

Y4
. In 8/13
L 22/4/
971/PT. 2

1040

92Y4
In 8/13
L 22/4/971/pt. 2

NATIONAL LAND USE POLICY

GOVERNMENT

UMENTS

Storage

21 1971

HEARINGS

BEFORE THE

LIBRARY
KANSAS STATE UNIVERSITY

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

S. 632

A BILL TO AMEND THE WATER RESOURCES PLANNING ACT (79 STAT. 244) TO INCLUDE PROVISION FOR A NATIONAL LAND USE POLICY BY BROADENING THE AUTHORITY OF THE WATER RESOURCES COUNCIL AND RIVER BASIN COMMISSIONS AND BY PROVIDING FINANCIAL ASSISTANCE FOR STATEWIDE LAND USE PLANNING

S. 992

A BILL TO ESTABLISH A NATIONAL LAND USE POLICY; TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO MAKE GRANTS TO ENCOURAGE AND ASSIST THE STATES TO PREPARE AND IMPLEMENT LAND USE PROGRAMS FOR THE PROTECTION OF AREAS OF CRITICAL ENVIRONMENTAL CONCERN AND THE CONTROL AND DIRECTION OF GROWTH AND DEVELOPMENT OF MORE THAN LOCAL SIGNIFICANCE; AND FOR OTHER PURPOSES

JUNE 22 AND 23, 1971

PART 2



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1971

63-988

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

HENRY M. JACKSON, Washington, *Chairman*

CLINTON P. ANDERSON, New Mexico

ALAN BIBLE, Nevada

FRANK CHURCH, Idaho

FRANK E. MOSS, Utah

QUENTIN N. BURDICK, North Dakota

GEORGE McGOVERN, South Dakota

LEE METCALF, Montana

MIKE GRAVEL, Alaska

GORDON ALLOTT, Colorado

LEN B. JORDAN, Idaho

PAUL J. FANNIN, Arizona

CLIFFORD P. HANSEN, Wyoming

MARK O. HATFIELD, Oregon

TED STEVENS, Alaska

HENRY BELLMON, Oklahoma

JERRY T. VERKLER, *Staff Director*

WILLIAM J. VAN NESS, *Chief Counsel*

DANIEL A. DREYFUS, *Professional Staff Member*

STEVEN P. QUARLES, *Special Counsel*

CHARLES COOK, *Minority Counsel*

(II)

CONTENTS

STATEMENTS

	Page
Arnold, Prof. Victor L., assistant professor of public affairs, University of Minnesota.....	312
Babcock, Richard F., immediate past president, American Society of Planning Officials, and chairman, advisory committee, American Law Institute, model land development code.....	390
Barton, Weldon, assistant director, legislative services, National Farmers Union.....	375
Brandon, David, director of program development, New York State Urban Development Corp.; and board of governors, American Institute of Planners, accompanied by Albert Massoni, director of national affairs, AIP.....	383
Clement, Roland C., vice president, National Audubon Society.....	299
Elliot, Donald H., chairman, City Planning Commission, and director of city planning, city of New York.....	316
Feiss, Carl, member, urban planning and design committee, the American Institute of Architects.....	277
Gernhauser, William K., commissioner, Lucas County, Toledo, Ohio, on behalf of the National Association of Counties, accompanied by Larry E. Naake, legislative assistant and western region representative, NACO.....	271
Jackson, Hon. Henry M., a U.S. Senator from the State of Washington, chairman, Committee on Interior and Insular Affairs.....	269, 315
Kimball, Thomas L., executive director, National Wildlife Federation.....	401
Landstrom, Karl S., Arlington, Va.....	365
Martin, Edward F., member, committee on forest land use, chairman, Southern California Section, Society of American Foresters.....	295
Martin, James G., vice president, National Service to Regional Councils, accompanied by C. James Dowden, assistant director of national service, and John J. Bosley, legal counsel.....	308
Pankowski, Ted, conservation associate, the Izaak Walton League of America.....	378
Pardo, Richard, administrative assistant, American Forestry Association.....	305
Ruth, Herman D., planner, Berkeley, Calif., and director, American Society of Consulting Planners.....	369
Siegan, Bernard H., attorney at law, Chicago, Ill.....	331
Slavin, Richard H., director, Planning and Community Affairs Agency, State of Washington, president, Council of State Planning Agencies, National Governors Conference.....	325
Stewart, Loran L., chairman, Forest Industries Council.....	289
Strong, Mrs. Ann L., professor of city and regional planning, Institute for Environmental Studies, University of Pennsylvania.....	344
Appendix to statement.....	348
Sullivan, Walter F., auxiliary bishop, Catholic Diocese of Richmond, Va.....	381
Toll, David R., general counsel, National Association of Electric Companies.....	397
Treichel, George, professor of geography, San Francisco State College, and chairman, Conservation Research Committee, Sierra Club.....	395

ADDITIONAL INFORMATION

National Association of Counties—National land use policy recommendations approved by the National Association of Counties board of directors, April 5, 1971.....	275
National Wildlife Federation, 35th Annual Meeting, Portland, Oreg., March 4-7, 1971—Resolution No. 7.....	405

IV

APPENDIX

(Statements and letters were received from)

	Page
Bagge, Carl E., president, National Coal Association: Letter to Senator Jackson, dated July 2, 1971.....	495
Bennett, Hon. Charles E., a U.S. Representative in Congress from the State of Florida, statement of.....	410
Bloom, George J., president, National Association of Regulatory Utility Commissioners: Letter to Senator Jackson, dated June 24, 1971.....	494
Brown, Carl, National Water Resources Association, Washington, D.C.: Letter to Senator Jackson, dated July 1, 1971.....	496
Cahill, Thomas E., executive secretary, Western States Water Council.....	484
Campbell, Jack, president, Federation of Rocky Mountain States, Inc., Washington, D.C.: Letter to Senator Jackson, dated July 16, 1971.....	505
Chadwick, Russell H. W., president, Northwest Mining Association, Spokane, Wash.: Letter to Senator Jackson, dated May 7, 1971.....	502
Supplementary statement.....	503
Edwards, Howard L., chairman, American Mining Congress: Letter to Senator Jackson, dated June 28, 1971.....	498
"Elements of a National Policy for Land Use," by Hermon D. Ruth, city and regional planning consultant, Berkeley, Calif.....	413
Federal Power Commission, report on S. 632 and S. 992.....	407
Guy, William L., Governor, State of North Dakota: Letter to Senator Jackson, dated June 1, 1971.....	410
Hovey, Donald I., Madison, Wis., chairman, Realtors' Washington Committee of the National Association of Real Estate Boards, statement of.....	491
Kaye, Stephen C., attorney, New York, N. Y., statement of.....	499
Knott, Charles A., chairman, Legislative Affairs Committee, National Association of Industrial Parks, statement of.....	490
Nassikas, John N., Chairman, Federal Power Commission: Letter to Senator Jackson, dated July 14, 1971.....	407
National Urban Coalition, statement of.....	484
The meaning of the Supreme Court decision in <i>James v. Valierra</i>	488
Rosholt, John A., chairman, National Water Resources Association, Washington, D.C.: Letter to Senator Jackson, dated June 23, 1971.....	497
Southern California Edison Co., statement of.....	492
Wilcox, William H., secretary, Commonwealth of Pennsylvania, Department of Community Affairs: Letter to Senator Jackson, dated June 30, 1971.....	411
Comparative table of provisions for S. 632 and S. 992 measured against 8 suggested criteria.....	412

NATIONAL LAND USE POLICY

TUESDAY, JUNE 22, 1971

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met at 10:05 a.m., pursuant to notice, in room 3110, New Senate Office Building, Senator Frank E. Moss presiding.

Present: Senators Moss, Anderson, Allott, Jordan, Fannin, Hatfield, and Stevens.

Staff members present: Jerry T. Verkler, staff director; William Van Ness, chief counsel; Dan Dreyfus, professional staff member; Charles Cook, minority counsel; and Steven Quarles, special counsel.

Senator Moss. The committee will come to order. The purpose of this hearing is to receive further testimony on pending legislation to establish a national land use policy, and to encourage and assist the States in the preparation and implementation of comprehensive land use programs.

The first bill, S. 632, is based on a measure which was introduced by Senator Jackson as S. 3354 early in the second session of the 91st Congress.

The second bill, S. 992, was recently recommended by the administration and in concept is similar to S. 632. In this session, we have heard testimony of administration, State, and local officials.

These 2 days of testimony from public witnesses will, I hope, conclude the hearings necessary before the committee. However, if it develops that further testimony is needed, this committee will schedule further hearings. And, it is possible we may even want to go out of Washington to get a full, comprehensive statement of our people on this subject.

Senator Jackson, who is the chairman of the committee, has a statement which will, without objection, be included in the hearing record, and will not be read at this time.

(The statement referred to follows:)

STATEMENT OF HON. HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON, CHAIRMAN, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

The purpose of today's and tomorrow's hearings is to receive further testimony on pending legislation to establish a national land use policy and to encourage and assist the States in the preparation and implementation of comprehensive land use programs. The first bill, S. 632, is based on a measure which was introduced as S. 3354 early in the second session of the 91st Congress. The second bill, S. 992, was recently recommended by the Administration and, in concept, is similar to S. 632. In this session, we have heard testimony of Administration, State, and local officials. These two days of testimony from public witnesses will, I hope, conclude the hearings before the Committee.

If we are to develop and implement a design for a better America, I believe it is essential that the nation establish a National Land Use Policy. We have made important progress in some areas in recent years toward introducing environmental values into governmental decisions. We must now undertake the far more challenging task of long-range planning to insure a proper balance between the nation's resource requirements and our national environmental goals. It is essential that we develop a framework within which the full spectrum of proposals to utilize environmental resources can be balanced against one another and measured against the demands they impose upon the environment. To do this, we need a focal point upon which we can compare alternative proposals to achieve our goals. This focal point should be the use of land.

For two centuries, the American people have moved to the West seeking land on which to live and work. It was a commonly accepted principle that ownership of the land brought with it the right to do with the land as one pleased. This principle still holds sway as, today, many land use decisions remain almost totally private decisions. Even a large number of public decisions on land use result in public costs far beyond the interests of the decision-makers. To avoid public or private land use decisions on economic grounds alone, we must ask the States to exercise planning authority.

Although our land is a finite resource, our greatest resource—our population—has proven to be anything but finite. Our population growth and its shifting residence have placed increasing stress upon the land. Just as the world grows smaller with technological achievements in transportation and communication, so our land resource, in a sense, diminishes with the demands of an ever larger population.

I have become increasingly concerned that, in the pending bills, we may not be placing sufficient emphasis on the difficult task of relating these two resources: people and the land. Neither of the bills addresses itself in a direct fashion to the myriad of domestic social problems from which we suffer—inadequate housing, population distribution, regional unemployment, inequitable tax policies, racial segregation, and a depressed economy. We must make certain that the "planning" which our legislation elicits will not be simply a bureaucratic exercise, a make-work response to a legislative fiat. A National Land Use Policy must do more than simply generate volumes of color-coded maps. Certainly each State, with the advice of its communities, should devise its own plan. These plans should be diverse. Yet, to allow diversity without prejudicing the needs of our people, the legislation must supply the States with guidelines setting forth very clearly the national goals we seek to attain.

Whether national land use policy legislation is the appropriate instrument through which these national goals should be introduced is an open question. Even if it should appear to be the place to begin, we are faced with the complex problem of deciding which goals should be chosen, what emphasis they should be given, and how they can be written into the final bill.

A second matter of concern is how to insure that State governments comply with a land use policy bill's requirements. I doubt whether the incentive of Federal funds for planning is sufficient insurance that the States will act. In our hearings of May 18, 1971, Mr. Russell Train, Chairman of the Council on Environmental Quality, suggested that the Committee and the Administration must work together in attempting to develop a proper set of sanctions.

It is a pleasure to welcome today's witnesses. Perhaps from you may come suggestions concerning these difficult issues.

Senator Moss. We have several very important witnesses here today, and it will be necessary to move along as rapidly as possible. The Senate is in session, and there will be rollcall votes from time to time, so it will be necessary to have brief recesses when those votes occur.

But, nevertheless, we will proceed as rapidly as we are able to do.

Our first witness will be Mr. William Gernhauser, commissioner, Lucas County, Toledo, Ohio, and chairman, steering committee, National Association of Counties, accompanied by Mr. Larry E. Naake, legislative assistant and western region representative for the National Association of Counties.

Will you come forward, please, gentlemen?

STATEMENT OF WILLIAM K. GERNHAUSER, COMMISSIONER, LUCAS COUNTY, TOLEDO, OHIO, ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES; ACCOMPANIED BY LARRY E. NAAKE, LEGISLATIVE ASSISTANT AND WESTERN REGION REPRESENTATIVE, NACO

Mr. GERNHAUSER. Thank you, Mr. Chairman.

Senator Moss. There will be bells like that from time to time. Ignore them unless the Chair indicates the bell tells me I have to go. Then we will have to have a recess.

Mr. GERNHAUSER. Mr. Chairman, and distinguished members of the committee, I am William K. Gernhauser, commissioner from Lucas County, Toledo, Ohio, and chairman of the environmental quality steering committee for the National Association of Counties.

With me today is Larry E. Naake, legislative assistant and western region representative for the National Association of Counties. We will both be available to answer any questions you may have at the conclusion of my formal statement.

It is indeed a pleasure for me to appear before your committee on a subject of such great importance that affects not only the future of land use planning and its relationship to the orderly development and preservation of open space lands and recreational areas, but also affects the very structure and powers of county and city governments throughout the United States.

The National Association of Counties, representing some 3,063 counties throughout the United States, recognizes the need to coordinate the efforts of all levels of government in planning for the orderly development of our urban areas and the preservation of our environment. But we also recognize the need to both utilize the existing talent in local government and to preserve the very proper concept of local planning and zoning in the United States.

Before dealing with the specifics of the two bills under consideration, I would like to state for the record that the National Association of Counties does support a national land use policy at the Federal level. As you might recall, representatives of our association appeared before your committee last July on the chairman's bill, S. 3354.

Since that time, the environmental quality steering committee, which I chair, has reviewed our policy position on land use policy. During our recent legislative conference in April, the committee recommended a policy statement to our board of directors, which they in turn adopted. I have attached a copy of this statement to my testimony for your records.

The specifics of this policy, which I will refer to as I proceed, demonstrates the belief of counties across the Nation that there is indeed a need to come to grips with the need for comprehensive planning and environmental protection. This need, I am sure, has been well documented before your committee. The problem, as you are well aware, is not that we will exhaust all the available land in the United States, but rather that we will exhaust the most valuable of our land resources in a manner that will be irreversible.

We must all admit the fact of our past failures. We at the county level know that we have made many mistakes and allowed economic

4. FINANCING

Although the amount of the planning and administrative grants provided under S. 632 may not satisfy all of the needs of the State and local governments, we believe that this is certainly an adequate amount for a new program. And, we certainly commend Senator Jackson for realizing that a financial, as well as legal, commitment must be made if an adequate job of land use planning is to be accomplished.

We also believe that the sharing ratios are quite reasonable and generous. To be consistent with recommendation No. 2 above, we would also suggest that where the planning and implementation powers are delegated to the local governments that the funds also be allocated to the same units of government.

On the other hand, we do not feel that the administration's policy bill provides adequate funding for a meaningful land use policy.

5. PENALTIES FOR NONCOMPLIANCE

Both our environmental quality steering committee and our board of directors were very serious about having a comprehensive land use plan instituted in each of our 50 States. They therefore went on record supporting a feature in such a program which would restrict or reduce the flow of specified Federal funds to State and local governments for noncompliance with such a policy.

They were specifically thinking of penalties, such as those outlined in Mr. Aspinall's H.R. 2449, which would reduce the flow of Federal funds for such land-use related programs as the highway trust fund, the land and water conservation fund, and the airport and airway development fund. They also stated that, if local governments were not able to comply only because State governments did not develop or implement a land use policy, then the flow of such funds should not be cut off to counties and cities.

Senator STEVENS. Could I interrupt?

Senator MOSS. Would you like to ask a question?

Senator STEVENS. Yes.

Senator MOSS. We will recognize the Senator for his question.

Senator STEVENS. We recognized that problem previously, but assuming the State does not act, would you agree that the Federal funds should be cut off in these other programs if the next level of local government did not prepare a plan for their own area? In other words, if you have, as we do, very large borough governments, if the State failed to act and the boroughs had a satisfactory plan, that they would have a flowthrough feature to that area and the funds would not be cut off if they acted?

Your suggestion is that if now no one acts we still don't have a stick.

Well, would you agree to that as far as the people you represent?

Mr. GERNHAUSER. If the local governments did not act, the State did not act, I think a penalty should be provided. But I would at the same time relate, if I understand your question clearly, that the local governments, just because the State does not operate or fails to comply, I do not think the local governments should be penalized for its failure.

Senator STEVENS. If they have a land use plan for their area.

Mr. GERNHAUSER. Yes.

Senator STEVENS. Thank you. That is all I have. Thank you, Mr. Chairman.

6. MINIMUM FEDERAL STANDARDS

Mr. GERNHAUSER. Finally, we believe that a national land-use policy should contain national standards that are only minimum. The States and local governments should be allowed to adopt more stringent rules and regulations, as was the case with the Clean Air Act of 1965. There are many States and local agencies that have adopted or hope to adopt land use policies that are even more stringent than the proposed Federal programs would provide for.

These then are the provisions that we in county government would like to see included in any national land use policy. We believe that they reflect a changing mood on the part of American citizens and their elected representatives. The policy reflects the belief that all levels of government have a role in planning for future urban development and in preserving our natural resources.

The counties and cities of America and their thousands of expert planning officials should play a primary role in the developing of detailed plans and implementation procedures within State and Federal guidelines.

We hope that our observations today have been helpful. We would be most pleased to work with your committee in further detailing our policies and suggestions.

Thank you.

Senator Moss. Thank you, Mr. Gernhauser, for your very good statement. The policy recommendations that have been approved by the National Association of Counties' board of directors are part of your statement and will appear in full in the record.

(The document referred to follows:)

NATIONAL ASSOCIATION OF COUNTIES

NATIONAL LAND USE POLICY RECOMMENDATIONS APPROVED BY THE NATIONAL ASSOCIATION OF COUNTIES BOARD OF DIRECTORS, APRIL 5, 1971

The National Association of Counties recognizes the current problems across the United States that relate to the quality of our environment. Counties must, and are willing to assume responsibilities to improve this situation. NACO, therefore, supports a National Land Use Policy which would:

- Encourage the development and implementation of planning and conservation programs by state and local governments, within Federal goals;

- Preserve local zoning and planning responsibilities by including local governments and councils of governments in the development of the state programs;

- Delegate funds and planning and implementation authority to units of general purpose local government;

- Provide adequate grants to local agencies to properly perform the planning and implementation functions;

- Provide a reasonable period of time to prepare the state plans;

- Restrict or reduce the flow of specified Federal funds for other programs to state governments for non-compliance, but not to local governments if they comply; and

- Provide that Federal standards are only minimum, and that states may adopt more stringent rules and regulations.

Senator Moss. We, of course, are very much heartened and pleased that the counties are assuming their responsibilities and are concerned

about this, and feel that they should play an important role in the development of national land use planning policy.

I think that it is the position taken by this committee that we would hope that we could have involvement primarily at the local level of those really closest to the land. We, of course, have to have the larger regional picture. And sometimes we must move back to the Federal Government when we have large regional problems that have to be planned out.

We appreciate having your testimony here today. There may be some questions that we have. Do you have any further questions, Senator Stevens?

Senator STEVENS. I have a couple.

Senator MOSS. I recognize you now, because we are going to have to take a short recess for a vote in a minute.

Senator STEVENS. Mr. Gernhauser, I understand that the National League of Cities has favored this national land use legislation, but it wants to preserve the rights of local government to control zoning.

It was pointed out to us that local government was placed in a zone with a use producing lower property tax revenues, the revenues of the local government would be harmed, and it was suggested to us that the legislation should contain specific provisions for compensation of localities by virtue of a State land use plan if their zones and revenues were affected.

Do you agree that there is an imposition on the local government as a result of a State use plan which results in reducing their tax revenues; if this happens, that they should be compensated; and, if so, by whom?

Mr. GERNHAUSER. I would say the local governments are hard put as it is today without taking any more loss. It would be difficult to lose any more income. However, like anything else, I think you have to seek other methods. I myself feel that when you are attempting to correct an evil that has existed for many years you have to take some medicine to correct it, and I feel very honestly that we can overcome that problem.

I can't see the loss that they are talking about. I honestly cannot see it to that extent. And I would admit that, if there is a loss, this is part of the penalty which we all must suffer through because we do not have a proper management policy.

We have never had that through this country, and I think we are all going to have to pay a penalty for that, not only the cities, but the counties, too. We have our taxes also, from local zoning, and I just—

Senator STEVENS. The zoning restrictions within the cities have been used to create areas of tax income to the cities a lot more than the counties. By virtue of zoning, they have been able to maintain areas of high property-tax income. I take it they are fearing that a State land use plan could well modify their zoning power, and if it did they feel that they should be compensated for the loss of their revenues. You feel that that is a burden they have to bear, along with everyone else, in terms of proper land use planning, I take it.

Mr. GERNHAUSER. I certainly do. I again reiterate that the county, too, is on the same tax base, and I feel that this is part of the penalty that we must bear in order to resolve the problem.

But I think the problem has to be tackled, and I don't know where the money would come from to compensate them for the loss. I don't

see how we could put it in here. I think you have this properly funded under the Jackson bill. I just feel very honestly that the cities and counties and local governments are going to have to take this bill.

Senator STEVENS. Secondly, section 106(a) of the administration's bill contains the provision relating to the conformance of Federal lands to the State land use program, and at the last hearings Secretary Romney pointed out that this section does not apply in cases of overriding national interest.

Have you examined that, and do you agree with that concept?

Mr. GERNHAUSER. Yes, we support that.

Senator STEVENS. The same section also said that projects significantly affecting land use shall be consistent with State land use programs.

Do you believe that that is strong enough to require that the Federal lands, the use of Federal lands, shall comply totally with the State land use plan except in cases of overriding national interest?

My question really is, do you agree with that in the first place and secondly, if you agree with it, do you think it is strong enough to, in effect, require that the States' plan have primary control in their own areas?

Mr. GERNHAUSER. Yes, we do. We feel that basically they should be compelled to do the same as the city or the county or the State, and we do agree with it.

Senator STEVENS. Some of us have been involved in the concept of the Federal Government complying with things like State water rights laws, and we are very interested in this provision. I just wonder whether your organization has taken a position upon the question of Federal lands and compliance and use of the Federal lands with the State land use program.

Mr. GERNHAUSER. Yes, sir.

Senator STEVENS. You agree with that?

Mr. GERNHAUSER. Yes, sir.

Senator STEVENS. Thank you very much.

We all have to make a vote. So if you wait for us to return, we will be right back after the vote is over.

Mr. GERNHAUSER. Thank you, sir.

(Whereupon, a brief recess was taken.)

Senator STEVENS (presiding). We want to thank you for your testimony. I think this is going to be one of those days.

We do appreciate your appearance and your answers to my question. Thank you very much for your testimony on behalf of the National Association of Counties.

Mr. GERNHAUSER. Thank you, Senator. We appreciate your time.

Senator STEVENS. The next witness is Carl Feiss, member, Planning and Design Committee, American Institute of Architects.

STATEMENT OF CARL FEISS, MEMBER, URBAN PLANNING AND DESIGN COMMITTEE, THE AMERICAN INSTITUTE OF ARCHITECTS

Mr. FEISS. Mr. Chairman, I am Carl Feiss, a practicing architect-planner, in Washington, D.C., and a member of the national urban planning and design committee of the American Institute of Architects.

Today the American Institute of Architects, a professional society representing 24,000 licensed architects, wishes to express its views on the subject of national land use and on S. 632 and S. 992, legislation to establish a national land use policy.

It gives me great personal pleasure to appear before this committee this morning to continue our mutual efforts to bring about a national commitment to sound land use planning within the context of a national growth policy.

We have witnessed a growing decay in the quality of human life because we, the most affluent Nation in the world, have not committed ourselves to the creation of a satisfactory living environment for every American.

Rotting central cities, deteriorating rural areas, the shortage of housing, the lack of public transportation, pollution of air and water, the mismanagement of our priceless natural resources, and so forth, are but symptoms of this lack of commitment.

We believe that it is a deplorable situation when the richest democratic Nation the world has known must look to other, less affluent nations for leadership in the management of the urban, rural, and natural environment.

Specifically, American professional architects, planners, developers, and Members of Congress have visited Eastern and Western Europe to be dazzled by their splendid examples of orderly and well-planned new town development and their expert natural resource management.

As architects, we believe that a civilized society must learn how to create a quality, manmade environment in harmony with the natural environment to sustain a high level of culture. This quality should be a fundamental expression of a free and democratic society in the post-industrial era.

We as a profession are very much encouraged by the work of this committee and others in Congress who are struggling with this most difficult and complicated task.

Today, before commenting specifically on the legislation pending before this committee, we would like to submit to you five major recommendations which we believe are crucial to creating the necessary conditions for the Nation to establish a workable national growth policy and sound land use planning.

We recommend:

1. The creation of a Policy Board on National Growth within the Executive Office of the President.
 2. The formation of legislative committees on environment and national growth policy in both the House of Representatives and the Senate.
 3. The creation of State and regional land use and development plans as elements of a national growth policy.
 4. The creation of mechanisms to implement State and regional plans as elements of a national growth policy.
 5. The use of Federal incentives and penalties as an essential ingredient stimulating the production of State and regional land use and development plans and their successful implementation.
- First, we would like to present our proposal for the creation of a National Growth Policy Board. In the past 2 years the need for

a national policy council or board has been recognized through two major pieces of legislation. The first, the National Environmental Policy Act of 1969, created the Council on Environmental Quality in the Executive Office of the President.

We again salute the leadership of this committee and its chairman, Senator Jackson, for your efforts on behalf of this crucial legislation. (Senator Moss resumed the chair.)

Mr. FEISS. Also in title VII of the 1970 Housing and Urban Development Act Congress recognized that rapid and uncontrolled growth—"* * * has created an imbalance between the Nation's needs and resources and seriously threatens our physical environment and that the economic and social development of the Nation, the proper conservation of our natural resources, and the achievement of satisfactory living standards depend upon the sound, orderly, and balanced development of all areas of the Nation."

Title VII charges the President with preparing a biennial report to Congress covering the legislative and administrative aspects of implementing the urban growth policy outline contained in title VII and establishing an identifiable unit of the Domestic Council to develop such a report and policy.

Reading the legislative charges to the Council on Environmental Quality and the Urban Growth Unit of the Domestic Council, one cannot avoid being impressed by the similarities of their charges. We believe the present scope and role of the two agencies are necessary, but not sufficient, in dealing with the full range of urban, rural, and natural environmental problems.

The broadly based National Policy Board that we envision would absorb and combine the responsibilities of the Council on Environmental Quality and the Council on Urban Growth, and add additional social and economic dimensions to their responsibilities.

We recommend that the National Growth Policy Board have the following functions:

A. ESTABLISH NATIONAL DEVELOPMENT GOALS

The Board would be an extension of the Executive Office of the President and would be the focus of the President's legislative and administrative plans for establishing and meeting national development goals. The Board would be the administration's spokesman for its policies and proposals before Congress and the Nation on these issues.

B. COORDINATE FEDERAL PROGRAMS

The Board would be charged with coordinating and reviewing Federal programs affecting State and local governments. Presently, this function is administered in part by the Office of Management and Budget, and through official State and regional councils, including councils of governments.

This function would be similar to section 102 requirements of the Environmental Quality Act of 1969, except that the definition of "environment" would be expanded to include the social and economic issues inherent in urban growth and which are now of secondary importance to the Council on Environmental Quality.

C. REVIEW STATE PLANS

The Board would have the responsibility for reviewing State land use and development plans on a regular basis to insure that they were compatible with national policy.

An example of this type of overall review board is the newly established Ministry of the Environment in Great Britain. The Minister of Environment has this responsibility on a national basis, and is the focus point for environmental matters in the British Government, a focus which is badly needed here.

While assistance programs to State and local governments would continue to be administered in the various departments, the policy board would have an overall coordinative function within the Office of the President.

D. ADMINISTER PENALTIES

The Board would have the ultimate responsibility for stopping the flow of Federal funds to those State and local governments which do not comply with the national growth policy. We complimented Senator Jackson's legislation on land use last year which called for certain penalties against States not preparing land use plans and programs for their implementation. We go into the penalty issue later in our statement.

Thirty years ago this Nation experimented with a national growth policy board in the form of the National Resources Planning Board, whose existence was ended in 1943.

We see this, the NRPB, as a useful historical example. A child of the Great Depression, it studied not only our natural resources but our urban growth, economy, and our social problems.

But it was ahead of its time, and was killed after 10 years of useful and promising hard work. Perhaps the largest mistake of the NRPB, and the reason for its demise, was that it was not built adequately into the administrative structure of the Federal Government. Accordingly, its power to influence administrative decisionmaking was minimal. Our proposal for a National Growth Policy Board which includes Federal program coordination, State plan review, and the administration of penalties, would overcome the lack of administrative power that the NRPB experienced. I would like to add a personal observation here, Mr. Chairman.

I served in the National Resources Planning Board as a consultant in three regions: Region 3, which had its headquarters in Baltimore, Region 1, which included the New England region, and Region 8, headquartered in Denver, and including the Mountain States.

At that time I was executive director of the Planning Commission. In the course of the work of the National Resources Planning Board, State planning commissions were established, for which the NRPB was largely responsible.

The NRPB served as a Federal consultant to the State planning boards and provided funding for many basic research programs at the State level and in the regions of the NRPB itself.

I go into this brief history because not only did the NRPB provide national documents on the social and economic structure of the country, but it also served in a consulting capacity to States and regions in the establishment of local planning programs.

Now after many years we are returning to something similar in nature. However, the AIA is urging something stronger also, something that would make it possible for this program to become a permanent part of the structure of government in this country.

Second, we propose the creation of legislative committees on environment and national growth policy in both the House of Representatives and the Senate.

From our view as a professional society seriously concerned with quality environment, one of our major frustrations in dealing with environmental issues has been the fractionalized processes by which Congress and the administration attempt to deal with the problem.

The American Institute of Architects has monitored the activities of no less than 50 congressional subcommittees in our concern for the environment. We see duplication, lack of coordination, and piecemeal approaches to complicated, interrelated problems which must be dealt with as a whole.

We are very pleased that the Senate has approved Senate Joint Resolution 17, which creates a Joint Congressional Committee on the Environment, and we fully support favorable action by the House on this question. However, we believe that these issues could be far more effectively dealt with if there were one legislative committee in each House of Congress with jurisdiction over environment and national growth policy.

Third, we support the creation of State and regional land use and development plans. It is necessary for States to play a key role in the formation of national growth policy by preparing their own land use and development plans. State land use and development plans should include urban as well as rural areas, social and economic considerations as well as the concerns of the physical environment.

One of the concerns we have about S. 632 and some of the other approaches to encourage developments of State plans, is that the mechanisms for insuring participation of citizens, local governments, special purpose governments, and interstate compacts, are not clear.

We strongly recommend that a prerequisite for State plans be a requirement for public hearings so the public at large can contribute to the formulation of the plan, as well as formal mechanisms for soliciting and considering the input of all local governmental units, which themselves would be required to hold public hearings.

In addition, an appeals procedure must be available for reviewing objections and reservations after the initial State plan is prepared.

State planning requirements should not focus solely on areas of critical environmental concern, nor should they focus solely on the natural resources concern and questions in nonurban areas. State plans should be aimed at (a) directing growth, (b) protecting and enhancing the natural resources, and (c) curbing environmental deterioration.

We believe that State plans should include the following elements, among others:

1. Agriculture.
2. Civil rights.
3. Economic development—employment, manpower.
4. Education.
5. Health programs and facilities.
6. Historic and scenic resources conservation.
7. Housing.

8. Multi-State environmental programs, including air quality control.

9. Natural resources, including soil and water conservation.

10. New communities.

11. Open space and recreation.

12. Transportation.

13. Utilities.

14. Welfare.

We recommend that guidelines based on the national development goals be provided by the National Growth Policy Board to the States for use in preparing their land use and development plans. Only in this way can 50 State plans be melded into a national policy framework.

We support the encouragement of mechanisms to implement State and regional plans. In our view, planning and implementation are equally important. It is not enough to require the States to prepare maps, diagrams, and charts, plotting their anticipated and planned growth. States should move in no uncertain terms toward creating devices to implement State land use and development plans.

Mr. Chairman, earlier this morning, the question was raised concerning the relationship between zoning at the local level and planning. I would like to, if I may, say a word about that.

As you know, zoning comes under the police power and is a responsibility delegated to localities by the State, validated in 1925 by the Supreme Court in the *Eustis v. Adler* case.

Regional and local planning do not come under the police power, although authorized by State enabling legislation.

Therefore, when we are discussing the implementation of State land use and development plans, we must find some way of bridging the gap between zoning as it is presently practiced at the municipal and county levels, and State and regional planning as it is currently practiced at the State official planning agency and council of government levels.

The differences in authority are fundamental. All we have at the present time is what has been mentioned before, the carrot and the stick, to encourage localities to comply with municipal, metropolitan, regional, and State plans.

The administration of zoning comes under local zoning boards of review, in the police power, and that is not predicated, unfortunately, on official plans, although this is frequently stipulated and is supposed to be the case.

I call this to your attention because I believe this legislation in time must reflect a concern for this question of the application of plans to local development as well as to national development.

Currently, the final decisions appear to rest with boards of review and the local courts.

The Federal Government should not prescribe the methods for shaping growth on the local level, because it is generally too far removed from the peculiar State and local problems. The most creative solutions must and will come from the States themselves. However, there are a few institutions and procedures which we believe should be specifically cited as prime mechanisms for implementing State plans:

(a) The State capital budgetary processes should be closely tied to State plans so that State expenditures are consistent with the land use and developmental goals.

(b) Start chartered development corporations with the power of eminent domain, taxation, public financing. And, where demonstrably essential, the override of local codes and ordinances should be encouraged, particularly with respect to new community development.

(c) A strong form of directly-elected metropolitan government should be encouraged.

(d) Heavy reliance on the regressive property tax administered on the local level to provide public services should be reduced and replaced by forms of State income tax. For example, financing for education, which is about two-thirds of the present local property tax burden, is best handled at the State level.

(e) Procedures and incentive to consolidate local governmental units, special taxing, districts, authorities, and other independent administrative bodies, should be promoted.

(f) Multi-State mechanisms should be promoted where environmental conditions require that base for solving the problem.

We suggest that incentives should be provided which would encourage States to create such mechanisms. For example, States that comply with the criteria described above could have their State planning programs funded at the 90-percent level, while those States which are not moving satisfactorily in their implementation would be funded at a lower, say 50-percent level.

Currently, section 701 of the Housing Act of 1954, as amended, provides a one-third-two-thirds matching program for planning purposes.

We fully appreciate the difficulties such a requirement imposes in view of the different State capabilities to (1) make plans, and (2) create the tools to implement plans. Consequently, we recommend that initially, during the first 5-year planning period called for in S. 632 and S. 992, all States be funded on an equal per capita basis.

Hopefully, those that find themselves with larger tasks will have an opportunity to catch up. Further, we must not overlook the fact that the Federal Government should continue to support plan development, which is a useful activity in and of itself, separated from implementation. However, those States which concentrate solely on the creation of plans must be progressing at a rate proportionate to their capabilities.

Fifth, we encourage the adoption of Federal incentives and penalties to stimulate effective State land use and development planning. In order to overcome inertia, economic and political interests, and to elevate a national growth policy to its rightful degree of importance, strong incentives and penalties are recommended.

We believe the incentive provided in S. 632 of \$100 million annually to assist States in preparing their plans is far superior to the \$20 million included in the administration's proposal.

On the penalty side, it is recommended that after the 5-year planning period is over, States which have not produced a plan meeting national guidelines, and which have not moved toward creating complementary mechanisms necessary to carry out plans, be penalized by Federal withholding of 7 percent of their water and sewer money and 7 percent of

their transportation money each year to a cumulative total of a maximum of 35 percent each.

This is similar to a provision in Senator Jackson's land use bill S. 3354 in the 91st Congress and in a bill introduced in the present Congress by Congressman Aspinall, H.R. 2449. In essence, the Federal Government will inform the States that, unless they provide for the planning and control of their growth, it will reduce the amount of Federal money being provided to that State in programs which sustain and encourage growth; for example, water and sewer transportation. This type of penalty is required to raise the economic and political stakes in the States so that it is in the general interest of the total State to prepare the plans and create the implementary mechanisms in tune with national growth policy.

It seems to us that it is time to require a commitment to environmental quality by those who would seek to have the benefit of national resources. For example, the \$4.6 billion annual expenditure for the construction of highways has created a disproportionate degree of social and environmental damage.

Historically, cultures have been extremely proud of their great public works. And yet today, in this country, we see one of our largest public works programs and greatest shaper of growth, the Federal highway system, precipitating one environmental and social disaster after another, notwithstanding that the highway program has led to significant social and economic benefits. It is our belief that those social and economic benefits would have been much greater had the program been designed to be more sensitive to human needs and environmental concerns, as part of a national policy of growth and development.

The American Institute of Architects believes that both S. 632 and S. 992 represent important legislative initiatives in the area of land use planning. There are several elements of each bill that we support, such as the provision in S. 632 for \$100 million to finance up to 90 percent of the cost of land use planning by individual States, the section in S. 992 dealing with land use having regional impact, and the emphasis both bills place on encouraging land use planning at the State level.

However, it is our judgment that, if the present land use dilemma is to be resolved, the legislation accomplishing this must include much broader coverage, especially for existing urban centers and for the areas in the path of urban growth. We find both of the measures pending before this committee lacking in that aspect.

The scope and role of the national land use policymaking and review authority must be expanded into a National Growth Policy Board.

Consequently, we believe that such a Board would be preferable to the planning councils called for in S. 632 and S. 992. We also believe that a council composed mainly of Federal agency heads who have heavy operational responsibilities in their own departments would be ineffective because of the low priority these men must place on their council activities in relation to their prime responsibilities.

This Board must create specific national developmental goals that can be translated into broad guidelines for use by the States in preparing their land use and development plans.

The Federal Government again must provide incentives to assist the States in preparing and implementing land use and development plans and penalties for States not complying with the national mandate.

Public hearings must be conducted to insure the direct involvement of all interested parties, private and public, with emphasis placed on the role played by local governments. Also, an appeals procedure should be available at the State level for review of the initial plans prepared by the State.

New legislative committees must be formed in both the House of Representatives and the Senate with full jurisdiction over measures relating to the environment and national growth.

We recognize that the legislation pending before this committee has already traveled down a long road and has many obstacles yet to cross before it will be enacted into law. The American Institute of Architects believes that land use and national growth are two of the most vital issues facing our Nation today and are ones that must be dealt with comprehensively. To do less will not achieve a lasting solution. For this reason we trust that you will thoroughly review our recommendations and act favorably on them.

Thank you.

Senator Moss. Thank you very much, Mr. Feiss, for that very comprehensive statement on behalf of the American Institute of Architects. It contains a great deal of well-thought-out comment on the legislation and it is obvious that you and your organization have been working on this overall general problem for a considerable period of time. It will be most helpful to us in the committee.

I take it in the main that, of the two bills that are here being considered, you favor the provisions of S. 632. Is that correct?

Mr. FEISS. I believe that is correct, Mr. Chairman, although we favor certain provisions in both bills.

Senator Moss. Yes. They are both directed to the same general problem. It is just a variation in the provisions of how we might meet the problem and how we deal with it.

Senator Allott, do you have any questions?

Senator ALLOTT. Just two or three things, Mr. Chairman. I think you put a great deal of time and a great deal of thought in your statement, which is quite obvious. Referring to page 3, you said that a broadly based national policy would absorb and combine the responsibilities of the Council on Environmental Quality and the Council on Urban Growth.

It is very true, of course, that we have many overlapping agencies in the Government which are very close together. However, it would appear to me at least that having gone through the creation of all this, the Council on Environmental Quality, it would be a most difficult task at this stage to put into effect the suggestion that you make there.

Now, basically I gather from your statement that you favor a degree of Federal concentration far beyond what I might favor. For example, on page 4 you talked about certain penalties against States for not preparing State land use plans.

We have discussed the carrot-and-the-stick approach for many places, and later on—I forget what page, but I will find it here—on page 8 you specifically recommended a 7-percent withholding by the

Federal Government. There are many reasons why a State cannot or might not be able to act within the proscriptions of the bill as required.

What, for example, would you withhold in transportation money? Would you include, for example, the installation of navigation aids? Would you include the construction of airports? Would you include the dredging of rivers and harbors, control of waterways, the water in the waterways? How far would you go?

Mr. FEISS. You will notice, Senator, that we have recommended that a 5-year period be given to States for planning purposes prior to imposition of any such penalties.

Obviously, matters involving the public safety, the public health and welfare and so forth, should proceed at all times.

As far as highways, waterways, or other means of transportation or other major public works are concerned, we sincerely believe that these are part of an essential planning process, and that they relate to the use of natural resources.

They have problems of location which relate to all kinds of land use, including the national land use policies which you are considering at the present time and those which develop through State planning. Land use planning cannot be separated from any of these major public works public improvement programs, of which there are a great many, administered by a great many different agencies, and funded from a great many different Federal, State, and local authority sources. Do I understand your question, Senator?

Senator ALLOTT. Yes; indirectly you do, but you recognize, also, the difficulties involved in the statement in that paragraph of your own statement, don't you?

Mr. FEISS. Yes, I certainly do. These are very difficult things to achieve and to administer.

Senator ALLOTT. There is another element of it. For example, water and sewer. A State legislative body which has a power all of its own, just as the Congress itself does, constitutionally endowed, may not see fit to act along certain lines of national policy, and yet a local community, a very small one which probably needs water and sewer facilities more than any other place in the State, they may be operating old outhouses in 80 percent of their community and have no control over the legislature as such, being such an insignificant portion of the population.

Yet they would lose what they have. I think one of the main difficulties with the bill last year was that some of us felt, and we tried to find other ways to do it and were not able to do it, that the stick was just a whale of a lot bigger than the carrot and I would say this was still a matter of concern to this Senator in that particular respect.

In your statement you also discuss and suggest the creation of legislative commissions on environment. I frankly do not quite see how this could be effective, for this reason. You have the Public Works Committee, you have the Interior Committee, you have the National Space and Aeronautics Committee, the Commerce Committee, to name four of them, who all have a jurisdiction in a given area.

Now, if you created legislative committees on environment what you would have to do if you gave them any authority at all as a legislative committee, you would be in effect creating a supercommittee

which could on demand take off the functions of any one of the four committees I have mentioned.

It seems to me this is a very great problem. It sounds very good, I think, from a theoretical point, but from an actual standpoint it is pretty difficult. Would you like to comment on that?

Mr. FEISS. Senator, I am not an expert on interrelationships between the committees of the Congress. The situation, however, is something that affects every decision of the Congress with respect to the destruction of natural resources and the pollution of our air, water, and land.

Whatever is finally determined by Congress in its wisdom as the best mechanism to protect this country from its own self-destruction will have to be a mechanism of greater strength, and of greater viability than anything we have experienced to date.

Certainly the mechanisms we have tried have not worked, or we would not find ourselves in our present dilemma. Whether or not the suggestion we made is a workable one, I cannot say, but this is what has occurred to us as a means of finding a better answer than we have had in the past.

The soul searching that we are all doing now in an effort to find where we have gone wrong before and what we should plan to do in the future will not be easy. We will not be able to find easy answers, nor comfortable ones. Whether a mechanism can be created that will satisfy the very tenets of these proposals before you today within the existing mechanism and structure of congressional committees I do not know. I hope we can and if so, of course, what we are proposing would not be necessary.

Senator ALLOTT. I have other questions, but I will yield to my colleagues. I do want to say one thing in conclusion. On page 7, where you try to set up general guidelines, I don't agree with all of it, at least I think this is a very practical contribution, because some such thing as this has to be included, I think, in any bill we have.

Mr. FEISS. Thank you, Senator.

Senator MOSS. The Senator from Idaho?

Senator JORDAN. I yield. I did not hear the testimony.

Senator MOSS. The Senator from Oregon.

Senator HATFIELD. Thank you. I am interested in your critical areas that should be involved in State planning as you list them on the bottom of page 3. You detail the various elements to be included on page 6. I would just like to ask for clarification. First of all, on page 6, do you include the subject of energy and fuels within your No. 13, your utilities. And specifically, or by implication, when you talk about economic development where do you include this particular subject, which is very, very critical at the present time?

Mr. FEISS. Senator Hatfield, both are included in 3 and 13, as you indicated. We did not want to prepare a shopping list here. There are a great many things that obviously have to be considered.

