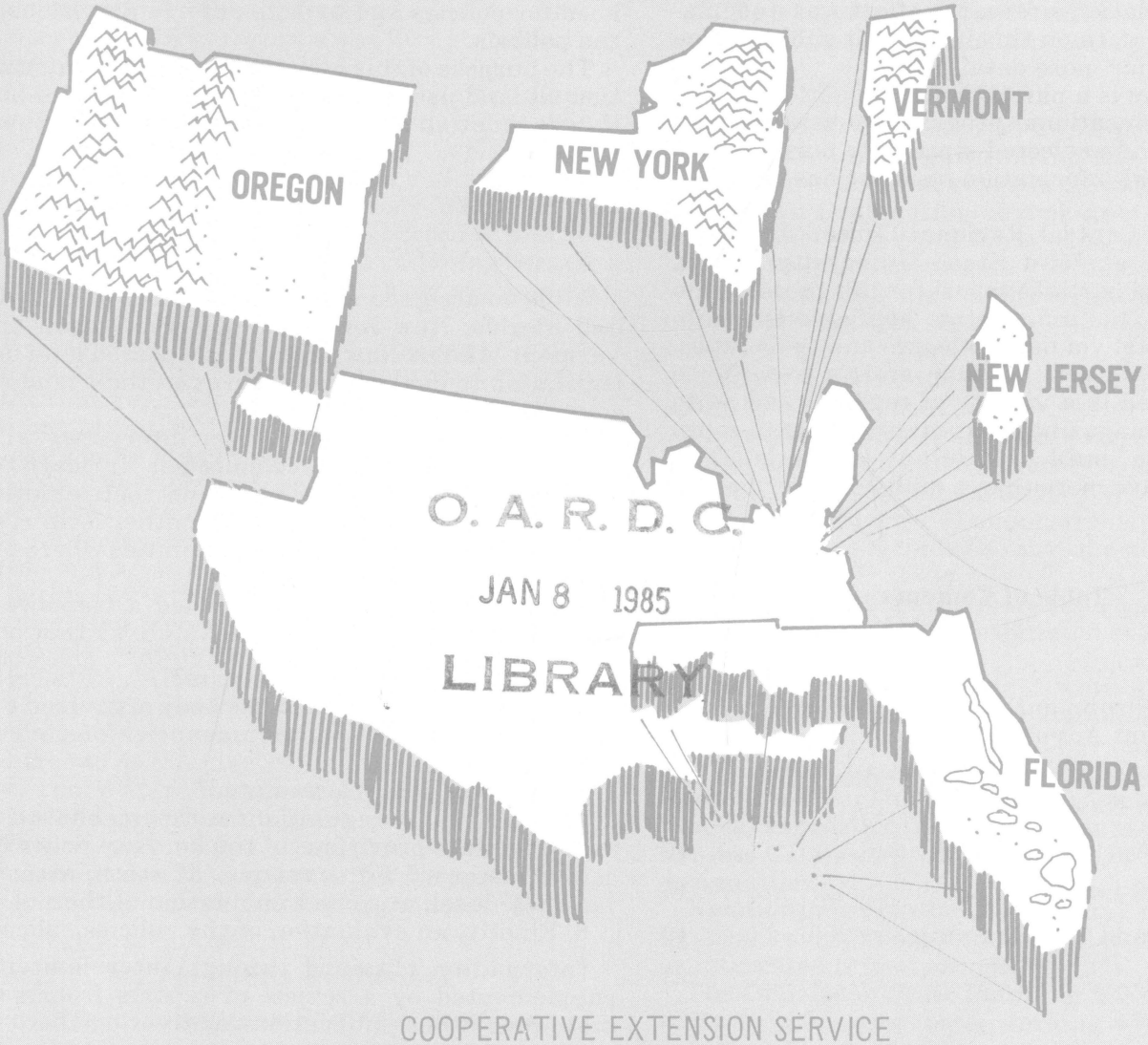
BULLETIN 623

LAND USE POLICIES IN SELECTED STATES



COOPERATIVE EXTENSION SERVICE
THE OHIO STATE UNIVERSITY

LAND USE POLICIES IN SELECTED STATES

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Preface

A growing concern about how land is used is reflected in a variety of developments in Ohio, other states in the Midwest and across the nation. With land use policies being enacted in some states and considered in others, the need for a well informed public is more important than ever before. A land use policy must be understood and accepted by most of the people if its objectives are to be realized.

To help meet the need for more information on land use legislation a research effort was undertaken to gather data on this important subject. (See Introduction for more detail.)

This bulletin is a part of the information assembled for an educational program concerning land use legislation in selected states. Its purpose is to provide factual information on what has occurred in five states.

The North Central Regional Center for Rural Development at Iowa State University, Ames, Iowa, provided partial support for this project. The Center made this information available throughout the Midwest via news releases and radio tapes. Also articles describing each state's experience were published in a variety of regional and state agricultural magazines plus others going to county, township, and municipal officials. The magazines have more than a million subscribers in the region.

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Introduction

In Ohio a number of events reflect the growing concern about best use of land. House Bill 63 passed by the Ohio Legislature in 1975 created a joint legislative Land Use Review Committee to study land use policies, programs and regulations in Ohio. Hundreds of people attended its hearings and expressed their attitudes and feelings about land use policies. The committee's final report for the General Assembly was published in July 1977. Also, for several years state conferences and workshops focusing on land use policy organized by diverse groups have been well attended.

These developments underscore the interest in future use of Ohio's land. One can expect legislation encompassing a comprehensive land use policy for Ohio to evolve from the work of the Land Use Committee. Proposed legislation will be submitted to the General Assembly in 1978.

With formulation of land use policy looming ever larger on the state's horizon, county officials plus other county and community leaders will be called on to interpret the "whys and wherefores" of land use policy and procedures. A continuous educational program will be needed to explain "why" the need for policies and tools to enforce provisions of the policies.

The purpose of this bulletin is to present information on land use legislation in five states and how this legislation is viewed by residents of those states.

Method

While on assigned research duty in 1975-76, I visited Florida, New Jersey, New York, Oregon and Vermont. All but New Jersey have passed land use legislation to deal with pressures on their land resources.

Information was secured via interviews with members of the agency, commission, or board responsible for land use policies and their enforcement. I also talked with farmers, other local residents and officials in towns and counties where the policies were in effect.

The following questions provided a framework for data gathering efforts on each state's situation:

1. What was the prior situation?
2. How is the state's land use body organized and its relations with other agencies of government?
3. How was policy formulated?
4. What kind of regulations were established?
5. How were provisions of the land use policy administered? For example, at state, area, or local level, or some combination of these?
6. Finally, an evaluation of the policies.

Information obtained through interviews was supplemented by a review of reports from each state plus other publications addressing the land use question.

I wish to express my appreciation and thanks to the many farmers, professors, planners, agency personnel and state and local officials whose cooperation and assistance contributed to the content of this bulletin and a valuable learning experience.

Florida's Environmental Land and Water Management Act of 1972

Florida is a land of sun and water, plus a rapidly growing population and a fragile ecology. A number of happenings converged to heighten interest and concern about the future of Florida's land, water, and people.

The increased interest in environmental questions, evident across the nation in the late 1960's and early 1970's, was shared by many Floridians. One reflection of this concern was the formation in 1971 of an organization named *Conservation 70's*. Its membership included most of Florida's conservation-oriented organizations. This condition spelled out its objectives and shared them with legislators and other interested citizens. One of Conservation 70's proposals was for a state land use plan.

During this period results of the U.S. Census documented what many thought was happening — Florida's population was growing rapidly! It increased 1.8 million between 1960 and 1970.

Along with this change, a crisis helped precipitate action. A severe drought occurred in southern Florida in the fall of 1971. Water rationing became a fact of life in many urban centers in southeastern Florida.

Responding to this crisis, Governor Reubin Askew organized a Water Resources Conference later that year. Several recommendations urging prompt attention to Florida's land and water resources came from those attending the conference. Shortly after the conference, Askew appointed a task force to study Florida's natural resources and the interplay between these resources and the needs of a growing population.

Early in 1972 the task force completed its work on four related pieces of proposed legislation. These proposals were presented as bills to the Florida Legislature. After some debate and modification, the Legislature passed all four bills in the spring of 1972: The Environmental Land and Water Act (also referred to as Chapter 380), the Land Conservation Act, the Water Resources Act, and the Florida Comprehensive Planning Act.

This chapter focuses on the first act, although all four are designed to improve future relationships between Florida's people and its natural resources!

Provisions of the Act

The basic purpose of Florida's Environmental Land and Water Act is to establish policies to guide and coordinate decisions relating to development. The act establishes procedures for the identification and regulation of areas and activities that are of state or regional concern. The policies are to be implemented by local governments.

The act's two categories of land use regulations are Areas of Critical State Concern and Developments of Regional Impact. These regulations concern land use proposals that extend beyond the boundaries of one unit of local government.

Florida and its 10 multi-county planning districts have a special interest in three major categories of developments:

1. Environmentally sensitive land such as fragile water storage areas and low lying areas where rivers flow into the ocean.
2. Large scale developments such as major housing developments and regional shopping centers.
3. Major areas of governmental activity such as state facilities and regional airports.

Area of Critical State Concern

Florida's Environmental Land and Water Act provides the state government the authority to modify use of large acreages in critically important land areas. Designation of such areas can include land in one or several units of local government such as counties and municipalities.

There are three major criteria used in determining whether an area should be designated as a area of critical state concern:

1. The area contains or has a significant impact upon environmental, historical or natural resources of regional or statewide importance;
2. An area significantly affected by an existing or proposed major public facility;
3. A proposed area of major development potential, which may include the site of a new community.

Under present law, no more than 5 percent of the state's land area can be designated as areas of critical state concern.

The Governor and Cabinet were given the authority by this act to designate boundaries of an area of critical state concern. They may also establish rules and regulations for guiding development in such an area. The Florida Division of State Planning is responsible for providing data to the Governor and Cabinet about a tract being considered for designation.

Nominations of critical areas may also be made by local governments, regional planning councils, or interested organizations.

