Coordination: The next phase in land use planning

ROBERT G. HEALY

THE last 10 years have seen a virtual explosion of land use controls at all levels of government. Beginning with Hawaii in 1961, and continuing with such notable cases as Vermont (1970), Delaware (1971), California (1972), and Florida (1972), state governments have begun to assume direct control over certain types of land and land uses that pose issues of more than local concern (*1*, *8*). The federal government has initiated a significant program of coastal zone management, administers a number of environmental programs that affect land use, and is paying increased attention to planning for the future of its own extensive land holdings (*5*). Counties and municipalities, long the only locus of land use control, are implementing programs directed to new and complex ends, such as environmental protection and growth management (*12*).

As these programs developed, perhaps the most significant question for planners was "What level of government should deal with the problem—where should power lie?" The sheer pace of development during the 1960s, with its attendant environmental, social, and fiscal problems, brought about a general awareness that there were a number of cases in which even the most competent, honest, and well-intentioned local government might make decisions that were not in the interests of a broader segment of society. As a result, planners incorporated into their vocabularies such concepts as "areas of critical state concern," "developments of regional impact," and "key facilities."

Even as these changes in the way in which land is regulated were occurring, we realized that we were adding new actors to the system, not removing the old ones. Under most of the new state land use laws, local governments retain most of their old responsibilities. Often they are given new ones as well. True, a state can overrule local authorities when an issue of statewide concern arises, but the local government still goes through its traditional process of planning and zoning. Similarly, old state and federal agencies retain their powers, even as new agencies are created. The process is one of addition rather than substitution.

Robert G. Healy, a senior associate at The Conservation Foundation, 1717 Massachusetts Avenue, N.W., Washington, D. C. 20036, recently completed a study on land use and the states while on the staff at Resources for the Future, Inc., in Washington, D. C.

Coordination a Major Issue

We have made considerable progress in sorting out what problems should be addressed at particular levels of government. Our next task, what I believe will be a major issue in land use planning over the next few years, is to coordinate the various parts of the system we have created. There are two major reasons for this assertion.

First, there has been considerable criticism of the duplication and delay already resulting from the proliferation of agencies with planning or regulatory powers. Some complaints have come from developers, who claim they face a maze of regulations, a bewildering variation in report forms and required information, lengthy project reviews and public hearings, and agencies that apply contradictory standards in making decisions. The need for environmental inventories and the increasing procedural complexity have created a new class of well-paid planning consultants and lawyers who are skilled at shepherding a project through the process. Some developers claim that the high cost of securing approval from multiple government agencies is a particular problem for the small builder. According to one Florida developer who spent $500,000 getting his huge new project approved, "The little guy can no longer be in the development business."

On the other side, we find agencies, mandated to exercise broad powers to modify or even stop development projects, that exercise their powers for strictly circumscribed purposes. This is a source of frustration to the agencies themselves, which come under public pressure to do things that are beyond their power to accomplish.

A classic case is the 1973 review of a proposed nuclear power plant at San Onofre on the California coast. The California Coastal Zone Conservation Commission, the last in a chain of permit-granting agencies, had an absolute power to veto the construction of the plant or to modify its design or location. It exercised this power on the basis of a mandate to "preserve, protect, and, where possible, to restore the resources of the coastal zone" (*2*).

On the one hand, the Commission found itself legally unable to even consider what proved to be the issue raising the most public controversy, namely the possible danger of nuclear accident. That, the Commission was told, was a power reserved to the U. S. Atomic Energy Commission (now the Nuclear Regulatory Commission). On the other hand, the Coastal Zone Conservation Commission was instructed by the people of California to protect the coast—it had no charge (at least officially) to consider the environmental implications of an inland site, where problems of water supply and thermal pollution are often severe. The Commission, competent though it was, had to make its decision on the basis of a specialized and incomplete legal mandate.

