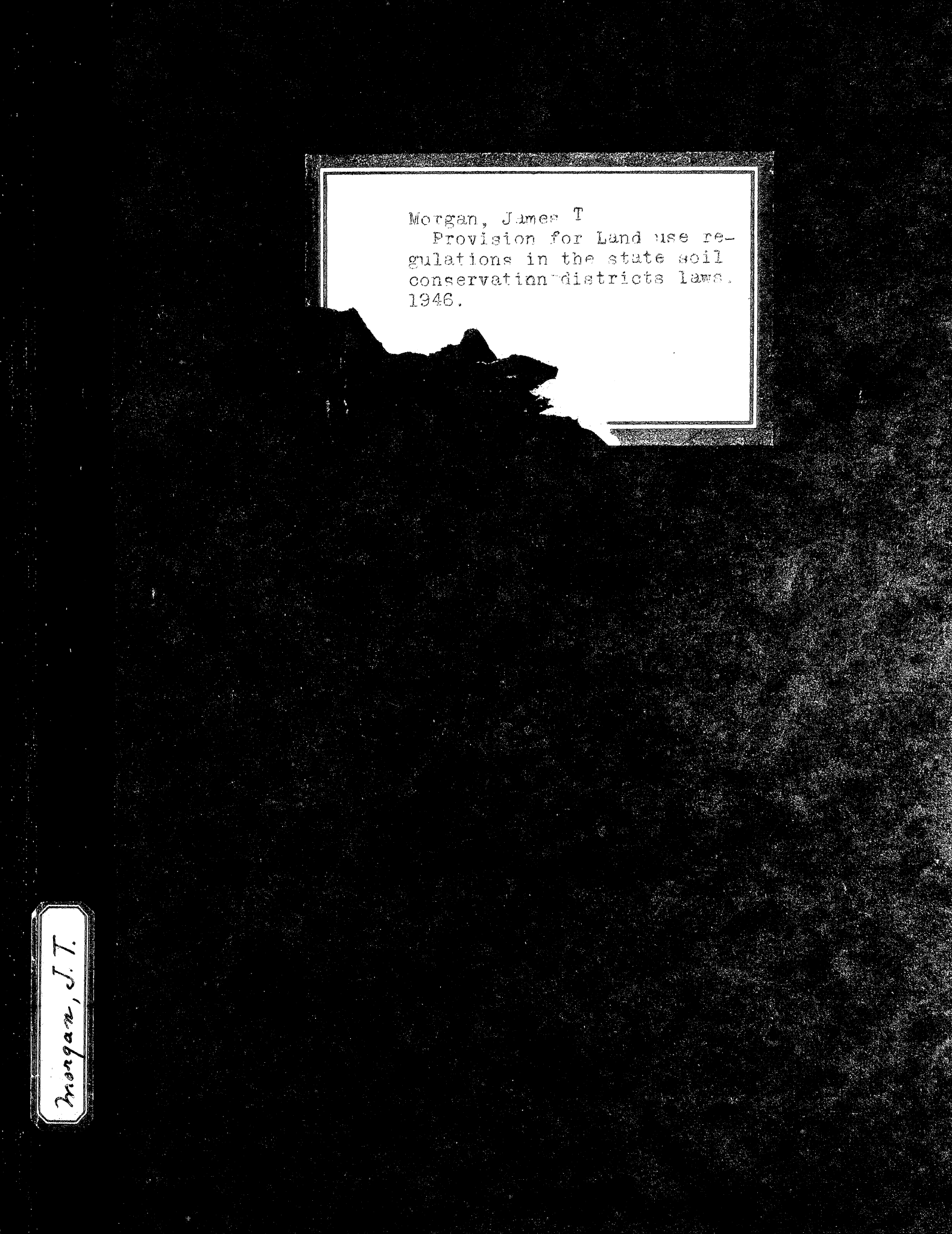
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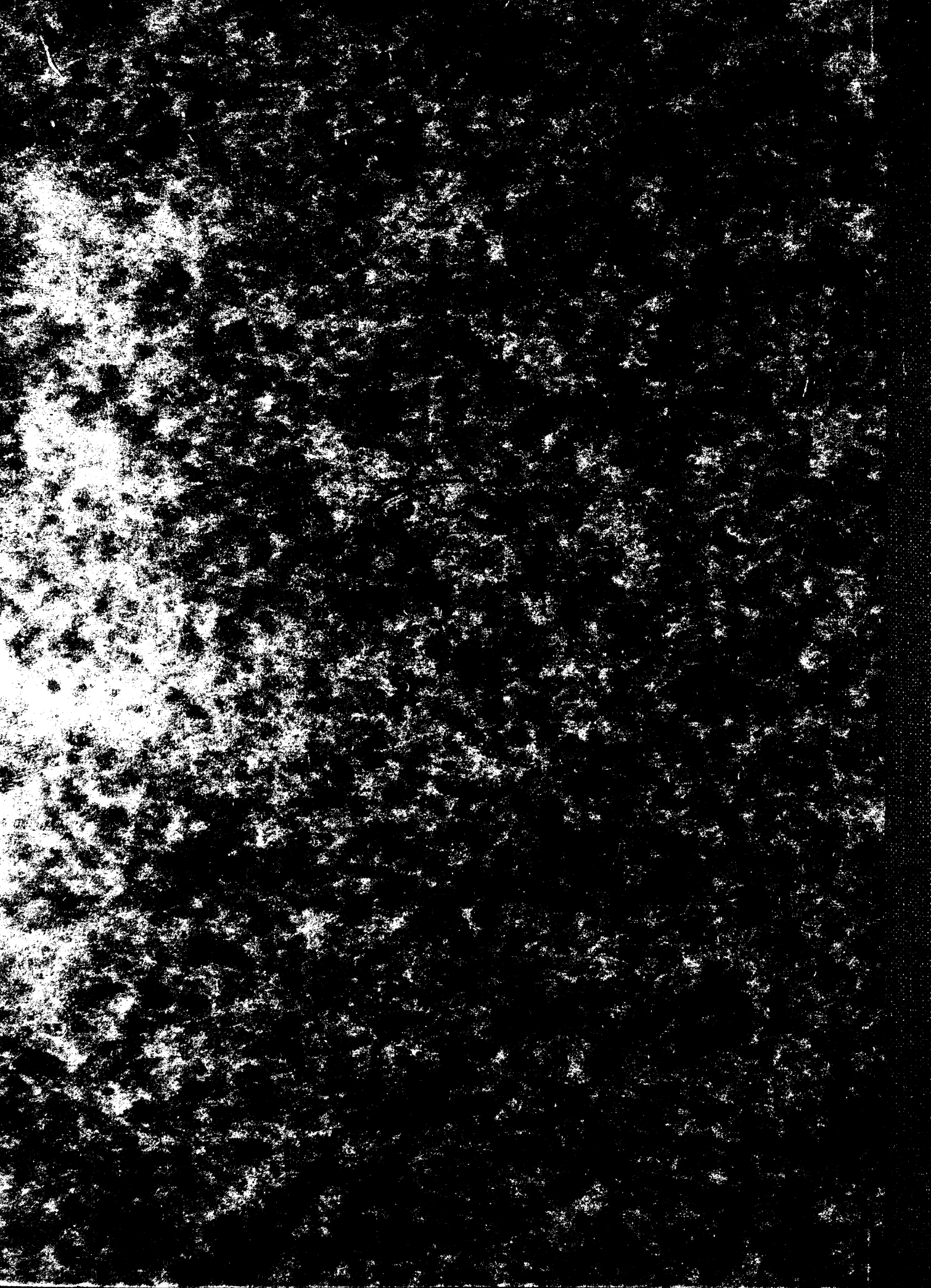

PROVISION FOR LAND USE REGULATIONS IN THE STATE SOIL CONSERVATION DISTRICTS LAWS

by

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INTRODUCTION

This is a study of the State laws which authorize soil conservation districts to employ local ordinances regulating the use of land. A brief review is made of the history of the soil conservation districts movement; there is a short discussion of European land use regulatory measures; the development of the laws in the several States is then examined, and finally some comments are made concerning the future of such regulations in the individual States, in regional groups, and in the United States as a whole.

It was not possible to delve into the actual adoption and application of the regulations. Those subjects are too large for a paper of this size, and it was thought that a sampling would not be feasible. With the exception of a few illustrations of the use of ordinances, the study is confined to the State laws.

No list of citations is given, because such a list would probably be out of date within a few months. The earlier acts can be found in the particular State Sessions Laws, and the current acts are in the Codes and their supplements. The acts are usually listed in the indexes under "Soil Conservation Districts Law."

The writer wishes to acknowledge his gratitude to Professors Shirley W. Allen, Warren W. Chase, and Willett F. Ransdell for their help and encouragement. Special acknowledgement is made to Melville H. Cohee for much of the material contained in Part II, and for a detailed criticism of that chapter.

Part I

THE SOIL CONSERVATION DISTRICTS IDEA

The Course of Conservation in The United States

In order to get a clear perspective of what the Soil Conservation Districts movement has been, one should first take a look at the United States' record in the field of conservation prior to the Franklin Roosevelt era. The record shows that, from the earliest Colonial times, there has been a strong current of thought and conviction that the natural resources of our portion of this continent should be used in a wise, orderly, and conservative manner. During our long period of expansion and pioneering, when laissez faire was the rule, the hand of government was weak, and the greatest of individual freedom was accepted and expected, voices were raised in defense of our heritage. Sometimes weak and usually ineffective, they nevertheless continued and multiplied until, with the narrowing of our physical horizon, the increase in our population, and our general "growing up" as a nation, they became strong enough to compel the passage of legislation. There were the conservationists of the Colonial and pre-Civil War days, mostly gentleman farmers and dilettants, then the period of "rebellion against restriction" and the consequent sacrificial disposal of the public domain, and finally the beginnings of a true conservation movement which brought about our present National Forest laws, the Migratory Bird Treaty, the Mineral Leasing Law and others. The handling of the public domain serves as a barometer for measuring the attitude of the public toward the use of the

natural resources, from the restrictions of the Colonial Governors through the era of settlement and exploitation to the management and multiple-use principles of today.

Conservation of the Soil Neglected

Throughout the pre-legislative period of debate and dissertation, scant attention was paid to the sine qua non of all natural resources, the soil itself. Some mention can be found in the writings of farmers in the later Colonial period of the increasing occurrence of gullies and of soil depletion, but the insidious attack of sheet erosion as a consequence of clean cultivation was hardly noticed. Many factors contributed to this lack of interest; among them were the abundance of new land, the underpopulation of the country, our preoccupation with industrial development, and the extreme individualism of the rural people.

Early Prophets of Disaster

By the beginning of the twentieth century a few scientists had seen the path of land bankruptcy down which the increase of world-wide, man-made soil erosion was taking us. Dr. Hugh Hammond Bennett, later Chief of the U.S. Soil Conservation Service, made early investigations and accurate predictions; some other workers recognized the danger and added their cries to the growing stream of protest against the ignorant or cynical mining of the soil. It was realized that here was a new and urgent national problem, demanding remedial action on a national scale; but no such action was to be taken until, in 1933, with the flood of social and economic reorganization that came with the New Deal, the control of accelerated soil erosion was firmly taken in hand.

Soil Conservation A Process of Social Evolution

The English scientist G.V. Jacks, Director of the Imperial Bureau of Soil Science, has said that soil conservation is a process of social evolution in which certain phases are discernible. Phase one he describes as that time when it is first realized that water on a slope will run down hill and that something has to be put in the way to stop it. This period is characterized by terracing, contour cultivation, damming and other well-recognized practices, most of which can be traced back to the people of antiquity. Phase two is that time when it is realized that if soil is fertile, water will be absorbed into it instead of running down hill. Here an additional effort is made to build up soil fertility, to achieve better tilth and soil texture. The third phase is attained when land occupiers begin to work together to adjust themselves to the problems of land as complete communities. The United States is the only country which has tackled the problem on a national scale. Acording to Jacks, science has contributed no original basic ideas. The practices were evolved by simple farmers who found out how to do what was necessary; science then came along and explained why these practices worked.[1/] No matter how we regard the role of science in soil conservation, we must agree that the evolutionary formula fits the facts.

The Soil Erosion Service

In October 1933, the Soil Erosion Service was created in the Department of the Interior to carry out those provisions of the National Industrial Recovery Act which were concerned with

the prevention of soil erosion. Dr. H. H. Bennett, longtime soil scientist and spokesman for concerted national action in the field, was made head of the new organization. As the first of a continuing series of moves that were to prove this new Service something in government agencies, the huge program of demonstration projects was begun. These projects took in hundreds of separate areas, covered the country, carried the work at the time when it was most needed and could best be acted upon to the hard-pressed farmers, and served not only as demonstrations but as laboratories. Not all of the techniques had been perfected. The program was only partly visualized, but the need was immediate. The thinking of the people was such that, for the moment, they were willing to try new ideas. Experimenting, rejecting, propagandizing, sometimes failing but never stagnating, the demonstration projects, with the invaluable aid of the Civilian Conservation Corps camps, went ahead to lay the ground work for the permanent program which was then taking shape in the minds of the leaders.

The Committee on Soil Erosion

No one can say with certainty just who had the original idea for the creation of Soil Conservation Districts. It was an idea that had been forming in the minds of conservationists over a period of years as the magnitude and importance of the damage became more apparent. In 1916, in an article entitled "Farms, Forests and Erosion," S. T. Dana wrote as follows: "There should be brought home to the people as a whole the extent and seriousness of erosion and the necessity for its control by the community."[2/] Others were thinking along the

same lines, trying to arrive at a mechanism capable of doing the job on a nation-wide scale but still within the framework of our laws and traditions. The Committee on Soil Erosion enunciated the idea and, while not providing an extremely detailed plan, put down in order the basic necessities and gave them a start through the proper channels so that some official action would result.