The Division of State Planning has the responsibility for reviewing data, working with local governments, and conducting public hearings on a proposed Area of Critical State Concern (ACSC).

When this work is completed, the division submits a report to the Governor and Cabinet. After a public hearing, they either approve or reject the proposal.

Once an ACSC has been designated, local governments involved establish land development regulations. If a local government does not submit regulations within six months, the state has the responsibility of preparing regulations.

The Division of State Planning annual reports show 74 nominations for ACSCs had been received by July 1, 1975. Two of every three nominations were rejected because they did not meet the criteria specified in the act. Seventeen active critical area nominations are in the division's files.

Developments of Regional Impact

Any company planning a large development must prepare a Development of Regional Impact (DRI) proposal. A proposal must be filed with local government when, "Any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety and welfare of citizens of more than one county."

The Governor and Cabinet established guidelines and standards for identifying 12 types of developments of regional impact. The types requiring DRIs range from residential developments and shopping center—the most frequent types—to mining operations and port facilities.

A developer initiates the process by submitting an application for approval of his project. He must provide information on five major areas: the environment and natural recources, the economy, public facilities, public transportation, and housing. Data in the report must describe in detail the impact of the project on these five areas.

The applicant files copies with the city or county government, the regional planning council and Division of State Planning. Then the unit of local government arranges a public hearing where data is presented. Within 30 days the local government makes a decision either to approve, deny, or approve with conditions the DRI proposal. If the proposal is approved, a development order is issued to the applicant.

Multi-County Planning Districts and Regional Planning Councils

Coordination of planning between local governments and the state is achieved through regional planning councils. Ten multi-county planning districts were authorized by Florida's Comprehensive Planning Act of 1972. Heavy lines on the state map outline each planning district.

A regional planning council serves each of these districts. Fifty-eight of Florida's 67 counties are members of a council. Many towns and cities also belong to these regional planning councils.

Most council members are elected officials, although representation varies from district to district. If the mayor of a city does not serve, he appoints a representative. One or more county commissioners from each participating county are members. Other members are appointed by mayors and commissions.

The Florida Legislature appropriates funds for these councils to assist in reviewing DRIs.

The Green Swamp ACSC

Part of Florida's Green Swamp was designated an area of critical state concern by the Governor and Cabinet in July, 1973. It was the first area designated under provisions of the new Land and Water Management Act.

The Bureau of Land Planning had been assembling data on the area for some time. Its findings and recommendations included delineating the area's boundaries, reasons why it was of critical state concern, the dangers of uncontrolled development and the advantages of coordinated development. The Bureau also recommended principals for guiding any further developments in this area. These data are contained in a 50 page Final Report And Recommendations For The Proposed Green Swamp Area of Critical Concern.

"The recommended Green Swamp Critical Area . . . is an area containing natural resources of regional and statewide importance and an area which has a significant effect upon existing and proposed major public facilities.

The most important resources in the critical area are those related to ground and surface water; specifically, the valuable natural functions of the Floridan Aquifer and the wetland areas. The Floridan Aquifer is the most important water-supply resource in the State, . . ."

An aquifer is an underground water recharging or resupply area. It could be described as an underground watershed.

The critical area designation did not include all of the Green Swamp. Location of the Green Swamp and the portion designated as an area of critical concern is shown on the state map. Only 322,690 acres of southern Lake and northern Polk counties in central Florida were included in the designated area. However, the physical land area of the Green Swamp extends into three additional counties.

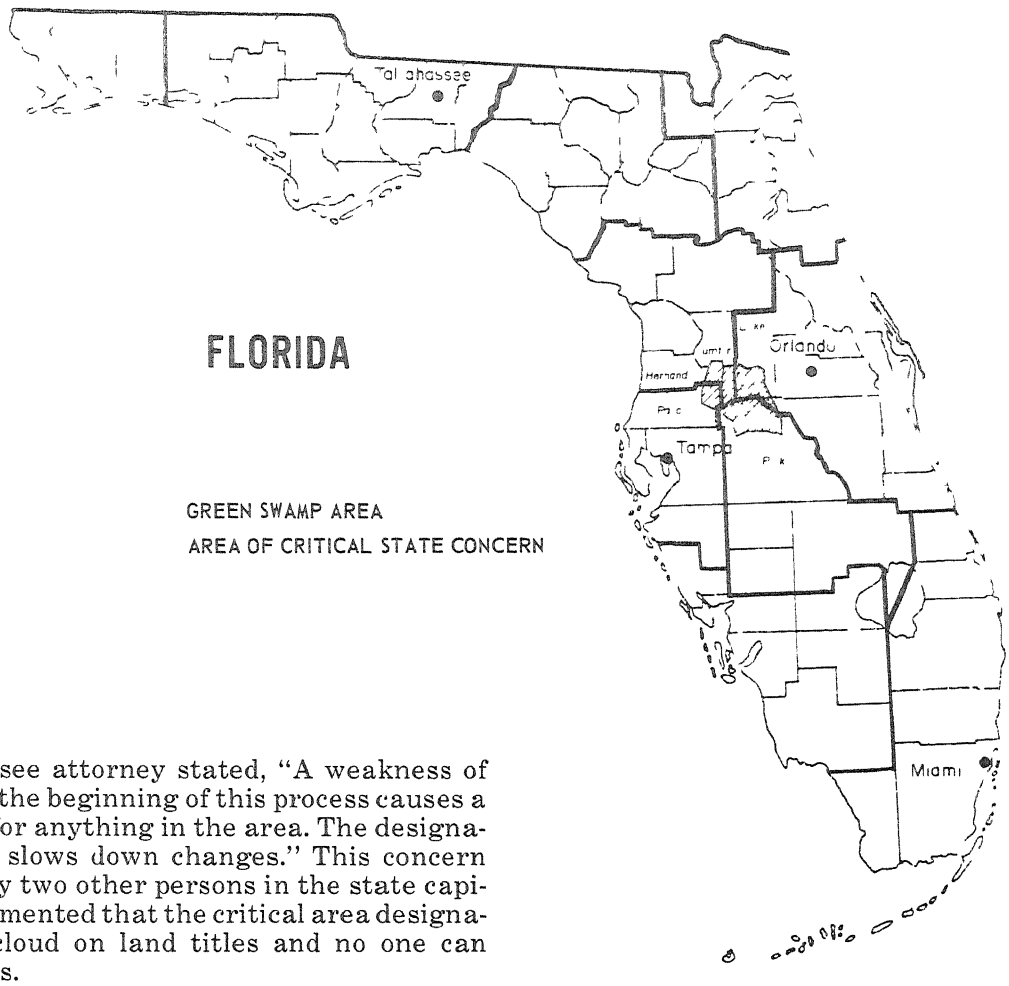
This designated area is located between three of Florida's fastest growing regions—Orlando, Tampa, and the Lakeland-Winter Haven area. Development activity in the area is increasing, and this trend is expected to continue.

Use of lands for agricultural purposes, which includes ranching, were not restricted by this designation. Other uses were restricted, however, according to major soil classifications. A variety of regulations apply to any development that occurs in this area.

Division of State Planning representatives met with local officials and citizens during the study period. Public meetings also were held while preliminary recommendations were being discussed.

Comments About ACSC and the Green Swamp ACSC

What does one hear about ACSC and the Green Swamp ACSC in particular? From Tallahassee to people farming in the Green Swamp came these comments.



A Tallahassee attorney stated, "A weakness of ACSC is that the beginning of this process causes a moratorium for anything in the area. The designation stops or slows down changes." This concern was echoed by two other persons in the state capital. They commented that the critical area designation puts a cloud on land titles and no one can change things.

The executive director of a statewide organization said it amounts to inverse condemnation, especially the time that elapses before development requirements are determined. The property owners are just in limbo about doing anthing. He asked, "Who pays the landowner when you restrict certain rights, or withdraw use of certain rights?"

A University of Florida faculty member said, "A lot of people will tell you that it is a disaster, particularly farmers who were thinking of selling farms for development. Within the designated area, there are a lot of very bitter people!!"

In several places the Bureau of Land Planning used highways as the boundary line for the designated area. This aroused considerable resentment on the part of local people. A county official stated, "We resented the arbitrariness of this action. They should have used something other than highways as a boundary."

As a rancher pointed out, "Values vary greatly in terms of which side of the road your land is on. Being in this critical area removes land from the market. If your land is in the Green Swamp, no one wants it!" A former director of the Division of State Planning said determination of area boundaries has always been difficult when lines must be drawn on paper through the marginal impact zones. The boundaries have been consistently disputed by both advocates and critics.

Restrictions on use of land in an ACSC goes counter to beliefs and attitudes of many people. It is usually expressed in this manner: "I should have the opportunity to develop and/or change how my land is used."

How strongly this belief is shared by people in the area is evidenced by a suit filed July 1975 against the Governor and Cabinet. The group is known as Green Swamp Property Owners, Incorporated. This excerpt from one of their letters reflects some of their objections to this designation:

> "Our properties are no longer at our disposition but subject to bureaucratic control. We are no longer equal to our neighbors across the highway except in taxes. The regulations bar us from use of from forty to ninety percent of our property, except for agriculture."

Their suit is still pending in the courts.

One farmer complained, "All I can do is grow fruit and cattle and I'm losing money on both!" He also expressed doubts that the planners and hydrologists knew what they were talking about.

A number of people do not believe the Green Swamp is an important aquifer recharge area or do not understand what is involved in terms of maintaining an adequate supply of fresh water.

Pros and Cons of Developments of Regional Impact and Regional Planning Councils

What do people working with DRIs and Regional Planning Councils think of the provisions of Florida's Land and Water Management Act?

During the 1974-75 fiscal year, the Bureau of Land and Water Management received copies of 62 DRI applications, which had been filed with local governments. Just as with the first year's experience, most were for residential developments and shopping centers, 31 for the former and 11 for the latter.

Local governments, frequently using the regional planning council's recommendations, approved 19 applications subject to specific changes being made. Two proposals were approved with no conditions attached. Twenty-two applications were still being studied and 13 had been withdrawn.

