S. 268 and related proposals, see Morris K. Udall, "Toward a National Land Use Policy for Urban America", 12 Ariz. L. Rev. 733, 745-747 (1970); James A. Noone, "Senate, House Differ on Approaches to Reform of Nation's Land-Use Laws", National Journal, July 27, 1972, pp. 1192-1201; Ira Michael Heyman, "Federal Impacts on Land-Use Regulation", in Frank S. Bangs, Jr., ed., Land Use Controls Annual (1973), pp. 7-14; The Association of the Bar of the City of New York, Electricity and the Environment: The Reform of Legal Institutions (1972), pp. 216-221; U.S., Congress, House, Committee on Interior and Insular Affairs, National Land Policy, Planning, and Management Act of 1972, 92d Cong., 2d sess., 1972; U.S., Congress, House, Committee on Interior and Insular Affairs, Public Land Policy Act of 1971, Hearings, 92d Cong., 1st sess., 1971; U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act of 1972, 92d Cong., 2d sess., 1972; U.S., Congress, Senate, Committee on Interior and Insular Affairs, Management Practices on Public Lands, Hearings, 92d Cong., 2d sess., 1971; U.S., Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy, Hearings, 92d Cong., 1st sess., 1971; U.S., Congress, Senate, Committee on Interior and Insular Affairs, Papers on National Land Use Policy Issues, 92d Cong., 1st sess., 1971 (prepared by Massachusetts Institute of Technology and Boston University).

of the need for a broader national land use policy, President Richard M. Nixon called for passage of such legislation three years ago in his environmental message to the Congress.¹²²

Several of the stated purposes of the Land Use Policy and Planning Assistance bill seem related to inventories, monitoring, and evaluation. As they now stand, its eleven overall objectives are to:

- (1) encourage and assist the several States to more effectively exercise their constitutional responsibilities for the planning and management of their land base through the development and implementation of State land use programs;
- (2) establish a grant-in-aid program to assist State and local governments and agencies to hire and train the personnel, collect and analyze the data, and establish the institutions and procedures necessary to develop and implement State land use programs;
- (3) establish a grant-in-aid program to encourage cooperation among the States concerning land use planning and management in interstate regions;
- (4) establish a grant-in-aid program to assist Indian tribes to develop land use programs for reservation and other tribal lands and to coordinate such programs with the planning and management of Federal and non-Federal lands adjacent to reservation and other tribal lands;
- (5) establish the authority and responsibility of the Executive Office of the President to issue guidelines to implement this Act and

¹²²See Public Papers of the Presidents of the United States: Richard M. Nixon (1972), p. 134. Mr. Nixon's 1974 State of the Union address again announced that a national land use law was a high priority among measures to be passed. See "Excerpts from Text of State of the Union Message to Congress by the President," New York Times, January 31, 1974, p. C20, col. 5.

of the Secretary of the Interior to administer the grant-in-aid and other programs established under this Act, to review, with the heads of other Federal agencies, statewide land use planning processes and State land use programs for conformity to the provisions of this Act, and to assist in the coordination of activities of Federal agencies with State land use programs;

(6) develop and maintain sound policies and coordination procedures with respect to federally conducted and federally assisted projects on non-Federal lands having land use implications;

(7) facilitate increased coordination in the administration of Federal programs and in planning and management of Federal lands and adjacent non-Federal lands;

(8) provide for meaningful participation of property owners, users of the land, and the public in land use planning and management;

(9) provide for research on and training in land use planning and management;

(10) promote the development of systematic methods for the exchange of data and information pertinent to land use decisionmaking among all levels of government and the public; and

(11) study the feasibility and possible substance of national land use policies which might be enacted by Congress.¹²³

Underlying these objectives is a characteristic of S. 268 which requires emphasis: in order to remain eligible for grants, States are cautioned to pay special attention to four important areas where the impact of land use extends beyond "local concern."