A second reason for believing that coordination will be the next key issue in land use planning is that a number of states are beginning to create comprehensive programs for planning and control by putting together powers that already exist in the state government structure instead of by passing new laws. Massachusetts Governor Michael Dukakis, for example, decided in early 1975, soon after his inauguration, that the state should study what impact its existing powers were having on land use rather than immediately seeking new legislative authority. In Vermont, where a state plan has twice failed in the legislature, planners are concentrating on how existing powers, particularly those connected with the state budget, can be used to guide the location of growth. A recent survey of legislative activity in all the states found a shift away from "comprehensive land use proposals" to "more limited proposals to protect critical areas, regulate floodplains, guide development of key facilities, and require cities and counties to prepare local land use plans" (*11*).

Overlapping Circles of Power

State Agency/Local Agency

The recent entry of some state governments into the direct control of land use is well-known. Currently, 9 states have assumed the power to regulate critical areas; 24 regulate

wetlands or shorelands; 6 control large-scale developments; and 22 regulate the siting of power plants and transmission lines (*13*). States set various types of environmental standards to which local governments must conform, including air and water quality standards, septic system requirements, and beach setback lines. States may also have a major impact on local growth through the location of highways, dams and irrigation projects, and university campuses. A handful, including Florida and Tennessee, even have some powers over the siting of new towns.

One of the most common sources of complaints about the lack of state-local coordination is in the course of what we might call "multiple-veto" permitting. Under this type of system, a proposed development goes through the standard litany of local land use controls, which may include obtaining rezoning, filing an environmental impact statement, complying with subdivision laws, obtaining an excavation permit, and perhaps paying a development fee. The local government has considerable power to turn the applicant down or, in many cases, to impose conditions on him. After the local process is completed, the developer must go through an entirely separate review by state or regional agencies, which may enforce different standards and which generally hold a de novo hearing, that is, one that is not based on the record of the local proceeding. The multiple-veto process is found in the comprehensive state land use laws of Vermont, Maine, and the coastal zones of California, New Jersey, and North Carolina. It is even more common in special-purpose state permitting systems, such as those governing developments of wetlands or shorelands.

Another source of state and local conflict occurs when state capital expenditures are not coordinated with local land use planning. Many medium size towns have found that the single most important factor affecting their rate of growth is the state's decision on the size and budget of a university campus.

Elsewhere, the building of highways has changed the course of local growth. Petaluma, California, for example, recently noted for its efforts to slow down its rate of expansion, owes much of its housing demand to those who commute on a newly improved highway to San Francisco. Says one observor, "With the new road, Petaluma became what it had not been before: an accessible extension of the San Francisco metropolitan center. Now one could live in Petaluma and hold a job in San Francisco—a long, but not unusual, 80-mile round trip" (*7*).

State Agency/State Agency

Recent enactment of direct state land use controls in some states has tended to focus interest on land regulatory agencies to the exclusion of numerous other state agencies that impact directly or indirectly on the use of land. These can include state parks departments, environmental agencies, departments of fish and wildlife, health departments, forestry boards, mining commissions, highway departments, state planning agencies, and state budget agencies.

These agencies exercise a bewildering variety of powers, broadly divided into permitting, planning, review, and funding. The need for contact with multiple state agencies is especially apparent for certain types of projects, including heavy industrial plants, projects involving wetlands or the coastal zone, and new towns.

It is difficult to criticize the reasonableness of individual requirements, for large projects and projects built in sensitive areas produce a correspondingly large potential for environmental and other problems. California's San Onofre plant, for example, had extensive review, not just by the regional and state coastal commissions, but by the California Public Utilities Commission, the State Water Resources Board, the State Lands Commission, and the Regional Water Quality Board, among others. (There were also reviews by the federal Atomic Energy Commission, Environmental Protection Agency, Army Corps of Engineers, and U. S. Coast Guard.)