"The DRI process has eliminated a lot of projects that had no merit. Developers completing projects had to do a more competent job of land use planning. They addressed topics they hadn't considered before. DRIs have upgraded the quality of developments!" This comment from an architect who serves on a regional planning council.

Provisions of the DRI's alerted elected officials, both city and county, to the impact that a large development would have in their sphere of influence. Representatives of local government learned more about important factors that had to be dealt with—such as water quality and various kinds of pollution. The DRI process also gave local governments time for pre-planning whether they did so or not. The requirements that must be met in a DRI proposal have provided a stimulant to planners, members of RPC and developers to look at more factors when considering a major project.

An attorney who represents several development companies believes the details and additional requirements called for in a DRI proposal were adding 10 to 15 percent to the cost of projects.

"Front end costs are staggering and that slows us down! In the beginning it scared us to death! Seemed like something totally unrealistic being crammed down our throats." These remarks from an engineer-developer who had prepared DRIs.

A council member felt that setting an arbitrary size criteria before a project had to be treated as a DRI was a weakness of the act. "It leads to a splitting off of projects so developers can get some in under the wire. This is an evasion of the act by some developers."

A University of Florida faculty member who had long experience with planning and zoning in the state said, "The DRI process seems to be working pretty well. Overall there is no doubt that 380, the Environmental Land and Water Management Act, is very much on the plus side!"

An attorney thought regional planning councils were a big problem. He felt they were too autonomous and their administrators were requiring more and more detail from those submitting proposals. He added, "They can diddle around and ask for something more before accepting an application." The councils are not subject to any penalties if they make mistakes.

Some people oppose the idea of regional councils and multi-county planning districts. They see it as a third level of government—one further away than town and county governments. Some local officials oppose the regional organizations because they see them as a threat to local government.

However, attitudes change as reflected by this remark from a developer who was also a member of a regional planning council, "Basically, the law is good. I didn't like the idea of another layer of government at first, but it is a workable way to do it."

Persons who were members of regional planning councils and others working with them commented favorably on the work of councils.

A county commissioner, chairman of a regional planning council, believes one of the big advantages is that councils make assistance of professional planners available to sparsely populated rural counties. Another council member pointed out that counties can now do things together they couldn't do alone. He added that the professional staff advises local governments on legislation, both state and federal, that would benefit them.

The mayor of a rapidly growing small town said, "I think it is a good tool for getting people together. At least you talk with other people in adjoining counties that have common problems. A RPC provides a means wherby we can talk and decide on better solutions to problems. It benefits counties and towns in the districts." He is a member of his district's regional planning council.

Conclusions

Present trends indicate Florida's population is increasing and pressure on land, water and other natural resources will continue to grow. Careful management of land and water in rural areas is a must if large numbers of people are to live in Florida's cities.

With passage of the Environmental Land and Water Management Act, the state began to take back some of its power delegated to local governments. Population growth and development were of such volume that they threatened the health and welfare of Floridians and the state's fragile ecology. As a University of Florida professor stated, "The magnitude of growth was such that it was necessary for the state to become actively involved in certain types of development.

There was general agreement that data required in DRI for all major projects had improved the quality of developments and the planning process. The socioeconomic impacts as well as impact on natural resources are spelled out.

The act has increased the amount of planning going on across the state. Under usual circumstances, small towns and very rural counties do not have access to planners and planning services.

Today, planning assistance and other services for Florida's small towns and rural counties is available from Regional Planning Councils.

The Environment Land and Water Management Act provides an organizational arrangement whereby towns and counties can engage in cooperative efforts within a district. A Regional Planning Council in each district facilitates this cooperative effort. It enables more towns and counties to work together on common problems. Adjoining towns and counties can address issues that cross their legal boundaries.

What of the future? Florida's Division of State Planning is working on a statewide comprehensive land use plan. Passage of the Local Government Comprehensive Planning Act in 1975 complements the Environmental Land and Water Management Act. This act requires every Florida city and county to prepare and adopt a comprehensive plan by 1979.

Just as in other states, several laws influence what happens to the land. The Environmental Land and Water Management Act coupled with other laws should move Florida towards an optimal relationship between its people and natural resources.

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For additional information contact:

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The Transfer of Development Rights Proposal in New Jersey

"The people of New Jersey have to make up their minds if they want farms in the state," commented a farmer. He is only one of many concerned about the future of agriculture in New Jersey—the Garden State.

Rapid change is a characteristic of this most urban and most densely populated state in the nation—New Jersey has more than 950 persons per square mile and its population increased 18.2 percent from 1960 to 1970, from 6,000,000 up 7,200.000. More people, highways, housing, commercial and industrial developments generate heavy demands for land to accommodate these uses. Much of this land was formerly used for agricultural purposes. For example, between 1964 and 1969, the acreage in farm land declined by 120,000 acres. About one million acres remain in farm land.

The situation regarding agriculture's future in New Jersey is getting more critical every day. Two land use policies are being considered in attempts to cope with this situation. A policy based on transfer of development rights is one, and purchase of development easements by the state is another.

This article explores the transfer of development rights policy. Permissive legislation in the form of a bill entitled Municipal Development Rights Act, which incorporates provisions for such a program, is being considered by the New Jersey legislature. Its major objective is to provide legal authority to municipalities so they can help maintain farming and preserve open space.

How a Transfer of Development Rights Policy is Supposed to Work

This policy is based on the assumption that ownership of land or real property is really ownership of a "bundle" of rights. One of these is the right to develop or a development right. Another is the mineral rights, which the landowner can sell. This right and the right to develop can be separated from the land. The owner can sell either or both of these two rights and retain title to the property. He could still use the land for agricultural, forestry, or outdoor recreational purposes.

This policy provides a mechanism where the right to develop can be transferred and/or sold so a greater density of housing units are permitted on a different plot of land.

The process begins when a municipality designates a tract of land for agricultural and open space uses only. The residential development potential in this tract is calculated and the municipality issues development right certificates to each property owner. Development rights in urbanizing regions are of considerable economic value.

Landowners in the designated open space areas may then sell their development rights to builders, or whoever wishes to develop housing in tracts where a higher density of dwelling units has been designated.

This procedure follows from a basic premise that the municipality has a master plan and zoning.

The changing pattern of land use in New Jersey—housing developments replace agriculture. (Photo courtesy of Soil Conservation Service-USDA)

Creating Development Rights and a Market for Them

1. A municipality must identify specific tracts of land it wishes to maintain as open space. In New Jersey, townships are considered municipalities with the same rights and powers of towns and cities. This open space would be zoned residential but would consist largely of farm land, woodland, flood plains, or hilly ground. These designated open space areas must be in keeping with the municipality's master plan.

2. A municipality must determine the residential development capacity or potential of each landowner's property. When the development potential is determined, it is converted into development rights, and these rights are distributed to the property owners. The number of development rights each landowner receives is based upon the value of the property, not just on acreage. A person with flat or gently rolling clear land would receive more development rights than a person with the same acreage whose land was rocky, hilly, and wooded. This method of distribution takes into account the location and unique characteristics of each tract. This procedure creates a supply of development rights.

3. A municipality must create a market for development rights. It does this by designating other tracts as having a higher density development potential than stated in the present zoning ordinance. That is, more housing units will be permitted if accompanied by the required number of development rights.

This requirement of development rights as a prerequisite before a higher density project can be built creates a market for these rights. The increase in the residential density - above that of the former zoning maximum - provides an incentive which should attract a buyer. The municipality must create this incentive by designating districts where it is more profitable for the developer to build using the development rights.

A municipality will specify how many development rights are required to fully develop a piece of property. For example, a builder has a 10 acre tract and can put one house on each acre. However, under the new zoning, if he can get 10 development rights, he can build according to the new density provisions—2 houses per acre. He considers it more profitable for him to build 20 units than 10 so he is in the market for 10 development rights. The builder goes shopping for 10 development rights. The price he pays is determined by negotiations with one or more holders of development rights.

The municipality, in its overall planning, zoning and issuance of development rights, will determine the number of development units for each landowner and the total number of development rights to be issued. It would allow the same number of additional dwelling in a development zone as the number prohibited in the open space area. Hence,

under optimal conditions, the demand for development rights should equal the supply in each municipality.

Development right certificates could be taxed as if they were real property. The value of a development right would be equal to the difference between the assessed value of the land for open space uses and its assessed value for development purposes. Whoever owns the certificates would pay property taxes on them. After selling the development rights, a rural landowner would pay property taxes based on the reduced value of his land.

4. Because of the uncertainties of the development situation, a municipality must be ready to make adjustments. The incentive to purchase development rights must be maintained. For example, a tract designated at the higher density rate of two houses per acre with development rights might be developed at one house per acre and the builder would not be in the market for development rights. A municipality would then be responsible for rezoning another tract in which development rights could be utilized.

Comments on a Transfer of Development Rights Policy

Transfer of development rights has considerable appeal to some people because the policy utilizes the free enterprise system. The market determines the price of certificates. In the buying and selling of certificates, there is no direct cost to the municipality.

A transfer of development rights policy reduces the likelihood of some landowners suffering "wipeout losses" while others enjoy "windfall gains". Landowners in the open space zones would be paid for the restrictions imposed by zoning. They could sell their development rights units on the open market and thus be compensated for giving up these rights. On the other hand, builders and developers using land in the higher density zones share their profits with open space landowners via purchase of development rights certificates.

Would a transfer of development rights policy work if widely adopted by municipalities across the nation? A major requirement for success of this policy is a strong demand for land in areas selected for a higher density of housing units. The proposal would not work in a static situation or areas where population is declining for there would be little demand for development rights.

What about areas without many planning commissions and zoning? A must for success of this program is for municipalities and counties to have effective planning commissions. The commissions forecasts as to future changes and demands must be close to what actually happens so there will be a market for development rights certificates. Also, a master plan and zoning must be in place. Planning and zoning work must be completed before open space and high density tracts can be identified. This land use policy should not be undertaken by elected officials who do not have the services of a competent planning staff and a planning commission.

Of New Jersey's 567 municipalities, which include townships, 550 have planning commissions or boards. Each of the 21 counties has a professional planning staff.