The committee was appointed by the Secretary of the Interior for the purpose of making studies and recommendations with reference to the policies and objectives of the Soil Erosion Service. Its report[3/] deals largely with immediate problems--the word "districts" does not even appear in its summary of conclusions --but in its final pages the report assembles the elements of a national plan for erosion prevention, explains why such steps need to be taken, and outlines the procedure necessary to put them into effect. Its prescription for future action is stated in well chosen words:

> It is the opinion of the Committee that the work of the Soil Erosion Service would be more valuable if the land owners in the demonstration areas had a more active part in the establishment of the project, in working out the general plan for erosion control, and in the continuation and expansion of the erosion control program beyond the demonstration stage....
>
> The Committee recommends that as a condition precedent to the establishment of any new demonstration area, the Soil Erosion Service require that the land owners organize and set up the machinery for active cooperation in the demonstration project and in the continuation of the whole program, including vegetative control, until erosion control is firmly established. On the existing projects, where possible, the farmers should be similarly organized.

The committee considered the permanence of the erosion control program, both as to its present demonstrational phase

and to its possible development into an organization to be a permanent part of governmental activities. A major recommendation contained in the report, and one of a type rare in government or other bureaucratic circles, was that the Soil Erosion Service be transferred to the Department of Agriculture, if that Department would agree to consolidate in one service all the erosion control agencies then engaged in work on private lands. The report then states the measure of cooperation necessary:

> A well ordered program for erosion control throughout the nation will require full coordination of all Federal and State agencies. The Federal efforts should be centralized in one organization in the Department of Agriculture as recommended elsewhere in this report. The State work would probably be organized through the Agricultural Colleges and Experiment Stations.
>
> The Federal organization, with its nation-wide interests and experiences, could plan the broad aspects of the erosion control measures, while the States, with their less extensive but more intimate knowledge of soil erosion within their boundaries, could formulate the details of the program. Together the Federal and State Governments could carry out the plans....
>
> To consummate this program and allocate the costs will require legislation on the part of Congress and the State legislatures. A permanent Soil Erosion Service should be authorized by Congress to cooperate financially and physically with the States and through them with local soil and water conservancy districts chartered under State statutes.

Accomplishments of the Committee

It is evident that the committee clearly recognized the objective in its broadest sense. Having once seen the magnitude of the job to be done, it then formulated a policy calculated to achieve that objective. The policy was stated in

general terms; exact specifications were left to Departmental and Congressional experts. The recommended policy provided for, not a cautious, experimental beginning, but a dynamic "plan," to be adopted nearly simultaneously by all the States. It tried for the ultimate goal, not for temporary expedients, considering all approaches and choosing the best. How closely the major recommendations of the committee were followed will be described below.

Transfer to the Department of Agriculture

Early in 1935, by a series of administrative and legislative actions, the Soil Erosion Service was transferred from the Department of the Interior to the Department of Agriculture. This was a part of a Presidential Plan for Reorganizing the Administrative Departments. As a further step, the Secretary of Agriculture directed the unification of all Department activities pertaining to soil erosion under the Soil Erosion Service. Legislative pronouncements were now necessary in order that the planners should have a clear directive on what road to follow. The pronouncements were not long in coming.

Public Act #46

There can be little doubt that there existed a close liaison between the legislative and executive branches of the Government in shaping the erosion control program of 1935. On April 27 of that same year in which the Soil Erosion Service had been streamlined and made ready for greater action, the President approved Public Act #46 of the 74th Congress, the

law which was to become the cornerstone of the Soil Conservation Districts movement. This act declared it to be the policy of Congress "...to provide permanently for the prevention and control of soil erosion." It gave the Secretary of Agriculture broad powers to conduct research, disseminate information, conduct demonstration projects and to carry out preventive measures in a coordinated national program for the prevention and control of soil erosion. It directed the Secretary to establish an agency to be known as the Soil Conservation Service to administer the provisions of the Act. And it contained in Section 3 two paragraphs that were the germ of the policy:

"Sec. 3. As a condition to the extending of any benefits under this Act to any lands not owned or controlled by the United States or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of this Act, require---

(1) The enactment and reasonable safeguards for the enforcement of State and local laws imposing suitable permanent restrictions on the use of such lands and otherwise providing for the prevention of soil erosion...."

The wording of this section of the act coincided with the strategy of the planners. It did not attempt to dictate to the States. It did not impose restrictions on them or even provide that they must share the cost, as has been the case in legislation authorizing Federal and State cooperation in building schools and highways and establishing game refuges and the like. The Department depended for the acceptance of its future programs on the presence of a great need for erosion control and also

on its own successful salesmanship of the proven methods of control. It said, in effect, "The Federal Government has the knowledge, the authority, and the organization to initiate this job, but it is up to the States, through their use of the police power, to make sure that the work will not be done in vain, that the progress achieved will be retained, and that permanent provisions for wise land use will be enacted and enforced." For greater flexibility, the final decision on the sufficiency as to type and scope of the legislation required of each State was left to the discretion of the Secretary. This point has been important in speeding the work of district formation, since it was later found that many of the States refused to pass laws permitting the adoption by the districts of land use regulations, and had the Federal law been more restrictive regarding these regulations, it is probable that not nearly so many districts would be in existence now.

Report of the Interbureau Committee

The Soil Erosion Service was redesignated the Soil Conservation Service by the Secretary and was made responsible for carrying out the provisions of the above described act. The Secretary then set up an inter-bureau committee of the Department of Agriculture to study the relation between the Soil Conservation Service, other bureaus of the Department, and State agencies. It is characteristic of the men in charge of the Soil Conservation Service that, even when things were moving swiftly, planning was several months ahead of execution. As we further trace the development of the district idea we

shall see how each new policy was a step in the logical sequence of events, part of the master plan. The report of the inter-bureau committee on soil conservation, submitted June 5, 1935, became the charter for subsequent procedure.

In shaping the future course of Service activities, the report emphasized two points, (1) coordination with other bureaus and State agencies and (2) the formation, within a relatively short time, of legally constituted soil conservation associations through which the Service might act in carrying its program into direct application to the land. To speed the progress of organization and to serve as a medium between the Government and the farmer until the time when legal bodies could be set up, the formation of voluntary associations was to be encouraged. The report emphasized the desirability of dealing with groups rather than individuals and strongly recommended that the Service actively foster voluntary associations of farmers not only because the Service needed groups of land owners with which to deal but because it needed to revamp its structure and methods to conform to the new operations involving group participation. The two worked together, the Service completing its reorganization and the associations serving as the advance guard of the groups which were to do the actual work on the land. Thus the transition from an emergency agency in the Department of the Interior to a permanent bureau of the Department of Agriculture was taken in stride.

Voluntary Associations

The voluntary associations soon got under way, the first three being formed in North Carolina. By January of 1936 the Washington office of the Service had articles of association from 220 groups in 18 States and many more were forming throughout the country. In some localities, such as the Palouse country of eastern Washington, the idea had taken hold before the Secretary's committee submitted its report. In some cases these early joiners helped to secure the passage of State Districts laws and in most cases continued to function even after the formation of legal districts because their organization experience was needed by the supervisors in preparing work plans and choosing work areas. They also acted as straw bosses and leg men to get things done. They played a vital role in disseminating and amplifying the stream of excellent propaganda now originating with the Service.

Preparation of the Standard Act

Soon after the passage of Public Act #46 the Department of Agriculture began to receive inquiries from the agricultural agencies of various States asking what form of legislation would be acceptable as a condition for cooperation under the act. The Secretary then asked the Land Policy Committee of the Department to work out, in cooperation with the Soil Conservation Service, a standard form of soil conservation districts law which should be appropriate for adoption by the State legislatures. That law, now known as the Standard State Soil Conservation Districts Law, or more briefly, the Standard Act,

was submitted to the Secretary in February 1936, by the solicitor of the Department, whose office had assisted in its framing. In his summary which, together with an opinion on its constitutionality, accompanied the law, the solicitor said that three basic considerations have largely determined the provisions of the Standard Act. These three points, in condensed form, are: (1) that soil erosion is intimately tied up with land use practice and that because of this, adequate control must necessarily involve changes in cropping and tillage and the retirement of some lands from cultivation; (2) that erosion on one property causes damage on neighboring property, making control an area or watershed problem; (3) that the program must be voluntary to be effective, and therefore machinery must be created which can be used by the farmers after they have been educated to the desirability of taking action. The solicitor also stated that the essence of the statute was this: "It provides a procedure by which soil conservation districts may be organized, such districts to be governmental subdivisions of the State and to exercise, in the main, two types of powers: (1) the power to establish and administer erosion control demonstration projects and preventive measures; (2) the power to prescribe land use regulations in the interest of the prevention and control of erosion, such regulations to have the force of law within the district."

Necessity of Passing Enabling Legislation

In order for a district to be formed, the State in which the district is to be located must pass an enabling act authorizing the formation of such districts and prescribing the

methods to be followed. Since districts are legal subdivisions of the State, they operate at the pleasure of the State; they may do only those things that are permitted by the enabling act and exercise only those powers that are specifically delegated to them. The scope of these delegated powers determines in large measure the success or failure of the district properly to control erosion within its boundaries.

Provisions of the Standard Act

This study is primarily concerned with land use regulations; therefore, it is not necessary to make a detailed investigation into the organizational aspects of the model law. It has been ably examined several times, most authoritatively by the solicitor of the Department of Agriculture in his Memorandum for the Secretary which documents its constitutionality and legal precedent.[4/] It is well, however, to review the powers of districts and the provisions for the adoption of land use regulations for later comparison with the laws actually enacted by the several States.

Organization:

The first seven sections of the act deal with the short title, the declaration of policy, the definitions, the State Soil Conservation Committee, the creation of districts, the election or appointment, qualifications and tenure of supervisors; and declare that districts shall be legal subdivisions of the State as well as bodies corporate and politic. The State Soil Conservation Committee is designed to administer the procedures involved in the creation of districts and

thereafter to serve as an advisory and coordinative agency for all districts in the State. Any 25 land occupiers (owners, lessors, tenants, etc.) may petition the State committee to establish a district. The State committee reviews the petition and decides whether the proposed district is feasible. If an affirmative decision is reached, a referendum is held on the question of forming the district, such referendum to be by secret ballot of all the land occupiers within the proposed district boundaries. To insure that the act will be held valid by the courts of all States, an affirmative vote in this referendum does not make the formation of the district obligatory on the State committee; but the committee may not establish a district unless a majority of the votes are in favor of it. The committee makes its decision as an administrative determination, being guided by a specific standard set up in the enabling act. The supervisors are to be the governing body of the district.

Powers:

Section eight of the Standard Act specifies what may be done under the first of the two types of powers that districts may exercise. To quote from the condensation in the solicitor's opinion, "This section empowers the districts, through their supervisors, to conduct necessary research (but seeks to avoid duplication of research activities by requiring research projects to be initiated only in cooperation with State or Federal agencies), to conduct demonstration projects, to carry out preventive and control measures, to acquire necessary properties

and make necessary contracts, to make available to land occupiers machinery and equipment needed for control operations, to develop land-use plans and bring them to the attention of land occupiers, and to take over Federal and State erosion-control projects and administer them."[5] The districts are thus authorized not only to take over and administer the entire land treatment program which had heretofore been the province of the Federal Soil Conservation Service but to go ahead on their own in developing and carrying out new programs especially adapted to their local problems. Most important, of course, is the item of local responsibility and initiative, the policy of reducing the role of the Federal Government to one of coordination, technical advice, and practical assistance; while the primary responsibility for prevention and control is to be assumed by the districts.

Adoption of Land Use Regulations:

Section nine contains the most controversial provisions embodied in the Standard Act; the provisions that have furnished most of the thunder used by the opposition, and that have been the greatest stumbling block with which the district organizers have had to deal in promoting popular acceptance. The first sentence reads: "The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion." It is the idea first brought forward in the report of the Shepard Committee[6] and later firmly stated in Public Act #46. It recognizes the fact that erosion is a

watershed problem, that one farmer cannot maintain a conservation program on his land if that land is being damaged because of the lack of adequate controls on neighboring land; and it set up the machinery through which farmers can attack their problems in the most efficient way, on the area or neighborhood basis.

Safeguards: In making provisions for the adoption of land use regulations, the same safeguards are employed as surround the creation of a district. The supervisors may hold public meetings and public hearings to assist them in drawing up the tentative rules. The law provides for full publicity prior to the referendum, and the form of the referendum is clearly stated. All occupiers of land in the district shall be eligible to vote, and only such land occupiers shall be eligible. The supervisors may not enact a proposed ordinance into law unless a majority of the votes cast are in favor of such ordinance but a majority vote in favor shall not be deemed to require the supervisors to enact the proposed ordinance into law. Any occupier of land within the district may petition for amendment, supplement, or repeal of any or all existing ordinances. Once adopted, however, the regulations shall have the force and effect of law and shall be binding and obligatory upon all land occupiers within the district.

Scope of the Regulations: The regulations may include: (1) Provisions requiring the carrying out of necessary engineering operations and structures; (2) Provisions requiring the observance of particular methods of cultivation;

(3) Specifications of cropping programs and tillage practices to be observed; (4) Provisions for such other means, measures, etc. as may assist conservation of soil resources and prevent or control soil erosion in the district. The regulations shall be uniform throughout the district or with regard to each type or class of land within the district.

Justification and Authority: The moral right of States to make use of the police power to insure beneficial use of the land is a part of the social theory of property, which may be stated: "Private property is established and maintained for social purposes."[7/] The reason for exercising this power was well stated by Henry George as follows: "Material progress cannot rid us of our dependence on land; it can but add to the power of producing wealth from land. If all existing men were to unite to grant away their equal rights, they could not grant away the right of those who follow them. For what are we but tenants for a day? Have we made the earth, that we should determine the rights of those who after us shall tenant it in their turn?"[8/] George here enveighs against the waste of natural resources from the standpoint of the loss to future generations. Losses to present inhabitants and to the community as an entity are equally to be condemned.

