PROGRAMS, POLICIES AND LEGAL AUTHORITIES AFFECTING THE USE OF LAND IN MINNESOTA

Land Use Planning Report Number 1

STATE PLANNING AGENCY
Environmental Planning Division

May, 1975

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Summary and Recommendations

Summary and Recommendations

CHAPTER 1: NATIONAL LAND USE LEGISLATION

A. SUMMARY

1. National land use legislation:

   a. was introduced in Congress in 1973 and 1974.

   b. was introduced to encourage improvement in state and local land use planning programs.

   c. would have provided funds for voluntary state land use programs.

   d. did not pass.

2. States receiving funds would have had certain requirements including:

   a. the identification and protection of critical areas and control large scale development, key facilities and subdivisions.

   b. the development of a resource data base.

   c. provision for technical assistance to local government.

   d. provision for public involvement.

   e. the development of state policies.

CHAPTER 2: LAND USE PLANNING ACTIVITIES IN MINNESOTA

A. SUMMARY

1. Several reports and projects have been undertaken in Minnesota dealing with specific land use issues which include:

   a. population distribution

   b. lakeshore resources

   c. outdoor recreation

2. A major effort has resulted in the development of an information system for organizing data relevant to land use and for supplying it quickly to those who must make land use decisions. The system utilizes data that is collected and maintained by a variety of local, state, and federal agencies and the University of Minnesota.

B. RECOMMENDATIONS

1. IT IS RECOMMENDED THAT THE LEGISLATURE CONTINUE FUNDING FOR THE DEVELOPMENT OF A STATEWIDE INFORMATION SYSTEM AND FOR THE COLLECTION AND STANDARDIZATION OF INFORMATION ON WHICH THE SYSTEM DEPENDS. THIS INFORMATION INCLUDES:

   a. SOILS,
   b. GEOLOGY,
   c. VEGETATION,
   d. SURFACE AND GROUND WATER,
   e. LAND OWNERSHIP,
   f. EXISTING LAND USE, AND
   g. LAND VALUE

   THESE DATA ARE CURRENTLY AVAILABLE IN VARYING DEGREES OF ACCURACY FOR DIFFERENT AREAS OF THE STATE. THEY ARE ABSOLUTELY ESSENTIAL FOR MAKING REASONED JUDGMENTS ABOUT THE USE OF LAND. DESPITE MRC, LEGISLATIVE AND LEAP RECOMMENDATIONS FOR ORGANIZING THE STATE'S LAND OWNERSHIP RECORDS, THIS IMPORTANT TASK IS BARELY BEGUN. EFFORTS TO ORGANIZE THIS TASK DURING FY 74-75 HAVE NOT RESULTED IN MUCH PROGRESS. THE DNR REQUESTED THE RESPONSIBILITY FOR DOING THIS TASK BUT DOES NOT HAVE THE MONEY OR MANPOWER TO COMPLETE IT IN THE FORESEEABLE FUTURE.

2. IT IS RECOMMENDED THAT THE LEGISLATURE EMPOWER A SINGLE STATE AGENCY TO DEVELOP STANDARDS FOR INFORMATION COLLECTION AND DISSEMINATION THROUGH THE PROMULGATION OF RULES AND REGULATIONS. WE BELIEVE THAT THE STATE PLANNING AGENCY SHOULD HAVE THIS ROLE BECAUSE OF ITS RESPONSIBILITY, THROUGH LEGISLATION, TO PROVIDE INFORMATION FOR PLANNING PURPOSES AND TO COORDINATE PLANNING ACTIVITIES AMONG STATE AND LOCAL GOVERNMENTS. INFORMATION SHOULD CONTINUE TO BE COLLECTED BY THE TRADITIONAL AGENCIES.

3. IT IS FURTHER RECOMMENDED THAT THE STATE PLANNING AGENCY BE AUTHORIZED TO ESTABLISH A STATE LAND DATA SERVICE CENTER TO PROVIDE CITIZENS AND PUBLIC AGENCIES WITH A "LIBRARY" OF CURRENT DATA, WHERE IT CAN BE FOUND, IN WHAT FORMAT IT EXISTS, AND ITS ACCURACY.

CHAPTER 3: EXISTING AUTHORITIES FOR PLANNING AND REGULATORY LAND USE

A. SUMMARY

1. By law, Minnesota's land use planning and regulatory authority exists among many levels of government. This authority was granted over the years to bring about more orderly land patterns in both urban and rural areas and to protect the indiscriminate use of natural resources.

2. Some of these authorities, such as zoning, have an obvious relationship to the land. Others, such as taxation, may have been enacted for a different purpose and have a more obscure effect on the use of land. But these authorities can encourage or discourage certain types of land use and the rate of development.

3. Municipal and County land use planning and regulatory authorities have been granted by the legislature and they may develop comprehensive plans for their respective jurisdictions and may implement these plans through the adoption of implementation measures and official controls. These measures include zoning, subdivision regulations, official maps and others.

4. Township land use planning and regulatory authority must be approved by the voters of the township. If approved, state legislation provides for the preparation of a comprehensive plan and the adoption of zoning regulations.

   Certain towns called "urban towns" have the same authority as municipalities.

5. Through state legislation certain special purpose districts are established which have land use planning and regulatory authority. These include 92 soil and water conservation districts, which cover the entire state, and 33 watershed districts. Of the two, watershed district authority is the most extensive.

6. Regional development commissions have comprehensive planning authority but cannot regulate the use of land. All 12 of the state's RDCs have been formed and include all but the 7-county metropolitan area. In addition to their planning role, the RDCs coordinate the activities of units of local government and the plans of independent boards, commissions or agencies which affect several communities or the entire region.

7. In the metropolitan area, the Metropolitan Council has regional land use planning authority and in some cases, regulatory authority. The Council members are appointed whereas the members of regional development commissions are elected officials from municipalities, townships, counties, school boards and councils of government.

8. Many state agencies have the authority to plan for and regulate the use of certain lands. This authority is distributed among "functional" agencies which administer programs relating to natural resources management, pollution control, economic development, transportation and so on. The State Planning Agency has the authority to coordinate these activities through the development of "comprehensive" plans but does not have regulatory authorities.

9. Traditionally, most state agency regulatory authorities exist in the form of:

   a. direct land acquisition, management, and improvement,

   b. standards, or

   c. permits.

10. In 1973, the legislature expanded these authorities by passing legislation which permitted the state to:

    a. locate certain types of development such as power plants,

    b. directly assist in the planning for certain "critical areas",

    c. require environmental impact statements.

11. A comparison of Minnesota's legal tools with the requirements of the proposed federal land use legislation which did not pass shows that Minnesota now meets or exceeds all requirements.

12. The 1973 Legislature also expanded the administrative structure of the state in dealing with land use issues by creating:

    a. an Environmental Quality Council, and

    b. a Commission on Minnesota's Future to develop alternative growth and development strategies for legislative review.

B. RECOMMENDATIONS

1. WE RECOMMEND THAT THE LEGISLATURE EXPAND ON THE INFORMATION CONTAINED IN THIS REPORT BY HOLDING HEARINGS TO DETERMINE THE EFFECTIVENESS, RELEVANCE AND INTERRELATIONSHIP OF EXISTING LAND USE AUTHORITY AT ALL LEVELS OF GOVERNMENT. AREAS OF DUPLICATION OR CONFLICT SHOULD BE RESOLVED. THIS IS ESSENTIAL IN DETERMINING THE NEED FOR MORE LAND USE LEGISLATION AND WHAT IT SHOULD ADDRESS.

2. IN ADDITION TO ADMINISTRATIVE EFFECTIVENESS A MAJOR QUESTION TO BE DECIDED IS WHAT LAND USE ISSUES EACH LEVEL AND AGENCY OF GOVERNMENT SHOULD DECIDE.

   WE RECOMMEND THAT NO SINGLE STATE AGENCY OR COLLECTION OF AGENCIES BE GIVEN UNILATERAL AUTHORITY TO MAKE ALL LAND USE DECISIONS. STATE AGENCIES ACCOUNTABLE TO THE GOVERNOR AND THE LEGISLATURE SHOULD PLAN FOR AND APPROPRIATELY REGULATE LAND USE ISSUES OF STATEWIDE INTEREST OR THOSE AFFECTING STATE OWNED LAND.

   IN TERMS OF NUMBERS, MOST LAND USE DECISIONS ARE OF A PURELY LOCAL NATURE AND SHOULD CONTINUE TO BE MADE BY LOCAL GOVERNMENT. LOCAL GOVERNMENT, PARTICULARLY LOCAL ELECTED OFFICIALS, MUST BE PROVIDED FINANCIAL AND TECHNICAL ASSISTANCE, HUMAN AND PHYSICAL RESOURCE INFORMATION, AND OTHER TOOLS NECESSARY TO DEAL EFFECTIVELY WITH LAND USE ISSUES. ALSO, THERE NEEDS TO BE A STRONGER PARTNERSHIP WITH LOCAL GOVERNMENT IN THE DEVELOPMENT OF STATE STANDARDS, RULES AND REGULATIONS, POLICY AND LAWS.

CHAPTER 4: STATE LAND USE POLICY

A. Summary

1. Minnesota, like most other states, does not have a single land use policy. It has a collection of policies relating to various areas of land or land use problems.

2. The terms "policy", "goal", "purpose", "program", "activity", and "objective" are used frequently in state law and general communications. These terms can be very useful in understanding legislative and administrative roles if they are properly defined and then used consistently.

3. There is an inseparable relationship between the policies of the legislature and the programs of state agencies. The impact or effectiveness of a policy is determined by evaluating the accomplishments of the program.

4. The accomplishments of a state agency program cannot be successfully evaluated without a clear indication of what and how much the program is to achieve to serve the public interest. This direction has not been provided in most cases.

5. In some major land use areas, no declaration of state policy could be found in the statutes. These include agriculture, forestry, urbanization and some aspects of mining.

6. No conflict between state policies could be found because of the broad terms in which they are stated. However, individual programs that implement the policies may conflict when applied to a specific parcel of land.

7. The state's water resource management program provides a good example of the relationship between goals, policies, programs, plans and implementation and the sequence in which they should occur. This program also demonstrates the breakdown that can occur when one or more of these elements is not completed.

B. RECOMMENDATIONS

1. THE LEGISLATURE SHOULD ADOPT A PROCEDURE TO IMPROVE PROGRAM EFFECTIVENESS AND STATE AGENCY ACCOUNTABILITY. WHEN A LAND USE ISSUE OR PROBLEM IS IDENTIFIED WHICH REQUIRES STATE INVOLVEMENT THROUGH ACQUISITION, MANAGEMENT, REGULATION OR OTHER MEANS, THE STEPS IN THIS PROCEDURE ARE AS FOLLOWS:

   a. SELECT A STATE AGENCY OR LEVEL OF GOVERNMENT THAT IS BEST QUALIFIED TO ADDRESS THE ISSUE.

b. REQUIRE AND FUND THE AGENCY OR UNIT OF GOVERNMENT TO DETERMINE HOW MUCH OF SOMETHING NEEDS TO BE DONE IN QUANTIFIABLE TERMS, I.E., HOW MANY HOUSES NEED TO BE BUILT, HOW MANY DUCKS SHOULD BE RAISED, HOW MANY BUSHELS OF CORN NEED TO BE GROWN. THE RESPONSIBLE ENTITY SHOULD BE REQUIRED TO HOLD A SUFFICIENT NUMBER OF HEARINGS TO REPRESENT THE PUBLIC WHOSE INTEREST IS TO BE SERVED AND ACCOUNT FOR ANY DIFFERENCES IN REGIONAL CHARACTERISTICS. THE LEGISLATURE SHOULD SET A REASONABLE TIME LIMIT FOR THIS INFORMATION TO BE PREPARED.

c. THE LEGISLATURE SHOULD REVIEW THIS INFORMATION AND DETERMINE IF THE ESTIMATED NEEDS ARE REASONABLE AND ACHIEVABLE AND MAKE ANY MODIFICATIONS. THE ESTIMATED NEEDS SHOULD THEN BE ENACTED AS STATE POLICY. NEEDS SHOULD BE UPDATED AS CONDITIONS CHANGE. THIS ALLOWS EVERYONE A CHANCE TO HAVE A ROLE IN GOVERNMENT AND TO KNOW WHAT TO EXPECT FROM THE PROGRAM.

d. THE LEGISLATURE SHOULD GIVE THE APPROPRIATE AGENCY OR LEVEL OF GOVERNMENT THE AUTHORITY AND FUNDING TO ESTABLISH THE NECESSARY PROGRAM AND AS A FIRST PRIORITY, DEVELOP A PLAN THAT IDENTIFIES THE LAND THAT WILL BE AFFECTED BY THAT POLICY - LAND TO BE ACQUIRED, MANAGED OR REGULATED. THE METHOD OF IMPLEMENTING THE PLAN, INCLUDING RULES AND REGULATIONS, STANDARDS, ETC. SHOULD ALSO BE PREPARED.

e. THE LEGISLATURE SHOULD REVIEW THE PROPOSED PLANS AND REGULATIONS FOR CONSISTENCY WITH LEGISLATIVE POLICY AND RESOLVE POTENTIAL CONFLICTS WITH OTHER PROGRAMS. IF A PROPOSED HIGHWAY CONFLICTS WITH A PROPOSED PARK OR OTHER PUBLIC FACILITY, THE USE (POLICY) THAT HAS PRECEDENCE IN A GIVEN LOCATION MUST BE DETERMINED.

f. THE LEGISLATURE SHOULD AUTHORIZE AND FUND THE AGENCY OR LEVEL OF GOVERNMENT TO IMPLEMENT THE PLAN. INCREMENTAL ACCOMPLISHMENTS DESIGNED TO ACHIEVE THE STIPULATED END WILL BE PROVIDED BY THE PROGRAM BUDGET.

IF THIS PROCEDURE IS ADOPTED, ATTENTION MUST BE GIVEN TO THE AVAILABILITY OF INFORMATION, STAFF AND FINANCES REQUIRED TO COMPLETE THE WORK INCLUDING THE IMPLEMENTATION. ALSO, THE LEGISLATURE MUST BE SPECIFIC IN DEFINING WHAT THE TASK INVOLVES, I.E. PLANS, RULES, ETC. AND MUST PROVIDE REASONABLE TIME LIMITS FOR COMPLETION.

Introduction

Introduction

In 1973, the legislature appropriated $380,000 to the State Planning Agency for "state land use planning." The legislature stipulated that, "the study is to be done in cooperation with the affected state agencies and coordinated with local units of government and regional development commissions."

The land use planning staff is located within the Environmental Planning Division of the State Planning Agency. It is neither possible nor desirable for this staff to conduct all aspects of the state's land use efforts. Since many programs affect the use of Minnesota's lands, a large number of state and local agencies will have important roles in the state's land use planning program. The principal role for the land use staff is to conduct research relating to the needs of government agencies and the legislature to coordinate programs among various levels of government, and to recommend measures which will improve and strengthen the manner in which land use decisions are made.

The State Planning Agency prepared a land use planning work program which was presented to the Minnesota Resources Commission in January, 1974, and was approved. Included in the program were a number of work components which the State Planning Agency and other state, regional and local agencies felt were important. Some components will result in products this biennium, while others are of a long-range nature and will require more than one biennium to complete.

Generally, these work components deal with the assessment of current conditions in Minnesota. We have found that we know very little about the land and water resources of the state for which we are planning. For example, without basic information on soils, geology, ground and surface water, vegetation, and existing land use, any attempts to deal with agricultural, mining, general growth and development, forestry and recreational issues are superficial and cannot be based on the facts. Similarly, without knowledge of existing and potential land use problems and the legal mechanisms that have been created to deal with them, the effectiveness of these mechanisms cannot be evaluated, their administrators cannot be held accountable and the need for new laws or changes in old laws cannot be properly evaluated.

This report is the first in a series that will provide a perspective for land use planning in Minnesota. It deals with the vast legal authority that has been conveyed by the Legislature to municipalities, counties, townships, regional development commissions, selected special purpose districts, the metropolitan council and a host of state agencies. The report documents the major provisions of the

land use bills introduced in Congress in 1973 and 1974 and shows Minnesota's standing in relation to those provisions. Finally, the relationship between "state policy" and the activities of state and local agencies is explored and recommendations are made for improving that relationship.

Through this research, we have found that Minnesota has one of the most comprehensive systems of governmental structure and law dealing with land use issues. While other states attempt to duplicate various aspects of this system, our challenge is to perfect it and make it most effective in serving the citizens of the State.

Chapter 1

AN HISTORICAL REVIEW OF NATIONAL LAND USE EFFORTS

Chapter 1: An Historical Review of National Land Use Efforts

During the past five to ten years, the nation's citizens have shown an increased concern for the way in which the country is developing. For some citizens, the concern is mainly one of protecting the natural environment--of maintaining a balance between man and nature. For others, social or economic factors have precipitated a heightened interest. Regardless of their point of view or particular interest, people recognize that proposed projects that appear to be geographically distant and of no direct significance can have very substantial effects on their welfare and livelihood. A few major problems that have been fairly well publicized nationally have contributed to this awareness. For example.

a. Uncontrolled urban sprawl has created major problems in our cities ranging from transportation problems, the pollution of air and water and a shift in tax base to the suburbs creating an economic vacuum in the core cities.

b. Poor land use decisions have resulted in the loss of scenic and recreational resources, and the destruction of scientific, historical, and archaeological features.

c. While food prices soar and millions have dietary deficiencies, prime agricultural land continues to be converted into non-agricultural uses. At the same time, millions of public tax dollars are spent to subsidize irrigation projects in the arid west and southwest in order to grow crops which are more easily and much more economically grown in other parts of the nation.

d. Public officials continue to grant building permits for flood plain development. Each year, spring floods result in enormous damage claims which are paid for with public tax dollars.

e. Improperly regulated strip mining, logging, real estate development, and countless other projects have resulted in substantial economic gain for a few and substantial environmental, social or economic loss for many.

Since virtually all development projects require the approval of at least one public agency, citizens have become more concerned about and more critical of the quality of the decision-making process at all levels of government. In answer to this dilemma, Congress and some state legislatures have passed a variety of new acts in recent years. At the Federal level, these include:

a. the creation of a Federal Environmental Protection Agency, with broad authority in environmental affairs, including the managing of Environmental Impact Statements;

b. Air and Water Pollution Control Acts, which set stringent standards and timetables for cleaning up the nation's air and water; and

c. various resource protection acts which allow federal protection or acquisition of specific geographic areas such as wilderness areas, wild, scenic and recreational rivers and so on.

According to a 1973 study prepared by the Congressional Research Service of the U.S. Library of Congress, twenty-three Federal departments and independent agencies presently administer programs with impact on land use policy and/or planning. Included are at least 112 Federal land-oriented programs, which may be grouped according to function under two major headings - natural resources and physical development. Very often several departments and agencies will be active in the same area of concern. The principal land use related appropriation bills for fiscal 1975 involve over $2.5 billion and could approach $5 billion with the approval of bloc grants for community development.

Some Congressmen recognized that these past efforts, while well intentioned and long overdue, represented a scattergun approach to land use control. They had attempted to solve problems in a piecemeal manner by passing legislation which focused on single environmental objectives such as clean air, clean water or particular types of natural resource areas. This approach was not successful and the problems have continued to worsen in both urban and rural America. Land use decisions cannot be based solely on environmental criteria or economics or any other single factor. There must be an overall policy direction to coordinate thousands of daily land use decisions within a meaningful perspective.

In 1972, Senator Henry Jackson of Washington introduced the national Land Use Policy and Planning Assistance Act to provide a more comprehensive approach to land use problem solving. The bill was passed by the Senate but died for lack of a companion bill in the House. Senator Jackson reintroduced the bill in the 93rd Congress in 1973 and the Senate again passed the measure. Congressman Udall introduced a companion bill (HR 10294) in the House and after controversial but successful hearings in subcommittee and committee, it was laid over in a surprise move by the House Rules Committee. An intensive lobbying effort finally moved the bill to the House floor where a rule to debate the bill was defeated by 7 votes on June 11, 1974. This action destroyed any hope for the enactment of Federal land use legislation that year. Lobbying efforts against the bill were led by the U.S. Chamber of Commerce and the National Association of Home Builders.

The Jackson and Udall bills would have provided grants to the states of up to $100 million per year for eight years. These federal grants would have funded up to 75% of the states cost of developing a land use planning process. Additional funds would have been available for the planning of Indian reservations bringing the total amount for the eight year period to about a billion dollars. Allocation would have been determined by a state's resource base, population, growth pressures, land ownership patterns and financial need. Based on the normal distribution of federal funds, Minnesota could have expected to receive about 2% or $2 million annually for land use planning.

Participation in the program was voluntary, but any state receiving federal funds would have been required to develop a land use planning process during the three years in Phase I of the Program. The land use planning process included:

1. The development of methods for identifying and inventorying:

    a. areas of critical environmental concern such as coastal zones and sanctuaries, shoreline, natural hazard land, and scenic and historic districts,
    b. large scale development of more than local impact such as new towns, regional shopping centers and utility projects, and
    c. key facilities such as airports, highways and highway interchanges, recreational developments and power plants.

2. The development of an adequate resource data base in each state.

3. Technical assistance and training programs.

4. Public involvement.

5. Consideration of the impact of large scale subdivisions and other development on existing utility systems and services.

6. Development of necessary state policies.

7. Regulation of development activities to prevent violation of air, water, noise or other pollution standards.

8. Consideration of housing opportunities.

9. Establishment of an intergovernmental advisory council composed of local elected officials and an appropriate state land use planning agency.

Phase II of the federal acts would have required states to adopt an implementation program within five years to:

1. protect critical areas from unwise development and exercise control over large scale development, key facilities and subdivisions,

2. assure that local regulations do not unreasonably restrict or exclude development and land use of regional or national benefit,

3. prevent actions which disregard state policies, and

4. provide for an appeals mechanism.

Although federal land use legislation was not passed in 1974, it has been outlined in this report to provide legislators and others with an understanding of the type of act being considered by Congress. Land use planning is certain to be a topic that is high on the priority list for 1975 when the 94th Congress convenes. As of February, 1975, it appears that the administration will not include funds for land use planning in the Federal budget. It is rumored that the President may sign a land use measure if it is passed by Congress.

Chapter 2

A REVIEW OF LAND USE PLANNING ACTIVITIES IN MINNESOTA

Chapter 2:. A Review of Land Use Planning Activities in Minnesota

Basic to any consideration of land use planning requirements in Minnesota is an understanding of our current position and of the many steps that have been taken in the past to solve or prevent land use problems. As early as 1967, it became apparent that a number of existing and anticipated land use issues would become unmanageable unless they were addressed in a comprehensive way. These issues included urban sprawl, loss of cropland, uncontrolled lakeshore development, expansion of mining activities, undesirable distribution of population, and the destruction of key natural, historical, and recreational resources. Before most other states or the federal government became active in land use matters and before the term "land use planning" became popular, Minnesota began building a foundation for properly addressing land use issues. This foundation consists of a vast number of legal authorities, conveyed by the legislature to various levels and agencies of government and special purpose districts. The foundation also includes several studies and activities funded primarily by the Minnesota Resources Commission.

LAND USE RELATED STUDIES

Three of the major studies that have a relationship to land use planning were published between 1970 and 1972. These include:

a. Minnesota Land Use and Settlement-1985.* Presented a view of the changes that may occur in geographic patterns of population and major land uses in Minnesota over the years from 1970 to 1985. Varying projections of conditions in 1985 were made by extending historical trends since 1940 and by assuming a number of deviations from those trends because of certain social, economic, political and technological conditions. The report is a prelude to the work of the state demographer and demonstrates that the physical patterns of population and major land use provide a framework within which other activities and services operate.

b. Minnesota Lakeshore Study.* Provided the first detailed assessment of the use, ownership and physical characteristics of the state's lakeshore. The report's recommendations led to the enactment of the Shoreland Management Act which authorized the Department of Natural Resources to classify the state's lakes and establish standards for controlling the quality of shoreland development.

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* See References, Page 97

c. Project 80.* Provided a comprehensive overview of state administered outdoor recreation facilities as requested by the legislature. The study resulted in an inventory of over 1,000 sites in Minnesota which possess natural, historical or recreational significance; a proposed Outdoor Recreation System, comprised of eleven different components which provide outdoor recreational opportunities consistent with the resources of each type of area; a number of state policies relating to outdoor recreation; and a procedure for planning state recreational facilities that encourages the use of professional talents in various state agencies. The basic elements of the study are incorporated in the Outdoor Recreation Act of 1975. Project 80 provides a model for land use planning in that it recommends the enactment of proposed state policies to guide legislative appropriations and to evaluate the progress and effectiveness of state programs.

DATA COLLECTION AND ANALYSIS ACTIVITIES

In addition to these studies, past actions have contributed substantially to the overall knowledge of the physical resources of the state. Land use and resource management decisions at all levels of government can be improved through the use of accurate information. As early as 1963, the Minnesota Resources Commission (MRC) recognized the need for improving and accelerating the State's data collection activities. In that year, topographic mapping was available for only 45% of the state and much of it was obsolete. The MRC backed a 10-year program for statewide topographic mapping which will be completed on schedule in 1975. State appropriations of $4.9 million during the 10-year period were augmented by $5.2 million in Federal funds.

Other natural resource data needs were also identified and the collection of data has been accelerated in some areas. The Soils Atlas Project of the University of Minnesota* is producing the first reliable generalized statewide soil survey utilizing a uniform scale and soil classification system. Geologic information, which has direct application to land use decisions, is being collected in the metropolitan area this biennium. Statewide coverage remains substandard. Uniform air photo coverage of the entire state (1969-70) was made available in inexpensive prints at the same scale as the topographic maps to permit easy comparison. Over 62,000 of these prints have been requested and distributed since late 1969. In addition, space technology has provided us with the ERTS satellite which passes over the same point every 18 days and transmits imagery back to earth. The potential for accurately interpreting and using this data is being studied.

With additional information becoming available through a growing number of sources, a system was developed for collecting and storing information in a manner which would make it readily available to a variety of people in solving land use problems.

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* See References, Page 97

This is called the Minnesota Land Management Information System (MLMIS). The MLMIS is a computerized method of storing information by geographically definable areas of land called "data cells." The data cell selected for Minnesota was the 40-acre parcel which is the smallest common denominator of most land records in the state and has been used as the basis for locating field lines and roads for many years. In Minnesota, there are 1.4 million 40's, but information for each one can be conveniently stored and retrieved through the use of a location code.

The first product of the MLMIS was the large wall map entitled Minnesota Land Use-1969* (1:500,000 scale) which protrays the major land use categories that existed in Minnesota in 1969 by 40-acre parcel. The statewide aerial photo coverage taken during that year was essential in determining the dominant land use category for each parcel. Although the data is generalized, this map provided the first graphic view of statewide land use patterns.

A report entitled Land Management Information in Northwest Minnesota - The Beginning of a Statewide System* was published in 1973. The report documents the application of the MLMIS to a variety of land use related issues and the importance of having good information. For instance, if accurate information on vegetation is available, tabulations of the total acres of aspen, pine or other tree species can be prepared for counties, regions and the entire state. If accurate information on land ownership is available, it can be combined with data on vegetation to produce tables or maps showing the amount and location of state, county or private land with aspen, pine or other species by county or other geographic unit. If accurate soils information is available, an indication of the potential for growing certain tree species can be calculated and used in the preparation of management plans for maximizing the production of timber on Minnesota's public and private forest lands. The value of the system is limited only by the availability of good data and by the imagination.