Each of these agencies has important and distinct responsibilities. To ignore any one of them would be irresponsible. Nevertheless, one is taken aback by the assertion of a utility company executive at Coastal Commission hearings that simply moving the San Onofre plant to a new site a half-mile or so inland (as suggested by Coastal Commission staff) would have caused renewal of the entire regulatory process, requiring no less than four years of additional delay (*6*).

The lack of coordination among state agencies has inspired considerable criticism, including some from planners themselves. A Massachusetts study (*10*) found that "The proliferation of regulations is an unfortunate situation following from uncoordinated efforts and leading to many of the problems cited by critics of state land use regulation. It is left to the individual who wants to build to find his way through the horizontal and vertical maze of regulations, which nowhere are viewed as an integrated system subject to system design."

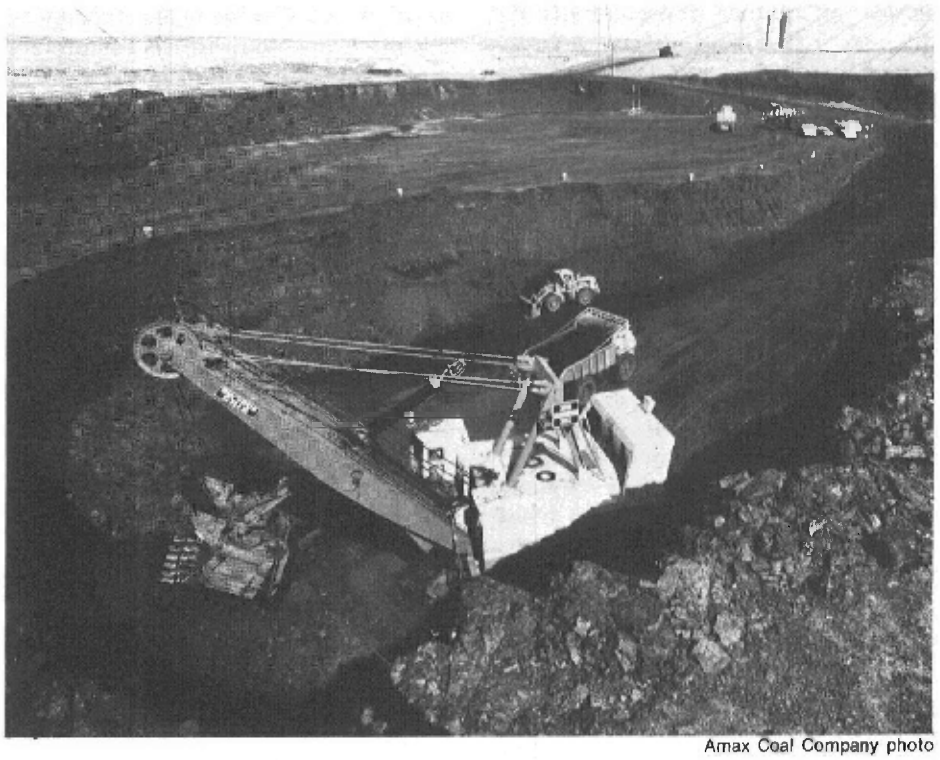
According to a recent report by a California study group (*3*), "More planning is being done in California today than ever before. It may even be true that there is more good planning than ever before, but this still does not add up to a comprehensive planning process. There are cases of interagency coordination, but in fact planning in California is not coordinated. Some plans do not fit with other plans, some controls do not match other controls, some controls are not based upon plans at all. Sometimes one agency does the work of another, and sometimes one undoes the work of another."

Any attempt at comprehensive planning, either for an entire state or a portion of a state, inevitably comes into contact with the jurisdictions of existing state agencies. The California coastal plan now being considered by the state legislature is a case in point. According to testimony by the deputy director of the state's Resources Agency (*4*), an environmental superagency, "approximately 145 of the 162 policies in the Plan directly or indirectly affect one or more of the governmental entities within the Resources Agency." Sorting out agency roles has been one of the thorniest issues of legislative debate over the coastal plan.

