

Public Control Growing in a Land Use Revolution

By **GLADWIN HILL**

What authorities have called a "quiet revolution" in government regulation of land, America's most basic resource, is gathering momentum from coast to coast.

Nearly two-thirds of the nation's 3.5 million square miles is still privately owned. And the idea that private land should be immune from governmental interference is still highly resistant to change.

But out of a mass of conflicting developments, an unmistakable pattern of growing public influence over land use decisions is emerging at all levels of government.

Only a few years ago, land use policy-making could be found in only a handful of states. Today, a national survey by The New York Times indi-

cates, nearly all states have moved into land regulation of some sort.

With some it takes the form of coastal development restrictions; with others, subdivision regulation or "critical areas" protection. About half the states now have laws relating to strip mining, and about half have preferential tax rates for farm land aimed at preserving "open space."

Patchwork of Controls

Up to now the spread of controls has been largely a patchwork. But before Congress is a bipartisan proposal, backed by the Nixon Administration, that would establish a measure of order by giving states money to set up comprehensive land use planning programs.

The movement toward regu-

lation is the product of an intense, three-sided dispute involving apostles of development, crusaders for the environment and individuals striving to reconcile the diverse interests at stake.

While the controversy will undoubtedly take years to resolve, such concern over land is viewed by many experts as the onset of a fundamental change in the American way of life, a change of possibly historic dimensions.

The crux of it is a transformation in the concept of land from that of a commodity, simply to be bought and sold, to that of a national resource in which all citizens have a rightful interest.

Among those holding the latter view is President Nixon, who has articulated it in three

successive annual environmental messages.

"Today's broader view of land values," according to Fred Bosselman and David Callies, authors of "The Quiet Revolution in Land Use Control," a recent study published by the Council of Environmental Quality, "recognizes that in the long run land values will reflect our ability to maintain a society in which people want to own land."

Far-Reaching Implications

This new "land ethic" has implications that reach far beyond land itself.

It is already affecting millions of people—what they can do with their property, where they can build or buy new homes, how close they will be

Continued on Page 4, Column 1

Public Control Grows in Land Use Revolution; Most States Adopt Regulations

Continued From Page 1, Col. 5

living to industry, power plants and shopping centers, where they spend vacations, and in countless other ways.

It involves the development of new governmental mechanisms; altered local-state and state-Federal relationships; and above all concerned public consideration of how people want the country to look and function in years to come.

State Action

State land controls instituted in the last few years are numerous and vary widely in their details and real force.

The Times survey shows that just since January the legislatures of almost a score of states have passed new land-use measures. In nearly as many states, similar bills were debated but defeated or left to die in committee, and are virtually certain to be revived in the future.

Hawaii is still the only state that has "zoned" every square foot of its territory, earmarking it for urban, rural, agricultural or conservation uses.

But a number of states—notably Washington, Oregon and California on the West Coast, and Maine, Vermont and Florida in the East—have embarked on statewide land regulation on a big scale.

In California, even construction of a home on private property within a thousand yards of the ocean is subject to a permit from a regional commission, whose decisions can be overruled by a statewide commission.

Maine has a state permit system covering all sizable industrial, commercial and residential projects. Vermont, to curb a stampede of land speculators has just instituted a capital gains tax that penalizes quick resale of property. New York State recently banned a big private-land development project in the midst of its 6-million-acre Adirondack Park.

In developing land-use controls, states fall into two general categories. In one, by far the larger, are those that have reluctantly entered the field with "single purpose" measures to meet particular problems but that still shy away from the concept of large-scale, state-level planning.

In the other are states that envisioning themselves becoming trapped in a tangle of "single mission" measures, have moved to at least explore integrated land-use planning.

The Land Crunch

The basic reason for the appearance of the new national "land ethic" is a widespread realization that—as with clean water and clean air—the supply of desirable land is limited and dwindling rapidly, and that measures to husband and protect it seem called for.

"Unlike air and water," says Senator Henry M. Jackson, Washington Democrat, "land cannot be protected by day-to-day regulation. It can only be protected by planning. If we are to truly weigh and balance competing economic, social and environmental goals in the years ahead, land must be viewed not as a commodity to be bought, sold and consumed but as a finite resource which must be managed in the interests of future generations."