In the case of utilities and power, and power in particular, we are dealing with interstate problems as well as State problems.

In terms of overall national planning, we are faced with the power grid problem which we must look at in much the same way we look at our transportation system as a grid and as part of the total programs in the country.

However, currently, in any active State planning operation in this country, all 14 of the items we listed and others are under constant consideration. These are not new. These are currently part of State planning practices.

Senator HATFIELD. I just wanted to draw that out for the record. I am sure you know that we are addressing ourselves in this committee, and other committees as well, to the overall fuel and energy shortage and the critical problems we face in that area.

We immediately run head on into some of these environmental questions, and we have to make judgments.

Mr. FEISS. If I may say, Senator, the generation of new urban growth frequently accompanies highways, water and power supplies in specific geographical locations.

Therefore, the national grids, for highways, for water, and for power, become an important combination of elements in the development of a national policy. I read somewhere that the exception to that general rule is Los Angeles. There seems to be no reason why Los Angeles was established—water and confluence of rivers and so forth. I believe it is atypical in many ways.

Senator HATFIELD. Would you elaborate a little bit on (b), on page 5, I believe, on protecting and enhancing the natural resources? What do you conceive in a State plan that would provide this kind of protection and enhancing as you use these words?

Mr. FEISS. First of all, we must assume that whatever mechanism is established at the Federal level to handle natural resources will make a national inventory of those natural resources which are essential to the welfare of the Nation as a whole.

Then, in the hierarchy of essentialities, these will have to be described, mapped, and placed under some type of Federal responsibility. We have already done this with the national parks systems, the national forests, and many other national land use determinations which have been made by the Congress and by the Executive over many years.

At the State level, there are State equivalents, State park systems and State forest systems, and many other national resource determinations which have been made to date.

As part of the national land use policy, the protection and enhancement of natural resources includes the continual inventory of those resources which are essential for maintaining a public interest and for making decisions at all levels of government.

Senator HATFIELD. When you say this, may I interpret that you are intending here that we are talking basically about conservation, management, utilization concept of conservation, of natural resources, to meet these 14-point requirements on the following page, such as in case of housing and utilization and so forth? And you would draw a distinction between public-land States and non-public-land States, I suppose, as far as the degree of involvement the State must assume and the degree of responsibility. For instance, in my State of Oregon, we have about 51 percent of the State that is owned by the Federal Government.

We have a few State forests with excellent management, especially Elliott State Forest, but mainly it is the Federal timberlands that provide us not only with the utilization of a resource, but also responsibilities.

So we are looking here at a coordinated program between the State planning and the Federal planning as it relates, say, to a public land State, and as contrasted, say, to a New England State where the Federal land ownership is not great.

Mr. FEISS. That is correct, sir. I have nothing to add to that.

Senator HATFIELD. You would not preclude the Federal Government from expanding into such things as new forests, but expanded, perhaps, in its management techniques.

Mr. FEISS. I would hope that in many of the areas in which the Bureau of Outdoor Recreation is currently working in the Eastern States where there are fewer large areas of Federal lands that the program can be enlarged in tune with national interests, including the shorelines, in order to safeguard the remaining natural resources which urbanization continues in high concentrations along the Atlantic seaboard, the Gulf Coast States, and elsewhere.

Senator HATFIELD. Mr. Chairman, I wish to compliment Mr. Feiss again in this particular section of his testimony. I think he has given to the committee a very comprehensive statement as to what elements must be included in the total State plans, and I think many of these should be looked at as far as the Federal agencies and their responsibilities are concerned, too, because you recognize in this not only the reality of the role, but the elements which must be put together to make this appropriate and the type of growth that is going to provide us with our needs as a people, both today and down the road.

I want to compliment you on that section.

Mr. FEISS. Thank you.

Senator Moss. Thank you very much, Mr. Feiss. We appreciate your testimony, given on behalf of the American Institute of Architects. It was very helpful to us.

Mr. FEISS. Thank you.

Senator Moss. Our next witness will be Mr. Loran L. Stewart, chairman, Forest Industries Council. Mr. Stewart has been called now because he must leave this afternoon.

STATEMENT OF LORAN L. STEWART, CHAIRMAN, FOREST INDUSTRIES COUNCIL

Mr. STEWART. My name is Loran L. Stewart, president of Bohemia Lumber Co., of Eugene, Oreg., and chairman of the Forest Industries Council, having headquarters in Washington, D.C. I appear before this committee today in my capacity with the Forest Industries Council which is the policy coordinating organization for the forest products industry throughout the country.

The organizations sponsoring FIC are American Forest Institute, American Paper Institute, American Plywood Association, American Pulpwood Association, and National Forest Products Association.

I would like to amplify a little that this includes the redwood people, the Douglas-fir people, the pulp and paper people, the complete family and gamut of forest industry people are in this Forest Council, and we represent them here before you today.

I would also like to say that I am chairman in Oregon of the State parks and recreation advisory committee which sets policy for the State parks in Oregon, and I think Senator Hatfield will agree with

me that we have some of the finest parks that exist in the United States. I am also on the State board of higher education in Oregon, so I feel that I am somewhat personally qualified to speak on conservation as well as representing the industry.

For the sake of time, I will request that the full text be inserted in the hearing record.

Senator Moss. Without objection, that will be done.
The full text of your statement will be in the record.

Mr. STEWART. The forest products industry is on record from previous testimony before this committee as strongly favoring adoption of a national land use policy. We have long advocated such a policy on the tenets that:

1. The Nation's lands embrace material resources and the ultimate foundation of the Nation's wealth.

2. The flow of resources from the land, public and private, benefits every one of our 200 million people providing them with more goods and services at lower prices. Industries and individuals initially using resources need to be assured that their particular resource, or use, will be available on a continuing long-range basis.

3. In the case of privately owned land, owners and communities need assurances that land will not be condemned away from private use, thus endangering investments, tax base, opportunities, particularly local community stability.

4. In the case of publicly owned land, resources and uses should be managed intensively and made available at prices and under terms which will foster a healthy economy in the local area involved. This will help make these communities viable so that the people will not have to leave rural areas for the cities and aggravate that already complex problem.

5. While there is considerable disagreement on the methods to be used, local government units, we feel, need to receive in one form or another equitable recognition for the Federal land base within their jurisdiction and its influence on their revenue base. In other words, community stability.

6. Federal land managers at all levels should encourage increased public participation in land management decisions.

7. A basic need is that land acquisitions, and management and disposal policy must be responsive to the needs of those persons, industries, and communities dependent on those resources. With one-third of the Nation's land area already in Federal ownership, our industry does not feel that substantial additions to the public lands is warranted.

8. Federal lands should be managed to provide commodities and services according to the best use of the land insofar as they are not mutually exclusive.

I would like to go to one other point that our industry is meeting in Portland this coming Thursday and Friday and we will give these bills intensive study and would like to continue our recommendations, but these are our main recommendations.

Carrying out the policy to the fullest extent, we submit there should be specific policy provisions which will allow for development and management of commercial forests.

On pages 8 and 9 of the statement are four suggested amendments to these bills.

I would like to state, also, Mr. Chairman, that our industry was the only group that appeared before the conventions of both parties in 1968 and urged a land-use policy which both parties put in their plans. So we are solidly behind this type of legislation. It is a matter of how it is implemented and so on.

Senator Moss. Thank you very much, Mr. Stewart. I have glanced through the remainder of your statement, and I see that it is a good and well-thought-out paper. You have given us very specific recommendations here on amendments that you think would improve the legislation.

We are grateful for that, and we also do encourage you to send any further recommendations that may be hammered out in your upcoming meeting in Portland. We recognize the importance of your industry and the concern that you have for this matter of land use planning. You were early in the endorsement of the idea of the land use planning needs in this country, and you put it forward earlier.

We are very pleased to have your recommendations and suggestions and I commend you for them and the organization you represent.

The Senator from Oregon may have questions.

Senator HATFIELD. Mr. Chairman, I am particularly happy to welcome Mr. Stewart to our hearings this morning. We worked together as legislators in the Oregon Legislature years ago, and throughout my other public life. I admire him not only as a person, but as leader in his industry. He has always offered constructive and, I think, interesting suggestions, and I think it is typical here today, where on the last three pages of his testimony he makes a point about what he feels what the language of the bill is omitting, and he provides us with draft copies of amendments. Whether we accept them or not, we should recognize that this is a constructive approach Mr. Stewart takes.

For the record, I wonder, Mr. Stewart, if you would comment further on this part of the Senate bills 632 and 992 which provide language that would lead one to believe and rightly so, that they are both concerned about revitalizing rural areas, developing new communities.

Would you tell the committee how this relates particularly to your interest and not only Oregon, but I think in many other States and towns, where there is a mill and where the supply of that resource is going to maintain that community, where otherwise it is going to dry up and blow away, and all those people are going to migrate, especially the young, to the cities and create more urban problems.

Tell us a little more, if you would, how your industry is concerned about this and how it relates to this point.

Mr. STEWART. This is, of course, vital to Oregon, and I would say the whole Northwest. Forestry and the use of trees and growing trees is our No. 1 industry. This is what, in the State of Washington and the State of Oregon and Idaho and western Montana—forestry is No. 1.

Generally speaking, these forests are surrounding smaller towns. Cottage Grove, my hometown, is very small, and it depends almost entirely on the forest industry. If that should be dried up and the trees not allowed to be harvested or used, that town would be gone and there would be nothing left there. The little town of Burns, Oreg., and the little town of Lakeview and many, many towns in Oregon and in Washington and these others, would just fade away and those people

would have to go to the urban areas for a livelihood, which then just compounds the problems that we have in the urban areas.

Senator HATFIELD. This would be true of the southern pine States, too, would it not?

Mr. STEWART. Very much so. I am speaking for the southern pine people, too, and they are just as concerned that forestry and those small towns be kept alive.

Senator HATFIELD. The point you make so well here, I think, should be reiterated time and time again, and that is oftentimes, when we hear about the concept of new communities, we are really talking about new suburbs, and we are talking about new communities most generally in reference to some payroll, some industry, and either trying to develop a new community related to that particular manufacturing and industrial activity, where actually many of our existing communities, rural communities, to be rehabilitated, restored, rejuvenated, if a meaningful base were related to them. I have often said it would be less costly to us as a nation to give more attention to see how we can help in maintaining and restoring some of these smaller communities with sewer and water bond programs, in timber States and so forth, because not only will we keep those smaller communities going and therefore retard this great urban trend, but also as it relates to the small and medium-size operations in the economic field where many of these small communities are.

Yours would be called a medium-size operation, wouldn't it?

Mr. STEWART. Yes. We would be medium sized. In the town of Baker, it is dependent on one or two mills over there. This happens all over the Northwest. It is not isolated to Baker.

Senator HATFIELD. I think so much of our land use thinking is geared into the greater urban centers, and deteriorating central cities, which is a great national problem. At the same time, we have tended not to see the deteriorating rural areas of America, and we might be able to get a handle on that more quickly and effectively in here than in some of our urban areas. Don't you agree?

Mr. STEWART. I agree 100 percent. There is no question in my mind that with a proper land use policy we can siphon off a lot of the urban problems back into the rural communities where we don't have that type of problem.

Senator HATFIELD. I think even some of our concern about population explosion fails to take into account that perhaps it is not so much the numbers of people that we have as much as it is the concentration of people living on a smaller and smaller part of the geography of this country, and what are we doing to deconcentrate that kind of concentrated population. We have all sorts of things such as birth control, but actually we should be addressing ourselves to land policy.

Thank you very much.

Senator Moss. Thank you very much, Mr. Stewart. We appreciate your testimony. Your full statement will be placed in the record.

Mr. STEWART. Thank you.

(Mr. Stewart's prepared statement follows:)

STATEMENT OF LORAN L. STEWART, CHAIRMAN, FOREST INDUSTRIES COUNCIL

My name is Loran L. Stewart, president of Bohemia Lumber Company of Eugene, Oregon, and chairman of the Forest Industries Council having headquarters

in Washington, D.C. I appear before this committee today in my capacity with the Forest Industries Council which is the policy coordinating organization for the forest products industry throughout the country. The producing organizations sponsoring FIC are American Paper Institute, American Plywood Association, American Pulpwood Association, and National Forest Products Association.

The forest products industry is on record from previous testimony before this Committee as strongly favoring adoption of a national land use policy. We have long advocated such a policy on the tenets that:

1. The nation's lands embrace material resources and are the ultimate foundation of the nation's wealth.

2. The flow of resources from the land, public and private, benefits every one of our 200 million people providing them with more goods and services at lower prices. Industries and individuals initially using resources need to be assured that their particular resource or use will be available on a continuing long-range basis.

3. In the case of privately owned land, owners and communities need assurance that land will not be condemned away from private use, thus endangering investments, tax bases, opportunities, particularly local community stability.

4. In the case of publicly owned land, resources and uses should be managed intensively and made available at prices and under terms which will foster a healthy economy in the local area involved. This will help make these communities viable so that the people will not have to leave rural areas for the cities and aggravate that already complex problem.

5. While there is considerable disagreement on the methods to be used, local government units, we feel, need to receive in one form or another equitable recognition of the Federal land base within their jurisdiction and its influence on their revenue base. In other words, community stability.

6. Federal land managers at all levels should encourage increased public participation in land management decisions.

7. A basic need is that land acquisitions, management and disposal policy must be responsive to the needs of those persons, industries and communities dependent on those resources. With one-third of the nation's land area already in Federal ownership, our industry does not feel that substantial additions to the public lands is warranted.

8. Federal lands should be managed to provide commodities and services according to the best use of the land insofar as they are not mutually exclusive.

All of these tenets are in accord with the purposes expressed in both of the land use policy measures under consideration today. However, neither of the measures makes sufficient policy provision for use of the land's natural resources. Unless such policy is established, there will be continuing problems for land based industries to provide the products made from these natural resources which are essential to the welfare and economy of the nation.

The two bills under consideration, S. 632 and S. 992, establish policy upon which future legislation concerning specific land uses would be based. Neither bill establishes definitive policy for conservation and development of the natural resources on Federal and non-Federal lands to meet the economic and material requirements of the nation. However, implicit in both measures is the anticipation of increased population which will require more food, more housing, more energy, more water, more recreation, more environmental considerations. The nation's forests contribute positively and significantly to all these requirements except for food. It would be in the best interest of the nation to establish a policy promoting increased growth and management of forests as a renewable natural resource.

There is need for such specific policy provision because, as this committee is well aware, there are many vocal opponents to commercial uses of public lands, particularly public forest lands. A policy promoting growth of new forests and providing for compatible commercial and multiple-use purposes is consistent with the findings and purposes of both S. 632 and S. 992. Among other things, both measures are concerned with revitalizing rural areas and developing new communities. Development of new commercial forests and perpetuation of existing commercial forests are directly related to these purposes because commercial forest management automatically provides an economic base in rural areas.

Forest management should be recognized as a legitimate objective of land use planning. Without management, forests stagnate and lose much of their environmental value as well as their economic value. Public forests belong to all the people and should be managed so as to provide all of the people with maximum aesthetic and material benefits.

Vigorous growing forests are the product of forest management. Growing forests are more productive of environmental and material benefits. Growing forests provide forage for wildlife. Young managed forests are protected from destruction by insects and disease, and are provided better means for control of fires and other natural hazards.

Forests use and store solar energy. They provide watershed protection and control under proper management. They provide for outdoor recreation, for solitude and spiritual solace. Forests provide all these and still supply the raw material for manufactured products which contribute to the nation's economy and the people's needs and comforts. These multiple benefits, however, can be achieved and maintained indefinitely only under good forest management protected by a national policy.

Good management utilizing latest agricultural techniques is recognized as a prerequisite in cultivating the quantity and quality of grains and fresh produce necessary to sustain our population. The same is true for animal husbandry where food animals are carefully bred and managed under certified conditions to produce the quantity and quality of meat needed for American consumption. Our nation could not support its current 200 million population if our food resource consisted of wild grains, fruits and berries which managed to grow despite the vagaries of nature. Nor would gamey, stringy wild animals caught by trap or killed by hunter supply the needs or satisfy the palates of the American people. This principle of good management must be recognized as a prerequisite in cultivating our forests to produce the quantity and quality of timber essential to sustaining the wood fiber needs of the nation in the form of construction materials, paper and some 5,000 other products made from wood.

Popular esthetic environmental concerns are creating increasing pressures to decrease commercial uses of public lands. This occurs at a time when there is growing need for intensive development of these lands and their resources. More and more Federal lands are being set aside for purposes which prohibit commercial forestry. And yet the people of this country need, indeed they demand, products which are manufactured from the timber resources these lands contain. Without the productivity emanating from utilization of these raw materials, the people of the United States could not afford the environmental amenities which, in large part, most of us take for granted. Certainly, without sustained productivity, we could not afford to increase our demands for environmental amenities because they are services and of themselves nonproductive.

Recent studies released by the Department of Labor have projected that by 1980 seven out of every 10 people will be employed in service-connected jobs. Yet the nonservice connected jobs and the industries which supply them provide the economic base which supports service-connected jobs. Thus, if this country is to continue to maintain its present standard of living, productivity will have to be increased in the nonservice sector. At the same time, this sector is facing increasing pressures to reduce its production capacity. This is particularly true for land based industries which are dependent upon Federal, state and local government lands for either use of the land or its natural resources. These pressures are usually exerted in the name of conservation. Slowing down productivity is not conservation, it is improvidence. It does not consider the needs and best interests of any level of government or the people as a whole. True conservation lies in not wasting our natural resources by obtaining the maximum benefit from them.

A purpose put forth on page 24 of S. 632 bears directly upon this point:

"... that the substance and the nature of a national land-use policy ought to take into consideration the needs and interests of State, regional, and local government as well as those of the Federal Government, private groups and individuals; and that Federal land-use decisions require greater participation by State and local government to insure that they are in accord with the highest and best standards of land-use management and the desires and aspirations of State and local government."

Further, under "Declaration of Policy," S. 632 states the intent of a national land-use policy "to promote the general welfare and to provide full and wise application of the resources of the Federal Government in strengthening the environmental, recreational, economic, and social well-being of the people of the United States . . . which shall incorporate ecological, environmental, esthetic, economic, social, and other appropriate factors."

To carry out this policy to its fullest intent, we submit that there should be specific policy provision which would allow for development and management of commercial forests.

To accomplish this, we suggest that there be added a new provision in S. 632 under Sec. 302 (b), page 25, as follows:

"Provide for stability of use of the land and its natural resources to land-based economies which are supportive to the food, energy, housing and other requirements of the American people."

We also suggest that there be added under Sec. 303 (a), page 26, line 21, delete the word "and" before "environmentally," and following that word, insert the words "and economically." This would make that provision read in total:

"(a) to establish a national policy to encourage and assist the several States to more effectively exercise their constitutional responsibilities for the planning, management, and administration of the Nation's land resources through the development and implementation of comprehensive statewide land use plans and management programs designed to achieve an ecologically, environmentally and economically sound use of the Nation's land resources;"

We also suggest that in S. 992 under Sec. 101 (a), (5), page 2, line 24, there be added following the word "sites," the words ", including new forest sites,". This would make the provision read:

"(5) that the selection and development of sites, including new forest sites, for essential private development of regional benefit has been delayed or prevented;"

We suggest further that in S. 992 under Sec. 102 (c), page 5, line 7, there be added following the word "use" the words "and uses of the land's natural resources". This would make the provision for the definition read:

"'Development and land use of regional benefit' includes land use and uses of the land's natural resources and private development for which there is a demonstrable need affecting the interests of constituents of more than one local government which outweighs the benefits of any applicable restrictive or exclusionary local regulations."

We believe that these suggestions are in full accord with the intent of the Congress and the Administration to establish a land use policy which would provide the greatest benefits to the nation and its people.

Senator Moss. Mr. Edward Martin is our next witness. We are glad to have you before us, sir, and we would appreciate it if you would proceed.

STATEMENT OF EDWARD F. MARTIN, MEMBER, COMMITTEE ON FOREST LAND USE; CHAIRMAN, SOUTHERN CALIFORNIA SECTION, SOCIETY OF AMERICAN FORESTERS

Mr. MARTIN. Thank you, Mr. Chairman. I am from Riverside, Calif.

I have had 20 years of forestry practice, and have been personally involved with many land use planning problems. In my district reside more than 10 million people. People are continually moving now into limited forest and watershed areas for permanent residence and for recreation. Developments such as these are creating a multitude of land use conflicts. Currently I am chairman of our society's subcommittee on land use planning and in this capacity I appear before you today.

The Society of American Foresters is a nationwide organization of more than 17,500 members. It was founded by Gifford Pinchot and six other pioneer forestry men in 1900 and represents the profession of forestry in America. Of vital interest to the society is environmentally sound management of the forested third of the Nation.

The society is greatly interested in the proper planning of the Nation's land resources. It supports the concept that integrated plan-

ning of all natural and human resources is paramount to a total conservation effort. Society members have overwhelmingly shown by referendum their support for the skillful coordination of forest land uses in such a way that they contribute maximum benefits to the economy and to society continuously. Our policies also show our concern for the effect of unlimited population growth on the Nation's ability to meet land resource needs.

Professional foresters have had long and intensive experience with land use planning. The very nature of the resource we deal with has encouraged us to plan present and future land use wisely. Basic to our experience has been the ability to revise plans to meet new demands that are continually being placed on forests, and to take advantage of new and more reliable data on land use.

Forest land is important because there is so much of it. America's 759 million acres of forests provides products, services, and pleasure for a diversity of forest landowners and for people generally. Through management of these lands to meet public needs, foresters have substantial credentials in land use planning and implementation. A great portion of this experience is certainly transferrable to other land use planning situations.

Foresters recognize the need for better land use planning at all levels of government. They are aware that many forces which dictate longrun forest land use are not under the command of land managers and planners. Furthermore, many of these forces are completely uncontrolled and result in land use which is at cross-purposes with the best interests of the public.

Sound forest use land planning is vital for several reasons:

1. Continuity in forest land use is important if forest managers are to provide the economic, social, and spiritual benefits demanded by the public. The period of time required to grow trees is basic to this point. For example, an esthetically attractive and recreationally useful forest may in some cases require trees of great age. On the other hand, some products such as pulpwood from southern pines may be grown in as few as 25 years, and managers of forest land need assurance that long-range goals such as these will be realized. Otherwise, land management incentives are lost.

2. Subdivision is one of the most destructive forces at work on today's forests. There are countless examples of this in southern California where forested mountains have become high-elevation extensions of the urbanized megalopolis. Drainage patterns are being severely upset since 20 percent of the land surface in developed areas is covered by streets and roofs. Air pollution is choking trees—the very trees which cleanse the air. These factors are killing trees and seriously reducing the beauty of the forest which initially attracted people.

Indiscriminate subdivision development has greatly increased the fire hazards to forests and at the same time increased the potential for loss by complicating fire fighting efforts. Almost 800 homes were lost in California's fires in 1970. Firemen assured us that fires became much larger than necessary because so much effort had to be spent saving lives and structures, and so little was available to control the fires. At the same time, fire control costs have been greatly increased.

3. Indiscriminate construction of roads and utility lines can have a severe impact on forest amenities. Such developments not only add

to fire hazards, they limit the forest's ability to produce esthetically pleasing scenes and reduce still further productive forest acreage.

4. Forest land planning is vital if we are to provide the needed combinations of goods, services, and pleasure from limited forest lands. In the face of a growing population and mounting demands for water, timber, forage, wildlife and recreation, the need for better planning of our limited forest land base becomes more and more obvious.

The urgency of this situation is exemplified by the above land use problems we have described. They illustrate the need for an effective land use planning act. The society's position is that control of land use is the key to insuring that future development is in harmony with ecological principles and the needs and desires of the public. Without the stimulus provided by land use planning legislation little can be done to achieve this harmony.

The two bills—S. 632 and S. 992—before this committee have many merits. Either would be a great step forward. We do have certain concerns which we would like to bring to your attention.

First is the need for an inventory and study of land use planning data. The need for land use planning data is great. Not only do we need information on the Nation's desires for goods and services from various land types, we need to inventory and classify land use. Both of these aspects of planning must be done on a continuing basis. This type of information is especially lacking in the area of outdoor recreation needs. The language of S. 632, sections 102 and 106 is favored in this respect.

Second, the implementing and revising of statewide plans is important. Implementing and revising statewide plans is crucial to land use planning. Plans which cannot be revised to cover unforeseen events can never be successfully implemented. Moreover, revisions should not be required to proceed through a laborious process for a plan to be vital and workable.

Furthermore, there must be provision for adequate control over the use of lands covered in a statewide plan if it is to be implemented.

Then, too, implementation will be facilitated by inclusion of local planning efforts as opposed to planning being done entirely at higher levels. Less resistance to local planning efforts will occur if there has been local input. On these points, the language of S. 992 is favored because, while it allows the States much leeway in the actual methods employed, control over subsequent land use is made a part of the plan, and revisions are provided for at no higher than the State level.

Our third point is the need for regional coordination. Because forest lands do not necessarily fall into blocks coincident with the boundaries of political subdivisions and because forests often serve the needs of populations residing in different political subdivisions, we favor a machinery similar to that of S. 632 since it provides for regional coordination. S. 992 does not prohibit regional cooperation but such coordination is so vital that it should not be left to chance.

Our fourth point is the need for inclusion of Federal lands in any land use planning on a nationwide basis, because any comprehensive land use plan would be severely limited in usefulness if it did not include Federal lands. This is especially true in the Western United States. S. 632 is favored in this respect. If Federal lands

cannot be conveniently included at this time, we urge that companion legislation such as covered in several other bills already introduced be given favorable consideration as soon as feasible.

Our fifth point is inclusion of cities, areas of unimproved forests, because many cities include substantial areas of unimproved forest and watershed lands which are, in our opinion, areas of critical environmental concern. In California some of our most serious forest land use problems involve forested areas within major incorporated cities such as Los Angeles, San Diego, San Bernardino, and South Lake Tahoe. Related to this are the problems created by recreational pressures on nearby unincorporated forested lands resulting from inadequate provision for parks and recreation within the cities. S. 992 does not exclude incorporated cities from planning consideration, but areas of critical environmental concern within incorporated cities should be specifically recognized.

Our sixth and final point and the one which is most important to us concerns the exclusion and inclusion of lands to be covered.

The forest lands of the Nation are of vital importance in providing material, esthetic, and recreational needs. There must be a land use policy covering forest lands as such. Neither of the bills under consideration adequately covers forest lands.

S. 632 tends to categorize forest lands for particular uses such as recreational, agricultural, industrial, and commercial uses. Forest lands produce many kinds of goods, services, and pleasure, often simultaneously with and from the same area. Use of the forest for products is not incompatible with many types of recreational use or with esthetic qualities in the long run.

In view of the limited resources of our Nation, forest lands must be managed for the combination of compatible uses which will contribute the largest measure of economic and social benefits to society. Categorization as in S. 632 runs counter to this philosophy.

S. 992, on the other hand, tends to disregard forest lands, except as they may be part of an area of critical environmental concern. It does not appear that this provision adequately covers the needs of forest areas.

Over 60 percent of the most productive forest area is in fragmented farm and other small ownerships subject to serious developmental pressures which are destructive to the forest environment. It is our contention that all forest lands are "areas of critical environmental concern." We would favor the format of S. 992 with a specific provision that all forest lands be so defined in section 102, and that section 104 be worded to stress that forest lands plans should provide for the combination of compatible uses contributing the most benefits to society.

Mr. Chairman, the Society of American Foresters thanks you and the committee for this opportunity to present its views on land use planning. We look forward to being of further assistance in the development of this vital legislation.

Senator Moss. Thank you, Mr. Martin, for coming here and presenting this paper on behalf of the Society of American Foresters. We are pleased to have your recommendations, which have been specific. We will welcome any further discussion or suggestions you have to submit to this committee as we consider the bills before us

and try to make a judgment on the various provisions of those bills in working out what we think is the practical way to go, and at the same time achieve the maximum value that we expect to get from the land use planning bill.

We are pleased you came to testify.

Senator Allott?

Senator ALLOTT. I also want to express my appreciation to you for coming and also for your very fine statement. I like your comments on two matters, and I will be very short: section 106(a) of the administration bill, S. 992 contains a provision relating to conformance of Federal lands to State land use programs.

Last year, Secretary Romney pointed this section out. However, as he also pointed out, the requirement does not apply in the cases of overriding national interest. You are not a lawyer, you are a forester, but as a forester, how would you interpret "overriding national interest"? What do you think it could conceivably be said to include?

Mr. MARTIN. As a forester, I would have a great deal of difficulty interpreting that section, on what it would include.

Senator ALLOTT. I think it is something anybody could scratch their head about a little bit. Secondly, the section says that Federal activities and projects significantly affecting land use shall be consistent with State land use programs.

Do you interpret this clause to mean the same thing as saying that the use of Federal lands shall conform to the State land use programs, or is there possibly some other interpretation?

Mr. MARTIN. It would seem to me it would be open to some other interpretations. It would almost have to be, I would think, in cases of overriding national interest.

Senator ALLOTT. If you take the two of them together you do have some question. The interpretation that I would be prone to put on this latter is that it does mean the same, that the Federal lands shall conform to the State land use programs when it says, "Federal activities and projects significantly affecting land use shall be consistent with State land use programs."

I am just trying to make a record here, because this is the interpretation, if I voted for it in this form, that I would put on it personally.

Thank you very much, sir.

Senator MOSS. Thank you very much, Mr. Martin. We appreciate it. I believe we have time for one more witness.

Mr. Clement, vice president of the National Audubon Society.

STATEMENT OF ROLAND C. CLEMENT, VICE PRESIDENT, NATIONAL AUDUBON SOCIETY

Mr. CLEMENT. Mr. Chairman, and Senators, my statement is brief. I would like to prefix it by pointing out that although I have concentrated on national land use policy for the last 3 years I have come before you this morning only to comment on the two bills and not tell you what my thinking on policy is. Although, of course, we would be delighted to share our thinking in this broader area, too, if this would be helpful, some other time.

Senator MOSS. Very good.

Mr. CLEMENT. I am an advocate of steady-state socioeconomic systems, but the Land and Water Resources Planning Act proposed in these bills would provide interim reordering of priorities that will allow our Nation to reexamine its long-range objectives and to identify optima in both population and development, and most importantly, the American people will evolve a cooperative approach.

Such planning would also provide much needed leeway in solving many national problems by reducing conflicts and reducing the wasteful use of resources which has become characteristic of the American economy.

I happen to be chairman of the Army Corps of Engineers Environmental Advisory Board, and I can attest to the waste and the environmental damage done by many Federal projects for lack of statewide, regional, and/or national use planning.

These shortcomings apply not only to the Corps of Engineers projects, but to the Bureau of Reclamation and to many Department of Agriculture land and water projects.

At the State level and in private enterprise, the same shortcomings are evident, and if the damage has seemed less acute because the local agencies had less technological power at their command, local action has nevertheless even often resulted in equal or greater damage because it was of a more extensive activity.

I should explain, gentlemen, that the undesirable side effects of developmental projects in the past were due not to any necessary lack of responsibility or sensitivity, although these may have occurred, but rather to the project approach itself. I submit that it is impossible to plan intelligently except on a regional basis, and ultimately on a national and even, perhaps, on a global basis.

The Corps of Engineers has recognized this, and has been a leader in advocating regional planning studies but until we make these broad planning approaches national policies, neither the Corps nor the other Federal agencies or the States will have the sanctions necessary to implement this wider and wiser approach.

I submit that national land use planning is absolutely essential if we are to avoid what Alfred E. Kahn has called "the tyranny of small decisions" that now dismantles, piecemeal, the carrying capacity of our environment.

As we try to move away from the unregulated development of the Nation that has created so many problems for us, we should, of course, be alert to the possibilities of redirecting the technical and planning skills of our large Federal agencies to more constructive, more essential tasks. We need to keep in mind that technological capability is a boon, but that overinvestment or overcapitalization in such capability poses very real problems of directing this capability since it will work otherwise and constitute a destructive pressure for mere make-work activity. This is true today in our highway establishment, in aviation, and in almost all land moving technologies.

This is why we are all pleased that the Congress has authorized the corps to outline a wastewater management program, since the Nation could profitably use the corps' expertise and energy in this area.

We point out that many of the functions called for in section 106 of Senate bill 632, calling for a Planning Information Center, are already being performed by the Department of Agriculture.

Rather than develop a new information and data center, it would make good sense, economically and politically, to assign this information task to Agriculture, or to the appropriate services if some of these are transferred to the proposed Department of Natural Resources.

I have in mind Agriculture's soil surveys, forest surveys, crop surveys, air photo mapping services, and its land capability classification programs. These are all basic environmental data systems. I suggest a congressional warrant to expand services the Nation really needs, while at the same time reducing, through the overview of the proposed Land and Water Resources Council, the conflicts created by Agriculture programs involving drainage and irrigation.

Mr. Chairman, I realize that S. 632 perhaps already provides this authority in section 407(b) but the changes I think are called for are of such magnitude that it would be well to make more specific the intent of Congress in this respect.

As for the two proposals and approaches proposed by S. 632 and S. 992, we believe that S. 632's provisions of 90-percent funding for State programs has the weight of our successful interstate highway program behind it. The chief trouble with that program is that we allowed special gasoline taxes to accumulate in a Highway Trust Fund.

The problem of adequate funding is real, but it should be obvious that the States are currently incapable of much more funding than they now provide. Federal taxes skim much more surplus wealth than State and local taxes, and there is a significant potential for more Federal income through the closing of current tax loopholes. I personally feel, also, that an enlarged Land and Water Resources Council will be more representative than if this planning function were assigned to any one department, and it should also, through its stability, make for a more professional review in the long run.

We therefore conclude by favoring S. 632 as the most promising vehicle for the integrated land use planning the Nation so sorely needs. It thoughtfully provides for full State representation, and has adequate safeguards to prevent overcentralized control and yet provides real incentives to joint Federal-State planning.

If the Congress will pass this bill, we will have taken a long and crucial step in putting our home in order. As a tax-exempt organization the National Audubon Society is severely restricted by law in influencing legislation, but I point to the fact that our 65 years of experience and existence have really paved the way for such legislation by alerting the public to the need for the sort of integrated policy crystallized in the Land and Water Resources Planning Act. We will do all we can to finish the educational task required for general acceptance of this important national policy.

Mr. Chairman, I can conclude my testimony here and thank you once again for this opportunity.

Senator Moss. Thank you very much, Mr. Clement, for this fine statement on behalf of the Audubon Society. Your interesting assignment as Chairman of the Engineers' Environmental Advisory Board gives you a vantage point on this matter of planning. And certainly we have profited by your testimony here today.

Your comparison of the provisions of the two bills was noted, and it is very helpful to us. Your statement in full—you omitted one or two programs—the full statement will be placed in the record.

Senator Allott?

Senator ALLOTT. Yes, I would like to ask you one question. At the top of the page, page 3, your first sentence at the top of page 3, you say, you put it,

I suggest a congressional warrant to expand services the Nation really needs, while then at the same time reducing, through the overview of the proposed land and water resources council, the conflicts created by agriculture programs involving drainage and irrigation.

Would you give me an example of what you mean by the last portion of that statement?

Mr. CLEMENTS. Concerning the conflict, Senator?

Senator ALLOTT. Yes.

Mr. CLEMENT. Yes; there are two current examples. For many years the Department of Agriculture has made it possible to drain the small prairie potholes in the northern interior of the country, while at the same time the U.S. Department of Interior was charged with the responsibility of trying to preserve breeding ground for North American waterfowl, which were important in many ways.

So this was a conflict of policy which has created havoc.

As you know, there is no effective demand for any more agricultural production. Every time we make it possible to bring one new acre of land into agricultural production, we are essentially robbing the Nation of environmental diversity, and at the same time creating problems for other agriculturists because every new acre comes into competition with every existing acre of production.

Senator ALLOTT. On that latter point, I appreciate your reply to the first part. Are there any other instances of the type of thing you think would come under this conflict of interest statement of yours, that occur to you at the moment?

Mr. CLEMENT. The other item that you should have mentioned is that there is a great deal of interest now on the channelization of streams both by the Soil Conservation Service, by the Corps of Engineers, and perhaps others. Once again, this is done to bring more land into production, private land being publically subsidized, and when we don't need the production of these private lands. So this is a problem in balance, Senator.

We must ultimately aim at achieving a population stability if we are going to avoid chewing up the entire landscape piecemeal.

Senator ALLOTT. You are aware, I believe, every bill reported out of this committee in the last several years, at least in the last 6 or 8 years, dealing with the authorization of reclamation projects has contained provisions against the growing of crops which have been declared in surplus in the United States. Are you aware of that fact?

Mr. CLEMENT. Yes; I am generally aware of this, Senator, but I don't think this is a sufficient constraint. In other words, if the Nation does not need more agricultural production, why should we subsidize bringing more land into production?

I realize this is a sensitive problem in many regions of the country, but I think if we are going to think nationally we must take a national

stance in this respect and try to balance our books more carefully.

Senator ALLOTT. On the other hand, the land may be better preserved for the future through its use in agriculture, for example, than it would be by laying sterile or laying out in the open.

In my part of the country, and this is true in Senator Moss' great State, too, we see many great examples which cause us great pain, of soil erosion. You know, in all this environmentalist binge that everyone is on for the moment, we hear little about soil erosion, which is one of the most serious things happening in this country.

I really feel that there is a point to be made, if I may disagree with you, pleasantly, about putting land in production. That can actually preserve the land from serious soil erosion and in addition to that it can add to the cover and protection of birds and wildlife which does not now exist in many areas.

Mr. CLEMENT. Senator, I am a biologist and a vegetationist, and I must respectfully suggest that many roads cause many abuses. If we leave the task to nature, usually it becomes vegetated, unless, of course, it is too dry, and vegetation then protects it against erosion.

I agree with you that agriculture can make a contribution in some areas, but this is, once again, the question of balance, Senator. If we bring more land into production, we make it possible for the large operators to dominate the picture increasingly, and more people would be pushed off the farm.

This has been the history of the last 25 or 35 years, and these people then must migrate to the city and you heard this morning, for example, as I did, that there is a concern for trying to decentralize the American population.

This is a very difficult problem, and I don't really feel that we have rationalized this properly as yet.

Senator ALLOTT. Well, I think we could discuss this for some considerable length of time. I really am thinking of those portions of the country where you have a maximum of 11 to 12 inches of rainfall a year, and this part of the country I think I know very well, and, of course, the concentration of farm land, or the farms, the larger farms I am not sure that that is not a matter of an economic policy that has been followed, or an agricultural policy that has been pursued through the years.

I don't know how we get at that. We have been trying to do something about that for a long time, even before the Senator from Utah and I came to the Senate, but we have not made very much progress.

I appreciate your remarks, sir.

Senator MOSS. Thank you, Mr. Clement.

We have very important witnesses to hear after our noon recess. We will now be in recess until 2 o'clock.

(Whereupon, at 12:15 p.m., the hearing recessed, to reconvene at 2 p.m.)

(Mr. Clement's prepared statement follows:)

STATEMENT OF ROLAND C. CLEMENT, VICE PRESIDENT, NATIONAL AUDUBON SOCIETY

I am Roland C. Clement, a biologist and environmentalist who is vice president of the National Audubon Society, a membership conservation organization with some 150,000 dues-paying members and a long tradition of service to national resources policy. We appreciate your invitation to share our views on proposed legislation to create a Land and Water Resources Planning Act.

I am, I should begin by saying, an advocate of steady-state socioeconomic systems, but the Land and Water Resources Planning Act proposed in these bills would help provide that interim reordering of priorities that will allow us as a Nation to reexamine our long-range objectives and identify optima in population and development; and, most importantly, help the American people to evolve cooperative approaches now so sorely lacking in our system. Such planning would also provide much-needed leeway in solving many national problems by reducing conflicts and reducing the wasteful use of resources which has become characteristic of the American economy.

As chairman of the U.S. Army Corps of Engineers' Environmental Advisory Board, I can attest to the waste and the environmental damage done by many federal projects for lack of statewide, regional and/or national planning. These shortcomings apply not only to Corps of Engineers projects, but to the Bureau of Reclamation, and to many Department of Agriculture land and water projects. At the State level, and in private enterprise, the same shortcomings are evident, and if the damage has seemed less acute because these local agencies had less technological power at their command, local action has nevertheless often resulted in equal or greater damage because it was a more extensive activity.

I should explain, Mr. Chairman, that the undesirable side effects of so many developmental projects in the past were due not to any necessary lack of responsibility or sensitivity among the managers of these projects, but to the project approach itself. It is impossible to plan intelligently except on a regional basis, and ultimately, on a national and even a global basis. The Corps of Engineers has recognized this and has been a leader in advocating regional planning studies, but until we make these broad planning approaches national policy, neither the Corps, the other federal agencies, or the States will have the sanctions necessary to implement this wiser approach.

National land use planning is absolutely essential if we are to avoid what Cornell University economist Alfred E. Kahn has called "the tyranny of small decisions" that now dismantles, piecemeal, the carrying capacity of our environment.

As we try to move away from the unregulated development of the Nation that has created so many problems for us, we should of course be alert to the possibilities of redirecting the technical and planning skills of our large federal agencies to more constructive, more essential tasks. We need to keep in mind that technological capability is a boon, but that overinvestment or overcapitalization in such capability poses very real problems of directing this capability since it will otherwise constitute a destructive pressure for mere make-work activity. This is true today in our highway establishment, in aviation, and in almost all land-moving technologies.

This is why we are all pleased that the Congress has authorized the Corps of Engineers to outline a wastewater management program, since the Nation could profitably use the Corps' expertise and energy in this area.

We point out that many of the functions called for in Sec. 106 of Senate bill 632, calling for a Planning Information Center, are already being performed by the Department of Agriculture. Rather than develop a new information and data center, it would make good economic and political sense to assign this information task to Agriculture, or to the appropriate services if some of these are transferred to the proposed Department of Natural Resources.

I have in mind Agriculture's soil surveys, forest surveys, crop surveys, air photo mapping services, and its land capability classification programs. These are all basic environmental data systems. I suggest a Congressional warrant to expand services the Nation really needs, while at the same time reducing, through the overview of the proposed Land and Water Resources Council, the conflicts created by Agriculture programs involving drainage and irrigation.

I realize that S. 632 perhaps already provides this authority in Sec. 407(b), but the changes I think are called for are of such magnitude that it would be well to make more specific the intent of Congress in this respect.

As for the two approaches proposed by S. 632 and S. 992, we believe that S. 632's provision of 90% funding for State programs has the weight of our successful interstate highway program behind it. The chief trouble with that program is that we allowed special gasoline taxes to accumulate in a Highway Trust Fund. The problem of adequate funding is real, but it should be obvious that the States are currently incapable of much more funding than they now provide. Federal taxes skim much more surplus wealth than State and local taxes do, and there is a significant potential for more federal income through the

closing of current tax loopholes. I personally feel, also, that an enlarged Land and Water Resources Council will be more representative than if this planning function were assigned to any one Department, and it should also, through its stability, make for a more professional review in the long run.

We therefore conclude by favoring S. 632 as the most promising vehicle for the integrated land-use planning the Nation so sorely needs. It thoughtfully provides for full State representation, has adequate safeguards to prevent over-centralized control, and yet provides real incentives to joint Federal-State planning.

If the Congress will pass this bill, we will have taken a long and crucial step in putting our house in order. As a tax-exempt organization the National Audubon Society is severely restricted by law in influencing legislation, but I point to the fact that our 65 years of existence have really paved the way for such legislation by alerting the public to the need for the sort of integrated policy crystallized in the Land and Water Resources Planning Act. We will do all we can to finish the educational task required for general acceptance of this important national policy.

AFTER RECESS

(The committee reconvened at 2:05 p.m., Senator Anderson, presiding.)

Senator ANDERSON. Mr. Pardo is our next witness. Mr. Pardo is administrative assistant, American Forestry Association.

STATEMENT OF RICHARD PARDO, ADMINISTRATIVE ASSISTANT, AMERICAN FORESTRY ASSOCIATION

Mr. PARDO. Mr. Chairman, I am Richard Pardo, administrative assistant with the American Forestry Association. AFA is a nationwide citizen conservation organization of more than 82,000 members dedicated to the advancement of intelligent management and use of forests and related resources of soil, water, wildlife, and outdoor recreation. We appreciate the invitation to appear here today to present testimony on this important legislation.

We support the concept of a national policy for land use planning as it relates to wise use of our finite supply of land in general, and as it helps to promote more balanced forest land use and management in particular.

In this regard, I would like to endorse the very fine statement presented this morning by Mr. Edward Martin for the Society of American Foresters.

We believe there is a need for such a national policy, and not for the purpose of putting the Federal Government in the land use regulation business but rather as a means of encouraging the various States to more diligently exercise their sovereign powers of land use planning, and the duty to protect public values which these powers carry with them.

The time is past when we can treat our land base as now inexhaustible. There is only so much, and from this fixed amount of land we must shape a pattern of growth and use to meet the needs of our people.