The legal right so to use the police power is well substantiated. It stems from the inherent power of States to promote the public health, safety and morals and in the final analysis depends upon judicial decision. In comparatively recent years the Supreme Court of the United States has taken the position that the police power is necessarily expansive

and has used this language in setting forth its findings: "We hold that the police power of the State embraces regulations designed to promote the public convenience or the general welfare as well as regulations designed to promote the public health, the public safety or the public morals"[9] and "That power is not confined...to the suppression of what is offensive, disorderly or unsanitary. It extends to so dealing with the conditions which exist in the State as to bring out of them the greatest welfare of its people."[10]

However, the police power is not all-inclusive. Since the slightest exercise of it must necessarily invade the liberty or the property of some individual, there is a constant competition between inherent power on the one hand and constitutional guarantees on the other. The "due process of law" amendment, the protection against unreasonable entry and search, and other provisions of the Bill of Rights--many of which are repeated verbatim in State constitutions--protect the individual from excessive use of inherent power. But, subject only to these constitutional guarantees, the private right must bow to the public need as is the case in the two other important powers of States affecting land, the power to tax and the power of eminent domain.

From this it may be seen that the legal basis for land use regulations is subject to the interpretation of the State courts, but that high precedent in their favor exists. The remaining provisions of the Standard Act are likewise open to review, but have sufficient weight of authority on the side of

their legality for the Office of the Solicitor to be satisfied that there was little danger of their being thrown out in any test suit.

Enforcement:

Section ten of the Act, the "enforcement" section, gives the supervisors authority to go upon lands within the district to determine if the regulations are being observed and makes violation of the regulations a misdemeanor punishable by a fine for each offense. The supervisors may also provide by ordinance that an occupier sustaining damages as a result of violation may recover damages at law. Although these provisions are obviously necessary if the regulations are to be more than unenforceable rules, very few States have included all three in their laws.

Section eleven is designed to prevent a stalemate in cases where the threat or imposition of fines is not enough to compel the offending operator to comply. It gives a method for the supervisors to take the case to court. When they have determined by inspection that an ordinance is not being observed on certain lands and that such non-observance tends to increase erosion on such lands and hinders the prevention or control of erosion on other lands within the district, they may present to the appropriate court of original jurisdiction a petition praying the court to require the operator to perform the work within a reasonable time and to order that if the operator shall fail to comply, the supervisors may go upon the land, perform the work and recover the cost from the operator.

The court may dismiss the petition or grant either of the two prayers. In case the accused operator is not the owner, the owner of such lands shall be joined as defendant. Procedure for collection of the costs as real estate taxes is provided.

A further step in the democratic process is the setting up, in section twelve, of a board of adjustment to hear and decide on grievances arising out of the regulations. This is a three-member board appointed for three-year terms by the State Soil Conservation Committee with the advice and approval of the district supervisors. Any land occupier may petition this board to authorize variance from the regulations in his case, alleging great practical difficulties and unnecessary hardship in carrying out the strict letter of the ordinances on lands occupied by him. On the basis of its findings of fact, the board shall have power to authorize variance if the spirit of the regulations is kept. Petitioners aggrieved by an order of the board may obtain review in the proper court of original jurisdiction.

Other Enforcement Clauses Examined:

It is interesting to note that in section eleven, the "performance of work" clause, the supervisors are not authorized to take to court the case of an occupier who, by failing to observe the regulations, damages only his own lands and not those of another. This is rather surprising in view of the pronouncement in section ten that violation by itself is a misdemeanor punishable by a fine, regardless of the resulting damages to land. The theorist would wish for machinery capable of compelling the correction of the practices, or lack of practices,

that were contrary to the ordinance. Harking back to the social theory of property, he would say that when land is abused in defiance of law there should be a constructive method of enforcing the law, something in the nature of an injunction or similar instrument to force the offender to mend his ways in the interest of society. It is not clear whether such action in regard to land use is made impossible by legal barriers or whether it was feared that this was too strong a dose for the States to swallow. The Standard Act provides only a fine as a deterrent to an occupier who willfully ruins his own land without injuring the property of his neighbors.

In a case where an occupier's failure does injure his neighbors, the methods of correction open to the supervisors are ample. They can, if they choose, lay down the law and see that it sticks. These provisions for legal action are not meant to be the main motive for compliance. Voluntary cooperation following in the wake of a well-directed educational program will be the only fully successful way. It is an axiom of local government that when laws become unpopular with a large percentage of the people, they become unenforceable no matter how disagreeable the penalties of disobedience. To permit adoption of land use regulations, a majority of the district electorate must express themselves in favor of them; but times and people change, and if for any reason the regulations become unpopular with a substantial minority, the supervisors must renew and revitalize their educational activities. Such activities may take the form of active selling campaigns if

the supervisors are strongly disposed toward the regulations. If the opposition still remains adamant, it is better to hold a referendum on the matter and to have it settled one way or another. Too many laws are left on the books long after all efforts at enforcement have ceased, to the detriment of our respect for law and order in general.

The board of adjustment, although appointed by the State Soil Conservation Committee, is actually the instrument of the district supervisors and will in most cases reflect the supervisors' policies. This is necessary, else the board could veto all regulations by indiscriminately granting variance. As envisioned by the Standard Act, the board is an extremely important tribunal. If an occupier is dissatisfied with the board's ruling in his case, he may appeal to the court; but the court will not admit new evidence and will regard as conclusive, if supported by evidence, the findings of the board as to fact. The function of the court is to review the legal procedure of the board for error. In the normal process of judicial review, the court may disagree as to the admissability or sufficiency of evidence and thus cause a change to be made in the findings. Whether doubtful of the constitutionality of this arrangement or being unwilling to provide the boards with this amount of power, some States have required that the courts shall hear such cases <u>de novo</u> and make their own findings on the basis of whatever evidence they shall accept.

Sections Thirteen to Eighteen

Sections thirteen, fourteen, and fifteen of the Standard Act deal with cooperation between districts, cooperation with State agencies, and discontinuance of districts. Section sixteen is left open for a clause authorizing appropriations for the expenses of the State Soil Conservation Committee and the districts, to be paid out of the State treasury. It was expected that the individual districts will receive grants, donations, etc. from outside sources, but for various reasons it was not believed advisable that they be given the power to tax directly their membership. The important point in this regard is that districts are not intended to operate revenue-producing properties. Any assessments made by them would have to be imposed equally against agricultural lands in the district, some of which might be tax-delinquent already. Taxes on real property are usually heavy in most localities, there being so many governmental units with the power to tax. The Soil Conservation Service is expected to make available certain goods and services and some funds to properly organized districts along with their advice and assistance. Section seventeen states that if certain provisions of the Act shall be held invalid, the remainder shall not be affected thereby; and section eighteen provides that if this Act is inconsistent with any other act, this Act shall be controlling.

Summary

The Standard Act, upon completion, was a remarkable piece of work. Seemingly no effort had been spared to produce a document which would be extremely flexible and readily adaptable. Lawyers in the Department of Agriculture had reviewed existing State legislation and its judicial interpretation to see how they would fit with the districts program. Every possible source of legal trouble had been scouted and prepared for so that nothing would be able to hold up the passage of the State laws and the formation of districts after the Act was submitted to the States. States' rights and responsibilities were recognized and respected all the way through. The model statute was to be made available to the States for the purpose of legalizing voluntary associations as well as for the formation of districts in localities where no associations existed. The Soil Conservation Service stood ready to assist in many ways, had prepared suggested procedures for the guidance of State Soil Conservation Committees, and had briefed its key men on the district program so that they would be ready to help when the time for local action came. The typical district that was to result from the Standard Act would be local in origin, democratic in formation, flexible in size. It promised to enlist the maximum active participation of farmers. Also it would be a most effective means of spreading conservation in general.

The Statute Sent to the States

On Feb. 26, 1937 copies of the model law were sent to the governors of each of the forty-eight States. They were sent as enclosures to personal letters from President Franklin D. Roosevelt to each governor, in which the President succinctly but tactfully stated the erosion problem and its seriousness, gave the background and purpose of the Act, and expressed a hope that comparable legislation would be enacted by each State. (see Fig. 1). How the 1937 State legislatures reacted to this proposal will be seen in part three of this paper.

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TEXT OF PRESIDENT FRANKLIN D. ROOSEVELT'S LETTER
RECOMMENDING THE STANDARD ACT TO THE GOVERNORS

MY DEAR GOVERNOR:

The dust storms and floods of the last few years have underscored the importance of programs to control soil erosion. I need not emphasize to you the seriousness of the problem and the desirability of our taking effective action, as a Nation and in the several States, to conserve the soil as our basic asset. The Nation that destroys its soil destroys itself.

In the Act of Congress approved April 27, 1935 (Public #46 of the 74th Congress), the Federal Government, through the Soil Conservation Service of the Department of Agriculture, initiated a broad program for the control of soil erosion. Demonstration work has been undertaken but much remains to be done. The conduct of isolated demonstration projects cannot control erosion adequately. Such work can only point the way.

The problem is further complicated by the fact that the failure to control erosion on some lands, particularly if such eroding lands are situated strategically at the heads of valleys or watersheds, can cause a washing and blowing of soil onto other lands and make the control of erosion anywhere in the valley or watershed all the more difficult. We are confronted with the fact that, for the problem to be adequately dealt with, the erodible land in every watershed must be brought under some form of control.

To supplement the Federal programs, and safeguard their results, State legislation is needed. At the request of representatives from a number of States, and in cooperation with them, the Department of Agriculture has prepared a standard form of suitable State legislation for this purpose, generally referred to as the Standard State Soil Conservation Districts Law. The Act provides for the organization of "soil conservation districts" as governmental subdivisions of the State to carry on projects for erosion control, and to enact into law land-use regulations concerning soil erosion after such regulations have been approved in a referendum. Such legislation is imperative to enable farmers to take the necessary cooperative action.

I am sending to you several copies of the Standard State Soil Conservation Districts Law, with a memorandum summarizing its basic provisions. I hope that you will see fit to make the adoption of legislation along the lines of the Standard Act part of the agricultural program for your State.

Very sincerely yours,

FRANKLIN D. ROOSEVELT

Figure 1.

Part II

LAND USE REGULATIONS AS TOOLS TO IMPLEMENT LAND USE POLICIES

Government Interference

"The person who works his own land for a living is usually a strong individualist. He looks to the earth, rather than to persons, for his livelihood. He does not cater. If, in any country, he patronizes, it is because of his social position, not because he is a farmer.

This individualism conduces to isolation of ideas. The farmer's work is founded on personal experience; and when he is not able to analyze his experience or to understand it, he falls into the experience-routine of the season, and his ideas become crystallized.

The first or original real occupation was the management of land. It is the basic occupation. Out of it most other occupations and trades have developed. The constructive and imaginative spirits took to these newer trades, and the conservative forces tended to remain on the land.

As the demands of civilization have developed, and particularly as world-competition has arisen, the isolation-ideals of the land-worker have been more and more inadequate to meet the conditions. A new type of mind has been forced on him. As community-ideas have evolved, fellow land-workers have assumed new relations to each other. As the community-sense has grown into nationalism, and as loyalty to the person of a

local leader or ruler has developed into patriotism, the organization of society--or the government--has felt the necessity of interfering with the land-worker, as with other workers, for the benefit of society at large.[11]

Forest Laws

The European forest laws of the Middle Ages were mainly edicts proclaimed by the feudal lords for the protection of their property, both timber and game animals. The term "forester" was applied not only to the lord's forest police but to other dwellers and workers in the forests, including outlaws. Later, with the rise of nationalism and central governments, there grew up on the continent and elsewhere a body of law regulating the use of the forest resource for the common good; today these laws are the oldest land management regulations still in force. Later still, regulations were enacted governing the use of agricultural lands.

European Land Use Regulations

Mr. Melville H. Cohee, Senior Soil Conservationist with the United States Soil Conservation Service, visited Great Britain and central Europe in 1938-1939, making a study of the land use regulatory measures, past and present, in several countries. The factual material on these foreign laws presented below is taken from his report.[12] Mr. Cohee traced various types of land use regulatory measures from the middle of the last century to the current period when he was in Europe; this included, therefore, laws enacted and put into use by

totalitariam forms of government in power in Germany and Italy before the close of World War II. Of course the laws of the Axis powers and their satelites are now in doubt; the direction that new legislation there will take will depend on the political complexion of the new governments now emerging. These laws are interesting as examples of the coercion in land policies that is typical of totalitarian states.

Fascist Italy:

Mr. Cohee's investigations in Mussolini's Italy centered on the Consortia--local land reclamation associations. The Consortia may have been democratic in their early history but in their final form they seem to have served only as tools for carrying out the will of the nation's rulers; they conformed to the Fascist ideology of the corporative state. They were composed of land owners, were designated as bodies corporate and politic; and they undertook such projects as the draining of the Pontine marshes, dune stabilization on the seaboard, and the control of mountain torrents. They fulfilled public and social functions delegated from the national government. They were under close scrutiny by the Ministry of Agriculture and Forests, which had the power to replace local presidents and amend local rules. The Ministry could establish Consortia in areas where local leadership was slow to act. The Consortia received from the government certain financial aid, the amount being based on the quantity of work actually accomplished at a particular time.

The general plan for all works was prepared by the central government. The Consortia then drew up plans for works on their own district lands, being careful to follow the model closely. When the local plan was finished and the work allotted, the farmer had his choice of performing the work laid out for his farm or letting the association do it at his expense. If he failed to carry out his portion of the plan, and was either unwilling or unable to pay the cost of having the association do it , his land could be confiscated by the government. In addition to the Ministry of Agriculture and Forests, the National Association of Land Reclamation Consortia was another watchdog for the government. This organization kept a strict eye on the doings of its members and frequently recommended policies to be followed, policies that were more in line with the national drive for self-sufficiency than with the advancement of the land-working population. An instance of this was the use of the tax power to compel the practice of certain types of agriculture. When an irrigation system had been finished, the owners of adjacent land were made to pay a water tax whether water was used or not; thus they were forced to change from extensive to intensive farming and the volume of their output was increased.

Nazi Germany:

The forest laws of the individual German states were the foundation on which the Nazi government built its agricultural program, but the spirit and method were considerably changed in the process. The older laws were more restrictive than

anything that we have in the United States on the subject of forest lands, but in Europe they were not regarded as being at all radical. The laws were easily administered because the people recognized the need for proper forest use. In many cases the practice of conservation management preceded legislation demanding such practice. With true German specialization, each state agency hewed closely to the line of its own narrow technical field, so that there was very little coordination in the land work of related organizations. Changes in policy and technique came about slowly and only after painstaking research.