There are still, arithmetically about 11 acres of land for every man, woman and child in the country. But most of the nation's population is concentrated on less than 10 percent of the nation's area—the two coasts and in a few centers in the "great open spaces" far from population centers remains for the time being largely academic.

Desirable, accessible land has been falling victim to the "environmental crunch." A John R. Quarles Jr., assistant administrator of the Environmental Protection Agency, says "Our shorelines are being gobbled up, our wetlands dredged and filled, our mountain valleys dammed and flooded, our streams drastically altered by channelization, our wilderness areas cut with highways and botched with development."

Open space is being lost to urbanization at the rate of more than 1,000 square miles a year—an area the size of New Jersey—every decade.

"I don't believe there's a acre of land in this state," Massachusetts Gov. Francis Sargent said recently, "that isn't being eyed for one type of development or another."

Summary of Senate Land Use Bill

Following are the main points of the Land Use Policy and Planning Assistance Act (S.268), passed by the Senate in June and awaiting reconciliation with differing House versions:

Under the proposal, the Federal Government would distribute about \$100-million annually for eight years in grants to states to cover from 66 to 90 per cent of the administrative costs of land-use planning programs.

Within three years after enactment, participating states would be required to:

- Set up a land-use agency with authority to formulate a state land-use program.
- Inventory the state's land, resources and factors like population bearing on land and resource use.
- Develop a program to regulate land sales and housing developments of more than 50 units more than 10

miles outside a metropolitan area.

Within the ensuing two years, states would have to promulgate programs including methods:

- To control the use of environmentally sensitive areas such as flood plains.
- To control land subject to developmental impact from such facilities as airports.
- To control large-scale developments of more than local impact.
- To influence the location of new communities.
- To keep all developments consonant with antipollution laws.
- To assure citizen participation in carrying out the foregoing measures.

Pressures for Regulation

The loss of environmental values people have come to prize, along with perplexity about locating the endless succession of needed new facilities, has given rise to a sudden nationwide quest for means of regulating development. Those

means have not been readily available.

Land-use regulation in the United States has traditionally been a local matter, a constitutional power delegated by the states to counties and cities. Their principal implement has been zoning.

But zoning is far from a universal fixture. Of some 60,000 jurisdictions in the country, only 5,000 have instituted zoning.

Nor does zoning necessarily mean land planning. It is primarily a device for protecting selected established land values. Even with zoning, land use has been shaped mainly by raw economics. Thus, for example Houston, which has never had zoning, has ended up looking pretty much like other cities.

"Local development," says Portland (Ore.) City Commissioner Lloyd Anderson, "can't withstand the kind of pressure that come when you build freeway, and demands arise over the use of land around the on-and-off-ramps."

But overshadowing the frailties of zoning is a new fact of life: Many of today's land problems are beyond the competence of local jurisdictions.

The National Commission on Urban Problems reported in 1968: "In large urban areas the formation of 27,000 new households every week. A surge and upward of 50-million people in the country in the next 25 years. Once-bucolic Maryland, typically, faces the prospect of losing 45 square miles of prime agricultural land to urbanization every year.

In the next two decades, new power plants alone will take up 200 square miles of land throughout the country, and long-range transmission lines will need nearly 5,000 square miles of right-of-way.

The rapid consumption of land is linked with many other problems.

"Land-use questions," says Russell E. Train, recent head of the Council of Environmental Quality, "lie at the heart of many of the critical environmental decisions facing the nation, whether they be all quality implementation plans, decisions on where to locate large-scale energy facilities, or policies for the use of our public land [or] decisions on how best to manage the national parks and forests, seasonal home developments in the mountains and along the coasts, historic preservation, strip mining, stream channelization and urban sprawl."

The other is functional controls without any special geographical links—"critical area," farmland and real estate development regulation; highway, industry and airport siting strip-mining and erosion controls.

Resistance

One or more of these measures have been adopted in nearly every state. But the obstacles to state action are formidable. The notion that the use of private land should be free of governmental interference persists strongly, even though it can be shown to be equally a myth.

As far back as 1693, colonial government imposed certain constraints on land use in New England. Communities' right to impose zoning restrictions was upheld by the United States Supreme Court in 1926. Since then numerous other court decisions have reaffirmed the validity of public interference with land owners' prerogatives.