According to the first annual report of the Council on Environmental Quality some 22 percent of the land within the 50 States is classified as ungrazed forest land. The report further states that each year about 1 million acres of agricultural land is converted to intensive uses, such as highways, airports, reservoirs, and urban expansion. Much of this is forest land. Often such conversion is environmentally

unsound, and yet there is no mechanism by which the total range of environmental values can be injected into the private decision and considered before the fact.

Also, although forest lands have the fortunate capacity to be able to serve a variety of multiple purposes at one given time, they have not been entirely immune from conflicts and competing use pressures. Because the forests are so basic a resource, these lands, just as much as any others, must be managed with consideration of the long-range environmental factors in the decisionmaking process.

The landmark National Environmental Policy Act which this committee was so instrumental in developing, has done a great deal in forcing Federal agencies to consider environmental impacts in their programs and proposals. Perhaps the day will come when every private decision with an environmental impact will also require the filing of a private 102 statement. Some States have begun to move in this direction. But most have not, and before they can, the tools for planning and implementation of a land use policy must be in their hands.

Therefore, we support the basic concept of both bills which would place the major responsibility of this program at the State level.

And although our sights should be set on eventually having land use planning on a statewide basis, it seems to us that the provisions in S. 992 which single out specific critical areas for priority attention give promise as the approach most likely to achieve expeditious results.

Focusing on a specific problem area makes possible a greater sense of urgency and supplies a more tangible target on which efforts and energies can be focused. The process is less likely to become bogged down in generalities, and is more amenable to citizen participation, and if necessary, citizen prodding, when a specific target is in sight.

Much of the discussion so far has focused on the need to direct and plan patterns of developing land use on the urban fringes, where the most dramatic examples of changing uses are taking place.

We agree that these areas, and other critical regions such as coastal zones, deserve high priority, and others more familiar with these problems have presented and will be presenting testimony during these hearings.

So I would like to devote my time to calling attention to another particular need which we see as also important, the question of private land use as it affects recreational use and enjoyment of nearby public lands.

Some of these problems are becoming increasingly apparent, for example, in the eastern national forests. Rather than being carved out of public lands as were the western forests, those in the east were created primarily by the purchase of private lands.

The original intent was to rehabilitate cutover and unproductive lands for watershed protection and increased timber productivity. In recent years, recreation has become the overriding use of many of these areas.

However, unregulated land development on nearby private lands poses a threat to the quality of the public experience and imposes social costs on the public lands for the benefit of the adjacent private landowners.

For example, consider the case of the Massanutten Unit of George Washington National Forest, where the problems are still in the early stage, but where accelerated activity seems almost a certainty.

Massanutten Mountain is a unique isolated range in the middle of the Shenandoah Valley, bordered both sides by two forks of the legendary and beautiful Shenandoah River. Its configuration is unusual, with two parallel ridges surrounding an interior valley of the farms and small homes.

Most, but not all, of the range is within the purchase unit boundary of the George Washington Forest. However, actual national forest ownership is confined almost entirely to the steep slopes and ridges. Massanutten Peak, the southern prow of the mountain, is not in the public ownership, nor is the roadless area beneath the peak known as The Kettle. Although the purchase unit boundary includes portions of the South Fork of the Shenandoah, by far the bulk of the riverfront land lying at the base of the mountain is privately owned and ripe for development.

Massanutten Mountain is perhaps the closest eastern national forest unit to a major metropolitan area. As I mentioned, being just 2 hours by automobile from Washington, D.C. As such, the recreation use is heavy and is the dominant use of the land. For the same reasons, the nearby private land is also in demand for recreational use.

Clearly the quality of the recreation experience which the public can find here in the future will be influenced to some degree by the way in which the inholdings and adjacent private property are developed.

As long as Fort Valley remains in farms and small developments of permanent homes, it enhances the surrounding countryside. If it is turned into poorly planned and unregulated summer home subdivisions, the effect could be the opposite.

Similar unregulated developments along the banks of the Shenandoah could ring the mountain with all manner of buildings and camps and perhaps seriously pollute the rivers.

In recent weeks it has been announced that a major land developer will break ground this month, and began selling lots this summer in a large recreational development which will include Massanutten Peak and a major ski area in the undeveloped land valley beneath the peak.

Putting aside the question of wilderness versus ski developments, it seems certain that such an enterprise will greatly add to the conversion of nearby private lands into recreational developments. At present, the counties involved do not have the type of land use plans and controls to effectively cope with such rapid change.

I cite, rather, it is typical of many areas throughout the country. These are situations which could be handled at the local level, but which generally are not. We believe that here is where the State has a legitimate role to play in seeing to it that buffer zones are established to protect the public interest and prevent the development of adverse impacts by uncontrolled private developments.

Now, referring to the issue—specifically, to the two bills before you—S. 632 addresses this problem in section 305(b)(7), which requires State plans to require for measures such as buffer zones, scenic easements, and prohibitions against nonconforming usage.

The administration bill, S. 992, covers this, although less specifically, as an area of "critical environmental concern", where uncontrolled development could result in irreversible damage to important esthetic values.

Between the two, we would favor in this instance the more specific designation contained in S. 632.

Mr. Chairman, this is only one of the many issues to be considered within the framework of a national land use policy, but it is one which has received little attention because land use thinking has traditionally been urban rather than rurally oriented. But it is an area where there is still time to plan wisely.

Only the very wealthy or the very foolish would write checks on a bank account without knowing the balance on deposit or keeping some control over expenditures. But, in effect, this is what we as a nation have been doing with our land resources account, by allowing withdrawals to be made at an accelerating rate without really knowing what our balance is, and without having a workable system of regulating and balancing our day-to-day transactions.

We are no longer so rich that we can afford this. Let's hope we are no longer so foolish, either.

Thank you, Mr. Chairman, for this opportunity to come here and present this testimony today.

Senator ANDERSON. It is a very fine statement, and we are glad to have had you give it.

Mr. PARDO. Thank you, sir.

Senator ANDERSON. Mr. Martin?

STATEMENT OF JAMES G. MARTIN, VICE PRESIDENT, NATIONAL SERVICE TO REGIONAL COUNCILS; ACCOMPANIED BY C. JAMES DOWDEN, ASSISTANT DIRECTOR OF NATIONAL SERVICE, AND JOHN J. BOSLEY, LEGAL COUNSEL

Mr. MARTIN. Thank you, Senator. It is a great opportunity to have the privilege to have the opportunity to testify before the distinguished members of this committee.

We are a new development on the horizons of local government. I think we have a slightly different wrinkle to propose to this committee.

I also have the pleasure of serving as the chairman of the Mecklenburg County Board of Commissioners and I am the founder and past president of the Central Piedmont Regional Council of Governments in Charlotte, N.C.

I have with me today C. James Dowden, assistant director of the National Service, and John J. Bosley, legal counsel, who will be available with me for questions following my presentation.

Let me begin with some introductory comments about the organizations. The National Service to Regional Councils was initiated by the National League of Cities and the National Association of Counties in 1967, to assist the rapidly growing number of regional councils in setting up and improving their programs and activities.

Regional councils are areawide organizations which involve more than one local government and encompass a total regional community. Regional councils exist both in densely populated metropolitan areas and in sparsely populated rural areas. Their prime purpose is to increase communication, cooperation, and coordination among local governments and to develop policies and programs to meet mutual problems and challenges.

I might say that along the way we get an interesting fringe benefit in that we begin to overcome the resistance and mistrust between neighboring local governments which are inherent in human nature. We think we are beginning to bring neighbors into a more neighborly cooperation.

The term regional council encompasses several different types of organizational structures, the most prominent being councils of governments, economic or local development districts, and regional planning commissions.

Close to 600 regional councils have been established to deal with areawide problems, and the governing bodies of these councils are composed primarily of local government elected officials or their representatives.

Many regional councils serve as the basic coordinative device for Federal funding of local government activities. This function is performed as a result of the review and comment provisions of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. This provision was subsequently expanded by the Intergovernmental Cooperation Act of 1968, and implemented through circular A-95 of the Office of Management and Budget.

Regional councils, designated as A-95 agencies, or clearinghouses, review Federal aid applications of local governments prior to submission to the Federal funding agencies.

The councils review the applications to assure their consistency with the regionally adopted plans and priorities.

The National Service to Regional Councils is a membership association of regional councils throughout the country. Our board is composed of local government elected officials and other regional council policy members, as well as representatives of the boards of the National League of Cities and the National Association of Counties, those are the two parent organizations.

Although the legislative approach differs, both S. 632 and S. 992 have the same thrust. They require a redirection and redistribution of the powers over land use, planning, and regulation. They mandate the State to take back some of the powers previously delegated to local governments, yet leaving with the localities, the control over land use decisions of purely local nature. The purpose of this realignment is to more adequately reflect national and State policies in the development of our fundamental natural resource, the land.

We would say, of course, that this is a good objective, this feature we are referring to here. It does pose a problem and we would say a challenge to your committee if we are to establish areawide policy jurisdictions without depriving local governments of the control and direction of their own destinies, and that is what we are speaking to today.

With the advent of the model State zoning enabling legislation in the early twenties the regulation of land use has been a local government prerogative. The unfettered delegation of this responsibility to local governments made sense at that time.

In most cases land use decisions of individual local governments did not have State, local, and regional significance. But with the improvement of transportation systems, this parochial impact soon ended. To cope with this extraterritorial aspect of land use regulation, most States have authorized the establishment of regional agen-

cies to develop advisory land use plans on an areawide basis. At first these agencies were composed primarily of laymen. But in an effort to move planning closer to decisionmaking, many of these regional planning agencies are being reconstituted into regional councils of local elected officials from the general purpose governments within the area.

I might say that counting as of the year 1970, approximately 55 percent, that is, over half, have a majority of their policy boards who are elected officials, again, such as myself.

In this process of change, regional councils are also becoming involved with all of the interjurisdictional problems concerning our urban and rural regions; this is providing the opportunity to make regional land use planning responsive to the social and economic goals of these areas.

At the same time, we recognize the need for a National and State policy context for our decisions on growth and development. It is the process under which such National and State policies are developed that is of concern to us. And in this respect, Mr. Chairman, we have several suggestions on the proposals before the committee.

Land use decisions cannot be made in a vacuum. Their most immediate impact is on the physical environment. But this influence does not stop there; they affect the social and economic environment as well. Therefore, planning and land use regulations can only be an effective tool of government management when there is a policy context that considers all of these factors.

Unfortunately, there is not such a context for decisionmaking at the national level in most States. To make land use decision more national and responsive to the needs of the larger communities, both National and State, a balanced national growth policy is required.

Such a growth policy should establish national goals and priorities to deal with such problems as the migration and physical growth which create disparities among States, regions, and local governments, poverty, employment, fiscal disparities, housing, strengthen and modernize State and local governments, and many more pressing issues.

We recognize a first step has been taken in this direction with the enactment last year of the Urban Growth and New Community Development Act of 1970. However, if there is to be an effective national land use policy, there must be at the same time a balanced national growth policy. Without such a framework, State, regional, and local land use decisions will continue to be made on the basis of either subjective judgments as to what national goals and priorities may be, or worse, without any regard to these larger considerations at all.

Both S. 632 and S. 992 provide for the development of statewide land use plans. Such plans will be the basis of local land use regulations in those areas identified to have statewide or regional significance. The arrangements—both the institutional and procedural—for complying with this requirement are of great importance to regional councils, whom we represent. The degree that local and regional interests are considered and reflected in the State's plan will be determined by these arrangements.

This is an important issue. Planning is a two-way street. It cannot be effectively accomplished by a process imposed solely from the top. In short, local and regional interest must be articulated and considered

in the formulation of State land use plans. And in our opinion, this interest could be represented through the elected officials of the local government, acting through their regional councils, if they are to be most effective.

Under this procedure—it has precedent in the procedure for developing a State development plan under the proposed rural revenue sharing legislation—each State would regionalize.

These regions or districts would be established by State law or designation by the Governor, or Governors, in the case of interstate areas. Their governing bodies would be composed primarily of local elected officials from the general purpose local governments of the region.

The purpose of these regional organizations would be to reflect regional and local land use planning in the development of statewide land use plan. This would be accomplished as follows:

Each State would establish a land use board or commission, composed of State officials and other appropriate individuals as designated by the Governor or the State legislature. The board would also have representation of at least one elected official from each one of the regions within the State. The State land use board or commission would be charged with developing a land use plan for the approval of the Governor. Final adoption and subsequent modification or amendment of the land use plan would repose in the Governor or any such other agency of State government, including the commission, as may be designated under each State's legislation.

This approach to development of a State land use policy has several advantages:

First, it establishes a desirable, flexible, mechanism for involving local and regional interest directly in the development of the State land use plan.

Second, it would utilize the professional land planning resources and experience of local governments and regional planning agencies in the planning process. This is particularly important because most State governments do not now have a staff capability to undertake the kind of land use planning required in the proposed bills before this committee.

The direct involvement of local governments, through regional agencies, would strengthen the State's capability to carry out the responsibilities placed on it under these bills.

Third, numerous States have already regionalized. Many of the regional organizations within these States are developing comprehensive plans and programs for the solution of intergovernmental problems in their areas.

The designation of these agencies as part of the process for establishing a State land use plan would strengthen their capabilities to develop policies for areawide development and coordinate Federal grant-in-aid programing in their areas. As we pointed out before, most of the existing regional councils are now the A-95 clearinghouses for their region.

The fourth advantage is that regionalization would provide a necessary institutional framework, within interstate metropolitan areas, assuring that coordinated land use planning for these areas, such as Kansas City, St. Louis, and Philadelphia, would be compatible with individual State land use plans.

We have a second point that we want to introduce. If local governments, acting through their regional councils, are to be effectively involved in the process of developing State land use plans, additional resources must be made available.

Currently the only program that funds land use planning per se is the 701 program administered by the Department of Housing and Urban Development. There is much competition for this money and land use planning is just one component of the comprehensive planning activities it supports.

In the last fiscal year, for example, only \$22 million of 701 money was made available to regional councils. Much of these funds were spent for specific functional planning activities, such as open space, water and sewer, and housing, and other miscellaneous planning activities.

The need to respond to the land use planning process required in the proposals before the committee will put larger burdens on regional councils. For this reason consideration might be given to authorizing the States to make available some portion of the money they receive for developing State land use plans to regional planning agencies.

Such additional funding at the regional scale we feel would benefit not only the regional and local governments involved, but improve the overall State land use planning process.

Ultimately the significant national benefits to be derived from these proposals would be realized only if adequate resources are allocated for their implementation at the regional and State level.

In summary, the point on which we focus here is the intent of both bills to provide for wider jurisdiction on setting the land use policies, a shift away from local government. We appreciate this objective but feel that generally shifting to the State or Federal level, the decision-making on any specific issues affecting more than one locality removes the authority in most of these cases too far from the problem, and the people who are concerned locally.

This, of course, is the dilemma before you, and we propose that regional councils which are flourishing across the country in many ways are the last clear chance for local government, that they are the logical and proper answer for this dilemma, and we urge this to your consideration.

Thank you, sir.

Senator ANDERSON. Thank you very much, Mr. Martin.

Do you other gentlemen have any statements?

Mr. MARTIN. I don't believe they do, sir.

Thank you.

Senator ANDERSON. Mr. Arnold?

**STATEMENT OF PROF. VICTOR L. ARNOLD, ASSISTANT PROFESSOR
OF PUBLIC AFFAIRS, UNIVERSITY OF MINNESOTA**

Mr. ARNOLD. Mr. Chairman, I am Victor Arnold, assistant professor of public affairs at the University of Minnesota.

I appreciate the opportunity to discuss S. 632 and S. 992 before the Committee on Interior and Insular Affairs.

I will not reiterate the pressing need for communication and coordination between local, State, and Federal agencies and units of government over issues related to land use planning nor will I elaborate

the undesirable consequences which have resulted from the lack of communication and coordination. These areas have received excellent attention in earlier statements before this committee.

I will assume that congressional guidance in the articulation and development of a national land use policy is necessary and I will limit my remarks to some of the practical issues inherent in the implementation of such a policy. Consideration of these issues while designing the legislation will enhance the effectiveness of a national land use policy.

As I read S. 632 and S. 992, the intent of both bills is to encourage State governments to assume primary responsibility in developing State land use information in a systematic manner and to utilize this information in the development of land use plans and programs.

There are basically three inherent difficulties in both bills, as they are currently written, which impair the development of such plans and programs.

These things are:

1. Neither S. 632 nor S. 992 explicitly state objectives or priorities which may act as guidelines for State land use planning activities. Federal grants without explicit priority guidelines will allow each State to develop an information base and plans and programs but it does not insure commensurability between information bases and plans and programs among the State. Commensurability would allow national focus on a particular land policy issue.

I would suggest that a national land use policy identify one or several sequenced priority areas for investigation by all States. For example, valuable ecosystems could be identified as first priority concern from a national perspective. All States could be expected to identify and inventory their respective valuable ecosystems, and develop plans and programs for their use, preservation, and other considerations. This would allow nationally focused consideration of plans and programs which relate to these ecosystems.

Sequenced priorities would follow the same methodology and allow focused attention.

2. A national land use policy should explicitly guarantee local government participation in the formation of a State land use plan. Reconciliation or accommodation of State and local conflicts of interest should be accomplished before the State plan is implemented.

3. Federal agencies should submit national public land plans and programs and long-range objectives to State governments. This interchange would reduce the possibility of making irreversible land use decisions by both parties which would have undesirable and environmental consequences in the future.

I believe these issues to be critical to the overall success of a national land use policy and would hope that the Committee on Interior and Insular Affairs consider them in the context of S. 632 and S. 992.

Mr. Chairman, that concludes my formal statement. Thank you.

Senator ANDERSON. Thank you for appearing and for your statement.

Thank you very much.

We will stand in recess.

(Whereupon, at 2:45 p.m., the committee adjourned, to reconvene at 10 a.m., June 23, 1971.)

NATIONAL LAND USE POLICY

WEDNESDAY, JUNE 23, 1971

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met at 10:05 a.m., pursuant to recess, in room 3110, New Senate Office Building, Henry M. Jackson (chairman of the committee) presiding.

Present: Senators Jackson, Anderson, Moss, Burdick, Jordan of Idaho, Fannin, Hansen, Hatfield, Stevens, and Bellmon.

Staff members present: Jerry T. Verkler, staff director; William Van Ness, chief counsel; Dan Dreyfus, professional staff member; Charles Cook, minority counsel; and Steven Quarles, special counsel.

Senator Moss (presiding). The committee will come to order.

We are continuing with our hearings on S. 632 and S. 992, both of which are bills to establish a national land use policy.

It is expected that we will be able to conclude our hearings today. We have a long list of witnesses—most important witnesses—and we are anxious to hear from them. We will move along as rapidly as we can.

Senator Jackson, the committee's chairman, has a prepared statement which will be included in the record at this point.

(The statement of Senator Henry M. Jackson follows:)

STATEMENT OF SENATOR HENRY M. JACKSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON, CHAIRMAN, COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Today this committee concludes its hearings on S. 632 and S. 992, bills to establish a National Land Use Policy and to encourage and assist the States in the preparation and implementation of comprehensive land use programs.

In prior statements before this Committee, I have expressed my belief that the task of conducting long-range planning to insure a proper balance between the nation's resource requirements and our national environmental goals may be the greatest challenge in the history of our people. One of our first steps must be to strike this balance in the use of land.

Our land is a finite resource and much that we do to and upon it permanently alters the use to which it can be put. For this reason and because, in the last analysis, nearly all environmental decisions are related to land use decisions, we must act promptly in developing a national land use policy.

Although the land is a finite resource, our greatest resource—our population—has proven to be anything but finite. Population growth and its shifting residence have placed additional stress upon the land. Just as the world grows smaller with technological achievements in transportation and communication, so our land resource, in a sense, diminishes with the demands of an ever larger population.

I note that several of our witnesses yesterday queried whether, in the pending bills, we may be placing insufficient emphasis on the difficult task of relating these two resources: people and the land. Neither of the bills addresses itself in a direct fashion to the myriad of domestic social problems from which we suffer—inadequate housing, population distribution, regional unemployment,

inequitable tax policies, racial segregation, and a depressed economy. We must make certain that the "planning" which our legislation elicits will not be simply a bureaucratic exercise, a make-work response to a legislative fiat. A National Land Use Policy must do more than simply generate volumes of color-coded maps. Certainly each State, with the advice of its communities, should devise its own plan. These plans should be diverse. Yet, to allow diversity without prejudicing the needs of our people, the legislation must supply the States with guidelines setting forth very clearly the national goals we seek to attain.

Whether national land use policy legislation is the appropriate instrument through which these national goals should be introduced is an open question. Even if it should appear to be the place to begin, we are faced with the complex problem of deciding which goals should be chosen, what emphasis they should be given, and how they can be written into the final bill.

It is a pleasure to welcome today's witnesses. Perhaps from you may come suggestions concerning these difficult issues.

Senator Moss. Our first witness today will be the Honorable Donald H. Elliot, chairman of the City Planning Commission and director of city planning of the city of New York.

We are very pleased to have you, Mr. Elliot. Would you come forward here and be seated at the table.

I might announce as a general announcement to all of the witnesses, if any of you care to have your full statement put in the record, your full written statement will be in the record. If you care then to summarize or highlight the statement in order to facilitate with respect to time, we will appreciate that.

The important task of a public hearing is to build the record, and obviously, with the assignments we have, we can't have the full committee here listening to your testimony. They are going to have to read it from the record, and the staff is going to have to read it in the record.

So, don't feel that anything will be left out if you just summarize or highlight your statements.

You may proceed, Mr. Elliot. We will be glad to hear from you.

STATEMENT OF DONALD H. ELLIOT, CHAIRMAN, CITY PLANNING COMMISSION, AND DIRECTOR OF CITY PLANNING, CITY OF NEW YORK

Mr. ELLIOT. Let me begin by saying that as the officer in New York City who has first responsibility for land use planning, I think the issues which this committee is dealing with in the legislation that is before it is extremely important, and I think the terms of the discussion as it is evolving are particularly important.

I am not going to rehash any of the arguments which you have already heard on various sides, but I would like to give from the point of view of a person who works in a major metropolitan area and looks at these problems from the position of the city of New York some information which I hope you might find useful.

First of all, I think the need for an overall planning procedure for land use planning in the United States is becoming increasingly clear. We must allocate and use land for the needed functions of society, not just those which pay, which pay taxes or which are considered desirable, but also those which are considered by some less desirable but which in terms of the society as a whole are absolutely essential. We can't just have shopping centers. We also need sites for power

generation. We can't just have high-income housing. We need housing for families of low and moderate income.

There must be land for recreation, not only for those who live in rural areas, but also for those who live in our urban centers.

Second, if we are going to talk about realistic land use planning, it is not simply the allocation of land or provisions to see that land is used appropriately.

We must develop an ever increasingly sophisticated standard for the activity that uses land, and I think without going into detail that air and water pollution are probably the best examples of these kinds of standards.

Third, we must provide as a matter of national policy, for the conservation and protection of our national environment. We become increasingly aware of the fragile nature of man's hold on the planet earth and how we can in fact destroy our ability to survive at all.

We must also, in all of our discussions about national planning, remember that the protection of local initiative and the responsiveness to local conditions is an absolute essential.

It is a dilemma we sometimes find ourselves in, and we have to solve big problems with big numbers, and we have to build millions of units of housing. But all of those get down to their effect on you and me, and all of the citizens of the cities and the Nation.

Therefore, the process, whatever it is, cannot simply be national or State, but must be responsive to local initiative.

Further, I think it is essential, and I believe this committee recognizes this, that policies and programs of the Government, both State and national, as well as local, but particularly Federal, which may seem at first glance to be unrelated to land use planning in fact may be far more important than regulation or zoning in the traditional sense.

Just today, a couple of obvious examples, the Interstate Highway System designed originally to promote the national defense has in fact put enormous pressure to unplanned and sprawling growth of the metropolitan areas, and has been one of the major determinants of the way in which we have in fact used thousands of acres of our present land.

The FHA home mortgage program provided housing for millions, but by concentrating on single-family housing, encouraged movement to the suburbs.

Without going into the question of whether that development was a desirable one or not, it has a tremendous effect upon the allocation of our land.

Farm policy which took land out of cultivation and resulted in rural workers seeking jobs in cities is another kind of policy, and there are many others.

So that when we are talking about national planning or national land use planning, it is essential to remember that it includes not only allocation and regulation of use of land, but Federal programs which govern activities in the country as well.

Then, there are a couple of items which I think are important to view because they sometimes are missed.

The first one I would put under the heading "Competition Between Regions or Parts of a Region of the Country."

20 National planning has got to come to terms with the fact that you may—first of all, the regions of the Nation compete with one another. That is perfectly healthy and desirable, unless that competition turns out to be destructive and it is very much like competition in any other area of our society.

Take within a region: If you have two counties or two towns within a region using public moneys to write down the cost of land in order to induce a manufacturing firm to move from one to the other, you can clearly see—because they want the tax revenues that will flow from that firm—you can clearly see the kind of destructive competition that that can set up, and in fact occurs too many times.

The other side of that coin and equally important to remember is the need for local jurisdictions to find the resources to operate, and this is really a continuation of the proposition that if we are going to plan realistically, we have got to plan in terms of real life as we find it.

It is very difficult for a locality to dedicate land for public recreation use that pays no taxes and that in fact costs money, when it has to run its school system and when it has got to otherwise service its community.

The same problems are obviously faced in providing for some of the other needs of the society.

So that I think we come inevitably to the conclusion that realistic planning is needed, but it is needed not only at the national level but at National, State, regional, and at the local levels.

I think what we are seeking to do is to set up more explicitly the rules of the game that permit healthy diversity and competition among areas of the country to permit development in ways that are responsive to local needs, but do it in a way that creates out of all of it a nation which grows in strength.

I want to deal briefly with what I see as the organization of this planning effort, and then I would like to enunciate several principles that seem to me very important in carrying it out.

I suggested that this has got to be done at National, State, regional, and local levels. Let me first look at the national planning process.

Essentially, it seems to me the need for a systematic articulation of national policy is vital. I don't believe the National Government at any time should end up saying, "in this census tract we will have manufacturing and in that we will have housing." That is not the kind of planning which it seems to me is useful on a national level.

The kind of planning that is useful at the national level is, first of all, to set up physical standards for public and private activity wherever it occurs.

In many of these areas, I am happy to see that in recent years, we have been moving with what you might call environmental regulation. Standards for solid and liquid waste disposal come to mind.

Whatever activities are carried on, and wherever in the Nation, there are standards that have to be met.

You don't permit one area to compete with another area by destroying the standards for the Nation as a whole.

Second, there are a series of what I would call very important social standards which also need to be articulated and enforced at a national level. I suppose the two most obvious and most important are freedom of choice in housing and nondiscrimination of employment.

Third, and it seems to me a national planning, but also a national obligation, is the actual provision of land for certain essentially national needs, and I would put in this area, first and fundamentally, recreational land.

I think we are going to have to see a great expansion of the national park system, especially in urban areas; and secondly, the protection of certain natural resources, such as wetlands, where the simple cost of doing it is too great for a locality and where the benefit is really a part of the national ecological system.

Finally, the fourth activity which seems to me essential, and these are not in order of importance, is that we must evaluate and adjust national programs to achieve a coherent national development policy.

In a sense, it is easy for planners to say this is the most difficult part of the process to carry out and it is at the same time the part of the process that the Congress and the Executive are involved in all the time, the provision of national programs to achieve national goals.

However, as I have suggested, our housing programs or transportation programs, and our open space and education and recreational programs have in the past had quite unintended and unfortunate effects on national development.

Therefore, it is essential in my judgment that this begin to be done systematically to look not only at the effect of a particular program, does it house a million people, but what does it do to the growth of the major metropolitan regions in the city, of the Nation, and of the rural areas as well.

Then, in the national planning process, the enunciation of national standards and the rationalization of Federal programs we get down to what seems to me next a very important level, and in many ways one of the least successful levels of planning in the United States, and that is the metropolitan or regional level.

It has been unsuccessful primarily because it has been, to date, unrelated to the process by which decisions are actually made.

Metropolitan planning agencies do not control resources, either Federal or local, and they do not control the activity of the government entities that made decisions.

Therefore, they have become primarily information gathers, in the enunciation of State programs, particularly.

I do not think it is realistic to say that the only way we can do metropolitan and regional planning is through metropolitan government in the old sense. I do not think that is realistic. I think there are characteristics of a regional planning effort which, if it is going to fit into a national planning effort, are essential.

First of all, the area for which the planning activity is carried on must be large enough to encompass the entire organic metropolitan area, and that is unrelated to the political jurisdictions as they may have grown up, having to do with towns or school districts or sewage districts, or even States.

The point is: If you are going to look at the transportation needs of the New York metropolitan region, for instance, you have got to concern yourself with counties in New Jersey and sections of Connecticut, and counties of New York outside the city of New York.

So, it must be large enough geographically to cover the metropolitan area.

Second, it must be able to influence sufficient resources so that its decisions can be implemented. It must in fact be an instrument for carrying out national policy or for making more specific national standards which I am talking about that have the force of national law behind them, and also it has to evolve so that, in my judgment, national moneys will flow in metropolitan regions in greater quantity than they do.

Third, the entity that does the planning must be representative in an effective way with the area of what I have called the organic region. That means both the inner city and the suburban belt or ring.

It can't simply be representative of the State which may in fact have only a piece of the metropolitan region, nor can it in fact be representative of only one part. It must be representative, and this is a very difficult problem, but it can be solved. It must be representative of both the suburbs and the inner city.

It would seem to me it is the responsibility of the regional planning entity to take the national standards and the national programs and translate them on a regional level, still not getting down to the question of local zoning.

I don't think this metropolitan planning entity should be concerned with local zoning or local planning. I think there is a major area of setting standards on a regional level of development that is not now being carried out and needs to be done.

Finally, we get down to local planning, and I think it would be an enormous mistake for our concern with the total—well, essentially since 1916, we have said the actual regulation of the use of land is primarily and almost totally a local responsibility. That does not work, as we have seen, but I think it would be a serious mistake to say that since we went too far in that direction that we should abandon that effort completely.

As I am sure you are all aware, the fact of how a program affects each individual block is of enormous significance for the people who live on those blocks, even though you may be able to meet national and regional goals in a variety of ways.

So that I think the local planning has got to be constrained by both national programs and standards and by regional programs and standards, but within those limits you ought to give the maximum possible freedom for innovation and different conclusions to the local planning effort.

It is only as the citizens of a locality can realistically participate in the degree appropriate in regional and national planning and can participate in a very meaningful, immediate way in local planning that they will in fact support the results that are achieved.

That institutionally is how, or organizationally, how I think the organization can work.

There are several sort of fundamental principles I would like to enunciate, which it seems to me are essential if this process is going to work.

First of all, there have to be incentives at both the State and national levels to dedicate land in substantial quantities for public recreation.

This has too often been a responsibility of the locality, and it is unrealistic to ask the locality on the edge of a major city to dedicate a substantial portion of its land to that city's recreational use unless you are going to compensate for it in one way or another.

Second, construction of industry ought not to be permitted without provision for housing or adequate transportation from adequate housing to the source of jobs.

We ought not, as a matter of national and regional policy, to permit small political jurisdictions to attempt to capture taxpaying industries without bearing any of the costs which are in fact associated with the people who work in those industries.

Third, there must be an equitable bearing of the cost of services of an entire region by all who live and work within a region. We cannot permit, over the long haul, for small jurisdictions to set themselves up as little islands in the midst of either the Nation or the region.

I think for all of us who work with these problems, you are never going to have a healthy suburb unless you have a healthy city. But we still persist in the belief that we can put little islands around, and if they can survive, fine.

I am reminded of the Cartoonist David Low who after the Munich Conference, did a cartoon showing John Bull sitting in the stern of a boat, and the nations of Europe in the bow, and water is spurting up in the middle of the boat between them.

John Bull says, "Good thing it isn't in my end of the boat."

The third of these major principles is that there must be freedom of choice in housing, and this requires a balance of housing types to be spread throughout a region as well as financing techniques to be available.

Finally, the kind of organic controls: A balanced transportation system that is responsive to regional needs has got to be developed for each of the regions of the country. This means that the freedom of the auto user may have to be restricted, particularly during certain hours, and that a program of investment which is useful in one region of the country cannot be—the interstate highway, again, being the most conspicuous example.

Metropolitan areas in the country ought to be able to use resources to plan a balanced transportation system, and not simply carry out a national transportation system which is unresponsive to their needs.

So, in summary, I would urge strongly that we go beyond the legislation which is before you, and that we seek a three-tier plan which is supported by the Federal Government and which achieves at each level, Federal, regional, and local.

Let me say that I didn't intend to leave this out, but at the regional level in the nonmetropolitan areas, it is the State plan which is the appropriate level, or in my judgment is the appropriate institution to do that level of planning.

I think, as one of the bills recognizes, the fact is that you have a different situation in the major metropolitan regions. Outside of those regions, clearly I think the State is an intermediate level, if that is an appropriate word to use.

Finally, at the local level, it should be the local jurisdiction.

By the enunciation of national standards and national programs, the spelling out of those things and their implementation at a local

level, I think we can see a national development of policy, a planning process for all, which can make significant improvements in the quality of life, for us all.

Senator ANDERSON (presiding). Do you have any questions?

Senator HATFIELD. Thank you, Mr. Chairman.

As you know, Mr. Elliot, both of these bills that we have under consideration here refer to not only planning but enforcement of planning and zoning. I am not sure that I understood you correctly and I would like you to clarify this for the record, please. Did I understand that you would not favor national or regional enforcement in zoning?

Mr. ELLIOT. I would favor national and regional standards to which local zoning must comply, and that if it did not comply could be rendered void. I do not think the actual zoning ought to be done by a national or regional body.

That is separate from the issue of the allocation of land for public purposes, and I would think clearly that is really not a zoning question.

Senator HATFIELD. How would I understand you, actually, then? How would you put these plans into effect? Where would the enforcement be?

Mr. ELLIOT. This is for the purpose of illustration, because I don't think it would be responsible to try to do this at this level at this stage. But let's say that a regional planning body carrying out a national policy for freedom of choice in housing enunciated for a particular region that within that region on every political subdivision had to have a certain percentage of the land zoned for mobile dwellings, and had to have certain other characteristics of housing that was available in the area, and let's assume the local zoning authority violated that and refused to do it, and zoned everything for 3-acre lots.

It would seem to me then very clearly that the regional and national level would have to have the power to overrule the local zoning and in fact substitute for it if necessary.

But I don't think the regional level, unless as a last resort, should decide that "on this side of the river we are going to have zoning for multiple dwellings, and down the road we are going to have quarter-acre lots."

Senator HATFIELD. If there are national patterns, we are engaged in certain land classification, and that land classification involves use or restricted uses or identified uses.

So, in effect, we are doing that very thing. We may do it under the criterion of a national ecological pattern.

Mr. ELLIOT. Yes. I think that is an important thing to be distinguished. If the land which we are talking about cannot be used at all, or should not be used at all for public activity, or should be used for such restrictive public activity that you are in fact taking it, then it seems to me it is the duty of the public agencies to take that land.

One of the great problems has been that we have been unwilling to acquire publicly wet lands in many instances, and we have tried to regulate their use, on the one hand trying to stay away from actually taking it so the man can use his land, and on the other hand, trying to protect it in an unused condition.

So, on the one hand, if it should be taken, I think the public ought to take it.

Second, I think it is appropriate to say that whatever the zoning, there are certain regulations that will concern all activities in riverbanks, or all activities that front wet lands, and so forth.

Senator HATFIELD. What about coastal area and estuaries?

Mr. ELLIOT. I am not calling these zoning because within those regulations there is a wide range of activities that might be permissible.

Senator HATFIELD. You are not saying they should all be acquired, though?

Mr. ELLIOT. No. I think it is legitimate to say there are certain regulations that everyone has to live up to if he happens to have land that falls within a pretty wide area.

Senator HATFIELD. Let me pursue that for a moment.

Let's take the coastal area which has, say, a rather fragile ecological situation that could arise.

Would it be your thinking that the Federal Government would have every right to declare certain limited use of, say, coastal areas, particularly the areas surrounding estuaries, and that certain commercial developments would not be permitted, whereas certain private developments could, such as boat landings or small inlets, or perhaps even little jetties that might protect boat basins?

Mr. ELLIOT. The general answer is "Yes."

Senator HATFIELD. Aren't they designating pretty much zoning then?

Mr. ELLIOT. It seems to me you have either got to compensate the locality for the national interest that is being preserved, because you are taking away its tax base, or if you go one step further than that, you really have to acquire the land.

When I talked about incentives, I think we have got to find ways to compensate local governments, particularly those that fall largely within the areas where you want to restrict use. You have to find ways, if we are going to succeed in saving these lands, we have to find ways to compensate the localities for the restrictions that are placed on the use of that land.

Senator HATFIELD. You would not, then, therefore, strip or not empower the national or regional agencies from certain enforcement authority?

You would not deny them that enforcement authority?

Mr. ELLIOT. No, I think that enforcement is essential.

Senator HATFIELD. Where you have Federal lands in areas, such as States which have statewide plans, what would be your opinion as to the role of the Federal land? Do they perform with the statewide plan, or are they exempt from it?

Mr. ELLIOT. Presumably if the system were at work and you in fact have a national plan which is carried to greater detail by the statewide plan, they should be consistent, and the use of Federal land ought to be consistent with that plan.

If in fact the State plan is inconsistent with the use for which the National Government is holding the land, then I think you have a problem, and that the process isn't working.

Senator HATFIELD. In other words, the Federal Government's own possessions of land within that State ought to conform to the State plan. But you can foresee certain inconsistencies that might arise.

Mr. ELLIOT. I think particularly with the States.

Senator HATFIELD. We have some now.

Mr. ELLIOT. With very large Federal holdings, I think you have a very real problem.

Senator HATFIELD. Thank you very much.

Senator ANDERSON. Senator Bellmon?

Senator BELLMON. Thank you, Mr. Chairman.

Mr. Elliot, you mentioned the need for large geographical area planning, and you pointed out it was not possible to approach this problem except on the basis of large areas.

However, to me, there seems to be another necessary step here, and I am not sure that planning can solve it. Looking ahead to the time when we will have another 100 million people in this country, what kind of an approach do we need to decide where this Nation can best accommodate this expanded population without doing a great disservice to our total social structure?

The tendency seems to be for these people to be drawn into the urban centers where there are great problems in providing necessary services, and our last census shows that the trend still is toward depopulating the rural areas where perhaps services could be provided more economically, and where a lot of people would prefer to live.

How do we approach the problem of getting proper distribution of population throughout this Nation?

Mr. ELLIOT. Well, I think there are—let me just say preliminarily in answer to that that I don't think that if you were to prevent those people from flowing into the metropolitan centers that it would be cheaper to service them.

Senator BELLMON. I am not suggesting you can prevent them. I am suggesting we might provide opportunities elsewhere.

Mr. ELLIOT. I would see essentially two avenues to that.

The first is to make the metropolitan regions function more effectively, and I think they can accommodate, nationwide, substantial increases of population which could in fact live better, more efficiently, if we did some of the things we have been talking about this morning.

Secondly, I think the new town program for which there is legislation and a substantial evolution in which David Rockefeller of the Chase Bank has been urging, providing financing and the ability to create balanced communities outside of the existing older cities and even on the edges of existing metropolitan regions is a very useful one.

I think we need to understand the reasons for the flow from the rural areas to the metropolitan regions. It seems to me we then need to meet those desires and needs in an environment that works.

I happen also to believe that the provision of large amounts of open space which is available in much more significant ways than it is now, so that the concentration of population in many ways makes it easier to service. It is easier to support a water system and a sewage system and transportation system if in fact we do it in such a way that we don't simply get concentration, but we get congestion, and the system doesn't work.

I think the metropolitan regions could be made to work more effectively. I think a substantial growth of population can be accommodated in the new towns without essentially saying we should reverse

the trend of the last 30 years and assume that we are going to have small farms as a major part of our economic growth.

Senator BELLMON. I am not one of those who believe we will ever go back to small farms, but I believe it might be possible to have a better distribution geographically than we have at the present time, when most of our population increases seem to be occurring along the sea coasts and the Great Lakes and around the Gulf.

You say we can make our metropolitan centers operate more efficiently. Do you have figures showing how much it costs to provide services in New York, say police protection, trash removal and all the other services the city provides?

Do you know what it costs per capita?

Mr. ELLIOT. I can supply all those numbers for you. I would rather not try to do it off the top of my head. It is very substantial.

Senator BELLMON. Is it as high as a city like Cairo, Ill.?

Mr. ELLIOT. I think it is substantially higher per capita, but I think you have got to—you have got to look at the whole economic structure of the region, whether it produces the income to make it possible to pay for services, and what are the additional costs which you are dealing with.

I don't think that you will ever find—I don't think that growth policy that says, "Let's just spread evenly, let's try to create small towns across the Nation", is going to work. So that I think that is a cost-benefit analysis that is too simple. You are going to pay a higher cost per capita for trash removal, but you are also going to get a very much more effective economic unit, and therefore, you can afford the higher cost.

I did that much too simplistically when I said I think the cost of services is not going to be essentially different.

It is higher, but I think it is higher—in the first place, it is possible to accommodate large numbers of people.

Secondly, you have run out of the system where digging a well will work, or a septic tank will work. Those are cheaper than a water or sewage system, but they are most destructive in the long-run and will not support the kind of population we are talking about. So, I think you have to take a long-range view in discussing this.

Senator BELLMON. That is all, Mr. Chairman.

Senator ANDERSON. Thank you, Mr. Elliot.

The next witness is Mr. Slavin.

STATEMENT OF RICHARD H. SLAVIN, DIRECTOR, PLANNING AND COMMUNITY AFFAIRS AGENCY, STATE OF WASHINGTON; PRESIDENT, COUNCIL OF STATE PLANNING AGENCIES, NATIONAL GOVERNORS CONFERENCE

Mr. SLAVIN. Thank you, Mr. Chairman.

For the record, I will be submitting technical information from the State planning level.

I would like to make a brief statement here and answer any questions.

Senator ANDERSON. Go ahead.

Mr. SLAVIN. My name is Richard H. Slavin, director of the Planning and Community Affairs Agency, which is in the Governors office

in the State of Washington, I am also president of the Council of State Planning Agencies, an organization of planning directors of the 50 States and four possessions.

Every State is currently involved in an environmental crisis. The crisis indicates a need for State government to develop methods to resolve the constant conflicts that arise between development processes and the needs for environmental preservation and resource conservation.

Present State land use policy is an aggregate of thousands of unrelated decisions made by single-purpose agencies, local governments, and private developers without regard for each other or regional, State, and national concerns and face problems similar to the Federal land use problems.

The goals, therefore, should be to evolve and promote development policies and programs taking into account both people's and nature's needs for the purpose of minimizing the areas of conflict and discovering and enhancing the areas of harmony.

Land use planning has not been a traditional function of State government. All States have transferred this responsibility to local governments. However, during the past 5 years, many States have begun to assume direct responsibilities for land-use planning. Notable among those States are Hawaii, New Jersey, Colorado, Oregon, and California. Each in its own way has established a land use policy which promises more effective environmental control and coordination of development activities.

These efforts are of four major types: (1) individual issue analysis of areas of unique environmental concern; (2) State or regional review of local land planning activities to assure coordination of plans and consideration of larger scale issues; (3) State guidelines to assure that statewide areas of critical concern are included in local and regional land planning; and (4) State land use commissions which designate settlement, conservation, and agricultural districts.

In my own State of Washington, Governor Evans has requested legislative enactment of both seacoast management and comprehensive State land-use planning measures. Our most recent legislative session resulted in the creation of a State planning commission strongly supported by legislators who had reversed their positions of only 2 years ago.

We strongly support the land use planning bills which you are now considering. We especially support those sections regarding program assistance to the States. States are moving in this field and deserve the support necessary to produce effective land use policies during the 1970's.

I believe that two elements required in any Federal legislation assisting States in the development of land use policy are: (1) Joint guidelines with the Federal Government which assure effective coordination of Federal and State policy in resource development and environmental protection; and (2) Financial assistance to assure that State efforts are of the magnitude required for the task.

Both S. 992 and S. 632 meet these standards. S. 992 focuses on the responsibility of States in land use planning by providing financial assistance and emphasizing "areas of critical environmental concern." In the immediate future, the identification and management of "areas

of critical concern" will be the foremost issue facing the State of Washington. This process is already underway. Federal support of this activity will be of great value.

S. 632 is certainly the more comprehensive approach. The guidelines for State land planning are especially well developed and establish some far-sighted procedures for effective State-Federal coordination. The 90-10 program of assistance to States during the first 5 years promises substantial support.

I do not view these bills as mutually exclusive from the standpoint of States. They are similar to recommendations we made in a recent publication entitled "Toward a State Land Use Policy for the 1970's." Each might be on a continuum of action with S. 992 providing a fundamental beginning at this time and S. 632 providing a highly developed national land use policy.