Professor Jerome G. Rose of Rutgers University and an authority on land use policies believes success or failure of this policy is dependent upon the skill of planners and their allocation of land use. He also points out that there must be a long-term commitment to the plan on the part of local officials. Without stability in local government, very few people would be interested in buying certificates.

Another ingredient that can be overlooked is the importance of a well-informed public. It is highly desirable that a majority of a municipality's citizens understand local land use problems.

B. Budd Chavooshian, a land use specialist at Rutgers University, sees a new market created for open space land once the development rights have been sold. Economically it would be easier for farmers to purchase the land because its value would be based upon its agricultural productivity. Also, conservation-oriented organizations would be in a better position financially to buy land. Land for campgrounds and other outdoor recreation facilities would be within the reach of more people.

A transfer of development rights program should reduce risks for developers. They would know the areas planned for future growth. There should be a reduction in time and expense of getting approval for projects because the usual services and facilities should be readily available.

A possible disadvantage of this policy is that developers may not wish to buy development rights. They might seek out municipalities where such provisions are not in effect. This would not be difficult to do in New Jersey where the pending legislation is of the permissive type. Without uniform adoption of this policy, developers could shop around and build in municipalities without the development rights policy.

This policy does not attempt to include commercial and industrial developments in its program. Location of these land uses would follow conventional zoning procedures.

Present Status of TDR Legislation

A Municipal Development Rights Act was introduced to the New Jersey legislature in February, 1975. This bill incorporated all the procedures needed to set up a transfer of development rights land use program. It provides the legal authority for municipalities that wish to adopt such a policy to do so. It is permissive legislation, meaning townships and municipalities have the option of using provisions of the bill or ignoring it.

The bill passed the General Assemble (House) in 1975 but fell two votes short of passage in the Senate. It has been re-introduced in 1976 and is being considered by legislative committees.

What of Agriculture's Future in New Jersey?

One wonders about the future of agriculture in the Garden State. Immense pressure on land to be used for other than farm purposes will continue. The state lies along the axis of the tremendous strip of metropolitan development extending from Boston to Washington, D.C. as pointed out in a folder extolling the state's attractions; "New Jersey is the main street of the multi-city . . . ."

Much of the state's land area is within commuting distance of either New York City or Philadelphia. A grid of major highways and extension of sewer and other facilities make more and more acreage attractive to home seekers, businesses, and industry.

Should commercial agriculture in New Jersey be preserved or saved? If the answer is yes, then some form of legislative action by New Jersey's lawmakers is a must. Meanwhile, some farmers are not making long-term investments in their property, such as improvements of buildings and purchase of new farm equipment.

A member of a state agency doubted that a transfer of development rights policy based on permissive legislation would be effective. With the decision to adopt this policy left up to each township and city, he wondered if enough farm land would be preserved to maintain an agricultural business complex. The presence of seed, fertilizer, and farm machinery businesses that provide supplies and services for farmers is very important if agriculture is to survive in New Jersey.

Several people interviewed discussed the importance of maintaining a "critical mass" of land for farm purposes. A certain volume of business is necessary if the agri-business complex is to continue its service and supply functions.

A transfer of development rights policy is one proposal to maintain agriculture and open space in New Jersey. Purchase of development easements is another policy proposed by a state Blueprint Commission on the Future of Agriculture. Several persons—among them farmers, Rutgers University faculty and members of state agencies—thought these two policies would compliment each other if used to address the problems of agriculture and open space.

Regardless of the advantages and disadvantages of either policy or their complimentarity, there is a pressing need for enactment of some kind of state policy. Present trends indicate continued heavy demands on New Jersey's land resources. The less intensive uses of land, such as farming, will continue to give way to the demand for more intensive uses, such as housing developments and shopping centers.

Without a state land use policy, New Jersey may actually be the "Garden State" in 10 or 15 years—lawns and gardens but no farms as they are usually thought of.

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New York's Agricultural Districts

This is what a New York farmer said about agricultural districts: "I could see the handwriting on the wall. When I went back to New Jersey for a visit, there were no farms left. The same thing is going to happen here. They are going to try and push us out. I hope agricultural districts will help us stay in business a little longer. I enjoy farming, that's the reason I stay with it."

Almost four million acres of farm land in New York state are now in agricultural districts. Two-hundred and ninety four agricultural districts had been organized by the middle of June 1976.

Why this interest in agricultural land? A growing number of New Yorkers, both urban and rural, were concerned about haphazard urban sprawl and its affect on agriculture. Many acres of excellent farm land were disappearing as subdivisions, shopping centers, factories and other urban uses spread over the countryside and along river valleys. Also those farming adjacent to towns or cities were subject to complaints and restrictions concerning some phases of their farming operation.

Organization of agricultural districts was made possible by action of the state legislature when they passed unanimously the Agricultural District Act in 1971. Passage of this legialation was the culmination of a process that began several years earlier.

The intent of the legislature was to maintain viable agriculture in the face of growing urban pressures. Its policy is set forth in this declaration:

> "It is the declared policy of the state to conserve and protect and to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air shed, as well as aesthetic purposes."

At an agricultural leaders forum held at Cornell University in 1966, Governor Nelson Rockefeller announced that he would establish a Commission on Preservation of Agricultural Land. The 16 persons appointed to the Commission represented agricultural, industrial and business interests throughout the state.

After two years of work which included many hearings and reports by faculty from Cornell University's College of Agriculture, the Commission submitted a report to the Governor. The report was entitled, **Preserving Agricultural Land in New York State.**

Several months later, Governor Rockefeller formed a permanent Agricultural Resources Commission to replace the first Commission. After two years of work which included many discussions with interested people, this commission prepared a report. This report served as a kind of blueprint for the persons who drafted the Agricultural District Bill. It set forth many of the provisions incorporated in this bill.

The content of the bill and its passage into law represented the culmination of several years work. People representing various interests around the state contributed to this effort to conserve and protect agricultural lands.

Interest in agricultural districts continues to grow and is reflected in the organization of new districts. People in other states want to know more about agricultural districts and how they work.

Why The Rapid Growth of Agricultural Districts?

Many farmers were quick to see the advantages provided by provisions of this new law, but not for the same reason as could be expected. A number of reasons emerged as to why farmers and others wanted to organize districts.

Formation of agricultural districts helps to keep farming and the agricultural business community strong. Districts not only provide a measure of protection for investment in farm enterprises but also for businesses that make up the agricultural business complex in the area.

"Agricultural districts influence legal actions favorable for farmers. People know you plan to stay in farming. When you sign your name, you make a commitment to farming. People won't buck you as much then." These comments come from a New York dairy farmer.

Another advantage of New York's agricultural districts is that they help establish or maintain an agricultural community. A young farmer said with feeling, "You're not alone! In an agricultural district you are together with a group of farmers!" He had been active in organizing an agricultural district. He called a meeting at his house and after determining widespread interest, had taken a petition around to neighbors to gather support for formation of a district.

Acceptance of a district by the County Board of Supervisors provides public recognition that agriculture is an important activity in the county. Everyone knows this acreage is dedicated to agriculture for at least eight years. Nonfarm people in districts consider agriculture when thinking about solutions to local problems.

Professor Howard E. Conklin of Cornell University states that basically the district creates conditions that increases the odds that a farmer can maintain his agricultural enterprise and it reduces the opportunities to sell land for other uses.

Some farmers were eager to form districts to get in before tax rates went up. However, opinions were mixed on this matter. Two or more farmers commented that they didn't see that the district provided any tax advantage in their cases, at least not for the present.

"The district provides protection for the farmer, it gives him more freedom. It protects against sewer line expenses so you won't be assessed out of business. It also discourages encroachment by speculators," commented another farmer.

All landowners in a district have agreed to an eight year commitment on their property. When farmers sign a petition, they renew or reaffirm a commitment to farming as a way of life and a way of making a living. A Cooperative Extension agent thought the commitment a farmer makes in signing up is an important aspect of agricultural districts. This provision has the effect of discouraging land speculation.

Creation of districts help conserve land valued as natural resources as well as for agricultural purposes.

Two or three people believe that agricultural districts are highly acceptable because they are not imposed on local people by the government. The idea or initiative for creating a district comes from the local landowners.

Steps In Forming An Agricultural District

There are a number of steps before an agricultural district becomes a legal entity in New York.

(1) Landowners start the process by agreeing among themselves to initiate proceedings for a district. They must own at least 500 acres or 10 percent of the land in the proposed district. Preferably the farms should be next to each other. Some land not

used for farming purposes can be included in a district.

They file a completed application form with the county legislative body. Information on the form identified the location of the proposed district, the amount of land involved, names and acreages owned by the applicants, and a map.

(2) The county legislative body refers the petition to the County Planning Board and the Agricultural Districting Advisory Committee. The Advisory Committee consists of four farmers, four agribusinessmen residing within the county (an agribusiness is one that depends upon farming operations in the area), and a member of the county legislative body who acts as Chairman. Such a committee must be created if none exists when the county legislature receives a proposal for a district.

After a review by these two organizations, they submit their evaluations and recommendations to the county legislature. In some cases, they may submit their recommendations at the same time in one report.

(3) The legislators then hold a public hearing, usually within the proposed district or some readily acceptable place. After the public hearing, they either adopt the proposal for an agricultural district, adopt a modification of the proposal, or reject it.

(4) If the proposal is adopted, the county legislators send the plan to the State Commissioner of Environmental Conservation.

(5) The Commissioner submits a proposal for review to the State Agricultural Resources Commission and to the Department of Environmental Conservation. Representatives from one or both of these commissions examine each proposed district in the field; they visit the proposed site and examine the area. Acreage in the proposed district must consist primarily of viable agricultural land.

(6) Following reports by these two organizations and a review, the Commissioner of Environmental Conservation certifies the plan or modification of it as being eligible for a district.

(7) Final county action is taken by its legislative body. If the plan has been modified by the Commissioner or by the county legislature, a public hearing must be held.

(8) The county legislature either approves or disapproves the proposal. If it does not take formal action within a specified period of time, the plan automatically becomes effective as a district. When a district becomes a legal entity, a description is filed by the County Clerk and the Commissioner of Environmental Conservation.