¹²³ Land Use Policy and Planning Assistance Act, §102(b). This and all references hereinafter to the Land Use Policy and Planning Assistance Act are taken from the bill as passed by the Senate. See Congressional Record - Senate, June 21, 1973, pp. 11663-11672.

These are "areas of critical environmental concern",¹²⁴ "key

¹²⁴ "Areas of critical environmental concern" are defined at ibid., §601(i) as:

. . . areas as defined and designated by the State on non-Federal lands where uncontrolled or incompatible development could result in damage to the environment, life or property, or the long term public interest which is of more than local significance. Such areas, subject to State definition of their extent, shall include--

(1) "Fragile or historic lands" where uncontrolled or incompatible development could result in irreversible damage to important historic, cultural, scientific, or esthetic values or natural systems which are of more than local significance, such lands to include shorelands of rivers, lakes, and streams; rare or valuable ecosystems and geological formations; significant wildlife habitats; and unique scenic or historic areas;

(2) "Natural hazard lands" where uncontrolled or incompatible development could unreasonably endanger life and property, such lands to include flood plains and areas frequently subject to weather disasters, areas of unstable geological, ice, or snow formations, and areas with high seismic or volcanic activity;

(3) "Renewable resource lands" where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could endanger future water, food, and fiber requirements of more than local concern, such lands to include watershed lands, aquifers and aquifer recharge areas, significant agricultural and grazing lands, and forest lands; and

(4) such additional areas as the State determines to be of critical environmental concern.

facilities",¹²⁵ "large scale development",¹²⁶ and "land sales

¹²⁵ S. 268 defines "key facilities" as:

(1) public facilities, as determined by the State, on non-Federal lands which tend to induce development and urbanization of more than local impact, including but not limited to--

(A) any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;

(B) major interchanges between the Interstate Highway System and frontage access streets or highways; major interchanges between other limited access highways and frontage access streets or highways;

(C) major frontage access streets and highways, both of State concern; and.

(D) major recreational lands and facilities;

(2) major facilities on non-Federal lands for the development, generation, and transmission of energy.

Ibid., §601(j).

¹²⁶ "Large scale development" means private development on non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of the State. In determining what constitutes "large scale development" the State should consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

Ibid., §601(k).

or development projects."¹²⁷

Turning to specifics, the Senate's Land Use Policy and Planning Assistance measure alludes to inventories, monitoring, and evaluation through its requirements for developing and implementing State land use planning processes and programs. States are eligible for three years under S. 268 for grants to develop statewide land use planning processes. In order to remain qualified for Federal monies after the three-year period,

¹²⁷ As defined by §601(1); ibid., the phrase "land sales or development projects" refers to:

any of the activities set forth in clauses (1) through (3) below which occur ten miles or more beyond the boundaries of any standard metropolitan statistical area or of any other general purpose local government certified by the Governor as possessing the capability and authority to regulate such activities:

(1) the partitioning or dividing into fifty or more lots for sale or resale primarily for housing purposes within a period of ten years of any tract of land, or tracts of land in the same vicinity, owned or controlled by any developer;

(2) the construction or improvement primarily for housing purposes of fifty or more units within a period of ten years on any tract of land, or tracts of land in the same vicinity, owned or controlled by any developer, including the construction of detached dwellings, town houses, apartments, and trailer parks, and adjacent uses and facilities, whatever their form of ownership or occupancy; and

(3) such other projects as may be designated by the State.

each State's planning process must be adequately developed in a number of areas.¹²⁸ Broadly speaking, these include "the preparation and continuing revision of a statewide inventory" of the State's land; natural resources; environmental, physical, and geological conditions; use of Federal lands for State, local, and private needs; and public and private institutional and financial resources. Beyond that, the bill provides for "projections of the nature, quantity, and compatibility of land