We believe it is time for action in this area. We will welcome Federal assistance to States for land use policy.

In the final analysis, the most challenging part will be to define the level of planning responsibility. What is the Federal-State level of responsibility? What is the regional level of responsibility, and what is the local level of responsibility?

I think these bills are a start.

Our organization, our technical staffs, would be pleased to offer any assistance to your staff in the development of the guidelines and the legislation.

Thank you, sir.

Senator ANDERSON. Thank you very much.

Senator Hatfield?

Senator HATFIELD. Mr. Chairman, I am somewhat familiar with Mr. Slavin's activities. He is from the sister State of Washington. I am familiar with him from the National Governors' Conference, and I am happy to welcome him here this morning and to thank him for his statement.

Mr. Slavin, on page 2 of your statement, beginning with the first requirements, the elements that you have listed here involving Federal legislation—

Mr. SLAVIN. Yes, sir.

Senator HATFIELD (continuing). You have stated that joint guidelines are needed, and so forth.

Would you expand on that a little further? I think you put your finger on probably one of the most important factors in both these bills. It may need a little more clarification or spelling out in the language of the bills.

Mr. SLAVIN. In terms of our own experience, there are many ways to draft legislation, as I am sure you are well aware in the terms of land use planning. You can get the framework, the policy, the direction in the bill, and then allow the development of the guidelines for the implementation of the bill.

I think this is what we are hoping will happen. If I may use an example from another area, I think one of the most effective planning bills to come along in the last 5 or 6 years was the Comprehensive Health Planning, 89-749, which permitted the States to sit down with the regional offices of HEW and then with the Federal offices over a

period of 6 to 9 months to develop effective guidelines for the implementation of this health planning concept.

I think the approach that was taken with the Omnibus Crime and Safe Streets Act was another healthy approach giving the States and regions and local governments an opportunity to sit down before the guidelines were cast in concrete.

I think in this case where we are not entering a very precise area, because there is the planning jargon and then there is the reality of putting the plan in operation, this is an unknown area for many involved.

I think to make haste slowly at this point would be the wisest course of action. We need the law to get us started. We need a time period to accomplish it.

I think in your own State of Oregon, that this was perhaps, in dealing with the rural counties of Oregon, a logical way to go, say, "Let's take the first 18 months or 2 years to give you an opportunity to work with us, and if you don't do it, then we will do it."

I think this is what saved the bill in Oregon. We learned from this in the State of Washington. In our own sea coast management bill, this is the approach we used.

This is what I am suggesting here.

Senator HATFIELD. If I understand you correctly, aren't you saying to us that there is a very distinct difference between effective guidelines that are coordinated with national policy and national goals and guidelines just for the sake of guidelines?

Mr. SLAVIN. Right.

Senator HATFIELD. I think we have failed in the hearings thus far to draw that relationship.

Let me give you an example.

You reiterate the fact here by saying that there must be joint guidelines with the Federal Government which assure effective coordination of Federal and State policy in resource development.

My example is this: We have another bill, we have an existing law, called the National Housing Act. Here is a policy of the Federal Government, and a goal is set clearly saying that we are going to develop 26 million housing units in the next decade. That is set as a national goal or a national policy.

At the same time, we have to become realistic in setting guidelines for the utilization of national forests as part of the environmental concern, as far as our recreational interests are concerned, but also as to the utilization of raw material to achieve the goal we have set over here in the National Housing Act.

I think you put your finger on a real key point. It does us precious little good, as I see it, to get all excited here about setting up guidelines and a great land use program if we fail to tie in with the stated goals and the stated policies of this Nation, in reference to the utilization, classification and use of that land and the resources therein.

I don't think we have really melded these two together in any of the testimony up to today that you have indicated or you have given us for our consideration.

I want to thank you for it, because I think we get off here into guidelines oftentimes without careful consideration of tying those guidelines into meaningful goals and policies.

I am speaking of those already established or those we are already in the process of establishing with the other hand.

Mr. SLAVIN. I think what is needed from the standpoint of legislation is perhaps not guidelines, but an outline, and then negotiate the guidelines. With all due respect, I think the testimony of the first witness demonstrates what happens when you get involved with working out a zoning matter in a regional or national context.

It cannot be done. You cannot mix apples and oranges. We are talking about a legalistic concept to developing a land use approach for our country. We are not talking about physical land use situations at this time.

To try to legislate that, as we found in our own State, you can't do it. I don't think it would be possible at the national level, either.

We are hoping for flexibility. We need the mandate, but we have a capability, and I think now, as you know, in our own area, the Pacific Northwest, this is a whole new ball game. We can only throw up New Jersey so long to them, and they are now starting to listen, and we are making progress.

Senator HATFIELD. I couldn't agree more, and I think you have made the right approach as relates to the various political and other interest groups within your own State by coordinating and working with them and developing a broad base of public support for such land classification and land use policy.

Thank you very much.

Senator ANDERSON. Senator Bellmon?

Senator BELLMON. Thank you, Mr. Chairman.

In your statement, Mr. Slavin, you mention areas of critical environmental concern.

What specific areas do you have in mind?

Mr. SLAVIN. Again, I will use my own State as an example.

We felt that at this point in history, we had to differentiate between what was a matter of local concern of the community, which is primarily this area of zoning, and zoning variances.

We felt, however, there were certain unique features in the State that, while they may be at the present time under the control or ownership or legalistic implications of local government, where they were too important to be left to the decisionmaking of the local government, and that these areas should be identified and then they become areas of critical concern where the State and local area must resolve what will happen to this.

For example, we have a meeting on the Nisqually Delta. The Nisqually Delta is the estuarine which is the dividing line between two counties. It is the last remaining pure estuarine area that we have in the State. The Port of Tacoma is interested in making it a super port. There are others who love it and want it to remain in its natural state.

Now, if this is left solely to a port that has the right of eminent domain to make this decision, we know what the decision will be.

I use this as one example of what we mean by an area of critical concern.

We had another one recently called the Guemes Island situation, where they wanted to put an aluminum company in.

We had another one involving an oil refinery.

What we are attempting to do in terms of State language is to identify these areas and then work out a mechanism to deal with the State and local and in some cases, like the Nisqually, we don't think that there is a necessity to evolve so-called statewide zoning plans.

I think the mayors and some who have testified are unduly concerned about this. I think, when I talk about defining the levels of responsibility and then within these levels of responsibility these areas of critical concern that we must then focus our attention at the State level.

Senator BELLMON. Would you consider it to be an area of critical environmental concern if we allowed an area to become so large and so congested and so polluted that it was virtually unlivable?

Mr. SLAVIN. Yes, I would.

Senator BELLMON. Do you consider it a matter of critical environmental concern that that area then comes to Congress and asks for money to help with things like mass transit and trash removal and all sorts of services which wouldn't exist if people hadn't become so jammed together?

Mr. SLAVIN. I think it is a result that very few States, and indeed the Nation, we have not really developed an urban policy.

Senator BELLMON. Is this part of land use planning a part of urban policy?

Mr. SLAVIN. I think it is the reverse. I know in our own strategy, within our Governor's administration, we say, "What resources do we have to influence the growth of population away from the Puget Sound?" People live on the Puget Sound because they want to live there.

Our problem is, then, how do we offer equal, or perhaps in most cases, greater advantages to disperse the population?

We are trying to develop a State public investment policy that will encourage industry to locate in other areas. In our own Pacific Northwest, the new town concept is not particularly meaningful to us, because we have the nucleus of some towns that could be expanded with additional public investment to take care of this diversification.

But it has to be a State policy and a Federal policy, or people are going to settle on Puget Sound. If we want them to live in the tricity area, we have to make it attractive for them to live there. You can't do this by the chamber of commerce or the boosterism route.

There have to be facilities, and these are public investments.

So, I think that land use planning is part of the public investment strategy for State and Federal Governments.

Senator BELLMON. Thank you, Mr. Chairman.

(At this point Senator Jackson assumes the chair.)

The CHAIRMAN. I am sorry I wasn't able to be here and hear your testimony. I want to express my appreciation for your appearance here on behalf of the State of Washington and on behalf of the Governor. I know you are aware of the problem that we have been wrestling with here due to your familiarity with the job that all of the Governors are trying to do.

I take it that experience in the State of Washington has made it evident that it is still not possible, as of now, to obtain the kind of statewide land use planning that you would like to see without some kind of Federal encouragement. Is that a fair statement?

Mr. SLAVIN. That is true. I appreciate your covering this point.

In the prior discussion, I talked about programs at this point; what we need is a definition of the three levels, the Federal, the State, and the local, and then to make sure that each of the three levels, that we have our own house in order and then be able to coordinate, and I suggested one of the best ways was to come up with a bill that suggested the outline and then work out between the Federal, State, and local governments the guidelines for the implementation.

At our last session that ended last month, we were able to pass a Washington State Land Use Commission, which we did and sold it on the basis of what you people are doing here.

We said, "It is now time for the States and the Federal Government to get in concert," and it was meaningful and it went through.

The CHAIRMAN. At least you have the machinery to be able to recommend the kind of implementation that would be necessary in connection with what we ultimately do here.

Mr. SLAVIN. Right.

The CHAIRMAN. Thank you very much. We appreciate having your fine statement.

Mr. Bernard H. Siegan.

**STATEMENT OF BERNARD H. SIEGAN, ATTORNEY AT LAW,
CHICAGO, ILL.**

The CHAIRMAN. Maybe Mrs. Ann L. Strong could come to the table with Mr. Siegan, and I gather you have different points of view which will be of interest to the committee. We will call on Mr. Siegan first, and then Mrs. Strong.

Mr. SIEGAN. I have a statement to make, Mr. Chairman.

The CHAIRMAN. Because of the time problem, to the extent that you can summarize your statement, it will be helpful. The whole statement may go into the record as if read, but in the interest of time, we would appreciate your endeavoring to summarize your position.

Mr. SIEGAN. I will try to be as brief as possible.

The CHAIRMAN. Can you talk right into the microphone?

Mr. SIEGAN. Yes.

Mr. Chairman, I appreciate this opportunity to testify before this committee.

My name is Bernard H. Siegan. I am an attorney at law with offices in Chicago, Ill. I have been practicing law since January 1950, and for the past 20 years, have specialized in real estate and zoning matters.

In 1969, the University of Chicago Law School granted me a research fellowship to study zoning and, in particular the absence of zoning in Houston, Tex. My study was published as an article entitled "Non-Zoning in Houston" in the April 1970 issue of the Journal of Law and Economics of the University of Chicago Law School. I have also written an article published by the American Society of Planning Officials on the same subject entitled "The Houston Solution: The Case for Removing Public Land Use Controls", which appears in the Land Use Controls Quarterly for summer 1970.

We have now had over 50 years of zoning, and the record is largely one of failure. This is not only my opinion, it appears to be also the

opinion of virtually any person or group who has made an in depth study of the subject.

Unfortunately, however, most of the critics are urging new and different governmental controls over land use or just minor modifications of existing controls, and ignoring the fact that it is the existence of governmental controls that largely accounts for the problems.

The dogma persists that if zoning doesn't work, try more of it. I submit that the best solution lies in the direction of eliminating governmental controls over land use; society cannot afford another 50 years seeking the impossible dream of "good" zoning.

A major assumption of the critics seem to be that zoning is somehow essential in modern urban life. I disagree. My position is not one founded on some abstract theory or fantasy. It is based on the actual experience of Houston, Tex., which has never adopted zoning. Houston is the country's sixth largest city and the fourth in dollar volume of building construction. The land use experience of Houston and other nonzoned cities of Texas demonstrates that zoning is neither necessary nor desirable, that its absence does more good than harm.

Current criticisms of and efforts to eliminate so-called exclusionary zoning provide an excellent illustration of the need for substantial curtailment, not just minor adjustment of zoning powers.

The critics contend that zoning has been one of the means used to exclude people of lesser incomes from the suburbs and suburban type areas of the cities and counties. Their objective is to provide sites for public housing for the poor and some form of public-private housing for the not-so-poor whose incomes are too high to qualify for public housing and too low to purchase private housing available in the area. They do not otherwise seek to reduce the zoning powers of the municipalities.

In my view, what these proposals will accomplish, in light of the great housing needs of the country, can be considered as almost in the nature of "tokenism"—if I may borrow that term—notwithstanding that some individuals would most certainly benefit from such tokenism.

As a practical matter, the most these endeavors can hope to obtain for a large suburban area are probably no more than several moderate and low income developments, each containing say about 100 to possibly 400 or 500 apartments.

If, however, the zoning powers of the municipalities were to be generally curtailed, many more times that number of multiple and single family units would be established for the same area.

Although most of these units would be for an average or higher income market, the substantial increase in production and availability will have a much more favorable impact on almost all levels of the housing market, including those for moderate and low income.

These efforts at placing small subsidized housing projects in suburbs may even prove to be counterproductive to the goal of creating more housing opportunities. I know of several suburbs that have or are contemplating token-sized subsidized developments, and I fear they will use them as a pretext or perhaps justification to maintain even bigger exclusionary walls toward everyone else.

There is a lesson in this for Federal or State agencies that want to force subsidized projects on municipalities. Unless the balance of zoning powers are also reduced, the net benefit to the housing stock may be little more than zero.

However, notwithstanding the problems involved, discussion and analysis of exclusionary zoning have served an important purpose. National attention has now been focused on the serious problems created by the exclusions perpetrated by and under zoning. Exclusionary zoning is actually a redundancy. Exclusion is the name of the zoning game. The objective of zoning is to exclude certain uses of property and thereby those people who would live in the property excluded. Thus, there is no question that zoning has been the instrument by which thousands upon thousands of apartments for most income levels have been kept out of the suburbs.

It is ridiculous that the national goals of providing more housing are being frustrated by local goals of providing less housing. Furthermore, not only do these zoning laws prevent the construction of new housing, they also operate to create and continue adverse housing conditions.

According to a recent survey, undertaken at the Institute of Social Research of the University of Michigan, the construction of 1,000 new housing units makes it possible for a total succession of about 3,500 moves to occur to different and likely better housing accommodations.

Thus, the addition of one new housing unit to the market serves not only its intended occupants, but also several other families or individuals, who are able to move as a result to other accommodations, which presumably are more desirable. The same survey shows that more than one-third of those who move are likely to be in the lower and moderate income categories, and that these moves extend to older areas near the center of the city. These figures include both white and black families, although the authors conclude that blacks do not benefit nearly as much as whites.

The consequences are certainly greater than what is connoted by the term "trickle-down" or "filter-down," the usual description for this process. The process set in motion by new construction, together with that construction apparently accounts annually for how and where about one-half of those who change residence will live.

Government should be directed at stimulating this process, certainly not impeding it as invariably occurs and will occur under zoning. Our society has proven that the best stimulant ever devised to maximize production are the incentives of the private market. No legislator or planner will ever be as eager to solve housing needs as a builder who thinks he can make a profit in the process.

In maximizing production and competition probably lies the best hope we have for improved housing conditions. The existence of a highly competitive market is a tenant's best guarantee of lower rents and better maintenance and repair.

Those of average or lower income are most harmed by Government policies that impede the production and supply of housing. For a family struggling to maintain financial solvency, a 5- or 10-percent increase in rent can be a considerable hardship. These may well be the principal casualties of zoning.

The zoning process raises some important constitutional questions, and the judiciary is beginning to, and I believe will continue to, curtail zoning powers of the municipalities. When housing is involved, a zoning controversy is not simply one of a municipality versus landowner, or a case of people versus property; it is one of the people versus people.

It is more correctly viewed as a dispute between those who already live in a certain area and those who want to live in that or an adjoining area.

Zoning allows existing residents of a community to greatly influence or even determine who can and who cannot move into that community. One group, those who got there first, exercises considerable restraints over the production of housing intended to benefit many other groups.

Now, I do not mean to suggest that homeowners should have no protection against the use of adjoining property. For values of homes to be maintained and maximized, it is necessary that there be some certainty as to how adjoining properties will be used. Because this is a matter of economics, legal devices have been created within the marketplace to provide such assurance, and these devices are private agreements which are commonly referred to as "restrictive covenants".

Thus, the Houston system of nonzoning does not mean a generalized mixture of land uses. By the use of restrictive covenants most subdivisions in Houston are restricted solely to single family use for specified periods of time.

The difference with present zoning practice is that Houston homeowners have no control over any property outside of their subdivision. Their exclusionary powers over land use terminate at the subdivision boundary line. Values of homeowners are thus reasonably protected as are those of the owner and potential inhabitants of the land adjoining the subdivision. (For those not familiar with restrictive covenants, I want to note that racial restrictions are unenforceable.)

With this introduction, I would like to explain in brief the land use controls operative in Houston and other nonzoned cities of Texas. Despite the absence of any zoning ordinance, land uses on the whole are probably about as separated in Houston as they would be under zoning.

But even if this is not entirely accurate, it is more than offset by the economic and social rewards emanating from the absence of Government restraints over the development of property.

How has this occurred without zoning controls? The answer is that Houston does have land use controls, but these are primarily economic, and they function effectively and with much more desirable social effects.

Specifically, the use and development of land and property in Houston is controlled in three different ways. First, by the normal economic forces of the marketplace. Second, through legal agreements, principally the restrictive covenants, and third, through a relatively limited number of land use ordinances adopted by the city. Houston also does control building and development through subdivision, building, traffic, and housing regulations that do not appear to differ appreciably from those of other cities in its region.

But the contrast with zoning is clear: Unless the property is subject to an enforceable restrictive covenant, the city does not control the

use that will be made of and on that property, whether it be for a mansion or factory or virtually anything else.

Restrictive covenants affect only about 20 to 25 percent of the dollar amount of nongovernmental construction in Houston, which means that there are few legal restraints over land use involved in over 75 percent of the dollar volume of building activity.

The politicians and city planners who control zoning seem to adopt the same approach as did that individual who expressed a taste solely for large canvasses. When queried as to whether he was an art critic, he responded, "No; I am a framemaker."

Well, nonzoning shows that zoning schemes, grandiose, and otherwise, are unnecessary—the real estate marketplace does not operate chaotically or haphazardly.

Residential, commercial, and industrial uses tend to develop separately from each other. Certain uses will develop only in certain places. The gas station and most other major commercial developments provide an obvious illustration; regardless of where they are permitted, they will locate only on heavy traffic streets.

This means that major business and commercial uses generally will be absent from the residential or local streets which constitute close to 80 percent of total street mileage within Houston, and probably about the same elsewhere.

In areas of Houston no longer subject to restrictions, or in which restrictions were never imposed, these local streets contain relatively few commercial uses, probably no more than 5 percent. The bulk of these are home occupations and businesses that serve the residents of the area, and therefore, contrary to most conventional thinking on the subject, are probably compatible with the area.

For those who doubt the propensity of industrial uses to separate themselves, I recommend for dramatic effect an inspection of land use maps of medium-sized Texas cities which do not have zoning: Baytown, Pasadena, Wichita Falls, and Laredo. And gentlemen, I brought these maps with me if you are interested in viewing them.

In each of these cities the bulk of industry is concentrated and separate from other uses, and this has occurred without governmental intervention. In fact, it is most difficult to determine from land use maps which Texas cities are zoned and which are not.

It is generally too costly in terms of land prices and potential residential hostility for heavy industry to locate near new residential subdivisions. The plans and factories in the Houston area which are contiguous to and were erected subsequent to homes are usually "light" rather than "heavy" in character.

I doubt that where there is proximity of industry to residential in nonzoned cities that there is more harm to property values and tastes than in zoned communities.

There are substantial areas in and around Houston where there is minimum demand for multiple family, industrial, and commercial development. These areas are suitable for and are being developed for single family occupancy.

Most single family developers in Houston, as well as in many other parts of the country before the advent of zoning, have traditionally imposed restrictive covenants to permit only the erection of houses within their subdivision. For restrictive covenants to remain effective

and enforceable, the law requires that they be diligently enforced by the homeowners. Inasmuch as this can be costly for homeowners in lesser income subdivisions and small subdivisions, Houston adopted in 1965 an ordinance enabling the city to enforce these covenants.

Houston has also adopted an offstreet parking ordinance for residential development only and a relatively limited number of other Government regulations designed to cure problems of land use not satisfactorily controlled by the private market.

I am skipping a portion here, gentlemen, which I think is important, about zoning elections, but in the interest of time, I will skip that portion.

What has happened in Houston when restrictive covenants have expired? The answer depends upon the real estate pressures that have arisen in the area since the time when the covenants were imposed on the subdivision.

Along expressways and the more heavily traveled streets, commercial, multiple family and possible a few light industrial uses will in time generally develop.

The answer may be quite different for areas adjoining interior or local streets where the traffic is light. In some instances, there will be virtually no changes because of the absence of economic pressures for other uses. As I have indicated, there will be relatively few commercial uses on the local streets due to the limited extent of traffic and accessibility.

Substantial changes in interior areas will come about only where there is a strong demand for multiple-family uses. Since many areas are largely immune to the demand for apartments, there are substantial areas of Houston where despite the absence of covenants for long periods of time, single family remains largely the only use.

As I have suggested, the most desirable influence of nonzoning at present is its effect on multiple family dwellings. If Houston had adopted zoning when proposed in 1962, restrictions of the ordinance would have resulted in less apartment production, and this means higher rents and a lesser number and variety of apartments.

The absence of restrictions has made available a great number of building sites at lower cost, and this, together with the high density that is permitted, has resulted in a larger supply of many different kinds of rental accommodations. Many have been able to afford new housing who would have been denied this if Houston had zoning.

The major thoroughfares in Houston are largely similar in appearance to those in zoned cities. Areas adjoining heavy traffic streets contain homes, apartments, townhouses, and businesses similar to what occurs under zoning.

There probably are more businesses and apartments along thoroughfares than there would be under zoning, because such uses bring a better land price than does single family. The result is also a greater number of houses on interior streets, all of which makes for a separation of uses not inconsistent with conventional planning objectives of compatibility and desirability. One can hardly fault economics that causes homes to be built on the local rather than on heavily traveled streets and, of course, vice versa, with respect to commercial uses.

Moreover, the absence of zoning restrictions allow for maximum development of strip areas. In zoned areas with their many classifica-

tions and subclassifications, it is often a matter of chance whether a particular parcel is zoned for the use intended.

There is no such problem under nonzoning. The results in Houston appear even more favorable when compared with what develops when the planners, politicians, and possibly even the courts juggle the land to determine where the various uses along the thoroughfare will go.

The absence of restrictions is also financially rewarding because it allows for the maximum development of a community. Zoning restrictions that impede the maximization of real estate development serve also to diminish the amount of real estate tax receipts. The fact is that the situation is actually the reverse of the way it is commonly presented: We may well question whether America can afford zoning.

Thus, to impose zoning restrictions on a community that has none can easily bring about a reduction of at least 5 percent annually in the amount of private nonhome construction—and I consider this a most conservative estimate. In Houston, this would have meant a loss of more than \$175,000 in ad valorem taxes during each of the last 3 years.

Is the Houston system of land use control exportable?

Is nonzoning feasible and desirable for communities where land is much more scarce?

My answer is clearly in the affirmative. Consider, as an example, the last 40 acres of vacant land that remain in a community where all other land has been fully developed.

The decision as to how this last tract of vacant land will be used in a zoned city will be made through the political processes of local government.

The city council or other governing board will zone or rezone the property after hearing from all of the interested parties, their planners, lawyers, and other representatives. These include the owner, the neighbors, homeowners groups, political organizations, do-gooders, do-badders, et cetera. Even the League of Women Voters has entered into the fray these days. Each side will have no difficulty in producing a planner to prove "conclusively" that its position is the only correct one.

How it will come out will depend on who or what are best able to influence or pressure or even pay for the vote of the council members. That there may be an enormous demand for apartments in the community is likely to be a less important factor than the opposition to such use by some politicians or by a homeowners group.

The decision is likely to be controlled by a host of factors and forces that have virtually no relationship to maximizing production, satisfying consumer demand, maintaining property rights and values, or planning soundly. A similar scenario, gentlemen, can be expected if some land use control decisions are removed to State or Federal level except for a change in the cast of characters and pressures.

By contrast a land use decision where there is no zoning will be more rational. The property is likely to be used in accordance with the demands of the market which means that directly or indirectly it will be used to satisfy the predominant consumer demand. The more a developer or his successor in ownership succeeds in supply consumers' demands, the greater his profits are likely to be.

This is, I submit, the highest and best use of the property as determined by what appears to be the least fallible of city planners, the marketplace. Property values will be maximized for the site in question.

A location consistent with maximizing profits is also likely to be consistent with the maintenance of neighboring property values. More things and more accommodations will be provided for more people. Business, employment, and community finances will be benefited. And the precious land will be used productively and will not be wasted for the sake of political expediences.

The result is that the marketplace is providing for development in Houston which could not occur under zoning. The Greenway Plaza development provides an example.

This is a major high rise commercial complex which is adjoined on its west by residential subdivisions. In 1968, and 1969, its developer bought almost all of the 230 homes in two adjoining subdivisions at a price above market and with a 5-year rent free provision for each homeowner.

A good deal apparently for both sellers and buyer since upwards of 90 percent of the homeowners sold under these terms. The developer intends ultimately to raze these homes and substantially enlarge the entire original complex.

Can you imagine what the developer would have had to do and go through to rezone this property from single family to high rise commercial, how long it would have taken, and at what cost?

I am convinced that because of the many problems involved, the developer would never even have seriously contemplated the project and zoning been in effect.

Those seeking solutions to the many problems of land use control should well heed the lessons of zoning and nonzoning. Specific land use problems such as parking or location of certain uses which greatly affect the public interest should be dealt with specifically and should not be used as an excuse for granting great and totally unrelated powers over the balance of land uses.

The history of zoning has been one of the power abuses, political opportunism, social and economic inequities, and serious failure to meet the housing needs of our population.

Our immediate efforts must be directed at generally reducing governmental controls over private land use.

The CHAIRMAN. Mr. Siegan, you have brought a different point of view to these hearings.

Mr. SIEGAN. I certainly hope I have.

The CHAIRMAN. We are not afraid of ideas here, and we welcome your views.

Mr. SIEGAN. Mr. Chairman, these views are held by a lot of people who never get an opportunity to attend hearings of this nature, and I think should be noted by this committee.

The CHAIRMAN. That is the purpose of the hearings.

We will defer questions to you, and at this time, we will go on to Professor Strong.

(The prepared statement of Mr. Siegan follows:)

STATEMENT OF BERNARD H. SIEGAN, ATTORNEY AT LAW, CHICAGO, ILL.

Mr. Chairman, I appreciate this opportunity to testify before this committee.

My name is Bernard H. Siegan and I am an attorney at law with offices in Chicago, Illinois. I have been practicing law since January, 1950, and for the past 20 years have specialized in real estate and zoning matters. In 1969 the University of Chicago Law School granted me a research fellowship to study zoning and, in particular, the absence of zoning in Houston, Texas. My study was published as an article entitled "Non-Zoning in Houston" in the April 1970 issue of the *Journal of Law and Economics* of the University of Chicago Law School. I have also written an article published by the American Society of Planning Officials on the same subject entitled "The Houston Solution: The Case for Removing Public Land Use Controls," which appears in the *Land Use Controls Quarterly* for Summer 1970.

We have now had over fifty years of zoning, and the record is largely one of failure. This is not only my opinion, it appears to be also the opinion of virtually any person or group who has made an in-depth study of the subject. Unfortunately, however, most of the critics are urging new and different governmental controls over land use or just minor modifications of existing controls, and ignoring the fact that it is the existence of governmental controls that largely accounts for the problems. The dogma persists that if zoning doesn't work, try more of it. I submit that the best solution lies in the direction of eliminating governmental controls over land use; society cannot afford another fifty years seeking the impossible dream of "good" zoning.

A major assumption of the critics seems to be that zoning is somehow essential in modern urban life. I disagree. My position is not one founded on some abstract theory or fantasy. It is based on the actual experience of Houston, Texas which has never adopted zoning. Houston is the country's 6th largest city and the 4th in dollar volume of building construction. The land use experience of Houston and other non-zoned cities of Texas demonstrates that zoning is neither necessary nor desirable, that its absence does more good than harm.

Current criticisms of and efforts to eliminate so-called exclusionary zoning provide an excellent illustration of the need for substantial curtailment, not just minor adjustment of zoning powers.

The critics contend that zoning has been one of the means used to exclude people of lesser incomes from the suburbs and suburban type areas of the cities and counties. Their objective is to provide sites for public housing for the poor and some form of public-private housing for the not-so-poor whose incomes are too high to qualify for public housing and too low to purchase private housing available in the area. They do not otherwise seek to reduce the zoning powers of the municipalities.

In my view what these proposals will accomplish, in light of great housing needs of the country, can be considered as almost in the nature of "tokenism"—if I may borrow that term—notwithstanding that some individuals would most certainly benefit from such tokenism.

As a practical matter, the most these endeavors can hope to obtain for a large suburban area are probably no more than several moderate and low income development, each containing say about 100 to possibly 400 or 500 apartments. If, however, the zoning powers of the municipalities were to be generally curtailed, many more times that number of multiple and single family units would be established for the same area. Although most of these units would be for an average or higher income market, the substantial increase in production and availability will have a much more favorable impact on almost all levels of the housing market, including those for moderate and low income.

These efforts at placing small subsidized housing projects in suburbs may even prove to be counter-productive to the goal of creating more housing opportunities. I know of several suburbs that have or are contemplating token-sized subsidized developments, and I fear they will use them as a pretext or perhaps justification to maintain even bigger exclusionary walls toward everyone else. There is a lesson in this for federal or state agencies that want to force subsidized projects on municipalities. Unless the balance of zoning powers are also reduced, the net benefit to the housing stock may be little more than zero.

However, notwithstanding the problems involved discussion and analysis of exclusionary zoning have served an important purpose. National attention has now been focused on the serious problems created by the exclusions perpetrated by and under zoning. Exclusionary zoning is actually a redundancy. Exclusion

is the name of the zoning game. The objective of zoning is to exclude certain uses of property and thereby those people who would live in the property excluded. Thus, there is no question that zoning has been the instrument by which thousands upon thousands of apartments for most income levels have been kept out of the suburbs.

It is ridiculous that the national goals of providing more housing are being frustrated by local goals of providing less housing. Furthermore, not only do these zoning laws prevent the construction of new housing, they also operate to create and continue adverse housing conditions.

According to a recent survey, undertaken at the Institute of Social Research of the University of Michigan, the construction of 1000 new housing units makes it possible for a total succession of about 3500 moves to occur to different and likely better housing accommodations. Thus, the addition of one new housing unit to the market serves not only its intended occupants, but also several other families or individuals, who are able to move as a result to other accommodations, which presumably are more desirable. The same survey shows that more than $\frac{1}{3}$ of those who move are likely to be in the lower and moderate income categories, and that these moves extend to older areas near the center of the city. These figures include both white and black families, although the authors conclude that blacks do not benefit nearly as much as whites.

The consequences are certainly greater than what is connoted by the term "trickle-down" or "filter-down", the usual description for this process, the process set in motion by new construction, together with that construction apparently accounts annually for how and where about one-half of those who change residence will live.

Government should be directed at stimulating this process, certainly not impeding it as invariably occurs and will occur under zoning. Our society has proven that the best stimulant ever devised to maximize production are the incentives of the private market. No legislator or planner will ever be as eager to solve housing needs as a builder who thinks he can make a profit in the process.

In maximizing production and competition probably lies the best hope we have for improved housing conditions. The existence of a highly competitive market is a tenant's best guarantee of lower rents and better maintenance and repair. Those of average or lower income are most harmed by government policies that impede the production and supply of housing. For a family struggling to maintain financial solvency, a five or ten percent increase in rent can be a considerable hardship. These may well be the principal casualties of zoning.

The zoning process raises some important constitutional questions, and the judiciary is beginning to, and I believe will continue to, curtail zoning powers of the municipalities. When housing is involved, a zoning controversy is not simply one of a municipality versus landowner, or a case of people versus property: it is one of people versus people. It is more correctly viewed as a dispute between those who already live in a certain area and those who want to live in that or an adjoining area. Zoning allows existing residents of a community to greatly influence or even determine who can and who cannot move into that community. One group, those who got there first, exercises considerable restraints over the production of housing intended to benefit many other groups.

Now, I do not mean to suggest that homeowners should have no protection against the use of adjoining property. For values of homes to be maintained and maximized, it is necessary that there be some certainty as to how adjoining properties will be used. Because this is a matter of economics, legal devices have been created within the marketplace to provide such assurance, and these devices are private agreements which are commonly referred to as "restrictive covenants."

Thus, the Houston system of non-zoning does not mean a generalized mixture of land uses. By the use of restrictive covenants most subdivisions in Houston are restricted solely to single family use for specified periods of time. The difference with present zoning practice is that Houston homeowners have no control over any property outside of their subdivision. Their exclusionary powers over land use terminate at the subdivision boundary line. Values of homeowners are thus reasonably protected as are those of the owner and potential inhabitants of the land adjoining the subdivision. (For those not familiar with restrictive covenants: I want to note that racial restrictions are unenforceable.)

With this introduction, I would like to explain in brief the land use controls operative in Houston and other non-zoned cities of Texas. Despite the absence of

any zoning ordinance, land uses on the whole are probably about as separated in Houston as they would be under zoning. But even if this is not entirely accurate, it is more than offset by the economic and social rewards emanating from the absence of government restraints over the development of property.

How has this occurred without zoning controls? The answer is that Houston does have land use controls, but these are primarily economic, and they function effectively and with much more desirable social effects. Specifically, the use and development of land and property in Houston is controlled in three different ways. First, by the normal economic forces of the marketplace. Second, through legal agreements, principally the restrictive covenants, and third, through a relatively limited number of land use ordinances adopted by the city. Houston also does control building and development through subdivision, building, traffic and housing regulations that do not appear to differ appreciably from those of other cities in its region. But the contrast with zoning is clear: Unless the property is subject to an enforceable restrictive covenant, the city does not control the use that will be made of and on that property, whether it be for a mansion or factory or virtually anything else. Restrictive covenants affect only about 20 to 25% of the dollar amount of non-governmental construction in Houston, which means that there are few legal restraints over land use involved in over 75% of the dollar volume of building activity.

The politicians and city planners who control zoning seem to adopt the same approach as did that individual who expressed a taste solely for large canvasses. When queried as to whether he was an art critic, he responded, "No, I'm a frame-maker".

Well, non-zoning shows that zoning schemes, grandiose and otherwise, are unnecessary—the real estate marketplace does not operate chaotically or haphazardly. Residential, commercial and industrial uses tend to develop separately from each other. Certain uses will develop only in certain places. The gas station and most other major commercial developments provide an obvious illustration; regardless of where they are permitted, they will locate only on heavy traffic streets. This means that major business and commercial uses generally will be absent from the residential or local streets which constitute close to 80% of total street mileage within Houston, and probably about the same elsewhere.

In areas of Houston no longer subject to restrictions, or in which restrictions were never imposed, these local streets contain relatively few commercial uses, probably no more than 5%. The bulk of these are home occupations and businesses that serve the residents of the area, and therefore, contrary to most conventional thinking on the subject, are probably compatible with the area.

For those who doubt the propensity of industrial uses to separate themselves, I recommend for dramatic effect an inspection of land use maps of medium-sized Texas cities which do not have zoning: Baytown, Pasadena, Wichita Falls and Laredo. In each of these cities the bulk of industry is concentrated and separate from other uses, and this has occurred without governmental intervention. In fact, it is most difficult to determine from land use maps which Texas cities are zoned and which are not.

It is generally too costly in terms of land prices and potential residential hostility for heavy industry to locate near new residential subdivisions. The plants and factories in the Houston area which are contiguous to and were erected subsequent to homes are usually "light" rather than "heavy" in character. In most instances their existence appears to pose no more, and possibly less peril to residential values and tastes than would be the case if the same property had been developed for an alternative use such as apartments. I doubt that where there is proximity of industry to residential in non-zoned cities that there is more harm to property values and tastes than in zoned communities.

There are substantial areas in and around Houston where there is minimum demand for multiple family, industrial and commercial development. These areas are suitable for and are being developed for single family occupancy.

Most single family developers in Houston, as well as in many other parts of the country before the advent of zoning, have traditionally imposed restrictive covenants to permit only the erection of houses within their subdivisions. For restrictive covenants to remain effective and enforceable, the law requires that they be diligently enforced by the homeowners. Inasmuch as this can be costly for homeowners in lesser income subdivisions and small subdivisions, Houston adopted in 1965 an ordinance enabling the city to enforce these covenants.

Houston has also adopted a offstreet parking ordinance for residential developments only and a relatively limited number of other government regulations designed to cure problems of land use not satisfactorily controlled by the private market.

Why do Houston, Wichita Falls and Baytown not have zoning? The answer is that these cities allowed their voters to decide this question in public elections. Houston voted twice against zoning. In the last vote in 1962, 57% voted against zoning and 43% voted in favor. Zoning lost 3 out of 4 elections in Wichita Falls. The most recent election was held in 1963, and an overwhelming 82% voted against to 18% voting in favor. In 1969 in Baytown 68% voted against and 32% voted for zoning. Beaumont adopted zoning in 1954 despite the fact that over 70% of the voters rejected it in 1948.

The only pattern that I have been able to detect to explain the election results is based on income level. Covenants in many of the older subdivisions occupied by lesser income families had expired or never existed; and one might ordinarily expect these homeowners to favor zoning as a means of excluding diverse uses. It would also seem that in the newer, wealthier subdivisions there would be little demand for zoning since covenants are in effect and usually strictly enforced. Neither assumption is correct, however. In Houston and apparently elsewhere, lesser income homeowners, living in the older areas have generally voted against zoning and those of higher income levels, living in the newer areas have voted for zoning. The principal reason, I suggest, why the less affluent reject zoning is that it would deprive them of the service and convenience afforded by neighboring commercial developments which zoning would take away. In addition, their approach to questions of esthetics and tastes appears to differ from that of wealthier groups.

In an area containing local auto repair shops, grocery stores and home occupations, the vote went 5 to 1 against zoning. The more affluent voters in the newer areas supported zoning about 2 to 1, and came out in much greater numbers to vote. But they could not overcome the larger majorities in the poorer neighborhoods.

What has happened in Houston when restrictive covenants have expired? The answer depends upon the real estate pressures that have arisen in the area since the time when the covenants were imposed on the subdivision. Along expressways and the more heavily traveled streets, commercial, multiple family and possibly a few light industrial uses will in time generally develop. The answer may be quite different for areas adjoining interior or local streets where the traffic is light. In some instances, there will be virtually no changes because of the absence of economic pressures for other uses. As I have indicated, there will be relatively few commercial uses on the local streets due to the limited extent of traffic and accessibility. Substantial changes in interior areas will come about only where there is a strong demand for multiple family uses. Since many areas are largely immune to the demand for apartments, there are substantial areas of Houston where despite the absence of covenants for long periods of time, single family remains largely the only use.

As I have suggested, the most desirable influence of non-zoning at present is its effect on multiple-family dwellings. If Houston had adopted zoning when proposed in 1962, restrictions of the ordinance would have resulted in less apartment production, and this means higher rents and a lesser number and variety of apartments. The absence of restrictions has made available a great number of building sites at lower cost, and this, together with the high density that is permitted has resulted in a larger supply of many different kinds of rental accommodations. Many have been able to afford new housing who would have been denied this if Houston had zoning.

The major thoroughfares in Houston are largely similar in appearance to those in zoned cities. Areas adjoining heavy traffic streets contain homes, apartments, townhouses, and businesses similar to what occurs under zoning. There probably are more businesses and apartments along thoroughfares than there would be under zoning because such uses bring a better land price than does single family. The result is also a greater number of houses on interior streets, all of which makes for a separation of uses not inconsistent with conventional planning objectives of compatibility and desirability. One can hardly fault economics that causes homes to be built on the local rather than on heavily traveled streets and, of course, vice versa, with respect to commercial uses.

Moreover, the absence of zoning restrictions allow development of strip areas. In zoned areas with their many classifications and subclassifications, it is often

a matter of chance whether a particular parcel is zoned for the use intended. There is no such problem under non-zoning. The results in Houston appear even more favorable when compared with what develops when the planners, politicians, and possibly even the courts juggle the land to determine where the various uses along the thoroughfare will go.

The absence of restrictions is also financially rewarding because it allows for the maximum development of a community. Zoning restrictions that impede the maximization of real estate development serve also to diminish the amount of real estate tax receipts. The fact is that the situation is actually the reverse of the way it is commonly presented: we may well question whether America can afford zoning. Thus, to impose zoning restrictions on a community that has none can easily bring about a reduction of at least 5% annually in the amount of private non-home construction—and I consider this a most conservative estimate. In Houston, this would have meant a loss of more than \$175,000 in ad valorem taxes during each of the last 3 years.

Is the Houston system of land use control exportable?

Is non-zoning feasible and desirable for communities where land is much more scarce? My answer is clearly in the affirmative. Consider as an example the last 40 acres of vacant land that remain in a community where all other land has been fully developed. The decisions as to how this last tract of vacant will be used in a zoned city will be made through the political processes of local government. The city council or other governing board will zone or re-zone the property after hearing from all of the interested parties, their planners, lawyers and other representatives. These include the owners, the neighbors, homeowners groups, political organizations, do gooders, do badders, etc., etc. Even the League of Women Voters has entered into the fray these days. Each side will have no difficulty in producing a planner to prove "conclusively" that its position is the only correct one.

How it will come out will depend on who or what are best able to influence or pressure or even pay for the vote of the council members. That there may be an enormous demand for apartments in the community is likely to be a less important factor than the opposition to such use by some politicians or by a homeowners group. The decision is likely to be controlled by a host of factors and forces that have virtually no relationship to maximizing production, satisfying consumer demand, maintaining property rights and values, or planning soundly. A similar scenario can be expected if some land use control decisions are removed to state or federal level except for a change in the cast of characters and pressures.

By contrast a land use decision where there is no zoning will be more rational. The property is likely to be used in accordance with the demands of the market which means that directly or indirectly it will be used to satisfy the predominant consumer demand. The more a developer or his successor in ownership succeeds in supplying consumers' demands, the greater his profits are likely to be.

This is, I submit, the highest and best use of the property as determined by what appears to be the least fallible of city planners, the marketplace. Property values will be maximized for the site in question. A location consistent with maximizing profits is also likely to be consistent with the maintenance of neighboring property values. More things and more accommodations will be provided for more people. Business, employment, and community finances will be benefited. And the precious land will be used productively and will not be wasted for the sake of political expediences.

The result is that the marketplace is providing for development in Houston which could not occur under zoning. The Greenway Plaza development provides an example. This is a major high rise commercial complex which is adjoined on its west by residential subdivisions. In 1968 and 1969 its developer bought almost all of the 230 homes in two adjoining subdivisions at a price above market and with a 5-year rent free provision for each homeowner. A good deal apparently for both sellers and buyer since upwards of 90% of the homeowners sold under these terms. The developer intends ultimately to raze these homes and substantially enlarge the original complex. Can you imagine what the developer would have had to do and go through to rezone this property from single family to high rise commercial, how long it would have taken, and at what cost? I am convinced that because of the many problems involved, the developer would never even have seriously contemplated the project had zoning been in effect.

Those seeking solutions to the many problems of land use control should well heed the lessons of zoning and non-zoning. Specific land use problems such as

parking or location of certain uses which greatly affect the public interest should be dealt with specifically and should not be used as an excuse for granting great and totally unrelated powers over the balance of land users.

The history of zoning has been one of power abuses, political opportunism, social and economic inequities, and serious failure to meet the housing needs of our population. Our immediate efforts must be directed at generally reducing governmental controls over private land use.

The CHAIRMAN. If you wish, Professor Strong, you may comment on Mr. Siegan's statement as well as your own, and then he will have a chance to comment on yours, of course.

STATEMENT OF MRS. ANN L. STRONG, PROFESSOR OF CITY AND REGIONAL PLANNING, INSTITUTE FOR ENVIRONMENTAL STUDIES, UNIVERSITY OF PENNSYLVANIA

Mrs. STRONG. I think I will present my statement and then wait for the questioning to comment on his statement.

I do disagree, but I would also eliminate zoning. I do not arrive at the same conclusion he does.

My name is Ann Strong. I am professor of city and regional planning and director of the Institute for Environmental Studies at the University of Pennsylvania.

I am here to urge enactment of legislation committing the United States to development of a national land-use policy.

Fifty separate State land-use policies cannot be pieced together to equal a national policy. Only a direct commitment by Congress to the people of the United States to manage land use for their benefit can suffice. Only with such a commitment can Congress redeem a long-standing debt to the people.

In 1949, Congress set a goal of providing a "decent home and suitable living environment for every American family." Our sorry record in the ensuing years gives a hollow ring to the repetition of that goal in the Housing Act of 1968.