The Bavarian forest law of 1889 prescribed three conditions which must be met before land could be clear-cut. The conditions were: (1) the land was unquestionably suited for a better use, (2) the forest was not necessary for protection from the elements, and (3) the holders of use rights in the forest agreed to the cutting. Protection forests were defined and clear-cutting therein was forbidden. The intention to clear-cut an area had to be reported to the state forestry authority, which would make an investigation and perhaps issue a permit. The old law of Wurttemburg also provided that the forest officials must be informed and that holders of adjoining property must be heard before a decision was reached. In Wurttemburg a clear-cut area had to be reforested within three years, a provision common to most of the older laws. The control of flood waters in Bavaria was the responsibility

of a state organization from 1902 forward, the costs of control being divided between the state, district, and local governments.

In the south German state of Baden, early forest laws (1833 and 1854) required all owners of forest land to maintain full stocking and soil productivity. They made specific provision for restocking of cut-over lands. The owner was not made to manage his forest on a sustained yield program; he could clear-cut and plant, but he did have to abide by the above regulations. Where trees were to be cut on the selection, shelterwood, or other system which left partial stocking, the crop trees were marked by a state forester, as was done in the communal forests. The laws of Bavaria and Wurttemburg were similar in this respect. Grazing on private forest lands was regulated, and compliance with the regulations was checked by an inspector of the forest police. Likewise, fire protection regulations were provided, and the owner had to take such steps for prevention and control of insects and disease as were ordered by the forest officials.

The 1923 forest law of the state of Saxony was democratic in spirit and application. It was known as the "self-administered forestry law", and it applied to private forest lands only. It was possible for an owner to read from the law how much he could cut, where he could clear-cut, and when he had to ask for permission to make a cutting. Protection forests were defined as those protecting the forest of the owner or his neighbor from erosion, floods, or soil slippage.

Permission of the forest district officer was necessary before an owner could change from forest to another land use; and if a satisfactory change was not made within a stated period of time, permission was rescinded. Fprest district officers inspected all private lands yearly and kept files of reports on the conditions that they found. A "Forest Committee" for each district was set up to hear and decide on appeals from the decisions of the district officer. This Committee consisted of the Oberforstmeister (superior officer of the forest district officer), who was its president, one member of the regional authority, and three members chosen by the regional authority--one of whom was an accredited forester and two of whom were forest owners. In Saxony, as in other German states, there was little need for punitive action, the land owners usually being more than willing to accept the recommendations of the authorities.

In many of the German states there arose various types of forest societies composed of private owners, formed to cooperate in afforestation, management, and marketing. Sometimes these owners pooled their lands in one ownership, sometimes each continued to hold title to his portion while the whole tract was put under one management and worked as an economic unit. Ordinances were adopted by these societies for their mutual protection. Prior to 1933, authority for the formation of these cooperative societies came from the old state forest laws. When the National Socialist party gained control of the government, the forest societies-as known before 1933-were abolished and their voluntary and

cooperative functions were not replaced by any other agency. Forest owners were marshalled into new organizations, set up by the national government, and their activities were strictly regulated.

The forest laws enacted by the Third Reich in 1934 promulgated a policy of minimum national standards. State laws which were more restrictive or stringent were allowed to stand but state laws that were less restrictive than the new national law were nullified. Unauthorized clear-cutting was made punishable by fine, imprisonment, confiscation, or reforestation at the violator's expense.

At about this same time, all the local farm organizations were united by edict into a national institution called the Reichsnahrstand. Planning, research, production, and all other phases of farm activity were controlled by this organization. Its three sections--people, farms, and markets--gave comprehensive coverage of the nation's agriculture. All actions of the local groups became subject to Reich approval, including the election of officers. Stringent regulations were adopted with heavy fines for lawbreakers. The method was highly dictatorial; it amounted to an integration of farmers into a factory-like discipline, and its goal was the sustained yield of the greatest possible amounts of farm produce. To lessen the occurrence of idle land, inheritance laws forbade the sale or mortgage of farm property, and made the designated heir responsible for taking over and managing the farm when it was willed to him. The laws even provided that the heir should furnish a home at the farm for the

testators until their death. There was practically no limit to the power of the government to interfere with the individual. In an example cited by Mr. Cohee, a farmer of Luben was forced to rent his land for an eighteen-year period because he had not met production quotas set for him and had allowed his holding to deteriorate.

Hungary:

The old forest laws of Hungary were similar to contemporary laws of the German states, many of them having had their origin during the time of the Austro-Hungarian Empire. Their greatest concern seems to have been protection from wind erosion, a persistent plague throughout the great Hungarian plain. The forest law of 1935 also dealt largely with protection but its methods were patterned after those of the other police states with which the country was then associated. It compelled the afforestation for protection of several classes of land, both private and communal. Land owners had to submit to the performance or construction of works which higher authority had decided were necessary for the common good unless, on petition, they were permitted to provide other means of protection. Permission for alternative practices was frequently given, and the law was rather liberally administered. Owners contributed toward the cost of soil stabilization work on their lands, paying in proportion to the benefits they received, such benefits to be determined by the forest police. Communities were compelled to cooperate

by furnishing planting stock, maintaining a labor supply, and so forth. Confiscation of land was authorized, but the owner was given the right of redemption within a stated time if he were able to acquire the money. Integral plans covering logical areas were drawn up, and performance under the law was checked periodically by the forest police.

Denmark:

An unusual kind of land regulatory body is the Danish Heath Society, a private organization formed in 1866 for the reclamation of the waste area of Jutland Heath. It is a cooperative of the highest type. It is subsidized by the government, but it is also helped by private contributions. The leadership of the Society is of such a high order that the government needs to exercise almost no control or supervision and merely turns over the subsidy funds to the Society. Its functions include planning, technical advice, promotion, administration, and inspection. In the reclamation work, the government furnishes free labor and planting stock at one half price for plantations more than ten hectars in size. Participation of land owners is entirely voluntary. The owner must agree that the land shall be left in permanent forest, and he must also care for the young plantation under regulations approved by the government and the Society. This form of undertaking is very like the cooperative agreements made by the soil conservation districts and cooperating farmers in the United States. There is no coercion.

The owners request help individually or band together voluntarily to ask that a project be established. The Society encourages such requests and devotes a large amount of energy to spreading information about the program but does not attempt to force its plans on anyone.

Switzerland:

The general forest laws of Switzerland have become known to American foresters from descriptions of management on the Sihlwald and other community forests. They make the basic provision that the forest area of the country may not be diminished; beyond that they contain the usual European restrictions on cutting and they establish protection zones.

Mr. Cohee describes in some detail the "land ameliorations" program then in progress, and which has been going on intensively for thirty years and to some extent for ninety years, comparing it to the organization and administration of soil conservation districts in the United States. This program is essentially a scheme to re-group into single blocks of land the scattered holdings of farmers in communities where farming is done under the "three field" system. Under this system, fields were divided among the heirs upon the death of the landowner; thus one man might own many separate holdings scattered in all directions from the village. The inefficiency of this state of affairs led to the formation of land amelioration corporations--quasi-public bodies with authority to do drainage works, conduct forestry projects,

and make flood control structures as well as to redistribute the land.

Corporations are founded with definite land boundaries, as are the soil conservation districts. An affirmative vote of two-thirds of the landowners, representing one-half of the land area, makes the rest of the owners bound to join. They pool their properties, creating one legal person--the corporation--which through its elected officers, takes care of the redistribution. Careful appraisals are made, for each contributor expects to receive one piece of land of a value equal to the combined values of the many fields he surrendered. As the new farms are blocked out, new roads are planned, new cooperative drainage systems are surveyed, and erosion control is considered. The number of separate plots will be much reduced, and the total effect should be to make a much more economic farm unit for each contributor. Courts of arbitration are provided to settle the disputes which inevitably arise. The most dangerous feature of the program is that there is no restriction of landowners from once again bequeathing away their holdings, piecemeal, thus defeating and nullifying most of the amelioration work. It is hoped that proper education will prevent this.

England and Wales:

The drainage laws of Great Britain date from 1427 or earlier. In more recent times Parliament has created drainage authorities to grapple with the urgent problems of

draining low-lying lands along the coasts and at the mouths of rivers. These authorities were created one at a time as the need became recognized, but they were rather ineffective because of the lack of proper planning, financing and coordinating.

The Act of 1930 eliminated the multiplicity of laws enacted and still active during the past four or five centuries and provided for the establishment of Catchment Boards, one Board to have authority over the entire catchment area of each river running to the sea. Previous to this time, many Internal Drainage Districts had been formed to work on particular areas, but this act made each of the Internal Drainage Boards (officers of the Districts) subservient to the Catchment Board in whose area their District lay. Some of the members of a catchment board are appointed by the Councils of counties and county boroughs within the area; some are appointed by the Minister of Agriculture and Fisheries, upon the recommendation of the Internal Drainage Boards. The Internal Drainage Boards are elected by landowners.

The whole area must contribute to work on the "main river", which is done by the Catchment Board alone. Ratepayers are taxed according to benefits received. The Catchment Board also supervises the plans and work of the International Drainage Districts within its catchment area; and it may even go so far as to perform works in delinquent

districts, prorating the costs among the district members. The Catchment Board may also adopt "by-laws" governing land use as it affects drainage within the area.

The whole procedure is somewhat autocratic and somewhat democratic, but it is efficient beyond anything tried before. The Boards have the two powers most important and most necessary to carry out their functions, namely, the power to tax and the power to regulate use of land. Most basic of all, the drainage act makes no political considerations in locating the boundaries of catchment board authority. It recognizes that run-off must be controlled on a watershed basis.

Rural Zoning

Zoning may be defined as "the creation by law of districts in which regulations differing in different districts prohibit injurious or unsuitable structures and uses of structures and land." It is an exercise of the police power, a device to give legal effect to land use plans. Zoning is promoted for three types of reasons: (1) utilitarian--to enhance property values, (2) aesthetic--to avoid unsightly structures or works, and (3) economic--to provide increased efficiency of services, reduction of taxes, and so forth. It dates back to the Modesto, California, ordinance of 1885, segregating Chinese laundries.[13] From this case, which established the breadth of use that could be made of the police power, others have derived, making land use benefits by ordinances.

The Wisconsin Act of 1923 gave the counties power to zone all lands outside of incorporated places. An amendment in 1929 permitted the classification of these lands into agriculture, forestry, and recreation zones. Non-conforming uses already in progress are allowed to continue but may not be continued if the title to the lands changes hands. A county board of adjustment is provided in each county that exercises the power granted in the zoning enabling act, and the sheriff is required to check land use practices to determine if there is compliance with the law. The board of adjustment has power to hear pleas for modification and to allow variations within certain limits. The Michigan zoning law of 1935 added soil and water conservation to the list of uses.

Zoning can promote the best use of land only by prohibiting the wrong use; thus there is a danger of its becoming merely a negative measure. It can prevent the denudation of a forested slope, but it is powerless to compel reforestation of an already denuded slope, because of the provision for the continuance of non-conforming uses.[14/] Zoning ordinances are tools very useful in bringing about better land use in areas that are marginal and submarginal for agriculture; they may well be integrated with the farm planning activities of soil conservation districts. However, it is very doubtful if they can fulfill the functions of soil conservation ordinances possible in those districts operating under a state soil conservation district's law which includes the land use regulatory powers of the Standard Act.

Other Public Controls

Although the United States lags behind most other countries in placing public controls on private lands, there are several methods, other than those discussed, which have been accepted and are in every-day use. Many of them are State laws, as distinct from local ordinances, and they cover such subjects as the control of noxious weeds and insects, and health and sanitary regulations.[15] In another category are deed restrictions--use limitations imposed as a condition to the sale of property. Deed restrictions have been widely employed in urban and suburban subdivisions, to prescribe the type of structurds which may be erected on the land being sold, and there is a chance that they could also be used to regulate the use of agricultural land being conveyed.

There are also contractual controls. These are used by the Farm Security Administration and the Indian Service in the place of mortgages, and they involve compliance, over a period of years, with a farm plan of operations which has been drawn up by government experts. In return for compliance, a loan is granted to the cooperating farmer. Ward Shepard describes a case in which a large insurance company has adopted a similar supervisory method in reselling its farms on time payments.[16]

An outstanding example of group voluntary restriction, often cited by conservationists, was the lumber code adopted by the lumber industry under the National Recovery Act of 1933.

Some States have been working on laws similar to this code, in an effort to forestall national regulation of forest practice, and many plans for federal-State cooperative control have been advanced.

Summary

The foregoing systems of governmental control and regulation of the use of private land have been discussed to provide a background for properly evaluating the provisions for land use regulations embodied in the State soil conservation district laws. European systems have in general been more stringent than any so far used in the United States. While it is conceded that strict national control would be unwanted and unworkable in this country, still a way must be found for farmers to achieve collective security from erosion. At present, the soil conservation districts seem to hold the best promise for this achievement.

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Part III

THE DEVELOPMENT OF PROVISIONS FOR LAND USE REGULATIONS

1937

The year 1937 was the optimum time for the promotion of State soil conservation district legislation. During the first term of the Roosevelt era the New Deal had had its inception, the lines of progressive social law-making fanning out to include practically the whole field of human welfare. These four years were the shake-down cruise, the time when the radical changes affecting many of our established concepts were debated in Congress, tried out in practice and tested before the Courts. Some of them, being too far in advance of their time, fell by the wayside, but with the exception of the ill-fated NIRA, the major advances were retained. The CCC was near its peak enrollment, its record of accomplishment in defense of the soil and forests known and approved by farmers throughout the country. The Soil Conservation Service, through its network of demonstration projects and its enlightened, aggressive information service, had carried the word and shown the need. The country was recovering from the depression but was still far from the comfortable, well-fed, conservative stage. People were still ready to experiment--they had confidence in the Administration and its works. President Roosevelt's letter went to the Governors in 1936, then the landslide in the Presidential election of that year confirmed the New Deal in office, not only in Washington but in many normally Republican States. The stage was set.