These early studies and activities relating to the use and characteristics of land and resources and the organization and handling of data:

1. Demonstrated the importance of good information to resource planning and management programs.

2. Led to the creation of a system which makes data available to decision-makers quickly and in a suitable format.

3. Provided a statewide picture of the use and availability of certain resources.

4. Resulted in the establishment of state standards and policies which provide a rationale for acquiring or regulating the use of resources and a benchmark for measuring the success of state management programs.

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* See References, Page 97

Chapter 3

EXISTING LEGAL AUTHORITIES FOR PLANNING AND REGULATING LAND USE IN MINNESOTA

Chapter 3:

Existing Legal Authorities for Planning and Regulating Land Use

Years ago, a person who had available capital to buy land and to finance construction could build anything anywhere for purely personal or economic reasons. As people began living and working closer together, they learned that these arbitrary decisions often had an adverse impact on the well-being of others. To bring about more orderly land patterns and protect the indiscriminate use of resources, legal authorities were conveyed to various agencies and by the legislature. Units of local government were empowered to prepare plans to guide the use of land and to implement those plans through zoning and other forms of control. State agencies were given the authority to locate and construct facilities; acquire and manage land, water and other resources; and regulate the use of land through various means. In some cases, new agencies were created to address new problems.

Over time, this accumulated body of law has expanded in size, scope and complexity. Not only has the total number of governmental entities that have legal authorities increased, but so have the problems and concerns. For example, society's growing awareness of and concern for the delicate balance of the physical environment has added a new dimension to the regulation of land and its use. Today, environmental concerns, such as air and water quality, noise abatement, and the protection of flora, fauna, aesthetics, and open space, combine with more traditional social and economic concerns to influence the location of virtually every kind of land use.

Some of the legal authorities relating to the use of land, like the agencies that administer them, are prominent and have an obvious relationship to land use. Many others are little known or more subtle in their affect. Tax law, for example, is primarily intended to produce revenue for taxing districts but may also increase or decrease the rate and type of land regulation or development.

In the State's study of land use planning, particularly in view of the pressure for passing new major land use legislation, it is important to review the body of existing law to determine its extent and effectiveness. It is also important to identify the agencies or levels of government that carry these authorities out and determine their relevance in today's setting.

This Chapter is organized in five parts:
Part A outlines the authority of local government, including municipalities, townships and counties.
Part B outlines the authorities of two special purpose organizations.
Part C outlines the authority of regional development commissions.
Part D outlines the authority of the Metropolitan Council.
Part E outlines the authority of state agencies.

PART A: LOCAL LAND USE PLANNING AND REGULATORY AUTHORITY

Municipal Authority

There are 854 municipalities in Minnesota. According to the 1970 census, three cities, Minneapolis, St. Paul and Duluth, are cities of the first class with over 100,000 population. Twenty-four cities are cities of the second class (over 20,000 to 100,000 population); 27 cities are cities of the third class (over 10,000 to 20,000 population) and 833 cities are cities of the fourth class with 10,000 or less population. In 1970, 66% of the state's municipal governments served populations of fewer than 1,000.

Under Minn. Stat. Section 462.351-462.364, all of these municipalities have the authority to prepare and adopt comprehensive municipal plans and to implement those plans through a variety of "implementation measures."

Table 1 provides a diagramatic view of the various land use related authorities of municipal government. It also illustrates the relationship and respective roles of citizens, elected officials and appointees. Several points should be made with regard to municipal authority.

1. The authority to plan and adopt implementation measures is voluntary, not mandatory. The number that have adopted plans and regulations is not known.

2. The appointment of a municipal planning agency and a zoning administrator is optional.

3. If the governing body adopts implementation measures, the creation of a board of appeals and adjustments is mandatory.

4. Municipalities may extend zoning regulations and subdivision controls up to two miles beyond their boundaries into unincorporated territory except in towns or counties which have adopted zoning regulations or subdivision controls.

1973 legislation requires municipalities to take certain action regarding shorelands, floodplains, and state designated wild, scenic and recreational rivers or critical areas.

Township Authority

Minnesota contains 1,798 townships. In 1970, 92% of these townships had populations of fewer than 1,000.

Table 1

MUNICIPAL LAND USE PLANNING AND REGULATORY AUTHORITY

MUNICIPAL PLANNING AGENCY (OPTIONAL)

Created by charter or ordinance of governing body in one of two forms:

a. Planning commission with staff. Advisory directly to governing body.
b. Planning department with staff and advisory planning commission. Advisory to governing body and municipal administration.

GENERAL AUTHORITY:

1. Prepare and periodically review comprehensive municipal plan.
2. Review and recommend amendments to municipal plan.
3. Study & propose plan implementation measures including:
   a. zoning ordinances
   b. subdivision regulations
   c. official maps
   d. coordinated public improvement programs
   e. urban renewal plan
   f. capital improvement program

   Municipalities may extend zoning regulations & subdivision controls up to two miles into unincorporated territory except in towns or counties which have adopted zoning regulations or subdivision controls.
4. Review public land acquisition, disposal or capital improvement proposals for plan compliance.
5. Review proposed variances to plan.
6. Review and comment on appeals to enforcement of zoning ordinance.

SPECIAL AUTHORITY:

1. Shoreland & floodplain management & wild, scenic & recreational rivers protection:
   a. prepare implementation measures to comply with state standards.
   b. review, recommend & comment on proposed amendments & variances.
2. Critical areas
   a. recommend areas for designation to governing body.
   b. prepare plans & regulations for designated critical areas.
   c. review, recommend & comment on proposed amendments & variances.

MUNICIPAL GOVERNING BODY

Elected by citizenry

GENERAL AUTHORITY:

1. Request county board to prepare comprehensive plan & implementation measures for municipality.
2. Create planning agency, board of appeals & adjustment & zoning administrator.
3. Adopt comprehensive municipal plan.
4. Amend comprehensive plan.
5. Adopt/amend plan implementation measures.
6. Approve land acquisition, disposal or capital improvement proposals consistent with plan.
7. Approve variances to implementation measures.
8. Enforce plan implementation measures.

SPECIAL AUTHORITY:

1. Shoreland & floodplain management & wild, scenic & recreational rivers protection:
   a. adopt implementation measures to comply with state standards.
2. Critical areas:
   a. may recommend areas for designation to RDC.
   b. prepare/adopt plans & regulations for designated critical areas.
   c. enforce EQC approved plans and regulations.
   d. recommend amendments to plans & regulations to EQC.
   e. notify EQC of applications for special use permits.

ZONING ADMINISTRATOR (OPTIONAL)

Appointed.

GENERAL AUTHORITY:

Enforces implementation measures as delegated by governing body.

CITIZENS

COURTS

Elected judges

GENERAL AUTHORITY:

Judicial review.

BOARD OF APPEALS & ADJUSTMENT (OPTIONAL)

Created by ordinance of governing body as separate board or comprised of governing body, planning commission or committee of planning commission. Mandatory when implementation measures are adopted.

GENERAL AUTHORITY:

1. Hear and decide appeals to enforcement of zoning ordinance.
2. Hear and decide requests for variances from provisions of zoning ordinance.
3. Hear and decide appeals for certain building permits.

The legislative authority which enables townships to plan and adopt building and zoning regulations dates back to 1939. Amendments have been made more recently. Statutory authority is contained in Minn. Stat. Sections 394.33, 366.10-366.182, 368.01, 368.56-368.58

As depicted in Table 2, townships or towns, as they are called, are of two types -- urban towns and other towns. The authorities of each are quite different. Urban towns, as defined in the diagram, have been granted the same land use authorities by the legislature as municipalities (Table 1). Other towns require voter approval to plan and zone. As in the case of municipalities, planning and zoning is voluntary. In addition, the appeals board is not required of townships when they adopt regulations to implement the plan. Legislation requires that township regulations must be consistent with and not less restrictive than adopted official controls of the county.

Figures 1 through 7 illustrate the distribution of townships throughout Minnesota. They also show cities of the first, second and third class and urban towns possessing the authority of municipalities. The map source is from a publication of the Bureau of Census, U.S. Department of Commerce entitled 1970 Census of Population. Information regarding the ranking of cities was compiled from U.S. Census Data, 1970, by State Planning Agency Staff. Information on urban towns was provided by House Research.

County Authority

Minnesota has 87 counties. In 1970, about half of the counties contained less than 15,000 people.

The organization and extent of county land use planning and regulatory authority is provided in Minn. Stat. Section 394.21-394.37 and is illustrated by Table 3. Strong similarities exist between counties and municipalities. The preparation of comprehensive plans and the adoption of official controls are voluntary. When a county board adopts official controls, the creation of the board of adjustment is mandatory. The legislature specified that official controls may be used for a variety of purposes, including sewage disposal, protection of slopes and soils, preservation of wetlands, open space, forests, wildlife habitat, agricultural lands and other uses.

1973 legislation requires certain action from counties relating to shoreland or floodplain programs and the designation by the state of wild, scenic and recreational rivers or critical areas.

TOWNSHIP LAND USE PLANNING AND REGULATORY AUTHORITY

Table 2

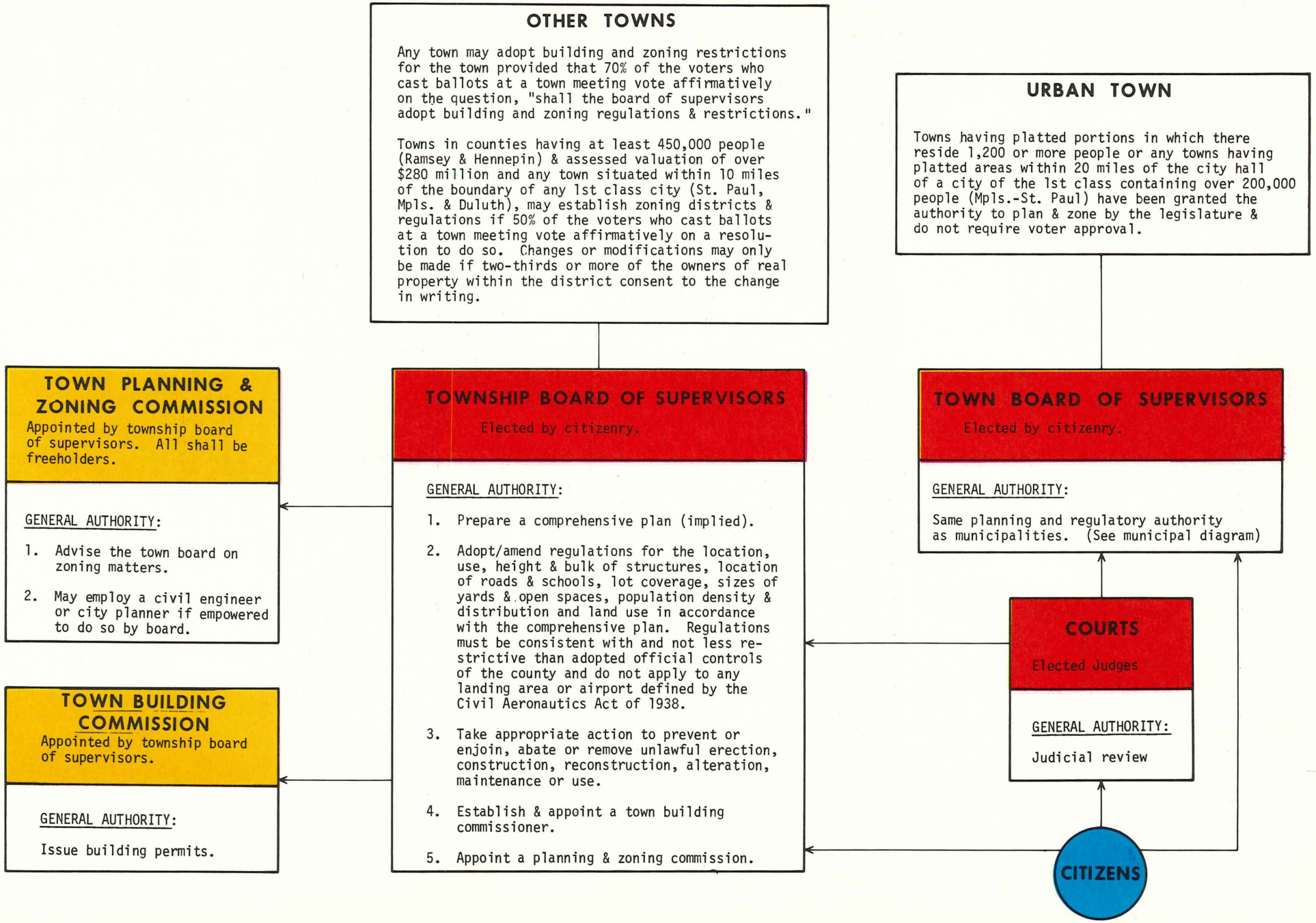
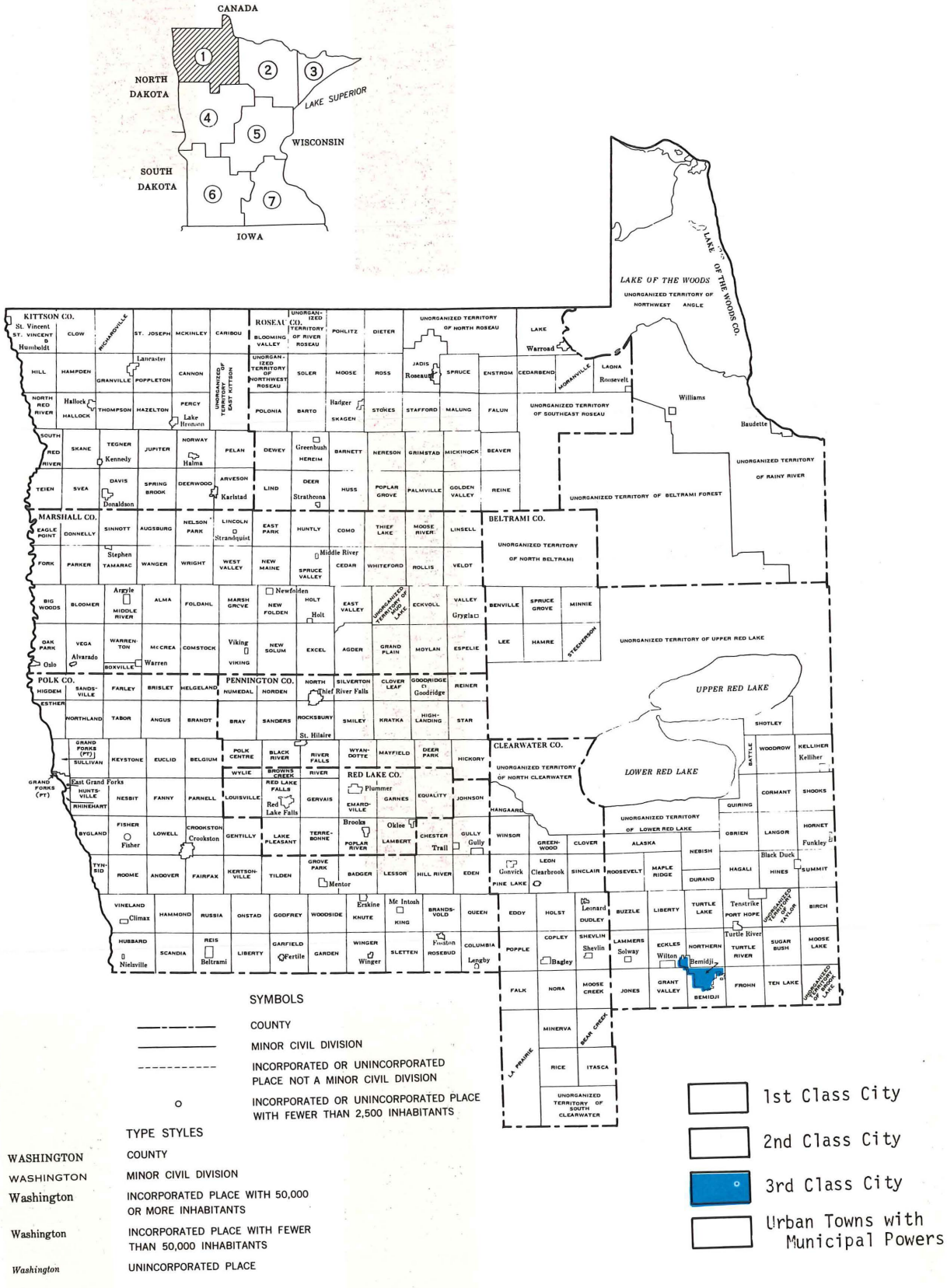


Figure 1

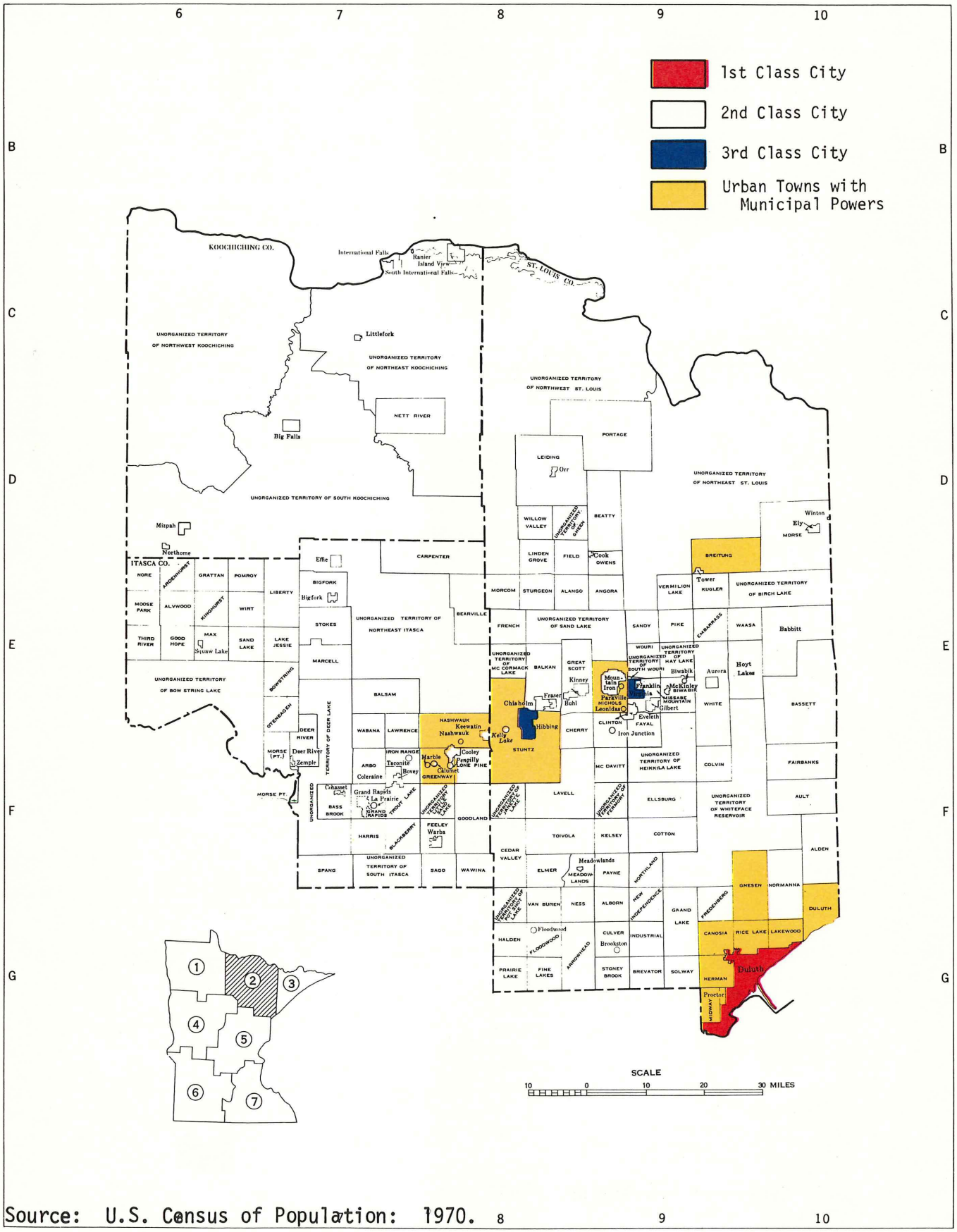
County Subdivisions/Townships, Unorganized Territories, and Places



Source: U.S. Census of Population: 1970.

Figure 2

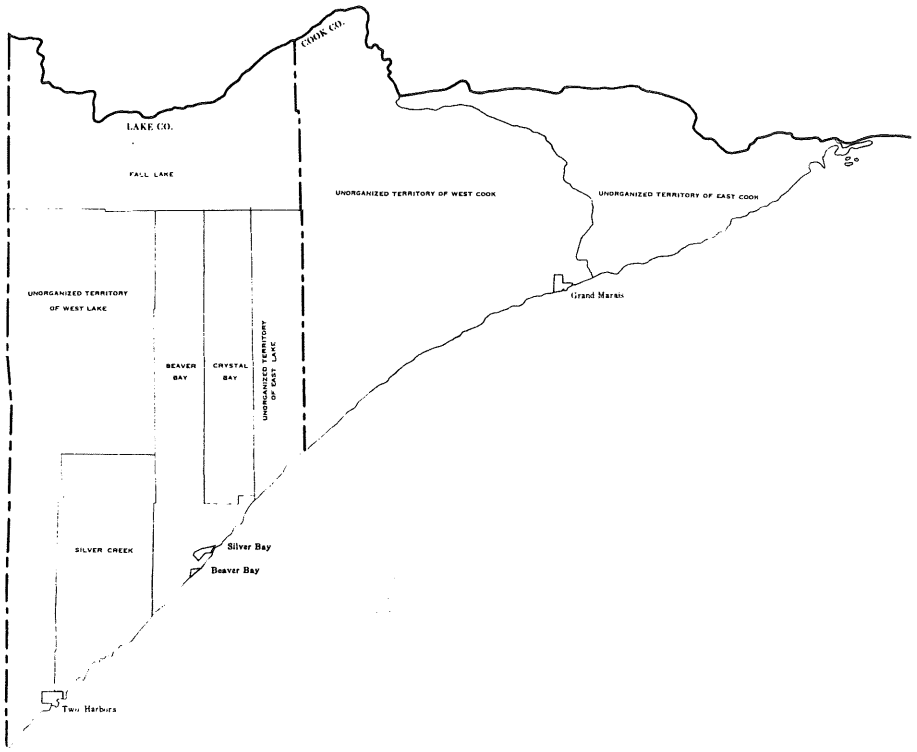
County Subdivisions/Townships, Unorganized Territories, and Places

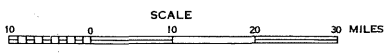


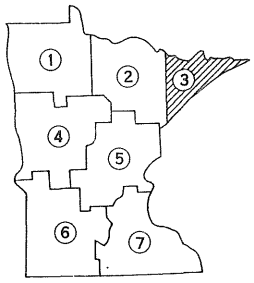
Source: U.S. Census of Population: 1970.

Figure 3

County Subdivisions/Townships, Unorganized Territories, and Places



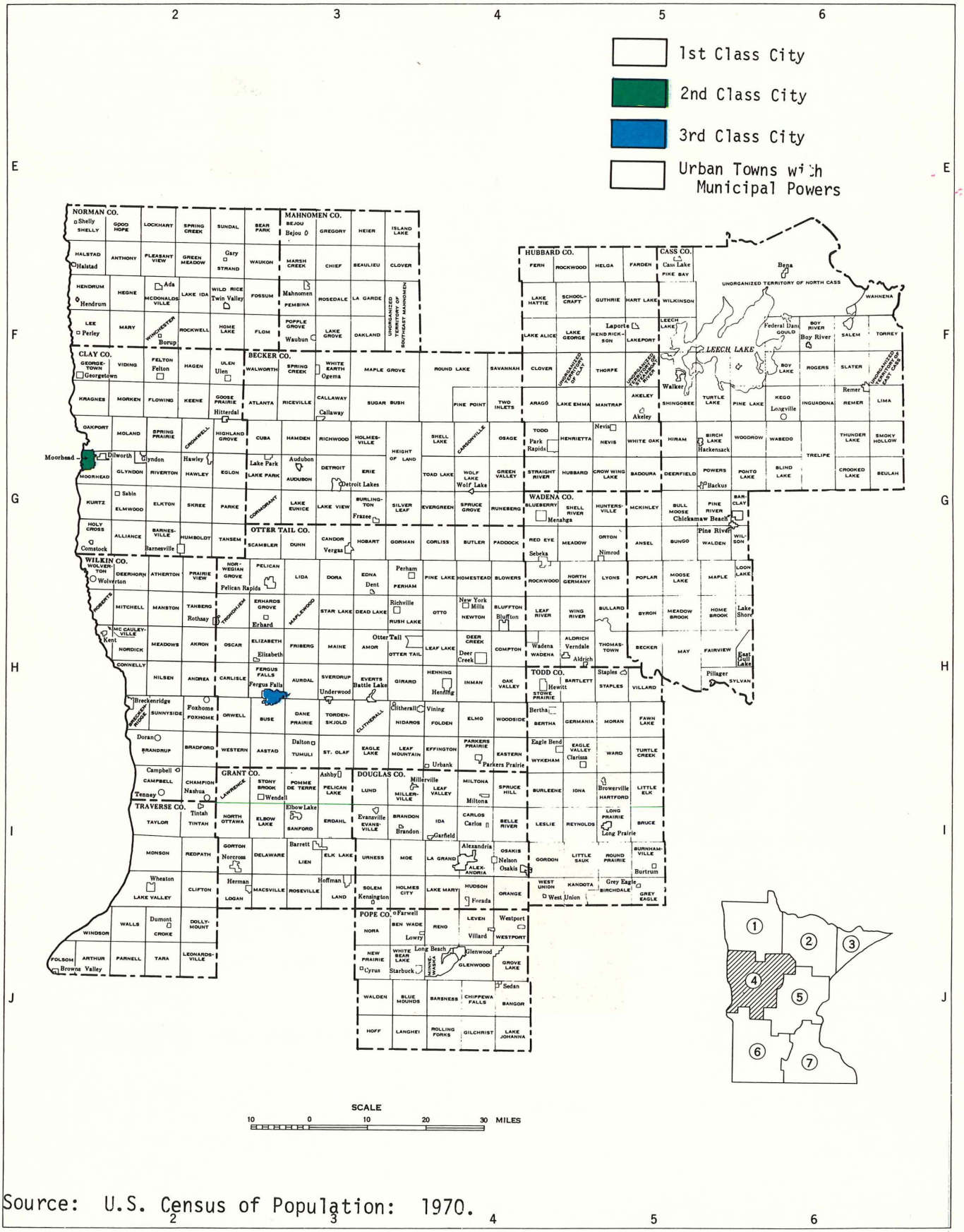




Source: U.S. Census of Population: 1970.