Time is about up; maybe it is even now too late. Cynicism and pessimism, violence and anger, bitterness and despair characterize today's mood. Will, indeed should, our society, and its government, survive if we fail to achieve a far more equitable distribution of the fruits of our prodigious economic growth or if that growth continues to be at the expense of life itself?

Today, in 1971, what percent of us enjoy a decent home and a suitable living environment? In the Philadelphia urban area, only 16 percent of us earn enough to buy a home in the suburbs. Even in the suburbs, the air is dirty, the septic tanks overflow, the streams are filthy, the planes obliterate sleep and conversation, traffic chokes the highways, and the trains, which at least we still have, expire—cancelled, collapsed, or annulled in the words of the Penn Central; a suitable living environment? Healthy? Satisfying? For whom?

How are we doing for the other 40 million Americans, the nonurban ones? The immediately sensed effects of pollution—smell, noise, ugliness—often are less. So are overloads on the natural system from too heavy concentrations of development.

However, since 30 percent of these rural people have incomes below the poverty line, much of the housing is wretched. Even for those with a decent house, pervasive rural poverty and decline often deny rural

residents the choices that contribute to a suitable living environment. Among these are choices of jobs, friends, schools, and recreation.

We have had a national land use policy from the founding of the Nation: grow, build, exploit, expand. National policies for logging, for railroads, for mining, for highways, for agriculture, have been to open up the country, to bring out the resources, and to grow.

We have exploited not only our land and its resources, but our people. We have rewarded competition and aggression, we have fostered the concept, as foreign to our European forbears as to the American Indians, that land is a private commodity.

Fortunately, we have begun to change and to acknowledge the need for a new ethic for man's use of the land. Much more slowly are we accepting the need for a new ethic for man's treatment of his fellow man.

A new, articulated, and coordinated national land use policy is central to effectuation of both changes. If we are to start again, if we are to create a society in which all men can flourish, nothing less than a national commitment of our resources can suffice.

To sustain life, we must control our population size and distribution, manage our resource base, and restore the quality of our air, water, and soil.

To offer liberty, all people must have the opportunity to partake of the Nation's resources. In the pursuit of happiness, we must explore, then create, the congeries of living patterns—density, mobility, variety, choice, and size—which are most satisfying to men.

As a government, we must officially reestablish our goals as a nation and then plan for the commitment of our resources to the fulfillment of those goals. We also must create a process for continually re-evaluating our goals and the comparative effectiveness of the programs followed in realizing them.

This national land use policy must embody two commitments: (1) a commitment to use our land to afford to all people a suitable living environment, and (2) a guarantee that this first commitment will be enforced throughout the United States. It is from this perspective and with these convictions that I shall comment on the proposed legislation.

First, four areas that I shall not touch upon: (1) location within the Federal Government of the administrative mechanism for land use planning and programs; (2) penalties for State failures to comply with State and/or Federal plans; (3) those provisions of S. 992 which deviate from the provisions of S. 632; and (4) the role of resource management.

Effective administrative structure and sanction provisions both are critical issues; however, they are outside the area on which I have chosen to focus today. I have limited consideration of particular provisions to S. 632 because, in my judgment, it contains everything that is of merit in S. 992 and, in addition, is far more carefully drawn as to both procedure and substance.

Resource management has undoubtedly been stressed by most persons appearing before this committee. Its importance is immense, but I am sure that it has not been slighted.

S. 632, as presently worded, looks to land protection first, economic growth second, and people's well-being hardly at all.

This represents some reordering of priorities as between the land and the economy, but man remains last, perhaps an incidental beneficiary.

Why do we care about protecting the natural environment? Is man's well-being not the central focus of our efforts? If so, let us say so and begin by defining what we believe is necessary to create a suitable living environment.

The elements certainly include many of those included in this bill: A healthy natural environment, including clean air and water, protection of amenities, and the fitting of development to the landscape. However, the bill is unclear or silent on many other points. It provides no goal priorities which the shapers of policy can use to resolve conflicts.

I refer specifically to section 302(b) where the national policies are listed without stated priorities. Section 302(b) (1) directs that development shall accord with economic planning, while section 302(b) (2) would promote economic development in all States and regions of the Nation.

How are we to decide when economic growth shall be limited to protect the natural environment or when efficiencies of agglomeration should be preferred over goals of widespread distribution of production?

What minimum standard of living do we wish to guarantee to all people, including what opportunity for education, what jobs, what accessibility to work and to nature, what quality of housing, what range of public services, and what income?

How highly will we value provision of choices as part of this guarantee? Once we refine answers to this set of questions, we can determine the implications for economic development and for tradeoffs between such development, use of natural resources, and location of development.

Without answering these questions, how is it possible to say, in section 302(b) (4) that we should "revitalize existing rural communities and encourage new communities?"

Admittedly, this is asking for a lot. However, no more than virtually every other developed nation has already done. Some of the national land use plans are simplistic, and all need improvement. However, they exist.

Nations have articulated the bases for policy and have moved, through formally adopted national plans, to implement these policies at all levels of government. The plans are constantly subject to improvement and revision as experience and changed circumstances warrant.

A few brief examples follow. The Dutch have chosen to limit growth of the Randstad—Rotterdam, Amsterdam, and The Hague—even though this may mean somewhat less economic growth for the Nation as a whole, in order to meet two objectives: (1) assurance to all city dwellers that open countryside will be within a 15-minute bike ride and (2) more even distribution of economic and social opportunities throughout the country.

The French are attempting to divert growth from Paris both through a national program of new cities in a corridor along the Seine and through national regulatory legislation and funding for advance land acquisition outside large cities where growth is sought.

The Israelis experimented with development of a heirarchical pattern of settlement, only to learn from experience that rural villages were unpopular and that towns of around 10,000 are necessary to provide the variety and activity which people want.

The United States lags far behind, and this bill can provide an opportunity to start to catch up. In so doing, however, I reiterate my plea to you to start planning for land use with an articulation of man's needs, both for today and the future.

My final point is that there is no justification for ceding the basic national land use policy decisions to the States. S. 632 at section 301 (d), states that primary responsibility rests with the States and local governments.

Building on this, section 307 directs that Federal land use activities shall accord with the State plans. This is an improper and undesirable cession of power to the State and local governments.

As an appendix to this statement, there is a short legal memorandum in support of this position.

It has been prepared in haste by Mark Pollook, a research assistant of the Institute for Environmental Studies. The major constitutional and statutory provision bearing on this point are the commerce clause, section 5 of the 14th amendment, the general welfare clause, and a judicially derived right of Federal intervention.

Throughout our history, Federal action has been the primary determinant of land use. The Federal action has taken several forms: land acquisition followed by sale or lease subject to Federal policies, land regulation, financial incentives, and penalties to secure desired land use.

Policies for the cheap sale of sections in the Northwest Territory in the 18th century and the fluctuating homestead acreage and priving policies of the 19th century both were subsidies for rural settlement.

The latter 19th century grants of 183 million acres of land to the railroads to open up the country and create new towns subsidized a transportation network and linked small communities to service the rural areas. Resettlement policies during the depression sought to move the poor out of crowded cities to adjacent rural areas.

More recently, FHA and VA mortgage insurance and Federal income tax deductions for mortgage interest payments have received much of the credit, or blame, for the postwar suburban development pattern.

Conversely, denial of mortgage money throughout large areas of central cities has been a major factor in the decline of housing conditions there. Federal administrative and judicial interpretations of housing laws have reinforced ghetto concentrations.

We have already had extensive experience with Federal funding for urban land use planning under HUD's 701 program. The results can only bolster my contention that abdication of Federal substantive criteria for judging State, regional, or local plans will lead to plans which reduce freedom of individual choice and which confirm the denial of a decent living environment to most Americans.

I speak here from considerable personal experience, as chairman and vice chairman of a suburban county public housing authority and as a member of a suburban planning commission. Given a local referendum, there will be no housing for low-income people in the suburbs.

Even now, with the choice in the hands of local elected officials, Federal programs are only approved in old, deteriorating towns with a vocal population of resident poor.

When built, the housing is so hamstrung by local prohibitions on site and occupancy that failure is almost assured. It is not only the poor who are excluded. The 701 program has enabled suburban communities to become sophisticated in seeking to avoid any further growth, unless it be clean research-type industry which pays a hefty tax or possibly expensive single-family housing.

Lodging a review power in the States won't change much in the States I know best. The power will still rest with a coalition of the haves: the wealthy suburban local governments and the big businesses. Only overriding Federal policies, and Federal penalties for failure to conform to these policies, can bring about a significant reordering of land use practices to provide a suitable living environment for all Americans.

The CHAIRMAN. Thank you, Professor Strong.
(Appendix to Mrs. Strong's statement follows:)

APPENDIX TO MRS. STRONG'S STATEMENT

RESPONSE TO SECTION 301 (D), S. 632

I. Federal power to regulate land-use policy has origins in both the Commerce Clause (Article I, § 8) and the Fourteenth Amendment's Enforcement Clause (Amendment XIV, § 5)

A. Constitutional authority exists for permitting Federal regulation of activities that affect interstate commerce, including state and local land-use controls.

1. Original broad expositions of the Commerce Clause by Marshall, C. J. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

2. Reacknowledgement of the Marshall doctrine after years of hesitancy and retrenching: The power of Congress over interstate commerce "is complete in itself, may be exercised to the utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. *United States v. Darby*, 312 U.S. 100, 114 (1941).

3. The extreme limits of applicability—*Wickard v. Filburn*, 317 U.S. 111 (1942), farmer found to be within ambit of Agricultural Adjustment Act, although he and his family consumed the entire produce of his small farm.

4. Commerce doctrine considerations related to land-use control:

a. Federal regulations, where valid, may properly override state police powers. [Such as land-use controls] "This is not a controversy between equals. The United States is asserting its sovereign power to regulate commerce. . . . There is no question that this power is superior to that of the state to provide for the welfare or necessities of their inhabitants." *Sanitary District of Chicago v. United States*, 266 U.S. 405, 425-6 (1925) (Holmes, J.).

b. Federal regulation can reach admittedly local and *intra* state activities where they have: ". . . such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance." *Bethlehem Steel Co. v. New York State Labor Relations Bd.*, 330 U.S. 767, 772-3 (1947), quoting from the Schreveport Case [*Houston, East and West Texas Ry. v. United States*] 234 U.S. 342, 351 (1914)

i. Land-use controls affect the location and existence of commercial and industrial facilities engaged in interstate commerce.

ii. Land-use controls affect commerce on the navigable waterways of this country. "Flood protection, watershed development . . . are likewise parts of commerce control . . . that authority is as broad as the needs of commerce." *United States v. Appalachian Power Co.*, 373 U.S. 546, 587 (1963)

iii. Land-use controls affect the viability and very existence of farms.

iv. Land-use controls affect the free movement of people. *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 261 (1964)

v. "If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze." *United States v. Women's Sportswear Manufacturers Ass'n.*, 336 U.S. 460, 464 (1949). See e.g. Federal power to control wholly local and intrastate milk prices. *United States v. Rock Royal Co. Operative, Inc.*, 307 U.S. 533 (1939).

vi. Land-use controls affect the location of our national system of defense highways.

5. Use of the commerce clause to effectuate social and civil rights is not invalid.

a. Title II, Civil Rights Act of 1964, 42 U.S.C. § 2000(a) et seq.; upheld in *Heart of Atlanta Motel, Inc. v. United States* 379 U.S. 261 (1964); see also *Katzenbach v. McClung*, 379 U.S. 294 (1964)

b. Land-use controls have been used by communities to keep "undesirables" out; maintain high-income enclaves. To have as an objective, the elimination of these wrongs, would not be an undue extension of the commerce power.

6. Lack of previous Federal legislation is not conclusive of state jurisdiction.

a. Federal law may serve to pre-empt state legislation *Pennsylvania v. Nelson*, 350 U.S. 497 (1956) (sedition laws)

b. However unless there is a need for uniformity or the activity is a national character, state and Federal law may coexist, so long as the former does not conflict with the latter. See e.g. *People v. Zook*, 336 U.S. 725 (1949) where the state law was found to support and enforce the Federal law.

c. The establishment of Federal standards for land-use control grants would permit the coexistence of both Federal and state laws.

7. Arguments for holding the Tenth Amendment as a limitation on Federal powers have been rejected since the 1930's. See *United States v. Darby*, 312 U.S. 100, 123 (1941) where the court dismissed the Tenth Amendment as "but a truism—that all is retained that has not been surrendered."

B. Federal regulation of land-use controls is a necessary and proper means of implementing the Fourteenth Amendment—specifically § 5 (Enforcement).

1. Zoning discriminates against Negroes.

a. Local exclusion of housing projects.

b. High percentage of Negroes in low income levels.

c. Large minimum-acre requirements serve to keep out low-income and minority groups.

2. *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 261 (1964) upholding Title II, Civil Rights Act of 1964, 42 U.S.C. § 2000(a) et seq.

II. Federal "Police Power" does not exist as a constitutionally granted right, but rather as a bundle of rights, similar in scope to state policy powers, and derived from various enumerated and implied powers

A. "Police power" is a term of legal art. Taney defined it as "nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions." *License Cases*, 4 How. 504, 584 (1847)

B. Although the Court, per Brandeis, has said that the police powers are limited by the Tenth Amendment to the states, *Hamilton v. Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 156 (1919), clearly Taney's view implies the existence of an inherent set of powers similar in scope to those of the state.

C. Use of the commerce clause in the past resulted in the protection of "health, safety and morals" of the national public, much in the same way "police power" would.

1. White slavery, see *Hoke v. United States*, 227 U.S. 308 (1913).

2. Truth-in-packaging, P.L. 89-755, 80 Stat. 1296.

3. Various safety regulations, e.g. National Traffic and Motor Vehicle Safety Act of 1966, P.L. 89-563, 80 Stat. 718.

4. Omnibus Crime Control and Safe Streets Act of 1968.

D. Invalidation of Federal statutes on the possible basis of "police powers" has occurred only when no other constitutional justification for the legislation could be found. For example, where the police power employed was not based on commerce or tax powers: *United States v. DeWitt*, 9 Wall. 41 (1870) invalidated law forbidding sale of illuminating oils below certain test standard; *Trade-mark Cases*, 100 U.S. 82 (1879) invalidated laws punishing counterfeiting of trademarks and sales of goods bearing such signs.

E. Establishment of land-use controls, although superficially a duplicate of local land-use controls, would be a valid Federal "police power" in view of its basis either under the commerce clause, or the general welfare clause, or the Fourteenth Amendment. See e.g. Title II, Civil Rights Act of 1964, 42 U.S.C. § 2000(a) et seq.

III. Federal regulation of land-use controls would be valid in view of the need to prevent impairment to existing Federal functions and programs. *Johnson v. Maryland* 254, U.S. 51 (1920)

A. Local zoning impairs the proper use and location of Public Housing, Housing Act of 1937, P.L. 75-412, 50 Stat. 888, 42 U.S.C. 1401 et seq.

B. Local land-use controls effectively serve to discriminate against low-income and minority groups, contrary to national policy :

1. Fair Housing—Title VII, Civil Rights Act of 1968.

2. Equal opportunity in housing, Executive Order 11063 [27 Fed. Reg. 11527] (November 20, 1962)

C. Local regulation of land-use imperils objectives and goals the National Environmental Policy Act, P.L. 91-190: by permitting excessive coverage of ecologically vital sections such as flood plains, by permitting intensive development, thereby removing open space and natural spaces.

D. Local regulation of land-use imperils free navigation by failing to control for :

1. Industrial waste and sewage pollution,

2. Excessive run-off,

3. Flood plain destruction.

E. Local regulation of land-use impairs full development of Model Cities Program, P.L. 89-754, 80 Stat. 1255, 42 U.S.C. § 3301 and New Communities Program, P.L. 90-448, 82 Stat. 472, 513, 42 U.S.C. § 3901 et seq.: by limiting potential sites, by making unduly burdensome requirements on developers or redevelopers.

IV. Federal regulation of land-use controls is a valid exercise of the "welfare" power granted by Article I, Section 8, Clause 1

"The Congress shall have the power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imports and excises shall be uniform throughout the United States."

A. The accepted view of the limits of the welfare clause.

1. Alexander Hamilton: "The only qualification of the generality of the phrase in question which seems admissible, is this: That the object to which an appropriation of money is to be made be general, and not local; its operation extending in fact or by possibility throughout the Union, and not being confined to a particular spot." Hamilton's Report on Manufactures to the House of Representatives, Dec. 5, 1791. 3 *Works of Alexander Hamilton*, 372 (Lodge ed. 1885) [accepted by the Supreme Court, *United States v. Butler*, 297 U.S. 1 (1936)]

2. The Supreme Court, upholding old-age insurance aspects of Social Security: "... Yet difficulties are left when the power is conceded. The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event. There is a middle ground or certainly a penumbra in which discretion is at large. The discretion, however, is not confided to the courts. The discretion belongs to Congress, unless the choice is clearly wrong, a display of arbitrary power, not an exercise of judgment. This is now familiar law. 'When such contention comes here we naturally require a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to Congress.' *United States v. Butler* [297 U.S. 1, 67 (1936)] ... Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well being of the Nation. What is critical or urgent changes with the times." *Helvering v. Davis*, 301 U.S. 619, 640-641 (1937)

B. The welfare clause has been used to justify the existence of a broad range of Federal grant-in-aid programs, many with attendant Federal standards, regulations and requirements.

1. *Steward Machine Co. v. Davis*, 301 U.S. 548 (1937) upheld Social Security against attacks based on state sovereignty arguments, i.e. that conditions attached to the grant are inconsistent with the Tenth Amendment.

a. The court held that the conditions were appropriate to the attainment of the stated congressional goals, and

b. Each state entered the program voluntarily.

2. *Oklahoma v. Civil Service Commission*, 330 U.S. 127 (1947) Hatch Act directed Federal agency to withhold amount equal to two years salary from state found to have employees violating ban on political activity—upheld by the Court as a valid condition of Federal grants.

3. See also, conditions and federal standards in AFDC program.

C. Land-use related grants are a valid extension of the welfare clause and have, in recent years, been tied to specific standards and regulations.

1. Pre-1926 [*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)]

a. Homestead Act.

b. Morrill Land Grant Act.

c. Grants to railroads.

2. Since 1926.

a. Requirement in 1949 Housing Act for a local program, including zoning, that would prevent further blight. § 101(a), P.L. 81-171, 63 Stat. 413, 414, 42 U.S.C. 1450.

b. Redevelopment Act of 1961, § 112, P.L. 87-27, 75 Stat. 47.

c. Workable program requirement for Federal funding § 101(e) [Housing and Urban Development Act of 1965, § 302(a)(1)] P.L. 89-117, 79 Stat. 451.

d. Neighborhood Development Program, § 501(b), Hsg. & Urb. Dev. Act of 1968, P.L. 90-448, 82 Stat. 476, 518.

e. Criteria and policy aims of New Communities Act of 1968.

f. Demonstration Cities and Metropolitan Development Act of 1966, P.L. 89-754, 80 Stat. 1255, 1261.

3. Each of these programs serve to affect land-use and often have as an attendant result, the promulgation of various land-use controls, such as zoning or building codes. The requirement, under a National Land-Use Policy Act, for meeting congressionally determined standards, would merely extend the jurisdiction to wider areas of concern. The Court's willingness, in *Berman v. Parker*, 348 U.S. 26 (1954), to accept Congressional discretion as to the limits of Federal renewal acquisition, would seem to indicate a similar willingness to accept Federal regulation of state-wide land-use control standards, in a far less drastic program entered into only voluntarily by the states.

CONCLUSION

Authority does exist for the right of the Federal government to establish standards for state and local land-use controls.

1. Such local control significantly and substantially affects interstate commerce, such that Federal legislation would be valid.

2. Existing land-use controls serve as a vehicle for discrimination, so that action under § 5 of the Fourteenth Amendment is justified.

3. Where state and local laws impair and imperil the functions of existing Federal programs, the Congress may legislate to protect those programs and activities. Land-use controls do serve to imperil the objectives of existing Federal programs; therefore regulation of grants for further land-use planning may properly include the establishment of standards by which such grants may be given or withheld.

4. Grants-in-aid programs, such as the Land-Use Policy Act, originate in the General Welfare Clause of the Constitution. They have in the past dealt specifically with land-use, such as grants for colleges and railroads, and indirectly with land-use, such as workable program requirements that inevitably include land-use controls. Promulgation of a Land-Use Policy Act with standards for acceptance by the administering agency, would be acceptable in view of past procedures.

The CHAIRMAN. Mr. Siegan, on page 5 of the statement, the last paragraph on that page, you say that residential, commercial, and industrial uses tend to develop separately from each other, and that certain uses will develop only in certain places.

Isn't the problem that these developments occur in places that are highly objectionable?

We have the problem of the Everglades Airport. This is just an example and I don't want to get too many, but here is a case where the Federal Government was involved in three different programs: One involving the Corps of Engineers, solely for drainage and for water purposes adjacent to the park, but which effectively influenced the park. Then we had the Park Service running the park. And basically, we had the FAA making funds available to the Department of

Transportation for Airports. The proposal, of course, was to put an airport right adjacent to the park.

Is this something that you wouldn't do anything about? If not, tell me what you would do.

Mr. SIEGAN. Mr. Chairman, the specific comment relates to my investigation of where uses have gone in Houston. We find, for example, that the commercial uses that develop on other than the major thoroughfares are those that are generally compatible with the areas where they go.

Frequently, they are small shops. The "worst" one I can think of is say, an auto repair shop, but in a low-cost area, an auto repair shop is highly desirable. It permits someone in an automobile city to have low-cost ways of repairing his car. It is close by. The terms are very liberal.

My statement specifically refers to various areas of Houston where we determined what the uses were. One of these areas in which the auto repair shops are located, never had any restrictions, absolutely no restrictions whatever. And despite the fact that there is heavy industrial on one side and at one corner only 5 percent of the uses were commercial, and 1 percent industrial.

Let me jump to your specific question, because I do want to explain what I have said.

About the Everglades situation, the airport, I assume that is really what you have in mind.

The CHAIRMAN. This was my question.

Mr. SIEGAN. I wonder if we had a land plan whether it would have been any different, or possibly you might even have had an airport right there.

I have been dealing with planners for—

The CHAIRMAN. May I interrupt right there by pointing out that the National Environmental Policy Act which we sponsored hopefully will eliminate this sort of thing.

We used the Everglades case as the classic example of why we needed section 102 statements provided for under the National Environmental Policy Act.

Do you think this is sound?

Mr. SIEGAN. I am glad you said "hopefully" will eliminate.

I don't know that they will. I am saying to you, Mr. Chairman, that it is entirely possible, knowing the great variations in planning, that we very well could have had an airport planned at a different period of time which might very well be in existence if we had land planning.

The CHAIRMAN. Anything is possible, Mr. Siegan, but isn't this a useful means?

Mr. SIEGAN. I doubt it, sir; because of the other things that occur in the planning process. One is the possibility, that the planners will act soundly. The second is, what else happens; it is not simply a question of saying, "Fellows, we are not going to have an airport here."

There is another process that goes with it. It is also a process of planning for many other places, and while we may not have had an airport there, we also may not have had an airport in many other areas that were useful, and we also may have had a lot of other things that have nothing whatever to do with airports.

Because once you get into the planning process, as is apparently proposed, it is not a question of isolating what you want to do. A plan means a plan, and I brought along with me—to give you an idea of really what happens—I brought along with me a very interesting document, which is a best seller in Chicago, called “The Chicago Zoning Ordinance”, and the solution to particular problems of land use turning into something like this straitjacket (indicating) where we have every single piece of land in the city of Chicago designated for certain uses.

We have seven business districts. We have four commercial districts et cetera. But I am saying to you very specifically: If the planners had thought as you think they might have, that the airport in the Everglades was undesirable, along with the plan that said that, a lot of other things would have been said, and I am inclined to think that the overall detriments, judging by my experience with what has happened in the suburbs and what has happened in the cities, the overall detriments involved in foisting a large plan, a Government plan, upon the entire country would have had on the whole, bad results.

The CHAIRMAN. How would you deal with the Everglades problem, then?

Mr. SIEGAN. I think these are specific questions.

The CHAIRMAN. That is the problem of all zoning. We deal with specifics. You get down to specifics.

Mr. SIEGAN. Let me deal with that.

The CHAIRMAN. Could you be as brief as possible? Because my question was how would you deal with the Everglades example.

Mr. SIEGAN. I will give you the example—

The CHAIRMAN. Don't give me another example.

Mr. SIEGAN. I am not trying to be argumentative.

The CHAIRMAN. I am trying to get an answer.

Mr. SIEGAN. When the city says, “The reason we need a zoning plan is we have a parking problem, or there are too many gas stations,” I am suggesting that these are specific problems. Airports are a matter involved with the national interest, and the regulations of the Government that involve airports should take fully into consideration all of the harmful and good effects of airports and leave it at that.

We have one rule, we have one statute. That statute is airport regulation.

The reason I mentioned parking is that Houston has a parking ordinance. It is not used as an excuse for encumbering things that have absolutely nothing to do with parking, and similarly, I say to you that I think the problem with the airport is a specific problem, it should be dealt with specifically with legislation, it should not be used to control things which have absolutely nothing to do with it.

The CHAIRMAN. You mean you would pass a special law for each situation as it emerged?

Mr. SIEGAN. Yes, I would say a special law.

The CHAIRMAN. No further questions.

Senator Bellmon?

Senator BELLMON. Mr. Siegan, on page 10 of your statement, you make the statement that if a developer succeeds in meeting consumers' demands, the greater his profit would be.

Would you use profit as the only criterion?

Mr. SIEGAN. In order to make a profit, I have to serve somebody. A builder, to make a profit, has to put up a building that is going to house 20 or 30 or 40 people. If he puts up something that does not serve the consumer, he is not going to make a dime of profit, and that is the way I have used the term "profit." The builders motivation is personal profit. But society's motivation is the benefits that are derived to society by reason of what he does to get a profit.

Senator BELLMON. Let me give you a couple of specific examples of the problems we have had in Oklahoma.

In several communities, a developer went in and built a fairly large number of homes for that size community, and a flood, 6, 8, or 10 years later, came along. We have those from time to time. Those houses had 6 feet of water in them. There was, of course, tremendous damage to private property, and some people were hurt.

Immediately, there was a cry that this was a great disaster, so the people came to the State government wanting assistance.

How do we keep that developer, who did make a good profit, I am sure, from utilizing that land in that way, from creating this kind of situation which only the Federal Government and the people's tax money were able to solve?

Mr. SIEGAN. Do you have a subdivision ordinance? There are subdivision ordinances that can take care of this.

I am not suggesting that all these situations be left wide open. If there are areas where the preponderance of evidence indicates that there are problems of the kind you mention, then I think something should be done.

It seems to me if you had a subdivision plan, you wouldn't have ended up with this situation.

Senator BELLMON. You tell us you don't need plans or zoning.

Mr. SIEGAN. I am saying you need specific types of legislation.

Senator BELLMON. You are saying we should have legislation saying every acre of land should be used in specific ways?

Mr. SIEGAN. No; I am saying where you have a flood problem, there should be specific legislation dealing with such a situation.

Senator. BELLMON. How do you keep the housing from being there in the first place?

Mr. SIEGAN. We have subdivision ordinances. They see to it that there is adequate drainage and so forth.

A problem that is, perhaps, comparable to that is where there are water flooding problems. I give you one in my area.

There is a metropolitan sanitary district in the county of Cook. It will not issue a permit for a building unless it is satisfied that no water problems will be created.

This has nothing to do with zoning. It is a simple matter of police power control for the metropolitan sanitary district not to issue a permit where there is a problem of water drainage or water flooding, something that obviously should not be done.

I am not talking specifically about land-use control. Where it comes to matters that obviously are unquestionably matters of police power, such as the one you mentioned, I think we can have controls which will or which will not authorize a sewer connection in the particular situation.

I want to emphasize that this is tremendously different than what occurs under zoning.

Houston has held up—I don't know if it is still holding them up—but Houston held up 10,000 apartment permits because there was inadequate sewage capability. I can't criticize that. Obviously, that was an appropriate function of government. But it did not tell the people who wanted to build in those areas what they should build and how they should build it. The two are entirely different problems.

Senator BELLMON. Let me give you another specific example and ask how we would avoid this. Again, in our State, we have a very large Air Force base, and a developer, a very enterprising man, who I am sure was interested in making a profit, went out right in the path of the approach of this airport and bought a tract of land and built a fairly large number of low-cost housing units, and built a school, too, right in the approach pattern.

We have since had two planes come in short and hit houses and killed people.

If you don't have planning, how are you going to avoid this enterprising individual from making a nice profit off a situation like this?

Mr. SIEGAN. I would say with airport regulations—

Senator BELLMON. This land is outside the airport.

Mr. SIEGAN. Again, whichever body makes the legislation, I think it is appropriate—

Senator BELLMON. What you are saying is that you want zoning and you want planning.

Mr. SIEGAN. No; what I am saying is that there are problems, but to have a zoning ordinance because of the problem you mentioned will perhaps, and I want to emphasize "perhaps" will solve that problem, but it will create a lot of other problems.

The restrictive process stops the building there, where it should, and I fully agree that it should, but it also stops building all over the place. It stops building in the suburbs by the thousands and thousands, the same process that has served well the airport situation.

It has harmed humanity enormously in all the other areas where the very same ordinance operates.

What I am suggesting is that we isolate these problems as approaches to the airport.

I think there may be appropriate Federal powers available in this kind of situation.

Senator BELLMON. Those houses were all built with FHA money. The Federal Government not only permitted it, they subsidized it. The same was true with the flood situation.

Until we have a land-use policy, the Federal Government has no way of knowing when it is supporting these kinds of things.

Mr. SIEGAN. With all due respect, you are asking for the millenium. You say the FHA approves it. Where are the people who know the precise think to do? Here we stop it, and here we let it go.

When you find the people, I would like to know them. After you find them, they have to go through the legislative process, and you have as a legislator to accept what they want, and Mr. Hansen has to accept it. The process of working this out appears to be very difficult. Many nice objectives of zoning have been accomplished—the

suburbs look gorgeous to me—but in the process we have hurt our society greatly because of restrictions in trying to help these little things, and have thereby enormously hurt many other things.

FHA—they are knowledgeable and they look at these things, and I know because I have had many applications before the FHA. They even tell me how to write the covenant, and how much space to put between the house.

Even they miss these kinds of things. I am inclined to think that the greatest of plans, as good as it might be, might miss the mark. When it goes through the maze of the legislative process—and I like all the things Mrs. Strong likes—it is going to be a lot different than when it starts out. When whatever is left is implemented I think there will be very little remaining from the way it started out.

Senator BELLMON. I have only one other question.

It is obvious, I think, that when zoning was expanded throughout the country, it must have been for the purpose of certain land use evils. Zoning didn't just happen.

Isn't it a fair assumption that these evils initially stem from non-planning or nonzoning? Why did we start using this zoning business in the beginning?

Mr. SIEGAN. Zoning started in 1916 because New York's Fifth Avenue merchants wanted to keep out the garment makers. It started as a monopolistic device. Here was someone who had a business on Fifth Avenue, and they said, "If we can get Government to stop other people from coming in, it is great."

This is how it started off. We all like to live with our peers or our betters, and when Government comes along and offers this device and says to us, "Here is a way of having your fondest dreams come true, our Government money is going to be used for that"; I think it is an extremely attractive offer and it has been so attractive that it has been greatly utilized.

There is only one additional factor I would like to mention, and that is that the Government, through its 701 program, has been saying to the cities, "Here is a lot of money, just go out and plan," and that has been a very important factor, also, in creating this vast maze of zoning that we have throughout the country.

Senator BELLMON. Let me ask one more question.

Professor Strong, on page 7 of your statement, you say that the Israeli experimented with a hierarchical pattern of settlements, learned that towns of 10,000 are necessary to provide the activities people want.

My problem with planning and zoning is this: Someone has to make the decisions with what to do with the land. I was present at a hearing of the Rural Development Subcommittee last week where a witness testified that it was his considered opinion, based on his knowledge of social needs of the people that the national policy of this country ought to be to allow and to help all cities of under 50,000 die gracefully.

If we get a planner making these kinds of decisions with that kind of approach, which to me is about as far wrong as it can be, how do we avoid displacing these kinds of authorities?

Mrs. STRONG. Well, I would say that we don't yet have nearly enough information on what size cities, either too big or too small, in the United States are appropriate to encourage.

I think that we can move in a direction of larger cities for the small villages that are declining, and I think New York, with its current decline in jobs and service problems is giving signs of being too big.

I don't think we are yet able to say that a specific range of cities in the United States are the right size. But I do think we can start assisting a middle span, perhaps starting with—I don't know, I might pick 25,000 to 4 or 5 million for a metropolitan area, and say I would accept that range of city to encourage.

I do think that there is enough experience, not only in Israel, but in a number of European countries, where the planners have created all different sizes from a very small village of 500 on up to a city of several hundred thousand and then have done social studies and economic studies to find out whether people want to live there or not, or whether as soon as they can get a job somewhere else, they flee.

The experience has certainly been that the communities which only offer a couple of stores, an elementary school and a church, that type of thing, do not hold people, and that people want something big enough to have a variety of activities, employment, people to meet, contacts of all sorts.

So, I think we can encourage some growth in some bigger cities, and it would be a mistake to assume that all of our present rural communities should be concerned with growth.

Senator BELLMON. Is it your feeling that anyone should made a decision as to what size communities we have, or what size communities individuals should live in?

Mrs. STRONG. I think we already do in the sense that we currently give money to support cities of various sizes.

Our programs are distributed in such a way that we do encourage growth of different sized cities without stating it as a specific policy.

I think you can change the incentives or the taxes used to encourage some cities to grow more, and I think medium sized ones, large middle ranges, should be the size to be encouraged.

Senator BELLMON. This frightens me. I am afraid when we have anyone with police powers of government saying that certain size communities should be encouraged and others not, that we make a decision that government really isn't smart enough to make.

Mrs. STRONG. Well, I disagree with you. The French found only Paris was growing, that cities of a million were not growing, because everyone was going to Paris.

So, they, as a matter of policy, picked metropolitan regional centers, and said they would give money to industry to go there, and discourage industry and commerce from coming to Paris so that we can develop a more balanced pattern.

I think most nations in Europe have been doing this.

Senator HANSEN. Mr. Siegan, do I gather from your testimony that you are saying that without zoning there will be greater opportunity for a bigger percentage of our population to live as they would prefer to live, and have greater opportunity than with zoning?

Mr. SIEGAN. Yes. Zoning is a barrier to development. The obvious example is the suburbs which have in effect erected great big walls.

They have said, "We only want this type of development. If you want any other type of development, go find it elsewhere. This is the way we want to live."

The result is that thousands and thousands of apartments in the Chicago area could be erected that are presently not erected. That is one thing.

The second is big-sized lots. When you take an area and you require 2- and 3-acre lots, you just get a smaller number of lots and those lots tend to be more expensive.

When the market operates, it may subdivide some of those areas into 2- or 3-acre lots, but it will also provide smaller lots if people want them, because that word "profit" now enters.

Profit means selling what people want. The zoning device has been one of the most restrictive devices that I know of to prevent this from occurring and to impede the development of both housing and nonhousing facilities.

Senator HANSEN. I think I got the impression from what you said that there may be some who look with disdain upon the word "profit."

Is it your feeling that profits reflect a service that is rendered to some one and an extension of basic freedom as we may recognize it in this country, which is the right and the ability and the freedom of the people to choose and pick where they want to live and what they want to do?

Is it your feeling that as we increase the opportunity for people to make choices based upon their ability to pay for those things that they feel desirable, whether it is services or a place to live, or whatever, that we extend freedom by that same measure?

Mr. SIEGAN. I would say freedom not only for the individual, but it is the way we get things done. The people who have an incentive of profit work night and day trying to sell what they have. If they cannot sell their apartments, they will have failed, and these incentives to succeed are enormous.

I have said to many planners. "If you told me you worked as hard and spent as much time as Mr. X trying to figure out how to solve a housing problem, I wouldn't believe you," because those incentives for the planner are simply not there.

But the builders I represent work 7 days a week trying to accommodate the consumer. Actually, of course, they are doing it not to accommodate the consumer. They are trying to make a profit.

But the only way they could possibly do it is if they sell their product, which means in this case housing—or ties, shirts, whatever it is, and this is the way our system works. This is the reason I think our system has shown one thing: There is no device that will stimulate production as much as the incentive or profit system. I think throughout the world we have examples every place. It is impossible for Government, it is impossible for any other nonprofit or eleemosynary group to have as strong an incentive.

The market should be allowed to operate freely, for the market controls how that incentive operates. When I built some apartment, I really wanted to rent them for \$500 a month, but the market wouldn't permit it. I had to settle for \$130 a month.

When we have maximum competition, such as we had in that case, when the restrictions are off the producers, the consumer is the man who benefits. Perhaps the word "profit" has disturbed the gentleman, but I think we ought to recognize that profit is really a conduit to the consumer being satisfied, and the consumer would be best satisfied

when there are profit incentives and when the market is very, very free.

On this thought, consider what happens in the suburbs when they allow just one apartment building to come in. The owner is in a terrific spot, because he can sometimes almost charge what he wants.

When those bars are removed and 20 buildings come into these suburbs, then they all vie with each other and the consumer wins. Go down to Houston, and you will enjoy being a tenant. A tenant is a VIP in Houston, because there is a great deal of competition. Everybody is in there trying to build, and the guy who is at the top of the scale is the tenant.

When I was in Houston, baskets of fruit were served to tenants. Compared to the Chicago area tenants are given courtesies that to me seem out of Mars, and that happens because there is a great deal of competition. Nobody has come in there to say that even though the market wants a thousand units, you can only build 100 units. That is what the zoning process has done. That is why I consider it in this day and age as almost evil, and the only cure for it is to simply get rid of it, not by having new kinds and new devices and new planning and these vast utopian ideas.

Let the market operate as it has with ties and with shirts, and you will have a lot of VIP's like you find in Houston, and they are the tenants.

Senator HANSEN. One argument I make for zoning is that without it we are likely to see developments built and sewage systems overtaxed and many other hazards that come about as a byproduct of uncontrolled development that is not in the public interest.

Do I gather from your statement that you feel in this area that the State and the municipalities have police authorities that they can exercise in order to see, as I think you pointed out, Houston had denied a permit to build a certain type of apartments. The reason was that there was not at that time in existence a sewage capability to support it. So, rather than stopping it by virtue of zoning, it was stopped through the police power authority of the city to say, "No, this will not be permitted because there are other considerations that override your right to do what you want to do in an area."

Mr. SIEGAN. That is right, and it gives respect for government, because everybody understands that. Everybody understands that when you have a sewer system that can only accommodate *X* number of units and when you want to treble the number of connections, it simply can't work. There is respect for government, when everybody understands that that was a necessary thing that had to be done.

In my article, I go into it. In fact, it costs a lot of money to put some of those things in. And you will find that Houston benefits very greatly from having operated that way.

Senator HANSEN. I would like to ask Mrs. Strong a question.

You say on page 1 of your prepared statement, Mrs. Strong, about the middle of the sheet, "In 1949, Congress set a goal of providing a decent home" for every American family.

My question is, and I certainly do agree with that objective, do you relate the fulfillment of this goal in any considerable degree to the passage of a nationwide zoning ordinance?

Mrs. STRONG. Not a zoning ordinance; No.

Senator HANSEN. Land use policy?

Mrs. STRONG. Yes, indeed. I feel the reason it has failed has already been touched on by Mr. Siegan. I certainly agree with him that zoning has been distorted by the local communities and used for exclusive purposes. I feel it is only when we have not only the commitment to build the 26 million units but also some way of parceling out that commitment and saying that the States have a responsibility in relation to their current population to accommodate a certain number of those low-income units in their States, and that they then pass this down to the local governments where it is going to be achieved.

So that I feel that part of the plan has to say that people of all income levels should by a certain time—we have set a 10-year target in the most recent housing act—shall have decent housing, and that the plan the States submit will have to show to you how it is going to be achieved, and that that will be part of the responsibility of the Federal Government to see that the States meeting of that is enforced.

Senator HANSEN. On page 2, Mrs. Strong, you speak about how are we doing for the other 40 million Americans, the non-urban ones.

However, since 30 percent of these rural people have incomes below the poverty line, you say, much of the household is wretched.

Would it be your feeling that a nationwide land use planning ordinance would assure that every home would have to be a modern home?

Mrs. STRONG. No, I don't think age has anything to do with it. I think the condition of the house, though, whether it has indoor plumbing.

Senator HANSEN. That is what I mean by modern.

Mrs. STRONG. I am sorry. I mistook you. I thought you said "new".

Senator HANSEN. Should everybody who wants a home be able to afford it?

Mrs. STRONG. I think we should make it possible.

Senator HANSEN. How?

Mrs. STRONG. By the income subsidy route.

Senator HANSEN. How do you plan to provide the money for that?

Mrs. STRONG. By taxing people who have more money.

Senator HANSEN. Oh.

Do you feel that people who come from homes without the advantages of indoor plumbing are not able to succeed as well as those who have had indoor plumbing?

Mrs. STRONG. I don't think I have seen such a study, no.

Senator HANSEN. Do you believe it might be demonstrated?

Mrs. STRONG. I think you might say that that is why many of them are leaving the rural areas, because it is impossible to earn enough to provide themselves a decent house. They are making the choice to go.

Senator HANSEN. Would you think that if you were to go into many areas of rural America, and there are a great many—despite the fact that there are fewer than there were a number of years ago, but would you think that the ability to live satisfactory lives is demonstrably less in those areas where people are denied what most would consider essentials, indoor plumbing and so forth? Would you say the quality of life is poorer there than it would be in any other area of America?

Mrs. STRONG. No, I certainly would not. I think there are so many advantages in the rural area that the absence of so many of the stresses and pressures of the crowded cities—you are asking me personally—I would go without the toilet and still have a beautiful view and clean air, clean water, a stream to swim in, a lot of those other things that when you leave the rural area and go to central Philadelphia or Chicago or New York you abandon.

No; I wouldn't say that.

Senator HANSEN. Do you think that the Federal Government is capable of implementing laws and guidelines that will be satisfactory and responsive to the needs of people throughout all the 50 States to a greater degree than would be the case if each State attempted to work out its own guidelines?

Mrs. STRONG. Yes, I do.

In the overall objectives in types of opportunities for housing, for education, to be able to move to get a job, to open up transportation systems, to protect environmental areas—major goals; yes.

Senator HANSEN. Would it be your feeling that the U.S. Government would move into Alaska and say, either you are going to build a house of a certain kind with all of the modern devices—or would you think it might be indicated to move the people out of there?

I am thinking about the Far North where it is very cold, and I am wondering how you would achieve the standard that I suspect you have in mind for people everywhere in that area.

Are you willing to subsidize the Alaskans and the Indians and the Aleuts up there, and provide them with the kind of home that you feel would be acceptable, or would it be a better part of wisdom to bring them down where it wasn't so expensive?

Mrs. STRONG. No; I would not. If they wished to stay, I would feel they have the opportunity to stay, and the quality——

Senator HANSEN. Let me interrupt you. Then you would hold in abeyance those national guidelines that you would propose generally; would you?

Mrs. STRONG. No, no. I didn't say that. I said if I set standards that people were entitled to, then I would provide the subsidies to make it possible for the people in the Far North, of Alaska, to have that kind of environment.

Senator HANSEN. Do you have any idea what it might cost?

Mrs. STRONG. No.

Senator HANSEN. Thank you.

Senator FANNIN. I certainly agree with some of the goals that you profess, both of you, and I think that we all would like to provide an adequate home for every American, but we must be realistic about the problems that we face as a nation.

At the present time, we have great fiscal problems, and we face a deficit of perhaps more than \$20 billion this year.

If we carried through with some of the programs which we would hope could be carried through—but we have to be quite realistic about it—we would have a bankrupt nation.

Mrs. STRONG. Not if we got out of Vietnam.

Senator FANNIN. I don't think that has anything to do with it.

Mrs. STRONG. If we wish to consider the defense budget, we can.

Senator FANNIN. I am glad you brought that up, because let me give

you an illustration: Japan spends less than eight-tenths of 1 percent on defense. The Japanese people, fewer than 20 percent of them have modern plumbing facilities as of today. Did you realize that?

Mrs. STRONG. Yes. What did they start from after the war, however?

Senator FANNIN. They have been going on for years and years, so the war doesn't enter into that. Those isolated areas were not affected by the war to that extent. They were not rebuilt and all, if that is what we are referring to. But it is a rarity to have a hot water heater, and this was before the war, and where we here in the United States, most of our people do have modern facilities.

I don't think you can blame it on the war, and I think they have a great economy now. They have a much faster developing economy than we have. It is the fastest developing economy in the world.

But just to get to specifics, I wish we could have one plan, and we could adopt it nationally, but that isn't possible.