The First Laws

Twenty-two State legislatures of 1937 enacted Soil Conservation District laws.[17] All of these laws contained some provision for land use regulations yet, characteristically, there were almost as many variations as there were States. Viewing the phenomenon in today's perspective, one might think that the laws had been rushed through without much thought but on closer inspection it appears that the makers of those original laws took time to ponder the consequences and made an effort to adapt the Standard Act to the needs of their particular States and what they conceived to be the best interests of their constituents.

Arkansas led the field by passing the first law. It excluded authorization for regulations governing cropping and tillage practices and it provided, as did a majority of the laws to follow, that only land owners could vote on the permission to adopt regulations. The only enforcement machinery provided was that the district was permitted to petition the court to require performance by the violator or to authorize the district to do the work and recover the costs. Fourteen of the other States passed laws very like the standard law. Some balked at making violations a misdemeanor, some imposed no liability and some failed to provide for a board of adjustment but in the main they paralleled rather closely the letter and spirit of the model.

Early Divergences

Seven State laws contained innovations which should be noted individually. The Colorado "Soil Erosion Districts" were not allowed to propose their own regulations but were permitted to vote on "by-laws" submitted to them by the State Board. Budget funds were levidd on lands in proportion to the benefits such lands were to receive. Kansas passed a law almost identical with the Standard Act but required that a yea vote of 90% of the land occupiers was necessary to permit the adoption of regulations. Minnesota enacted a confusing and conflicting statute that uses the words "binding and obligatory" and "force and effect of law" in section 8 yet says flatly in section 10: "Nothing in this act shall be deemed to be compulsory upon any land occupier". Section 9 declares that the supervisors have the right of entry upon lands for inspection "with the consent of the occupier," a meaningless clause. Boards of adjustment are provided for but neither the boards nor the courts can force compliance although petitions for variance may be denied. Apparently the law was amended to death before passage and to date there has been no successful attempt to clarify it.

Nebraska omitted sections 10, 11 and 12, thus making no provisions for enforcement. New Jersey departed from the norm by providing that regulations may be drawn by the supervisors, approved by the State Committee and posted without referendum. Owners of 25% of the district acreage must protest within 60 days or the regulations become law. South Dakota introduced an acreage qualification in addition to requiring 67% of the

land occupiers to vote yes in the referendum to permit adoption. Utah imposed restrictions on the powers of districts to make financial requirements, to dispossess occupants and to establish game and wildlife regulations "not in keeping with the intent and purposes to effect soil conservation as provided in this act".

Criticism of the Innovations

Of the first twenty-two State laws, then none really ignored the possibilities of local regulation of land use and only four made substantial departures from the basic democratic suggestions contained in the Standard Act. The Colorado system, in which land owners vote on "by-laws" submitted by the State Board, could achieve the desired end if there were close correlation and understanding between the board and the supervisors of each district. It can be assumed that the board would consult with the local men before framing such laws so that in effect, with good laison, the supervisors would be influencing, or in fact proposing, their own regulations. The Minnesota law seems hopelessly confused and incapable of enforcement, for even though the regulations become local ordinances the Act specifically forbids compulsion on any land occupier to correct violation, the law can be successfully flouted. Nebraska also fails to include any means for enforcing the will of the majority but does not categorically forbid such enforcement, leaving the door partly ajar.

The New Jersey provision is the widest deviation from the

referendum idea and though it is possible that such a system might work in practice, it is basically unsound and disorderly. It permits regulation by decree, subject to the review of the State Committee, and puts the burden of refusal on those land owners who are in opposition to the regulations. It is a negative, arbitrary way of doing things and permits group action only by the opposition. This last is an important point. One of the strongest arguments for the district organization is the fact that it furnishes a medium for farmers to work together toward the betterment of themselves and their properties. The "no referendum" aspect of the New Jersey law tends to encourage the formation of groups aligned to defeat the regulations, groups which will inevitably don the mantle of crusaders against interference, while the chance of cooperative action in support of the regulations goes by default. Even if the supervisors draw the regulations with the purest of motives, they will be suspected of having been influenced by government agents and the cry of bureaucratic control will again be raised. If all the affected land owners were allowed to vote on the adoption the issue would be decided in a manner consistent with the primciples of American government and no one would have a legitimate complaint.

1938

The legislatures of California, Louisiana, Mississippi and Virginia, meeting in 1938, added four new laws to the list. The California law made no provision for land use regulations yet went beyond the Standard Act in some other respects.

It allowed for condemnation proceedings by the district against privately held land under certain circumstances, an important delegation of authority but one deemed necessary because of California's recurrent flood problem. It was made possible for districts to levy annual assessments on their members to provide district funds. The remaining three States enacted substantially the standard clauses on land use regulation, but Virginia made payment of costs for work done conditional on the land occupier's ability to pay as certified by the county board of supervisors.

1939

1939, the next year in which most of the State legislatures met, brought ten more States into the fold but two of them (Idaho and Iowa) made no provision for the adoption of land use regulations and one of them (Vermont) passed a law which apparently was designed to enable the State to receive Federal aid without delegating any real authority to the districts. Technically, regulations were authorized under the law; actually, they had no force and amounted to little more than statements of policy by the supervisors.

1940 to 1945

In 1940 the Kentucky and New York laws were passed, the former with provisions for land use regulations, the latter without any provisions. Of the four State laws passed in 1941, only the Wyoming law included such provisions. Three new laws were passed in 1943 and two more in 1945, all of which omitted the land use regulations clauses entirely. A chronological listing of the original law appears in Figure 2.

Later Laws and Amendments

It is desirable at this point to examine some of the later original laws and some of the amendments to the 1937 and 1938 laws, noting in what ways they differ one from the other, what the trends of development have been within the several States and what good or bad innovations have been prescribed by the various legislatures. Because of the differences in State constitutional and statutory requirements, local traditions and usages, and because of the newness of the program, no definite pattern by regions is clearly discernible; still, regional differences are reflected in the adoptions made of some of the laws. The South, where the crisis in agriculture was most acute, early accepted the districts idea and all of the first laws of that section provided for local land use ordinances. They followed the Standard Act to a marked degree. The Great Plains and the mountain states were next in order of acceptance, then the Pacific coast, followed by the Middle West and last of all the Northeastern states. The response in this last named region was far from overwhelming; as of today, 1946, there is not a State in the Northeastern region that has workable provisions for district land use regulation.

California Adopts Regulation Principle

California, one of the very few States which have become progressively more regulatory, began in 1938 with no provision for regulation. The 1939 amendment, the first of many in this State, made regulations permissible upon a 67% vote of the owners. It is interesting to note that under these provisions the owners

have the power to vote regulations but the occupiers are bound by them, not a particularly healthy situation. The wording of the law makes possible the adoption of regulations which are only negative in character, as such regulations are limited to prohibiting practices which are detrimental to land belonging to others. Proof of "unreasonable" damage is necessary before the district may do the corrective work and recover costs for the operations. In 1940, during the course of another extensive revision of the Act, violation of legally adopted regulations is made a misdemeanor.

Colorado's Strong Regulations

The Colorado law was the subject of considerable tinkering over a period of years but the end result is probably a more streamlined instrument than the Department of Agriculture would have cared to recommend. In 1939 it was decided that a majority vote of land owners was necessary to make levies for the support of the district program. In 1941 the Soil Erosion Districts were redesignated Soil Conservation Districts, and it was enacted that a 51% vote in favor of any regulation made the adoption of such regulation mandatory instead of leaving the decision to the district supervisors. Apparently deciding that this was going a little too far, the 1945 legislature raised the percentage, requiring affirmative votes of 75% of the qualified voters, to secure adoption and declared that all previous regulations were void unless readopted under the new law. Continuing their independent way, the legislators established a State Board of Appeals to hear petitions for variance carried from

the local, elected boards of appeals. They also decreed that, during a twelve month period after posting of the notice, the Supervisors may enter on any land within the district after ten days notice and do corrective work deemed to be necessary, or they may apply for a court order of compliance. The supervisors shall fix the costs, which are then collected as property taxes. Violation is a misdemeanor and a $100 fine is assessable. The law makes it the duty of the local District Attorney to prosecute for the supervisors such cases as they shall bring to him but the supervisors may also sue in Justice Court, using their own counsel. This law obviously means business--it eliminates many loopholes and much cause for indecision by stating in black and white just what procedures may be followed. Under the Standard Act there was no way by which the supervisors could be compelled to adopt regulations even though 100% of the voters were in favor of them. The Colorado law provides a wide margin of safety (75%) but insures majority rule after the referendum makes the will of the majority known. Colorado is the only State that permits the adoption of binding land use regulations without stating in its enabling act exactly what provisions these regulations may cover, a blanket grant of authority which assumes that the districts are responsible subdivisions of the State government and as such may be trusted with wide latitude in the management of their own affairs.

Indiana Weakens Its Law

The original law of Indiana, passed in 1937, contained relatively few deviations from the Standard Act. In 1941

another legislature amended it by requiring a 90% affirmative vote to permit the adoption of regulations. It is doubtful that a law with this requirement can be considered workable - especially since the clause states "90% of those eligible to vote" and ordinary experience in any type of large scale balloting shows how difficult it is to "get out" a vote of these proportions. Perhaps realizing this, the legislature of 1945 again reversed its field and took the State back to the Standard Act except that it deleted the clauses permitting the right of entry for inspection, making violation a misdemeanor, imposing liability for injury resulting from violation, and providing for the establishment of boards of adjustment. The only enforcement clauses now remaining are the right of the district to petition the court to require performance and to authorize the district to do the work and to recover costs from the violator. The law is thus considerably weakened in spite of the more liberal balloting requirements. In a situation like this - Arkansas is another example - the burden of decision is placed on the State courts; the right of petition is made clear but the courts must decide, in the light of their own precedent and of the State constitution, how far to go in compelling obedience or in making good the provisions of the regulations. In the absence of specific statutory authority, the courts are forced to depend on the common law, a body of law which not only contains few rules relative to the subject but is noted for its defense of the personal freedom of the individual as opposed to cooperative action for collective security. The opinions of courts in other States are not

likely to be considered because these opinions are based upon different statutes. The whole process of forming a backlog of local State precedent is slowed and allowed to stagnate, hindering the execution of the district program throughout the State.

Kansas, Kentucky and Maryland

The Kansas (1937) and Kentucky (1940) laws also required a 90% affirmative vote to permit adoption of regulations but these laws were made less prhhibitive by stipulating not 90% of the eligible voters but 90% of the votes cast. Kentucky followed the lead of South Dakota in requiring that the affirmative voters must represent a certain percentage of the district acreage, a seemingly sound idea which was omitted from the Standard Act. Maryland made violation a misdemeanor but imposed no liability for damages resulting from violation and provided for no boards of adjustment.

Michigan Discards Regulations

In 1937 Michigan enacted the Standard Act with a few alterations. The fact that provision was made for binding land use regulations made the whole district idea suspect to Michigan's individualistic, ultra-conservative farmers; the formation of districts proceeded at a slow pace. In 1945, the State's agricultural officers and leaders, realizing that the fight was going against them, suggested amendments to the Legislature with the result that the entire section dealing with regulations was repealed.

New Mexico and Zoning

New Mexico made an interesting departure from the mean in 1939. Having passed the Standard Act in 1937 (except that a 67% affirmative vote was necessary to permit the adoption of regulations) the next session of the Legislature required that each district be divided into two zones, one to be known as the "Range Land Zone" and the other as the "Farm Land Zone". The supervisors for each zone are to be elected separately, two from the zone containing the largest number of land owners and one from the remaining zone. Land use regulations may be proposed for each zone, are voted on by the owners within that zone and apply to that zone only; but the supervisors, in proposing regulations, shall consider the interdependence of zones. In 1943 it was required that the regulations must be approved by 50% of the land owners within the zone in question. Here we have a good example of a State taking the Standard Act, accepting the major provisions and keeping the basic idea foremost, but modifying it to suit the particular requirements of their local economy, climate and topography. The Farm Land Zones are easily defined since, for the most part, the land must be irrigated to make it suitable for cultivation. Diversified, subsistence farming is not the rule; rather, the land operator counts on making the major portion of his income from one set of crops, be they cattle or sheep products or orchard and truck crops. The two types of land use have little in common; and the erosion controls necessary for each are widely divergent; intensive for the valuable farm land and extensive for the comparatively less valuable range land. An interesting sidelight

on this arrangement is the presence of the traditional hostile feeling between range men and "squatters," some of which has carried over to the present day. The New Mexico law, by providing that the two shall work together in the common fight against erosion but that each shall be prevented from making restrictions inimical to the interests of the other, seems to have been a wise decision on a critical issue and one that may perhaps be followed by other western States.

North Dakota and Oregon

The changes made in the North Dakota law have not been spectacular but they typify the general drift away from binding regulations. The 1937 law approximated the Standard Act, however it made a two thirds affirmative vote of land occupiers a prerequisite for the adoption of regulations, and it failed to impose liability for violation. In 1939 the prerequisite was raised to 75% and the clause making violation a misdemeanor was ruled out. The other methods of enforcement are retained in the North Dakota law and the provision that land "occupiers" (who may be non-owner operators) are made eligible to vote in the referendum as well as owners (who may be absentee) was left undisturbed. With the single exception of Nebraska, all of the six States that comprise the Northern Great Plains Region[18] have employed this provision of the Standard Act; while States in other sections of the country have generally specified that only land owners shall be eligible to vote.