¹²⁸ Ibid., §202(a). Procedures for determining continuing grant eligibility are described at §306, ibid. These are generally that (1) the Interagency Advisory Board on Land Use Policy, described in §305, has an obligation to advise the Secretary of Interior on the adequacy of a State's land use program; that (2) the Administrator of the Environmental Protection Agency has determined that the State's program of land use is compatible with Federal pollution laws under EPA's jurisdiction; and that (3) the Secretary of Housing and Urban Development has likewise determined that the program is compatible with S. 268 and the Housing Act of 1954, §701, as amended. If, after all this, the Secretary of Interior finds that a State is in noncompliance with S. 268, his decision must be affirmed by an ad hoc review board, appointed by the President, before grants are terminated. For Federal actions in the absence of State eligibility, see §208. Section 208 is not thoroughly discussed in this study. However, it should be noted that the topic of Federal actions in the absence of State eligibility has had controversial features. In particular, these have involved questions of sanctions--whether Federal grants for other purposes related to land use should be cut in States unwilling to develop or effectuate land use plans. See "Land Use: The Rage for Reform", Time, October 1, 1973, p. 98; James A. Noone, "Senate Committee Acts on Land Reform, Bill Would Aid States' Planning Role", National Journal, June 2, 1973, p. 794; "House Fight Near on Land Use Bill", supra, n. 98; Kathleen Gordon, "Congress Moves to Stem the Land Rush", Environmental Action, October 27, 1973, pp. 11-12. Note, however, that sanctions were deleted prior to the Senate's passage of S. 268. Similar sanctions have been removed from the House version, though attempts may be made on the House floor to add them prior to passage.

needed and suitable for" numerous land use considerations-- environment, conservation, agriculture, industry, commerce, recreation, transportation, housing, solid waste management, urban and rural development, and health, educational, and scientific activities.

Then, perhaps more importantly, S. 268 contains the following requirements for State planning processes:

(a) the compilation and continuing revision of data, on a statewide basis, related to population densities and trends, economic characteristics and projections, environmental conditions and trends, and directions and extent of urban and rural growth;

(b) the monitoring of land use data periodically to determine changes in land usage, the comparison of such changes to State and local land use plans, programs, and projections, and the reporting of the findings to the affected local governments, State agencies, and Federal agencies by request;

(c) the establishment of methods for identifying large-scale development and development of public facilities or utilities of regional benefit, and inventorying and designating areas of critical environmental concern, areas which are suitable for key facilities, and areas which are, or may be, impacted by key facilities;

(d) the provision, where appropriate, of technical assistance for, and training programs for State and local agency personnel concerned with the development and implementation of State and local land use programs; and

(e) the establishment of arrangements for the exchange of land use planning information and data among State agencies and local governments, with the Federal Government, among the several

States and interstate agencies, and with the public; . . .¹²⁹

These stipulations directly promote systematic land use evaluation based on inventories and monitoring.¹³⁰

S. 268 continues by explaining the conditions under which States may qualify for land use program funds after five years. State land use programs shall include an adequate land use planning process (as discussed above) and a statement of objectives and policies for land use within the State.¹³¹ What is more, in order to remain eligible, the State program must implement S. 268 by providing methods for: first, controlling land utilization in areas of critical environmental concern and in areas that are or may be impacted by key facilities; second, assuring that public facility developments of regional

¹²⁹ Land Use Policy and Planning Assistance Act, §202(a)(2), (5), (8), (9), and (10).

¹³⁰ With regard to the planning process, the State land use planning agency must meet additional standards under the Land Use Policy and Planning Assistance bill. To begin with, it must be primarily responsible for the State's land use program, while maintaining a competent, interdisciplinary staff. The State land use planning agency must also coordinate its activities with other Federally-financed State land use programs and be advised by an intergovernmental advisory council composed largely of local elected officials from the State. And, in the words of the legislation, the State agency shall ". . . give priority to the development of an adequate data base for statewide land use planning process using data available from existing sources wherever feasible; . . . (and) have authority to make available to the public promptly upon request land use data and information, studies, reports, and records of hearings." Ibid., §202(b)(3) and (5).