Figure 4

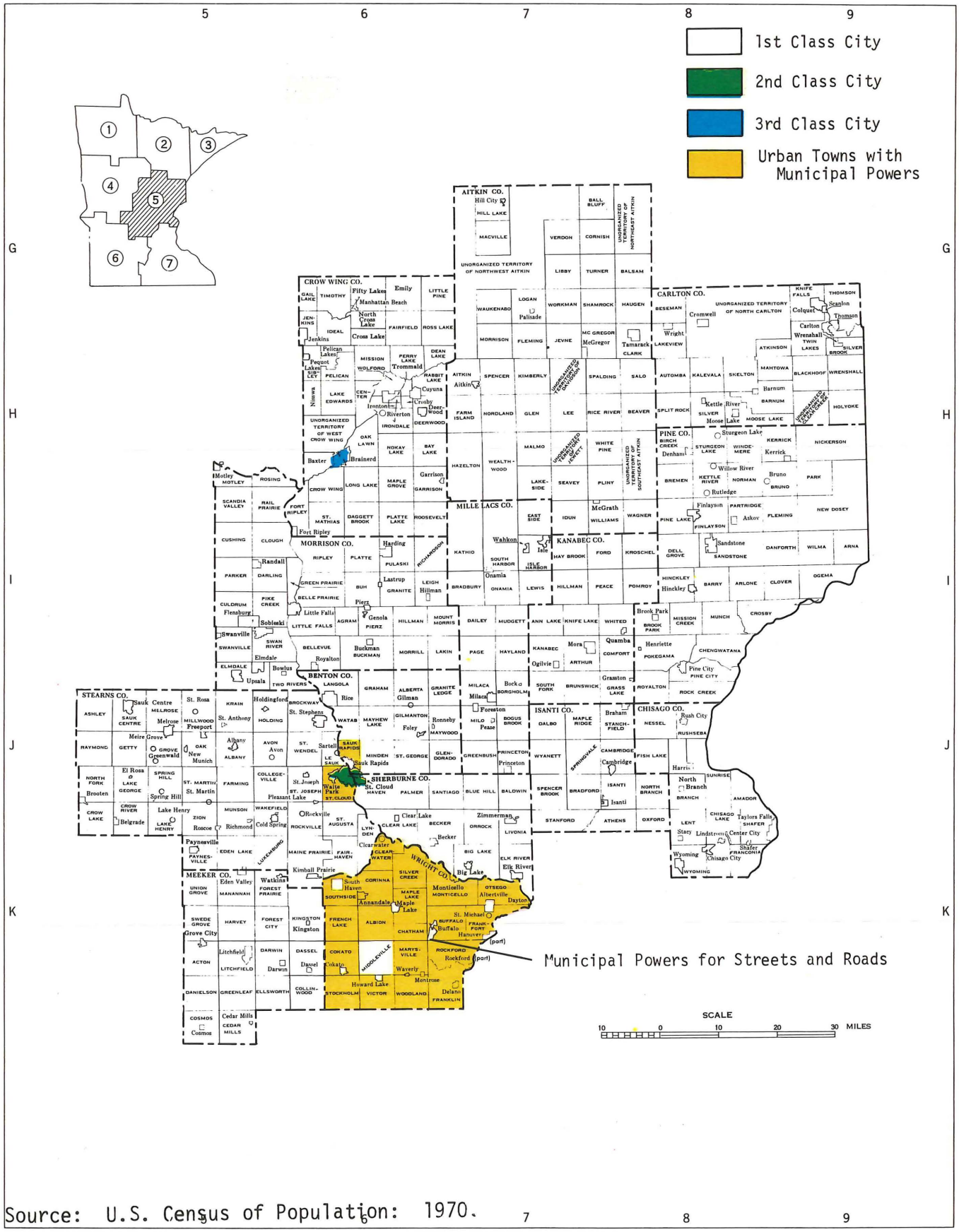
County Subdivisions/Townships, Unorganized Territories, Places



Source: U.S. Census of Population: 1970.

Figure 5

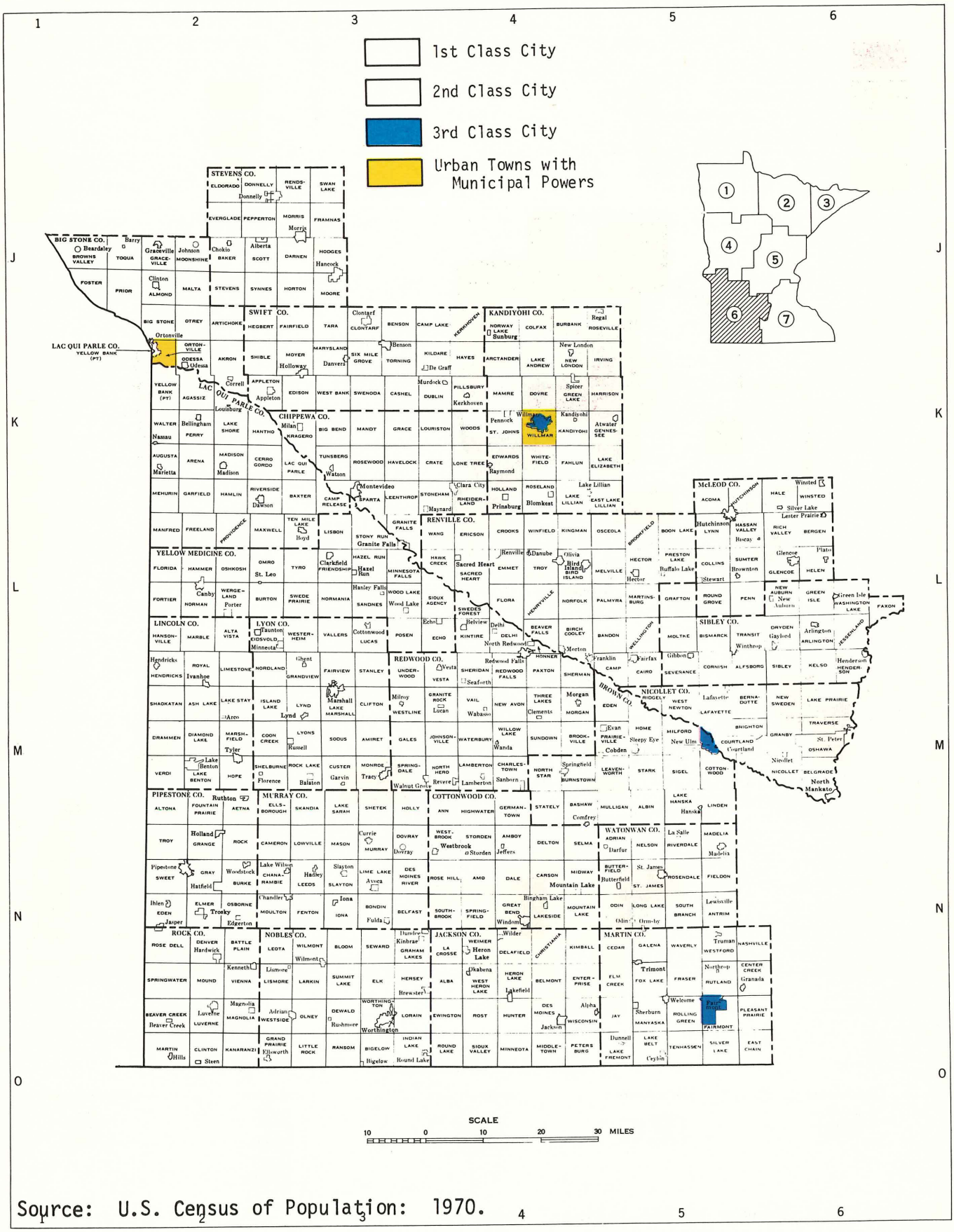
County Subdivisions/Townships, Unorganized Territories, and Places



Source: U.S. Census of Population: 1970.

Figure 6

County Subdivisions/Townships, UnorganizedTerritories, and Places



Source: U.S. Census of Population: 1970.

Figure 7

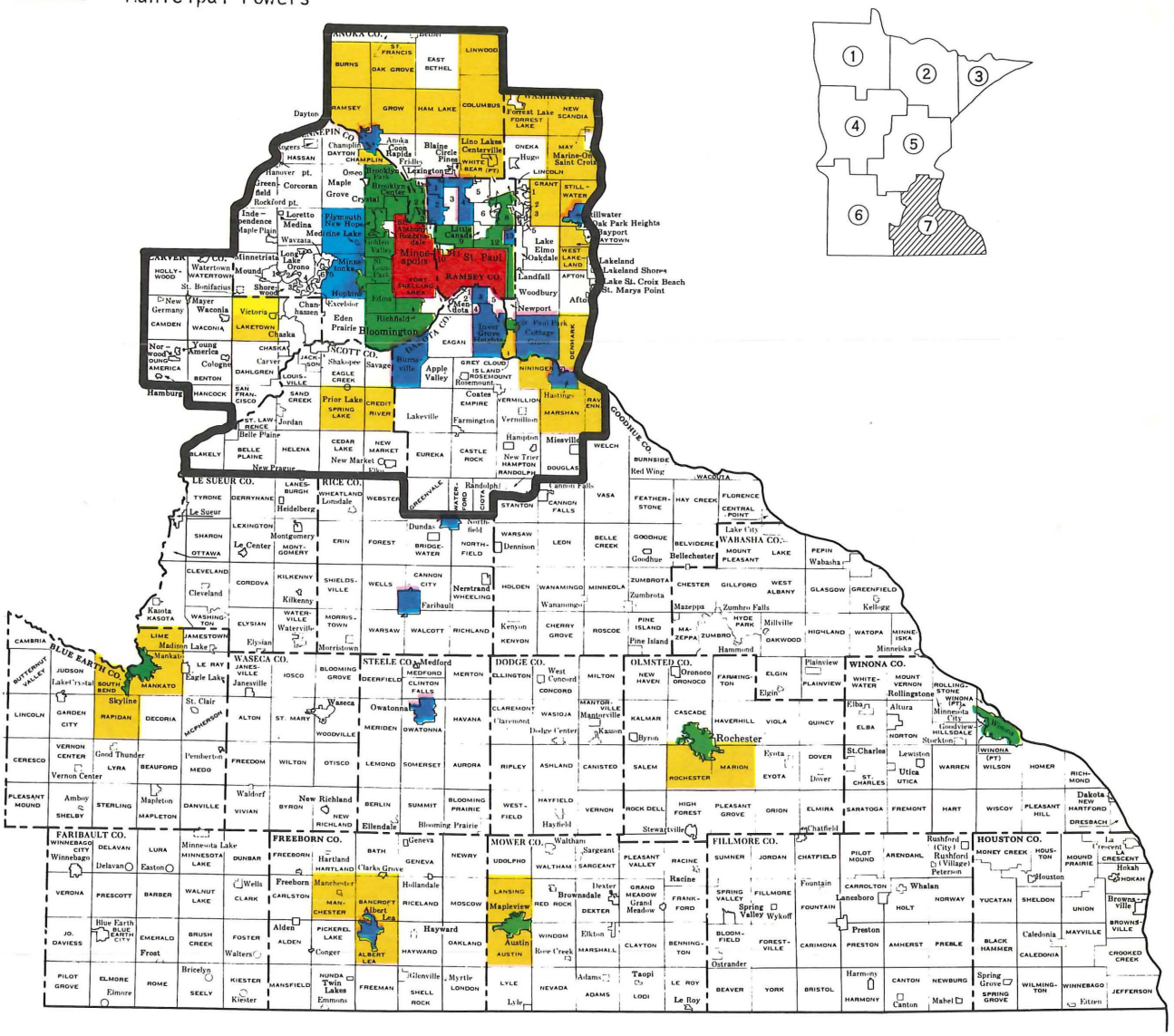
County Subdivisions/Townships, Unorganized Territories, and Places

1st Class City

2nd Class City

3rd Class City

Urban Towns with Municipal Powers



ANOKA COUNTY

1 Spring Lake Park
2 Hilltop
3 Columbia Heights
4 Minneapolis

DAKOTA COUNTY

1 Lilydale
2 Mendota Heights
3 West St. Paul
4 Sunfish Lake
5 South St. Paul

HENNEPIN COUNTY

1 Spring Park
2 Minnetonka Beach
3 Tonka Bay
4 Greenwood
5 Woodland
6 Deephaven

RAMSEY COUNTY

1 Mounds View
2 New Brighton
3 Arden Hills
4 Shoreview
5 North Oaks
6 Vadnais Heights
7 Gem Lake
8 White Bear Lake
9 Roseville
10 Lauderdale
11 Falcon Heights
12 Maplewood
13 North St. Paul

WASHINGTON COUNTY

1 Dellwood
2 Mahtomedi
3 Willernie
4 Birchwood
5 Pine Springs

Source: U.S. Census of Population: 1970.

Table 3

COUNTY LAND USE PLANNING AND REGULATORY AUTHORITY

COUNTY PLANNING COMMISSION (OPTIONAL)

Created by ordinance of county board, Board chairman appoints 5 to 11 members which shall include at least 2 residents of unincorporated areas but shall not include more than one county officer or employee or anyone earning a substantial portion of income from urban-related land development during 2 years previous to appointment.

GENERAL AUTHORITY:

1. Cooperate with planning director in preparing & recommending a comprehensive plan & amendments thereto.
2. Prepare & recommend official controls including:
   a. zoning ordinances
   b. subdivision controls & approval of plats
   c. site plan regulations
   d. sanitary, building & housing codes
   e. erosion & sediment controls
   f. official maps

   Official controls may be used for sewage disposal, protection of slope & soils, preservation of wetlands, open space, forests, wildlife habitat, agricultural lands & other uses. Official controls may be binding on municipalities if they so request. Land owned or leased by the federal or state government is exempt.
3. Review or recommend amendments to official controls.
4. Review conditional use permits.

OPTIONAL AUTHORITY: (Assigned by Board)

1. Issue conditional use permits.
2. Approve land subdivisions.
3. Approve planned unit developments.
4. Review plans, official controls, public land acquisition & development proposals of local, state & federal agencies.

SPECIAL AUTHORITY:

1. Shoreland & floodplain management & wild, scenic & recreational river protection:
   a. prepare implementation measures to comply with state standards.
   b. review, recommend & comment on proposed amendments & variances.
2. Critical areas:
   a. recommend areas for designation to governing body.
   b. prepare plans & regulations for designated critical areas.
   c. review, recommend & comment on proposed amendments & variances.

COUNTY BOARD OF COMMISSIONERS

Elected by citizenry

GENERAL AUTHORITY:

1. Adopt/amend comprehensive county plan for unincorporated areas only.
2. Adopt/amend official controls for unincorporated areas to further purpose & objectives of comprehensive plan.
3. Designate appropriate conditional uses under zoning regulations.
4. Approve the issuance of conditional use permits & impose necessary restrictions or conditions.
5. Provide planning & zoning services to municipalities on request.
6. As an emergency measure, adopt a temporary interim zoning ordinance or map.
7. Adopt regulations to regulate, reduce & gradually eliminate nonconformities.
8. Purchase nonconformities which are detrimental to goals & objectives of comprehensive plan.
9. Enforce official controls.

SPECIAL AUTHORITY:

1. Shoreland & floodplain management & wild, scenic & recreational river protection:
   a. adopt & enforce ordinances to comply with state standards.
2. Critical areas:
   a. may recommend areas for designation to regional development commissions.
   b. prepare/adopt plans & regulations for designated critical areas.
   c. enforce EQC approved plans and regulations.
   d. recommend amendments to plans and regulations to EQC.
   e. notify EQC of applications for special use permits.

CHIEF ADMINISTRATIVE OFFICER OR PLANNING DIRECTOR WITH STAFF (OPTIONAL)

Appointed. Planning director's staff may include a zoning administrator, sanitary inspector & building official.

GENERAL AUTHORITY:

1. Carry out purposes of county planning act.
2. Administer official controls.
3. Issue conditional use permits upon order of County Board or planning commission.

CITIZENS

COURTS

Elected Judges

GENERAL AUTHORITY:

Judicial review.

BOARD OF ADJUSTMENT (OPTIONAL)

Created by Board of County Commissioners at same time as adoption of official controls. Consists of 3 to 7 members including one member of county planning commission. No elected county officer or employee of County Board is eligible.

GENERAL AUTHORITY:

1. Order the issuance of variances from terms of any official control.
2. Hear and decide appeals from enforcement of ordinances.
3. Review any order, requirement, decision or determination made by enforcing official.
4. Order issuance of building permits in areas designated for future public use on official maps, under hardship conditions or when permits are required by consideration of justice & equity.

In 1973, the Agricultural Extension Service, University of Minnesota, published a report entitled Land Use Controls by Minnesota Counties.* Although preliminary and subject to change upon further analysis, the report shows that on March 1, 1973, 59 counties were using countywide zoning ordinances, 52 counties had adopted countywide subdivision control ordinances, and 78 counties had enacted land use controls that brought them into compliance with the requirements of the shoreland management program. Of this number, 44 had adopted a separate shoreland management ordinance. In addition, 18 counties had countywide sanitary codes; 12 counties had ordinances to regulate the disposal of solid waste and 10 counties had adopted other special controls.

At the cutoff date for the survey, nine counties apparently had not yet adopted controls in accordance with the shoreland management program. Four counties - Chippewa, Lake of the Woods, Ramsey, and Traverse - had not adopted any land use controls. Three counties - Hennepin, Lake, and Pine - had adopted neither shoreland management nor zoning ordinances but were using some other controls. Houston and Waseca counties were using zoning ordinances that did not yet include the required controls over shoreland areas. Houston County also had a subdivision control ordinance.

Figure 8 illustrates the county land use controls in effect on March 1, 1973. This figure is adapted from the University of Minnesota Report.

PART B: SPECIAL PURPOSE DISTRICT LAND USE RELATED AUTHORITY

Of all units of local government in Minnesota, special purpose districts are increasing most rapidly--from 148 in 1967 to 211 in 1972. Of these 211 districts, there are 92 Soil and Water Conservation Districts and 33 Watershed Districts. Both of these districts have authority which affects the use of land.

Soil and Water Conservation Districts

The entire state is covered by 92 Soil and Water Conservation Districts, which in most cases follow county boundaries. The State Soil and Water Conservation Commission, under the Department of Natural Resources, can organize soil and water conservation districts upon petition of occupiers of land in the district and after a hearing and referendum. The districts are organized basically to deal with soil erosion; and to carry out their goals, they are empowered to provide aid for and to conduct erosion control projects, to acquire

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* See References, Page 97

Figure 8

County Land Use Controls in Effect on March 1, 1973, Minnesota

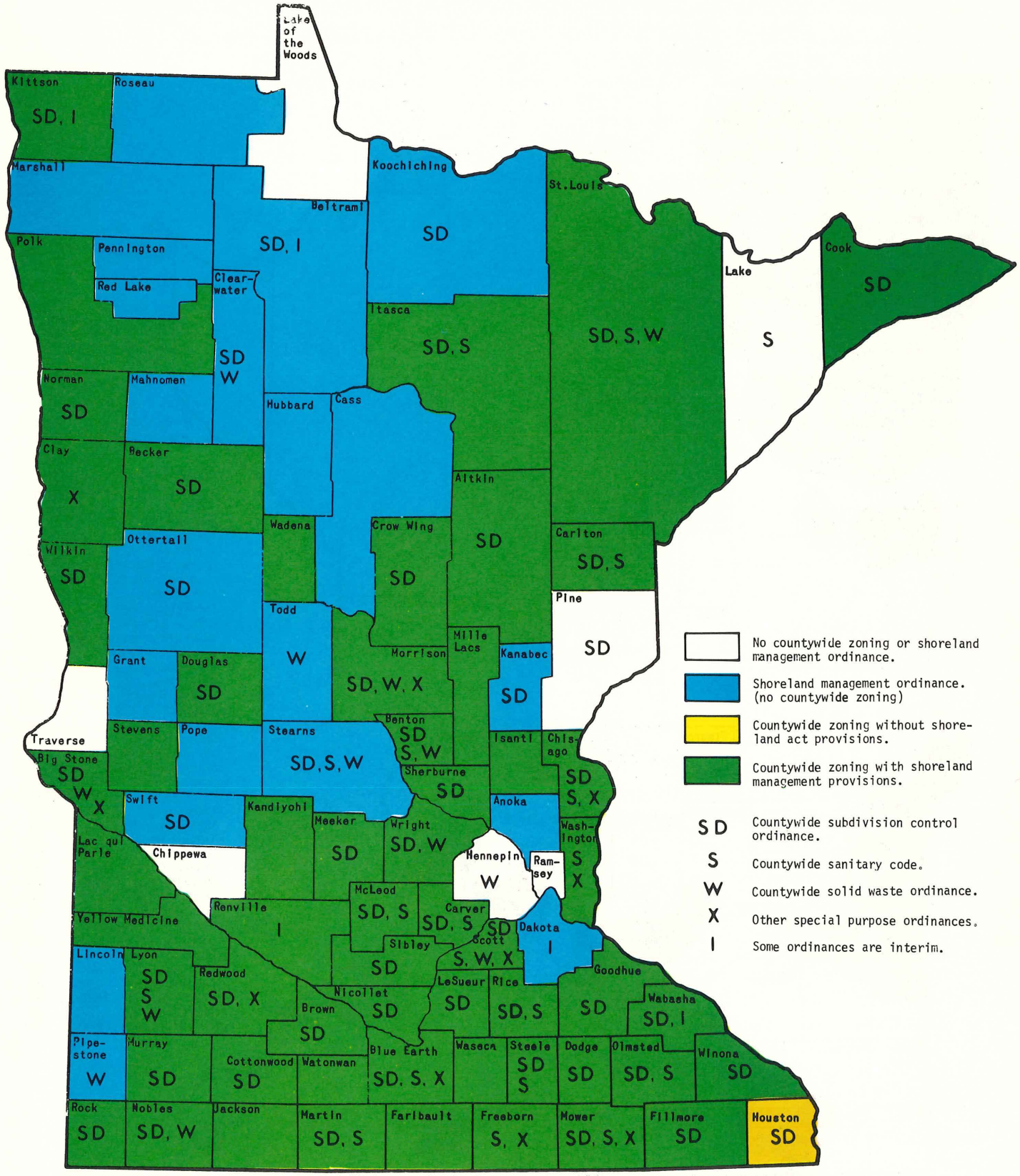
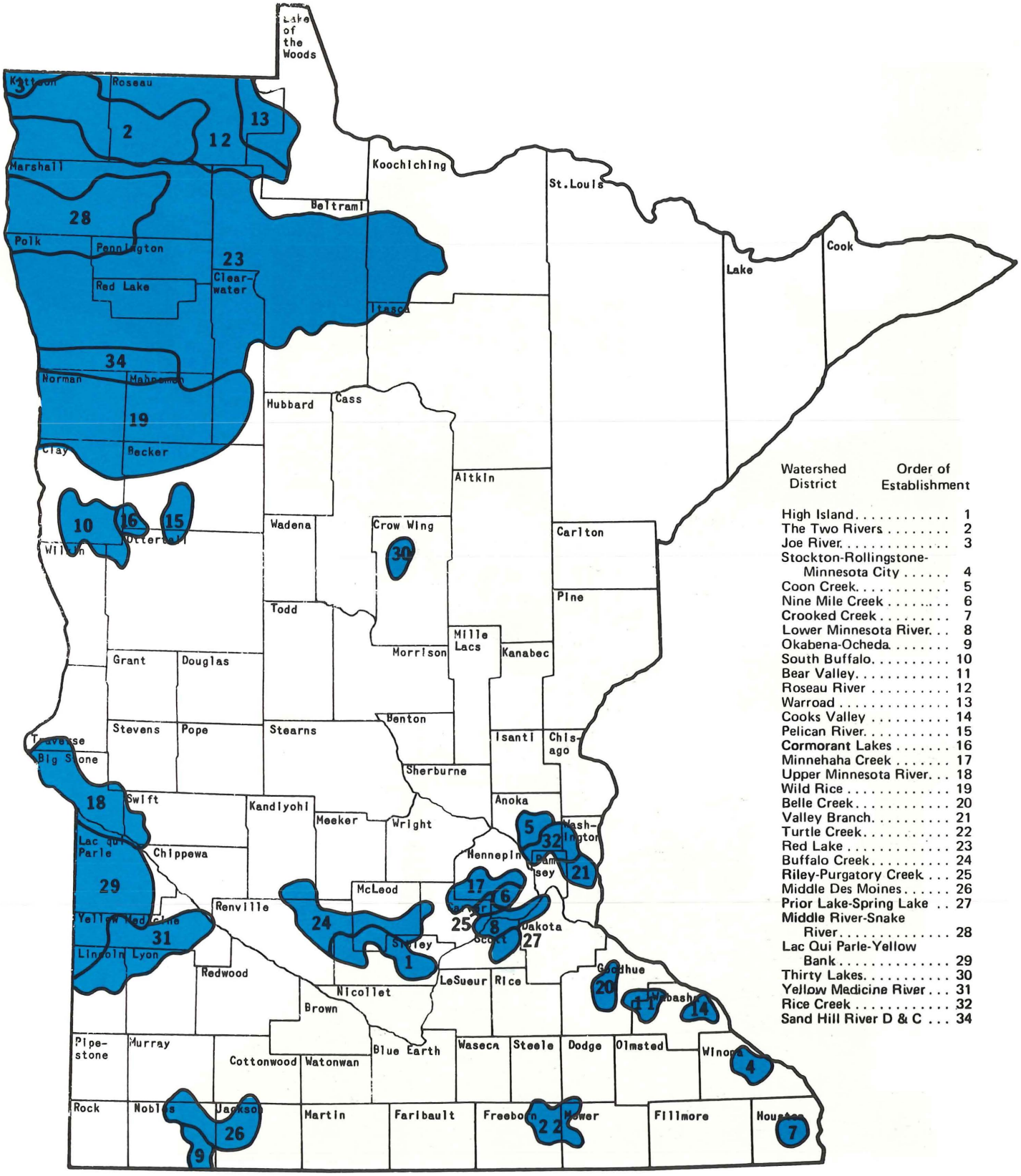


Figure 9

Location of Watershed Districts



Watershed District	Order of Establishment
High Island	1
The Two Rivers	2
Joe River	3
Stockton-Rollingstone-Minnesota City	4
Coon Creek	5
Nine Mile Creek	6
Crooked Creek	7
Lower Minnesota River	8
Okabena-Ocheda	9
South Buffalo	10
Bear Valley	11
Roseau River	12
Warroad	13
Cooks Valley	14
Pelican River	15
Cormorant Lakes	16
Minnehaha Creek	17
Upper Minnesota River	18
Wild Rice	19
Belle Creek	20
Valley Branch	21
Turtle Creek	22
Red Lake	23
Buffalo Creek	24
Riley-Purgatory Creek	25
Middle Des Moines	26
Prior Lake-Spring Lake	27
Middle River-Snake River	28
Lac Qui Parle-Yellow Bank	29
Thirty Lakes	30
Yellow Medicine River	31
Rice Creek	32
Sand Hill River D & C	34

and dispose of property and, when directed by the county, to undertake various works of improvement. A district can also develop a comprehensive plan for conservation of soil and water resources specifying necessary projects, farming methods, and "changes in land use"; but it is given no power to enforce such a plan.