The law provides that each agricultural district must be reviewed every eight years. The district is reviewed by the same organizations responsible for bringing it into being; the county legislature, the Department of Environmental Conservation and the Agricultural Resources Commission. The district may be modified or terminated. Boundary changes may be made if some portion of a district is in strong demand or under great pressure of other than farm uses.

Provisions of The Agricultural District Law

There are five major effects or provisions of the Agricultural District Law and they provide some assurance that farmers who invest in long term farm improvements are not likely to lose their investments because of excessive taxes, restrictive ordinances, or taking under the right of eminent domain. The provisions also reduce the likelihood that thoughts of speculative sales for nonfarm use of land will cause farmers to reduce their usual long term investments in the agricultural enterprise.

The five provisions are:

1. Within a district, local ordinances cannot unreasonably restrict structures used for agricultural purposes or interfere with usual farming activities, unless such restrictions have a direct relationship to public health and safety.

2. Policies should reflect the importance of farming in agricultural districts. Policies of New York's state agencies should encourage the maintenance of viable agricultural districts. They should modify their regulations and procedures insofar as this would be consistent with the promotion of the public health and safety.

3. The power of special districts to impose benefit assessments and levies on farm land for sewer, water, lights and nonfarm drainage is limited.

4. Public agencies cannot take farm land in an agricultural district without special justification. Any state agency or any local government which intends to acquire land must file a notice of intent with the Commissioner of Environmental Conservation. This notice must contain a report justifying that proposed action. The agencies are required to give serious consideration to other areas before viable farm land can be taken for public uses.

5. Most agricultural land within a district is eligible for an agricultural value assessment. Any landowner with ten acres or more that has been used for agriculture purposes in the previous two years and sold farm products with a gross value of $10,000 or more is eligible for the agricultural value assessment. The landowner must file an annual application for such as assessment as it is not automatic.

This provison will be more important to most farmers in the future rather than in an immediate reduction in present taxes. However, it does provide some immediate benefits for districts very close to suburban developments. They will not have to pay taxes based on assessments influenced by nonfarm speculative values.

Land that benefits from the agricultural value assessment is subject to a maximum five year roll back if the land is converted to a nonfarm use.

Additional Benefits of Agricultural Districts

Creation of districts has forced some counties to take a more serious look at land use planning. An extension agent pointed out that local people have to take a critical look at planning when agricultural districts are formed in their community.

An additional benefit of the district is that the county planning commissions and those interested in agriculture (farmers and agri-businessmen) find themselves sitting around the same table making decisions about the future of the county. Districts bring farmers and planners together. Creation of a district provides an opportunity for these people to talk with each other about the same project. During the process, all should achieve a greater understanding of planning, agriculture, and the county situation. In some counties, the Agricultural districting Committee and the Planning Commission submit their recommendations at the same time in one report.

The review of district proposals at the state level brings planners from various agencies and the Agricultural Resources Commission together. The review of proposals also adds to the visibility of agriculture in state government.

Probably the feature of greatest value to rural residents is the requirement that each district proposal be routed to every state agency. If an agency has something planned for the proposed district, it has to make its intentions known to the public. For example, the state highway department would have to make known its future road plans for the district.

The value of this is reflected in these comments by a farmer; "Agricultural districts enables you to have some say in these matters involving eminent domain. Eminent domain is the main way a district helps. It gives farmers a voice in a proposal."

If a state agency wants to take some land lying within an agricultural district, it has to notify the commissioner of the Department of Environmental Protection in advance of any action. If the commissioner feels good agricultural land is threatened, he can call a public hearing. This gives everyone a chance to be heard.

The intersession by a state agency on the part of rural landowners is another benefit from the provisions of this bill. The commissioner of Environmental Protection can require that the agency explore all possible alternatives before acquiring viable agricultural land. Local residents have the expertise and resources of a state agency to help them when dealing with other state agencies. Justification for taking of land by any state or public agency has to be justified or meet the approval of the Department of Environmental Conservation. (Under existing law, state agencies can take up to ten acres from any one farm and up to 100 acres in a district with-

Agricultural districts reduce the likelihood of this kind of development occurring on prime farm land. (Photo courtesy of USDA-Soil Conservation Service)

out having to file a notice of intent to the commissioner of the Department of Environmental Protection).

Not only must state agencies modify some of their state regulations in districts, but several also discuss their proposals with the Agricultural Resources Commission. For example, the Department of Highways discusses some of its plans and ideas for new highways with the Commission. As a result of these discussions, proposed routes may be changed while in the planning stage. This additional benefit has a potential of saving thousands of acres of agriculture land by reducing the likelihood of farms being divided in such a way that they are no longer viable economic units. This is another major contribution of agricultural districts which may not be generally recognized or thought of.

Crises or drastic changes also speed up formation of agricultural districts. For example, interest in agricultural districts increases rapidly in areas where a reservoir or a new highway route is being proposed.

The Cooperative Extension Service of New York conducted an extensive educational program concerning procedural steps and provisions encompassed in the agricultural district law. They provided resource people for county meetings and printed brochures explaining the purpose and content of the agricultural district legislation.

What Of Support From New York's Nonfarm Population?

Some agricultural districts are close to towns or villages. Many districts include small tracts of land that serve as home sites for people who work in nearby towns or cities. What do these people think of this new arrangement?

These comments and observations are from persons who have statewide experience with agricultural districts in New York, another with experience in several counties and from a farmer who took the leadership in organizing a district.

"Rural nonfarm people support districts. They want farming to be preserved for it maintains open space. Many sign the petitions for a district." These comments are from a person in a state agency working with agricultural districts.

Another man with similar experience said, "Nonfarm and small acreage residents in proposed districts have largely been supportive. They sign up."

It should be understood that a small percentage of the acreage in many districts is owned by rural nonfarm people.

What are the attitudes of urban people? A Cooperative Extension Service agent involved in a multi-county educational program regarding agricultural districts felt that many urban residents favored districts as a means of maintaining open space. He believes thay want to keep the rural way of life going.

He felt that some districts were given strong leadership by rural nonfarm residents who wanted to keep the area rural. He contends that these urban people see the value of open land well beyond its use for agricultural purposes.

A farmer who had taken the leadership in organizing a district said, "We had no problem with the people who had lived here for some time. A lot of small owners signed up. Many small landowners want to keep it like it is. Some absentee owners who were speculators opposed the idea but others were in favor of districts."

From these reports, one would conclude that many nonfarming people are in favor of agricultural districts. Some of them see it as one means of maintaining open space.

Shortcomings of Agricultural Districts

Persons interviewed about agricultural districts were asked what they considered disadvantages of districts. Here are some of the representative responses:

"Agricultural district law can't stop residential development. Law should be stronger!"

"A disadvantage of the law is that it has very few teeth in it."

A farmer commented, "Districts are a start, a stepping stone, but not enough to save agricultural land." He repeated that districts just aren't enough to preserve agricultural land! With considerable feeling he also stated, "I don't think farmers are dedicated enough to the idea of keeping land in a farm!" An extension agent also commented that there is a need for a stronger commitment on the part of the farmer.

Several people commented about the mixed reaction from professional planners; some see districts as an aid to planning and better land use. Others aren't so sure and some even see it as an infringement on their area of work. One local planner refers to agricultural districts as "a paper tiger".

This farmer perhaps summed up the feeling of many with this statement. "Provisions in the agricultural district law are not strong enough, but if too strict, who would join?"

Within a few years, a study should be made to evaluate how effective districts are in achieving the purpose of the Agricultural District Act. These responses indicate more is needed if viable agriculture is not to be threatened or superseded by other land uses. Perhaps professional planners will contribute ideas at this time. Hopefully, legislators will continue to rank agriculture high on their list of concerns.

Some Unanswered Questions

Over 294 agricultural districts representing almost four million acres of New York's best agricultural lands have been organized since passage of enabling legislation in 1971. Organization of more districts continues and interest in provisions of agricultural districts is widespread.

A state official believes in the future relief from taxes will be the most important provision in at-

tracting people to the district idea. Increases in tax rates and assessments make farmers more sensitive to agricultural districts. He thinks another two million acres will come into agricultural districts in the next few years.

Actually, how good or effective are agricultural districts? Many of the districts have been in operation for only two or three years. One farmer said he hadn't had enough experience to say much about the districts in terms of their real strengths and weaknesses. He did think that the eight year period would be a disadvantage to some landowners. Especially if a fellow is thinking about retiring and wanting to sell his land for other than agricultural purposes.

Another farmer thinks the greatest value of the districts won't be evident until five or ten years from now. He did think the original sign up for eight years in a district should be for a longer period of time. He also thought that renewal of a district should be automatic.

Similar statements were made by a number of people as evidenced by these quotes:

"Districts are just a 'stop gap' measure!"

"Agricultural districts are an interim measure - they will buy some time."

"No one knows what will happen! Too soon to say."

Professors Howard E. Conklin and William R. Bryant of Cornell University have studied the progress of agricultural districts. They make this statement in an article in a professional journal; "In areas of eminent wall to wall urban development, however, it appears that some type of action other than agricultural districts will be needed if agriculture is to be preserved."

It seems agricultural districts are not the final solution or answer, although citizens in New York state are increasing their use of districts as one means of protecting viable agricultural land.

New institutional arrangements must be evolved if a satisfactory balance between agriculture and competing uses of land is to be resolved. It is an issue of major importance not only in New york but across the nation! Various methods for making better use of their land resources has been instituted by many states. Hopefully those interested in agriculture and open space, be they farmer, professor, environmentalist or legislator, will address this issue.