Oregon in 1939 made several limitations on the powers which would have been granted by the Standard Act. It was

provided that only land owners could vote, adoption of regulations was made contingent upon a 75% affirmative vote of land owners representing two-thirds of the land within the district, violation of the regulations was not deemed to be a misdemeanor nor did it entail liability for damages, and nearly all of the powers that the supervisors could exercise require approval of the State Soil Conservation Committee to be effective. This latter idea, that of making the State Committee a watch-dog and overseer for all district functions, is not thought to be a very progressive development in the main. Some other States have done the same, notably Georgia, West Virginia and Wisconsin; but none has gone so far as Oregon, or rather none has so far failed to decentralize the powers from State to local levels. The more State controls there are to inhibit local initiative, the less the local people will be inclined to work for their own programs and the less pride they will take in the districts as local organizations. Naturally, States are reluctant to delegate authority of any kind unless it is assured that the body which is the recipient of the delegated power is fully capable of exercising it with justice and discretion; but in the case of soil conservation districts, that capability is certainly implied if not explicit. The democratic method of district creation and the elaborate safeguards are one set of sureties. Another set can be deduced from a knowledge of the workings of local rural groups in general. As Ward Shepard has said, "The soil conservation districts completely refute the widespread and naively snobbish

belief among the educated classes that the masses of men are dull and hidebound and incapable of making use of the highest technological advances. They point indeed to a complete revision of our traditional concepts of organizing science for human use, and give an unmistakable clue to the paradox of the dazzling advance of science and the dismal lag of social progress. It is not the people who drive a horse and buggy, but the leaders of science, education, and government who collectively show an amazing lack of social inventiveness and courage, and allow the wondrous fruits of science to rot before they are ripe..... The tendency in government and industry has been strongly in the direction of specialized, bureaucratic hierarchies whose function it is to do the things they think the people need, instead of making it possible for the people to organize to do them."[19/] Many of the government agents who have been active in the County Land Use-Planning program of the Bureau of Agricultural Economics will subscribe to this. One of the unexpected developments of the program has been the general excellence of the plans arrived at by the county groups of (professionally) untrained men. It seems fairly clear that the local people may be safely trusted, to this extent, with local problems. Removing this unwonted vestige of State supervision also removes another chance for the program to be crippled as the result of a change in State administration. Politics on the local level are usually more stable than State politics.

Pennsylvania and New York Follow Wisconsin Toward County System

Pennsylvania was one of the states which, in 1937, accepted the Standard Act nearly as it was proposed. In 1939 it substituted the word "owners" for "occupiers" throughout and raised the necessary affirmative vote from 51% to 65%, making the adoption of regulations considerably more difficult. The 1945 Legislature repealed the entire law and enacted a new one which, following the lead of Wisconsin, placed the creation of districts on a county basis. No provision for the adoption of land use regulations was included in the new law. Since the county system in effect in Wisconsin will be discussed below, no further analysis of this particular form will be made here except to state that when district boundaries are constricted to conform to political ones, the basic idea of the watershed approach to soil conservation is in most cases made impossible. Here, then, is a State that began by adopting the Standard Act, including all of its liberal provisions, but, with the changing political complexion, became progressively more conservative until the fundamental character of the district was nearly lost. Perhaps this was necessary and in tune with the will of the people affected; perhaps they were opposed to trusting themselves with the making of local regulations. By the end of 1945 Pennsylvania had only eight organized soil conservation districts including a total of little more than two million acres, while at the same time Oklahoma boasted seventy-one districts with more than thirty-eight million acres.

Certainly something was delaying the program which was being so enthusiastically accepted in many other States. In 1946 New York, which had never permitted regulations, also amended its law to conform to the county system.

Texas

The first Texas enabling act, passed in 1939, made several wide departures from the Standard Act. One of the major provisions was that voting in any referendum should be by landowners only "in conformity with the General Election Laws." Regulations could be authorized by a 90% affirmative vote but could be suspended or repealed by a majority of the qualified voters voting. The supervisors could recover, to pay the costs of doing necessary work, only up to 10% of the yield from any property in any one year. Only owners could appeal to the board of adjustment for variance from the regulations, and only owners could contest petitions for variance. Owners did not, however, have the right to take their grievances to court after having been turned down by the board of adjustment, which was to be appointed by the State Soil Conservation Board.

This was probably the most conservative of any of the original laws passed by the Southern States. They have been fairly liberal about the percentages of votes necessary to permit district creation and land use regulation adoption but have consistently (except for Virginia) maintained that only owners of land may vote. Quite likely this was done because of the share cropping and tenant farming systems prevalent throughout the South and of other conditions that have brought about a

seasonal, migrant type of land occupier. Some might say that it was a part of the policy of maintaining "white supremacy"; this would certainly seem true of the Texas requirement that voters lists be in conformity with the General Election Laws. Whatever the reason, the 90% feature of the law still stands; and judging by the extent of district formation in Texas it has not been a hindrance. In fact, it might be argued that the action of the Southern States in keeping the reins of all the districts' functions firmly in the hands of the land owners has been one of the contributing factors in the rapid advance of the district organization in that section. Admittedly, it is not so purely democratic as the more liberal plan envisioned by the Standard Act but in an imperfectly developed, semi-feudal economy it may well have been necessary in order for the district movement to progress at all.

The 1941 Texas Legislature thought better of it and repealed the clause demanding conformity with the General Election Laws. It also stipulated that a 90% affirmative vote made regulations mandatory, a feature which may involve an improper delegation of legislative power but one which is not likely to be successfully contested in the courts. In order to somewhat rectify the anomalous position of the non-owner operator, the owner of the land is now joined as a defendant in any suit brought against the operator; and the operator, or "occupier", can now file a petition for variance from the regulations with the board of adjustment.

An interesting comment on the rapidity of district creation was written into the 1941 Texas law. It appears in section 6, the Emergency Clause, and it states: "The fact that under the existing House Bill No. 20, Acts of the Regular Session of the Forty-sixth Legislature, sixty-three (63) Soil Conservation Districts have been created over a period wherein not more than twenty (20) districts were anticipated, and whereas the procedure provided requires certain unnecessary and excessive expenditure of the public funds, which may be eliminated by a simplification of such procedure, creates an emergency and an imperative public necessity, the Constitutional Rule requiring that bills should be read on three several days in each House be and is hereby suspended, and this Act shall take effect from and after its passage, and it is so enacted." The bill passed the House 122-9 and it passed the Senate 22-2. As of January 1, 1946, Texas had a total of 119 organized, legal soil conservation districts, comprising more than 105 million acres.

Vermont

The history of soil conservation districts legislation in Vermont is one of extremely guarded, cautious advances. It is a case of not wanting to be left out but not wanting to come all the way in. In a manner fraught with suspicion, the State Legislatures have passed enabling acts of sorts, which give very little promise of authoritative local action and prohibit in the law the exercise of certain practices which are not even likely to be considered by Yankee farmers. The super-security aspects of this law are such as might seem to have been provided to regulate dealings with a foreign, and possibly hostile, power.

The first law was passed in 1939. Its most glaring failure was that it neglected to make districts legal governmental subdivisions of the State. The powers of the supervisors to make detailed plans, agreements, and covenants were omitted. Land use regulations were authorized but the prescribed procedure was for the supervisors to hold a referendum and to publish the result. There were no "teeth", nor was it intended that there should be granted any real authority to regulate the use of land.

The Vermont Legislature of 1941 went a step farther; legally organized districts were made governmental subdivisions and bodies corporate and politic. It provided, however, that the two supervisors to be appointed in a newly formed district "shall not be employees of the Federal Government." The sale, lease or other disposition of real property can be made only with the written consent of the Governor of the State. In lieu of the specific subjects that the regulations may cover as outlined in the first part of section 9 of the Standard Act, the law simply says that regulations may apply to soil and stream bank erosion control and drainage but may not apply to forest land. In the case of non-observance of the regulations, the supervisors are permitted to summon the offending land owner and to confer with him concerning his dereliction. If he still insists on disobedience, the supervisors may refer the matter to the board of adjustment, appointed by the State Soil Conservation Committee, for compromise. If no agreement is reached at this stage in the process, the supervisors may petition the

County Court which "shall order such relief as it may deem necessary in the interest of public health, safety and welfare," provided that no owner shall be ordered to do or to pay anything that is not intended for the protection of his own land, nor in just proportion to the benefits he shall receive, nor for the public good.

The defects in this law are so obvious as to need little comment. After waiting four years from the time when the Standard Act was first proposed, and incidentally witnessing the great strides in districts work in some other States, Vermont has passed a law which, while following the general form of the model, surrounds the supervisors with so many restrictions that their task is made all but impossible. Doubtless it would have been more profitable to have made no provisions for the adoption of regulations than to set up machinery that can lead only to confusion and frustration. Real authority to control erosion adequately on an area basis, especially in a State possessing the rugged topography of Vermont, is conspicuously lacking.

Wisconsin, the County System.

The traditionally progressive bent of the people of Wisconsin is nowhere more in evidence than in their programs relating to the use of land. One could cite a long list of examples of their liberal, inventive, exploratory attitude toward land problems, some of the important items of which would be the Rural Zoning Law, the Forest Tax Laws, the success of the county land use planning committees and their schemes for land classification.

In 1937 their State Legislature enacted, with only minor changes, the model law. But in 1939, after study and consideration, it was decided to merge the soil conservation districts program with the political units around which are focused the great mass of the State land use legislation, i.e., the counties. The new law stated that a district should be "any county whose board of supervisors has by resolution declared it to be a soil conservation district". The special five-member committee on agriculture of the county shall be the supervisors of the district. Land use regulations may be adopted on an affirmative vote of 67% of the land owners and all of the standard enforcement provisions are included except the fixing of liability for damages. The board of adjustment is that provided for under the State rural zoning law, a three-member board appointed for three-year terms by the chairman of the county board of supervisors.

This law presents the most radical departure from the proposals of the Standard Act yet to be adopted by any State that can be said to have sincerely attempted to frame a worthwhile enabling act. As was noted in the case of Pennsylvania, this system of declaring counties to be districts completely negates and makes impossible of application one of the basic ideas of the districts program, that of attacking soil erosion by individual watersheds. Counties are political subdivisions, and rarely do they come near to coinciding with the drainage pattern of the land. Coordinated conservation programs by farmers living in the same valley but in different districts would

necdssitate a fine degree of cooperation between adjacent districts. This may be possible in some cases; but where there are county "feuds" over the question of roads, schools or other matters, such disputes are liable to hinder the conservation programs when the men responsible for their execution are parts of the opposing county governments.

Two things may be said in favor of the county system without an appraisal of actual results. One is that it prevents a certain amount of duplication of government at a level where funds for public services are extremely hard to obtain. The States and the Federal Government may indulge in deficit spending but the counties have statutory limitations on debt; moreover, the governing bodies must collect taxes to pay their expenses directly from their sometimes hard-pressed neighbors. Consolidation of county and district should result in a saving on clerical work, office space, publicity costs and other administrative expenses. There is also the opportunity of pooling resources for the purchase of needed machinery and the chance for the farmers to borrow existing county grading equipment, trucks, etc. during idle periods, effecting a more efficient use of the same. The second favorable comment that may be made is that consolidation may bring about a speed-up in the formation of new districts by eliminating the opposition of the county governing bodies. No organization or set of organizations looks with pleasure upon a brash newcomer who tries to invade its domain claiming that it has a cure for the ills of the inhabitants. Public administrators have sometimes referred to the counties as "the Dark Continent of American

government", meaning that of all our political divisions they are the least susceptible to change or reform; it is true that most county supervisors in agricultural areas are highly conservative people. Rather than fight the system in hopes of long term gains, it may be better to compromise and thereby further the main objective of getting conservation on the land now.

Four Feeble Gestures

Arizona in 1941 passed an abridged version of an enabling act that held no authorization for land use regulations. In 1945, while subjecting the act to a reorganization which contributed little in the way of delegating real authority to local groups, the legislature passed an amendment that practically nullifies the State's district program. This amendment reads: "after the formation of any district under the provisions of this Act all participation thereunder shall be purely voluntary, any provision of this Act to the contrary notwithstanding". Reading of this sentence calls to mind similar provisions of the present Minnesota law. The two are in the same class, contradictory, baffling and unworkable. Many districts have been created in Arizona (27 at the end of 1945) but they are mostly tiny parts of counties and the total acreage is insignificant. At the same time, neighboring New Mexico with a "strong" law had 51 organized districts with a total acreage of close to 40 million, just about 100 times that of Arizona.

The 46th and 47th States to pass enabling acts, Massachusetts and New Hampshire, did so in 1945. In the case of these

two laws the term "enabling act" is actually a misnomer. Under the Massachusetts law, districts may be formed and dissolved by resolution of the State Committee while New Hampshire simply declared the whole State to be one soil conservation district, making special provision that nothing could be done affecting land without the consent of the land occupier. No land use regulations are provided for by either law. Massachusetts has done very nearly the legal minimum to make possible the formation and function of local organizations; and New Hampshire, in a rather extravagant dodging of the spirit of the movement, permitted Federal cooperation while effectively preventing any local district formation whatsoever.

Connecticut, the remaining hold-out, in 1946 still did not have a soil conservation districts law. It did go so far as to create a State Soil Conservation Committee to assist the Commissioner of Agriculture, giving to this Committee most of the powers usually bestowed on district supervisors. The sixth of these powers specified by the law is "as a condition to extending benefits to land owners, require contributions to operations on such land and require owners who have consented to such work being done on their lands to enter into and perform such agreements as to long term use of such lands as will tend to prevent erosion thereon." Thus Connecticut, without going through the fiction of creating impotent districts, has as much of a start in the program without a districts law as have Massachusetts and New Hampshire with their makeshift legislation.

Purpose of Part III.

This has been a rapid survey of the development of soil conservation districts legislation in the forty-eight States as it affects land use regulations. The following chapters will attempt to piece the different parts of the picture together, to show how the State programs fit into regional and physiographic boundaries and to draw some conclusions as to the fate of the movement on a national scale.

Literature Cited

17/ See State laws of Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, and Wisconsin.

leg. index
law library

18/ See State laws of Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

19/ Ward Shepard, op. cit., p. 44-46.

CHRONOLOGICAL LIST OF ORIGINAL STATE S. C. DISTRICTS LAWS.

1937

State	LUR Auth.
Arkansas	yes
Colorado	"
Florida	"
Georgia	"
Illinois	"
Indiana	"
Kansas	"
Maryland	"
Michigan	"
Minnesota	"
Nebraska	"
Nevada	"
New Jersey	"
New Mexico	"
North Carolina	"
North Dakota	"
Oklahoma	"
Pennsylvania	"
South Carolina	"
South Dakota	"
Utah	"
Wisconsin	"
22	22

1938

State	LUR Auth.
California	No
Louisiana	Yes
Mississippi	Yes
Virginia	Yes
4	3

1939

State	LUR Auth.
Alabama	Yes
Idaho	No
Yowa	""
Montana	Yes
Oregon	"
Tennessee	"
Texas	"
Vermont	"
Washington	"
West Virginia	"
10	8

1940

State	LUR Auth.
Kentucky	Yes
New York	No
2	1

1941

State	LUR Auth.
Arizona	No
Maine	"
Ohio	"
Wyoming	Yes
4	1

1943

State	LUR Auth.
Delaware	No
Missouri	"
Rhode Island	"
3	0

1945

State	LUR Auth.
Massachusetts	No
New Hampshire	"
2	0

In connection with the table it should be noted that in 1939 California, by amendment of its 1937 law, made provision for the adoption of land use regulations; and that in 1945 Michigan and Pennsylvania, and in 1946 New York, repealed such provisions in their laws.