But the mystique of owner autonomy still pervades legislatures and affects their decisions.

When state land regulation comes up, organizations of cities and counties and their officials swarm in to object to any relinquishment of authority, however unwilling or incapable they have been to exercise it.

The executive director of the Illinois Municipal League, Steve Sargent, says candidly: "Traditionally and successfully we've opposed any state involvement in land use, including subdivi-

sion control, flood plain control and all that sort of thing.

"I think the counties are with us. This is fundamentally a local-government affair. And we think we've done a pretty good job."

Resistance also comes from property owners' groups, real estate developers, builders and other commercial interests.

The defeat of a land-use planning bill in Kentucky last year was attributed primarily to coal and agricultural interests.

Vermont's land-use planning program has been openly opposed by owner and developer groups, who have campaigned with newspaper and radio advertisements.

The Texas Manufacturers Association boasted of having killed land-use planning proposals in this year's legislative session.

"Anti-planning forces' objections range from contentions that environment is being unduly favored over economics to fears that planning stemming from the state level will be insensitive to local requirements.

In Florida, construction workers' bumper stickers admonish: "If Building Stops, I'll Be On Relief," and officials of areas under consideration for natural preservation complain that their economic growth is being sacrificed to make "playgrounds" for developed areas.

David R. Cohn, an official of the Maine Land Owners Association, says: "There's been too

much emphasis on preservation for the sake of environment alone. Some of the regulations are being drawn by academic or socially conscious people not versed in economics."

Robert Bowers, president of the Nevada Real Estate Association, says: "We know planning is necessary, but the tendency has been to ignore economics and do everything toward ecology. The trend is toward decisions made hundreds of miles away from the locale affected."

The Emerging Patchwork

Despite all the opposing forces, an array of state regulatory measures has emerged. Three basic administrative patterns are evident.

One is direct statutory controls, as with strip-mining regulation.

Another is state guidelines for city, county or regional action, with the right of intervention if the localities do not proceed properly.

The third is joint state-local commissions, exemplified in California's new coastal management program.

The use of such mechanisms across the country is highly erratic, however.

"At present," Richard Slavin, the University of Kentucky's late land-use expert said this year, "state land-use policies are little more than an aggregate of thousands of unrelated,

often conflicting, decisions, made by single-purpose agencies, local and regional governments, and private developers."

No state yet has a working mechanism for dealing with the totality of its land. Even Hawaii, despite having broadly zoned all its land over a decade ago, has continual controversies over developments within the zones, and pressures for new administrative machinery.

"We're in danger," says William D. Ruckelshaus, recent head of the Environmental Protection Agency, "of creating a continental hodgepodge so lacking in rationality as to make land-use planning an exercise in futility. In my opinion there is no way to avoid integral planning of land use with transportation, housing, utilities, farm policy and so on."

The Federal Role

For public officials, legislators, businessmen and many citizens, the situation has given rise to alternate nightmares.

In one, the United States becomes, a decade or two hence, a continuous expanse of hideous highway "strip" cities, cracker-box subdivisions, obtrusive condominiums, industry-desolated shorelines, and mountains and forests pocked with "second homes."

In the other, every square foot in the nation has been functionally earmarked by scowling, insensitive bureaucrats in Washington, and a brainwashed populace moves in lockstep from square to square with all the joy of chessmen.

Three years ago, in what has become a bipartisan effort to steer between these extremes, Senator Jackson introduced a bill providing for Federal grants to states to develop comprehensive mechanisms for dealing with land-use problems.

Although the proposal has been depicted by some as revolutionary in intruding on laissez faire in private land management, it actually is a culmination of more than a century of Federal initiatives in disposition of the nation's land.

In 1862 the Homestead Act opened up great reaches of the West to settlement, under certain developmental requirements. A decade later saw the birth of the national park system, in which 30-million acres of land have been permanently segregated from private usage.

In recent years, criteria for federally assisted housing and highways have been a determinant of much land use. In 1968 Congress enacted a law to preserve "wild and scenic" rivers.

The Land Sales Full Disclosure Act of 1968, imposing restrictions on large-scale subdividers, has put some brakes on deceptive interstate real estate promotion.