The opportunities for interagency conflict are especially significant in the environmentally progressive states where existing, single-purpose agencies, such as those regulating air and water pollution, are in fact doing their jobs effectively. Individual agencies may be advanced in planning as well as regulation, yet their plans may be based on quite narrow goals. Often their communication with other agencies is impeded by differences in pro-

fessional background as well as mission—highway engineers have little professional common ground with wildlife biologists or environmental planners.

However, we should not be so optimistic as to believe that communication alone is the problem. Real conflicts in objectives are frequently involved. For example, pursuing their mandate to improve water quality, state pollution control agencies may approve sewage treatment plants that open up new lands to development. Land use planners, anxious to foster compact settlement patterns or to preserve farmland, may oppose the treatment plants. Similarly, it is easy to envision a situation in which a land use agency tries, in the name of easing congestion, to increase a project's provision for off-street parking, while the air pollution control authorities, enforcing EPA's "complex source" regulations, try to limit the amount of parking provided.



Amax Coal Company photo

Surface mining for coal is but one of many land use activities subject to some form of regulation by a host of local, state, and federal agencies.

Federal Agency/State-Local Agencies

The federal government often is neglected in discussions of coordination in land use planning, yet it plays a significant and apparently increasing role. One count found that approximately 137 federal programs have a direct impact on land use, the most prominent of which include U. S. Department of Housing and Urban Development 701 planning, the 1972 Coastal Zone Management Act, the Clear Air Act (particularly its complex source requirements and court-ordered standards for nondegradation of pristine areas), the Water Pollution Control Act, the Rural Development Act, and the U. S. Department of Agriculture's Soil Conservation Service (*9*).

One might also consider the activities of the Army Corps of Engineers, which not only manages a large public works construction program but controls dredging and filling of wetlands, both coastal and inland. Moreover, the federal government is the direct owner of about one-third of the nation's land, including many of the most valuable natural and scenic places. In this capacity it purchases about $125 million of land yearly. In recent years it also has become deeply involved in planning for its holdings, as evidenced by the on-going preparation of land use plans for each of the 154 national forests.

The relation of one federal planning program to another is somewhat like the relationship of state agencies that I already described—there has been talk about coordination and some effort (particularly the A-95 review process) in its behalf, yet planning still occurs program by program, agency by agency. This is particularly true in planning for federally owned lands, where, with the notable exception of Alaska, there has been little involvement of state and regional planning agencies.

Perhaps the issue with the clearest potential for conflict between federal policy and that of other levels of government is in the siting of energy facilities. State and local opposition has been notable against strip mining of western coal; construction of petroleum refineries in Maine, New Hampshire, and Delaware; and offshore drilling along both coasts. Federal planners are making decisions about energy self-sufficiency and types of fuels to be emphasized, yet they face decisions by other levels of government that could negate all their plans.

The most significant move to date in relating federal and state planning is a rather obscure and as yet unimplemented section of the 1972 Coastal Zone Management Act. This is the so-called "federal consistency" requirement. It provides that after a state's coastal zone management program has been certified by the federal government, all federal activities and federal development projects shall "to the maximum extent practicable" be consistent with the state program. Moreover, applicants for federal licenses or permits needed for coastal zone activities must present evidence that their project complies with the certified state program (*14*).

Methods of Coordination

Some observers, viewing with horror the potential for duplication and delay posed by the exercise of land use controls by multiple agencies, propose to solve the problem by eliminating some of the actors. This would, in most cases, be a mistake—a mistake that would undo much of the progress we have achieved in land use regulation in the last decade. Individual actors, usually in the form of one

agency or another, represent distinct interests in the land. These interests have two dimensions—goals and constituencies. A state water pollution control board, for example, represents the state's commitment (or goal) to preserve and restore the purity of its waterways. It is clearly a goal that should be represented in land use planning, for one of the lessons of recent experience has been the interrelation of land and water. The agency also has a constituency, in this case a statewide rather than a local one.