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Oregon's 1973 Land Use Act

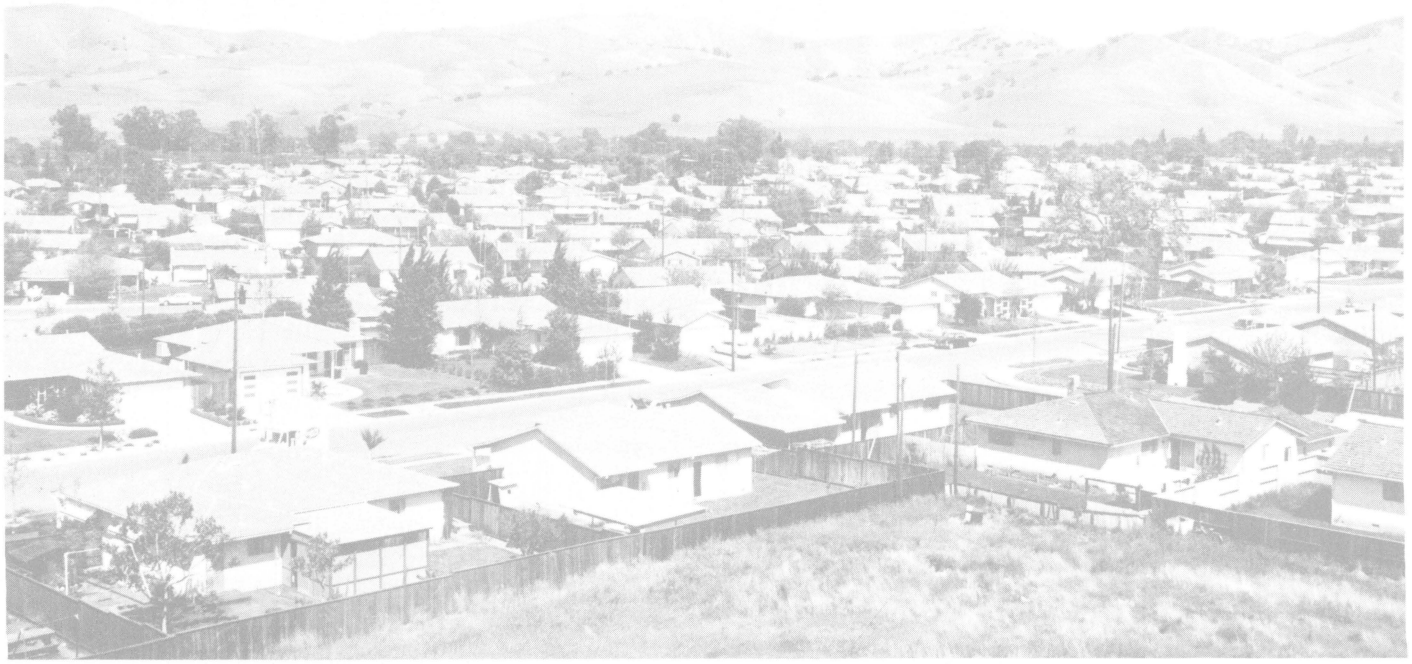
"Thank heaven we live in God's country," is on a brochure published by Oregon's Highway Department. It reflects the view of many Oregonians and they want to keep it that way. Tom McCall, a recent governor, expressed the feeling of many when he invited tourists to visit but hoped they would not move to Oregon.

Uncontrolled growth in Oregon was becoming more and more apparent during the late sixties and early seventies. Population pressures and leap frogging of subdivisions in the Willamette Valley contributed to a growing concern that something more needed to be done. Land speculation in other parts of the state added to the awareness that something must be done. "Outside speculators will eat us up if we don't do something!" exclaimed one Oregonian.

"Don't Californicate Oregon" is a popular bumper sticker. Natives and newcomers alike display it. Many of the recent migrants came from congested metropolitan areas and they "don't want it to happen here!" They have experienced tremendous urban pressures in other states.

This concern about Oregon being a good place to live goes back quite a few years. More recently Oregon's Legislature has passed a series of bills to protect and conserve its natural resources. In 1967 the so-called "Beach Bill" was enacted into law. It provides that the entire Pacific shoreline from the low water line to a certain height is reserved for the public's use and enjoyment. A Scenic Waterways Act was passed in 1970. This legislation paved the way for a clean up of the Willamette River—once one of the most polluted in the nation. A "Bottle Bill" was passed in 1971. It requires deposits on all beverage containers and outlawed pull tab cans. This law has reduced the amount of litter along Oregon's highways.

The first step towards a statewide land use policy occurred in 1969. Senate Bill 10 required local gov-



"Don't Californicate Oregon"—Oregon's Land Use Act seeks to preserve fertile agricultural land. Housing fills this California valley. (Photo courtesy of Soil Conservation Service-USDA)

ernments to begin work on comprehensive plans. It also implemented mandatory zoning by cities and counties. This bill and those enacted earlier helped set the stage for major land use legislation.

An unusual feature about Oregon is that the small Willamette Valley contains most of the rich agricultural land and approximately three-fourths of Oregon's two million plus people. It stretches north from Eugene to Portland.

Agriculture is big business in the valley. Population growth and related developments set the stage for conflict over how land would be used. Could demands for agricultural uses and the others have traveled in California and are aware of what happened to agriculture and food processing plants in sections of that state. Farmers and ranchers in other parts of Oregon were not subject to much pressure from this growing population.

As a result of these pressures, a Willamette Valley Environmental Protection and Development Council was formed. It proceeded to alert Oregonians to these rapid changes through a "Project Foresight" program. The council collected data and developed a number of informative pieces that could be mailed and viewed by Oregonians. Visual materials, organized as a kind of scenario, were shown to many groups all over the state.

Passage of the Land Use Bill

These developments plus Senate Bill 10 created a greater public awareness of the need for land use legislation and planning.

State senator Hector MacPherson initiated action which culminated in the passage of Senate Bill 100, commonly known as the 1973 Land Use Act. MacPherson, a Willamette Valley dairy farmer, was greatly concerned over what was happening to the state's land recources, especially its prime agricultural acreage. As he pointed out, "Preservation of agriculture is a key issue in this state!"

With the aid of the governor's Local Government Relations Division, Senator MacPherson formed a Citizen's Land Use Policy Action Group. Its members represented many points of view from around the state. They studied land use legislation from other states and drafted a bill.

The proposed legislation sponsored by Senators MacPherson and Hallock had bi-partisan support and the Land Use Act became law when Senate Bill 100 was passed. It represented the latest in a series of actions to promote comprehensive land use planning in Oregon. Other bills passed related to farm use zoning and tax deferrals, a uniform building code and subdivision regulations.

Provisions of the 1973 Land Use Act

Oregon, through its legislature, established a commission to formulate goals and guidelines that would give direction to planning efforts wherever they occurred; in counties, cities, Council of governments (Cogs), state or federal agencies. The act created the Land Conservation and Development Commission (LCDC). Its seven members are responsible for making land use planning policy decisions.

The act also created the Department of Land Conservation and Development to assist in carrying out the intent of the Land Use Act. It is the administrative arm of the LCDC.

The act provides that comprehensive land use planning takes place at the local level. It mandates active citizen involvement in decision making throughout the planning process at all levels of government. Another provision is that planning will be done on a partnership basis between local and state governments. LCDC coordinates the land use plans of cities, counties, and those of state and federal agencies.

To guide local planning, the act directed the LCDC to adopt statewide planning goals and guidelines by January 1, 1975. These goals and guidelines are to be used by state agencies, cities and counties in preparing and implementing comprehensive plans. The commission reviews plans of local government and agencies to insure conformance with statewide goals.

The Oregon Legislature also established a Joint Legislative Committee on Land Use to oversee the work of LCDC. LCDC reports its activities to this committee every month. After reviews of the commission's work, the Legislative Committee may recommend new legislation pertaining to land use issues identified by this program.

Getting The Job Done—LCDC and The Planning Process

One of LCDC's first tasks was determining what goals were most important to Oregonians. What did citizens want accomplished by land use planning in terms of end results?

To get citizen's responses, a series of meetings were organized around the state in 1974. The commission conducted over 50 workshops while developing statewide land use goals and guidelines. Through this process it was able to determine citizen attitudes and concerns about land use and comprehensive planning.

Later the commission conducted public hearings and work sessions on drafts of these goals. Along the way they received additional ideas from a Citizen Involvement Advisory Committee, a Local Official's Advisory Committee and several technical advisory committees. Fourteen statewide goals plus guidelines were formally adopted in December, 1974. Several thousand Oregonians had been involved in this planning process before the goals were adopted.

These goals were described in detail in an 8 page newspaper-like publication. The commission made these available to citizens and organizations throughout the state. The goals range from one on citizen involvement to preservation of agricultural lands to one on urbanization. As cities and counties evolve comprehensive plans, these state goals provide a focus and direction for the planning process.

Counties are responsible for coordinating the plans of towns and cities within their jurisdiction. This provision has caused some friction between municipal and county governments. If a majority of governmental units in a county agree, this review function may be carried out by a council of governments—Cog. This action has been taken in several areas of Oregon. Some counties have given multi-county Cogs the authority for overall planning and coordination of town and county plans.

As specified in the act, each county and city must have a Committee for Citizen Involvement working to ensure participation of lay people in the planning process. Citizens must be involved in development of the plan and seeing that ordinances are enforced.

The LCDC provides funds to towns and counties to facilitate planning efforts. The commission meets once a month to review progress on comprehensive plans. They conduct hearings when officials from cities, counties or state agencies want to present information.

Very few municipalities or other units of government have been able to complete their comprehensive plan.

Comments on the Act and the Land Conservation and Development Commission

Passage of Oregon's Land Use Act has increased planning efforts in the state. Additional resources have been allocated to planning work as a result of this act.

The goals and guidelines developed by the LCDC provides a common focus and direction for all planning. A result will be uniformity of planning results and less variation in the comprehensiveness of master plans.

An LCDC member commented it was a little too early to evaluate impact of this act. However the member was certain many people had a better understanding of planning as a result of the commission's work.

Through a program of grants and other funds, LCDC has helped many smaller communities facilitate their planning efforts. However, some of these little towns feel harrassed and have difficulty finding enough people to help with the planning effort.

Farmers were in the forefront in initiating action on the Land Use Act and added their support to its passage. However, some ranchers and other rural residents of eastern Oregon which is thinly populated did not feel as strongly about the need for a land use bill. The Land Use Act was opposed by some farmers, usually living near cities, interested in selling land for development purposes.

A farmer very knowledgeable about LCDC and the provisions of the Land Use Act said, "It (the Act) will have more impact in the future, still in a shakedown phase but the screws are being tightened! Local government is responding slowly. Their comprehensive plans and zoning vary greatly."