I think you both realize that there is such a variance of conditions throughout the United States. Let's take the Western States, for instance. I don't know how you could get by without having land use planning, and we have spent 5 years on the Public Land Law Review Commission trying to work out what can be done in coordination with our local and State governments where we can have the goals and guidelines, and have the standards, perhaps to a certain extent, but that we would be realistic as to the variations and the problems that exist.

Now, in my State of Arizona, I don't know how we could develop subdivisions without having some land use planning program, and we have not had the planning programs that I wish we could have had over the years.

But here you have a desert area. You have the areas that have developed first near the cities, and then you travel out into the rural areas and you have increased developments.

We have several new cities now that have been developed in the last years. Others are planned in Arizona. I think this is necessary, though, to accommodate the people that you are talking about, that there has to be an overall plan, because with that planning, we must develop industries or means of livelihood for these people.

So, without the land use planning, I just can't understand how you would handle a situation like this: How would you handle a situation where you develop one subdivision, maybe a good, modern one, and then say a mile from there, upstream, on the little washes they decide to have another subdivision.

In so doing, they affect the flow of the water that has been coming down through these areas over the years, and so it is dispersed out.

What would you do without the land use planning?

Mr. SIEGAN. I don't know that it is a land use planning problem again. I think it is a question of adequate utilization of sewer and water facilities. I can only tell you this, that—you have been in Houston. There are magnificent subdivisions.

Senator FANNIN. That is a flat, level area. Compared with what we have in the Western States.

Mr. SIEGAN. When you give me a specific question like that, I can't answer it, but I can say this: In Houston, they are making it. There are some subdivisions that are magnificent, others that are not. They have restrictive covenants with the private market.

I am inclined to think that in those areas where the private markets can't handle it, let those be handled by government.

Senator FANNIN. We have been very forward in our developments. As I say, we do have these new cities, and we are developing another new city now, with schools and colleges all combined. We have the Sun City, which is a retirement city.

Mr. SIEGAN. Aren't they working out, though?

Senator FANNIN. Yes.

Mr. SIEGAN. Are they controlled by zoning, or covenants?

Senator FANNIN. By zoning, generally.

Have either of you heard of a new high rise, open field program that they are working on now? In other words, they will have a high rise apartment and then they will have it surrounded with open areas.

Say they are going to develop a subdivision. They will have, say, 360 acres. They will have a golf course and whatever it might be—parks, playgrounds, fishing, and whatever might be available—but this will be in a development where they use high rises, and they furnish them with the conveniences that you would not be able to have if you had just, say, four homes to an acre or three homes to an acre, or some instances where they have one home to an acre.

Do you see any possibility of working out a program like that?

Mr. SIEGAN. Senator, I assume that is privately done. I assume that the kind of thing you are talking about was done with land planners employed privately, and that I approve very, very heartily. But there is a difference between doing that kind of thing and doing zoning.

If that doesn't work out, such as Reston didn't work out, the zoning may prevent the development from accommodating to conditions.

The kind of thing you are talking about, if it is incorporated in a zoning ordinance and doesn't work, you may be stuck with it. If it is incorporated in a privately developed system, the system will accommodate because the purpose will be to provide consumer acceptance.

Senator FANNIN. Flexibility of zoning, I think, would be essential. I can't understand, however, how we can possibly develop a State or develop a community and the areas surrounding it unless we have zoning.

Here we have Indian reservations, where we don't have zoning. Twenty-seven percent of our land in Arizona is owned by Indian people. If we didn't have zoning, we could have stockyards built just across the border of a subdivision.

Mr. SIEGAN. I brought a lot of land use maps with me. I don't really think there is enough time to show them. But I have maps of cities which have never had zoning—Baytown, Tex.; Laredo, Tex.; Wichita Falls, Tex.; never any zoning—and then I will show you land use maps of cities that do have zoning of comparable size in Texas.

You can't tell me on the basis of location of industry, which is zoned and which isn't.

Are you familiar with those towns?

Senator FANNIN. I am not.

Mr. SIEGAN. Baytown, Tex., is an ideal example—45,000 people, and they don't have zoning.

Senator FANNIN. I think we have exceptions, and we can have illustrations such as you are giving.

Mr. SIEGAN. This is true of every one of them.

Senator FANNIN. We spent several hundred thousand dollars for these surveys and they are available on this zoning matter, and I hope that you do obtain the studies that have been made.

Overall, there is a problem.

How do we handle programs, how could you set standards, and I know that when we talk about setting standards and having basic national land use policies, do you mean taking over all the authority?

Mrs. STRONG. Good heavens no. Only very broad terms by which one would judge the State plans.

Senator FANNIN. You are setting guidelines. I agree with that. But I would not want to go to the point where you make local decisions.

Mrs. STRONG. Good heavens. Certainly not.

Senator FANNIN. My reading of your statement is misleading. I may have misinterpreted what you said. I was not here when you made your statement, but I will study it further, because I am interested in what you both have said, and I don't know that you are in agreement.

I see that there is evidence of disagreement on what should be done. But as I see it, Mrs. Strong, you would advocate that we do have this coordinated effort between the Federal Government, the cities and the States in the land use planning, and that is a similar program to what has been recommended by the Public Land Law Review Commission.

I would say that it would be the same as your amendment. I have had no chance to study your statement, but I know it is similar to your statement.

Mrs. STRONG. My objection to the current legislation really goes to the fact that I do not see substantive Federal guidelines in the current legislation.

Senator FANNIN. Of course, I don't think that you realize what we are up against now when we talk about subsidies.

We are not in a position to carry through the present programs from the standpoint of our financial ability, and we can't just say that when we are out of Vietnam all these matters will be settled, because countries not involved in Vietnam and who are spending very little money in this regard, are still having more serious problems than we are having.

Mrs. STRONG. I think you have to consider the base from which each nation begins from the time you are talking about it, and what percentage of its GNP it puts toward various things such as environmental protection, housing, highways, and so forth.

What I am saying is that if we have a statement of goals for land use and urban growth that this will necessarily bring about a change in our spending patterns. I certainly feel that if we don't, it is futile to adopt a policy.

Senator FANNIN. I hope that someday we will be able to carry through some of your recommendations, but I say frankly that now I would certainly oppose any additional subsidization that would get our budget in further difficulty, and we certainly, if you will watch the news in the months ahead, you will realize that what I am talking about—

Mr. SIEGAN. Senator, I would like to comment on one point you have already made. If we didn't have the zoning restrictions, we would have thousands and thousands more apartments in the suburbs

at no cost to the Federal Government. Housing problems would have been alleviated to some extent. I can't tell to what degree, but there would be a great deal more housing in this country at zero cost to the Government, and that is something I think should be very carefully considered.

Senator FANNIN. I will study it, but I can't agree with you. At the same time, I have not had the privilege of studying your statement, and I know you spent time preparing for your remarks here today. I appreciate your being here, and it is a privilege to have you with us, and we benefit greatly whether we agree with you or not.

We certainly can be guided and influenced by what information is available through sources such as you have given us, and we are very appreciative.

Thank you very much.

Senator HANSEN (presiding). Senator Jackson has asked me to announce that there are 10 witnesses remaining to testify. He points out that this will be a busy afternoon on the Senate floor, which means that we will be going and coming in order to respond to rollcalls on other business as may develop on the floor.

The chairman invites each of you to file your statement with the reporting clerk if you would care to do so, and in the event that you do not, in order that each of the witnesses might be heard, he points out that it will very likely be necessary to limit the time for individual statements.

I think what he is saying is that he would hope you might consider condensing your statement down to a very short statement, perhaps not more than 5 or 10 minutes, in order that we could get the thrust of your concern, with the understanding, of course, that your full statement would be incorporated in the record.

Did you have a statement?

Mr. LANDSTROM. My name is Karl Landstrom. I would like to file my statement for the record, and I will not be here this afternoon.

Senator HANSEN. Very well.

If there are others, please leave the statement with the reporter.

Having said that, the committee will stand in recess until 2:30 this afternoon.

Thank you very much.

(Whereupon, at 12:45 p.m., the committee recessed, to reconvene at 2:30 p.m. of the same day.)

(Mr. Landstrom's statement follows:)

STATEMENT OF KARL S. LANDSTROM, ARLINGTON, VA.

My name is Karl S. Landstrom. My address is 510 N. Edison Street, Arlington, Virginia 22203. I am a member of the American Agricultural Economics Association, the American Society of Range Management, and the Natural Resources Section of the American Bar Association. My comments before the Committee, however, are my own, not necessarily reflecting the view of these professional organizations.

Because of my background in land use planning and Federal lands administration, I have followed the progress of these pending bills with great personal interest. As an employee of the Department of the Interior a year ago, it fell my duty to attend the hearings on S. 3354 and to advise the Office of the Secretary regarding the legislation. I attempted to aid in coordinating the Department's consideration of the bill with similar functions in the Department of Agriculture. I recall receiving information from an office in the latter Department pointing out an

important asset of the bill, namely, that it would tend to overcome what may have been a mistake made by the Congress when it established the Water Resources Council in that planning for water resources was to be separated from planning for land resources except (under the administrative interpretation) when the two classes of resources were physically related.

As an individual Government employee, I for some years have advocated enlarging the scope of the Water Resources Council and its constituent regional commissions so as to encompass natural resources. I much prefer the Council device over assigning this function to a particular Federal agency, even though it might be a new Department of Natural Resources. This is one of the reasons that I have enthusiastically supported S. 632 and its predecessor bill whenever I have had the opportunity.

It may be well to note for the record that about a year ago, the Department of the Interior's representative before the Public Land Law Review Commission stated his belief that the Water Resources Council should be converted into a Land and Water Resources Council. As of about a year ago, it may also be noted, most of Interior's bureaus and agencies favored enactment of S. 3354, if amended in certain respects.

When I first entered into the land use planning profession, in 1938, I encountered a general belief that what was then called a "national land policy" was well on the way toward becoming a reality. Dr. L. C. Gray, the founder of land use planning in the Department of Agriculture, wrote in that year, for example, that "rapid progress toward realization of a national land policy for the United States has been one of the outstanding developments in agriculture and conservation during recent years."

Why, over three decades later, do we in this country not have a more viable national land use policy? Time does not permit me here to provide my answer. Suffice it to say that I agree with Senator Jackson that a policy vehicle is needed. I believe that S. 632 provides a framework for that purpose.

In the interest of conserving the Committee's time, I shall forego the opportunity of giving my reasons in further detail for supporting S. 632, and content myself with presenting the text of certain amendments which I urge the Committee to consider.

1. RIVER BASIN COMMISSIONS

The bill should be amended so as to eliminate the term "river basin commission" and substitute "regional natural resources commission" or something equivalent. The term "river basin" has been and is misleading in that it implies that primary or sole consideration will be given to rivers or river waters, rather than generally to natural resources within the geographic area concerned.

In keeping with this principle, the proposal contained in Sec. 201(c) allowing existing "river basin commissions" to continue in existence in unmodified form should be stricken. Instead, a limited time should be specified within which an existing commission must be converted into a new commission.

2. INTEGRATION OF LAND AND WATER RESOURCE CONSIDERATIONS

The text of the bill unwisely continues the practice of making arbitrary distinctions between "land" and "water." For example, the term "land resources" in Sec. 102(a) arbitrarily excludes water resources without apparent reason. The same is true of Sec. 102(b).

The existing term "water and related land resources" would be continued in various places in the bill, in a manner out of keeping with the bill's intention to convert the Water Resources Council and the regional commissions into natural resources organizations of comprehensive scope. The term "water and related land resources" should be replaced by either "land and water resources" or "natural resources."

The term "land use planning" as used in the bill should be defined or described in the report as encompassing planning for water resources as well as for land resources, or planning for natural resources generally.

3. MEMBERSHIP OF REGIONAL COMMISSIONS

In keeping with the above suggestions, Sec. 202(c) should be amended to provide that one member of the commission shall come from each State which lies wholly or partly within the "region," rather than within the "area," "river basin," or "group of river basins."

4. SCOPE OF STATE AND LOCAL GOVERNMENTAL LAND USE REGULATION

The first sentence of Sec. 301(d) appears to be based on a mistaken notion that the general governmental (police) power exercised by the States and local governments in regulating private land-using activities within their boundaries does not extend to such activities when conducted on lands held in the title of the United States. As the Committee knows, the United States holds only proprietorial jurisdiction over the bulk of its real properties. Exclusive legislative jurisdiction over private land-using activities within the areas occupied by such Federal lands resides in the States or in the local governments to which such jurisdiction has been delegated. This legislative jurisdiction carries with it the power, free from interference from the United States, of regulating private land uses on Federal proprietorial lands, except insofar as such regulation is not inconsistent with the Federal Government's own use of its property. This important matter should not be overlooked.

I have prepared a research paper on this matter, and I shall be glad to advise the Committee further regarding it if the Committee should desire.

In order to conform the first sentence of Sec. 301(d) to the law as I understand it, I would suggest the following language:

"(d) The Congress further finds that, although the primary responsibility and authority for regulating land-using activities, except in the case of areas over which the United States holds legislative jurisdiction, rests in the State governments, it is increasingly evident that the manner in which this responsibility and authority is exercised has a tremendous influence upon the utility, the value, and the future of Federal land-using activities as well as non-Federal land-using activities within areas over which the United States holds legislative jurisdiction, such as in certain national parks and other classes of Federally owned areas: . . ."

For the same reason, the first sentence of Sec. 303(a) should be amended to read:

"(a) to establish a national policy to encourage and assist the several States to more effectively exercise their constitutional responsibilities for regulating non-Federal land-using activities on Federal lands and non-Federal lands, except in case of areas over which the United States holds legislative jurisdiction, through the implementation . . ."

And the term "Federal lands," as it appears in Sec. 303(f), and the term "non-Federal lands," appearing in the same subsection, should be amended to read "Federal land-using activities," and "non-Federal land-using activities," respectively. This same adjustment of terms is also needed at Sec. 304(b)(4).

5. NATURE AND SCOPE OF THE STATE LAND USE PLANNING AGENCY

Sec. 305 would require each State to carry out land use planning and administrative land use regulations or programs through a single agency, in order to qualify for Federal grants-in-aid. This could be awkward. It certainly is arbitrary and could be impracticable. Choice of institutional arrangements should be left up to the State, so long as the required functions are adequately provided for in an over-all manner. Note that the Federal Government does not follow a standard of carrying out all such functions through a single agency. Appropriate adjustment is also needed at Sec. 305 (c) and (e).

6. GEOGRAPHIC SCOPE OF STATEWIDE LAND-USE REGULATIONS

Sec. 307 appears to assume that an "approved statewide land use plan" and presumably the implementing land-use regulations, will apply in an "area" within which a Federal agency is "conducting or supporting activities involving land use." For reasons indicated under paragraph No. 4, above, such an assumption is unfounded. The State land-use planning and regulating agency or agencies will be concerned with land-using activities to be conducted by the State agencies, local governments, and private interests, including such activities to be conducted on Federal proprietorial lands. The "approved statewide land use plan" is not apt to cover in any comprehensive way the land-using activities to be conducted by the Federal agencies under Federal programs, although ideally the statewide land use plan would be coordinated fully with Federal agency plans for conducting such Federal activities, and vice versa. For this reason, the phrase "inconsistent with an approved statewide land use plan" appears to lack clear meaning.

The last sentence of Sec. 307(a) and of Sec. 307(b) should be stricken. As a substitute, the text of the bill might be amended to include an expression of a policy of the Congress that Federal agency land use plans should be made consistent with approved statewide land-use plans whenever feasible in the judgment of the head of the agency.

I much prefer S. 632 over S. 992 because S. 632 is fully comprehensive in dealing with the matter of land use planning, whereas S. 992 deals only with so much of land use planning and programming as may be necessary to provide for the maintenance of environmental quality. In this sense, the title proposed in Sec. 1 of S. 992 ("National Land Use Policy Act of 1971") is a misnomer. Nevertheless, there are some elements contained in S. 992 that merit consideration for inclusion by amendment into S. 632, and other elements of S. 992 that I consider objectionable unless substantially changed or amended. I shall briefly list these respective elements in the remainder of my paper.

1. FINDINGS AND DECLARATIONS OF POLICY

Much of Sec. 101 of S. 992 could be incorporated into Sec. 301 of S. 632. However special care should be given to overcoming the erroneous assumption implicit in Sec. 101(b), namely that State land-use regulatory authority does not extend to non-Federal land-using activities conducted on Federal proprietorial lands. (See discussion on pages 2-3 above).

2. PROGRAM DEVELOPMENT GRANTS

My reaction to Sec. 103 of S. 992 is that it goes beyond the scope of S. 632, which is concerned, so far as Federal grants-in-aid are involved, with making grants only for "land use planning," which is understood under the bill's provisions to include such functions as: (1) preparing inventories; (2) compiling and analyzing data; (3) providing technical assistance and training; (4) arranging for cooperative planning; (5) using common data bases; (6) exchanging information; (7) conducting hearings; (8) preparing reports; (9) soliciting comments; and (10) conducting related planning and coordinating functions. By contrast, Sec. 103 of S. 992 would authorize grants-in-aid "to assist in developing a land use program . . ." In ordinary governmental parlance, program development goes beyond the various elements of "planning" as enumerated above, and gets into what is sometimes called "project development," which would include such functions as surveys, designs, cost estimates, scheduling, budgeting, and public information.

In order to retain the basic premise of S. 632, which is that Federal grants-in-aid are needed to bring about a more satisfactory level of *planning* in the States, only so much of the provisions of Sec. 103 of S. 992 as encompass *planning* should be incorporated by amendment into S. 632. The remaining elements of S. 103, going beyond the scope of *planning*, should be reserved for separate legislative consideration within the scope of proposals for grants-in-aid to stimulate State and local governmental programs in aid of environmental quality preservation.

3. PROGRAM MANAGEMENT GRANTS

The function of managing State land use programs, which have been developed for the purpose of conforming to environmental quality standards, goes far beyond the scope of S. 632, which, as stated above, deals only with grants-in-aid for the function of *planning* for the use of natural resources generally, and then not merely on account of environmental quality considerations, but on account of general human welfare considerations not excluding environmental quality.

Accordingly, I believe that the provisions of Sec. 104 and all the remaining sections of S. 992 are insufficiently germane to the contents of S. 632 to warrant efforts at consolidation. Instead, these portions of S. 992 should be separately considered within the scope of proposals for grants-in-aid to stimulate State and local governmental programs in aid of environmental quality preservation.

In any event, I would object to the provision of the first sentence of Sec. 106(a) of S. 992, which would apparently attempt to require that all Federal projects and other activities "significantly affecting land use" be made "consistent" with the State land use programs to be funded under the bill "except in cases of overriding national interest." This latter phrase, in my judgment, is insufficiently precise to be effective. Perhaps my bias as a former agency administrator shows through when I suggest that consistency with State programs not be required where, in

the judgment of the agency head, such consistency would violate the policies or standards governing the Federal activities in question.

This completes my statement. I appreciate the opportunity afforded by the Committee to participate in these hearings.

AFTER RECESS

(The committee reconvened at 2:35 p.m., Senator Quentin N. Burdick presiding.)

Senator BURDICK. We have several witnesses left, and the chairman has announced that he would appreciate it if the witnesses would summarize their statement and be as brief as possible, so that we can possibly get through with the hearings.

In any event, the full statements that you have will be made part of the record, and I hope you can cooperate with that admonition of the chairman.

The next witness will be Herman Ruth, planner, Berkeley, Calif., director, American Society of Consulting Planners.

STATEMENT OF HERMAN D. RUTH, PLANNER, BERKELEY, CALIF.; AND DIRECTOR, AMERICAN SOCIETY OF CONSULTING PLANNERS

Mr. RUTH. Mr. Chairman, I have a statement which I have filed with the committee, and I will not try to go through it. I will summarize in the interest of time.

It is a privilege to be before your committee once again. I was here approximately a year ago and presented testimony on S. 3354. I am Herman D. Ruth, and I am representing the American Society of Consulting Planners.

Our society supports this bill and we will be pleased to see it enacted.

While the States have power to develop, only a few—notably Hawaii—have developed plans as contemplated in S. 632. Many actions by the States, such as expenditures for Hawaii development and water resources and higher education and other institutional developments, direct and influence the location and the magnitude of local government and development.

S. 632 will encourage States to undertake the preparation of statewide land use plans. This is an important step and long overdue.

Until very recently development was the objective of planning. Now planning proposals are being examined for their immediate and long-term impact on environment in addition to the inclusion of development proposals. Statewide land use policies and statewide land use plans can provide the basis for reconciling development and conservation in the best interest of the public.

We support the proposed legislation for the following five reasons: First, the States will be encouraged to develop land use plans and State land use policies. Such plans and policies will provide a basis for making rational decisions vis-a-vis development and conservation programs.

Second, the States may encourage their political subdivisions to develop, extend, and modify existing planning programs as a contribution to and as an extension of State land use policy.

Third, there exists in the States council of governments centered on the metropolitan areas which have been engaged in intrastate regional planning programs.

Fourth, the expansion of the existing river basin commissions will provide a basis for multistate regional planning for land and water centered on the river basins.

Fifth, the creation of a land and water resources council to study Federal policy and programs involving land use and to make recommendations concerning such Federal policy and programs may provide the basis for the development of a land use policy.

While we support S. 632 in its present form because of the urgent need for such legislation, we may in passing say that there are some considerations which may warrant further study.

First, we think there is little in these bills that would insure the emergence of a national land use policy. It may be that after the first 5 years of operation that the Land and Water Resources Council can bring such a statement to the Congress for consideration and adoption. In national land use policy we should find legislative expression so that the States may be guided by it to fulfill the objectives envisioned in S. 632.

A land use policy is determined by social and economic objectives and even political objectives of the community. Land use policy and development and conservation actions are interrelated and indivisible. S. 632 would benefit from a preamble or declaration of policy which recognizes these interrelationships.

Many policies pertaining to development or socioeconomic programs influence land use policy, and land use policy, in turn, influences development and socioeconomic programs.

Land use policy and planning must go together and go beyond the intrinsic characteristics of land, the environmental impact of development proposals and provide greater recognition of the impacts of the socioeconomic programs of land use and land use policy.

We would look to devices in addition to traditional zoning and being more significant to the implementation of statewide programs. The impact of fiscal taxing and investment policy will shape the pattern of growth far more directly than zoning and other similar regulatory devices.

The Land and Water Resources Council and the States should have legislative authority to explore and determine how such policies, fiscal, taxation, and investment, cause development to come into being and their effect on the exportation of our resources and the quality of the environment.

To suggest that the States, as the bill does, cannot plan Federal lands within the States or the lands within cities containing more than 250,000 people is really a retrogression in the art and science of comprehensive planning. While many States do plan Federal lands, they cannot commit them to use, development, and conservation purposes without approval of the Federal Government.

States should have legislative authority to plan the Federal lands within them to provide a dialog which will clarify State land use policy and may influence Federal policy decisions on Federal land holdings?

The other element dealing with the limitation on the size of cities, I think, warrants further consideration. Urban growth is a component of State and National land use policy, whether it is incorporated in the State and National land use policy legislation.

In addition to the expansion of the existing river basin commissions to provide regional planning for land and water in multistate jurisdictions centered on river basins as proposed in S. 632, the bill should provide for the coordination of the work of multistate regional economic agencies such as the Appalachian and Four Corners, and all other regional agencies that bear on land use policy and development. There is a need for administrative machinery to reconcile land use policies and economic objectives so that both cause the maximum improvement to depressed regions.

There is also the need to reconcile the differences that grow out of pursuit of single-purpose activities with regional economic improvement and land use policies.

The funding and the Federal-State matching arrangements at the proposed 90-10-percent level should provide an incentive to the States to develop land use policies. The sanctions proposed in S. 632 are less severe and less likely to discourage continuity of statewide planning than S. 992. However, the threat of the loss of funds for land acquisition and improvement as in, for example, the administration of the land and water conservation fund may be considered after the States have prepared statewide land use plans or after the 5-year program.

An alternative method may be to require demonstrated progress each year in order to receive additional planning moneys and/or funds for land acquisition and development.

In conclusion, I would say we support S. 632 because it provides the essential structure for the encouragement of land use planning at all levels of government. If the States can be encouraged to pick up their responsibilities for comprehensive land use planning and the formulation of land use policy, we shall be able to accommodate growth and development which we know are sure to come, with the concern for the preservation, indeed the improvement of our environment.

I might say, Mr. Chairman, that I have if the Senate committee would like, another paper, which I will not attempt to read, which is entitled "Elements of a National Policy for Land Use," which I presented a couple of months ago at the American Society of Planning Officials conference, and in that I described some nine elements and why they should be included in such a national land use policy.

Thank you.

Senator BURDICK. Without objection, your extra statement will be included in the record.

I think in your testimony you suggested that S. 632 is a little weak when it comes to the national land use policy.

Mr. RUTH. I don't see any device in the bill which will enable a national land use policy to emerge. It is perhaps assumed that the States, when they develop State land use policies, that that will be the national land use policy, and in my testimony a year ago I suggested, and suggest now, that that will never happen, and that they will have to provide machinery, administrative machinery, to reconcile differences among States to find some objectives.

I have some feeling that perhaps it may be a bit premature to put in legislation right now what is a national land use policy. I think the proposed bill will provide the machinery, the mechanism to stimulate interest at all levels of government, including the Federal Government, so that at the end of perhaps 5 years the Land and Water Resources Council will be in a strong position to make recommendations to the Congress as to what a national land use policy may contain.

Senator BURDICK. If this spelled out a national land use policy, it would be taking away some of the prerogatives of the grass roots. I think the theory of the bill is that the grass roots are going to meet and devise a plan out of the cauldron of the many States.

Mr. RUTH. I am thoroughly in accord with that. I think that is why the legislation is important, because the missing link in the structure of the hierarchy of governments in planning is at the State level.

States, except for a few, have not prepared comprehensive land use plans. If States do, in working with their council of governments and the metropolitan agencies and the local governments as well, they may create a reconciliation of land use objectives in the same way the interstate river basin commissions, which if expanded would be land and water basin commissions, would find that they have to work with the States to reconcile their differences.

Out of all that, that is why I say that in perhaps 5 years we may be in a position to develop a land use policy.

Senator BURDICK. Have you an additional factor here? There will be deadlines for the States to follow that perhaps go directly to the national policy, too, or go in that direction.

Mr. RUTH. That is very true.

Senator BURDICK. Senator Stevens.

Senator STEVENS. I have no questions.

Senator BURDICK. Thank you.

(Mr. Ruth's prepared statement follows. The supplemental statement is in the appendix.)

STATEMENT OF HERMAN D. RUTH, PLANNER, BERKELEY, CALIF.; AND DIRECTOR,
AMERICAN SOCIETY OF CONSULTING PLANNERS

Mr. Chairman, members of the Committee on Interior and Insular Affairs, it is my privilege to appear before your committee in connection with S. 632 and S. 992. My name is Herman D. Ruth and I am chairman of the legislative committee of the American Society of Consulting Planners. Approximately one year ago I appeared before this committee and presented testimony on S. 3354. We are pleased to see that some of those suggestions have found their way into S. 632. Our Society supports this bill and would be pleased to see it enacted into legislation.

While the States have the authority to plan for development and conserve their resources, only a few, notably Hawaii, have developed plans as contemplated in S. 632. Most States have delegated this authority to the local governments—the cities, townships, and counties within the States. Local government is encouraged to plan for its future growth and development and to regulate that growth through the enactment of zoning and subdivision ordinances. However, many actions by the States, such as expenditures for highway development, water resources, and higher education and other institutional developments, direct and influence the location and the magnitude of local growth and development. S. 632 will encourage States to undertake the preparation of statewide land use plans. This is a most important step and, perhaps, long overdue. The preparation of statewide land use plans will cause States to plan for the twin issues of development and conservation.

Until very recently development was the objective of planning. Now, planning proposals are being examined for their immediate and long term impact on the environment in addition to the inclusion of development proposals. State-wide land use policies and statewide land use plans can provide the basis for reconciling development and conservation in the best interest of the public. At a minimum, the goals and the issues would be articulated as a basis for planning. Enactment of S. 632 may provide the governmental structure and financial support for stimulation for wider intergovernmental planning and the resolution of land use plans among all levels of government.

The American Society of Consulting Planners supports S. 632 because it will provide the following:

Firstly, the States will be encouraged to develop land use plans and State land use policies. Such plans and policies will provide a basis for making rational decisions vis-a-vis development and conservation programs.

Secondly, the States may encourage their political subdivisions to develop, extend and modify existing planning programs as a contribution to and as an extension of State land use policy.

Thirdly, there exists in the States council of governments centered on the metropolitan areas which have been engaged in intra-state regional planning programs. The rationalization of this work with State development and conservation objectives on one hand, and the local government units that make up the council of governments on the other, will provide a statewide coordinated and, hopefully, integrated land use plan.

Fourthly, the expansion of the existing river basin commissions will provide a basis for multi-state regional planning for land and water centered on the river basins.

Fifthly, the creation of a Land and Water Resources Council to study federal policy and programs involving land use and to make recommendations concerning such federal policies and programs may provide the basis for the development of a national land use policy which would reflect objectives generated at the local, intra-state regional, state, interstate regional and the national levels of government.

LEGISLATIVE EXPRESSION TO A NATIONAL LAND USE POLICY

While we support S. 632 in its present form because of the urgent need for such legislation, there are several features which we believe may warrant further consideration. While S. 632 and S. 992 are designed to establish a "National Land Use Policy" there is little in these bills which would insure the emergence of a National Land Use Policy. It may be that after the first five years of operation that the Land and Water Resources Council can bring such a statement to the congress for consideration and adoption. A National Land Use Policy should find legislative expression so that the States may be guided by it to fulfill the objectives envisioned in S. 632.

RECOGNITION OF SOCIAL AND ECONOMIC OBJECTIVES

Land use policy, whether for the State or the National Government, cannot be approached solely from the point of view of the physical or intrinsic characteristics of land itself, or even from the point of view of environmental quality. Land use policy is determined by the social and economic objectives, yes, and even the political objectives of the community. All levels of government in our federal system must be concerned with land use policy if such policy is to influence decisions bearing on development and conservation; private investment and economic improvement; land, water, and air consumption and the quality of the environment; the rising demand for fuels and energy; diminished open space and the quality of the environment; and the improved quality of life for all of its citizens.

Land use policy and development and conservation actions are interrelated and indivisible. S. 632 would benefit from a preamble or a declaration of policy which recognizes these interrelationships. Many policies pertaining to development or socio-economic programs influence land use policy, and land use policy, in turn, influences development and socio-economic programs. The policy of a major corporation to locate its headquarters out of a metropolitan city or to build plant facilities in small cities, or the determination of the defense department to support particular weapon system programs or installations, bear directly on land use and land use policies. Welfare policies of particular states,

job opportunities and employment patterns, and considerations of the quality of life have direct bearing on land use and land use policies. Land use policy and land use planning must go beyond the intrinsic characteristics of land, the environmental impact of development proposals and provide greater recognition of the impact of socio-economic programs on land use and land use policy.

FISCAL IMPACT ON LAND USE POLICY

The bills are structured to produce statewide land use plans which will be implemented by regulations, probably some form of statewide zoning. As important as zoning is, it appears that when we move to the State level we should look for additional devices as more significant to the implementation of statewide plans. The impact of fiscal, taxing, and investment policies on public facilities and private development will shape the pattern of growth far more directly than zoning and other similar regulatory devices. How the States raise, taxes, and where they make investments for public facilities and improvements are direct actions which bear on State land use policies. The Land and Water Resources Council and the States should have legislative authority to explore and determine how such policies—fiscal, taxation and investment—cause development to come into being and their effect on the exploitation of our resources and the quality of environment.

AUTHORITY TO PLAN FOR ALL LANDS

To suggest that the States cannot plan Federal lands within the States, or lands within cities containing more than 250,000 people is a retrogression in the art and science of comprehensive planning. While States may and do plan Federal lands they cannot commit them for use, development and conservation purposes without approval of the Federal government. States should have legislative authority to plan the Federal lands within them to provide a dialogue which will clarify State land use policy and may influence Federal policy decisions on Federal land holdings.

The concentrations of persons in cities of 250,000 and over in metropolitan areas cannot be reasonably omitted from statewide land use plans. The problems within, and immediately adjacent to, cities of this magnitude require their consideration in State land use policy and State land use plans. Land, water and air pollution, the scarcity of open space and recreation areas in metropolitan areas, the loss of wetlands to urban development and expansion, all bear directly and heavily on statewide land use policy and plans. Urban growth policy is a component of State and National Land Use Policy, whether or not it is incorporated in State and National Land Use Policy legislation. Furthermore, the changing life style of our urban residents—with increased income, leisure and mobility—has an impact far beyond the metropolitan areas. It influences the character and location of our recreation areas, water resources, and fuel and energy requirements, as well as the traditional resources of grazing lands, forest lands, fish and wildlife, and mining operations.

FRAMEWORK FOR REGIONAL PLANNING

Expansion of the existing river basin commissions provide regional planning for land and water in multi-state jurisdictions centered on river basins as proposed in S. 632 is a considerable advance. However, there is also in existence a number of multi-state regional economic agencies which have received increased financial support from the Congress. The bill should provide for coordination of the work of these agencies and all other regional agencies that bear on land use policy and development. There is a need for administrative machinery to reconcile land use policies and economic objectives so that both cause the maximum improvement to depressed regions. There is also a need to reconcile the differences that grow out of the pursuit of single purpose activities with regional economic improvement and land use policies.

FUNDING, INCENTIVES AND SANCTIONS

The funding and federal-state matching arrangements at the proposed 90-10 percent level should provide an incentive to the States to develop land use plans and land use policies. The sanctions proposed in S. 632 are less severe and less likely to discourage continuity of statewide land use planning than S. 992. However, the threat of the loss of funds for land acquisition and improvement,

as in the administration of the Land and Water Conservation Fund, may be considered *after* States have prepared statewide land use plans, or after the five year program. An alternative method may be to require demonstrated progress each year in order to receive additional planning moneys and/or funds for land acquisition and development.

We support S. 632 because it provides the essential structure for the encouragement of land use planning at all levels of government. Particularly, it provides incentives to the States to prepare land use plans and land use policies. If the States can be encouraged to pick up their responsibilities for comprehensive land use planning and the formulation of land use policy, we shall be able to accommodate growth and development, which we know are sure to come, with the concern for the preservation, indeed the improvement, of our environment.

Our next witness is Mr. Weldon Barton, assistant director, legislative services, National Farmers Union.

**STATEMENT OF WELDON BARTON, ASSISTANT DIRECTOR,
LEGISLATIVE SERVICES, NATIONAL FARMERS UNION**

Dr. BARTON. Thank you.

I have a relatively concise statement, Mr. Chairman, that I can complete in just a few minutes.

Senator BURDICK. All right.

Dr. BARTON. I am Weldon V. Barton, assistant director of legislative services, National Farmers Union. I welcome this opportunity to testify before this committee today on S. 632 and S. 992, bills to establish a national land use policy.

The membership of Farmers Union, made up of 250,000 family farm units across the United States, looks upon land and water conservation as closely related to preservation of the family farm pattern of agriculture in the United States. The delegates to our 1971 national convention adopted the following statement of policy on natural resource programs:

Preserving the ecology and preserving the family farm system of agriculture are interrelated. We hail the crusade led by science and the ecologists to save mankind from its own folly. Food and land are as necessary to mankind as air, water and population control. What is needed is a new national land and food policy oriented to family agriculture. Family farmers, the historic custodians of Mother Earth, must take part in this crusade to save the human species from extinction. We call upon the ecologists and scientists, ministers and their followers, teachers and their students, and all people of good will, to join with rural America in preserving family agriculture, which is the foundation of American democracy. We must act in unison to preserve the food supply and environments.

Farmers Union is pleased to see that section 305 of S. 632—the section of the bill which enumerates Federal guidelines for State land use planning—contains references to planning for agricultural uses and for development of new towns and revitalization of existing communities.

We would like to see an explicit reference to family farm agriculture in the statute. This could be done by adding in section 305(b)(5), after the phrase “provides for assuring orderly patterns of land use and development”; the words “including measures to maintain a family farm pattern of agricultural production.” This would have the effect of requiring a State to deal with the question of strengthening family farm agriculture in its statewide land use plan.

There is, we think, ample evidence that family farming is a sufficiently important factor in both the revitalization of rural com-

munities and in environmental protection, so that protection of family farm agriculture against the invasion of corporations into agricultural production should be an element of any land use policy. The family farmer to whom land and related water and other natural resources are entrusted, lives on the land, performs the work and management himself with little outside labor, and takes pride in husbanding these precious resources for his family and for future generations. Family farm agriculture is much more oriented to natural resource conservation than is corporate agriculture with its absentee owners and managers.

Now, Mr. Chairman, I would like to briefly compare S. 632 and S. 992 with respect to two additional points that are of concern to Farmers Union:

1. We are concerned that the progressive role of the Federal Government in public land policy, pollution control, rural community development, and other aspects of land and water resource policy not be in any way weakened by the pending legislation. The statute should not overemphasize State-local powers at the expense of regional and national interests.

If the Federal role in land use policy is to be protected, Federal interests and goals must be integrated into land planning throughout the planning process. In this sense we think that S. 632 is clearly superior to S. 992.

S. 632 provides at least two ways for making sure that Federal interests are covered in the statewide land use plans to be drawn up by the States: (1) by enumerating Federal guidelines and requirements to be followed by the States, and (2) through formal review and approval of statewide plans by a Land and Water Resources Council representing the President and Federal agencies. S. 992, on the other hand, contains no real inducements on the States to consider Federal interests until the implementation stage on the land use policy.

These two ways of protecting Federal interests in S. 632 should be retained and strengthened. For example, the Director of the Council, who is appointed by the President under S. 632, should have ample staff to carefully review statewide plans on a continuing basis.

2. We are concerned that the land use policy include action-forcing mechanisms that will afford the best chance that the planning will result in action to implement the plan.

The commission is fully aware that comprehensive planning of the type proposed here can be unproductive—or even counterproductive—in getting things done. Robert H. Pealy of the University of Michigan in a recent study of comprehensive river basin planning concluded that—

Planning of this sort should be abandoned if there is no appreciable evidence in the future that there is a direct connection between the plans and * * * development.

Planning must be tied to the arms of action if the plans are not to hang in limbo and never be effectuated.

I am not suggesting that we forgo the type of systematic land use planning that is implicit in S. 632. I would urge, however, that the legislation hold open every way that the Federal Government—which has been the moving force in so many of the land and water

resource programs in this country—can push for action to implement the State land use plans.

It helps in this regard that S. 632 provides for getting Federal interests incorporated into State land-use plans before the plans are finally approved. This hopefully will allow the Federal Government to play a positive role in working for implementing the plans, rather than being forced to hold back because national interests are threatened by the plan itself.

In addition, I recommend that you hold to a minimum the involvement of regional agencies that can come between the individual States and the Federal Government and can hamper and frustrate effective administration of the land use plans.

Interstate compact agencies in particular should, in our view, be excluded from any formal role in planning or implementation. The experience with interstate compacts in this country shows that, more often than not, they have been used as a smokescreen to ward off overdue action by the Federal Government, rather than as a means of solving the problems over which they are given jurisdiction.

The authorization under section 304(a)(2) of S. 632 for Federal land-use planning grants to interstate compact agencies should be dropped, and existing Federal agencies should be relied upon to handle planning and action over areas that overlap State boundaries.

Mr. Chairman, that concludes my statement, and I will be pleased to respond to questions you may have.

Senator BURDICK. In the middle of your second page, you testified that it helps in this regard that S. 632 provides interest in appropriate State use plans before the plans are finally approved.

Would you give me an example of Federal interest in this connection?

Dr. BARTON. I referred to that, Mr. Chairman, in another connection. S. 632 provides for Federal guidelines that the States are required to follow in drawing up their land-use plans, and, secondly, it provides for review by the council while the granting is going on and before the plans are approved for implementation.

Senator BURDICK. Give me an example of Federal interest.

Dr. BARTON. I think effective pollution abatement would be a Federal interest, and establishing of strong pollution abatement standards. This is something that the Federal Government, we think, has been pushing more effectively, and we would lose this type of Federal input by going back to the States for planning. If we did that, it would be losing a progressive part of our present public policy.

Senator BURDICK. Senator Stevens.

Senator STEVENS. I think you have a good point in mind with respect to family farms, and we will have to keep that in mind as we mark up the bill.

Senator BURDICK. Do you have for the record a definition of a "family farm"?

Dr. BARTON. In a sense, I defined a family farm in going through the testimony. We define a family farmer as a person who lives on the farm, manages the farm himself, hires relatively little outside labor except during peak harvest seasons. Basically, this is the way we define the family farmer.

Senator BURDICK. I think the essential ingredient is that he lives on the farm, isn't it?

Dr. BARTON. Exactly, certainly in this regard, in regard to husbandry and protecting the soil and land resources.

Senator BURDICK. You don't have any acreage limitation or anything like that in mind?

Dr. BARTON. No; we haven't gotten down to that specifically. What we are thinking of at this point is that if you could get this type of provision in the Federal guidelines, then the States would be obligated to take into consideration this whole question of family farming in drawing up its land-use plans. Then you could move from there.

Senator BURDICK. I think that is all very encouraging.

Thank you very much.

Dr. BARTON. Thank you, Senator.

Senator BURDICK. Our next witness will be Mr. Ted Pankowski, conservation associate, the Izaak Walton League of America.

STATEMENT OF TED PANKOWSKI, CONSERVATION ASSOCIATE, THE IZAAK WALTON LEAGUE OF AMERICA

Mr. PANKOWSKI. Thank you, Senator.

My wife has trouble with our last name still.

Senator BURDICK. Then you will forgive me.

Mr. PANKOWSKI. I certainly do.

Mr. Chairman, we appreciate the opportunity to comment on the legislation before you, and we are glad the Congress and the administration are addressing themselves to this problem.

In the interest of time I would like to begin essentially with page 3 of our statement. We recognize that there are significant differences between the proposals being recommended.

We wholeheartedly support this concept. We recognize, however, that the problems of land use and water use, since both are linked together, are as complex as our society itself, and it seems apparent that no single solution or approach will meet that. Nonetheless, as the Nation recognizes, we must begin somewhere.

As a starting point, the league suggests that a national land-use policy begin with a commitment to protect and wisely use what S. 992 terms "areas of critical environmental concerns," that is, estuarine and coastal zone shorelines, flood plains, lakes, rivers and streams, and so forth.

We recommend that the States exercise a greater degree of planning and control over key facilities such as airports, highways, powerplants, water supply systems, and the like.

S. 992, however, does not appear to deal effectively with relationships within the Federal Government itself. It tends to ignore the fact that Federal programs are often most directly responsible for environmental degradation and for poor land- and water-use patterns.

In this respect, we believe that S. 632 takes a far more preferable approach, and responsive approach. We have under our system of government, numerous Federal and State agencies which have diverse programs which must be taken into account in land-use planning, water resource planning, and coastal zone management.

While many elements of our environment can be managed separately, it is doubtful in this complex age whether anything can be planned for separately; unless there is a mechanism to involve the broadest possible range of governmental and private interests, including the citizenry, in the formulation of plans as early as possible, we will continue to have unnecessary conflict and confusion.

In this regard, the league supports the recommendations made in S. 632 to vest authority for land-use planning in the water resources council or in an upgraded equivalent of it and in the river basin commissions established through the 1965 Planning Act. Conservationists, including the league, supported that act, and after years of neglect and in addition to it, we should be ready to do whatever is necessary to make it work. If there are no coordinating mechanisms at the Federal level, one would have to be created for any land-use policy or any segment of it such as coastal zone management that Congress finally enacts.

We believe this is a critical point. Responsible agencies have been shut off from early consideration in water- and land-use management. Citizens have been polarized, radicalized and ignored because of a lack of opportunity to sit down with each other and Federal and State administrators. We have in recent months made several recommendations to the Water Resources Council and the various agencies represented on it in an attempt to meet the problem.

Thank you very much for the opportunity to come.

(Mr. Pankowski's prepared statement follows:)

STATEMENT OF TED PANKOWSKI, CONSERVATION ASSOCIATE, THE IZAAK WALTON LEAGUE OF AMERICA

Mr. Chairman and members of the committee, I am Ted Pankowski of the National staff of the Izaak Walton League of America. We appreciate the opportunity to comment on various bills to establish a National Land Use Policy.

As the Committee knows, conservation organizations such as the League have tended to concentrate their land-use related concerns and energies on either the management or expansion of the public domain, National Parks, Forests, Federal and state scenic river proposals and general watershed programs when public rivers and streams were involved. This sprang from a time when National population pressures were less and when the Nation was either basically rural or Western oriented. Our land use programs and policies have reflected this accordingly.

But increasing incidents like the Everglades jetport, the destruction of coastal marshes nationwide, the endless struggles over dam proposals, stream channelizations, highways and powerlines have broadened our outlook. If the Nation cannot rationally plan and wisely use those land and water resources which we need to sustain ourselves, there is no hope of protecting even the finest examples of those environments that have been set aside for the public, much less ensure the benefits of a quality life for people everywhere. The League is very much encouraged, therefore, that both Congress and the Administration are recommending a National Land Use Policy.