When the Environmental Protection Agency was created in 1970, land-use supervision is not part of its statutory mandate. But the agency has been drawn into a multitude of land-use judgments in administering the multibillion-dollar sewage facilities grant program under the Water Pollution Control Act of 1972 and in implementing the Clean Air Act of 1970.

In outlining traffic control plans for 38 smog-afflicted cities recently, the E.P.A. counseled them that in many cases the only ultimate solution to their excessive car fumes lay in comprehensive land-use planning that would locate communities and their facilities so as to minimize auto travel.

The Clean Air Act's provision for regulating "complex new sources" of air pollution involves E.P.A. approval of the siting of big developments like shopping centers.

And on July 13, the agency told all the states bluntly that to avert "significant deterioration" of clean-air areas under a recent Federal court decision, they would have to engage in extensive land-use planning and perhaps even statewide industrial zoning.

A mini-version of the Jackson bill was enacted last year

in the Coastal Management Act, which calls for the 30 coastal and Great Lakes states to create administrative machinery for overseeing shoreline development.

And pending in Congress are nationwide strip-mining controls, and the Environmental Protection Tax Act, which would refigure certain Federal levies to encourage rather than penalize land conservation.

After many modifications, including incorporation of a parallel Administration measure, the Jackson bill was passed by the Senate last year but not acted on by the House.

Now entitled the Land Use Policy and Planning Assistance Act (S.268), the bill was passed again by the Senate last June 64 to 21. It awaits reconciliation with several somewhat differing House proposals.

Among a number of controversial points to be threshed out are how the program should be meshed with management of Federal land, which amounts to one-third of the nation's area, and whether the measure should contain penalties for any states that spurn the program.

"The approach," Russell Train explained, "is not to shift authority over land use to the Federal Government, or even to remove from small units of local government the vast majority of public decisions over land use."

"It is rather to encourage the states to establish a process for identifying and controlling those major land use decisions which require a broader review than that provided solely by the current fragmented approval processes at the local level."

for identifying and controlling those major land use decisions which require a broader review than that provided solely by the current fragmented approval processes at the local level."

"We don't intend to tell a state what its policies towards the use of land should be," says Secretary of the Interior Rogers Morton, whose department, under the bill, would be the Federal coordinating agency.

"Our criteria for continued assistance, or application of sanctions, will be based solely on whether a state has devised mechanisms for insuring a planning process and implementation program on lands of critical state concern."

Criticism of the legislation falls into several schools of thought—opposition in principle to Federal involvement in state land planning, opposition to the pending measure's terms as too dictatorial, and contentions that it does not go far enough.

But amid the debate on ways and means, the movement of land use regulation by one governmental level or another appears inexorably in the direction of more rather than less.

The main question at this juncture seems not whether public decision making will assume a bigger role in land use but how quickly a smooth system will be developed and how orderly the transition will be.