¹³¹ Ibid., §203(a)(1) and (2).

benefit are not capriciously restricted by local regulations, and that neither State nor local programs are inconsistent with the land use program of the State; next, timely revision of the State's program for land use, with participation in the revision process by local officials, the public, land users, and property owners; fourth, coordinating the State's land use program under S. 268 with land use management programs of the Coastal Zone Management Act; and finally, influencing the location of new community developments, controlling proposed large-scale developments which would have more than local environmental impacts, and assuring that Federal environmental legislation would not be violated by the location of new communities or large-scale developments.¹³² The bill further declares that the above methods of implementation should, "wherever possible", encourage local government's role in controlling land utilization.¹³³

¹³² These five requirements are listed at ibid., §203(a) (3)(A) through (J).

¹³³ Ibid., §203(b). Additional conditions for continued eligibility are that a review of State programs must demonstrate that six basic requirements have been met. To begin with, the State must not have neglected to include in its land use planning program areas of critical environmental concern of more than statewide import. In the second place, it must be shown that ". . . the State is demonstrating good faith efforts to implement, and, in the case of successive grants, the State is continuing to demonstrate good faith efforts to implement the purposes, policies, and requirements of the State land use program." Ibid., §204(2). Third, State land use laws, regulations, and activities are to be consistent with the Land Use Policy and Planning Assistance proposal. Next, the State's Governor

As will be recalled, a stated purpose of the Land Use Policy and Planning Assistance proposal is to provide grants to States for land use programs of an interstate nature. These programs, too, could be made more effective through inventories, monitoring, and evaluation. Grants for interstate programs are to assist in coordination, research, planning, and implementation of policy. These functions may be approached either through existing interstate entities or through new interstate compacts, with the consent of Congress.¹³⁴ But in either instance, ". . . such entities or compacts shall provide for an opportunity for participation for coordination purposes of Federal and local governments and agencies as well as property owners, users of the land, and the public."¹³⁵ Meanwhile, the Advisory Commission on Intergovernmental Relations is assigned the task of reviewing and recommending revisions in existing interstate agencies so as to improve land use in interstate areas.

is required to have reviewed and approved the land use program. Fifth, State land use programs under S. 268 must have been coordinated with related programs of State agencies, the Federal government, local governmental units, Indian tribes, and governmental units involved in interstate land use planning. Lastly, the State--where appropriate--is to participate in related planning programs under the Housing Act of 1954 (P.L. 83-560, 68 Stat. 590) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1434-1464).

¹³⁴ U.S. Const. art. 1, sec. 10.

¹³⁵ Land Use Policy and Planning Assistance Act, §205(a).

Beyond all this, in its present form, the bill would create a new office in the Department of the Interior--the Office of Land Use Policy Administration--to administer programs under S.268. Through this office the Interior Secretary would perform several functions, a few of which need mentioning here since they relate to inventories, monitoring, and evaluation. One function involves the study and analysis, on a continuing basis, of the nation's land and its usage, and of State and local governmental methods employed for implementing the bill. Second, through the Office the Secretary would ". . . cooperate with the States in the development of standard methods of classifications for the collection of land use data and in the establishment of effective procedures for the exchange and dissemination of land use data."¹³⁶ Finally, the development and maintenance of a Federal Land Use Information and Data Center would be a responsibility of the Secretary. The Center would have regional branches to disseminate information, land use plans, statistical data on land use of more than local significance, and studies on land use data acquisition, analysis, and evaluation.¹³⁷

¹³⁶ Ibid., §304(c)(3).

¹³⁷ Ibid., §304(c)(4).