While we recognize that there are significant differences between S. 632 and S. 992, both would strengthen the role of the states in planning and regulating land use development through a system of grants in aid and technical assistance. We wholeheartedly support this concept. Urban and suburban government seems to be caught in a vicious circle of ever-expanding growth that requires ever-expanding services and that exhausts ever shrinking revenues, resources and opportunities. As a result, the problems we are generally concerned with, such as open space, air and water pollution abatement, recreational opportunities, solid waste disposal, balanced transportation facilities and general community amenities are not being met. It does not appear, in our large Metropolitan Areas at least, that local government will ever be able to extricate itself from this dilemma without massive assistance and guidance from both Federal and state levels.

In smaller communities we often find resistance to public investments that do not yield the highest immediate dollar return, parks for example. Or in some areas where there is already a large public investment, such as a National Forest or a multiple-use reservoir, we see an unwillingness to come to grips with adjacent private developments which tend to negate the benefits of the investment and which contribute to the environmental degradation of the entire area. The problems of land use—and water use, since both are inextricably linked together—are as complex as our society itself. It seems apparent that no single solution or approach will meet them.

Nonetheless, as the Nation is recognizing we must begin somewhere. As a starting point, the League suggests that a National Land Use Policy begin with a commitment to protect and use wisely what S. 992 terms “areas of critical environmental concern”—estuarine and coastal zones, shorelines, flood plains, rivers, lakes and streams; rare and valuable eco-systems; scenic and historic areas; secondly, that the states exercise a greater degree of planning and control over “key facilities” such as airports, highways, water supply systems, power plants and the like. In those areas where local governments have formed interdisciplinary and intergovernmental teams to solve water supply, transportation and similar problems, these could become the basic elements that constitute the state plan for a specific region. S. 992 appears to have an advantage in this regard by not requiring state or Federal agencies to bite off more than they can possibly chew at this time. Further, it preserves every possible local option except in those instances where state, regional or national interests are directly involved.

S. 992, however, does not appear to deal effectively with relationships within the Federal government itself. It tends to ignore the fact that Federal programs are often most directly responsible for environmental degradation and for poor land and water use patterns. In this respect, we believe that S. 632 takes a far more preferable approach. The Administration has recommended that the Land Use Policy Act be administered jointly by the Secretaries of the Departments of Interior and of Housing and Urban Developments. Presumably the idea is to satisfy the two basic constituencies which are most vocal about the programs administered by each. This is not totally without merit. There are major areas which each department can handle with knowledge and expertise. We are now hearing the same argument for joint sharing between the Secretaries of Commerce and of Interior by proponents of the Coastal Zone Management Plan. Admittedly, cooperation between two Secretaries is far better than conflict created by one. Moreover, there is some strength to be gained by keeping management and regulatory lines as clear as possible. But all this ignores the real crux of many of our problems.

We have under our system of government numerous Federal and state agencies which have diverse responsibilities and programs that must be taken into account in land use planning, water resource planning or in coastal zone management. While many elements of our environment can be *managed* separately, it is highly doubtful in this complex age whether anything can be *planned* for separately. Unless there is a mechanism to involve the broadest possible range of governmental and private interests, including the citizenry, in the formulation of plans as early as possible, we will contribute to have unnecessary conflict and confusion.

In this regard, the League supports the recommendations made in S. 632 to vest authority for land use planning in the Water Resources Council, or in an upgraded equivalent of it, and in the River Basin Commissions established through the 1965 Planning Act. Conservationists, including the League, supported that Act and after years of neglect and inattention to it we should be ready to do whatever is necessary to make the system it creates actually work. If there were no coordination mechanism at the Federal level, one would have to be created for any Land Use Policy Act or for any segment of it such as coastal zone management that Congress finally enacts.

We make this recommendation not out of any sense of loyalty to any particular agency, Federal, state or local, or out of fear of having our concerns handled by any particular agency. The Water Resources Council, for example, has in the past been rather ineffective, has been understaffed and often unappreciative of the environmental concerns that have gripped the Nation. This can be changed, as it must be. But, the coordinating function which it should perform at the Federal level—and through the River Basin Commissions at the state and local level—must be made responsive and effective somewhere. The

League believes this is a critical point. Not only have environmentally responsible agencies been shut off from meaningful and early participation in water and land resource planning, citizens expressing deep concerns have been polarized, radicalized, confused or ignored solely by lack of opportunities to sit down with each other and with Federal and state administrators and to participate in the decisions that affect their lives. We have in recent months made several recommendations to the Water Resources Council and to the various agencies represented on it in an attempt to meet this problem. The direction and the capability engendered by passage of the Land Use Planning Act will be an important step in the same direction.

The Nation needs a Land Use Policy, Mr. Chairman, and a land ethic to go with it. Even more, it needs an informed and willing citizenry who can make it work for the environmental improvement of all.

Senator BURDICK. Our next witness will be the Most Reverend Walter F. Sullivan, auxiliary bishop, Catholic Diocese of Richmond, Richmond, Va.

**STATEMENT OF WALTER F. SULLIVAN, AUXILIARY BISHOP,
CATHOLIC DIOCESE OF RICHMOND, RICHMOND, VA.**

Bishop SULLIVAN. Mr. Chairman, I am Walter F. Sullivan, auxiliary bishop of the Catholic Diocese of Richmond, which covers most of the Commonwealth of Virginia and eight counties of West Virginia. I am also a member of the Founding Board of Hope Housing, Inc., a nonprofit housing corporation which after 3 years of redtape has recently received an FHA low-interest loan for 100 units under the 236D program.

I appreciate the opportunity to testify in support of S. 632, the National Land Use Policy Act of 1971. The committee is to be commended for holding these important hearings.

I realize that the thrust of this bill is environmental and I support the bill for the contribution that it will make in protecting against further environmental damage to our land areas. Hopefully, public officials at the local, State and Federal levels will realize the terrible situation our suburbs are in, a situation resulting from the lack of comprehensive planning for the tremendous growth which has been experienced in recent years. This lack of planning should not be allowed to continue in the future.

Of particular concern to me is the matter of housing patterns in the suburbs. Local governments have imposed archaic zoning regulations and restrictive covenants which, in turn, have created an extremely rigid pattern of racial and class segregation. It is common knowledge that local land use decisions have represented short-term, inward-looking attitudes.

One look at our major cities is all that is needed to underscore the fact that action must be taken now on a State and regional basis to bring order out of chaos. I was extremely distressed at the President's recent decision which seems to have the effect of allowing class discrimination in housing while opposing racial discrimination.

It seems to me it is time for intervention beyond the local level. It is time for intervention at the level of government which can be responsible to the needs of the wider community.

Local governments just cannot be expected to respond to regional land use needs. Their dependence on property tax creates the need to view property in terms of the greatest amount of property tax with

the least demand for public services. Local governments on their own initiative will not consistently allow low to moderate income housing in suburban communities. As a result for many Americans the declaration of Congress calling for "a decent home for every American" rings a hollow sound.

Let me give you some concrete examples: Recently the Catholic Diocese of Richmond offered 20 acres of land in Vienna, Va., which is in the suburbs, for low to moderate income housing.

Local resistance prevented the development of this project. In light of this opposition, the rezoning to multifamily use would have been impossible. Letters from residents reflected an openness to such housing as long as it was located in someone else's neighborhood.

The city of Richmond is land poor and has little area available for low to moderate income housing. Families within the core city, particularly among the poor, live in crowded, oftentimes substandard conditions. Increasing the problem is the lack of effective coordination in responding to the needs of the broader community. Surrounding metropolitan jurisdictions resist any rezoning for such type housing for fear of land value deterioration.

I would like to call to the committee's attention one possible effort at solving this problem. At the hearings before the Fairfax County Board of Supervisors which took place last week over 100 individuals and citizen groups testified in an effort to determine public reaction to a change in the county ordinances which would require developers of large subdivisions to provide 6 percent low-income and 9 percent moderate-income housing in all projects.

I do not know what the legislative result of these hearings will be, but the approach is innovative and something which regional planners may want to consider under the act. We are very hopeful that there will be a favorable response.

There are two aspects of the bill on which I would like to comment. First, the provision of bringing together all departments of the Federal Government which "have a tendency to influence patterns of land use" is vital. This coordination required under the bill will produce a unifying effect, which in turn could greatly increase the effectiveness of governmental action.

A second point is that the bill specifically mentions the need for buffer zones to protect threatened environmental areas. This, too, could have a positive effect on providing housing for low- and middle-income families.

The National Land Use Policy Act is particularly important because it represents a vital first step in bringing a regional approach to planning in future use of our land areas.

In summary, it is evident that natural growth patterns of cities create slums. Deliberate intervention is needed to reverse this natural pattern. Local governments are not motivated because of self-interest or because they lack sufficient jurisdiction to meet the problem. Therefore, Federal land use control is obviously required.

I want to thank you, Mr. Chairman, for giving me this opportunity to testify.

Senator BURDICK. I want to thank you, Mr. Sullivan, for your contribution. You brought a new factor into the testimony, at least today, in these areas surrounding our big cities.

Bishop SULLIVAN. Thank you very much.

Senator BURDICK. I am sorry to have to leave again. There is another vote over there. The committee will be in recess until the sound of the gavel.

(A brief recess was taken.)

Senator BURDICK. The next witness is Mr. David Brandon, director of program development, New York State Urban Development Corp., board of governors, American Institute of Planning.

STATEMENT OF DAVID BRANDON, DIRECTOR OF PROGRAM DEVELOPMENT, NEW YORK STATE URBAN DEVELOPMENT CORP.; AND BOARD OF GOVERNORS, THE AMERICAN INSTITUTE OF PLANNERS; ACCOMPANIED BY ALBERT MASSONI, DIRECTOR OF NATIONAL AFFAIRS, AIP

Mr. BRANDON. Thank you, Mr. Chairman.

I am pleased to be here today representing the board of governors of the American Institute of Planners. It is an organization of professional planners, over 6,000 of them working at all levels of government and in private practice throughout the country.

We have testified before your committee before, about a year ago, and recognized the importance of timely legislative response to the pressing environmental problems of this day.

In an era characterized by growing and frequent conflicting demands upon our total resources, the need for coordinated Federal, State, and local action is most apparent.

By total resources, we mean not only the national resources which your committee is most concerned with, but also the fiscal and human resources of our Nation.

Since the committee's first hearing, there has been increased awareness on the part of our citizens in these concerns for national resources and environmental management and Congress has continued to take action in support of this. It has included the establishment of the Environmental Protection Agency and the growth of the Council on Environmental Quality.

Some steps have also been taken toward formulating a national land use policy under title VII of the Housing and Urban Development Act of 1970. These steps have all been necessary, but have not been sufficient to achieve a national growth policy and a means of carrying it out. We believe that a national land use policy is vital, but again it is only one element in what needs to be an overall national development policy, a policy that includes the interrelated aspects of national, human and fiscal resources and problems.

We have recognized that there is a Federal responsibility for policy development that is both intra- and intergovernmentally coordinated. The American Institute of Planners has a professional commitment to the quality of our national environment, its land use and development. This will not be achieved, however, by the proliferation of new national commissions preparing annual and biennial reports independent from each other, and which too often will only result in being attractive documents filed away on the shelves.

More positive steps are needed if we are to be successful in dealing with the problems of our environment.

The American Institute of Planners believes that there should be one central agency in the administration charged with the responsibility of identifying and coordinating all national developmental policies.

We have since early 1969 called for a central planning agency, an arm of the presidential authority, which would identify national goals and priorities, coordinate all Federal programs affecting physical, economic and social development, determine realistic costs, and be charged with the development of national development policies and plans for land use and environmental control.

We are not today suggesting the establishment of this full-scale national planning agency. Rather, we are suggesting the development of a suitable mechanism for relating to and making more effective use of the on-going problem-solving analysis and plan-making processes being carried out at all levels of Government.

An agency apart from the administering agencies of the executive branch is needed to conduct a continuing and substantive review of national needs and trends and provide thereby a basic overview capability to which both Federal planning and development programs and non-Federal agencies can relate.

While supporting the basic premise of a need for a national land use policy as spelled out in both bills before this committee, we would suggest that additional study and consideration of the establishment of a national development policy and agency that would incorporate the best features of both the national land use policy bills under consideration, parts of title VII of the Housing and Urban Development Act of 1970 and some of the effective aspects of the Council of Environmental Quality.

We, therefore, also suggest that a new Land and Water Resources Council not be created as proposed in S. 632, but that instead a National Development Agency be created as described earlier.

Many of the functions described in title I of S. 632 should, however, be incorporated in that broader National Development Agency.

There is a definite need for functional land use planning programs in which Federal grants would be made available to the States and localities. We suggest that that program be administered by a line department of the Federal Government and that the States be encouraged to exercise their full authority and responsibility for planning and implementation of land use programs in coordination with both metropolitan local units of government.

The river basin commissions have been helpful in stimulating competent research and studies, but all too often their plans have not been implemented. This problem seems to us to arise from the fact that no one broad governmental unit within the multigovernmental structure of the river basin commissions is held responsible to follow through with implementation.

A State-based framework for land development programs would be a more viable one than attempting to base it on river basin commissions.

The American Institute of Planners strongly supports the provisions of title III, a national land use policy and program of assistance to the States of S. 632. The declaration of policy, the planning grant program for States and interstate areas, the guidelines and requirements for statewide land use plans and the coordination of

Federal programs are all necessary for a national land use program.

We do not, however, believe that the Water Resources Council would be the appropriate authority to administer the Federal grant-in-aid program.

We are convinced that this function should be administered by a line department of the Federal Government and that the States and their local governments be designated as responsible agencies for comprehensive land use planning and development.

There is a great deal of merit in focusing on areas of critical environmental concern, as well as demanding the development of statewide land use plans. The entire State must be considered relative to land use planning programs, and it would be impractical to consider critical areas without reference to the total State context.

We would urge that the final bill reported by the committee include a program that encourages both statewide planning and fosters a program for the protection of areas of critical and environmental concern.

A national program on land use planning should encourage a partnership among the various levels of government. It would seem perfectly valid to hold the States fully responsible for land use planning and demand that the States perform a strong role in fostering intergovernmental relations that acknowledge the important role of multicounty regions and districts. The Intergovernment Cooperation Act of 1968 and the Bureau of the Budget circulars have gone a long way in establishing a common set of boundaries for multicounty regions or districts within each State and serve as a basis to facilitate intergovernmental relations between Federal, State, and local governments in land use planning and implementation programs.

Funding for any national land use or development program must be at realistic levels. The authorization level in the administration's bill would seem very low. S. 632 would seem more close to what is needed.

Further, the formula used in S. 632 with a 90 percent matching ratio for the initial statewide planning effort would appear to be appropriate in terms of the emphasis and needs that will be required in those early years of preparation.

We would include some penalties or sticks similar to those included in the earlier bill prepared by Senator Jackson last year and in an earlier version of the administration's bill. The Institute believes that penalties like cuts in the Federal funds and various categorical grants are necessary to insure and stimulate appropriate action on the part of the States and their political subdivisions.

Both the Federal Government and the States have been moving to develop more creative and responsive means of shaping urban development in a fashion compatible with and responsive to the national environment.

Title VII of the Housing and Urban Development Act of 1970 provides a solid legislative basis for a creative public-private partnership which through the means of new communities can provide urban activity compatibly developed with national environmental requirements. Unfortunately this title has almost no funding and, therefore, serves little purpose.

A final suggestion with regard to the language used. The phrase is used in the earlier bill "highest and best use." This phrase has over the years become a state of the art piece of language, and has been interpreted by land appraisers and real estate interests and the courts to mean the largest dollar investment that can be generated for any given piece of property. This phrase in itself may in many cases have little or no relationship to the most desirable use of that land from the standpoint of the environment, the bearing capacity of the land or, for that matter, the communities' desire for development and growth and protection of its resources as expressed in existing comprehensive plans.

In summary, the American Institute of Planners supports the development of a national development policy and a national land use plan. We would like to emphasize from professional experience that the processes and assistance by which policies and plans are achieved are as important as the policies and plans that emerge.

We have suggested some fundamental changes needed to improve the land use planning process and the national development policy process. We offer these suggestions in the spirit of making this legislation more workable and effective.

We seek to place this needed activity within the framework of State and local government institutions and to maximize the benefits for the entire Nation.

(The prepared statement of Mr. Brandon follows:)

STATEMENT OF DAVID BRANDON, DIRECTOR OF PROGRAM DEVELOPMENT, NEW YORK STATE URBAN DEVELOPMENT CORP.; AND BOARD OF GOVERNORS, THE AMERICAN INSTITUTE OF PLANNERS; ACCOMPANIED BY ALBERT MASSONI, DIRECTOR OF NATIONAL AFFAIRS, AIP

Mr. Chairman and Members of the Committee, I am David Brandon, member of the Board of Governors of the American Institute of Planners and Director of Program Development for the New York State Urban Development Corporation. The American Institute of Planners is an organization of over 6,200 professional planners who work at all levels of government and in private practice. The American Institute of Planners is devoted to the study and advancement of the art and science of local, regional, state and national comprehensive planning. Members of the Institute have major responsibilities in all levels of government and in practice working with elected officials as well as with private organizations whose actions and policies directly affect the quality of the national environment. Accompanying me today is Mr. Albert Massoni, Director of National Affairs for the Institute.

On behalf of the membership of the Institute, I would like to thank the Committee for the opportunity to appear and present our views on various aspects of a national land use policy.

As we stated in March of 1970 before this Committee, we recognize the need for timely legislative response to the pressing environmental problems of this day. In an era characterized by growing and frequently conflicting demands made upon our total resources, the need for coordinated Federal, State and local action is apparent. By total resources, we mean not only the natural resources, but also the fiscal and human resources, all of which must be considered in the development of positive publications and programs. Legislation which will insure the protection of the public interest is needed and welcomed.

Since this committee's first hearing on a national land use policy in early 1970, we have seen an increasing awareness on the part of our citizens about the environment and the intimately related aspects within a comprehensive ecological system. The popularity has been reflected in increased Congressional action that has and would create various programs to deal with the environment and the future development of this country. Among others, we have seen the establishment of a new Federal department, the Environmental Protection

Agency, and the growth of the Council on Environmental Quality, both of which have responsibilities in carrying out national environmental policy.

Some steps have also been taken towards formulating a national land use policy under Title VII of the Housing and Urban Development Act of 1970 in which the Congress recognized that rapid and uncontrolled growth "... has created an imbalance between the Nation's needs and resources and seriously threatens our physical environment, and that the economic and social development of the Nation, the proper conservation of our natural resources, and the achievement of satisfactory living standards depend upon the sound, orderly and more balanced development of all areas of the Nation." Included in the charges under Title VII is the mandate for the President to prepare a biennial report to the Congress covering the legislative and administrative aspects of the Nation's urban growth policy.

These steps, among others we could outline, are all necessary but not sufficient to achieve a national growth policy and a means for carrying it out. We believe that a national land use policy is vital to the continued growth of this country. But here again, we must point out that even a national land use policy is only one element, a very necessary element, of an overall national development policy, a policy that includes the interrelated aspects of natural, human and fiscal resources and problems.

We have recognized that there is a Federal responsibility for policy development that is both intra and inter governmentally coordinated. National land use planning must be a part of an overall development policy. The American Institute of Planners supports the concept of a balanced national development policy that meets the needs of the country as a whole. National land use policy decisions must be a part of a broader national development policy.

As we stated in our opening paragraph, the American Institute of Planners has a professional commitment to the quality of our national environment, its land use and development. This will not be achieved however, by the proliferation of new national commissions, preparing biennial reports independent from each other, too often with the only result being an attractive report to be filed away. More positive steps are needed.

The American Institute of Planners believes that there should be one central agency in the administration charged with the responsibility of identifying and coordinating all national development policies. We have since early 1969 called for a central planning agency, an arm of Presidential authority which would identify national goals and priorities, coordinate all Federal programs affecting physical, economic and social development, determine realistic costs and seek the appropriations necessary to initiate comprehensive planning programs for the satisfaction of domestic needs. This same agency would be charged with developing national development policies and plans for land use and environmental control.

The cumulative efforts and trends of urban development that overlap jurisdictional State and local planning and other government functions are of national concern, but they escape effective treatment or management because they are poorly understood in relation to one another, and because there is not effective mechanism available to anticipate national development needs that individual State and local programs may be unable to meet. We are not here suggesting the establishment of a full-scale national planning agency, but rather to establish at the Federal level a suitable mechanism for relating to and making more effective use of the on-going problem-analysis and planmaking processes carried on at non-Federal levels.

An agency apart from the administering agencies of the Executive Branch such as the Departments of Housing and Urban Development, Transportation, Interior or Health, Education and Welfare, is needed to conduct a continuing and substantive review of national needs and trends and provide thereby a basic overview capability to which both Federal planning and development programs and non-Federal agencies can relate.

An agency as described above could in addition to having responsibilities for establishing national development goals and coordinating Federal programs affecting the States and local governments, be charged with the responsibility of reviewing State development plans to insure their compatibility with national policy. And in order for this role to be effective, the agency should have the ultimate responsibility of discontinuing Federal funds to those States and local governments which do not further the objectives of a broad national development policy.

The agency as proposed would by its nature maintain inventories of data and studies relative to land and other natural resources, as well as environmental impact studies and urban growth reports. Activities legislated under Title VII of the Housing and Urban Development Act of 1970 could be incorporated under this agency. It would seem that any new land use policy act or other similar legislation establishing advisory commissions, study councils and information data banks could be a costly duplication of similar functions called for in recent and proposed environmental and urban growth legislation. And even though these functions are extremely necessary, we feel that we have come to a period in our legislative process that cannot afford costly duplications and proliferations that dilute any coordinated efforts to achieve a national development policy.

While supporting the basic premise of need for a national land use policy as spelled out in both bills before this committee, we would suggest additional study and consideration of the establishment of a national development policy and agency that would incorporate the best features of both the national land use policy bills under consideration, parts of Title VII of the Housing and Urban Development Act of 1970 and some of the effective aspects of the Council on Environmental Quality. We therefore also suggest that a new "Land and Water Resources Council" not be created as proposed in S. 632 but that instead a national development agency be created as described earlier. Many of the functions described in Title I of S. 632 should however be incorporated in the broader National Development Agency.

We realize that there must be a framework for relating action programs to long term objectives. There is a definite need for functional land use planning programs in which Federal grants would be made available to the States and localities. We suggest that the Federal governmental system be strengthened in this respect by having the program administered by a line department of the Federal government, and that it would be in the national interest to encourage the States to exercise their full authority and responsibility for planning and implementation of land use programs in coordination with both metropolitan and local units of government. Experience has shown us that while the river basin commissions have been helpful in stimulating competent research and studies, that all too often their plans have not been implemented. This problem arises from the fact that no one broad governmental unit within the multi-governmental structure of the river basin commissions is held fully responsible for follow through and implementation. A State based framework for land development programs would be more viable than one based on river basin commissions.

The American Institute of Planners strongly supports the provisions of Title III "A National Land Use Policy and Program of Assistance to the States" of S. 632. The declaration of policy, the planning grant program for States and interstate areas, the guidelines and requirements for statewide land use plans, and the coordination of Federal programs are all necessary for a national land use program. We do not however believe that the Water Resources Council would be the appropriate authority to administer the Federal grant-in-aid program. We are convinced that this function should be administered by a line department of the Federal government and that States and their local governments be designated the responsible agencies for comprehensive land use planning and development.

In recognizing the national interest in land use planning and development we would suggest that there is a great deal of merit in focusing on "areas of critical environmental concern" as well as demanding the development of statewide land use plans. Indeed, the entire State must be considered relative to land use planning programs and it would be impractical to consider "critical areas" without reference to the total State context. There are however, areas of this country in which concerns relative to decisions about the use of land and natural resources may be broader in scope than the interests of the citizens of one State alone, and may very well be essential to the well being of all citizens. For this reason we would urge that the final bill reported by this committee include a program that encourages both state wide planning and fosters a national program for the protection of areas of critical environmental concern.

The Institute supports the development of separate statewide plan approaches, under a program that encourages flexibility of structure and administration. A national land use policy is not likely to be meaningful anyway if it is based on a collection of State land use plans, so we do not see any particular advantage to Federal legislation mandating identical administrative and organiza-

tional arrangements in each State. The important thing is that the States plan for the wise use of all of their resources and that such plans become a major element of the comprehensive planning process of each state.

A national program on land use planning should encourage a partnership among the various levels of government. It would seem perfectly valid to hold the States fully responsible for land use planning and demand that the States perform a strong role in fostering intergovernmental relations that acknowledge the important role of multi-county regions and districts. The Intergovernmental Cooperation Act of 1968 and the A-95 process has gone a long way in establishing a common boundary region or district system that should be used in facilitating intergovernmental relations between state and local governments in land use planning and implementation programs.

The final land use policy bill reported by this committee should recognize that metropolitan and non-metropolitan regional planning focused on environmental concerns now receives little support and emphasis from other Federal agencies. Major stress at the regional level is now being given to transportation, housing and other functions which should be more closely correlated with environmental concerns. Work on these other functions has helped areawide organizations build technical, organizational and governmental bases for adding proper treatment of environmental matters and comprehensive land use planning to the planning and management programs of metropolitan and regional planning organizations. In light of this fact we would encourage you to support an effective role for regional planning organizations as a mechanism for guaranteeing intergovernmental cooperation between State and local governments in land use planning. Areawide agencies, it must be remembered, lack taxing power, therefore they must be Federally supported if they are to work effectively in the area of comprehensive land use planning in cooperation with local and State government. There is much which can be done regionally at the local level to improve land use planning activity and this should be encouraged.

While the Institute appreciates that the demands for Federal financial resources require the Congress to apportion monies among many programs, it is our position that this and kindred legislation is indeed worthy of full financial support. If the mistakes of the past in the area of natural resource use are to be avoided, Congress must encourage a sound and continuing planning and management program in this area.

Funding of any national land use or development program must be at a realistic level. The authorization level in the Administration's bill of \$20 million for each fiscal year from 1972-1976 when divided among the fifty states across the country would seem very low. S. 632 calls for \$100 million annually in grants plus \$16 million for administration and contract studies which based on our early suggestions calling for a national development agency, with a broader scope of activities than originally conceived under the Land and Water Resources Council, would seem much closer to the kind of funds necessary to achieve a national development policy and program of assistance to the States. Further, S. 632 uses a 90% matching ratio which would definitely be needed if we expect the States to meet the responsibilities called for under this program.

At the same time we would, as we have already suggested, include some penalties or sticks similar to Senator Jackson's land use bill of last year to help guarantee implementation of the program. An early version of the Administration's bill also included strong penalties for States that did not produce satisfactory methods for controlling development. The Institute believes that penalties like cuts in Federal funds to these States for other categorical grants is necessary to insure that States will establish effective means for implementing controls.

We have seen that both the Federal government and the States have been moving in recent years to develop more creative and responsive means of shaping urban development in a fashion compatible with, and responsive to, the natural environment. Title VII of the Housing and Urban Development Act of 1970 provides a solid legislative base for a creative public/private partnership which through the means of new communities can provide urban activity compatibly developed with natural environmental requirements. Unfortunately, this title has almost no funding and is therefore serving little purpose in making the necessary natural resources and environmental management tie with urban development and land use activities.

In my own State of New York, the legislatively created Urban Development Corporation provides the means of compatibly carrying out urban development both within existing cities and throughout the State. It has the ability to work within an environmentally desirable framework on the development aspects of community planning. It is greatly hampered, however, by the lack of funding to absorb the costs through the companion Federal program covered by Title VII. The establishment of State chartered urban development corporations with the power to acquire raw land using "eminent domain" if necessary, the power to override local zoning and building codes, and the power of public financing, can be a powerful tool to shape growth and development within states, and let me say, has had very positive results in New York.

Another tool which has seldom been used at the State level to shape growth and development is capital programming. Some of the better managed cities have for many years used capital programming as a means of assuring compatible public development and highest cost effectiveness. This process has also been used to good advantage in a number of States, one of the most notable, Pennsylvania. The required development of a statewide land use plan and program will further strengthen and contribute to good management techniques such as capital programming.

A final suggestion relative to any bill this committee reports on land use planning is that special care be taken in selecting the phrasing to be used dealing with land use. For example, the phrase "highest and best use" has over the years been interpreted by land appraisers, real estate interests and the courts to mean the largest dollar investment use for which an individual can be found to develop property. This may in many cases have little or no relationship to the most desirable use from the standpoint of the environment, the bearing capacity of the land, or the community's desire as expressed through comprehensive urban development plans.

The American Institute of Planners supports the development of a national development policy and a national land use plan. We would like to emphasize from professional experience that the processes and system by which policies and plans are achieved are as important as the policies and plans which emerge. We have suggested some fundamental changes needed to improve the land use planning process and national development policy process. We offer these suggestions in the spirit of making this legislation more workable and effective. We seek to place this needed activity within the framework of State and local government institutions and to maximize the resultant benefits for the entire Nation.

We thank you for this opportunity.

Senator BURDICK. The next witness will be Mr. Richard H. Babcock, immediate past president, American Society of Planning Officials; chairman the advisory committee, American Law Institute, Model Land Development Code.

STATEMENT OF RICHARD F. BABCOCK, IMMEDIATE PAST PRESIDENT, AMERICAN SOCIETY OF PLANNING OFFICIALS, AND CHAIRMAN, THE ADVISORY COMMITTEE, AMERICAN LAW INSTITUTE, MODEL LAND DEVELOPMENT CODE

Mr. BABCOCK. Mr. Chairman, my name is Richard Babcock, and I am a member of the Illinois Bar. I will summarize my written remarks out of consideration for your time.

While I am associated to the organization to which you refer, I must make clear that they are not necessarily associated with the remarks that I may make.

You mentioned earlier, Mr. Chairman, the grassroots, and I suppose that I might categorize my experience in the field of land-use planning as having been for the last 25 years of my professional practice in the grassroots of land-use policy. Certainly I have been in innumerable zoning battles and bear the psychic if not physical scars of those contacts.

It is gratifying, Mr. Chairman, to see that both pieces of legislation before this committee recognize that it is long past due that we modify the system of land-use regulation which has resulted in irreparable damage to our national resources, and equally important if not more so, gross inequities in the living patterns among many people in our society.

I think there is evidence that the States are now willing to move. I think there is evidence that the long sleep of the States is over, and that is why the legislation that is proposed, both 992 and 632, is coming at a time when the tide is high. There are many similarities between the bills, which is gratifying for someone who has been involved in this area for so long.

Both bills select primarily the States as the responsible agents and this, it seems to me, is the correct conclusion, considering the choices that would otherwise have to be made.

My analysis of these bills leads me to conclude that in at least two respects I would urge you to consider some potential advantages in the administration bill, 992, although this is not to denigrate the many benefits in the other bill.

In the first place, 992, it seems to me, Mr. Chairman, permits not only the States to be more selective in choosing those areas with which they are going to deal, but also it recognizes quite clearly that it is not enough to plan unless the State can also participate to some extent in the regulation that implements that planning. I will return to that point in a moment.

I also sense that 992 is more aware of a real risk in our current concern over ecological deterioration. I think that 992 senses that an outcry for clean air, for unpolluted streams, may overlook the fact that for too many millions of our people the real threshold issue in environment is adequate housing, reasonably accessible to jobs.

I am reminded, sir, of the statement attributed to the black man when he was asked about efforts to cleanup our streams and his response was, "Vanishing trout and dying salmon, man, I didn't even know where they were before they were vanishing and dying."

Now, I think that 992, particularly in its reference to State responsibility in the areas of large-scale development and in "development of regional or State benefits" carries the recognition that the States must act to not only protect our natural resources from improper growth, but also the States should act to encourage growth—I repeat to encourage growth—when that is necessary to encourage our human growth and to rectify abuses in land use.

I return to selectivity and State participation in regulation, both of which I think are hallmarks of 992. I must confess that there are strong similarities between the concept expressed in that proposed bill and the tentative draft of the model land code that it has been my privilege to work on with the American Law Institute.

This is particularly true because our proposed model code is being considered by the ALI now, and it recognizes the States may have a concern over development in three categories, either because of the particular location of the development, namely, the area of critical State concern, or, second, because of the type of development, because it may want to encourage low- and moderate-income housing in some areas and, third, because of the scale of development.

The size alone may have an additional municipal impact and, therefore, may be of legitimate concern to the State. In all cases there is an appeal under the ALI-proposed code as there is in 992, or could be in 992, to a State board from a local decision. In other words, there is a recognition that the local communities should have the first crack at it, but in some instances, in limited instances, there should be State participation in the decisionmaking.

In essence, this says that 90 percent of all land-use decisions such as where you can put a gas station, where you can put the grocery store, will not have regional or State impact. But there are some rural ones that the State should anticipate.

Mr. Chairman, I want to congratulate your committee and this administration for demonstrating that there is now a real concern at the national level over what we have been doing in the name of land-use policy in the last three or four decades. I am confident that out of these hearings will come the best of both possible bills.

Thank you very much.

Senator BURDICK. Thank you very much.

I want to say that I am in contact with your representatives in another committee I am on.

Thank you for your contribution.

Mr. BABCOCK. Thank you, sir.

(Mr. Babcock's prepared statement follows:)

STATEMENT OF RICHARD F. BABCOCK, CHAIRMAN, ADVISORY COMMITTEE, AMERICAN LAW INSTITUTE, MODEL LAND DEVELOPMENT CODE

Mr. Chairman and members of the committee, I appreciate the opportunity to testify on the legislation you are now considering. In part my gratitude is personal—because I like to believe I was one of the first members of the organized bar to recognize and declare that our land use policies, if one can call them that, in the decades after World War II were not only despoiling our natural resources but also perpetrating what the Kerner Commission has trenchantly described as a divided society. In short, as early as 1959 I suggested that public regulation of the use of our land was too critical to our society's social and economic health to be left exclusively to each of thousands of separate municipalities. It is gratifying to see that I am no longer a voice crying in the wilderness and that both S. 992 and S. 632 reflect a deep concern at the national level over land use policy.

Both S. 992 and S. 632 embrace the one feature that I believe is an essential predicate to a practical solution to the current mishmash of land use regulation. I refer to the central role given the states in each bill.

If we are properly appalled at the consequences of a "system" that has delegated substantially all decisions to local government, our choice then is among the federal government, state government or some form of regionalism. I reject the latter because any system of planning that is not associated directly with those attributes of sovereignty—the power to regulate, to take and to tax—is doomed to be an exercise in talk-talk. I believe the proper role of the federal government is to reward those states that do demonstrate a capacity to deal responsibly with growth and with the use of land, and to step into an active role only in the event the states do not act. I believe there are notable signs that the long sleep of the states is over. From coast to coast states are reasserting their role, too long dormant in land use planning, and both these bills come as the tide is high.

My own choice between these two bills is for S. 992. As a card-carrying Democrat, I state categorically that no administration since World War II has made such a far-reaching and sensitive legislative proposal to encourage the restructure of the institutional system for public regulation of our wasting and wasted resource of land as is reflected in Senate Bill 992. (I trust this endorsement will not cause the administration to re-examine their proposal.)

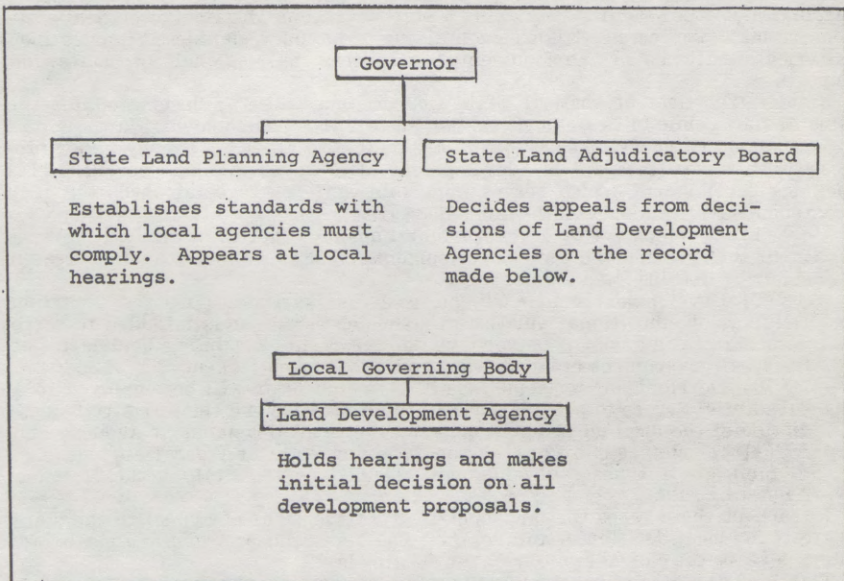
I believe S. 992 is the more sensitive of the two bills to a serious risk in the current agitation over our environment. That risk is that a total preoccupation over dirty air, foul streams and poisoned estuaries may blind us to the dismal fact that for too many millions of our citizens, the threshold test of environment is adequate housing reasonably accessible to jobs.

The Administration's bill strikes a remarkable balance between a rightful concern over our physical resources and a fear lest total emphasis on conservation may, in all innocence, operate to exclude even more persons from adequate housing. For I see in 992, particularly in its reference to state responsibility in the areas of "large scale development" and in "development of regional or state benefit", a recognition that the states must act not only to protect our *natural* resources from improper growth but also that the states should act to encourage growth when that is necessary to benefit our *human* resources and to rectify long-standing abuses of land use regulation.

I see this in 992 because in key respects it is similar to a product it has been my privilege to be associated with during the past few years. I refer to the Model Land Development Code now being considered by the American Law Institute. That Model deals with a variety of land use policies and practices at both the state and local level but I would like to describe to you the features of the Model legislation that are pertinent to the bills you are considering and which appear in Tentative Draft #3 of the ALI Model Code.

In considering various formulas for allocating state and local power in the American Law Institute's Model Land Development Code the Reporters for the Institute tried to be careful not to throw out the baby with the bath water. There are important benefits in having power exercised at a level as close to the people as possible—an issue, by the way, on which the suburbanite and the ghetto resident find common ground. Local control should be given up only where important state or regional interests clearly require it, and then only to the degree necessary to achieve the state or regional goal.

The system proposed by the Reporters for the ALI is a relatively simple one, but because it involves agencies with new names it may initially be easier to understand by reference to the following chart:



In general, the functions of the State Land Planning Agency includes the establishment of rules and standards governing development having state or regional impact. Anyone seeking permission to undertake such development, however, applies to the local Land Development Agency where the hearing is held and the initial decision made. The State Land Planning Agency may par-

ticipate in the hearing and, if the decision is unfavorable, may appeal it to the State Land Adjudicatory Board, an independent state board created to hear such appeals. The developer or any other party to the local hearing also has a similar right of appeal.

This system preserves the benefits of community control by assuring the local agency the right to make the initial decision in each case. It allows the State Land Planning Agency to concentrate on policy-making functions and participate in individual cases only to the extent it feels such participation is necessary to defend its policies. And by allowing the state board to review local decisions on the record made below, it avoids the necessity of creating an expensive and time-consuming procedure for new hearings at the state level.

A key element of the entire system is the principle that the state would be allowed to become involved only in the "big cases." Probably 90% of the local land development decisions have no real state or regional impact. It is important to keep the state out of those 90%, not only to preserve community control, but to prevent the state agency from being bogged down in paperwork over a multitude of unimportant decisions.

The problem of defining the "big cases"—the cases of state or regional impact—is thus crucial to the entire system. In establishing rules to govern development, the ALI Model starts with three basic principles:

- (1) Some development has state or regional impact because of its *location*.
- (2) Some development has state or regional impact because of its *type*.
- (3) Some development has state or regional impact because of its *magnitude*.

Based on these three principles we have set up three categories of development that is subject to state review.

The first such category is development in districts of critical state concern. The State Land Planning Agency is authorized to define the boundaries of such districts, which may include "an area significantly affected by, or having a significant effect upon, an existing or proposed major public facility or other area of major public investment."

The term "major public facility" is defined to include highway interchanges, airports and other facilities servicing a state or region. Districts of critical state concern may also include "an area containing or having a significant impact upon historical, natural or environmental resources of regional or statewide importance."

Finally, Districts of Critical State Concern may also be designated for the sites of new communities shown on the State Land Development Plan.

The second category of case that is appealable to the state agency under proposed Tentative draft #3 is "development of state or regional benefit." This includes development which serves important state or regional needs but may have some adverse impact on the immediate area:

"(1) Development by a governmental agency other than the local government that created the Land Development Agency or another agency created solely by that local government;

"(2) Development which will be used for charitable purposes, including religious or educational purposes, and which serves or is intended to serve a substantial number of persons who do not reside within the boundaries of the local government creating the Land Development Agency;

"(3) Development by a public utility which is or will be employed to a substantial degree to provide services in an area beyond the territorial jurisdiction of the local government creating the Land Development Agency; and

"(4) Development by any person receiving state or federal aid designed to facilitate a type of development specified by the State Land Planning Agency by rule."

In each of these cases the developer is given the right of appeal to the state board if the local decision is unfavorable. The Massachusetts zoning appeals law offers perhaps the closest analogy under existing law.

The third category of development in which the state has an interest is development which has a statewide impact because of its size. The proposed Code authorizes the State Land Planning Agency to establish for each broad category of development limits of magnitude which, if exceeded, allow the local decision to be appealed to the state board, either by the developer, by intervenors or by the State Land Planning Agency. Thus the Agency might, for example, provide that residential developments of 100 or more units or commercial developments

of more than 50,000 square feet of floor area might constitute large scale development. These limits would undoubtedly be higher within incorporated municipalities than in unsettled areas.

That concludes my description of the ALI draft as it relates to the role of the state in land use policy. I do not believe I am guilty of overstatement when I state that this Model Code will be the first legislative model of national scope for land use policy since Secretary of Commerce Herbert Hoover submitted to the nation a Model Zoning Act in 1923. It does not denigrate that remarkable effort to say that it is past time that we reorganized our policies over land use from those that were adequate to a quieter, less crowded era.

Let me close on an elaboration of a previous point: our worry over ecology is none too soon. No one can do other than welcome the resurgence of the states to stop the rape of our natural resources. But do not allow a proper concern for the moose and goose to blind us to more critical environmental issues. Adequate housing for humans reasonably accessible to jobs must surely be as legitimate an endeavor in an ethical society as resting places for terms. And, frankly, Mr. Chairman, I see in S. 992 a remarkable degree of sensitivity to these difficult choices between housing and salt marshes.

No one has put our crisis better than Robert Frost:

"And so put off the weary day
When we would have to put our mind
On how to crowd and still be kind."

I congratulate both the Administration and this Committee on their respective efforts to date. I am confident that out of the on-going critical examination of these bills will come a law that will reflect the best features of both.

Senator BURDICK. Our next witness this afternoon will be Dr. George Treichel, professor of geography, San Francisco State College and chairman, conservation research committee, Sierra Club.

**STATEMENT OF GEORGE TREICHEL, PROFESSOR OF GEOGRAPHY,
SAN FRANCISCO STATE COLLEGE; AND CHAIRMAN, CONSERVATION
RESEARCH COMMITTEE, SIERRA CLUB**

DR. TREICHEL. Mr. Chairman, I will keep my comments very brief this afternoon and focus on seven major points.

Before I do so, I have just a short paragraph of introduction.

My name is George Treichel. I am an ecological counselor to the executive director and the executive board of the Sierra Club, a national organization well known to most of you and presently comprising over 130,000 members.

We are encouraged by the general content of the bills under consideration. They represent a promising first step in a major new national direction. We, in the Sierra Club, are particularly interested in helping to create greater ecological awareness and a more ethical attitude toward land and resources among the people of this country. A national land-use policy that envisions land as something more than a commodity to be bought and sold for maximum profit or speculative pleasure will give this Nation time to anticipate and provide more intelligently for the future. We urgently need a more rational and responsible method of anticipating the future.

In S. 632, we endorse the proposed program of assistance to the States and the plans for a significant Federal Planning Information Center with regional branches. In S. 992, we like the special attention given to "areas of critical environmental concern," but would add two additional areas of concern in rapidly developing regions: unique agricultural lands and metropolitan open space.

We also like identification of the "key facilities" which tend to induce development and would add energy production sites (and corridors) and major water transmission features as items 4 and 5 to the list.

The latter, of course, are of particular importance in the western third of the Nation.

We think that the bills would be strengthened significantly by adding the following seven features:

First, a stronger initial statement of intent in the proposed act developing a national policy to protect the American environment—focusing on land-use planning based on ecological principles to promote the quality of life in this country.

Second, the enabling congressional statute should expand the list of ecological planning criteria (S. 992's "areas of critical environmental concern," "key facilities," et cetera). We think this sort of thing could be significantly expanded and would be very useful.