The governing bodies of the districts consist of five supervisors, three elected by the public and two appointed by the Soil and Water Conservation Commission. County boards have the authority to levy an annual tax for such amount as the board determines to be necessary to meet the requirements and obligations of the district. Assistance is also provided by the U.S. Department of Agriculture in testing soil and in planning alternative land uses for voluntary acceptance by private property owners.

Watershed Districts

Minnesota has 33 watershed districts which are illustrated in Figure 9. As demonstrated by Table 4, the relationship of citizens, elected officials, intermediate agencies and the watershed district is much more complex than for municipal, township or county government.

In this case, citizens elect local officials, the Governor and district court judges. The Governor in turn appoints the members of the Water Resources Board. The Board then reviews petitions from citizens, municipalities, or counties to establish watershed districts and, if appropriate, establishes the districts, their boundaries and the initial watershed board of managers.

The Watershed Board of Managers appoints employees and advisors to carry out substantial authorities relating to various aspects of water, waste disposal, open space and other land uses. Watershed districts may also determine the benefits derived from their projects and assess public and private lands for these benefits.

Appeals to the decisions and actions of the watershed managers can be heard by the Water Resources Board (seldom used) or by the district court.

In the metropolitan area, the Metropolitan Council, appointed by the Governor, may review and comment on the proposals of the watershed districts.

Table 4

WATERSHED DISTRICT LAND USE RELATED AUTHORITY

WATERSHED DISTRICT BOARD OF MANAGERS

Must be voting residents of district & cannot include any government officers. 1st members appointed by Water Resource Board. 3 to 5 members are selected from a list of 10 nominees submitted by representatives of affected units of local government. If all or parts of 6 counties are included in the proposed district, membership may be increased from 5 to 9 managers. Successors appointed by county commissioners of each affected county.

GENERAL AUTHORITY:

1. Utilize reliable surveys & data, or enter lands in or outside the district to make surveys & investigations.
2. Prepare, adopt & amend an overall plan for any or all purposes of the district including water related problems, solutions, general objectives. Plan may include proposed work or projects & shall be reviewed once every two years.
3. Provide for sanitation & public health and regulate the use of streams, ditches or watercourses for waste disposal & pollution prevention.
4. Prepare a flood plain map conforming with state regulations.
5. Prepare an open space and greenbelt preservation map.
6. Review & approve petitions from landowners, county boards, municipal governing bodies for projects & improvements that are in the public interest, are practicable and are in conformity with the overall plan.
7. Review petitions for all new drainage systems or improvements to existing systems.
8. Develop, initiate & construct projects to accomplish purposes of district.
9. Construct, clean, alter, repair, abandon, consolidate, reclaim or change the course or terminus of any natural or artificial public ditch, drain, sewer, rivers or watercourse.
10. Take over & repair, maintain & improve judicial and county drainage systems when directed by district court or county board.
11. Acquire, operate, construct & maintain dams, dikes, reservoirs, water supply systems & appurtenant works.
12. Acquire necessary real & personal property by gift, purchase or eminent domain, including property outside the district needed for a water supply system.
13. Adopt rules & regulations to effectuate purposes of the watershed act (Chap. 112) & powers of the managers.
14. In the absence of county or municipal ordinances, adopt ordinances which control encroachments, the changing of contours, the placement of fill & structures of every type & prevent the placement of encumberances or obstructions in order to protect & control land use & development in flood plains, greenbelts & open space areas.
15. Regulate, conserve & control the use of water within the district.
16. Enforce powers, rules & regulations thru injunction or other means.
17. Determine benefits of proposed projects & assess affected public & private lands for benefits derived. All works paid by assessment upon benefited properties shall be instituted by petition or by unanimous resolution of the managers, provided that preliminary cost estimates for any project do not exceed $125,000 for any calander year.
18. Appoint 3 disinterested resident freeholders of the state to appraise benefits or damages to all lands affected by proposed projects & improvements.
19. Levy taxes for
    a. an organizational expense fund
    b. an administrative fund
    c. a bond fund
    d. a construction fund
    e. a preliminary fund
    f. repair & maintenance funds
20. Shall appoint advisory committee.
21. Select & employ necessary employees.
22. Cooperate or contract with the state or subdivisions thereof, federal agencies, private or public corporations or cooperative associations.

WATER RESOURCES BOARD

3 to 5 members appointed by Governor who are not government officers or employees. Confirmed by Senate.

GENERAL AUTHORITY:

1. Review petitions for establishment of watershed districts which may be initiated by:
   a. at least ½ of the counties within the proposed districts.
   b. a county or counties comprising at least 50% of the area of the proposed district.
   c. a majority of the municipalities within the proposed district.
   d. 50 or more resident freeholders of the proposed district excluding residents of municipalities where an authorized official has signed in their behalf.
2. Establish watershed districts & boundaries, review petitions to amend boundaries once each 5 years or terminate district not sooner than 5 years from formation, upon receipt of a petition signed by at least 25% of resident freeholders in district.
3. Appoint 1st watershed board of managers.
4. Hear & decide appeals regarding project benefits or damages, fees or expenses in any proceedings, substantial rights or orders of the board of managers authorizing or refusing to establish all or part of a project or improvement.
5. Employ required personnel.
6. Request special reports, surveys or studies from state agencies or institutes of learning.
7. Hear, determine & recommend, if petitioned, questions of water policy involving water conservation, pollution, preservation and management of wildlife drainage, soil conservation, public recreation, forest management & municipal planning.

LOCAL GOVERNING BODIES

Elected by citizenry.

GENERAL AUTHORITY:

1. Petition Water Resources Board for establishment of watershed districts.
2. Nominate and appoint successive members of watershed district board of managers.
3. Direct watershed districts to manage county drainage systems.
4. Petition watershed district for projects or improvements.

CITIZENS

GOVERNOR

Elected by citizenry.

GENERAL AUTHORITY:

Appoints members of Water Resources Board.

EMPLOYEES

Appointed by board of managers. May include a chief engineer & professional assistants.

GENERAL AUTHORITY:

1. Perform duties assigned by board.
2. Chief engineer sball:
   a. be superintendent of all works & improvements.
   b. make annual report to managers.
   c. report to board on findings, recommendations & feasibility of proposed improvements.
   d. develop plans & cost estimates for feasible projects.
   e. make soil surveys when requested by bond.

DISTRICT COURT

Elected Judges.

GENERAL AUTHORITY:

1. Designate amount of preliminary fund for projects & fix appropriate share of each county.
2. Hear & decide appeals regarding project benefits or damages, fees or expenses in any proceedings, substantial rights or orders of the board authorizing or refusing to establish all or part of a project or improvement.

ADVISORY COMMITTEE

At least 5 members appointed by board of managers, including if practicable: 1 soil & water conservation district supervisor, 1 county board member, 1 sportsman's club representative & 1 farm organization representative. Others shall be district residents.

GENERAL AUTHORITY:

1. Advise & assist managers on all matters affecting the interests of the district.
2. Recommend on all contemplated projects & improvements.
3. May appoint interested & technical persons who may reside in or outside the district.

METROPOLITAN COUNCIL

Appointed by Governor.

GENERAL AUTHORITY:

Review & comment on proposed work or projects pursuant to the overall district plan if within the metropolitan area.

PART C: REGIONAL DEVELOPMENT COMMISSION LAND USE PLANNING AUTHORITY

The formation of regional development commissions (RDC's) was authorized by the legislature in 1969 through Minn. Stat. Section 462.381-462.397. Thirteen RDCs have been created which cover the entire state with the exception of the seven-county metropolitan area. In this area, the Metropolitan Council has jurisdiction. The authority of RDCs is illustrated in Table 5.

The RDCs differ from the Metropolitan Council in that their members are elected rather than appointed. The RDC members are not elected directly to the commissions but are selected from elected officials in municipal, township and county government as well as school boards and councils of government. Selection is made by other elected officials at these levels. The elected officials, in turn, select citizen members of the commissions who represent the public interests of the region.

The RDCs are primarily planning and coordinating bodies which prepare and adopt comprehensive regional plans encompassing physical, social and economic needs. The commissions also review the plans of units of local government and special purpose districts within the region and review applications for state and federal financial grants. The RDCs do not have any authority to acquire, manage, develop or regulate the use of land or resources.

Through legislation passed in 1973, regional development commissions have special authority in matters concerning areas of critical concern.

PART D: METROPOLITAN COUNCIL LAND USE PLANNING AND REGULATORY AUTHORITY

The Metropolitan Council is the regional planning body in the seven-county metropolitan area. Its membership consists of 16 members from separate council districts, who are appointed by the governor. The chairman of the Council is also appointed by the governor and is the 17th voting member.

In creating the Metropolitan Council in 1967, the legislature granted the Council certain planning and review responsibilities relating to land use and associated concerns. Some of those responsibilities were revised in 1974 by specific provisions of the Metropolitan Reorganization Act (MRA). The Metropolitan Council Act (MSA 473B),as modified by the MRA, includes the following land use related responsibilities:

Table 5

REGIONAL DEVELOPMENT COMMISSION
LAND USE PLANNING AUTHORITY

GOVERNOR (STATE PLANNING OFFICER)

Elected by citizenry.

GENERAL AUTHORITY:

1. Designate/modify boundaries of development regions by executive order.
2. Develop working agreements with state and federal departments and agencies to conform with regional boundaries.
3. Consider and make disposition on disagreements between regional development commissions and independent agencies.
4. Make grants to regional development commissions in accordance with acceptable work programs.

STATE PLANNING AGENCY

GENERAL AUTHORITY:

1. Study and analyze regional boundaries and recommend modifications to Governor.
2. Review and comment on all regional development plans.
3. Coordinate state's technical assistance program to RDC's.

CITIZENS

REGIONAL DEVELOPMENT COMMISSION

GENERAL AUTHORITY:

1. Prepare/adopt comprehensive regional development plan encompassing physical, social & economic needs. The plan may include land use, parks & open space, transportation facilities, hospitals, libraries, schools, housing and other public buildings.
2. Review, comment on and notify other governmental units of comprehensive plans prepared by municipalities, towns, counties, watershed districts & soil conservation districts.
3. Review and approve all long-term comprehensive plans of independent commissions, boards or agencies which have a regional or multi-community effect. Plans which are found to be inconsistent with the regional development plan shall be indefinitely suspended. The RDC shall hear appeals relating thereto.
4. Review all region-related applications of governmental units and independent agencies for state and federal loans or grants and advise granting authority as to consistency with regional plans and priorities. Applications reviewed by authorized subregional agencies are exempted.
5. Study the feasibility of programs which relate to citizen concerns including water, land use, economic development, minority problems, governmental problems, human and natural resources, communications and transportation and institute demonstration projects.
6. Coordinate regional civil defense, community shelter planning and floodplain management programs.
7. Participate in proceedings before Municipal Commission.
8. Appoint members to serve on certain organizations without a vote.
9. Develop a center for data collection and storage and enter into agreements with state and federal agencies for data.
10. Provide services & technical assistance to local governments.
11. Engage in continuous research and study programs of appropriate subjects.
12. Levy up to ½ mill/dollar of assessed valuation on all taxable property in region for purposes of the Commission.

SPECIAL AUTHORITY:

Critical Areas:

1. Solicit suggestions from units of local government and recommend areas for designation to EQC.
2. Review & approve the designation of a critical area within 3 years of designation if deferred by the legislature.
3. Prepare or assist local government in preparing plans & regulations for designated critical areas.
4. Review plans and regulations for designated critical areas prepared by units of local government.

MEMBERSHIP:

RDC membership is comprised of elected local officials and citizens. The elected members are selected by the groups they represent (mayors, school boards, etc.) rather than being specifically elected by the citizens to serve on the Commission. Citizen members of the RDC's are selected by the elected members.

Representation includes:

Counties:

1 county board member each.

1 additional member from each county exceeding 100,000 population.

1 additional member from each county without townships.

Municipalities:

1 mayor/councilman per county representing all municipalities under 10,000 population.

1 mayor/councilman from each municipality over 10,000 in each county.

Townships:

1 township supervisor from each county containing organized towns.

School Boards:

2 school board members representing all school boards in the region.

Councils of Government:

1 member from each COG.

Citizens:

Selected by elected members of Commission to represent regional public interests including minority groups.

EXECUTIVE DIRECTOR

Recommended by chairman & appointed by commission.

GENERAL AUTHORITY:

Duties as prescribed by the commission.

EMPLOYEES

Appointed by chairman and approved by commission.

GENERAL AUTHORITY:

Duties as prescribed by the commission.

CITIZENS ADVISORY COMMITTEE

Appointed by chairman.

GENERAL AUTHORITY:

Assist in reviewing plans, programs and other matters referred by the Commission.

The Council shall prepare and adopt, after appropriate study and public hearings, a development guide for the metropolitan area consisting of policy statements, goals, standards, programs and maps prescribing guides for an orderly and economic development, both public and private. The guide shall recognize and encompass physical, social or economic needs of the area and those further developments which will have an impact on the entire area including, but not limited to, land use, parks and open space land needs, the necessity for and location of highways, transit facilities, public hospitals, libraries, schools, and other public buildings.

The development guide will include long-range comprehensive policy plans for each commission established under the MRA amendments (presently the Metropolitan Waste Control Commission and Metropolitan Transit Commission). When adopted, the policy plans shall be followed by the Council and affected Commissions. The policy plan for each commission includes a statement of the metropolitan needs relating to the function of the Commission and their location, priorities for development and a statement of expenditure.

The Council shall review all long-term operation and development comprehensive plans of each independent commission, board or agency within the metropolitan area, if the Council determines it to have an areawide effect, multi-community effect or to have a substantial effect on metropolitan development. If the Council finds that a plan, or any part of the plan, is inconsistent with its development guide or detrimental to the orderly and economic development of the metropolitan area or any part of the area, it may direct that the operation of the plan or such part be indefinitely suspended. An appeal procedure is provided.

The Council, in cooperation with other departments and agencies of the state and the University of Minnesota, may develop a center for data collection and storage and accept gifts for the purposes of furnishing information on such subjects as population, land use and governmental finances.

Where studies have not been otherwise authorized by law, the Council may study the feasibility of programs relating, but not limited to, water supply, refuse disposal, surface water drainage, communication, transportation and other subjects of concern to the peoples of the area, and may institute demonstration projects in connection therewith.

The Council shall approve the use of funds made available for land acquisition to local units of government in the Federal Land and Water Conservation Fund (LAWCON), the open space program of HUD and the natural resources account of the state, if the use of those funds conforms with the system of priorities established by law as a part of the comprehensive plan for the development of parks; otherwise it shall disapprove their use.

The Council may provide planning assistance to local government units when requested.

The Council shall adopt regulations establishing standards and guidelines for determining whether any proposed matter is of metropolitan significance and establish a procedure for the review of all proposed matters required to be considered and reviewed by the Council. The purpose of the regulations is to promote the orderly and economic development, public and private, of the metropolitan area. The Council shall review all proposed matters of metropolitan significance, all grant and loan applications made to the federal or state government for matters of metropolitan significance and all other matters requiring approval by a regional agency.

Each city, town and county in the metropolitan area shall submit to the Council for written comment and recommendation its proposed long-term comprehensive plans, including plans for land use, prior to final local government unit approval.

Each metropolitan commission shall submit to the Council a development program covering the detailed technical planning, engineering, financing, scheduling and other information necessary to the development of the program elements to be performed by the commission in implementing the Council's policy plan.

The Council shall engage in a continuous program of research and study on many subjects including air pollution control, acquisition and funding of recreation open space, water pollution control, solid waste management, tax structure, etc., for the metropolitan area. Studies will include recommendations as to the governmental organization, governmental subdivision, or governmental district best suited to discharge the powers recommended.

Related Legislation

In a series of 1969 statutes, the legislature gave to the Metropolitan Council authority over special areas of concern related to land use in the metropolitan area, either through the creation of new agencies under the Council or through greater Council authority over existing special purpose agencies or governmental units within the metropolitan area.

In Minn. Stat. Section 473C.03-473.06, the Metropolitan Council was granted planning and approval authority for all sewer service functions in the metropolitan area, and the Metropolitan Sewer Service Board was created as an agency of the Council. The Council shall prepare and adopt a policy plan for collection, treatment and disposal of sewage and "when adopted, such plan shall be followed in the metropolitan area." Thereafter, each local government, before altering its disposal system, must adopt

its own policy plan, subject to the Board's approval. The Board has required such plans to be in accord with the local comprehensive land use plan, and both the Council and the Board review the local sewerage plans despite the Council's lack of direct statutory authority to review such plans. The Board is also authorized to "assume ownership in all existing interceptors and treatment works (i.e., those owned by local government units) which will be needed to implement the Council's comprehensive plan... (and to) thereafter acquire, construct, equip, and operate and maintain all additional interceptors and treatment works which will be needed for such purpose." Moreover, it can require any person or governmental unit to use the metropolitan disposal system and can regulate substances discharged into its system.

The Metropolitan Council shall prepare and adopt a comprehensive plan for the disposal of solid waste and the management and disposal of hazardous wastes and "when adopted, such plan shall be followed in the metropolitan area." Each county must then submit a solid waste disposal report consistent with the Council's plan for approval by the Council. When approved, the counties will implement the report.

In Minn. Stat. Section 360.74-360.75, the Metropolitan Council was given authority to review the Metropolitan Airports Commission's (MAC) site selection of a major new airport. After a site is selected, the Council is directed to adopt "criteria and guidelines" for use of property in the metropolitan area within three miles (or five miles, if necessary) of the site. The criteria and guidelines are to include a plan and land use control measures, such as zoning ordinances and subdivision controls, for suggested adoption by local governmental units and for inclusion in the Council's metropolitan development guide. Such measures are designed "to encourage controls for the use and development of property and the planning of public facilities for the purpose of protecting inhabitants of the airport development area from aircraft noises and preserving natural underground water reservoirs and other natural resources of the metropolitan area." The statute goes further, however, and provides that all property in the airport development area not otherwise zoned is zoned exclusively for agricultural purposes, except for prior nonconforming uses; that any change in land use controls must be approved by the Council; and that existing controls must be approved by the Council as consistent with the "criteria and guidelines" or changed by the Council to make it so.

The same act requires the Council to regulate land use with respect to aircraft noise. The Council is directed, after approval of a major airport site, to establish aircraft noise zones, based upon probable or actual levels of noise, and to establish acceptable noise levels for each land use. Governmental units with land use control powers are then required to adopt measures incorporating the Council's land use standards, subject to review and change by the Council. This is the only area in which the Council's own land use control measures must be adopted.

The MAC has broad land use control powers, including acquisition rights, control over flight patterns and adoption of rules and regulations for management of airports in the metropolitan area. In considering whether a new airport is to be established or an existing one expanded, the MAC is required to consider the uses for the new airport and uses for land acquired and annexed to an existing airport and the effect of the acquisitions on the surrounding area. Otherwise, MAC is generally required to consider only safety in making determinations. The MAC's activities fall under the Council's general authority to review plans of independent agencies that affect the region.

In 473A.05-473A.05, the Metropolitan Transit Commission (MTC) is authorized to acquire and operate transit systems. Acquisitions of existing public transit systems must be approved by the Metropolitan Council. Moreover, MTC is authorized to plan and construct such systems and is required to prepare "with the cooperation of the (Metropolitan Council) and the Department of Highways... a plan for complete, integrated mass transit system for the metropolitan transit area." The legislative findings in setting up MTC indicate that environmental factors--particularly air pollution--should be considered in MTC decisions, but the enabling act does not expressly provide for this. Its plans, like those of other independent agencies, are subject to review and possible suspension by the Metropolitan Council.

The Council shall adopt a transportation policy plan under MRA provisions, which shall include policies relating to all transportation forms. The MRA designates the Council as the designated planning agency for long-range comprehensive transportation planning as required under federal legislation. The MTC must prepare a development program implementing the Council's policy plan which then must be approved or disapproved by the Council.

Before acquiring land for or constructing a controlled access highway, the body proposing such acquisition or construction must submit to the Council a statement describing the proposed project. After MTC and Council review and comments on the statement, the Council shall ascertain its consistency with its policy plan and development guide.

Better tools for environmental planning and protection of environmentally sensitive areas will be provided for local governmental units as the result of legislation that provides for the Council to develop standards and model ordinances adopted by local units of government. Once prepared, local adoption of the standards would be voluntary.

The guidelines developed by the Council would cover such open space matters as the preservation of wetlands, groundwater recharge areas, woodlands, and natural water courses; the suitability of development on slopes and certain soils; and

the prevention of premature development of prime agricultural land. In developing the guidelines, the Council is to seek assistance and approval from all affected agencies. The Council is to make copies of the guidelines available to local units which may, at their option, adopt the guidelines.

The legislature has authorized that up to 40 million dollars will be available to governments in the metropolitan area for acquisition of park lands. The legislation authorizes the Council to issue bonds up to that amount to provide grants to park districts, municipalities, and counties for acquiring or developing regional recreation open space.

Under the act, a Metropolitan Parks and Open Space Commission is created as an advisory body to the Council. This Commission would advise the Council in the preparation of a regional plan for parks, in the award of grants, and in the review of plans for specific regional park sites.

The legislation requires the Council to adopt a policy plan before January, 1975, that identifies areas that should be acquired and establishes priorities for acquisition and development of park sites. The plan will include a five-year capital improvement program (CIP) that shows how the Council would allocate park funds.

While the Council has the job of preparing a regional plan for major parks, park districts and counties are required to prepare plans for specific park sites in their jurisdiction showing park boundaries, proposed development and intended use of the site. Localities are to submit these plans for review to the Council, which determines whether they are consistent with the regional policy plan. If they are not, the Council returns the plan, and the locality must revise and resubmit it to the Council.

In addition to authorizing park districts, counties and municipalities to acquire regional park lands, the legislation also empowers the Council to acquire land without the power of eminent domain under limited circumstances.

The legislation also provides for compensation to municipalities and townships for tax revenue losses on land converted to parks. When land is acquired, the Council is required to pay a percentage of the property tax the community would have received had the land not been acquired.

The Council was given expanded authority by the Legislature in 1974 to assist local communities by acting as their Housing and Redevelopment Authority (HRA). The Council may provide such assistance only at the request of the local community. The legislation is aimed at helping communities provide needed housing with a minimum in organizational or administrative expenditures.

The legislation does not provide for additional money to finance regional HRA housing programs. The costs of a project undertaken by the Council will be borne by the municipality or county participating in the program, unless federal assistance is provided.

Under the legislation, a local HRA would review the Council-sponsored project and the city council would have to approve the project before it could proceed. A municipality with an HRA may take over a Council sponsored project if it does so within 60 days after the Council submits the proposal to the community for approval. Most of the efforts of the Council under this legislation will consist of technical assistance to local communities that do not have the staff to carry out housing programs.

PART E: STATE LAND USE PLANNING AND REGULATORY AUTHORITY

Land Use Related Functions of State Government

At the state level, land use related authority is extensive and confusing. It is not possible to detail these authorities as precisely or as completely as was possible with the other authorities contained in this chapter.

To organize these authorities in a meaningful way, the broad functions of state government that affect land use patterns have been generalized into six categories for this Report. These functional categories are:

1. Comprehensive Planning and Intergovernmental Relations
2. Resource Protection
3. Economic and Natural Resource Development
4. Transportation
5. Consumer Protection
6. Human Resource Facility Development

There are 15 state agencies that are responsible for one or more of these functions. The relationship of agencies to functions is shown in Table 6.

This listing demonstrates the broad scope of land use related authority at the state level. Many of these agencies, such as those under the Human Resource Development function, are not commonly thought of in the context of land use. The location, expansion and development of state institutions is, in some cases, the major spark plug for growth in a community.

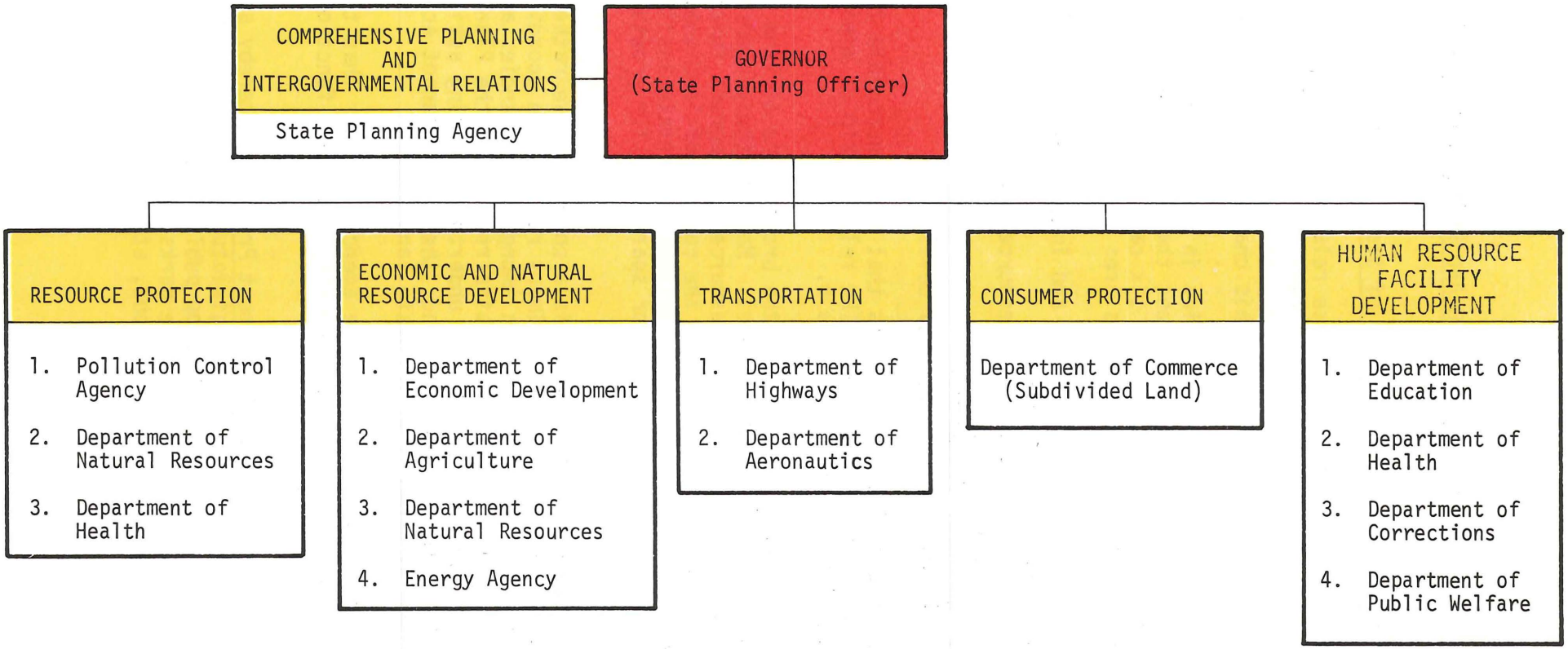
The State Planning Agency is a comprehensive rather than a functional agency. Its primary role is the coordination of functional responsibilities among state agencies and coordination of intergovernmental affairs. While the Planning Agency is frequently requested to undertake planning activities that could affect the use of land, the Agency cannot acquire land, manage resources, or regulate land use.