Conclusions

Dozens of Federal statutes influence various aspects of land utilization in the United States. The foregoing pages have focused upon two of the more recent of those laws and one prominent proposal. With little doubt, these are three of the most important Federal land use measures. And each contains provisions requiring or suggesting land use inventories, monitoring, and evaluation as a three-phased approach for solving urban or rural land use problems.

A foundation for this approach was adopted by the 1972 Rural Development Act, which requires inventories and monitoring of rural soil and water resource usage. As for coastal regions, the Coastal Zone Management Act of 1972 specifically stipulates that State land use management programs inventory portions of the coastal zone of particular concern. These two laws, then, seem to indicate a slight trend in recent Federal land use legislation. But they are only relatively small steps in this direction, merely limited attempts at promoting inventories and monitoring as essential activities for meeting the land use challenge of coming years.

Much more broad in nature is the Senate's Land Use Policy and Planning Assistance proposal. S. 268 would authorize grants for collecting and analyzing land use data. Further, it alludes to the establishment of institutional and procedural means for States to develop and carry into effect processes and

programs for land use control. To remain eligible for Federal grants, States must meet minimal requirements, including preparing and periodically revising a statewide land use inventory. State planning processes must also monitor land use changes over time. And S. 268 is designed to ". . . promote the development of systematic methods for the exchange of data and information pertinent to land use decisionmaking among all levels of government and the public. . . ."138 If passed in the present form, these would be significant advances in Federal land use law pertaining to inventories, monitoring, and evaluation.

Difficulties may develop, however, with regard to stimulating coordinated and efficient State land use from the Federal level. Particularly concerning the Land Use Policy and Planning Assistance measure, some observers contend that the Federal government would then have the potential for usurping State and local functions. Others insist that S. 268 is unnecessary, that it would cause a new labyrinth of red tape, and that it would generate much data of no use to planning programs. Still others say the bill would create overlapping Federal land use laws and agency activities and that present Federal environmental laws--

138 Land Use Policy and Planning Assistance Act, §102(b)(10).

if properly amended or enforced--are adequate for solving national problems in land utilization.¹³⁹

Some of these claims seem exaggerated or far-fetched, but a few may prove partially true. As witnesses testified before the Senate Committee on Interior and Insular Affairs, coordinating Federal land use law may become more complex and difficult with the signing of the Land Use Policy and Planning Assistance Act.¹⁴⁰ A related ". . . question that arises from this major change in the management of land is how to avoid or reduce conflicts between various levels and agencies of government--and citizens--over their respective roles while seeking to achieve new goals for the wiser use of resources and the environment."¹⁴¹ But these potential problems notwithstanding, the proposed measure would promote land use planning, management, inventories, monitoring, and evaluation long overdue in most parts of the country.

¹³⁹ Some of these points were argued during floor debate over S. 268. See Congressional Record - Senate, supra, n. 123, pp. 11647-11662.

¹⁴⁰ See, for example, the testimony of John R. Quarles, Jr., Assistant Administrator for Enforcement and General Counsel, Environmental Protection Agency, in U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act, Hearings, 93d Cong., 1st sess., 1973, Part 1, p. 296. See also American Enterprise Institute for Public Policy Research, supra, n. 120, pp. 4-6. Compare to Note, "National Land Use Policy", supra, n. 120, at 616-618.

¹⁴¹ "Search: A Report from the Urban Institute", Vol. 3, No. 6, November-December, 1973, p. 9.

IV. LEGAL TRENDS FOR LAND USE CONTROLS, INVENTORIES,
MONITORING, AND EVALUATION: AN OVERVIEW

In 1971 Fred Bosselman and David Callies correctly characterized trends and changes in State land use control as constituting a "quiet revolution."¹⁴² Three years later changes are even more profoundly revolutionary in some States, but far from quiet. Indeed, land use law-- at both the State and Federal levels--now receives significantly more governmental and public attention, is truly in a state of transition, and sometimes stimulates hotly debated legal and political questions. Beyond that, land use law in the States will probably continue to change rapidly as a result of Federal statutory initiatives to improve land usage. But though many State legislatures have considered more stringent land use legislation, as of early 1974 most States have not passed comprehensive, statewide land use control measures.