If we go over a list of agencies having input into a decision about whether or not to approve a major development project, we find a whole array of goals and constituencies represented. We have added new agencies to the land use control process precisely because we feel that these new goals and constituencies should be considered. The control of critical environmental areas by state agencies, for example, has grown out of a belief that there is a valid statewide interest in their protection. Thus, to remove an agency is in most cases to remove a goal or a constituency from the decision process.

Rather than eliminating interests, we should devise decision systems through which a maximum number of interests can be expressed efficiently. Such systems would coordinate the expression of many interests, rather than simplifying the process by eliminating the consideration of legitimate concerns.

We might look at interagency coordination as a continuum, stretching from simple interagency notification on one end to joint decision-making on the other. The following examples are taken from the states, which, since they stand between the federal government and regional and local bodies, have a particular responsibility for coordination. The list is not meant to be exhaustive, and a single state may simultaneously use more than one of the methods.

Interagency Notification

Perhaps the simplest method of coordination is interagency notification. Suppose a developer must apply for several state and local permits. There often is no prescribed order in which he must obtain them. In fact, it usually is the developer's responsibility to ascertain precisely which permits are required. On the other side, agencies often are unaware that a project is pending until actual application is made, even though the developer may have spent months securing other required permits.

A simple notification system would require the first agency to which application is made to notify all other agencies whose approval is required of the existence of the application. The developer, in turn, would be given a list of needed permits, along with information on time limits, application forms, and the preferred order in which the agencies should be approached. It may prove desirable to create a permit ombudsman to handle this notification and to make an initial ruling on which permits are needed.

This kind of notification has proven to be a popular feature of Washington's 1973 Environmental Coordination Procedures Act, although in this case notification is only the first step leading to a multi-agency hearing. Some developers, it is said, have used the Washington process simply to determine which permits they need, even though they have no intention of going through with the optional joint hearing.

Interagency Consultation

A more active form of coordination provides for formal or informal consultation among state agencies early in the life of a development application. This is particularly useful for sharing scientific or ecological information, which may be concentrated in a single agency. A Department of Fish and Game, for example, may counsel an agency ruling on dredging permits as to the potential impact of dredging on marine life.

Consultation tends to take place naturally in the smaller states, where the principals are geographically close and often know one another socially. In large states, with many employees and regional offices that may not even be in the same city, consultation has to be institutionalized to be effective.

Ironically, a leader in formal interagency consultation is a small state, Vermont (*1*). Under Act 250, the state's pioneering land use law, applications for large developments are processed by the Agency for Environmental Conservation. This agency not only notifies other agencies of state government but solicits their written comments. These are then brought before the biweekly meeting of the Agency 250 Review Committee, which brings together state agencies both inside and outside the conservation agency. The committee synthesizes the comments into a single document, which is forwarded to the district commission that holds the initial hearing on the application. This process provides technical information to the district commissions that might otherwise be unobtainable. The committee report has been described as "frequently the most articulate technical presentation at district commission hearings" (*1*).

Standards

One of the unheralded yet most frequent forms of coordination occurs when one agency uses standards (say for air or water quality) promulgated by another agency. This is especially true of agencies that control critical areas, exercising broad jurisdiction over geographically limited areas. By making fixed environmental standards part of the conditions to which a developer must adhere in order to obtain a permit, the land planning agency not only provides for consistent treatment of projects but acts as a secondary means of enforcement of legal requirements.

Approval of Plans

Several states, in their move to implement land use controls, think that there may be no need for the state to review individually every development application, even for large projects or sensitive areas. Instead, local governments are required to incorporate certain state-mandated rules or standards into their own land use plans and into the ordinances that implement those plans. Upon approval of a local plan, the state interest is protected, even though the state did not intervene in an individual case. (Naturally, some sort of limited review is still useful to ensure that the local ordinances are adequately applied.)