Figure 2.

Part IV

THE STATUS OF LAND USE REGULATIONS, 1946

Comments on Regulations in the United States.

A review of the governmental subdivisions of almost any State will reveal a considerable list of districts in operation. Some of them have been organized for the purpose of supporting a single institution or operation, as in the case of the school districts. But even these organizations of limited scope serve a purpose beyond that for which they were started, for, as the rural sociologists have pointed out, they are frequently the rallying point for the neighborhood projects of various characters. In addition to these legally organized subdivisions there are the smaller, unofficial working groups such as silo-filling cooperatives, harvest machinery and labor pools, and any number of somewhat similar "bees" which have always been a feature of rural America. Farmers' cooperatives, chartered as corporations for the remanufacture and sale of farm products, are also well established. The methods of rural cooperation are many and devious.

Districts having to do with land problems only are likewise nothing new. We have irrigation districts, drainage districts, wind erosion control districts, and conservancy (flood control) districts, most of them organized and directed on a watershed basis. Drainage districts throughout the country total 87 million acres; and one State, Indiana, has 44% of its land area within drainage district boundaries. Hundreds of regulations govern the processing and sale of farm products

through the pure food laws. Some of these, like the laws relating to tuberculosis in cattle, force the owner to submit to inspection of his property and may force him to destroy such property as is found to be infected. The authority for these laws is the police power of the State to provide for the protection of public health and safety.

Is there a need for regulations governing the use of land? Conservatives will say that the best means of control is the least measure of control consistent with orderly government; that each man, in working for his individual economic advantage, will bring about the optimum conditions if given sufficient freedom of action. This theory seems to break down when confronted by one word--speculation. If there were no short-term profits to be made from the speculative control of land the system might work; but when the situation arises, as it frequently does in war years, of a sellers' market in agricultural products making it possible for a man to benefit economically from the destructive cultivation of his land and then to sell out and get out, the loss to the State is obvious. If the soil is to be classed among the basic assets of the State it must be protected.

Is the censure of an enlightened public opinion sufficient to control misuse of land? In some sections of the country this is thought to be true; and, since the majority of the landowners feel this way, the proponents of regulation by ordinance must bow to the will of the majority while continuing to campaign for legal restrictions. One of the arguments

that they may use, in addition to the social theory of property, is that water, influenced by the force of gravity, ignores all but the physical boundaries and barriers. Surface water flowing over the land carries on the processes of erosion and deposition in response to its own volume and velocity and to the erodibility of the material over which it passes. Damages resulting from erosion on neighboring higher lands, cutting and shifting of stream channels, and the silting of dams and reservoirs are all frequently cited as demonstrating the need for proper control of precipitation. Less frequently mentioned but equally as important is the action of ground water, truely a local resource. When the water table sinks or disappears, either as the result of overdrawing or because of failure to utilize rainfall, the loss is sustained by the owners of all land above, and dependent on, the local aquifer, or water-bearing bed. It was early recognized that drainage of low-lying lands had to be carried out cooperatively in order for it to be effective and for the owners of adjoining lands to receive mutual benefits, but the conservation of water for storage on well drained lands has not been handled in the same way.

It seems rather clear that the majority of the people see the need for, and are in favor of, conservation farming on more than an individual basis. Only the methods of achievement are in debate. Jacks and Whyte give an interesting account of how various methods have been tried on one particular area. They point out that within a span of eighty years

(1860-1940) the Russian Steppes have experimented with and rejected systems of land tenure represented by feudalism, communal open-field farming, enclosures and capitalism, and collectivism and socialism. Without indorsing collective farming, the authors say that as far as erosion is concerned there is reason to believe that collectivism of some kind could be made to have a more stabilizing influence on the soil because individual boundaries are forgotten in conservation planning.[20/] The world today is moving toward more and more governmental restriction of individual action; but in the United States we prefer that education precede regulation so that the laws, when passed, will have the benefit of local acceptance and support.

Many instances of government by decree in foreign countries could be cited. One which relates directly to this study are the land use laws of the Republic of Haiti. Passed in 1937, they regulate planting according to the slope of the land to be planted, also regulate the forest program of the country, and the breeding and handling of livestock. The laws are strictly enforced, agricultural policemen being provided for periodic inspection of lands. An owner must get a permit from the government before he may cut, prune, burn or otherwise injure trees growing on a slope of more than 30% or within 160 feet of bodies of water. Annual crops may not be planted within these areas. These laws appear to be inadequate, if not illogical, unless they are supplemented by others not reported. They merely serve to show that in some countries where, presumably, education lags far behind and the need for control is immediate, the lawmakers have tackled the problem in their own way.

In contrast to this situation, take the case of the Turkey Creek Soil Conservation District in Nebraska. The formation of a district there was voted down when it was first proposed in 1937, the fear of "regimentation" leading the farmers to come out strongly against it. The advocates of the proposed district wisely deferred another attempt until education and information had worked to destroy this fear, with the result that eighteen months later the district was organized by an overwhelming majority. In the field of regulations, the power of the districts to formulate ordinanceshas had determined opposition in Colorado, especially in the State Senate, but attempts to revoke this power have so far been unsuccessful.

Why did the various States act upon the Standard State Soil Conservation Law as they did? Table 1 shows the provisions for land use regulations in the State laws as of 1946; from a survey of the regional differences and from other sources we can obtain an idea of why some States passed "strong" laws, some passed weaker versions, and some failed to make provision for any regulations whatever. The regional divisions made in Table 1 are not entirely the result of physiographic differences, nor are they made entirely because of political and traditional variations, but rather all three considerations were taken into account before the broad groupings were decided upon. Lastly, they were not so grouped in order to illustrate the influence of geography in the laws. Reasons proposed for legislative actions taken in one set of States may well apply in States of another group, although not in such an obvious manner.

The South

The plight of southern agriculture in the nineteen-thirties is too well known to need long discussion here. Cotton and tobacco are "mean" crops, both to the men that grow them and to the land on which they grow. Many decades of improvident farming had devastated much of the land, severely damaged nearly all of it. Ruined acres were either being worked by tenants and sharecroppers for what little they could squeeze from them or were being abandoned to fire and the seedling pine. The whole region needed a reawakening and revitalizing of its rural life, rewards which the soil conservation districts seemed to offer. The program was enthusiastically received; and, since its inception, the South has led the way both in the creation of districts and in the provision for ordinances designed to insure the survival of the corrective measures employed.

The system of land ownership in the South was also instrumental in facilitating passage of the laws. The control of large acreages combined with political power meant that a minority, composed mostly of the better educated and possibly more enlightened citizens, could speed enactment, once they had decided on the worth of the idea. Another factor was the presence of the Tennessee Valley Authority, a "government" agency that had come to the rescue when times were bad, had proved, on the whole, to be a good thing for the region, and had showed how problems could best be attacked on the watershed angle. Finally, there exists in the South very little

of the feeling of fear and suspicion toward the Federal Government that is so marked in some sections of the country. Governor Ellis Arnall of Georgia has said from the rostrum, "I love the Federal Government." Of course, that is particularly true when that Government is a Democratic Government, but nevertheless, there was a feeling among the people that "Washington" was right in initiating action on soil conservation, which would then be carried out by the States and their subdivisions. Among the fourteen States listed as being in the South nearly all can be said to have solid, workable laws; only one, Delaware (not strictly a southern State), has no provision for the adoption of land use regulations.

Upper Mississippi.

The States of the Corn Belt have not taken kindly to the idea of land use ordinances. Wisconsin now has the most workable enabling act, considerably changed from the proposals of the model, as discussed in part III. Indiana and Illinois, after amendments, still retain the major provisions of the Standard Act except that they afford no safety valve in the form of boards of adjustment. The Minnesota law can be discounted because its contradictory nature makes its incapable of enforcement. The other four, Iowa, Michigan, Missouri and Ohio, do not allow for local regulations.

One argument that was loudly proclaimed in opposition to regulations was that they just weren't needed. This attitude, in conjunction with the opposition to the infringement

of any individual liberties--to be expected in normally Republican States--brought on so much disagreement that the work of forming districts was seriously hampered, and actually halted in some localities. Despite evidence to the contrary, the farmers thought that if such ordinances were made possible the door would be opened to the interference and dictation that they feared. It was maintained that education and public opinion were enough to insure the success of the program, examples being cited of instances where uncooperative occupiers had suddenly changed their ways after receiving the "silent treatment" from their neighbors. It was felt that collective action could be had without the unwelcome necessity of making more laws. Men who disliked to sit in official judgment over the man across the fence thought it better to deal unofficially with each situation as it came along. The county system of local government was too strongly rooted to permit ready adoption of districts with watershed boundaries. In some cases the large farmer organizations, apparently feeling that rural leadership was being siphoned away from them, came out against districts in general and regulations in particular. The laws in this region are still in the process of revision, as witness the changes in the Michigan law made in 1945. Michigan is working toward the Wisconsin plan at the present.

The Great Plains

The States lying along the one hundredth meridian have unanimously permitted the adoption of land use regulations. True, Kansas and Texas demand an affirmative vote of 90% and

Nebraska makes no specific provision for enforcement, features that do not tend to strengthen the laws; but the region, as a unit, has accepted the idea throughout its area. The key to this unanimity is probably a physical one, wind erosion. The dust bowl and other sand-blasted territories were not the unwitting victims of insidious, imperceptible sheet erosion; they were hit by a smashing onslaught which almost overnight ruined thousands of acres of crops and forced hundreds of farm families to take the road to look for new lands. They didn't have time to argue, they had to have action, and from the nature of the problem it was obvious that such action would have to cover the region like a blanket if the land was to be saved. In the southern end of this tier of States that hope is near to accomplishment, and progress all along the line is good.

The Mountain States

In that great region which is bisected by the Continental Divide, the Federal Government, an absentee landlord, owns 275 million acres, or nearly 50% of the entire land area. While the amount of money thus lost to the taxing bodies is more than equalled by the amount spent by the Government in the region, the business and political leaders have long fulminated against the arbitrary action of "Washington" as the cause of all their ills.[22/] In some cases this remote control has had a tendency to enforce a general policy without adapting it to regional differences; in other cases where Federal action

was clearly necessary in the national interest the reasons for the action were poorly explained, giving the press a chance to cry out against the Government and arousing local antagonism. One would expect a varied reaction to any proposals for State action coming from Washington and not being accompanied by outright gifts.

Nevertheless, five of the seven mountain States have approved of the idea of regulations. Irrigation problems and the damages of flash floods, known to be intensified by cut-over uplands and denuded ranges, have made the region's people more than conscious of the need for cooperative control. Where the question of what to do about water--either too much or too little of it--is an everyday topic of conversation, this is not hard to understand. Another factor in the people's thinking is the wind erosion which is also common to the Great Plains.

The story of how two Colorado districts have solved their wind difficulties is given by Tom Dale. In the years 1935-1938 Baca County, Colorado, had more wild "blow" land than any area of similar size in the region. In 1930 there were 1730 farm families in the county but by 1938 the number had been reduced to 650; and 175,000 bare acres of shifting sand, incapable of supporting even a stand of weeds, were threatening to wipe out the survivors. A Soil Conservation Service demonstration project was begun in 1935; the outgrowth of which was the formation in 1938 of the Western Baca County and the Southeastern Baca County Soil Conservation Districts.

Working with the Department of Agriculture, the supervisors of these two districts set out to bring the wild land under control. The Department, under a submarginal land purchase project, took options on the worst areas and began planting; the supervisors leased thousands of idle acres from absentee landlords at $1.00 per acre, the money being loaned for the purpose by the Farm Security Administration. The plan was to get the area back to a stable livestock economy and to discourage the growing of wheat and other cultivated crops. When the work was completed it was found that the AAA conservation payments more than equalled the amounts loaned by the FSA, leaving the districts a balance with which to carry on, and that the area of "blow" land had been reduced to some 28,000 acres (1941). It was then that decisive action was taken to make sure that there would be no repetition of the disastrous land use practices. Ordinances were adopted forbidding the breaking of sod in the districts without permission of the supervisors; permission which has been given but rarely and then only for land which is clearly not in the danger zone.[23/] Ordinances can be made to work.

The Pacific States

The enabling acts of the four States of the Pacific group have at least one common factor: they each contain sound, unequivocal provisions for the adoption and enforcement of land use regulations. Nevada duplicated the wording of the Standard Act, California made numerous changes, and the other two made minor deletions and reservations; but in no case is a law

guilty of hedging. This region-wide acceptance of the idea may be due to the lack of homogeneity in the population, with the consequent freedom from traditions and prejudices; it may be because of the flood problem common to all mountainous regions; or it may have something to do with the relative scarcity and high cost of good agricultural land. Most likely it is a combination of all these and of other reasons. Although the amount of land under districts is small compared to the total land area, there is a good distribution of districts, and there are many indications that the program will succeed.

The Northeast

Yankee conservatism probably accounts for the lack of provision for land use regulations in New England and the adjoining States. Chapter III pointed out the considerable reluctance and delay with which soil conservation districts laws were passed in this region; a glance at Table 1 shows that only two of the nine States now authorize local land use ordinances. The Vermont law was made rather ineffectual by the addition of restricting clauses, and the New Jersey law does not require that the regulations be submitted to a referendum, so it can be said that in the Northeastern region there is no State law which follows closely the spirit of the Standard Act.