Likewise, few States now have statutory provisions requiring inventories and monitoring as a basis for statewide, systematic evaluation of the desirability or effectiveness of land usage. Equally important, of laws prescribing inventories and monitoring, rarely are there specific standards for these activities, and the concept of "evaluation" is not even referred to in much land use legislation. This status of the law partially explains why most governmental planning

¹⁴² Bosselman and Callies, supra, n. 7.

activities in these areas are relatively primitive. Yet because land use laws and practices are undergoing major transformations, this entire picture may change in the near future. Most State planners would probably hope so; they would probably hope that in the next few years inventories, monitoring, and evaluation will be based on a sophisticated approach, rather than employing dated highway and tax maps, limited field work, and related means to plan the use of land in the public interest.

Consideration of these legal deficiencies leads back to the fundamentals of land use control, namely, local versus State versus Federal powers and practices for solving land use challenges. An overview of the current situation seems relevant here.

States possess authority to regulate land utilization within their boundaries under the Tenth Amendment of the United States Constitution. Some observers prefer and expect State and local governments to solve their own land use problems, with practically no Federal influence. This could possibly be achieved through two approaches. First, authority might be largely entrusted to city and county governing bodies, because they are closest to land use problems in particular areas. And, of course, this has been tried. Legislatures have traditionally delegated virtually the entire responsibility for land use planning and zoning to

local governments. The results have been that this locally-dominated approach fails, for the most part, to promote coordinated land use, and it seems even less likely to succeed with regard to inventories, monitoring, and evaluation. If this method of land use regulation is to be retained, it should undergo significant reform in many respects.

A second alternative is for State governments to assert their own planning powers. Up until now State legislatures, with few exceptions, have been tardy in passing broad-ranging land use control measures to be enforced by State planning agencies, though State governments obviously regulate certain narrow areas of concern--coastal lands, surface mining, power plant sitings, and wetlands, to name a few. Nor do most States explicitly require land use inventories, monitoring, and evaluation from the State level. On the other hand, State officials recognize that their general approach to land use problems and solutions, characterized by delegation of power to local governing bodies, has fallen short of prohibiting chaotic growth patterns in much of the nation. They recognize, too, that local governments respond to political, social, legal, and economic pressures on a case-by-case basis. Hence, these problems and failures have spurred a "new mood" in many States--a mood favoring stronger State

laws to control land utilization, to protect areas of critical environmental concern, to regulate development of more than local impact.¹⁴³ Such a mood is clearly seen in beleaguered urban areas of Colorado, Florida, Hawaii, Maine, Vermont, and other States. Only the future will tell whether this trend and resulting State law will avert a land use crisis of national proportions or whether they will acceptably require inventories and monitoring for land use evaluation. Based on the 1950's and early 1960's, chances for adequate controls and evaluation looked bleak since State legislation normally failed to address aggressively these issues. But when viewed from the standpoint of the last half-dozen years, in combination with Federal assistance, trends appear more heartening.

While some observers support purely State and local solutions to land use problems, others believe that the best current hope for avoiding the imminent land use crisis is dependent on Federal action.¹⁴⁴ Dozens of Federal laws

¹⁴³See generally, Reilly, supra, n. 31; Fred Bosselman, "The Right to Move, the Need to Grow", Planning, Vol. 39, No. 8, September, 1973, pp. 8-12; John M. DeGrove, "Land Use Planning: State and Local Roles", 63 National Civic Review 72 (1974).