Prior to 1973, the 14 state agencies, other than the State Planning Agency, were authorized to carry out their functions in three different ways:

1. Acquisition and Management Programs, whereby a state agency is empowered by the legislature to acquire land and manage the resources or develop public facilities thereon. Examples include highways, state parks, forests, wildlife management areas, state institutions, etc.

Table 6

Organization of State Land Use Related Functions and Agencies



2. Regulatory Programs which require the issuance of a permit or license before a certain action regarding the use of land or a particular resource can legally commence. Examples are the programs of the DNR pertaining to the dredging and filling of lakes and streams or the appropriation of water or the issuance of permits by the PCA to regulate the location and design of feedlots or solid waste sites.

3. Regulatory Programs which empower state agencies to establish standards for regulating the use of specific land or resources. These standards may be enforced by state agencies, as in the case of PCA air and water quality and noise control standards, or by local governments, as in the case of the DNR's Shoreland Management Program.

It is important to note here that these agencies have some discretion in administering the functional programs they are responsible for. That is to say, they can determine priorities for the funding, acquisition, development and location of facilities and can, within certain constraints, allow exceptions to the terms of regulatory programs.

There is one other important function of state government -- taxation -- which has substantial effects on land use patterns. Although the state's tax program is administered by the Department of Revenue, tax policies established by the Legislature apply uniformly to all geographic areas of the state. Tax programs dealing with inheritance, gross earnings, taconite, property and other issues may all have some impact on individual or corporate land ventures. But two recent tax measures enacted by the legislature are likely to have a substantial affect on land use decisions.

1. The Fiscal Disparities Act, passed in 1971, is intended to share the commercial and industrial growth among all the taxing units of the metropolitan area. Forty percent of the region's future growth in commercial-industrial assessed valuation is distributed to all units of local government, regardless of where the new commercial-industrial growth is located. The share that each unit of government receives is determined mainly by population. But if its total property valuation is below the metropolitan average, it will receive a larger share; and if above average, a smaller share. By allowing all units of government to share in the total metropolitan growth, the legislature has relieved some of the pressure and competition among communities for tax base. With a greater assurance of economic security, land use patterns that are in keeping with the characteristics and potential of each community can be developed.

2. Revisions to the traditional method of school financing, enacted in 1971, placed greater reliance on state tax sources and less on the local property tax. The legislature set limits for local spending, decreased the property tax, increased the state income and other taxes, provided more state funds for the operational cost of local government, increased the proportions of state aid for education from 43% in 1970 to 65% in 1971 and equalized the expenditures per child in all the state's school districts.

   The most direct impact of this action on land use patterns is the decreased reliance on the local property tax. As in the case of the Fiscal Disparities measure, local government can be more selective in determining the most appropriate land use types and patterns within their borders.

Land Use Related Programs and Authorities of State Government

As indicated in Table 6, a number of state agencies have statutory authority to administer programs which result in the acquisition, management, development and regulation of land and resources. This section of the report documents many of these programs, identifies some of the administrative procedures that are employed by the agencies, and compares the progress or accomplishments of the agencies with statutory requirements.

The section first discusses a variety of program responsibilities that were enacted prior to 1973, then outlines substantial new authority and responsibility that was conveyed to state agencies in 1973 and finally summarizes the characteristics of 25 state programs that were deemed by the land use staff to have particular significance to the use of land in Minnesota.

1. State Program Responsibilities that Affect the Use of Land

   a. Department of Highways

      The Commissioner of Highways is authorized by statute to locate, construct, and maintain all state trunk highways, and to acquire lands necessary for such highways.[1] The Highway Department has acquired a total of 34,000 acres of highway right-of-way for the Interstate System, and 204,000 acres for the remainder of the trunk highway system. Of the 204,000 acres, approximately 75% was acquired by easement and the remainder in fee. Additional acres have been acquired for county state aid highways and municipal state aid streets. In addition to the direct use of land, highways often affect land values and land use patterns by stimulating additional growth and development.

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[1] Minn. Stat. § 161.15.

There are numerous checks on the Highway Department's authority to locate and construct highways. Although the final authority for making such decisions is vested in the office of the Commissioner of Highways, many preliminary steps are required in the planning of new or improved routes. These steps are spelled out in the Highway Department's Action Plan which documents the highway planning process. This process provides for continuing involvement of elected local government officials, other governmental units, and the public in all stages of the planning process.

The Highway Department must consult with municipalities in planning new or improved state highways within municipal boundaries.[2] The Department submits reports and preliminary plans to each municipality in which a state highway is to be constructed or improved, explaining the need for the particular improvement and the reasons for rejecting alternate solutions.[3] These data are also submitted to each adjacent municipality and to any affected municipal, county or regional planning commission (including the Metropolitan Council and the Metropolitan Transit Commission).

b. The Minnesota Pollution Control Agency

The Minnesota Pollution Control Agency (MPCA) was created in 1967 and has been given increasing authority by the state legislature to regulate many activities affecting the environment. These authorities have come from both state and federal legislation. In the statutes granting authority to the MPCA, the control of land use decisions is usually a secondary effect of pollution control activities.

In carrying out the powers and duties assigned to the MPCA for water quality management,[4] the agency has adopted standards controlling the quality and purity of the waters of the state and of the effluent discharged into these waters. To comply with these standards, individuals and corporations have constructed pollution control facilities or refrained from using certain portions of their land. In adopting purity and quality standards, the MPCA is required to consider the character, uses and value of the lands bordering the waters of the state,[5] so land use considerations do play some part in the setting of standards.

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[2] Minn. Stat. §§ 360.81-.91.
[3] Minn. Stat. § 161.173.
[4] Minn. Stat. § 115.03.
[5] Minn. Stat. § 115.44, Subd. 3(b).

The MPCA has also been given the authority to engage in comprehensive planning for water quality purposes.[6] Among other things, MPCA is empowered to develop basin and areawide waste treatment plans as directed by section 303 of the Federal Water Pollution Control Act Amendments of 1972. Within the context of these plans, the MPCA is to consider and assess the effect of non-point sources on water quality. Once identified and evaluated these non-point source problems may be best dealt with through systems of land use control which are not directly within the powers of the MPCA.

Through state statute and through the Federal Clean Air Act, the MPCA is given authority to establish air quality standards and to adopt regulations and otherwise develop strategies to prevent, abate or control air pollution. Under terms of the Clean Air Act, the MPCA must insure that all air quality standards are attained in Minnesota by May 31, 1975, and that all standards will be maintained thereafter. Further, the Clean Air Act contemplates that significant air quality deterioration will be prevented in those areas where air quality is cleaner than required by ambient air quality standards. As a measure of compliance with the Clean Air Act, all states were required to submit an implementation plan for approval by the Administrator of the U.S. Environmental Protection Agency. Among other things, the Clean Air Act requires that such plans contain sufficient controls "as may be necessary to insure attainment and maintenance of (air quality standards), including, but not limited to, land use and transportation controls."

The MPCA, then, through the Clean Air Act has been directed to utilize land use and transportation controls when necessary to manage air quality in accordance with the law. But this specific statutory language pertaining to land use does little more than recognize that the enforcement of air quality standards, like the enforcement of any environmental standard, will serve as a constraint on how land may be used in some areas. For example, if the addition of a new major pollution source in a particular location would cause environmental standards to be exceeded, it follows that either the source would have to be located elsewhere, that it install sufficient systems to meet standards or that it not be built at all. This does not mean that environmental standards are determining land use; rather, it means that environmental standards are constraining land use in instances when land is proposed to be used in a manner that would cause violation of those standards. Also if a major pollution source is permitted at a specific location, its existence will put constraints on future uses of surrounding land.

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[6] Minn. Stat. § 115.03, Subd. 1(c).

The MPCA has the authority to adopt and has adopted standards for the collection, transportation, storage and disposal of solid waste. These standards relate in part to location. The location standards are concerned primarily with delineating what types of locations are acceptable or unacceptable for solid waste disposal sites. For example, MPCA regulations prohibit solid waste disposal sites within a certain distance of a stream. MPCA permits are required for solid waste disposal sites. Permits are not to be granted for sites in locations which are inconsistent with MPCA regulations. In summary, the MPCA can prevent land from being used for a solid waste site if the characteristics of the location make it susceptible to pollution problems. Under legislation passed in 1974, the MPCA is also authorized to adopt standards for the location of hazardous waste disposal facilities. The MPCA also has permitting authority for hazardous waste facilities.

Finally, the MPCA is empowered to adopt standards setting maximum noise levels.[7] Among other factors the MPCA is to consider in creating these levels is the extent to which noise may interfere with the enjoyment of life or property. By statute the regulations are to reflect the fact that appropriate noise levels may vary according to location.

The major purpose of the authorities described is to control pollution, but the long-term impact of these activities on land use patterns may be significant.

c. Department of Natural Resources

The Department of Natural Resources (DNR), through its administrative control over the state's water resources, exercises some control over land use in Minnesota. All public waters, both surface and underground, are subject to DNR control.[8] DNR is charged with developing a general water resources conservation program contemplating the conservation, allocation, and development of all such waters.[9]

The DNR must issue a permit for appropriation of virtually all water in the state, surface or underground, which gives it an opportunity to exercise significant control over land users who appropriate water.[10] The Commissioner is to be guided by the general water resources conservation program in issuing permits.[11] This program was required by the legislature in 1974 but has never been completed. If the applicant's plans "provide for the most practical use of

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7 Minn. Stat. § 116.07, Subd. 4.
8 Minn. Stat. § 105.38(1), (2).
9 Minn. Stat. § 105.39, Subd. 1
10 Minn. Stat. §§ 105.41-.47
11 Minn. Stat. §§ 105.39

the waters. . . and will adequately protect public safety and promote the public welfare," the permit must be granted; if it "is inadequate, wasteful, dangerous, or impractical, or detrimental to the public interest," it must be rejected.[12]

Permits may be given "subject to such conditions as the Commissioner may find advisable or necessary in the public interest."[13] He may obtain the recommendation of a municipality, town, or watershed district in which the proposed activity is located but is not bound to follow it. The Commissioner's findings of fact and orders are deemed valid and reasonable, and the orders must be affirmed if lawful and reasonable.[14]

In 1969, the DNR was given authority to directly regulate land use for some mining purposes.[15] 1973 amendments to the Mineland Reclamation Act give the DNR authority to require a plan for the reclamation or restoration of mining areas and as of June 30, 1975, to issue a permit for operation based on this plan. In promulgating regulations for the permit, DNR is directed to consider, on one hand, the environment and wise utilization of land and natural resources and, on the other, the economic and employment effect of the regulation on mine operators and on the area and their effect on future mining and development of mineral resources.[16]

DNR also has direct authority to control certain other specific land uses. No person, public or private, can store gas or liquid (other than water) underground without a permit from DNR.[17] The Commissioner's authority to grant such permits is specifically limited by statute: no permit can be issued unless the storage will be more than 500 feet underground, will not impair any water resources, will serve a substantial portion of the consuming public in the state, and will be subject to certain conditions protecting landowners.[18]

DNR is authorized to grant licenses for telephone and power lines and pipelines to cross state lands and waters.[19] This power could probably be used to control construction and location of such lines in areas where much of the land is state-owned or where there are numerous bodies of water that

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[12] Minn. Stat. § 105.65.
[13] Minn. Stat. § 105.41, Subd. 1; also see Minn. Stat. §§ 105.44, Subd. 9(2), 45, and Minn. Stat. § 105.47.
[14] Minn. Stat. § 105.73-.77, and § 105.751.
[15] Minn. Stat. § 93.44-.51
[16] Minn. Stat. § 93.47, Subds. 2 and 3, § 93,481, Subd. 1.
[17] Minn. Stat. § 84.621; also see Minn. Stat. § 84.75
[18] Minn. Stat. § 84.60.
[19] Minn. Stat. § 84.415.

would be difficult for a line to avoid. Furthermore, and more significantly, before land can be acquired for a pipeline by condemnation, DNR must consider its environmental impact.[20]

The DNR may acquire private land for a number of specific purposes. These include the acquisition of private land for the establishment of scientific and natural areas that have "values inherent in the natural condition" (living museums); habitats for endangered species for game farms or hatcheries; for public hunting grounds and refuges; for parking and camping areas adjacent to public waters; for state forests; for state parks, waysides and trails; for wildlife development programs (with the approval of the county board); for dams and for other water control uses.[21]

As of February, 1975, the DNR held fee title to 5,201,623 acres of land. Of this amount, the Division of Lands and Forestry owned 2,997,889 acres within state forest boundaries and an additional 1,581,180 acres of forest land outside of state forest boundaries. The Division of Parks and Recreation owns 145,668 acres in state parks, recreation areas, waysides, monuments, historic sites and trails. The Division of Game and Fish owns 448,618 acres for wildlife purposes and 24,908 for fisheries purposes. The Division of Water, Soils and Minerals holds title to 1,890 acres of minerals lands, while the Division of Law Enforcement and Field Services owns 1,470 acres in public access sites.

The Flood Plain Management Act,[22] enacted in 1969, requires each local governmental unit to adopt flood plain management ordinances, which are to include regulation of land use in the flood plain.[23] The flood plain is the area that may be covered in a large flood--one that "can be expected to occur on an average frequency in the magnitude of the 100 year recurrence interval."[24] A substantial amount of land falls under the Act's purview. Local ordinances must be approved by DNR.[25] DNR is also charged generally with coordinating and evaluating local, state, and federal flood plain management activities.[26]

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20 Minn. Stat. § 117.48.
21 Minn. Stat. § 85.033; § 97.48, Subds. 12-15; § 97.481; § 105.58; § 97.48, Subds. 11 and 26.
22 Minn. Stat. §§ 161.171-.177.
23 Minn. Stat. §§ 104.01-.07
24 Minn. Stat. § 104.02, Subds.2-3.
25 Minn. Stat. § 104.04, Subd. 3
26 Minn. Stat. § 104.03, Subd. 1.

The Shoreland Development Act, also adopted in 1969, requires counties to adopt a shoreland conservation ordinance; if a county fails to do so or if its ordinance does not meet DNR's minimum standards, DNR can adopt an ordinance for the county.[27] DNR is required to promulgate, with approval of MPCA and the Board of Health, model standards and criteria including:

(1) The area of a lot and length of water frontage suitable for a building site;
(2) The placement of structures in relation to shorelines and roads;
(3) The placement and construction of sanitary and waste disposal facilities;
(4) Designation of types of land uses;
(5) Changes in bottom contours of adjacent public waters;
(6) Preservation of natural shoreland through the restriction of land uses;
(7) Variances from the minimum standards and criteria; and
(8) A model ordinance.[28]

The Shoreland Development Act gives the DNR authority to implement these regulations along the shorelands of public waters. This regulatory authority extends 300 feet for streams and rivers and 1,000 feet for lakes.

2. Additional State Land Use Powers Enacted in 1973

In 1973, the legislature passed a number of measures that substantially increased the state's authority to determine, influence or coordinate decisions relating to the use of land. First, in keeping with a trend that started several years ago, the legislature further expanded the state's role in regulating the use of land that is adjacent to water.

a. Chapter 369 extends the provisions of the Shoreland Management Act that previously applied to counties and directs the Commissioner of DNR to promulgate standards for the development of shorelands within incorporated areas as well. Cities are required to adopt ordinances by July 1, 1975, that comply with these standards governing the use of shoreland within 1,000 feet of lakes over 25 acres and within 300 feet of rivers.

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27 Minn. Stat. § 105.485.
28 Minn. Stat. § 105.485, Subd. 3.

b. Chapter 315, the Protection of Public Waters, stipulates that any activity which would change the course, current or cross section of public waters requires a permit from the Commissioner of DNR. Public waters are defined generally as any surface or underground waters which are confined and serve a beneficial public purpose which includes:

(1) water supplies,
(2) ground water recharge areas,
(3) retention of water to reduce downstream flooding or erosion,
(4) retention of nutrients or other pollutants,
(5) recreational activity,
(6) public navigation, and
(7) wildlife habitat.

c. Chapter 271, the Wild and Scenic Rivers Act, declares as state policy that rivers possessing outstanding scenic, recreational, natural, historical, scientific and similar values should be preserved and protected. The Commissioner of DNR is empowered to designate and classify rivers as wild, scenic, or recreational depending on their water quality and adjacent land development. The Commissioner shall adopt a management plan for each designated river, which may include the acquisition of some land by the state in addition to management regulations, in the form of zoning, for the uses of the water and the land areas designated in the plan. Units of local government are required to adopt or amend their ordinances to comply with the standards and criteria of the management plan.

Secondly, through the enactment of a number of landmark bills, the 1973 Legislature significantly expanded the three traditional methods of state regulation mentioned earlier by authorizing certain state agencies to:

- regulate the location of specific types of development;

- assure the proper use of areas of greater than local significance by preparing or assisting in the preparation of comprehensive plans for these areas; and

- protect the high quality of the state's environment by requiring detailed information in the form of an environmental impact statement for certain proposed projects to assess the project's environmental impact before it is implemented.

These bills include:

a. Chapter 591, the Power Plant Siting Act, authorizes the Environmental Quality Council to determine the location of large electric power generating plants and high voltage transmission lines. The EQC will promulgate standards and criteria for use in inventorying and ranking potential sites and corridors and to assure that these facilities are sited in an orderly manner compatible with environmental preservation and the efficient use of resources.

b. Chapter 413, the Subdivided Lands Act, gives the State Department of Commerce the authority to regulate the sale of subdivided lands by requiring them to be registered. Registration is designed to protect prospective purchasers from unfair and deceptive trade practices. Developers are required to disclose their business interests and financial situations as well as document pertinent data pertaining to the subdivision, such as condition of title, selling prices, fees, encumbrances, compliance with local zoning and other laws, availability of sewage disposal facilities, water, electricity, fire and police protection, schools and other services. Proposed subdivisions must also comply with local, state and federal environmental quality standards prior to registration. The state standards are to be promulgated by the EQC and monitored by the Commissioner of DNR.

c. Chapter 752, the Critical Areas Act, requires the EQC to develop criteria for the selection of areas of critical concern and to inventory the state to determine where such areas exist. Critical areas must have the characteristics of (1) containing or having a significant impact upon historical, natural, scientific or cultural resources of regional or statewide importance or (2) are either affected by or have a significant effect upon an existing or proposed major government development which serves substantial numbers of people and generates substantial development or urbanization. When the EQC finds an area that qualifies, either through its inventory or through a recommendation from a Regional Development Commission, the EQC may recommend to the Governor that he designate the area. The Governor's designation can include a moritorium on all or certain kinds of development that would be threatening to the resources of the area while a plan is being prepared for the proper utilization of those resources. The Act encourages units of local government to prepare the plans while the state pays for up to 100% of the planning costs. State agency expertise is made available if it is required for the development of an effective plan. After the plan is prepared, the EQC oversees its implementation.

d. Chapter 412, the Environmental Policy Act, provides that the EQC shall require the preparation of an Environmental Impact Statement where there is potential for significant environmental effects resulting from any major governmental action or any major private action of more than local significance. In most instances, the EIS is prepared by a public agency with regulatory control over the proposed action.

An EIS must contain extensive information on the action in question including consideration of:

Environmental impact of the proposed action;
Environmental, economic and employment effects;
Commitments of resources involved;
Relationship between local short term uses of the environment and the maintenance and enhancement of long term productivity;
Alternatives to the proposed action;
Impact on state government of any federal controls associated with the proposed action; and
Multi-state responsibilities.

A draft EIS is subject to an extensive review process, with the record remaining open for comment for at least 45 days. The EIS is reviewed by public agencies with jurisdiction or special expertise with respect to the proposed action and by the general public. Public meetings must be held as part of the review process. Public comments may be made at these meetings or in writing.

The final EIS must include comments received in the review process. The regulations require that the final EIS shall precede final decisions on the proposed action and shall accompany the proposed action through any administrative review process.

Based on its review of an EIS, the EQC may reverse or modify a decision or proposal where it finds, upon notice and hearing, that the action or project is inconsistent with the terms of the Environmental Policy Act.

The four acts in this category, the Power Plant Siting, Subdivided Lands, Critical Areas and Environmental Policy Act, represent the major thrust of the National Land Use Legislation. To see how Minnesota's progress relates to the features of the national land use bills, please refer to Table 7. They also comprise the major elements of the so-called comprehensive land use bills that many states are trying to enact. It should be emphasized that these bills have passed in Minnesota and are being implemented. On June 29, the Lower St. Croix River became the nation's

Table 7

Comparison of Minnesota's Relationship to the Proposed National Land Use Acts (1973—74)

PROPOSED FEDERAL PROVISIONS	MINNESOTA'S RELATIONSHIP
Phase I	
1. Develop methods for identifying and inventorying:	
a. areas of critical concern	Critical Area Act passed in 1973. Provides for state inventory which is underway. Inventory will incorporate existing inventories of various public agencies and private organizations.
b. large scale development of more than local impact such as new towns, regional shopping centers and utility projects	Identified and inventoried through various means. Most major projects require one or more state permits; environmental assessments or impact statements may be necessary; critical area inventory will identify major government development; Metropolitan Council and regional development commissions are involved in various capacities.
c. key facilities such as airports, highways and highway interchanges, recreational developments and power plants.	Similar to "b" above. Inventories of existing and proposed recreational development contained in Project 80 Study and State Outdoor Recreation Plan. The Power Plant Siting Act, passed in 1973, gives siting responsibility for power plants and transmission lines to EQC.
2. The development of an adequate resource data base	SPA and others involved since 1967 in developing such a data base. Topographic mapping, soil and geologic surveys, forest and water inventories and aerial photography have been funded in the past. Funding is being requested for FY 76-77 to accelerate some aspects. MLMIS computer system now operational for Region 3 with limited data available statewide. State demographer preparing data for human resources.

Table 7 - continued

PROPOSED FEDERAL PROVISIONS	MINNESOTA'S RELATIONSHIP
3. Technical assistance and training program	An ongoing function of the Office of Local and Urban Affairs and some other state agencies. Training conducted in some areas of state in conjunction with land use program. Will be accelerated during FY 76-77.
4. Public Involvement	Available now through public hearings, work groups, advisory committees and seminars. New techniques will be tested as part of the Coastal Zone Management Program on the North Shore of Lake Superior. In 1972, Congress passed the Coastal Zone Management Act which provides funds and guidelines for land use planning along the nation's coastal zone. The Great Lakes were included. Minnesota received federal funds and is in the first year of the three-year program.
5. Consideration of the impact of large-scale subdivisions and other development on existing utility systems and services	Subdivided Land Act, passed in 1973, requires subdivisions to disclose this information prior to registration by the State Department of Commerce. In metropolitan area, the Metropolitan Waste Control Commission has jurisdiction.
6. Development of necessary state policies	Work completed under the current appropriation for land use planning will highlight some of these requirements.
7. Regulation of development activities to prevent violation of air, water, noise or other pollution standards.	Legislature created the Pollution Control Agency in 1967 with responsibilities in all of these areas.

Table 7 - continued

PROPOSED FEDERAL PROVISIONS	MINNESOTA'S RELATIONSHIP
8. Consideration of housing opportunities.	Legislature created a Housing Finance Agency in 1971 to improve housing and increase opportunities for additional housing. All regional development commissions are in process of preparing regional housing plans. Housing and Finance Agency and HUD will use those plans as a basis for implementing state and federal housing programs. Metropolitan Council uses housing criteria in determing priorities for the distribution of recreation grants.
9. Establishment of an intergovernmental advisory committee composed of local elected officials and an appropriate state land use agency.	Legislature created regional development commissions, comprised of local elected officials, and a state planning agency with planning authority in environmental, economic, human resource development and transportation matters. By strengthening RDC's and by a close working relationship between RDC's and state government, Minnesota will have a far better and more comprehensive system for intergovernmental cooperation than would result by simply appointing another advisory committee.
Phase II	
1. Adopt an implementation program for:	
a. protecting areas of critical concern from unwise development	Achieved through Critical Area Act. However, St. Croix River designated by Executive Order in June, 1974. Mississippi River Corridor through Metro area under consideration. Units of local government empowered to regulate the use of land. Department of Natural Resources empowered to acquire key scenic, scientific and recreational resources or regulate resource use and development through permit or ordinance.
b. exercise control over large scale development, key facilities and subdivisions	Accomplished through state permits, environmental impact statements, power plant siting and subdivided land regulations. The social, economic and environmental effects of copper-nickel mining also being assessed through separate studies.

Table 7 - continued

PROPOSED FEDERAL PROVISIONS	MINNESOTA'S RELATIONSHIP
2. Assure that local regulations do not unreasonably restrict or exclude development and land use of regional or national benefit.	Political subdivisons are given their legal authorities, including police powers by legislature. State could overrule if necessary. Goal should be to develop working relationships between federal, state and local government that identify and account for the public interest at all levels. Federal government needs to identify what national interest or benefit is.
3. Prevent actions which disregard state policies.	Legislature needs to study existing policies for clarity and appropriateness, provide for accountability procedures and create and adequately fund programs which implement state policy.
4. Provide for an appeals mechanism.	In addition to the courts, mechanisms to hear appeals to land use decisions at the municipal, county, and regional level have been provided by statute. Proposed state appeals board was not passed by legislature in 1973. Proposal will be reintroduced in 1975.

first Critical Area to be designated by Executive Order. Minnesota has been able to take steps to protect the shores of that river while two federal agencies delay the implementation of a proposed management plan because of a debate over federal environmental impact statement requirements.

Thirdly, the 1973 Legislature expanded the administrative structure of state government to deal more effectively with environmentally related issues which often involve the use of land.

a. Chapter 342 created the Minnesota Environmental Quality Council to provide an interdepartmental forum for determining solutions to major environmental problems. EQC membership includes the heads of the State Planning Agency, Pollution Control Agency, Department of Natural Resources, Department of Agriculture, Department of Highways, Department of Health, Energy Agency, a representative of the Governor's Office and four citizens. In addition to having administrative responsibility for the Power Plant Siting, Subdivided Lands, Critical Areas, and the Environmental Policy Acts previously discussed, the EQC is directed to explore solutions to environmental problems, review state agency programs or proposals to assure that they are environmentally sound, convene an environmental congress annually and hold public hearings on matters of major environmental impact.

b. Chapter 741 created the Commission on Minnesota's Future which is to prepare by 1976 a proposed state growth and development strategy for consideration by the governor and the legislature; to prepare reports assembling relevant information regarding the state's future; to examine the long range plans of state departments and agencies, including the University of Minnesota, state colleges and junior colleges, and to assess their possible impact on state growth and development; and to report to the governor and the legislature at regular intervals on the development implications of major state decisions. A report of the Commission shall be submitted to the governor not later than November 30 of each even-numbered year. Recommendations and proposals are to be in the form of alternatives from which the governor and the legislature can select a preferred course of action, policy, plan, strategy or legislative program. A joint legislative committee of six senators and six representatives was established by the legislature to review the Commission reports, evaluate the alternatives, identify legislative priorities and develop a planning capability consistent with the task of this Commission.

The Commission on the Future is composed of 40 members, appointed by the Governor, which are apportioned among the State's 13 Development Regions on the basis of population. The Commission is encouraged to consult with citizen groups, farm, business and labor organizations, and other agencies and organizations, including agencies of the federal government concerned with Minnesota's future.