Several local officials exclaimed that towns and cities needed more time to develop their plans and

incorporate the 14 state goals in their comprehensive plans. Some local officials and planners felt frustrated in their attempts to comply with time schedules and guidelines set forth by LCDC.

The LCDC has been granting extensions to those units of governments requesting more time. By late 1976 the LCDC had not taken over the planning for any city or county.

This new commission is viewed by some as a threat to local government. Some local officials are apprehensive about how much authority the LCDC has and what are the limits of this new agency. Having to comply with goals established by LCDC worries some officials.

Definitions as to who does what and limits of local and state authority will be evolved as the planning process continues.

The Land Act has increased the concern of people who feel threatened by its provisions. It has more firmly established the line between those for planning and those opposed to planning. Several organizations supported the effort to have a referendum on the bill at the general election.

Conclusion

Oregonians have a deep feeling for the environment of their state. Use of natural recources is of major concern and commands the interest of both political parties. The attitude of most Oregonians, as finds expression through state legislators, is to maintain the attractiveness of the state's natural resources and enhance the quality of life for all. Orderly balanced growth that gives careful consideration to environmental concerns is proclaimed by both parties.

The feeling is widespread in Oregon that there must be some kind of planning. However, the Land Use Act has encountered organized opposition. Petitions for its repeal were circulated early in 1976. All of the state's major dailies opposed the repeal effort. This excerpt is from an editorial printed in Oregon's largest daily, Portland's *Oregonian* (January 25, 1976):

> "Repeal of SB 100 would mean a return to the jungle of unplanned growth that has proved costly to this generation and will, if unchecked, place an even heavier burden on the next. The loss of the orderly planning procedures required under SB 100 would not only increase tax burdens in many rural urban areas, but in the end would deface the quality of life that has made Oregon a symbol to the nation and much of the world."

November 2 Oregonians reaffirmed their belief that planning is important. Fifty-seven percent voted against the attempt to repeal the Land Use Act.

Although the Land Use Act is not without its critics, Governor McCall points out in *The Oregon Land Use Story*, "For Oregonians, sound land use planning transcends political labels and has become a means to preserve a way of life."

With some stress, conflict, and differences of opinions, Oregon's cities and counties are moving ahead with comprehensive plans that incorporate state-wide goals. Through provisions of the Land Use Act and other legislation, Oregonians are trying to maintain the attractiveness of their natural resources and enhance the quality of life. Much of what Oregon's countryside will look like in the future depends upon their efforts. Through goals, guidelines, and citizen participation, many are working to make this statement "Thank Heaven We Live in God's Country" representative of Oregon as a place to live.

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Vermont's Land Use Planning Act 250

During an interview with a young farmer he stated, "I think this (250) and other regulations make Vermont what it is! Act 250 has improved quality of the environment and improved the quality of life! It has helped us out in a number of cases. Without it you end up with a mess!"

He emphasized his great interest in maintaining the quality of life in the area. He is a selectman for this town (township trustee), a member of its planning commission and belongs to an area development association. Later he said with considerable pride, "Our family has lived here 200 years—goes back eight generations. Hope we'll be here another 200 years!"

A growing number of people want to make Vermont their home. The state's population growth of 14 percent between 1960 and 1970 occurred in both rural and urban areas. Vermont has experienced a rapid growth of recreational facilities and vacation home developments in many rural areas. Excessive comsumption of land and changes in the scenic views are some of the results of this population growth.

These and other trends were presented in **Vision and Choice: Vermont's Future,** a comprehensive statement prepared by the Vermont Planning Council. They formulated a statement of goals, policies and suggested programs for the state. This report was the forerunner of Vermont's Environmental Control Law, Act 250, frequently referred to as the Land Use Planning Act which was adopted in 1970. It is an attempt to make the best use of Vermont's natural resources and protect the health and safety of its citizens.

Act 250 provides a large measure of protection for small governmental units such as townships and villages. The permit system established by Act 250 prevents small municipalities from being overwhelmed by large developments that may occur almost overnight. The act also discourages the "fly by night" type of developer. The protection of agricultural lands is of secondary concern in terms of provisions of Act 250.

Though small in area and population, Vermont has many units of local government. There are 14 counties, 242 townships (in Vermont, townships are called towns), 62 incorporated villages and nine cities.

What's In The Law

Vermont's Act 250 contains two sections. The first section provides for a permit procedure and an organizational structure to administer the program. The major purpose of this section is to provide greater protection for Vermont's environment.

The Environmental Board

A nine member board that has overall responsibility for administering provisions of Act 250 is appointed by the Governor. The board is autonomous and is not subject to control by any state agency or department.

The board has five major functions. The first is administrative, the second regulatory, and a third is planning. The fourth is a quasijudicial function. The board is empowered to hear appeals from decisions on land use permit applications denied by a district environmental commission. finally, the board is empowered to initiate legal action to prevent or abate violations of the act or board regulations.

Another very important section of this law states that other departments of state government will cooperate with the board and make data, facilities, and personnel available to the board.

District Environmental Commissions

The state is divided into nine districts which overlap boundaries of the state's fourteen counties. Each district has an environmental commission which consists of three persons appointed by the Governor. The environmental commission holds hearings on permit applications and has the power to compel attendance of witnesses and to require production of evidence.

Each district commission employs a full-time coordinator who is responsible for assembling information and arranging meetings. Commissions also are assisted by a county forester. The forester works on 250 permit applications and assists developers during the planning process.

The second section of Act 250 called for the preparation of three plans over a period of years. The first was an interim capability plan which was approved by 1972. It was an inventory of present land use. The second plan contained broad policies for growth and development and was approved in 1973. The third was the state land use plan. This plan is still being developed and has not yet been passed by the legislature.

Who Must Apply For A 250 Permit?

Most land use decisions continue to be made by local officials. The vast majority of permits are still issued by local governments; townships, villages, or cities. Only those developments that meet certain criteria come under the provisions of Act 250.

Any of the following developments require a 250 permits:

1. Any subdivision of land into 10 or more parcels each of which is less than 10 acres.
2. A project involving 10 or more residential units.
3. Commercial or industrial development on a tract of land of more than one acre. If a development is in a municipality with subdivision and zoning ordinances, the tract of land must be larger than 10 acres.

4. Any development over 2,500 feet elevation.

5. Projects for state or municipal purposes involving more than 10 acres.

Only the larger developments and any above 2,500 feet elevation are reviewed by a district commission. Many of these developments would have an impact on an area larger than the township or village where they occurred.

Getting A Permit

No moving of dirt or laying of foundations can occur until a permit has been issued to the developer by a District Commission. A number of steps are involved before the developer receives this permit. First, he should get an application and learn the conditions and the criteria that must be met before a permit is granted.

The developer's application must contain information showing that the 10 criteria specified in Act 250 have been studied and provided for in his plan. For example, the project must not cause undue air and water pollution. It will not over burden the school and government services. It must also be in conformance with local and regional plans.

In most cases, the developer has employed an engineering firm to assemble the required information. After all of this planning work is done, the developer is ready to file an application.

They set a hearing date within twenty-five days after receipt of the application by the District Commission. The Commission's coordinator will work with the applicant before the hearing date. Before granting a permit, the District Commission holds a hearing and determines whether or not the applicant has met the 10 criteria.

No application is denied by a district commission unless it finds the proposed development detrimental to the public health, safety, or general welfare. Denial of a permit shall contain the specific reasons for the denial. Appeals can be made to the State Environmental Board or the superior court of the county in which the applicant owns land.

Only about 5 percent of the applications have been denied. One wonders why such a small percentage of the requests are turned down?

A coordinator gave two reasons: "In some cases, the commission recesses a hearing and has the applicant come back later with more information. Also, some applications have been withdrawn before the commission reaches a decision so they don't show on the record."

Frequently, a District Commission will issue a permit stating that certain conditions must be met or the permit will be revoked. A conditional permit requires the applicant to make specific changes in the development within a certain length of time.

The requirements also discourage submissions of less well planned proposals. As one agency official stated, "Vermont has better developments of better quality because of Act 250. How many 'fly-by-night' artists don't even come to the state we'll never know!"

Any development of 10 or more lots in Vermont requires a 250 permit issued by a district commission. (Photo courtesy of Soil Conservation Service-USDA)

What Vermonters Are Saying About 250

After six years of experience with Act 250, what do Vermonters consider to be the advantages and disadvantages of this act? Almost anyone will talk about 250, although even after several educational programs, some people do not understand this act.

An extensive educational program was conducted by the Vermont Natural Resource Council through a project entitled Environmental Planning Information Center. A copy of an eight page newspaper-like publication "The Act 250 Plans" was sent to almost every Vermont household. The council also conducted polls, had television spots, and placed ads in papers. The Office of State Planning cooperated with the Vermont Natural Resource Council on this effort. The Cooperative Extension Service also helped organize informational meetings on Act 250.

Despite these major educational programs, some confusion still exists concerning Vermont's Act 250 and other land use laws. 250's high visibility and its permit requirements have made it the subject of a great deal of comment.

During the economic slump, some contractors blamed Act 250 for what had happened without taking into account the general economic slowdown not only in Vermont but also across the nation. Other people did not understand or attempt to separate Act 250's requirements from other regulations.

A farmer stated, "Act 250 gets mixed up with health agencies and other restrictions. It was confused with zoning at first, but not so much now."

Members of two district commissions also commented about this confusion. They mentioned that some people blame 250 for things which involve zoning, subdivision regulations and health requirements.

Misunderstandings regarding new legislation is very common across the nation. Some confusion results when new state programs are launched or new laws are enacted. At times a new law becomes a sort of scapegoat for some people. Perhaps the greatest misunderstanding and confusion about Act 250 is now behind Vermonters.

Advantages

The ultimate test of the effectiveness of a new law or regulation is how it is evaluated by the people who live and work with its provisions.

A number of persons remarked enthusiastically that the law had improved the quality of developments and helped the environment. Others commented that it helped save some of the good land for farm purposes.