¹⁴⁴Interviews conducted for this study verified the idea that many State planning officials favor a Federal land use act. Interviews with Shelley M. Mark, supra, n. 18; Earl M. Starnes, supra, n. 34; Philip H. Schmuck, supra, n. 42; Arthur Ristau, supra, n. 58; Philip M. Savage, supra, n. 72.

regulate various, limited aspects of land use in the States. But these advocates argue that new Federal legislation is needed, legislation that--among other things--encourages systematic evaluation based on inventories and monitoring. The answer to land utilization problems, they feel, may be provided by the proposed Land Use Policy and Planning Assistance bill, which generally extends inventory and monitoring concepts found in the Rural Development Act of 1972 and the Coastal Zone Management Act of the same year. The Senate proposal, basically similar to the House version, is designed to authorize \$800 million to State governments over eight years for developing land use planning processes and programs. But the House version was suddenly delayed for a floor vote on February 26, 1974, by the House Rules Committee.¹⁴⁵ Uncertainty therefore exists as to whether a national land use bill will be passed during this session of Congress.

Regardless of Federal legislation to be passed, some States are currently more prepared than others to deal with land use problems, particularly through their statutory

¹⁴⁵ For details, see David S. Broder, "Land Use Bill Is Killed In House Unit", Washington Post, February 27, 1974, p. A1, col. 2; George C. Wilson, "Udall Fights to Revive Land Use Bill", Washington Post, March 3, 1974, p. A2, col. 4; Land and the Environment, Vol. 2, No. 5, March 8, 1974, p. 33; Leonard Downie, Jr., "The Ambush of the Land Bill", Washington Post, March 10, 1974, p. B3, col. 1; Land Use Planning Reports, Vol. 2, No. 5, March 11, 1974, pp. 1-3. The Nixon administration seemed to withdraw on this occasion its previously stated support for a national land use act. See supra., n. 122.

provisions requiring or suggesting evaluation based on inventories and monitoring. In this regard, of the fifteen States surveyed in this study, Florida, Hawaii, Maine, Vermont, and perhaps even Colorado now seem to maintain an edge over Delaware, Indiana, Kansas, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Utah, and West Virginia. Legal trends in the former five States should facilitate a reasonably effective and able response to objectives of Federal land use legislation. In the other ten States this is less likely, and questions of continuing eligibility for Federal land use grants and assistance will be of import as these States attempt to meet minimum requirements for planning processes and programs. States unable to meet these requirements will, of course, be ineligible for additional Federal funds. This fact will stimulate new State legislation.¹⁴⁶

Some new State legislation will undoubtedly be prompted, for example, by enactment of the National Land Use Policy and Planning Assistance measure. One should remember, however, that that particular bill provides no national policy in the strict sense and few specific requirements for State planning programs. Instead,

¹⁴⁶ Anticipated State legislative reaction to the national land use bill is discussed in a seven-part series in Land Use Planning Reports, beginning with Vol. 2, No. 2, January 28, 1974, pp. 4-7.

relatively broad guidelines for State planning processes and programs are stated, with particular emphasis on four distinct matters: areas of critical environmental concern, key facilities, large scale development, and land sales or development projects. What is more, sanctions against States failing to develop and implement land use plans have presently been removed from original versions of the bill.

These facts indicate two conclusions. First of all, the proposed National Land Use Policy and Planning Assistance Act should neither straight-jacket the States nor force them to reject their own peculiar planning traditions based on local control. This is nothing new, for Federal law pertaining to land use has traditionally encouraged States to cooperate with Federal programs through grants and other inducements, not by attempting to enforce rigid Federal guidelines. In the second place, it is far from certain how many States will design and adopt land use programs with stringent controls or require inventories and monitoring as a foundation for systematic evaluation of land use. This is new, or at least will be, and perhaps future research could profitably address these upcoming developments. But such research should either analyze trends in States other than those examined here or developments in all fifty States.

For the present, at both the State and Federal levels, there are some limited legal trends supporting inventories and monitoring for purposes of systematic land use evaluation. Future directions of those trends, plus local, State and Federal land use practices, will greatly influence whether the United States is to avert a national land use crisis.