The work of the Commission on Minnesota's Future is an extremely important element in a Land Use Planning Program. A growth and development strategy will guide planning for roads, schools, sewage treatment facilities and other services to encourage the growth that is desired in the location that is most desirable.

3. Summary of 25 State Land Use Related Programs

Table 8 summarizes the features of selected state agency programs that influence or directly regulate the use of Minnesota's land. In lieu of the diagrams provided for local government, watershed districts and regional development commissions, the land use planning staff felt that this format would permit a more detailed description of each program.

The characteristics of each program are listed under a series of headings on the Table. These headings are:

a. Program and Authority - identifies the title of the program, the statutory authority and the name and position of the administrator who provided information about the program.

b. Government Involvement - summarizes the administrative involvement of the state agency.

c. Enforcement - indicates the legal tools available to enforce or implement the program.

d. Controls or Effects on Land Use - self explanatory.

e. Area Subject to Control - applies to the geographic extent of the program within the state.

f. Rules and Regulations - shows if they are required by statute and whether they have been promulgated.

g. Planning Directives - lists statutory requirements for preparing plans as a part of the implementation process.

h. Comments - provides insight into the impressions of program administrators and the land use staff regarding the effectiveness and administration of the program.

Table 8

Program Review Summary

PROGRAM AND AUTHORITY	GOVERNMENTAL INVOLVEMENT	ENFORCEMENT	CONTROL OR EFFECTS ON LAND USE	AREA SUBJECT TO CONTROL	RULES AND REGS. REQUIRED/ADOPTED		PLANNING DIRECTIVES	COMMENTS
ENVIRONMENTAL QUALITY COUNCIL								
CRITICAL AREAS ACT M.S. 116G.01-116G.14 Interviewee - Jock Robertson, Environmental Planning Division, State Planning Agency	The Governor designates a critical area upon recommendation of the Environmental Quality Council (EQC). Land use plans and regulations are prepared by local government or regional development commissions with assistance from the state.	EQC reviews land use plans and regulations and local units of government enforce the plans and regulations using existing authority. When the Council determines that the administration of the local plans and regulations is inadequate, the Council may institute appropriate judicial proceedings to compel proper enforcement.	Protection of certain areas possessing important historic, cultural, or aesthetic values or natural systems greater than local significance and areas affected by or having a significant effect upon an existing or proposed major governmental development.	A limited number of areas with significant regional or statewide public interest.	Yes	Yes	Provisions are made for the periodic statewide assessment of resources and development to identify critical areas.	A planning procedure which is put into motion when no other means exist to protect an area -- for instance, when local units of government are not enforcing local land use controls or an area's unique historical or environmental characteristics are in danger of being destroyed. Implementation of the program may involve technical and financial assistance from the state when size and complexity precludes development of plans and regulations by the local unit of government. A minimum level of local expertise is needed to implement the critical areas land use plans; however, some local units of government do not have the necessary staff.
ENVIRONMENTAL POLICY ACT (MEPA) M.S. 116D.01-116D.07 Interviewee - John Mohr, Environmental Planning Division, State Planning Agency	The MEPA outlines state environmental policies which state agencies are directed to follow in implementing individual programs.	The legislature authorizes and directs that, to the fullest extent practicable, the policies, regulations, and public laws of the state shall be interpreted and administered in accordance with the policies set forth in the Act. The Act also requires a review of authority report whereby state agencies review their present statutory authority, administrative regulations, and current policies and procedures to see whether there is compliance with the Act. In addition, a process for analyzing the environmental impact of major actions is established (See Environmental Impact Statements).	Proposed major public or private statewide actions must comply with the policies set forth in the MEPA.	Statewide	Yes	Yes	(See Enforcement) In addition the governor shall transmit to the legislature each year an environmental quality report.	Currently, it is difficult to evaluate state programs to determine compliance with the Act because goals are so broadly stated.
ENVIRONMENTAL IMPACT STATEMENT (EIS) M.S. 116D.04 (Provision in the Environmental Policy Act) Interviewee - Jock Robertson, Environmental Planning Division, State Planning Agency	The EQC determines how and when an EIS* must be prepared by a state agency, local governmental unit, or private person responsible for the proposed action. MEPA specifies that impact statements must be required on major public actions where there is potential for significant environmental effects and major private actions of more than local significance where there is potential for significant environmental effects. *(An informational document which provides detailed information on the environmental effects of an action).	An environmental assessment is a document which determines whether an EIS should be filed. The assessment is required when a proposed action meets certain criteria as outlined in MEQC 25, the proposer requests a determination of the need for an EIS, and the EQC determines that an assessment shall be prepared. Under present rules and regulations, the EQC has sole authority to require the preparation of an EIS. Based on the review of an EIS, the EQC may reverse or modify a decision or proposal where it finds the action is inconsistent with the MEPA.	Informs decision-makers of environmental effects of land use decisions. EQC may require modification of actions proposed by state agencies.	Statewide	Yes	Yes		A consultant has been retained to review the current EIS process in order to increase the efficiency and level of citizen involvement. EQC has been inundated with petitions for EIS's on local actions and other requests for environmental review.
POWER PLANT SITING ACT M.S. 116C.51-116C.69 Interviewee - John Hynes, Environmental Planning Division, State Planning Agency	EQC designates power plant sites and transmission line routes.	Enforcement is achieved through the issuance of a certificate of site compatibility or a transmission line construction permit which supercede and preempt all zoning, building, and land use rules, regulations, or ordinances promulgated by regional development commissions, local governments, or special purpose boards or commissions.	Exclusion and avoidance areas are designated in the rules and regulations. Selection criteria will minimize population displacement and disruption of local communities and institutions, human health effects, irrigated and non-irrigated agricultural land uses, recreational and historical resources, natural systems and minimize visual impact on urbanized land, recreational land and water, and transportation corridors, etc.	The entire state is subject to inventory; however, power plant siting controls supercede local controls only after a certificate of compatibility is issued.	Yes	Yes	An inventory of potential power plant sites and transmission line corridors is to be made by July 1, 1975. The Council shall adopt broad spectrum citizen participation as a principle of operation.	The weighting of variables by the power plant siting advisory committee will be extremely important in determining potential power plant sites, transmission line corridors and the eventual transmission line route Key issues to be resolved are: 1) the determination of whether underground or surface water should be used for power plants, and 2) effects of the regulations on preventing degradation of air quality.

Table 8 - continued

PROGRAM AND AUTHORITY[1]	GOVERNMENTAL INVOLVEMENT	ENFORCEMENT	CONTROL OR EFFECTS ON LAND USE	AREA SUBJECT TO CONTROL	RULES AND REGS. REQUIRED/ADOPTED		PLANNING DIRECTIVES	COMMENTS
DEPARTMENT OF NATURAL RESOURCES								
AGRICULTURAL LAND POLICY M.S. 40.02-40.03 Interviewee - Marshall Qualls, State Soil and Water Conservation Commission, Department of Natural Resources (DNR)	Farmers may request technical assistance from soil and water conservation districts, but there is no mandatory review of land use practices.	There is no regulatory enforcement of soil practices; only technical advice is given.	When assistance is requested, certain land use practices contributing to conservation are reviewed, such as contour cultivation, land irrigation, sloping, terracing, and erosion control.	Statewide assistance, operational only when requested.	No	No	--	No state agency (including the Department of Agriculture) regulates agricultural land as a resource. Soil and Water Conservation Districts give technical assistance only upon request. The state has limited statutory legislation to protect prime agricultural land or ensure proper land use practices.
CONSERVATION RESTRICTIONS Chapter 531, 1974 Laws, Interviewee - Mike Priesnitz, Parks and Recreation Division, DNR	Private citizens or organizations may volunteer conservation restrictions on the land they own.	Restrictions may be enforced by injunction, and the DNR may enter the land in a reasonable manner to assure compliance.	Restrictions may be given voluntarily to the state or purchased by the state. The restrictions prohibit structures, landfills, surface uses, removal of vegetation, excavation, dredging and other acts.	Voluntary easement, covenants or other deed restrictions may be accepted statewide.	No	No	For specific projects or areas, DNR could promote the idea of conservation restrictions or scenic easements. This would apply in specific management units (i.e. parks, forests, rivers, etc.)	Potential problems could result if an excessive number of easements are obtained. Local units of governments could loose potential tax revenue if lands are devalued as a result of development restrictions.
DRAINAGE M.S. 105.42, M.S. 106.011-106.673 Interviewee - Bob Pofahl, Waters, Soils, and Minerals Division. DNR	County boards and district courts may regulate the construction of public drainage systems or control structures.	Approval to drain is granted by county boards or district courts; however, if public waters are involved a permit from DNR is required.	DNR determines what is a public water and issues permits to drain such waters.	All public waters of the state which serve a beneficial public purpose are controlled by the state; while local units of government control drainage projects.	Yes	Pending	Commissioner of the DNR is to promulgate a list of criteria that county boards or district courts must consider when establishing and improving drainage systems. Pursuant to M.S. 106.021.	Development of rules and regulations regarding the determination of public waters is desirable. Wetlands have a varying degree of importance depending on their regional surroundings. Decisions involving drainage must be based on social, economic and environmental implications of the action.
FLOOD PLAIN MANAGEMENT M.S. 104.01-104.08 Interviewee - Jim Wright, Waters, Soils and Minerals Division, DNR	All counties and municipalities are required to have flood plain ordinances for areas that are flood prone.	The program is carried out primarily through the adoption and enforcement of local flood plain ordinances.	Statewide standards established by DNR specify requirements for local zoning and subdivision ordinances. Zoning ordinances specify the land uses allowable in floodways and flood-frinage areas. Subdivision regulations prohibit the subdivision of lands subject to flooding unless hazards are overcome.	Ordinance is applicable to all rivers and streams draining land of at least 2 square miles in size that are flood prone.	Yes	Yes	All local governmental units subject to recurrent flooding must participate in the national flood insurance program.	Based upon information provided by the DNR, seven counties and 36 communities are known to have adopted DNR approved flood plain regulations. In the interim most counties are carrying out a minimal form of flood plain regulation through provisions of previously adopted Shoreland Management ordinances. The DNR has notified at least 36 additional communities that the Department has flood plain data and that the communities are to proceed to adopt regulations. Program emphases have been on mapping the state's flood prone lands in cooperation with several federal agencies and assisting localities in adopting regulations once these data are available. The DNR has identified approximately 350 communities and 85 counties as having flood prone lands in need of ultimate regulations. Data is available to map the flood plain areas of the state; however, staff and funds are not. Also, there is a shortage of personnel to implement the program. Several public meetings are required for every ordinance finalized. Staff is not available if immediate statewide implementation of the program is desired.
MINERAL POLICY AND MINELAND RECLAMATION M.S. 93.01-93.58 Interviewee - Elwood Rafn, Waters, Soils and Minerals Division, DNR	The state policy is to provide for the reclamation of certain lands were necessary both in the interest of general welfare and as an exercise of the police power of the state.	All mining is currently regulated by the DNR through a series of permits. After June 30, 1975, no person shall engage in or carry out a metallic mining operation without first submiting a plan for reclamation or restoration to the DNR and obtain a permit. Security (bonding) will be required if the operator fails to do proper research or comply with rules and regulations.	The following factors are to be considered in determining effects of mining on the environment: (1) environmental impacts, (2) future utilization of the land, (3) protection of natural resources, (4) control of erosion, (5) surrounding communities, (6) employment, and (7) practical problems of the mine owners. The rules so promulgated shall also conform with any state and local land use planning program.	Statewide guidelines will regulate the mining of metallic minerals and the reclamation of minelands.	Yes	No	M.S. 93.47, Subd. 1, directs the commissioner of the DNR to develop a comprehensive study to determine if regulation of mining is necessary for general welfare (1969 Laws). A report which was drafted in 1971 is now being updated and in the process of being published. Upon completion of this study and survey the commissioner of DNR may adopt rules and regulations pertaining to mining operations. The commissioner shall develop procedures that will identify areas or types of areas which, if mined, cannot be reclaimed with existing techniques to satisfy promulgated rules and regulations.	After June 30, 1975, metallic mining operations will require a permit from DNR. The statutues do not specifically state that rules and regulations must be promulgated by that date. DNR is in the process of developing such rules and regulations, but has not published the comprehensive study which determines the extent and type of regulation necessary in the interest of the general welfare.
SHORELAND MANAGEMENT ACT M.S. 105.485-105.541 Interviewee - Michael Hambrock, Waters, Soils and Minerals Division, DNR	All counties and municipalities are required to adopt shoreland management ordinances.	The program is enforced by counties and municipalities through adoption of ordinances acceptable to the DNR. All counties have adopted ordinances; municipalities are in the process.	Lake classifications are established by the DNR. Statewide standards are determined for placement of structures, lot sizes, sanitary structures, designation of land use types and restriction of land uses. The standards vary according to the classification of the lake.	Shoreland of public waters within 1,000 feet of lakes and 300 feet of streams and rivers. Lakes or ponds less than 25 acres or a stream with a drainage area of less than 2 square miles need not be regulated by the county under current rules and regulations.	Yes	Yes[2]	--	The detailed amount of data available to classify large lakes was not available for smaller lakes. Therefore, "Every lake basin between 25-150 acres was classified as Natural Environment (by DNR), unless development was detected (on county highway maps). When development already existed on these lakes,...they were classified as Recreational Development."[3] Such classifications will be interim until counties can designate land use districts as stipulated in the model DNR shoreland ordinance. The DNR's model ordinance contains special protection zoning districts to manage areas that are unsuitable for development. However, some county ordinances do not include special protection districts which would apply to unsuitable shoreland areas.

[1] See Compendium for additional statutes.

[2] Rules and regulations to be adopted for municipalities.

[3] Shoreland Management: Classification Scheme for Public Waters, Supplementary Report No. 1, Minnesota: Department of Natural Resources, April, 1971.

Table 8 - continued

PROGRAM AND AUTHORITY	GOVERNMENTAL INVOLVEMENT	ENFORCEMENT	CONTROL OR EFFECTS ON LAND USE	AREA SUBJECT TO CONTROL	RULES AND REGS. REQUIRED	RULES AND REGS. ADOPTED	PLANNING DIRECTIVES	COMMENTS
DEPARTMENT OF NATURAL RESOURCES								
STATE FOREST MANAGEMENT M.S. 89.001-89.43 plus additional miscellaneous policies Interviewee - Earl Adams, Forestry Division, DNR	Forest practices are regulated only on state forest lands and county tax forfeited lands transferred to the state. There is no regulation of private forest land, in or outside a state forest, although technical assistance is given upon request.	State lands, in and outside of state forests, are under the direct management of DNR.	Land is acquired for inclusion in state forests by gift, direct purchase of private lands and transfer of tax forfeited land by the county to the state. In addition, any state lands within the boundary of a state forest become state forest lands. Counties receive 50% of the gross revenues acquired from state forest lands within their boundaries as payment in lieu of taxes. The forests are established to grow, manage and harvest timber, develop recreational areas and protect wildlife. Policy is multi-purpose use of state forests.	Management assistance is given to 2.1 million acres of state lands and direct management to 3.1 million acres of state forest lands.	No	No	M.S. 89.01 - The commissioner shall ascertain and observe the best methods of reforesting cutover and denuded lands, foresting waste and prairie lands and administer forests on forestry principles and conserve forests on the watersheds of the state. Goal for the biennium is to prepare and update management plans for one million acres of state forest lands.	DNR stated that all management authorization is in the Minnesota Statutes. Many specific management goals are the result of DNR planning. One of the major problems being faced by DNR in state forest management is the cutback of funds for forest regeneration.
STATE WATER POLICY M.S. 105, 106, Chapter 558, 1974 Laws, Executive Order 71 (See Compendium) Interviewee - Eugene Gere and Gene H. Hollenstein, Water, Soils and Minerals, DNR	All levels of government are involved in some aspect of state water policy.	State water policy is carried out by various governmental agencies and special purpose districts through a variety of means including: Shoreland Management, Flood Plain Management and Water Quality Programs; granting of permits by the state; and the review of local plans by the state and the regional development commissions. (See Water Resources Diagram)	Land use patterns and general economic growth will be strongly influenced by state water policy. Current policy guidelines are found in statutory statements and numerous common or case law decisions.	All public waters and land related resources.	No	No	M.S. 105.39 (1947) directs the commissioner of the DNR to devise a general water resources conservation program. The program has not been completed. However, statutes state the commissioner shall be guided by such a program in the issuance of permits. Chapter 558, 1974 Laws, authorizes the DNR to prepare a statewide framework and assessment water and related land resources plan for presentation to the legislature by November 15, 1975, for its review and approval or disapproval. Executive Order 71 establishes a Water Resources Council to develop a statewide framework plan.	Due to the multiplicity of state agencies with water resources planning and management functions, the Minnesota Water Resources Council has been created to coordinate the development of a framework water and related land resources plan. Membership consists of representation from the Departments of Natural Resources, Health, Agriculture, Highways, and Economics, the Pollution Control Agency, the State Planning Agency and the Governor's representative to the Federal-State River Basin Commissions.
WATER SURFACE ZONING M.S. 361.25-361.26, Chapter 702, 1973 Laws, Subd. 1 Interviewee - Michael Hambrock and Ed Fick, Waters, Soils and Minerals, DNR	Local units of government may adopt water surface zoning provisions within their territorial limits. Water surface zoning provisions may also be placed into effect by the commissioner of the DNR.	After January 1, 1975, proposed water surface zoning ordinances must be reviewed by the DNR for consistency with statewide rules and regulations. Ordinances are enforced by local government.	Statewide regulations relating to type and size of watercraft, types and horsepower of motors, areas of water which may be used, speed of watercraft, times for permitted use and minimum distance between watercraft.	Applicable to all public waters of the state.	Yes (to be adopted by Jan. 1, 1975)	No	Commissioner of the DNR shall promulgate (1) standards and criteria for resolving conflicts in the use of water surfaces, (2) procedures for dealing with more than one governmental unit, and (3) enforcement procedures by January 1, 1975.	Formulation of statewide criteria and standards should help to alleviate water surface use conflicts and undesirable impacts on adjacent water bodies. The DNR is working on rules and regulations which should be adopted by early 1975. No full time staff position exists to review county or municipal ordinances for consistency with statewide standards.
WILD AND SCENIC RIVERS ACT M.S. 104.31-104.40 Interviewee - Mike Priesnitz, Parks and Recreation Division, DNR	Local involvement is mandatory after a wild and scenic river is designated by the legislature.	Land use controls in management plans are enforced by local governmental units. Also DNR controls land use through acquisition and the permit process.	A management plan is drawn up by the DNR prior to designation of a wild and scenic river. The plan stipulates allowable setbacks, structure heights, subdivision regulations, vegetative cuttings, etc.	Management plans can include up to 320 acres per mile of river (both sides).	Yes	Yes	Over 2,000 miles of river have been recommended for inclusion. The DNR is currently working on management plans for sections of the Kettle and Mississippi Rivers and the north fork of the Crow River.	Rules and regulations do not specifically require local input in the development of the management plan. However, public participation is stressed by the DNR. The priority for the commencement of work on management plans is based on the existing development pressures, land ownership patterns along the rivers and uniqueness of the area.
WILDLIFE MANAGEMENT (Acquisition of Wildlife Lands) M.S. 84A.55, M.S. 97.48, and M.S. 99.25 Interviewee - Roger Holmes, Fish and Wildlife Division, DNR	DNR can purchase lands anywhere; however, county boards must pass a resolution allowing tax forfeited lands to be acquired for wildlife management by DNR. Counties may be reluctant to approve resolutions because of the loss of current or potential tax revenues. However, counties are reimbursed annually at the rate of 50¢ per acre or 35% of the gross land receipts, whichever is greater, in lieu of property tax payments.	Wildlife management areas are under the direct control and regulation of the DNR.	Land is purchased by the DNR and managed as wildlife areas. As of July 1, 1974, a total of 380,630 acres have been acquired in fee title. A departmental goal is to acquire approximately 500,000 additional acres of high priority wildlife lands by the year 2000, thereby making a total of approximately 1,000,000 acres under wildlife management.	Any land which has been purchased. Top priority is given to the acquisition of wetlands in agricultural regions that are in danger of being drained.	4 No	4 No	Care for, protect, and preserve any or all species of wildlife.	It is difficult to acquire land that is especially desirable to DNR because the Department does not have powers of eminent domain regarding wildlife lands. No statewide inventory of wetlands exists; lands can only be purchased from "willing sellers." Tax forfeited land is also acquired upon presentation of a resolution to the county board. The land acquired to date and proposed for acquisition is mostly non-cropland or low grade farm land with about 60% of the lands acquired being marsh and water. A majority of the projects are located in the agricultural portions of the state.

[4] Refers to regulations relating to land acquisition or management other than game or fish limits.

Table 8 - continued

PROGRAM AND AUTHORITY	GOVERNMENTAL INVOLVEMENT	ENFORCEMENT	CONTROL OR EFFECTS ON LAND USE	AREA SUBJECT TO CONTROL	RULES AND REGS. REQUIRED/	RULES AND REGS. ADOPTED	PLANNING DIRECTIVES	COMMENTS
POLLUTION CONTROL AGENCY								
AIR QUALITY M.S. 116.07 Subd. 2-6, Federal Clean Air Act Interviewee - Ron Way, Division of Air Quality, Pollution Control Agency (PCA)	The Federal Environmental Protection Agency (EPA) considers the control of land use the prerogative of local and state governments. Since some aspects of air quality involve land use impacts, EPA regulations encourage consultation between the agency that enforces the air quality standards and the appropriate local governments and regional planning agencies.	Air quality standards are enforced by the PCA through the continued monitoring of air pollutants and the issuing of permits. Standards will also be enforced through the development of air quality maintenance plans.	Air quality managers recognize that pollution control regulations have an influence on how land is used. EPA regulations to prevent significant air quality deterioration will likely provide some constraints on land use. The federal agency has emphasized the need for states to closely coordinate air quality regulations with land use authorities at the state, regional and local level.	Standards for a variety of pollutants are adopted for the seven air quality regions covering the entire state. Three of these regions are entirely within the state.	Yes	Yes	The Federal Clean Air Act requires states to prevent the significant deterioration of air, but the anti-degradation features have yet to be clearly defined.	While the major purpose of the program is to attain and maintain national air quality levels, the secondary impacts on land use should be given close scrutiny as to how they interact with desired land use patterns. The PCA works closely with adjacent states to coordinate air quality plans.
NOISE ABATEMENT M.S. 116.06, 116.07, Subd. 2,4,5 116.08, Subd. 2,4,5 and 169.693 Interviewee - Al Perez, Division of Air Quality, PCA	Rules and regulations contain statewide standards for levels of non-impulsive noise.* No local government shall set standards more stringent than those by the PCA. *(Reflects the way sound is produced; non-impulsive noise -- air-conditioners, general office noise.)	Currently the PCA is not enforcing specific noise standards. By early 1975 additional regulations are expected for major sources of noise, such as airports, highways, and industrial operations.	Noise standards are adopted for land activities and give consideration to factors such as intensity of noises, types of noises, and the frequency of occurrence (length and time). Land use impacts could occur through the designation of compatible districts or activities.	Statewide standards for levels of non-impulsive noise. Standards for impulsive noise* sources will be developed in the future. *(Impulsive noise - gun shot, sonic, boom).	Yes	Yes (additions to be made)	--	The regulation of noise is a significant factor in improving the quality of the environment. While regulation of specific noise sources is desirable, the long term implications on land use patterns should be studied.
SOLID WASTE MANAGEMENT M.S. 116.07, Subd. 2 M.S. 116F.01-116F.05 Interviewee - Larry Kramer, Solid Wastes Division, PCA	Counties are responsible for developing solid waste system plans. Plans for individual sites are reviewed and filed with the PCA.	The state adopts standards and controls and relies on counties for daily surveillance and enforcement of feedlot and disposal site regulations.	Sanitary landfills are prohibited from locating within 1,000 feet of lakes, 300 feet of streams, a regional flood plain (100 year interval), wetlands, near airports, and certain highways or parks. Feedlots are prohibited within shoreland, floodways, 1,000 feet of a public park, areas draining into sinkholes or within one half mile of a concentration of 10 or more private residences.	Location of all sanitary sites, landfills, and feedlots within the state.	Yes	Yes	--	Since the initiation of the Solid Waste Program, the majority of undesirable landfills have been eliminated. A strong role for regional development commissions is to encourage increased efficiency and provide for a coordinated system of landfills. A major state policy is to encourage resource recovery techniques, thereby reducing the amount of solid waste.
WATER QUALITY M.S. Chapters 115, 116, and 116A Interviewee - Paul Davis, Division of Water Quality, PCA	Municipalities with limited tax base, excessive bonded indebtedness or critical water pollution conditions and sanitary districts with sewage disposal systems constructed to serve more than one municipality are given high priority in the allocation of construction grants.	The PCA monitors water quality, issues permits for discharges into waters and allocates funds for waste treatment plants to abate and prevent pollution.	The PCA classifies waters and adopts standards for purity and quality giving consideration to the most appropriate use of lands bordering said waters for residential, agricultural, industrial or recreational purposes and the extent to which certain pollutants may be permitted in the water.	All interstate and intrastate waters.	Yes	Yes	The PCA shall prepare a long range plan and program to effectuate the policy of preventing new pollution and abating existing pollution. The Water Pollution Control Advisory Committee is to assist in formulating a general statewide comprehensive policy for the conservation, utilization and development of water resources and other interrelated natural resources of the state for their most beneficial use and prevent and abate pollution. The Division of Water Quality Management is responsible for water quality. Management Basin Plans required by federal law.	The abatement and prevention of water pollution involves the regulation of septic tanks and construction of municipal sewage systems. Sewage disposal systems, including grants for construction, play a crucial role in determining future growth and development of urban areas.
MISCELLANEOUS								
AIRPORT ZONING AND LOCATION M.S. 360.011-360.91 Interviewee - Richard Keinz, Department of Aeronautics	Municipalities and counties are given the power to adopt airport zoning controls. Adopted airport zoning ordinances, or the intent to zone, are required before airports in the state system can receive financial aid. Site location of airports are primarily made by local governments.	Airport zoning ordinances are enforced by the local units of government.	Zoning regulations apply to structures, vegetation height, and land uses which obstruct the airspace required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport and any use of land which is hazardous to persons or property because of its proximity to the airport.	Zoning regulations apply up to two miles from airport boundary approach zone and one mile from other airport hazard areas.	Yes	Yes	To receive financial aid, a substantial aeronautical requirement must be shown by the municipality whereby the contemplated or existing airport is a necessary part of a statewide system of public airports.	Airports are generally developed in reaction to growth. Local governmental units initiate proceedings to construct or improve an airport. The Department of Aeronautics has in the past had adequate construction funds for all justifiable projects, but in the future may be in a position of having to allocate funds on a priority basis. The Minnesota Aviation System Plan has a well organized structure of goals and objectives which will be very helpful in this area.