Provision for state review of local plans is made in New York's Adirondack Park Agency Act (1973), in North Carolina's Coastal Area Management Act (1974) and in Florida's system for managing "areas of critical state concern." The California Coastal

Plan, now before the legislature, contains a similar provision.

Experience under all of these laws is limited as yet, and it remains to be seen whether local governments can be trusted to protect statewide interests, even when these interests are written into local plans. If such systems do work, however, they would significantly reduce both the regulatory burden and the time needed for project approval.

Multiple Input/Single Decision

One of the most obvious problems with multiple-veto systems of land use control is that important information about a project's environmental or fiscal impacts may not be brought out until late in the decision process. Florida, through its "development of regional impact" process, has devised a means through which regional and statewide interests can be expressed as early as the initial consideration of a project by local government. As with other state land use laws, the Florida statute provides for an appeal by the state, which then leads to a new hearing. The emphasis, however, is on pointing out the statewide interest early, before positions have hardened.

Under the Florida law, the developer of a large-scale project submits a standard application to the appropriate local government, which schedules a public hearing some weeks thereafter. At the same time the developer also sends a copy of the application to the nearest "regional planning agency." This is a multicounty council of governments, with a staff ranging from six to perhaps two dozen professionals. The agency has 50 days to review the developer's application, to prepare a written critique of it, and to vote to recommend that local government approve, deny, or modify the project.

Local government may or may not go along with the agency's recommendation. Often, in practice, problems pointed up by the agency are raised by environmentalists and other citizens in the course of the required public hearing. The decision on the application remains with the local government; but once made, the regional agency or state planning agency may appeal the decision to the Florida Cabinet. In this way, a second round of hearings is avoided, except in those cases (a bit less than a quarter of the total) that are appealed.

State input into local regulatory proceedings is also provided for in Maryland's 1974 land use law, although in the Maryland case there is no provision for administrative appeal.

Joint Hearings

Perhaps the most ambitious attempt to date at coordinating the issuance of multiple state permits is Washington's Environmental Coordination Procedures Act (ECPA) of 1973. The law is aimed at simultaneously making the decision process more certain and expeditious for the developer and more accessible to the public. It provides for coordinated application, hearing, and review of nearly all permits issued by the state government (principal exceptions are permits involving public lands).

The process is optional, giving the prospective developer the alternative of going through the old process of securing permits individually. If a developer chooses to use ECPA, he makes initial application to the state's Department of Ecology. In doing so, he must certify that his project is consistent with existing local planning and zoning, for ECPA does not override these requirements. The Department of Ecology then notifies all other state agencies that have a possible interest in the proposed project. If an agency does not respond within 15 days, it presumably has no interest and forfeits its rights to enforce permit requirements later.

The Department of Ecology sends the developer the forms required to apply for all needed permits. It also schedules a hearing, usually in the county in which the project is located. At the hearing, each agency chairs that part of the proceeding relevant to its concerns. Then, based on the common hearing record, each agency sends the Department of Ecology its decision as to whether or not its particular permit or permits should be granted. The Department then informs the developer. In this way there is a common response and a single hearing record, yet each agency retains its existing power to issue or deny permits.

The law also provides for a single administrative appeal, again based on the common hearing record. The standard of review is whether the agencies have been "arbitrary or capricious" in their decision, replacing earlier standards that allowed a wider scope for review.

Conclusion

The proliferation of land use controls at all levels of government has resulted in a demand by developers, by environmentalists, and sometimes by bureaucrats themselves to reduce duplication, uncertainty, and delay. The answer to this demand is to be found in coordinating the way in which these interests are expressed, not in eliminating otherwise legitimate interests from the process.

The states have been pioneers in the recent quiet revolution in land use control, making provision for the consideration of statewide and regional interests in land use that had been heretofore neglected. In the same way, we can expect the states to turn to the issue of coordination, solving this problem in a rich variety of ways. There are indications that a few states have begun the process.

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