A member of a state agency pointed out that Act 250 has raised the quality of development in commercial, industrial and major housing projects in the state. "It provides a sensible method of managing growth. The public has a better idea of the cost of development and its consequences because of the data that must be presented in every application. The physical and social costs and the impact of the development are identified in the application for a permit and at the public hearing."

Others pointed out that Act 250 provides for an area review and judgements on projects that have area wide implications. A commission can bring resources of state agencies, legal as well as other expertise, in to the hearings without a direct cost to the township or municipality. Access to these resources make for better developments.

The Land Use Planning Act 250 gives a township access to a state agency. They can call on a state agency for expert help while working with a developer. This provision of Act 250 provides an entree to the expertise of a state agency for township, municipal and regional planning commissions too.

Act 250 has given considerable impetus to planning efforts in Vermont. Condition 10 of the Land Use Planning Law Act is particularly important. It requires that permit applications be in conformance with any duly adopted local or regional plan. About 75 percent of Vermont's many units of government have a planning commission and have completed a plan.

Townships know their input is important under the provisions of Act 250. These provisions have elevated the self-conscienceness of townships regarding the importance of planning. Townships and regional planning commissions are encouraged to do an even better job of planning because of this permit system. Provisions of 250 have provided more reasons for regional planning commissions to work with townships.

This Act has increased the power of regional planning commissions. No permit is granted unless the planned development is in conformance with the Regional Planning Commission's comprehensive plan.

Both township and regional planning commissions have benefitted from the expertise they can draw on from state agencies. Access to resources of state agencies has added to the quality of planning efforts.

Disadvantages

Not all Vermonters are happy with the provisions of Act 250. The most frequently voiced complaint concerns the costs of preliminary planning, the need to hire engineers and the "red tape" in getting a permit. All of these factors add to the amount of time required to complete a development.

Local developers without a lot of capital or access to capital frequently find it too expensive to undertake projects and carry through on provisions of 250. Several people said 250 makes development too difficult or expensive for persons without many resources. A Vermont realtor noted that some firms were setting aside five percent of the overall cost of a project for processing the 250 permit.

A number of comments reflected dissatisfaction with the district commissions and how they worked. Several people remarked that developers hire

various experts, then review of the application is by nonprofessional people on the district commission. The developers would like a review by similar experts, an engineer evaluating another engineer's work. They resent that some commission members may have little experience concerning the complex of factors involved in a large development. A contractor agreed that the bill has some merit, but procedures are compounded by the regulations. He and several others indicated dissatisfaction with the wide variety of permits other than the one required by 250 when a project was proposed.

A different kind of shortcoming is that resources for district commissions are restricted to state agency personnel. They do not have funds to employ outside experts or professionals. Occasionally a professional will give advice without charging any fee.

Some people think 250 has tended to identify Vermont as "anti-development" because standards have been established and many of the costs are placed on developers rather than being assumed by public agencies. However, attitudes on this aspect of the act are mixed. As a farmer remarked. "Some people think it (250) retards industry coming into the state. Others have expressed the view that it helps industry want to come."

Some farm people have an "anti" feeling about 250, especially in northern Vermont. The "anti" feeling is not as strong in southern Vermont where farmers have seen what can happen when large developments occurred almost over night.

These are some of the major criticisms of the Land Use Planning Act. However, different ideas about the future of the state intrude upon any consideration of Act 250. Some people like Vermont just as it is and would like to see it remain the same. Others are for developments and change which they believe will improve the state's social-economic situation.

Tensions Concerning Development

"To change or not to change" is a big question in Vermont. A cleavage concerning this question runs deep between the people of Vermont. This cleavage is reflected in the different views concerning development by those who want development and those who want to "keep Vermont like it is". Those with the latter view are sometimes referred to as "environmentalists".

Unfortunately for Act 250, many people consider it as a device to maintain the status quo. So tensions and different views concerning Vermont's future clash around this piece of land use planning legislation.

There are different opinions as to what categories of people want to keep Vermont like it is. Opinions vary but one heard frequently is that prosperous recent migrants, sometimes referred to as newcomers, want to maintain the status quo, while those for developments are considered to be the less well-off native Vermonter. No one really knows how many people are on either side of this issue. No study has been made to determine just who is for and who is against change in Vermont.

A University of Vermont professor believes the natives, or long-time residents, resist planning and control more than newcomers. The low income Vermonter especially feels development will improve his lot and that any kind of control represents a threat, or at least a slowing of new construction.

The professor added that many of the newcomers come to enjoy Vermont's unique environment. They know what it is like to live in megapolis. They are for controls that will "keep Vermont green."

The natives enjoy the environment too, but they also have to make a living. They consider construction and other developments necessary to meet the needs of the many middle to low income people.

However, one should be aware that not all long-time residents are for development. The new residents, predominately from metropolitan areas, want more and better services. Costs go up when local government provides additional services. Some long-time residents resent these added costs. As a farmer observed: "Development puts a lot of added demands on a small township. The new people expect extra fire and police protection."

What Of The Future?

If present trends continue, Vermont will be the destination of more migrants from metropolitan areas. They continue to be attracted by the scenic setting and vistas of open space, so much a part of every day life in Vermont.

As the population mix of long-time residents and newcomers continues, so too will the tensions. A clash of attitudes and values is to be expected.

Act 250 provides a focal point for some of the people with different views concerning Vermont's future. This tension should not detract from efforts to determine whether Act 250 is accomplishing its objective of protecting the natural environment and the health, safety and welfare of Vermont's citizens.

Completion of the third plan called for in Act 250, that is, a state land use plan and its approval by the legislature and governor, is of major importance if objectives of Act 250 are to be accomplished.

There was almost complete agreement that since passage of Act 250, the quality of developments has improved, however, they are more expensive. The planning and information gathering process needed to complete the application for a permit has lengthened the time and cost of completing major projects. Many people emphasized the need to streamline permit procedures not just for 250 but including all agencies of government that require permits.

Requirements of 250 and the resulting costs make it more difficult for developers without a lot of capital to start and complete projects.

Act 250 provides for an area review and judgements by way of district commissions on projects

that have area wide implications. Also, resources of state agencies can be utilized in the hearings or procedures without a direct cost to the township or municipality. These resources have contributed to planning efforts and the quality of developments.

The analysis of some projects would be facilitated if funds were available to district commissions to employ - on a short term basis - persons with skills or expertise that cannot be provided by state agencies. Several persons commented on this need.

Responses indicate the need for a continuing education program to create a better understanding of what 250 does and does not do, and dispell the misconceptions that swirl around 250.

Act 250 has given impetus to planning efforts statewide and provided additional reasons for township and regional planning commissions to work together.

Present trends indicate this prediction contained in **Vision and Choice: Vermont's Future** may come true:

> The combination of shorter work weeks and better transportation connections can be expected to create a new phenomenon: an appreciable number of people will make Vermont their home and commute to major cities in the surrounding region. Moreover, the trend of former non-resident property owners settling in the state, particularly at retirement age, can be expected to accelerate.

Competition for land and pressure on the environment will continue. What happens in Vermont will be of interest to people across the nation.

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Conclusions

States are taking back some of the power they had delegated to counties and municipalities concerning property rights. In Vermont and Florida they are doing this via a district or regional type organization plus designation of areas of critical state concern in Florida. In these two states the emphasis is on exerting state or district control over large developments. Decisions on minor changes of land use are still made by units of local government. In Oregon and Hawaii participation in land use planning and decisions is accomplished through a state agency or a commission. The state is using its power to bring about goal setting and planning by local governments.

Attitudes and values are changing, and along with this goes a change in the norms. Changes in the norms require new laws or new institutional structures. Property rights are being redefined. More people are thinking of title to land as a bundle of rights — property rights — rather than ownership of the land, i.e., its physical properties. Along with this view is the understanding that one or more of these rights can be removed from the bundle while the owner retains title to the property. In some parts of the nation people are quite knowledgeable about mineral rights and water rights.

Development rights or easements are being discussed more and more as one of the rights that may be removed from property ownership. The development rights may be sold and the owner continues to use the land for agricultural purposes. The transfer of development rights or easements is central in land use policies being considered in New Jersey.

Along with the adequacy of the infrastructure of schools, local government, health facilities, etc., the capacity of natural resources to accommodate a greater number of people is being given greater consideration. The time seems closer at hand when land and other natural resources will be incorporated as a vital part of plans and decisions influencing the number of people to be accommodated in an area. The growing number of regulations on disposal of waste from industrial and business concerns as well as housing developments reflect this concern.

A significant trend in decision making regarding the use of rural land is occurring across the nation. Rural residents, including farmers, have less power than urban residents in the political arena. Persons other than rural property owners are demanding and having more of a say in how natural

Land use policies and comprehensive planning reduce the likelihood of this happening. (Photo courtesy of USDA-Soil Conservation Service)

resources are used, especially land. This is being accomplished through the legislative process in state capitals and the Congress. Their views are being expressed in various kinds of legislation.

Power alignments in state legislative bodies were changed by reapportionment. The ruling that each person's vote must have equal representation shifted political power in state houses as well as the nation's capital. Urban and suburban populations gained in power through this reorganization procedure.

Responses from farmers regarding their own attitudes and their perceptions of other farmers views range from those who are very much for land use legislation to those who are very vocal in their opposition to this legislation. State organizations representing farmers varied in their support or opposition of the legislation and implementation of the policies.

In Ohio and other states the prospect of a state comprehensive land use policy looms ever larger on the horizon. However, to be successful a land use policy must be understood and acepted by the people. A continuing educational program will be needed to explain the need for a policy and why tools to enforce provisions of the policy are necessary. Of course, no educational program is going to do away with all the conflict and tension surrounding land use legislation.

New institutional arrangements must be evolved if a satisfactory balance between agriculture and competing uses of land is to be resolved. It is an issue of major importance across the nation! Various methods for making better use of their land resources have been instituted by the states discussed in this bulletin. Hopefully those interested in agriculture and open space, be they farmer, elected official, professor, developer, or environmentalist, will address this issue in Ohio and other states.

10/77—2.5M

Issued in furtherance of Cooperative Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Roy M. Kottman, director of the Cooperative Extension Service, The Ohio State University.