Table 8 - continued

PROGRAM AND AUTHORITY	GOVERNMENTAL INVOLVEMENT	ENFORCEMENT	CONTROL OR EFFECTS ON LAND USE	AREA SUBJECT TO CONTROL	RULES AND REGS. REQUIRED/ ADOPTED	PLANNING DIRECTIVES	COMMENTS
MISCELLANEOUS							
SUBDIVIDED LANDS M.S. 83.20-83.42 Interviewee - Roger Williams, Environmental Planning Division, State Planning Agency and Harlee Goldsteen, Department of Commerce	A person may not offer or dispose in this state of any interest in subdivided lands unless the lands are registered. The Department of Commerce registers subdivided lands; the EQC determines environmental standards; and the DNR determines compliance with these standards.	If a subdivider violates any of the provisions found in M.S. 83.20-83.42, the Commissioner of the Department of Commerce is authorized to take appropriate action.	Subdivided lands must be registered and meet local, state, and federal environmental quality standards which may include, but not be limited to, water and air quality, shoreland, flood plain and wild and scenic rivers protection, drainage, etc., before being sold.	Act applies statewide. Subdivided lands, unless exempted (See Compendium), must be registered and meet state environmental standards before being advertised or sold.	Yes (State Environmental Quality Standards) / No	--	The subdivided lands act provides for consumer protection through the review of lands for: 1) compliance with state environmental standards, 2) availability of public utilities, 3) proximity to nearby municipalities, 4) scope of community services, etc. Also there is assurance that the planned improvements will be completed because a performance or completion bond must be filed.
ECONOMIC DEVELOPMENT M.S. 362.07-362.23 Interviewee - James Moore, Research Division, Department of Economic Development	Local governmental units may be aided by the Department in attracting and promoting business, industry, commerce and tourism. The Department also serves to bring about coordination between such development and neighboring states, counties and municipalities.	The Department of Economic Development does not have regulatory power. The Department promotes the economic development of the state by locating markets for manufactures and processors, conducts research, suggests policies for the development and conservation of the resources of the state. This role takes on greater importance when aiding communities in locating industrial parks.	The Department's impact on land use will be reflected by (1) the type of industry it encourages to settle in Minnesota, (2) the "desirable locations" it emphasizes, and (3) the secondary development which will result in additional housing, transportation facilities, sewage disposal systems, and other services.	Promote, encourage and implement business, industry, and commerce on a statewide, regional, and local level.	No / No	Conduct or encourage research designed to further new and more extensive uses of the natural and other resources of the state. Actively participate in providing technical assistance and economic inputs (including commercial recreation) into land use planning at all levels of government.	There is no specific directive to encourage any particular type of development. The Department places a high priority on attracting agricultural processing and natural resource based industries, technically oriented industries, corporate headquarters, and printing and advertising firms. No comprehensive long-range economic plan exists.
ENVIRONMENTAL HEALTH M.S. 144 and 156A Interviewee - Ed Ross, Environmental Health Division, Department of Health	All public and semi-public water supply plans are reviewed by the Department of Health. All wells for domestic uses, serving less than 25 persons, are reviewed for potential environmental health problems, such as proximity to sources of contamination. A municipality submits water supply plans to the Department of Health which reviews them for consistency with the standards in the adopted Manual of Water Supply.	The individual unit of local government must correct deficiencies before receiving approval to build the water system. Well-drillers (contractors) must be licensed before being allowed to drill any wells.	The Department of Health establishes a system for reporting on wells drilled by licensed water well contractors which can help to identify the quantity and/or quality of ground water. Model ordinances are developed for technical assistance to communities regarding on-site sewage disposal.	Statewide	Yes / Yes	--	There are approximately 300 licensed well-drillers in the State, and approximately 14,400 wells were drilled in 1973. The purpose of these controls, in addition to health protection, is to reduce and minimize the waste of ground water resources within the state. In addition, the data gathered from well-logs give valuable assistance in producing documentation of the geologic factors that affect land use and development.
HIGHWAY PLANNING M.S. 161.01-161.50 Interviewee - Morris Gildemeister, Transportation and Transit Planning and Programming, Highway Department	Local governmental units and the state highway department are involved in a mutual exchange of information, close cooperation, and assistance in development of the current highway plans.	Implementation will involve the setting of priorities for highway improvements since the demands requested throughout the state far exceed available finances.	The Highway Department is concentrating improvements on those routes which (1) promote out-state economic development, (2) satisfy travel demands on major recreational routes and (3) serve the maximum number of highway users.	All trunk and interstate highway systems.	No[5] / No	The Highway Department is involved in revising the current "backbone plan." The new "Action Plan" is emphasizing public participation with five rounds of meetings scheduled in each of the 13 regional development commissions to determine the needs and desires of the public.	The Department's "Action Plan" which incorporated a high degree of citizen input in the planning process is commendable. Future highway improvement problems may arise due to limited funds resulting from a reliance on gasoline taxes during an energy shortage.
STATEWIDE COMPREHENSIVE PLANNING AND LAND CLASSIFICATION M.S. 4.10-4.25, M.S. 92.35-92.36 Interviewee - Roger Williams, Environmental Planning Division, State Planning Agency	The State Planning Agency (SPA) acts as a directing, advisory, consulting and coordinating agency to harmonize activities at all levels of government, to render planning assistance to all governmental units and to stimulate public interest and participation in the development of the state.	The State Planning Agency reports to the governor and the legislature and makes recommendations for desirable legislation and necessary appropriations. SPA will classify all public and private lands in the state according to their intrinsic suitability as a part of its land use planning program.	The powers of the State Planning Agency are primarily those of review, recommendation and the coordination of planning activities at all levels of government. SPA also has the authority (M.S. 92.35) to classify all public and private lands in the state with reference to use to which the lands are adapted.	Powers and duties are statewide.	No / No	Prepare comprehensive, long range recommendations for the coordinated growth of the state taking into consideration the state's relationship to local units of government and the planning to be accomplished on such levels. (See Compendium)	The overall goal of the SPA is to develop methods for managing change. The land use goal of the agency is to develop a public decision-making process for determining the use of the land based on the balanced consideration of physical, social, and economic factors.

[5] No rules or regulations required for comprehensive planning.

Table 9
Examples of the Public Role in Minnesota Land Use

FUNCTION	LOCAL GOVERNMENT (within local government jurisdiction)	REGIONAL DEVELOPMENT COMMISSIONS (multi-jurisdictional within region)	STATE GOVERNMENT (multi-regional or involving state land)
PLANNING (analysis of what's happening and deciding what's to be done)	Local land use patterns - residential - industrial - commercial - agricultural - open space Local public services - road network relative to residential, commercial, industrial uses - utility services & extensions - utility charges - recreation facilities Capital Improvement Budgets - offices, fire stations, parks, utilities, hospitals Critical area planning Environmental impact statement process Information collection - mapping - population statistics - resource surveys (detailed) - building permit data	Regional land use patterns - urban centers - non-urban industrial use - rural land use - review local & special district plans - coordinate local planning Regional services - determine regional needs - integrate local service plans Capital Improvement Budgets - coordinate local government capital improvement plans Critical area planning and coordination Environmental Impact statement process Information collection - regional mapping - regional population statistics - resource surveys (intermediate)	State land use patterns - statewide growth & development - major geographic land uses (agriculture, forestry, mining) - major urbanization patterns - coordinate local & regional planning State services - interstate & trunk highway system relative to population centers & economic uses - power plant & transmission line siting - state airport system - state recreational facilities - state education, correction & health facilities Capital Improvement Budgets - state level facilities Critical area designation, planning, coordination Environmental impact statement coordination and review Information collection - statewide mapping - statewide population statistics - resource surveys (generalized) (soils, geology, water, etc.) - resource surveys (detailed) state-owned sites
REGULATORY	Zoning Subdivision regulations Access to basic utilities - when & where Building and housing codes Shoreland ordinance Floodplain ordinance Critical area regulations	None for regional development commissions. Metropolitan Council has certain regulatory authority	Promulgation of development standards - lakeshore - solid waste - air & water quality Promulgation of procedural standards - public hearings - grievances Critical area regulations - review & approval.
LAND ACQUISITION, MANAGEMENT AND DEVELOPMENT	Parks Streets and roads Public buildings Official map	None for regional development commissions, Metropolitan Council may acquire open space, sewers, transit.	State recreational facilities Wetlands Highway right-of-way State institutions State forests
PROPERTY TAX & FISCAL POLICY	Utility taxes Special assessments Urban-rural service districts Services - kinds & amounts Green Acres law		Property tax relief School aid Welfare funding Taconite and timber tax
GRANT ADMINISTRATION	Administer grants received by local unit	Review grant applications by local government Administer grants received by RDC	Review grant applications Distribute state and federal grants Administer grants received by state
TECHNICAL ASSISTANCE PROGRAMS		Provide technical assistance to units of local government	Provide technical assistance to local government & RDC's.
INTERGOVERNMENTAL ACTIONS	Annexation Joint powers-services Use state & federal grants, assistance, training, services Enforce state standards	Insure local & regional perspective in state programs	Cooperate with local & regional units Insure state perspective in federal programs

Summary

It should be obvious from the content of this chapter that Minnesota state agencies, political subdivisions and other entities are well endowed with legal authorities for controlling land use patterns. Local government has had land use authority for many years. It remains voluntary, and the legislature may wish to consider the benefits of making it mandatory.

Prior to 1973, most state authority dealt with the acquisition, management and development of land and resources or the regulation of land use through permits or standards. In 1973, the legislature expanded the authority of the state to have a more direct role in planning for or regulating land use in certain areas. Because this legislation is new and complex the respective state or local agencies may lack experience in its implementation. The land use planning staff recommends that prior to passing new land use legislation, the legislature and the governmental agencies gain a better understanding of existing authorities including methods of implementation and problems associated thereto. This knowledge is essential is determining if more land use legislation is necessary and what it should address.

While some additional legal authority may be required to address certain issues, the basic challenge in land use planning is in making the existing legal authorities work. In this regard, the legislature may wish to begin this session by reviewing some of these legal authorities to determine if they are housed in the appropriate agency or level of government. Some of these statutory authorities are extremely old. Responsibilities that were assigned 40 or 50 years ago may not be valid today. Shifts in legal authorities to other levels or agencies of government may result in economic efficiencies, more responsiveness to public needs and increased coordination among government sectors.

As pointed out in various places, the legislature has taken some important steps recently to coordinate and oversee these diverse responsibilities. At the local level, regional development commissions were created to provide a regional perspective for local planning and regulatory efforts. As they gradually mature and develop local support, the commissions are going to be a great aid in ameliorating state and local land use issues.

In state government, the legislature created the State Planning Agency to develop a state perspective and to coordinate the efforts of individual state agencies with broad and potentially conflicting functional responsibilities. In addition, mechanisms have been created to coordinate various programs which relate to a common state interest. In the environmental area, the Environmental Quality Council provides a forum for seven state agency heads to discuss and find satisfactory solutions to problems that may require the approval of one or all of the agencies. Similarly, the Transportation Task Force coordinates the separate interests of the Departments of Highways, Aeronautics, Public Service

Commission and the State Planning Agency, while the Human Services Council coordinates the functions of the Departments of Health, Education (Division of Vocational Rehabilitation), Corrections, Public Welfare, Administration, Employment Services and the State Planning Agency. These coordinating mechanisms represent important steps in the right direction.

This chapter has also pointed out that some programs at the state level are not functioning the way in which the legislature intended. In some cases, plans or rules and regulations were required by a certain date. This timetable has not always been honored. The "Comments" portion of the Program Review Summary provides some of the reasons which include lack of staff, lack of funds, or lack of information. It is clear to the land use staff that the legislature must set deadlines that provide a reasonable length of time for completing the work, provide agencies with the necessary tools, and also establish an accountability procedure. Too often in the past, the legislature has not reviewed the work it requested or even determined if it had been completed.

One county's frustrations with existing land use authority provides a good example of what can happen without accountability and review procedures. In 1973, the legislature passed the Critical Areas Act. Briefly, the act provides that the Governor may designate certain key natural resource areas or public facilities in the state as critical areas if they are threatened by development. A moritorium on development within the defined critical area can be declared while plans and regulations to guide future use of the area are being prepared by the unit of local government, the regional development commission and/or state agencies. The Act is to be used sparingly when other forms of control are not working adequately.

On February 4, 1975, the Mille Lacs County Board of Commissioners passed a resolution requesting the EQC to recommend to the Governor that the Mille Lacs Watershed be designated as a critical area. County officials feel that the area is being developed unwisely and that this development is polluting Mille Lacs Lake. Existing legal authority abounds to prevent this problem including: county and municipal planning and regulatory authority; planning authority in 3 regional development commissions within which the watershed is located; health department sewer and well regulations; DNR lakeshore ordinances and standards and permits for use of public waters; PCA water quality standards; and Department of Commerce subdivision regulations. It is not likely that legislation is required to create new authority or new agencies of government. Procedures are necessary to determine whether programs are being effectively implemented.

The Summary Table also hints at the fact that there is a direct relationship between land use programs and legislative policy. The term "policy" is used inconsistently in Minnesota and it is often difficult to determine what is meant by the term. Chapter 4 documents the policies that relate to the programs discussed in this chapter and shows the relationship that should exist between the two.

Chapter 4

STATE LAND USE POLICY

Chapter 4: State Land Use Policy

TERMINOLOGY AND DEFINITIONS

Minnesota, like other states, does not have a specific policy that is identified as "a land use policy." Instead, land use policy is comprised of a large number of policy statements that the legislature has enunciated in the statutes dealing with a variety of subjects that affect the use of land.

The term "policy" is also confusing. It is often used in a generic sense in referring to a wide variety of actions, mandates or decisions. Many experts have attempted to define policy and the results are almost as varied as the use of the term. Nonetheless, policy, as elusive as it might be, plays an important role in determining the scope and direction of many governmental land use activities.

In Chapter 3, land use-related programs and legal authorities of the state and its political subdivisions were reviewed. These programs and authorities exist because the legislature determined that they were necessary for the "general welfare, health and safety of the public." The legislature, in virtually every instance, has preceded the conveyance of authority by stating that there is a particular concern over the public welfare, health, and safety and therefore declares, "That is the policy of the state" to do something about it. There exists, therefore, an inseparable relationship between state policies and the programs and authorities that are created to implement them.

In addition to the terms "policy" and "program", which have already been used in this discussion, there are a number of other terms that have wide usage in Minnesota. These terms are equally important and all play a role in determining the manner in which public agencies respond to legislative directives. They include "goal", "purpose", "intent", "objective", and "activity." These terms, together with the terms "policy" and "program", need to be defined and their relationships more clearly understood.

Goal is a frequently used term but does not have any legal meaning in Minnesota. Goal is defined by Webster as, "an object or end that one strives to attain." To be meaningful, goals must be quantified. For example, "one structurally sound housing unit for every family in the state," is more meaningful than, "better housing for all."

Policy, Purpose and Intent, as defined by Webster, is "a principle, plan or course of action as pursued by a government, organization or individual." In Minnesota, "state policy" is created by the legislature in the statutes. While it provides the basis for the existence of many agencies as well as the authorities or responsibilities that they possess, the decision to create an

agency or authority should not be regarded as state policy. Also, it is not uncommon for someone to refer to the policy of a particular state agency as thus and so. These references often represent the department's point of view, operating procedures or objectives and should not be confused with legislatively declared state policy.

It is recommended, that the term "policy" be defined to refer exclusively to the legislature's declaration of state policy in the statutes.

The legislature has frequently used the term "purpose" in conjunction with policy in the statutes, and state agencies sometimes refer to purpose in rules, regulations and other documents. The purpose of state policy must relate to the object of government as stated in the State Constitution - "for the security, benefit and protection of the people." This can be interpreted to mean the general welfare, health and safety of the people.

The purpose of state agencies is exactly the same, but their responsibility is not to legally establish the actions that are required for the public interest, but to implement those actions when directed to do so as a matter of state policy by the legislature.

The term "intent" is generally used in the statutes to clarify the scope of state policy which is often stated in broad terms. This is an appropriate usage of the term and should be continued.

Programs, Sub-Programs and Activities have fairly clear definitions in Minnesota through the adoption of program budgeting. They refer to those things that state agencies do. Programs refer to the broad categories of state responsibilities, such as "Protection and Development of Land, Water and Wildlife." Sub-Programs are divisions of the program such as, Fish and Wildlife Management, State Land Administration and Development, etc. Activities are divisions of sub-programs. In the case of the sub-program, Fish and Wildlife Management, activities include wildlife habitat management, fish habitat management, fish population management, etc. State agencies are empowered by the Legislature to conduct programs, sub-programs and activities to implement state policy.

Objectives also have a clear definition from the program budget. Objectives are to be developed by the agencies to establish the incremental achievements that are to be accomplished during a biennium. Although the definition of objective is clear, the agencies do not always quantify their projected accomplishments. In order to be meaningful to the legislature and to the state agencies themselves, these objectives must state the amount of work to be accomplished. Otherwise, there is no accurate method for determining the level of appropriations or for measuring the progress toward the achievement of a state policy. Examples of properly quantified objectives are found in the DNR's Ground Water Management Activity. One of the objectives for FY 74-75 was to, "Increase collection of geologic bedrock samples to

6,000 samples by July 1, 1975." It is recommended that all objectives be stated in this manner.

In reviewing the land use related policies of the state, it became important to understand the relationships between these terms. Clearly the actions of the legislature and the actions of state agencies cannot be viewed independently but must be regarded as separate parts of a common course of action.

The majority of the land use related programs reviewed in Chapter 3, are guided in varying degrees by statutory state policy. The following discussion identifies where policies exist and do not exist and offers recommendations for improving the coordination between policies and programs.

THE IDENTIFICATION OF EXISTING STATE POLICIES RELATING TO LAND USE

The policies that relate to the state programs and authorities outlined in Table 8 are listed below. In most cases, the legislature has identified these statements as policies of the State. In a few instances, the statements have been referred to as intent or purpose and are included because they have been used in conjunction with the general welfare, health and safety of the public.

Environmental Quality Council

Critical Areas - M.S. 116G.02 (Policy)

> The legislature therefore determines that the state should identify these areas of critical concern and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.

Environmental Policy Act - 116D.02 (Declaration of State Environmental Policy)

> ...declares that it is the continuing policy of the state government... to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.

Power Plant Siting Act - M.S. 116C.55 (Policy)

> The legislature hereby declares it to be the policy of the state to site large electric power facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.

Department of Natural Resources

Soil and Water Conservation - M.S. 40.03 (Public Policy; Purpose) (This policy relates to the responsibilities of the Soil and Water Conservation Commission, an agency of the DNR. No declaration of state policy relating specifically to agriculture could be found.)

> It is hereby declared that it is for the public welfare, health and safety of the people of Minnesota to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, for land resource planning and development, for the implementation of land resource use practices that effectively reduce siltation and loss of the land base... and for flood prevention or the conservation, development, utilization, and disposal of water... and thereby preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, and protect public lands by land-use practices, as herein provided for.

Conservation Restrictions - Minn. Laws, 1974, Chapter 531

> No declaration of policy could be found in the statutes.

Drainage - M.S. 105.42, 106.011-106.673

> No specific state policy. See state water policy below.

Flood Plain Management - M.S. 104.01 (Policy and Purpose)

> It is the policy of this state to reduce flood damages through flood plain management, stressing non-structural measures such as flood plain zoning and flood proofing and flood warning practices.
>
> It is the policy of this state...not to prohibit, but to guide development of the flood plains of this state consistent with the enumerated legislative findings to provide state coordination and assistance to local government units in flood plain management, to encourage local governmental units to adopt, enforce, and administer sound flood plain management ordinances, and to provide the commissioner of natural resources with authority to carry out a flood plain management program for the state and to coordinate federal, state, and local flood plain management activities in this state.

Mineral Policy and Mineland Reclamation - M.S. 93.44 (Declaration of Policy)

> ...it is hereby declared to be the policy of this state to provide for the reclamation of certain lands hereafter subjected to the mining of metallic minerals where such reclamation is necessary, both in the interest of the general welfare and as an exercise of the police power of the state, to control possible adverse environmental effects of mining, to preserve

the natural resources, and to encourage the planning of future land utilization, while at the same time promoting the orderly development of mining, the encouragement of good mining practices, and the recognition and identification of the beneficial aspects of mining.

Shoreland Management - M.S. 105.485 (Purpose)

... it is in the interest of the public health, safety, and welfare to provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters, preserve the economic and natural environmental values of shorelands, and provide for the wise utilization of water and related land resources of the state.

State Forest Management - M.S. 89.001

No declaration of policy could be found in the statutes.

Water Resources Conservation

A. State Water Policy - M.S. 105.38 (Declaration of Policy)
In order to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety and welfare, it is hereby declared to be the policy of the state:

1. ... all waters of the state which serve a beneficial public purpose are public waters subject to the control of the state.
2. The state... shall control the appropriation and use of surface and underground waters of the state.
3. The state shall control and supervise, so far as practicable, any activity which changes or which will change the course, current, or cross-section of public waters...

B. Precipitated Water - M.S. 111.82 (Statement of Policy)
It is the policy of the state to promote the retention and conservation of all water precipitated from the atmosphere in the areas where it falls, as far as practicable. Except as otherwise expressly provided, all officers, departments, and other agencies of the state or any of its governmental subdivisions having any authority or means for constructing, maintaining, or operating dams or other works or engaging in other projects or operations affecting such water shall use the same, as far as practicable, so as to effectuate the foregoing policy.

Water Surface Zoning - M.S. 361.01 (Policy)

It is the policy of this state, which is blessed with an abundance of water, to promote its full use and enjoyment by all of the people, now and in the future, to promote safety for persons and property in connection with the use of the waters of the state, to promote uniformity of laws relating to such use and to conform with any requirements of the United States relating thereto.

Wild and Scenic Rivers - M.S. 104.32 (Policy)

The legislature finds that certain of Minnesota's rivers and their adjacent lands possess outstanding scenic, recreational, natural, historical, scientific and similar values. Because it is in the interest of present and future generations to retain these values, it is hereby declared to be a policy of Minnesota and an authorized public purpose to preserve and protect these rivers.

Wildlife Management - M.S. 84A.55, M.S. 97.48 and M.S. 99.25

No declaration of policy could be found in the statutes.

Pollution Control Agency

Air, Water and Land - M.S. 116.01 (Policy)

To meet the variety and complexity of problems relating to water, air and land pollution in the areas of the state affected thereby, and to achieve a reasonable degree of purity of water, air and land resources of the state consistent with the maximum enjoyment and use thereof in furtherance of the welfare of the people of the state, it is in the public interest that there be established a pollution control agency.

Noise Abatement - M.S. 116

No declaration of policy could be found in the statutes.

Solid Waste - M.S. 116F.01 (Statement of Policy)

The legislature seeks to encourage both the reduction of the amount and type of material entering the solid waste stream and the reuse and recycling of materials. ... it is also in the public interest to reduce the amount of materials requiring recycling or disposal.

The legislature also seeks to encourage the design and implementation of regional programs for materials conservation which take into account the variations in solid waste generation throughout the state.

Water Quality - M.S. 115.42 (Policy; Long-Range Plan; Purpose)

It is the policy of the state to provide for the prevention, control and abatement of pollution of all waters of the state, so far as feasible and practical, in furtherance of conservation of such waters and protection of the public health and in furtherance of the development of the economic welfare of the state.

Miscellaneous

Airport Zoning and Location - M.S. 360.011 (Purpose)
It is hereby declared that the purpose... is to further the public interest and aeronautical progress by providing for the protection and promotion of safety in aeronautics... and may encourage and develop aeronautics; by establishing uniform regulations, consistent with federal regulations and those of other states...

No declaration of policy could be found in the statutes.

Subdivided Lands - M.S. 83.20-83.42
No declaration of policy could be found in the statutes.

Economic Development - M.S. 263.07-362.73
No declaration of policy could be found in the statutes. The legislature has encouraged economic development by authorizing the sale of industrial revenue bonds, passing the taconite amendment, etc.

Environmental Health - M.S. 156A.01 (Legislative Intent)
It is the legislative intent and purpose... to reduce and minimize the waste of ground water resources within this state by reasonable legislation in licensing of drillers or makers of water wells in Minnesota and to protect the health and general welfare by providing a means for the development and protection of the natural resource of underground water in an orderly, sanitary and reasonable manner.

No declaration of policy could be found in the statutes.

Highway Planning - M.S. 161.01-161.50
No declaration of policy could be found in the statutes.

Statewide Comprehensive Planning - M.S. 4.10 (Purposes)
In order that the state benefit from an integrated program for the development and effective employment of its resources, and in order to promote the health, safety, and general welfare of its citizens, it is in the public interest that a planning agency be created in the executive branch of the state government to engage in a program of comprehensive statewide planning. The agency shall act as a directing, advisory, consulting, and coordinating agency to harmonize activities at all levels of government, to render planning assistance to all governmental units, and to stimulate public interest and participation in the development of the state.

No declaration of policy could be found in the statutes.

The principle purpose for identifying these policies was to determine if they existed, if they provided clear direction to the responsible agencies, if they conflicted and if they were effective. From our research, the staff concluded the following:

1. In those instances where no declaration of state policy could be found, the programs and activities of the state agencies would appear to be operating without any clear direction from the legislature as to how they should promote the state interest. It also appears that the legislature's position on some of the most geographically extensive land use activities has not been stated. These include agriculture, forestry and urbanization.

2. In most cases where state policies do exist, they are stated in extremely broad terms. While they all appear to be worthy statements that were enacted in response to particular problems, they do not always provide much direction to the agencies in designing implementation programs. If the legislature simply authorized an agency to implement a program, it must be assumed that the agency will establish its own course of action. In the past, this course of action has not always received the approval of the legislature or the public. A lack of clear direction also causes confusion over the scope and content of a program. It is not uncommon to hear two opposing sides debating the legislature's intent in passing a certain bill. These debates often result in ineffective administration or costly court cases which are not in the public interest.

3. Because state policies are stated in such broad terms, conflicts in the policy statements themselves could not be discerned. However, the individual programs that are intended to implement these policies may frequently conflict when applied to a specific parcel of land. These conflicts are often regarded as the result of administrative ineptness, while they are actually a result of the lack of legislative direction. Several examples can be used to demonstrate this point. Although no specific declaration of state agricultural policy could be found, the position of the legislature in sustaining and strengthening the family farm is well known. At the same time, the legislature has declared the importance of protecting "public waters," which include wetlands and of providing roads, state parks and other recreational facilities. In many instances, wetland or public water protection, road construction and outdoor recreation conflict with farming operations. While all of these uses are encouraged by the legislature, there are no guidelines as to which use should receive precedence in a given location.

4. The effectiveness of state policy can only be determined through an examination of the corresponding programs. Although many of these programs appear to be operating successfully, it is difficult to measure their progress in achieving a specific end because that end had not been quantified. A policy to conserve and properly allocate the water resources of the state cannot be evaluated or implemented

unless the need for water is determined and the amount and location of surface and ground water is known. In some instances legislative directives have not been carried out within the time period specified by the statutes again hampering the evaluation of program effectiveness.

POLICY ANALYSIS

An example which illustrates these problems is the state water resource management program which shows how policies, programs, and plans can be interrelated to meet public needs. The following analysis and accompanying diagram will focus on various directives mandated by the legislature, examine their relationships, and point out where problems occur when directives are not carried out or when policies lack direction because needs are not quantified.