The worth of regulations in the solution of the erosion problems of New Hampshire was described by three authors in Soil Conservation early in 1941. They related that there had

been a feeling of pride among the State's agriculturists that erosion on their holdings was of negligible proportions. Over 80% of New Hampshire is wooded, thus forest management is the major land use to be dealt with. In spite of there being little apparent erosion, productivity of the land was decreasing, and weed species of trees were taking over in the wake of clear-cutting the second growth pine and also on abandoned farms. The New England hurricane and the floods of 1927 and 1936 had done damage with which the local authorities were then unable to cope. Now (1941) some of the leaders were beginning to discuss land use regulations in relation to woodland management. When the floods of 1936 drowned them out, the farmers appealed to all branches of government for immediate aid, not excluding the Federal Government in their invitations, but there was no legal provision for extending such aid. It is declared by the authors that soil conservation districts with the authority to adopt and enforce regulations for proper land use are at present the most likely tool for the New Hampshire landowners to use. A law was passed in 1945 which declared the whole State to be a soil conservation district, but it is difficult to see how this action at the capitol will be very effective at the local level. Whether regulations are needed or not, there is small chance that they will be authorized in the near future. This observation applies to the other States of the region as well. In 1946 New York changed its districts law to conform to the county system, an action that was recommended by the State Conference Board of Farm

Organizations after a three-year study. The authority for regulations was not included. The post-war shift of many voters from Democratic to Republican philosophy is an indication that new regulations of any type will receive scant consideration in the next few years.

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PROVISIONS FOR LAND USE REGULATIONS IN THE STATE SOIL CONSERVATION DISTRICTS LAWS, 1946.

	Northeast								South																					Upper Miss.								Gr. Plains						Mountain							Pacific			
	Conn.	Maine	Mass.	N.H.	N.J.	N.Y.	Pa.	R.I.	Vt.	Ala.	Ark.	Del.	Fla.	Ga.	Ky.	La.	Md.	Miss.	N.Car.	S.Car.	Tenn.	Va.	W. Va.	Ill.	Ind.	Iowa	Mich.	Minn.	Mo.	Ohio	Wis.	Kansas	Nebr.	N.Dak.	Okla.	S.Dak.	Texas	Ariz.	Colo.	Idaho	Mont.	N.Mex.	Utah	Wyo.	Calif.	Nev.	Ore.	Wash.
Districts auth. to adopt land use regulations				+				+	+	+		+	c	+	+	+	+	+	+	+	+	+	+	+			+		+		+	+	+	+	+	+		+	+	+	+		+	+	c	+
Regulations adopted may include provisions for: Necessary engineering operations				+					+	+		+	+	+	+	+	+	+	+	+	+	c	+	+			+		+		+	+	+	+	+	+		+	+	+	+		+			+
Particular methods of cultivation				+					+	+		+	+	+	+	+	+	+	+	+	+	c	+	+			+		+		+	+	+	+	+	+		+	+	+	+		+	+	c	+
Specifications for cropping and tillage				+						+		+	+	+	+	+	+	+	+	+	+	c		+			+		+		+	+	+	+	+	+		+	+	+	+		+	+	c	+
Retirement from cultivation				+					+	+		+	+	+	+	+	+	+	+	+	+	c	+	+			+		+		+	+	+	+	+	+		+	+	+	+		+	+	c	+
Other means, measures and programs				+						+		+	+		+	+	+	+	+	+	+	c	+	+			+		+		+	+	+	+	+	+		+	+	+	+		+	+	c	+
Regulations must be uniform for all lands of same type or class				+					+	+		+	+	+	+	+	+	+	+	+	+	c	+	+			+		+		+	+	+	+	+	+		+	+	+	+		+	+	c	+
Who may vote on adoption of regulations) owners				+					+	+		+	+	+	+	+	+	+	+	+	+	c	+	+			+		+		+	+	+	+	+	+		+	+	+	+		+	+	c	+
Who may vote on adoption of regulations) o. & non-owner operators				a					+	+		+	+	+	+		+	+	+	+	+	+	+							+		+		+	q +		+		+			+		+	+
Votes necessary to permit adoption of regulations %																	+					+		+			+				+		+		+					+									
				a					51	80	75	51	51	d 90	e 67	51	e f 67	67	67	67	67	60	75	51			86			67	90	75	75	51	e 67	j 90		j 75		65	P 67	51	e n 75		67	51	e 76	67
Methods of enforcement: Violation a misdemeanor																														+	+		+				+			+	+	+		+	+		
Liability for damages resulting from violation				+						+					+		+	+	+		+			+																							
District may petition court: to require performance by violator				+					b	+		+	+	+	+	+	+	+	+	+	+	+	+	+						+	+		+	+	+		+		+	+	+	+		+	+	+	+
District may petition court: to auth. dist. to do work and recover costs				+						+		+	+	+	+	+	+	+	+	+	+	h +		+						+	+		+	+	+		l		+	+	+	+		+	+	+	
Board of Adjustment-establishment provided for				+					+					o	+	+		+		+		+	+							i	+		+	+	+		m		+	+	+	+			+	+	
Number of members appointed				3					3					o	3	3		3		3		3	3				3			i	3		3	3	3		m		3	3	3	3			3	3	3
Terms of office-regular term				3					1					o	3	3		3		3		3	3				3			i	3		3	3	3	2	3		3	3	3	3			3	3	3
Petitions for variance may be filed by: owners				+					+							+															+			+			+			+						
Petitions for variance may be filed by: o. and Non-o. ops.														+	+		+		g		+	+					+				+		+		+					+		+	+			+	+	
Variance may be auth. on basis of great practical difficulties or unnecessary hardship				+					+					+		+	+		+		+	+					+				+		+		+			+		+	+	+	+			+	+	+

Based on a chart entitled "Major Provisions of State Soil Conservation Districts Laws," The Soil Conservation Service, Washington, D.C. July, 1944.

TABLE 1

Footnotes

a No referendum-regulations will be operative unless owners of 25% of acreage file objections against them within 60 days of proclamation.

b Provided that no owner must do or pay anything not for protection of his own land, nor in just proportion to the benefits he will receive, nor for the public good.

c At the pleasure of or with the approval of the State Committee.

d No referendum until regulations have been approved in writing by State Committee.

e Required to represent certain percentage of acreage in district.

f Of those eligible to vote.

g "Occupier" defined to exclude owners.

h Costs may not be recovered if defendant "has reasonable objection or is financially unable to pay" and county board of supervisors so certifies.

i Those provided for under State rural zoning law. Members are 3, with 3-year terms, appointed by chairman of county board of supervisors.

j Favorable vote is conclusive, not advisory.

k Regulations may vary according to character and condition of specific tracts.

l District may perform work upon notice without prior authority of court.

m District board of appeals (3 elective members) and State board of appeals (3 appointive members)

n Requires this vote of owners and also of non-owners operators.

o Supervisors shall constitute the B. of A. and shall be ex-officio members thereof.

p Regulations must be approved in writing by owners of 50% of acreage to affected by regulations.

q Must be 21 and a resident of a county, all or part of which is in the district.

Part V

SUMMARY.

The preceding discussions are an attempt to bring into focus as many as possible of the factors that affect land use regulations for conservation in American agriculture. From the information thus presented, and from other sources, we should be able to draw some conclusions concerning the direction that the movement is taking and to hazard some predictions about its future development or decline.

The districts program itself has been a huge success. One can travel from New Jersey to Arizona and be within soil conservation districts all the way. Some of the southern States are solidly blocked in, and the national total of land in organized districts is well over 800 million acres.

Acceptance of the idea of regulating land use has been less widespread. Unfortunately, the scope of this paper does not permit a careful investigation of actual results in each State; we can only try to deduce the answers from the trends of State legislation. As of 1946, thirteen States have districts laws which do not permit regulations, two States (Minnesota and Vermont) have definitely unworkable laws, and several other States have surrounded their permission with such stringent limitations as to make adoption and enforcement next to impossible. In only two States (California and Colorado) has the trend been toward more liberal provision for regulations;

other States have either stood still or gone back to the traditional policy of non-interference.

Regulations Necessary

Let us accept the premise that regulations governing the use of most of our agricultural lands are right and necessary. This premise can be defended only from a theoretical standpoint because few, if any, statistics are available which show the "before and after" condition of lands, the use of which has been regulated by local ordinances. The Soil Conservation Service has refrained from publishing much information of this nature, apparently on the principle that regulations are the concern of the State and district authorities and that the Federal Government should remain neutral. As M. L. Wilson has said, "....The soil conservation districts law places the responsibility for the initiative and management of a soil conservation program upon local folk....Whether a district is to be formed rests entirely with the people who work the land. They express their decision by petition and in referenda. They develop their own program. They are answerable to no other agency in the conduct of their program. Its reins are held tightly in the hands of local people."25/ The safeguards inherent in the democratic nature of the districts laws should refute those critics who maintain that land use ordinances are morally wrong. For those who declare that regulations are unnecessary or unfeasible, experience must be the teacher.

Causes of Delay

Apart from a natural resistance to change, what are the reasons for delay in the program of adopting land use regulations? Such a program was recognized and provided for by law in Public Act #46, discussed in Part I of this paper and, although it has had no obvious official backing by Federal agencies, it has made considerable progress in some States. Why have other States handled it so gingerly? Is there an ingrained feeling in the people of the Northeast that will forever militate against acceptance of the principle? Are new and different methods of promotion needed and would they be effective now? Was the entire movement a phenomenon of the agricultural crisis, due to wither and die in the current season of prosperity? It is not possible to give definite answers to these questions; the best that can be offered are opinions based on study and personal observations.

The Soil Conservation Service had an astonishing early growth. Beginning from scratch in 1933, in a very few years it possessed more men and facilities than most of the other agricultural agencies of the Federal Government. Other Department of Agriculture bureaus which were conducting action programs on the land were not always able to keep abreast of the expanded activities of the Soil Conservation Service. The result was that, in spite of earnest attempts at Departmental coordination, by the time the different programs reached the farmers they sometimes seemed to be competing or even conflicting. Terminology, too, became confusing; for instance,

payments for soil conserving practices under the Soil Conservation and Domestic Allottment Act were administered by the Agricultural Adjustment Administration, which might have no local connection with the Soil Conservation Service. This situation is clear enough to one who has a knowledge of the programs involved but may be baffling to the neophyte. When busy farmers were visited by a succession of "government" men, each representing a different agency and promoting a different activity, there sometimes arose a feeling of bewilderment, suspicion, or resentment. This could happen even when the farmers were included in a well-organized soil conservation district.

Progress on district work plans did not always develop as the Service hoped that it would. M. H. Cohee has pointed out that work plans should be the joint efforts of supervisors and agents, but that some plans show clearly that they are the work of agents alone, except for signatures. He reiterates that the goal is ultimate autonomy and that all efforts should be bent toward getting the district out of the "guardianship" stage; and he concludes that Service agents must stick to the basic "soil conservation district philosophy" or jealousy, changing points of view, and economic crises may spell death to the movement.[26/]

The principle of districts adopting land use regulations has never had enthusiastic support from the old, established farmers' organizations. In its legislative program for 1940, the National Farm Bureau Federation stated: "....The Farm Bureau Federation wants county agents to captain the whole local

show. It wants all agricultural programs and agencies to work outward from local Farm Bureau offices to farmers...."[27] When New York State revised its districts law in 1946, it did so on the recommendation of the State Conference Board of Farm Organizations. New York's Governor, in committing the bill to the legislature, declared, "....Farmers, through their organizations, should decide what form of cooperative action is desirable and the State should provide legislation if any is needed to implement this program...."[28] The Michigan amendment of 1945, which abolished provision for land use regulations, was proposed by a group of agricultural agents and leaders, some of whom were members of the Extension Service. This group had made an intensive study of the laws of several States.

The above examples are intended to point up some of the possible reasons for the slow-down of the program. Some faults may be traced to government agents, some to entrenched farm organizations; and some of the difficulty may be cyclic--a temporary revulsion against even the suggestion of interference. It is interesting that in some cases there was a good deal of inter-State study made before new proposals were advanced.

What Can Be Done To Further The Program?

Ward Shepard--always an advocate of direct action--has proposed the merger of agricultural extension with the land management district. Extension, instead of being an independent and competing agency, would become the educational arm

of the district; and the district would serve as the center of agricultural administration. This organization, he believes, would bring the full weight of science to bear on the immediate problems; science would be put to work by the district through its organization and would no longer filter down to the farmer through independent agents.[29] If this arrangement were possible it would indeed eliminate some of the rivalries that now plague the Services.

Philip Glick has raised the question of a Constitutional amendment, giving Congress the power to control floods and soil erosion, or to conserve natural resources.[30] Under our system of delegated powers, the actions of the Federal Government are finally limited by the decisions of the United States Supreme Court. However, if a State supreme court holds invalid a State regulatory statute on grounds that it violates the due process of law clause of the State constitution, that decision is not reviewable by the United States Supreme Court. Thus State courts may enforce a narrower version of the police power than the higher court is prepared to enforce.[31] Whether we need such a Constitutional amendment depends somewhat on the effectiveness of State programs, but in any case it is not possible now. The interests which demand unfettered private use of land are at present well organized and very active (the agitation against the Grazing Service and the Forest Service are good examples of their strength.) It is probable that another period of crisis would have to occur before an amendment could be successfully promoted. Whether such an amendment

would be effective is a matter for speculation. As Philip Glick concludes, people may amend constitutions if the judges fail them, but the judges will still interpret the constitutions.[32/]

Parallel In The National Conservation Commission

The National Conservation Commission was appointed by President Theodore Roosevelt in 1908. It was an outgrowth of the White House Conference of governors, a landmark in the history of national conservation. This Commission made an inventory of natural resources and drew up far-reaching proposals for the conservation of natural resources on a national scale. Its program was killed by Congress, and its ideas were not acted upon until the New Deal era a quarter of a century later. The years leading up to our involvement in the first World War and the period of prosperity which followed that war provided a poor climate for the growth and practice of conservation ideals.

The movement for the creation of local land management districts having the power to regulate the use of land began only a few years prior to the United States' entry into World War II. For a while the movement prospered, but now the regulatory power is being reduced or further circumscribed. Apparently we will have to wait until another slump in the economic cycle brings about conditions more favorable for total conservation of the land, its people, and its products. Much social progress seems to be engendered by times of depression.

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