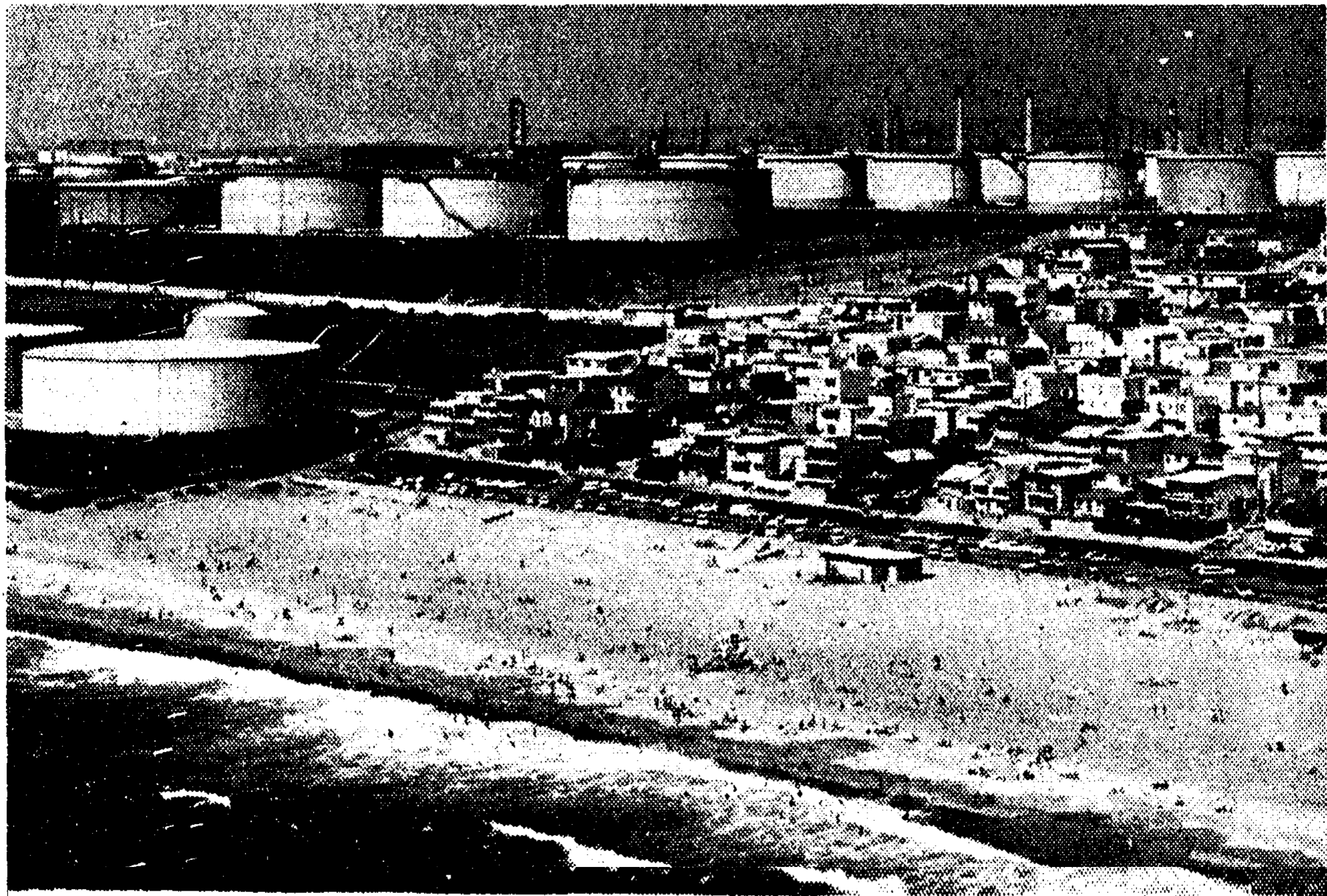
1973 Land Use Action Taken by Legislatures

	Measures and Regulations Passed	Measures and Regulations Blocked*
Arizona	Land Inventory Subdivision Flood plain	
Arkansas	Scenic Areas Commission Power plant siting Planning funds	
Colorado		Land use commission
Delaware	Wetlands	
Florida		Wetlands
Georgia		Critical areas
Idaho		Land planning Flood plain
Illinois		Land planning Scenic rivers Lake Michigan shoreline Zoning requirements
Indiana	Flood plain	
Maine	Scenic rivers	
Maryland		State land agency
Massachusetts		State land agency Critical areas
Minnesota	Critical areas Scenic rivers Power plant siting	Subdivision
Mississippi	Wetlands	State land-water plan
Montana	Subdivision Strip mining Power plant siting	
Nebraska		Land study commission
New Jersey	Coastal	
New Mexico	Subdivision Land use council	
New York	Adirondacks Wetlands	
North Carolina	Erosion	
North Dakota	Strip mining	
Oregon	Land use agency Subdivision	
South Dakota	Land planning board	
Texas		Land planning Flood plain
Utah		Land planning Subdivision Strip mining Local zoning
Vermont	Land capability plan	Flood plain
Wyoming	Land study Scenic rivers study Strip mining	Subdivision Power plant siting

*Defeated or died in committee

Following are legislative proposals awaiting action in 1973 or 1974 sessions: Alaska—State land agency; California—Open space planning, power plant siting, state agency; Delaware—Wetlands; South Carolina—Coastal.

The New York Times/Sep. 3, 1973



Redondo Beach, Calif., where land squeeze has jammed oil storage tanks next to residential development

The New York Times

Published: September 3, 1973

Copyright © The New York Times



The hillsides are blanketed by houses near Newhall, Calif., an area undergoing rapid development. But the state seeks tighter control over land use.

The New York Times

Published: September 3, 1973
Copyright © The New York Times