The water resource management program involves a vast array of activities at the state and local level. These activities should work in unison to meet the needs of the public. Neither the state constitution nor the statutes specifically identify any statement as a water resources goal; therefore, the broadest statutory directive "... to conserve and utilize water resources in the best interests of the people of the state.", is assumed to be the goal. Through another statutory directive, the commissioner of DNR is charged with the responsibility "to develop and manage water resources to assure a supply adequate to meet long range seasonal requirements for domestic, municipal, industrial, agricultural, fish and wildlife, recreational, power, navigation, and quality control purposes..." (M.S. 105.405) These directives indicate that the interests of the people should be met but do not elaborate, in quantifiable terms, what those interests or needs are. (See Tables 10 and 11).

An indication of how to serve the public interest is found in the following policy: "...to promote the retention of water precipitated from the atmosphere where it falls, as far as practical." While the precipitated water policy is to be carried out by state agencies and various political subdivisions with authority over water resources, the extent to which the policy is implemented, that is "as far as practical," is apparently left to the individual discretion of each governmental unit. This can result in governmental units working at cross purposes by attempting to fulfill the needs of a local and statewide public in an uncoordinated and disorganized manner.

The legislature's recognition of the necessity to clearly define the needs of the public are evident through a series of water-related planning requirements mandated by the statutes and executive order (See Table 11 - plans):

(1) In 1947, the Commissioner of the Department of Natural Resources (DNR) was directed to devise and develop a general water resources conservation program (M.S. 105.39, Subd. 1).

(2) In 1973, Executive Order 71 charged the Minnesota Water Resources Council to develop a statewide water and land resources plan.

Table 10

Summary of Water Resources Policy Analysis

Table 10 summarizes the major components of the state's Water Resource Planning Program as previously discussed in the text. This table also provides instructions for reading Table 11. Table 11 is a graphic presentation of the sequence of steps that should be followed under existing law in implementing the Water Resource Planning Program. The reader should start with the box labeled "GOAL" and follow the sequence indicated by the arrows.

Step 1
GOAL -- A "goal or need" statement provides direction in implementing a program by indicating "how much" should be done to serve the public interest. No statement in the Minnesota Constitution or the Minnesota Statutes was specifically identified as a water resource goal. Therefore the broadest statutory statement was chosen as the goal.

Step 2
PLANS -- The development of a water resource plan has been mandated by the legislature since 1947. No plan exists, yet the statutes consider it an essential and guiding element in the issuance of permits relating to water resources.

Step 3
POLICY -- The state policy to control public waters is desirable, but the issue of what is a private or public water must be clarified. Implementation of other policies will be hampered until public waters can be designated by the state and mapped.

Step 4
CRITERIA -- The legislature has directed the DNR to develop decision-making criteria; however, these criteria have not been developed. Decisions are being made using unofficial criteria which have low-visibility to other decision-makers and the public.

Step 5
IMPLEMENTATION -- The water resources program is implemented through the permit process. The issuance of permits is to be based on plans and criteria which have not been prepared.

Step 6
APPEALS -- The Water Resources Board was created to resolve inconsistencies in water policy; however, it is seldom used. Conflicts are decided through judicial proceedings.

Step 7
PROPOSED ACTION -- The left side of the diagram illustrates the course of action taken by a citizen when attempting to obtain a drainage permit.

CONCLUSIONS -- A close analysis of the water resource planning process illustrates that several steps are not being carried out although mandated by the legislature. The failure to implement this process has resulted in the inability to fully comprehend the impact of daily decisions on the state's water resources.

Table 11

WATER RESOURCES POLICY ANALYSIS

PROPOSED ACTION

A private citizen may request to allocate, conserve or develop a water resource in conjunction with a desired use of the land. For example, a citizen may submit a drainage petition to local authorities for appropriate action.

...PROPOSED ACTION

POWERS OF COUNTY BOARDS AND DISTRICT COURTS

Minn. Stat. 106.021 Subd. 1

The county boards of the several counties and the district courts are authorized to make all necessary orders for and cause to be constructed and maintained public drainage systems...in the manner set forth by law.
(1973 c479 s4)

DRAINAGE OF LAKES

Minn. Stat. 106.021 Subd. 2

[' lake shall be drained nor shall a natural watercourse be channelized except upon the determination of the commissioner of natural resources of the State of Minnesota that such lake or natural watercourse is not public waters of the state as determined by section 105.38....

STATEMENT OF GOAL Minn. Stat. 105.38

...to conserve and utilize the water resources of the state in the best interests of the people of the state, and for the purpose of promoting the public health, safety and welfare....

...GOAL

PRECIPITATED WATER POLICY

Minn. Stat. 111.82

...to promote the retention and conservation of all water precipitated from the atmosphere in the areas where it falls, as far as practicable.

...all officers, departments, and other agencies of the state or any of its governmental subdivisions having any authority or means for constructing, maintaining, or operating dams or other works or engaging in other projects or operations affecting such water shall use the same, as far as practicable, so as to effectuate the foregoing policy.

(1961 c754 s1)

PLANNING REQUIREMENTS

WATER AND LAND RESOURCES PLAN

Chapter 558, 1974 Laws, Section 1 (105.403)

The commissioner of natural resources, in cooperation with other state and federal agencies, regional development commissions, the metropolitan council, local governmental units, and citizens, shall prepare a statewide framework and assessment water and related land resources plan for presentation to the legislature by November 15, 1975.... This plan shall relate each of the programs of the department of natural resources for specific aspects of water management to the others.

WATER CONSERVATION PROGRAM

Minn. Stat. 105.39 Subd. 1

The commissioner (DNR) shall devise and develop a general water resources conservation program for the state. The program shall contemplate:

1. conservation,
2. allocation, and
3. development

...of all waters of the state, surface and underground, for the best interests of the people.

The commissioner shall be guided by such program in the issuance of permits for the use and appropriation of the waters of the state and...control structures....

(1947 c142 s3)

COMMENT: THIS PROGRAM HAS NOT BEEN COMPLETED, OFFICIALLY ADOPTED OR PUBLISHED.

WATER AND LAND RESOURCES PLAN

Executive Order 71

The Minnesota Water Resources Council consists of representation from the Departments of Natural Resources, Health, Agriculture, Highways, and Economics, the Pollution Control Agency, the State Planning Agency and the Governor's representative to the Federal-State River Basin Commissions.

Duties and responsibilities of the Water Resources Council:

Prepare a framework water and related land resources plan for the state in harmony with the planning for other state resources and local, regional, national and international water and related land resources plans.

...PLANS

POLICY Minn. Stat. 105.38

...it is hereby declared to be the policy of the state:

(1) ...all waters of the state which serve a beneficial public purpose are public waters subject to the control of the state.

DEFINITION OF PUBLIC WATERS

Minn. Stat. 105.37 Subd. 6

"Beneficial public purpose," in relation to waters of the state, includes but is not limited to any or all of the following purposes:

Water supply...; Recharge of underground water...; Rentention of water...; Entrapment and retention of nutrients...; Recreational activities...; Public navigation...; Wildlife habitat...; Areas designated as scientific and natural areas...

COMMENT: EFFORTS ARE BEING MADE TO ESTABLISH GUIDELINES FOR IDENTIFYING PRIVATE AND PUBLIC WATER WHICH SHOULD IN THE FUTURE HELP CLARIFY THE ISSUE.

POLICY Minn. Stat. 105.38

...it is hereby declared to be the policy of the state:

(2) The state...shall control the appropriation and use of surface and underground waters of the state.

PERMITS

Appropriation and Use of Water

Minn. Stat. 105.41 Subd. 1

It shall be unlawful...to appropriate or use any waters of the state, surface or underground, without the written permit of the commissioner (DNR).... Nothing in this section shall be construed to apply to the use of water for domestic purposes serving at any time less than 25 persons...(or certain other existing rights)....

POLICY Minn. Stat. 105.38

...it is hereby declared to be the policy of the state:

(3) The state shall control and supervise...any activity which changes or which will change the course, current or cross-section of public waters....

PERMITS

Work in Public Waters

Minn. Stat. 105.42 Subd. 1

It shall be unlawful...to construct, reconstruct, remove, abandon, transfer ownership, or make any change in any reservoir, dam or waterway obstruction on any public water...to change or diminish the course, current or cross-section of any public waters (drainage)....

...POLICY

DECISION-MAKING CRITERIA

CRITERIA FOR PROPOSED DRAINAGE SYSTEMS

Minn. Stat. 106.021 Subd. 6

Before January 1, 1975, the commissioner of natural resources shall promulgate, in the manner provided in Chapter 15, a list of criteria that county boards or court must consider when establishing and improving drainage systems. The criteria shall relate to the social, economic, and environmental impact of the proposed drainage system, and shall be limited to... (6 major criteria)....

COMMENT: SEVERAL PUBLIC HEARINGS HAVE BEEN HELD, REGULATIONS ARE STILL PENDING.

RULES FOR ALLOCATION OF WATERS AMONG POTENTIAL USERS

Minn. Stat. 105.41 Subd. 1a

The commissioner shall submit to the legislature by January 1, 1975, for its approval, proposed rules governing the allocation of waters among potential water users. These rules shall be based on the following (five) priorities for appropriation and use of water....

No permit shall be issued under this section unless it is consistent with state, regional, and local water and related land resources management plans, provided that regional and local plans are consistent with state wide plans.

COMMENT: RULES TO ESTABLISH VISIBLE DECISION-MAKING CRITERIA FOR WATER USERS HAVE NOT BEEN DEVELOPED. STATEWIDE WATER RESOURCE PLANS DO NOT EXIST.

STANDARDS AND CRITERIA FOR WORK IN PUBLIC WATERS

Minn. Stat. 105.42 Subd. 1a

The commissioner shall recommend by January 15, 1975, to the legislature a comprehensive law containing standards and criteria governing the issuance and denial of permits under this section. These standards and criteria shall relate to the diversion of water from other uses and changes in the level of public waters to insure that projects will be completed and maintained in a satisfactory manner.

No permit that will involve a change in the level of public waters shall be granted unless the shoreland adjacent to the waters to be changed is governed by a shoreland conservation ordinance approved by the commissioner and the change in water level is consistent with that shoreland conservation ordinance.

COMMENT: THE COMPREHENSIVE LAW CONTAINING STANDARDS AND CRITERIA FOR WORK IN PUBLIC WATERS HAS NOT BEEN DEVELOPED.

...CRITERIA

AUTHORITY TO GRANT PERMITS (DNR)

Minn. Stat. 105.44-105.45

The commissioner (DNR) is authorized to receive applications for permits and to grant the same, with or without conditions or refuse the same.... The commissioner in his discretion may waive hearing on any application and make his order granting or refusing such application.... The applicant, the managers of the watershed district, or the chief executive officer of the city...may within 30 days after mailed notice thereof file with the commissioner a demand for hearing on the application. The commissioner shall make findings of fact upon all issues necessary for determination of the applications heard by him. The commissioner shall make his order pursuant to hearing within 60 days after the completion of the hearing.

...IMPLEMENTATION

WATER RESOURCES BOARD

Minn. Stat. 105.72 and 105.77

Declaration of Policy. Seeming contradictions in (water) laws when applied in a specific proceeding create a need for a forum where the conflicting aspects of public interest involved can be presented and...the controlling policy can be determined and apparent inconsistencies resolved....

The ultimate question to which the board's recommendation is directed in all cases is the proper course of action to be followed by the agency in the proceeding in relation to questions of water policy.

COMMENT: RESOLVING INCONSISTENCIES IN WATER POLICY CAN ONLY BE MADE AFTER RECEIVING A PETITION FOR INTERVENTION. AS A RESULT, FEW CASES HAVE BEEN HEARD BEFORE THE BOARD.

APPEALS Minn. Stat. 105.47

District Courts

Except where otherwise prohibited, any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partly located, at any time within 30 days after notice of the commissioner's order.

Supreme Court

Any person aggrieved may appeal to the supreme court from the judgment of the district court made therein as in a civil action, except that the appeal must be taken within 30 days from date of the entry of such judgment.

...APPEALS

- State involvement
- Local involvement
- Undeveloped
- Pending
- Seldom used

(3) In the 1974 Laws, Chapter 558, the Department of Natural Resources was again directed to develop a statewide water and land resources plan.

The primary purpose of the above three directives is to establish a plan which will guide the issuance of water related permits granted by the DNR. According to M.S. 105.41 (1973) "No permit shall be issued under this section (water appropriation and use permits) unless it is consistent with state, regional, and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans." Unfortunately, no statewide plans have been formulated to fulfill legislative or executive mandates. Completion of a water resources plan is essential to quantify the public needs for water, to coordinate water programs of various agencies of government, and to provide a sound basis for issuing water resource permits. Through 1974, water resource permits were granted on an individual case-by-case basis without knowledge of the cumulative effect of past decisions. It is conceivable that approved projects may work at cross-purposes if viewed from a regional or statewide perspective.

Minnesota Statutes 105.38 outlines three basic water policies which clarify the role of the state in managing water resources (See Table 11 - policies). In effect, the state will control public waters, the appropriation and use of water, and work in public waters. The first policy which deals with the control of public waters may be the most significant in that subsequent policies and land management programs are dependent on the definition of public waters as found in the statutes. Because the current definition allows for broad interpretation, any water body in the state could potentially exhibit one of the necessary characteristics of a public water. As yet the DNR has not inventoried the water resources of Minnesota to determine which of those water bodies qualify as public water under the statutory definition. This is a very large task which will require a significant amount of manpower and funding. After the public waters have been determined and mapped, the effects of this policy can be more easily measured and understood. The legislature may find that the extremely broad definition of public water, which it has provided, encompasses far more water than it had contemplated. The legislature then has an opportunity to tighten its definition to include only those water bodies which serve the desired "beneficial public purpose." Rather than inventory every water body in the state, the legislature may want to consider a pilot project involving one or two counties to determine the appropriateness of the current definition.

The second and third policies controlling appropriation and use and work in public waters are implemented by requiring the applicant to obtain written permit from the commissioner (DNR) before carrying out such activities. As alluded to earlier, the issuance of permits are to be guided by a water resources plan which, if it had been completed, could have indicated specific achievements desired by the public. Presently, permits are granted if it can be ascertained that no harmful environmental effects will result from the proposed action. Recent

Table 12

Summary of State Water Resource Permits

PERMITS	AUTHORITY	STATUTORY POLICY*	DEVELOPMENT OF STANDARDS AND CRITERIA	NON-OFFICIAL OPERATING PROCEDURE	PERMIT REVIEW PROCEDURE	NUMBER OF PERMITS
1. DESIGNATION OF PUBLIC WATERS (Not a permit but does determine which actions are subject to the permit process.)	M.S. 105.37, Subd. 6, M.S. 105.38, Ref. 1	Policy defines several characteristics of public waters; however, the legal definition has caused some difficulties in that most wetland areas contain one or more of the characteristics. Currently almost all of the waters of the state could be construed as "public" waters.	The DNR is trying to establish guidelines to identify private and public waters; however, it is not a statutory requirement to do so.	Case-by-case determination of public waters, being aware of regional differences in natural resource base. Efforts are being made to establish guidelines for identifying private and public waters; however, a uniform statewide standard would not be desirable.	Not applicable.	Not applicable.
2. APPROPRIATION AND USE OF WATER	M.S. 105.41, Chapter 558, Subd. 1a, 1b, 1974 Laws	General policy developed; priorities among water users have been set without regional differentiation. Permits are to be issued on the basis of being consistent with a statewide plan that is not yet developed.	Rules are required to be submitted to the legislature by January 1, 1975. No rules have been developed.	General criteria developed for case-by-case decisions.	One or two individuals review water permits; they are approved by a regulation manager. Occasionally the permits receive further review. Field investigations are conducted. Public hearing by demand. Decentralization of permit process to DNR regional offices is in initial stage with approval at central office.	Approximately 600 approved annually; 2 or 3 are denied. Most involve submission of additional data and subsequent revisions in the quantity of the appropriation.
a. Drain and Divert Water to Facilitate Mining	M.S. 105.64	General policy relating to protection of public interests and welfare.	No rules have been developed. They are required as in 2 above.	No specific policies relating to quantity of water appropriated.	(See 2 above.)	(Included in 2 above.)
b. Irrigation of Agricultural Lands	M.S. 105.44, Subd. 8 and 9	Statutes require only a general statement in the application for permit when in reality more information is needed to make a decision. The review and recommendation provisions of soil and water conservation districts are rarely used.	No rules have been developed. They are required as in 2 above.	Some specific policies relating to quantity of water appropriation.	(See 2 above.)	(Included in 2 above.)
3. WORK IN PUBLIC WATERS	M.S. 105.42, Subd. 1 Chapter 558, Subd. 1a, 1974 Laws	After November 15, 1975, permits will be issued when projects conform to state, regional, and local water and related land resource management plans. Regional and state water resource plans are not developed.	The DNR shall recommend a comprehensive law containing standards and criteria to the legislature by January 15, 1975. Standards or criteria are not developed.	Case-by-case decisions. Difficult to state criteria that apply in all cases.	Six individuals review permit applications. Field investigations are conducted and then approved by regulation manager. Controversial applications further reviewed. Public hearings by demand. Decentralization of permit process is in initial stages with approval at central office.	Approximately 1,200-1,400 approved annually; 20 to 30 are denied. Many involve alterations in plans before receiving approval.
a. Building of Dams (Located in Compendium under "Work in Public Waters")	M.S. 105.42, 1974 Laws	Policy is to consider all flood control alternatives and review permit for consistency with the appropriate flood plain management ordinance. Certain county boards are also involved in the recommendation and maintenance of lake levels.	Standards or criteria are not developed. They are required as in 3 above.	General guidelines developed for reviewing control structures; difficult to state criteria that apply in all cases.	(See 3 above.)	(Included in 3 above.)
b. Drainage (involving public waters)	M.S. 106.021, M.S. 105.41, Amended -- Chapter 558, 1974 Laws	No lake shall be drained until it is determined by the commissioner (DNR) not to be public water.	The DNR is in the process of promulgating rules and regulations that list criteria that county boards or district courts must consider when establishing and improving drainage systems. They are required before January 1, 1975, but are still pending.	The DNR has been making the determinations on a case-by-case basis.	(See 3 above.)	(Included in 3 above.)
c. Establishment of Lake Levels	M.S. 105.43, M.S. 110.121, Chapter 558, Subd. 1a, 1974 Laws	It is policy to establish lake levels near the natural ordinary high water mark. The lake level must also be consistent with the appropriate county shoreland ordinance. Certain county boards are also involved in the recommendation and maintenance of lake levels.	Standards or criteria are not developed. They are required as in 3 above.	Developed methodology to establish lake levels. Difficult to state criteria that apply in all cases. Preference is to keep lake levels high.	(See 3 above.)	(Included in 3 above.)

*According to M.S. 105.39, Subd. 1, adopted in 1974, the Commissioner of the Department of Natural Resources shall develop a general water resources conservation program to guide the issuance of permits. This program or plan has never been completely developed, published or officially adopted.

legislation has directed the DNR to formulate decision-making standards, rules and criteria for both water appropriation and use permits and work in public waters permits to be submitted to the legislature by January 15, 1975, for its consideration. These standards, rules and criteria have not been developed. Additionally, the commissioner of the DNR was to submit to the legislature by January 1, 1975, for its approval, proposed rules governing the allocation of waters among potential water users. These rules were to be based on the following priorities established by the legislature:

> First priority. Domestic water supply, excluding industrial and commercial uses of municipal water supply. Agricultural irrigation, involving consumption in excess of 10,000 gallons per day.
>
> Second priority. Any use of water that involves consumption of less than 10,000 gallons of water per day.
>
> Third priority. Power production, involving consumption in excess of 10,000 gallons per day.
>
> Fourth priority. Industrial and commercial uses, involving consumption in excess of 10,000 gallons per day.
>
> Fifth priority. Other uses, involving consumption in excess of 10,000 gallons per day.

However, the rules governing the allocation of waters have not been developed. In the absence of a water resources plan and promulgated rules and regulations, decisions are made by unofficial (not promulgated) criteria on a case-by-case basis. Table 12 contains a summary of state water resource permits.

The left side of Table 11 illustrates how an individual's request to drain a water body on his property relates to the decision-making process in water resources. A drainage petition may be submitted to the county board for consideration. Before the county can decide, it must receive a determination from DNR as to whether the water is public water. If the water is declared to be public, a permit must be obtained from the DNR. After a permit is granted allowing a public water to be drained, the county board may establish a drainage system, including county ditches and other necessary construction, following criteria developed by the DNR. The criteria which would apply to both public and private waters and were to be promulgated by January 1, 1975, would have considered the social, economic, and environmental impact of drainage systems. Several public hearings have been held on the drainage regulations and they are still pending final approval.

The water resource permit process provides for public hearings in the event of conflict or misunderstanding between the applicant and the decision-making authority. All interested parties may be heard and the commissioner (DNR) shall make the findings of fact and decision within 60 days after the completion of the hearing. Although the final decision will be made with a greater understanding of the problem, the decision-making criteria may still have low visibility. If the applicant receives an unfavorable decision, further appeals may be made to the district and supreme courts.

One other appeal alternative exists if the permit involves a question of water policy. The issue may be considered by the Water Resources Board, which was created to resolve inconsistencies in water policy. Since the inception of this appeals procedure in 1957, few cases have been heard before the Board. The Board is limited in that a petition for intervention must be submitted before a case may be heard and many questions of water policy are never reviewed. Therefore the resolution of conflicts involving water policy evolve from the judicial process, thereby adding to the numerous case law decisions.

In conclusion there is a substantial breakdown of a process which was designed to make decisions accountable to the public as well as satisfy their needs. However, this problem is not only attributable to water resources management but also to other state programs affecting the use of land and related resources. (See Program Review Summary, Comments Section.)

RECOMMENDATIONS

The staff recommends that a procedure be developed for establishing needs and for resolving potential conflicts before programs are implemented and applied to the land. Part of the procedure involves a better understanding of the physical resources of the state in terms of their extent, quality and capability to sustain certain uses. This is being addressed by the State Planning Agency through its land use planning program and will be the subject of another report. The point is made here to emphasize the importance of information in making land use decisions.

The other part of the procedure involves a determination of "goals" or, as we prefer to call them, "needs" which quantify the policy in terms of the amount or level of something that is desirable and attainable in promoting the general welfare, health and safety of the public. For example, if the legislature were to declare as a matter of state policy that agricultural lands should be protected, someone must determine the amount of agricultural production that is desirable and possible in Minnesota. The decision must be based on reasonable projections relating to the public's need for agricultural products within the state, national and international markets. Once

this quantified need is established, data sources can be utilized to determine the extent and location of farm land which is required to satisfy the need. Similarly policies relating to outdoor recreation, wildlife management or highways should be followed by a statement of need which establish the recreational requirements, wildlife levels and highways that the public needs. These needs can then be translated into acres of land and geographic locations to enable the state and its political subdivisions to properly allocate the state's 54,000,000 acres among all of the competing land uses. Needs may change with time and must be periodically evaluated and updated if necessary.

The determination of needs can either precede a declaration of policy or be based on the policy. Needs can be determined by the legislature through the hearings process or can be assigned to an appropriate state agency. Any agency having this assignment should work very closely with other public agencies and should be required to hold numerous hearings throughout the state since public needs must reflect the desires of the citizens. Determination of need by state agencies should be submitted to the legislature for review and approval prior to their being effective.

Either procedure permits a discussion of regional differences whereby a particular need may not be uniform throughout the state. In the past, policies and programs have often been applied statewide without consideration of regional characteristics. This may cause hardship, unnecessary expense and unfavorable results. This procedure also provides the legislature with balanced professional and citizen opinion as to the program's extent and focus before it commences. Citizens are afforded an opportunity to become involved at a truly "grass roots" level and do not have to rely on citizens advisory committees to represent their interests. It provides the legislature with a yardstick to measure the impact of a policy on the land and to measure the progress being made in implementing it.

State agencies are provided a clear direction to follow in administering the program with a definite target to shoot for. The biennial program budgets become more meaningful because the proposed incremental work objectives and appropriations requests are framed within a long-range perspective.

Through this procedure, the policy has provided direction as to <u>how</u> the state intends to promote the general welfare, health, and safety of the public. The needs statement quantifies the policy by indicating <u>what</u> will be achieved.

The next step in the procedure involves the development of functional program plans by the agencies. The plans are a refinement of policy and will establish <u>how</u> the program will be conducted, <u>how</u> the needs will be met, and will contain guidelines for implementation measures which may include acquisitions, permits or standards. Where appropriate, the plan should include the amount of land that is required to satisfy the need and identify those land areas that are to be affected by the program. By comparing plans, conflicts over specific land areas can be identified and resolved.

This procedure is similar to the planning process for municipalities and counties which has been established through legislation. A community first prepares a comprehensive plan based on community needs. While the plan may be prepared by the planning commission - an administrative agency - it is not effective until approved by the city council - the elected body. The legislature may want to consider approving state agency plans. Secondly, the community prepares implementation measures which are the legal tools such as zoning or subdivision controls for actually implementing the plan. After state agencies prepare their plans, they should develop procedures for implementing those plans. A review of these procedures by the legislature would promote better understanding of the method of implementation and the required levels of staffing and financing. In the past, acquisition, setting of standards or regulation of land use through permits and licenses has often been the sole concern.

Several problems seem to recur which lead to duplicative legislation, uncoordinated approaches, and a substantial breakdown in the implementation process. In addition to the aforementioned procedure the staff suggests that the following points be considered when developing new legislation.

a. Clearly define the task. Legislation should be specific as to what accomplishments are to be made and what their format should be. If a program is to include needs statements, plans and implementation measures, these should be identified.

b. Determine the requirements of the task. An awareness should be developed of the data needed to carry out directives. Data banks, inventories, geological studies, mapping, etc. may be assumed to be in existence or adequate for the purpose when in reality there is an absence of the data to implement the policies as originally intended.

c. Ensure the means to implement policy. Determine the financial and staff assistance necessary for the development of plans, rules and regulations or other methods of implementation. In addition, specific but realistic dates should be indicated for completion of the plans and implementation measures.

d. Determine the appropriate authority for control and the related financial aspects of enforcement. With the increasing reliance on local government to enforce legislation, the limits of effective implementation are rapidly being approached. Authorities responsible for enforcement should be reviewed for the ability of existing staffs to carry out policies in the manner desired in light of their present duties. If financial assistance is deemed necessary, specific accomplishments should be tied to the expenditures. A proliferation of special purpose districts complicates these coordinating efforts.

e. Coordinate related legislation. Briefly state how the proposed legislation relates to existing legislation of a similar nature, including differences or improvements in scope, content, purpose, operation, regulation, and enforcement.

This procedure represents a fine line between executive and legislative roles in government. As the policy making body, it is felt that the legislature also has the right and responsibility to ensure that policies are implemented in a fair and effective manner consonant with legislative intent. Annual sessions provide an opportunity for more frequent and almost continuous legislative oversight that has not been possible before.

In the past, the legislature has directed agencies to develop plans, rules and regulations, or other measures to implement state policies. As evident in this chapter those directives have not always been carried out for a variety of reasons which might include lack of staff and finances, or apathy. While it is felt that the state agencies contain the professional expertise that is necessary to design and implement programs, it is also felt that state policy will be implemented more effectively and efficiently if the legislature is more involved in the process.

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