Third, we think it advantageous to set up the proposed organization under either the Environmental Protection Agency or the Council on Environmental Quality. We recognize this represents somewhat of a departure from much of the thinking on these bills. The Department of the Interior would be our third choice. We have reservations about creating a new council under the chairmanship of the Vice President, as outlined in S. 632.

Fourth, additional statutory responsibility to solicit and respond to citizen participation at all levels of government would be highly desirable. In other words, we would like more citizen participation built into this at every level.

Fifth, additional attention should be given to the problems relating to coastline conservation and development. Immediate priority attention is desirable in certain rapidly growing areas. The situation is approaching crisis proportions on the West Coast.

Six, the new national land use planning organization should conduct a major, comprehensive study of the possible advantages and disadvantages of zero population growth and reduced economic growth. Based on present trends among younger Americans, these are likely to become increasingly popular concepts in these United States.

And, seventh, more sophisticated mechanisms will be required to reconcile differences among land use proposals and later to enforce the features in the "certified plans."

Let me conclude. With reference to the last point, let us not forget that there are many noble land use plans resting on shelves all across these United States, but few have been translated to the land itself, particularly in rapidly growing areas where speculative pressures on the land are intense.

In a State like California most of the enlightened plans—and there have been many enlightened plans on paper—have been "varianced" to death over a period of 20 years by sacrificing the longer term ecological and environmental values and benefits to the shorter term economic returns. The identification of statewide and national priority areas and other places of interest has not been successful (the coast of California is a prime example).

Higher environmental standards are rarely achieved. National land use planning with maximum citizen participation and meaningful en-

forcement procedures could reverse this trend. Moral persuasion alone will not suffice.

Thank you.

Senator BURDICK. Thank you for your contribution. It is very helpful.

There will be a 2-minute intermission here.

(A brief recess was taken.)

Senator BURDICK. Our next witness will be Mr. David Toll, general counsel, National Association of Electric Companies.

STATEMENT OF DAVID R. TOLL, GENERAL COUNSEL, NATIONAL ASSOCIATION OF ELECTRIC COMPANIES

Mr. TOLL. Thank you, Mr. Chairman.

My name is David R. Toll. I am general counsel of the National Association of Electric Companies, a national trade association representing 137 investor-owned electric light and power companies. It is a pleasure to appear before this committee today to comment on S. 632 and S. 992, bills to establish a national land use policy.

Mr. Chairman, at this point I would request that my statement be printed in the record as though read, and I will conclude with just two observations.

Senator BURDICK. Without objection, your full statement will be made part of the record as if read.

Mr. TOLL. I noticed in Senator Jackson's opening statement this morning that he said one of the major jobs of this committee will be to identify those national goals which should be chosen and written into the final bill. I would respectfully submit that a more important national goal is to provide sufficient land for our Nation's need for energy, including electric energy.

I know this committee is aware of the need for energy because of its planned study under Senate Resolution 45 and the other work of this committee. I would recommend in the guidelines to be drafted into the bill that adequate recognition be given to the need for establishing adequate supplies of energy as a national goal.

Second, Mr. Chairman, electric companies are running into problems in some areas of the United States in that they must obtain numerous permits before they can begin construction of needed facilities. In some cases as many as 60 different clearances are needed before a single project could proceed.

I would hope that in the drafting of the final bill by this committee that an objective would be to expedite the process of clearances and to coordinate them rather than to add one more permit. An additional permit would delay rather than expedite construction of these facilities. Expediting and coordinating this process would be on the assumption that they complied with all the requirements of law to protect the environment and to provide for adequate and wise use of our land resources.

Thank you, Mr. Chairman.

Senator BURDICK. Thank you.

I have heard it said that our Nation's demand for electrical energy doubles every 10 years. Is that a fair statement?

Mr. TOLL. That has been the history of the last three decades. The projections vary as to whether that will continue, or how long that will continue. Probably for the next decade or two it would continue at roughly that rate. Then, in my opinion, it would probably begin to level off.

Senator BURDICK. The demands will be with us for some time. That is a fair statement, too; isn't it?

Mr. TOLL. I would say so, Mr. Chairman, and one of the points I tried to emphasize in my prepared statement is that electric energy can be used as a means of cleaning up the environment, through sewage treatment, through an alternate to the internal combustion engine. Since the electric plants can be built in designated areas and subject to modern air pollution controls, this is a good way of helping solve the environmental problems rather than creating new problems.

Senator BURDICK. I am pleased you made that statement, because I was going to ask that next. We can meet these demands and still meet the reasonable demands on the part of the environment. Would you agree with that?

Mr. TOLL. Yes; I certainly would, Mr. Chairman. I would also say that it is going to take good planning, more research and development to develop means of removing sulphur from coal, hopefully to develop means of putting high-voltage transmission lines underground, to develop the breeder reactor—all of those things should be done, but they can be done and then, finally, the facilities should be located in proper areas so that there will be a minimum adverse impact on the environment.

Senator BURDICK. You have said you can have electrical production plus environmental protection at the same time?

Mr. TOLL. Yes, sir. Mr. Chairman, I think the two, with proper planning and technology, can work together hand-in-hand.

Senator BURDICK. Thank you very much.

Mr. TOLL. Thank you, sir.

(Mr. Toll's prepared statement follows:)

STATEMENT OF DAVID R. TOLL, GENERAL COUNSEL, NATIONAL ASSOCIATION OF ELECTRIC COMPANIES

My name is David R. Toll. I am General Counsel of the National Association of Electric Companies, a national trade association representing 137 investor-owned electric light and power companies. It is a pleasure to appear before this Committee today to comment on S. 632 and S. 992, bills to establish a national land use policy.

Expanded usage of electric energy is essential to provide an improved standard of living for all Americans, and to assist in the solution of a wide range of environmental problems. This was well recognized by Representative Craig Hosmer, a member of the House Committee on Interior and Insular Affairs, when he stated earlier this year:

"... It is nonsense to talk about cleaning up the environment by cutting back on electricity. Pollution control requires more electricity—not less, and here I'm talking about... recycling waste products, sewage treatment, water pollution control, stack emission control and any potential alternative to the internal combustion engine. In addition, since almost two-thirds of all power generated goes to business and industry, power reductions would mean loss of jobs, loss of productivity and general economic chaos."¹

In reviewing the record of last year's hearings by this Committee on land use proposals, I noted the following exchange between FPC Commissioner John Carver and Senator Jordan.

¹ Congressional Record, Mar. 5, 1971, p. E1511.

"Mr. CARVER. Electric power is regarded as a polluter. But electric power, central station generation, is the principal unpolluter of our society. Without electric energy, that independent kind of clean energy, if everybody was still stoking their furnace for example, and building a teepee fire to read by, you would have a lot more pollution than you have now."

"Mr. JORDAN. Wouldn't you agree that it would be much better in a given community that had . . . 100,000 home furnaces all delivering into the atmosphere various parts of unburned fuel and fumes, that those homes be heated 100-percent electrically so that the fumes would all go out a single stack wherever possible and arrest the pollution and clean up what came out of the stack?"

"Could that be economically justified?"

"Mr. CARVER. That was what I mean, Senator Jordan, in connection with central station generation . . ."²

The goal of electric companies is to continue to provide this nation with an adequate and reliable supply of electric energy at reasonable rates, and with minimum adverse effect on the environment. Delays in power plant construction can have a serious impact on the supply of electric energy. It takes four to eight years to build a modern power plant. If a national land use policy is to be established through Federal legislation, it should contain provisions that will expedite, not delay, the orderly construction of needed power facilities.

RELATIONSHIP TO OTHER EXISTING AND PROPOSED LAWS

There are several different approaches to land use planning by electric companies under consideration by the Congress at the present time. These include the bills before this Committee—S. 632 and S. 992, to establish a national land use policy; the coastal zone bills, S. 582 and S. 638, (pending before the Committee on Commerce) which contemplate partial planning for about 30 States; the various power plant siting bills, including S. 1684 and S. 1915 (also pending before the Committee on Commerce) and the water pollution control bills, S. 523 and S. 1014, (pending before the Committee on Public Works), which include provisions relating to land use controls. Similar bills are pending before various Committees of the House of Representatives.

The simultaneous consideration of these concepts by different Congressional Committees raises some questions and possible conflicts. For example, would the plans and programs developed under coastal zone legislation be part of a State land use program? Would the Department of Commerce, administering a coastal zone grant program, use the same guidelines as the Department of the Interior or an expanded Water Resources Council if the latter were administering a State land use grant program?

There is also a possible conflict with an already existing law, the Clean Air Amendments of 1970, Public Law 91-604. Section 110(a)(2)(B) provides that the Administrator of the Environmental Protection Agency shall approve a State implementation plan only if he determines that it includes measures necessary to insure attainment and maintenance of national air quality standards, "including, but not limited to, land-use and transportation controls." The Administrator has recently announced proposed regulations that would require the States to establish and operate a State "permit" system to review proposed new stationary sources. If these proposed regulations are made effective, a State air pollution control agency will be reviewing proposed facilities and will be making land use determinations.

Our major concern with these bills is this: Do they contemplate still another new "permit" system? Do they contemplate that electric companies, prior to construction, will be required to obtain a permit that the proposed facilities will comply with a State's land use plan or policies? If so, they could lead to further delays in construction of needed facilities.

COMMENTS ON S. 632

Apart from these general comments concerning potential conflict with other proposed or existing laws, we have several specific comments concerning S. 632.

It is clear from the language in the bill and from the Committee's report last year on S. 3354, that S. 632 intends to deal with the location of utility facilities. The State plan must identify those areas where utility facilities should

² Hearings before the Committee on Interior and Insular Affairs, U.S. Senate, on National Land Use Policy, part I, Mar. 24, 1970, pp. 108-109.

be located. What is the role of the utilities in helping select the areas? What assurance is there that the State plan will be reasonable? Could the plan limit facility locations to a few isolated uneconomic areas—perhaps without adequate cooling water available?

S. 632 envisions that a single State agency must have the responsibility for the development and administration of a Statewide land use plan. However, there are no assurances that the selected agency will seek to balance the sometimes competing interests of protecting the environment and the need for an adequate and reliable supply of electric energy. In many States this latter responsibility is that of the State public service commission. If the Committee recommends a bill, there should be some clarification of the role of the public service commission as it relates to regulated utility facilities in the development of the State land use plan, and some assurance that the responsible State agency will use a balanced approach in the development of its plan.

Even after the designated State agency decides under S. 632 where utility facilities are to be located within a State or region, this decision would be subject to Federal review and possible discontinuance of Federal grants if the Federal authority should disagree. We believe it is impractical and undesirable for a Federal agency to review the details of every State plan. Therefore the selective approach of S. 992 would appear preferable.

COMMENTS ON S. 992

S. 992 also establishes criteria against which a State land use program would be measured in order to qualify for Federal grants. However, these criteria relate primarily to the methods and organization established by the State rather than to the plans themselves. The State's land use program, not decisions on actual use of land, would be subject to Federal review. Because we believe that land use decisions can best be made at the State and local level, we favor the approach of S. 992 over that of S. 632.

S. 992 has another advantage, in our view, in that it requires the State agency to select and regulate only those decisions which it considers to be of more than local importance. As we read the bill, investor-owned electric power facilities would not normally be classified as "key facilities" as defined in Section 102(b). However, many power plants, because of their need for cooling water, would necessarily be located in "areas of critical environmental concern," as defined in Section 102(a) to include coastal zones and estuaries, and shorelands of rivers, lakes and streams of State importance. Thus the State's land use program developed under Section 104 would probably include areas for proposed electric power facilities. Here again, we believe the legislation should recognize that land use plans should make reasonable allowances for location of electric power facilities.

CONCLUSIONS

In conclusion, we recognize the value of intelligent long-range planning to preserve some lands and best utilize others.

Electric companies must consider land use questions in their long-range plans, and are complying with all applicable laws and regulations concerning air and water quality and restrictions on land use, including local zoning requirements.

We believe specific land use decisions can best be made at the local, State, or regional level, rather than at the Federal level. If the Committee decides to recommend legislation, we recommend the approach of S. 992 rather than S. 632, because S. 992 does not require a Federal review of land use plans.

Any Federal land use legislation should recognize that an abundant and reliable supply of electric energy is vital to the future growth of the Nation and to efforts to clean up the environment. Reasonable allowances should be made in any State land use plan for future electric power facilities, and the objective should be to simplify existing permit and review procedures, not to further complicate them.

I appreciate this opportunity to present our views.

Senator BURDICK. Our next witness will be Mr. Thomas L. Kimball, executive director, National Wildlife Federation.

It is a pleasure to see you again. You have been before our committee many times.

STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE DIRECTOR,
NATIONAL WILDLIFE FEDERATION

Mr. KIMBALL. May I submit my statement for the record?

Senator BURDICK. Your entire statement will be made part of the record.

Mr. KIMBALL. Mr. Chairman, our federation and its million members support the objectives of these bills. If we were forced to make a choice, I think we would prefer to have the Interior Department to handle the responsibility because it is a line organization with a considerable amount of expertise and personnel available to do the job.

In the application of the bill, I am hopeful that there won't be too much emphasis placed on the development part of planning, development, and exploitation of resources, and that we can be assured that there will be an equal amount of consideration given the protection of the environment and the esthetic part, wilderness, wildlife, and the values of scenic beauty that should be preserved in the planning process.

I think many times we give far too much consideration to economic values and development values without the full consideration for these values that planning should give.

The reason that we are supporting this type of legislation is in the hope that in the comprehensive plans we will get this type of consideration.

Senator BURDICK. What you are saying, Mr. Kimball, is that there should be a balance between development and conservation.

Mr. KIMBALL. Yes. I am hopeful of that balance, and that we give full consideration for the environment in the development process. I agree with the previous speaker that we can have these values if we are willing to do the comprehensive job in planning and pay the price for it. Some of these things are going to cost a little bit more money, but I think in the planning process here is where the public can participate, and should be given the opportunity to determine whether or not they would spend a little more money, for example, for their electric power in order to have clean air and clean water and controlled thermal effect and radioactivity and all the other problems associated with generating electricity.

Finally, Mr. Chairman, plans in themselves are not the total answer, as has been pointed out before the committee. Many fine plans are gathering dust in many of the cities, counties, and States of our country. There are many fine plans where most of the effort has been devoted toward making exceptions to those plans, responding again to economic impact and development processes, and I am hopeful that those provisions that will withhold Federal funds unless the plans are developed.

But I think more important is to hold the States to the plans once they are developed so that we will not have wasted all this time and energy, that once a comprehensive plan is developed and accepted and determined to be in the overall public interest, that we not spend the rest of the time, money, and effort making exceptions to these plans when somebody wants to make a fast buck.

With that, Mr. Chairman, I want to compliment the committee and those responsible for placing this type of legislation before the Senate.

I am hopeful it will pass and receive the consideration of the other body, and that we can finally have a national land use policy as part of our national policy.

Senator BURDICK. I think you made an excellent point here this afternoon. Your point seemed to me that it isn't the making of the plans, but putting the plans into effect. There is no question that the plans have to be good plans to begin with, but unless they are made effective, they aren't much good on the shelf.

Mr. KIMBALL. That is right. I think that is the key question. First, we have to develop a comprehensive plan to meet the needs of the people, including the environmental values, and I think more importantly, once those plans are developed and accepted by the State and the Federal Government, then there should be a vehicle to make sure those plans are not deviated from.

Senator BURDICK. One witness said earlier today "varianced."

Mr. KIMBALL. Yes, that is the favorite adjective of the developers today to take care of this situation and that. I think that is the thing we need to guard against.

Senator BURDICK. Thank you very much for your contribution.

(Mr. Kimball's prepared statement follows:)

STATEMENT OF THOMAS L. KIMBALL, EXECUTIVE DIRECTOR,
NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Thomas L. Kimball, Executive Director of the National Wildlife Federation which has national headquarters at 1412 Sixteenth Street, N.W., here in Washington, D.C.

Ours is a private organization which seeks to attain conservation goals through educational means. The Federation has independent affiliates in all 50 States and the Virgin Islands. These affiliates, in turn, are composed of local groups and individuals who, when combined with associate members and other supporters of the National Wildlife Federation, number an estimated three million persons.

We welcome this opportunity to testify.

Mr. Chairman, the National Wildlife Federation regards this legislation as one of the most important conservation proposals to come before the Congress in recent years. In annual convention earlier this year, the Federation adopted a resolution listing the major conservation issues of 1971 and one of these related to National Land Use Policy. This is what we said: "This organization is convinced that the time has come when the Nation must develop a coordinated and comprehensive plan for the best use of all of its land resources, private and public. Such a plan, if coordinated between Federal, State, and local governmental entities, must result in the determination of priorities of land use best suited for the overall public good."

At the same time, our organization adopted a resolution specifically relating to a National Land Use Policy and a copy is attached for the record. In this, our organization expresses the conviction that the Federal Government should offer every possible incentive and assistance to the States and their political subdivisions in developing a coordinated and unified approach to land use planning, one designed to identify categories and set out priorities for land use. We also are firm in our belief that the Federal Government should establish general criteria which State planning agencies must meet in order to qualify for Federal funding.

To further indicate how strongly we regard the need for adopting a National Land Use Policy, I also am attaching a copy of the Second Index to Environmental Quality, which we developed and printed in the October-November, 1970, issue of NATIONAL WILDLIFE Magazine. In this, we said that the Number 1 priority is to develop a bold and comprehensive National Land and Water Plan. We said: "We're living in sophisticated times, trying to cope with jet-age problems using horse-and-buggy methods. Engineers and politicians now plan expressways, with power of condemnation, without regard to whether they displace low-income housing or swallow up fertile food-producing land that we may need

some day. Or, a factory goes up where a park ought to be. Or, we dam a wild river."

"We need Federal encouragement to states to develop state-wide zoning. We need local plans and zoning—all dovetailing together. And the people must have a voice in these decisions; must have a chance to help plan the kind of America they want. Public hearings must be held before decisions are made on issues affecting the quality of our environment."

Mr. Chairman, we have advice from all parts of the country that the development of such a plan, if properly coordinated, can do much to meet many of the needs which can be envisioned as being necessary to meet increasing demands from an expanding population. For example, many small self-subsistent homesteads are being virtually abandoned in parts of the South and Middle-West and, yet, these areas undoubtedly can be put to good productive uses if devoted to other types of suitable agricultural activities such as tree farms or forage for livestock. Some types of incentives likely would be necessary and desirable to encourage plans of this type.

While urban zoning long has been a means for comprehensive planning in metropolitan areas, the application of such principles to rural areas remains to be accomplished and, in our opinion, a National Land Use Policy is both necessary and desirable as a corollary step toward proper protection of the environment.

In testimony before this Committee last year, I emphasized the fact that we long have felt that an inventory and investigation of *private* land and water resources well might be the subject for a project or effort similar to that being undertaken, and now completed, on *public* resources by the Public Land Law Review Commission.

Also, as we pointed out last year, a sound national land use policy could set out a coordinated Federal-State-local governmental plan for molding the future of this country. Inconsistencies such as one agency of the Federal Government aiding and abetting drainage of wetlands while another sister agency endeavors to protect them, could be resolved. It could reduce the likelihood of Federally-supported highways and airports invading parks and recreation and wildlife refuges which have been set aside with Federal resources.

As this Committee already knows, there are basic differences in the approaches to the establishment of a National Land Use Policy as envisioned by S. 632 and S. 992. We do not disagree with the stated policy of the Congress to "Encourage the conservation, development, and utilization of land and water resources on a comprehensive and coordinated basis by the Federal Government, States, localities, individuals, corporations, business enterprises and others concerned," as set out in S. 632. We generally agree with the Findings, Policy, and Purpose in Title III of S. 632 and with the Findings and Declaration of Policy in Section 101 of S. 992.

There is an essential difference, however, between the two bills. S. 632 would have the program administered by a Land and Water Resources Council operating with River Basin Commissions. On the other hand, S. 992 would assign to the Secretary of the Interior the responsibility for administering the program.

We have no particular reason to think that the program would be administered more effectively by an independent Land Water Resources Council than by the Department of the Interior. At present, the Water Resources Council has only a relatively small staff, one which would have to be expanded greatly to assume new responsibilities, whereas Interior now is better equipped for the job. On the other hand, an independent body such as the proposed Council perhaps more easily could coordinate efforts of the many agencies involved. However, we note that both of these would be combined anyway in a new Department of Natural Resources if it is established.

S. 632 provides for an inventory and continuing studies of land resources, a plan with which we are in general agreement.

We also concur with the proposal to establish principles, standards, and procedures for the Federal participants in the preparation of plans. And, we believe it is desirable that an information and data center be developed and maintained.

S. 632 provides for the establishment of river basin commissions. We have gained a respect for the Commissions which already are in operation and believe they can perform useful functions if clothed with adequate authority, especially to coordinate what otherwise might be fragmented State and local efforts. A commission apparently then would coordinate efforts of governmental entities at all levels in developing comprehensive plans "for the development of land and

water resources in its area, river basin, or group of river basins." We trust that this language could not be construed as being a mandate for *development* when comprehensive planning should set aside land areas for wilderness or waters as wild or scenic rivers. We also would hope that "an evaluation of all reasonable alternatives means of achieving optimum development" will include due consideration of the desirability, on occasion of "no development".

Title III of S. 632 and S. 992 come together most nearly with respect to findings, policy and purpose. We agree with both in the finding that poor or non-existent land use planning activities at State and local levels sometimes has resulted in irreparable damage to natural resources of great public value. Consequently, we are pleased that both S. 632 and S. 992 finds there is a vital need for the Federal Government to assist the States in developing a national policy on land use.

We are pleased that Section 302(a) in S. 632 calls for a Declaration of Policy and believe this is stronger than Section 101(b) in S. 992. This sets out that it is continuing responsibility of the Federal Government, consistent with the responsibility of State and local government for land-use planning and management, to undertake the development of a national policy. We are pleased that the policy shall incorporate ecological, environmental, esthetic, economic, social, and other appropriate factors; and, that it will serve as a guide in making specific decisions at the national level which affect the pattern of environmental, recreational, and industrial growth and development of Federal lands. We trust this national policy will provide a framework for regional, State, and local land-use policy.

We note with particular interest that S. 632 declares a part of the national land-use policy to be: "(2) foster beneficial economic activity and development in all States and regions of the United States." Last year, in testifying before this Committee, I pointed out the certain of our organization that State and local entities may place undue emphasis on industrial and commercial development. In fact, we can visualize situations wherein economic considerations could become dominant unless proper national emphasis is placed as well on public non-economic values. Most local pressures will relate to grazing, timber production, irrigation, and land disposal. None of these activities are harmful if carried out in a balanced program which also gives due recognition to intangible benefits.

We particularly like the provisions in the proposed national land-use policy which would influence patterns of population distribution "in a manner such that a wide range of scenic, environmental, and cultural amenities are available to the American people" and to encourage new communities.

We note with particular interest the section in S. 632 on Federal guidelines and requirements for statewide land use plans. We believe this bill generally sets out all of the areas which should be identified, including those of outstanding public recreational and wildlife value.

Both bills establish grant-in-aid programs for States which conform to Federal guidelines. The grants would help State and local governments with staffing to develop, implement, and administer statewide land use plans. Planning grants under provisions of S. 632 perhaps would cover a broader or less specific range of concerns than under provisions of S. 992, which calls for non-urban land classification into six uses. However, we believe S. 992 has many good requirements for eligibility for grants, particularly relating to a system of controls and regulations pertaining to areas and developmental activities designed to assure that any source of air, water, noise, or other pollution will not be located where it could result in a violation of any applicable pollution standard or implementation plan. We also commend the Committee's consideration of Section 101(d) and the provisions for consideration of wetlands of value to wildlife.

This induces us to comment about one disappointment in both bills. In all candor, Mr. Chairman, we must observe that most States and their political subdivisions generally have done a poor job in resource planning. Planning grants, of course, should help. However, we believe the Federal Government must *require* suitable statewide land use planning. The threat of sanctions to withhold planning grant funds, of course, should provide some incentive for compliance but we believe the Federal Government should be prepared to use a "bigger stick" in requiring State guidelines consistent with its own. In short, the Committee should give consideration to the possibility of withholding Federal funds other than those for planning grants. Otherwise, what would happen if a State elects not to participate in a land use planning program? Only with a powerful Federal incentive, effectively pursued, will adequate plans be developed and implemented in some States.

S. 632 allows a Federal payment of up to 90% of the cost of planning for the first five years. S. 992 provides up to 50% of the costs. Grants under S. 632 would amount to \$100,000,000 annually whereas S. 992 authorizes only \$20 million per year for five years. If effectively administered, we believe the higher amount can be put to good use and we recommend its authorization.

To conclude, Mr. Chairman, we urge that the Committee act speedily to take positive action to make the establishment of a National Land Use Policy an accomplishment of the 92nd Congress.

Thank you again for the opportunity of making these remarks.
Resolution attached.

NATIONAL WILDLIFE FEDERATION, 35TH ANNUAL MEETING, PORTLAND, OREG.,
MARCH 4-7, 1971

Resolution No. 7

NATIONAL LAND USE POLICY

Whereas, the United States is blessed with vast and fertile land resources which have enabled Americans, with their energy and technological knowledge, to become the most productive of all Nations; and

Whereas, the pressures generated by an expanding human population are creating land use demands and conflicts in all parts of the country in manners formerly experienced only in urban areas; and

Whereas, present methods, procedures, and institutions for land use decision-making are inadequate to meet the Nation's present-day needs and too often fail to take into account the non-economic factors and long-range environmental effects; and

Whereas present practices have resulted in uncoordinated, haphazard land use patterns which permit unnecessary waste and abuse of natural resources; now, therefore, be it,

Resolved, That the National Wildlife Federation, in annual convention assembled Mar. 4, 1971, in Portland, Oreg., hereby expresses the conviction that the Federal Government should offer every possible incentive and assistance to the States and their political subdivisions in developing a coordinated and unified approach to land use planning, one designed to identify categories and set out priorities for land use; and be it further,

Resolved, That this organization is firm in its belief that the Federal Government should establish general criteria which State planning agencies must meet in order to qualify for continued Federal funding.

Senator BURDICK. That will conclude the hearings for today with one exception.

The statement of Mr. Karl S. Landstrom, a member of the National Resources Section, has been made part of the record.

This will conclude the hearings with the exception that the record will remain open until the 30th of June for additional statements.

(Whereupon, at 4:12 p.m. the committee adjourned, to reconvene at the call of the Chair.)

APPENDIX

(Under authority previously granted, the following statements and communications were ordered printed:)

FEDERAL POWER COMMISSION,
Washington, D.C., July 14, 1971.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In response to your request of March 10, 1971, we enclose the report of the Federal Power Commission on the bill. As you will note, the report is also addressed to the Administration's land use bill, S. 992, which was covered in the hearings on this subject.

The Office of Management and Budget advises that it has no objection to the submission of this report from the viewpoint of the Administration's program.

Sincerely,

JOHN N. NASSIKAS, *Chairman.*

FEDERAL POWER COMMISSION, REPORT ON S. 632 AND S. 992—92D CONGRESS

S. 632—A BILL "To amend the Water Resources Planning Act (79 Stat. 244) to include provision for a national land use policy by broadening the authority of the Water Resources Council and river basin commissions and by providing financial assistance for statewide land use planning."

S. 992—A BILL "To establish a national land use policy; to authorize the Secretary of the Interior to make grants to encourage and assist the States to prepare and implement land use programs for the protection of areas of critical environmental concern and the control and direction of growth and development of more than local significance; and for other purposes."

Although these bills differ in structure and approach to the problem, their principal purpose is to encourage and assist the States under Federal aegis to formulate and implement plans for the development and management of non-Federal lands.

The Federal Power Commission recognizes the need for legislation on the subject of national land use policy and we accordingly support the objective of these bills. We express no opinion, however, concerning the overall fiscal policy of the grants-in-aid program and the appropriate organizational structure and mechanisms for administering that program, since we believe that the choice of the best methods of carrying out the purposes of the bills in this regard ought to be resolved by Congress and the President in terms of the country's critical needs in these areas.

Land use questions are of major concern to the Federal Power Commission from the standpoint of the Commission's responsibilities under the Natural Gas Act (15 U.S.C. 717-717w) and Part I of the Federal Power Act (16 U.S.C. 792-823) and more particularly our interest in power plant and transmission line problems as they relate to electric supply within the meaning of Section 202(a) of the Power Act (16 U.S.C. 824a(a)).¹

¹ In pertinent part this subsection of the Act provides that one important activity of the Commission is "... assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources . . ."

We believe that the licensing and relicensing of hydro-electric project structures and facilities under Sections 4(e) and 15 of the Federal Power Act (16 U.S.C. 797(c), 808) and the certification of interstate natural gas pipeline facilities under Section 7 of the Natural Gas Act (15 U.S.C. 717f) which constitute our primary land use responsibilities under present law, have implications and importance of regional and national significance which might in some instances transcend the conflicting land use program of any given State. While we would normally condition any authorizations under our enabling statutes and controlling environmental laws on compliance with applicable State land programs, the Commission's responsibilities would require it to depart from such programs where the essential needs of regional and national utility services and energy supply so demand.

Although the Federal Power Commission does not have jurisdiction over the acquisition of rights-of-way for interstate natural gas pipelines, the holder of a certificate of public convenience and necessity issued by the Commission pursuant to Section 7(c) of the Natural Gas Act is empowered by Section 7(h) of that Act to condemn any needed right-of-way in the United States District Courts or in State courts. In issuing such a certificate the Commission has considered as an element of the public interest, the impact of the location of the particular pipeline on the area to be traversed and has included in the certificate appropriate conditions governing the routing of such a line, *Tennessee Pipeline Co.*, 38 F.P.C. 994, 995 (1967).

Moreover, the courts have held that the Commission must consider land use values in determining whether to issue a license under the Federal Power Act, *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608 (CA2, 1965), cert. denied 384 U.S. 941 (1966); *Udall v. Federal Power Commission*, 387 U.S. 428, 450 (1967); and *Federal Power Commission v. Idaho Power Co.*, 344 U.S. 17 (1952).

Section 401(c) of S. 632 states in pertinent part that nothing in the proposed Land and Water Resources Planning Act shall be construed "as superseding, modifying, or repealing existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of land and water resources or to exercise licensing or regulatory functions in relation thereto, except as required to carry out the provisions of this act; * * *" (emphasis added).

It is our view that the phrase "except as required to carry out the provisions of this Act" without some clarification might be construed to supersede, modify, or repeal the Federal Power and Natural Gas Acts to the extent that it would in effect preclude the Federal Power Commission from licensing hydroelectric projects or certifying pipeline facilities, the existence of which might be held inconsistent with a State land use plan. The Federal Power Act and its legislative history as interpreted by the courts emphasizes the importance of centralized authority in federal licensing matters.

The concept of comprehensive development embodied in the Federal Power Act is supported by a long line of Supreme Court decisions upholding the Commission's hydroelectric licensing jurisdiction. The Supreme Court has described the Federal Water Power Act of 1920 (Part I of the Federal Power Act of 1935) as:

"* * * a major undertaking involving a major change of national policy. That it was the intention of Congress to secure a comprehensive development of national resources and not merely to prevent obstructions to navigation is apparent from the provisions of the Act * * *" (footnote omitted), *First Iowa Hydroelectric Cooperative v. F.P.C.*, U.S. 152, 180-181 (1946).

In many later cases the Supreme Court has held that authorization of a hydroelectric project is in the executive jurisdiction of the Federal Power Commission unless that jurisdiction is modified by other federal legislation, *F.P.C. v. Oregon*, 349 U.S. 435, 446 (1955); *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320, 340 (1958); *F.P.C. v. Union Electric Company*, 381 U.S. 90, 98-99 (1965). These cases recognize that the Federal Power Act enunciated the policy of Congress to centralize responsibility in a single agency under a comprehensive licensing scheme in lieu of piecemeal regulation, *Northwest Paper Company v. F.P.C.*, 344 F.2d 47, 51 (1965).

While we do not believe that Section 401(c) of S. 632 is intended to permit State land use plans to conflict with the national interest, we think the bill should make it clear that legitimate Federal interests are preserved. To accomplish this purpose we suggest either that the words "except as required to carry

out the provisions of the Act" in Section 401(c) be stricken or the following subsection added:

(e) Nothing contained in this Act shall be deemed to supersede, impair, affect, compel or prevent the exercise of any of the rights, powers, duties, or responsibilities vested by law in the United States, its agencies and instrumentalities; nor to impair or otherwise affect rights acquired by holders of permits, licenses, certificates or other authorizations issued under such laws.

The foregoing language would clearly protect the statutory functions of the Federal Power Commission under the Federal Power and Natural Gas Acts and other laws, and would also preserve the Commission's responsibilities with respect to land related environmental matters under various Acts of Congress, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), Acts for the Preservation of Historical Sites and Archeological Data (16 U.S.C. 1151 *et seq.*), Clean Air Act (42 U.S.C. 1857 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321-4335, 4341-4347), among others.

Statewide and regional land use plans, prepared under appropriate Federal guidelines with participation by a broad range of interests, could be very helpful to electric utilities in siting generating plants and selecting transmission rights-of-way, and also to natural gas companies in locating gas pipeline facilities. Development of long-range plans might make possible consideration of joint use rights-of-way for various utility and transportation services. Such organized planning efforts at the State, regional, and local levels would in our judgment aid greatly in the early resolution of right-of-way difficulties and associated environmental problems and thereby minimize the costs and delays which might otherwise impair vital utility services and energy supplies.

S. 632 and S. 902 contemplate the setting up of functioning mechanisms at the State level for the purpose of formulating land use plans involving important decisionmaking authority in this area. We think it is important, therefore, that the bills recognize the problems of power plant siting and the pressing need for resolving such problems on a national scale under a statutory scheme specifically dealing with these matters.

In recent years utilities have experienced numerous problems in acquiring adequate plant sites and related facilities due in a large degree to scarcity of land available for utility needs. The scarcity of land for such utility functions is due to such factors as the increase in population, the growing use of waterfront property for recreational, residential and industrial use, and the growing objections raised to proposed location of utility facilities, on the basis of conservation, safety, esthetics and other grounds.

It is the view of the Federal Power Commission that there is substantial evidence of the need for legislation to provide for long-range planning and advance analysis and review by public authorities of proposed major electric power generating sites and rights-of-way for transmission lines, with their related environmental effects. Such legislation should provide, among other things, for public participation in such advance review followed by certification of the balanced resulting choices by a properly constituted State or regional agency, or, if necessary, by a federal agency. Various legislative proposals on this subject are pending in both the Senate and the House. For example, Section 7(a) of H.R. 5277, the Administration's "Power Plant Siting Act of 1971", would authorize State, regional and Federal certifying bodies to approve the use of sites or routes for the siting of bulk power supply facilities. In so doing, the bill provides in pertinent part that "[T]he judgment of the Federal, State or regional certifying body shall be conclusive on all questions of siting, land-use, State air and water quality standards, public convenience and necessity, esthetics, and any other State or local requirements * * *."

In sum, the Commission supports the basic objective of these bills in promoting effective land use planning at the State and local level. In this connection we are mindful, as the President's recent Energy Message points out (7 Presidential Documents 855, June 7, 1971) that a sufficient supply of clean energy is essential if the country is to sustain healthy economic growth and improve the quality of our national life. Accordingly, we urge that any legislation on the subject of land use policy be compatible with whatever power plant siting measures may be enacted and also clearly recognize this Commission's responsibilities in relation to the Nation's future needs for utility services and energy supplies.

The Office of Management and Budget advises that there is no objection to the submission of this report from the viewpoint of the Administration's program.

STATEMENT OF HON. CHARLES E. BENNETT, A U.S. REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA

Mr. Chairman, I very much appreciate having this opportunity to testify in support of the National Land Use Policy Act. I have legislation pending, H.R. 4337, in the House Interior and Insular Affairs Committee to accomplish these objectives.

For many years now I have been concerned about the lack of governmental action on land use policy which in many cases has caused severe environmental damage. This cannot be allowed to continue, because when it affects land, it affects a non-replaceable asset. As Will Rogers said "buy land, they ain't making any more of it." Since the early part of this century when state governments began turning over zoning matters, which is the primary source of land use control, to local governments we have learned a great deal about protecting the environment. We have learned the local government's working separately within their boundaries cannot solve ecological problems which are not fully contained in their jurisdictions. The states must assume responsibility for land use planning on an area wide basis.

At the present time, I am seeking to create the Florida Frontier Rivers National Cultural Park which covers land in several jurisdictions, including Jacksonville which I represent in Congress. The State of Florida has been extremely helpful through its Internal Improvement Fund, but they lack the tools to perform many needed tasks. The states need assistance in postponing expensive developments pending possible immediate inconsistent decisions on park and other community uses. Under this legislation and with assistance from the federal government, the states will be able to properly respond to this type of need.

In many areas of our country, underground water tables are being drained to the extent that springs and streams are drying up and sea water is seeping into wells. This is what has happened in South Florida. In Secretary Morton's statement before this committee he indicated that in South Florida "The ground water has sunk to alarmingly low levels, putting municipal water supplies in jeopardy from sea water. It has happened in recent years on Long Island; at Savannah and Brunswick, Georgia; at Houston, Texas; in the Los Angeles-Long Beach area."

Another important aspect of this legislation is the federal grants which would be provided to aid the states in preparing statewide land use programs. Once these state land use plans are complete, we will have pinpointed environmentally fragile areas. Using this information the states and the federal government will better know how to allocate funds for "areas of critical environmental concern," such as coastal wetlands, flood plains, riverfronts on scenic and historical areas.

We are learning every day the wisdom of words of John Muir, the great naturalist when he said "When we try to pick out anything by itself, we find it hitched to everything else in the universe." The federal government must assist in improving land use patterns which have ruined so much of our most basic resource, land. Through the passage of the National Environmental Policy Act, which I strongly supported, the Congress has made an important first major step in protecting the environment. This should be followed up with a National Land Use Policy which will bring us closer to the goal of a quality environment.

I hope that the committee will promptly report out this legislation and that it will be enacted into law and implemented at the earliest opportunity.

STATE OF NORTH DAKOTA,
EXECUTIVE OFFICE,
Bismarck, N. Dak., June 1, 1971.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: I was asked to be a witness before your committee preparing legislation on national land use policy. I am sorry that I will not be able to be present on June 7, for the hearing. I do, however, want to join those who believe that national land use policy is not of the core issues facing the nation today.

National land use planning, along with such basic policies as population distribution, will be absolutely essential if we ever strike a balance between our need to develop resources and provide jobs on the one hand, and conserve resources and protect our environment on the other hand.

National land use planning, of course, is a vast and complex subject. I am pleased that a man of your stature in the field of natural resource conservation and environmental management has taken the initiative to bring about a national policy in land use. I wish you every success in getting this historic legislation through Congress.

Sincerely yours,

WILLIAM L. GUY, *Governor.*

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF COMMUNITY AFFAIRS,
Harrisburg, Pa., June 30, 1971.

Hon. HENRY M. JACKSON,
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR JACKSON: I regret I was unable to appear at your hearings on S632 and S992.

We support fully the need for a national land development policy. We commend you for your attention to and concern for this important subject.

Governor Shapp shares this interest and has recently directed that appropriate agencies of the State Government begin preparation of a State plan.

We believe we have identified eight criteria for land development agency legislation. As you will from the attached, both bills at this time appear, according to our analysis, to fall short of several of these criteria. I should be pleased to meet with you or the staff of your Committee to review the matter further, if you desire. Governor Shapp is anxious that we be helpful in this important matter.

Sincerely yours,

WILLIAM H. WILCOX, *Secretary.*

COMPARATIVE TABLE OF PROVISIONS FOR S. 632 AND S. 992 MEASURED AGAINST 8 SUGGESTED CRITERIA

Criteria	S. 632	S. 992	Remarks
A national land development policy should—			
1. Not be primarily concerned with people or with environment but, instead, should be concerned with the interaction of each to the other.	Oriented mainly to water resources in major thrusts, though title III calls for the development of a "national land use policy," and recognizes in "findings" that "... continued growth of Nation's population, expanding urban development, proliferating transportation systems, large-scale industrial and economic growth present increasing problems."	This bill is oriented mainly to the national resource elements of land use with limited reference to the interaction with people, "major airports, highway interchanges, and recreation facilities," are, however, mentioned in findings and declaration of policy.	Land and Water Resources Council would be faced with somewhat competing priorities between title II and much of title III in S. 632.
2. Recognize the interaction and interdependency of industry, agriculture, housing, commerce, and recreation as they relate to proper and effective land use.	"Findings" in title III note that "existing Federal land-use planning programs have a significant effect upon the location of population, economic growth and the character of industrial, urban, and rural development.... The policy directs that the national land-use policy shall incorporate ecological, environmental, esthetic, economic, social, and other appropriate factors."	Not sufficient recognition to this criterion.....	This criterion should receive stronger emphasis in both bills.
3. Be more than a collection of 50 State land development policies; it should represent a national perspective with overall national objectives.	Criterion not recognized.....	Criterion not recognized.....	Both bills appear to assume that a national land development policy is the composite of 50 State policies; A national perspective, articulated at least in general terms, is needed.
4. Be designed to provide as little overlay as possible on existing governmental machinery for administration and operation.	Title III could duplicate and overlap with existing 701 planning grants and proposed grants for new town planning in 1970 housing legislation despite requirement for "full coordination between comprehensive water resource planning and other statewide planning programs . . ."	Would create new administrative machinery and new bureaucracy and grant programs in Department of Interior overlapping with existing DHUD bureaucracy.	Both bills in present form will create problems of coordination and administrative overlap. Requirement in S. 632 for a single State agency with primary authority in each State may create problems in Pennsylvania and other States due to organization of State government with department of community affairs serving local governments.
5. Face squarely the central issue of population growth, and the policy of population concentration or dispersement in old towns and/or new towns.	Does not face squarely population growth and dispersement issue.	Does not face squarely population growth and dispersement issue.	Bills do not specifically recognize earlier legislation requiring development of urban growth policy.
6. Be formulated with the participation of those who must execute the plan, including representatives of the State governments.	Governors not represented are on Land and Water Resources Council.	No provision for non-Federal inputs in setting standards, etc.	
7. Encompass bodies of water as well as land, include, in some cases, the air and the impact of land use on it.	Criterion recognized in bill.....	Criterion recognized in bill.....	
8. Be consistent with economic realities, including those which affect revenue-producing capacities of State and local governments.	Criterion not recognized.....	Criterion not recognized.....	Cost factors of implementing land use plans largely ignored.

ELEMENTS OF A
NATIONAL POLICY FOR LAND USE

Presented at the

American Society of Planning Officials
1971 NATIONAL PLANNING CONFERENCE
New Orleans, Louisiana

March 31, 1971

HERMAN D. RUTH
City and Regional Planning Consultant
Berkeley, California

TABLE OF CONTENTS

A. Introduction	1
1. National	1
2. Administrative and Congressional Policy	2
3. Approaches to a National Policy for Land Use	5
B. Areal and Spatial Distribution of Cities and Urbanization	11
1. Planned Regional Urban Expansion	14
2. Urban Containment and Intensification	17
3. New Towns and New Cities	22
4. New Metropolises	24
5. Urban Growth Corridors	28
C. Distribution of Economic Activities to Serve an Urbanizing Nation	29
D. Social Services and Facilities	33
E. National Transportation System	38
F. Water Resources	40
G. Agriculture and Agricultural Lands	42
H. Fuel, Power and Energy	44
I. Open Space and Outdoor Recreation System	46
J. Direction and Opportunity for Private and Corporate Investment	48

A. Introduction

1. National

When we refer to "national" or the nation, we usually mean the fifty states. When discussing "national land use" it is not uncommon to refer to the forty-eight contiguous, or continental states, and somewhat separately, to Alaska and Hawaii. In the context of a Nation Policy for Land Use, this paper refers to the fifty states, including Alaska and Hawaii. However, it may be well to note some special conditions relative to the states of Alaska and Hawaii.

Both states are separated from the forty-eight continental states by some distance. Alaska is approximately one-third the size of the forty-eight continental states. It is sparsely populated, rich in natural resources, it possesses a harsh climate but is considered to possess a fragile ecology. Hawaii is unique among states by virtue of its location, climate, island character, land tenure, and use as a worldwide recreation and resort area. It was also the first of the fifty states to have a general plan which was prepared in 1957-1961 and revised in 1967. The state legislature also passed the Land Use Law which provides for the classification and regulation of land. The plan is not a "policy plan," but a land use plan. The land is divided into four districts; urban, rural, agriculture and conservation, which means the state has taken the initiative in locating and regulating the broad categories of land use. The special conditions that exist in Alaska and Hawaii make it particularly desirable that they be included

because they may be instructive to the development of a National Policy for Land Use.

2. Administrative and Congressional Policy

Many Federal agencies administer programs which reflect land use policy. The Forest Service, Bureau of Land Management, National Park Service, Bureau of Sport Fisheries and Wild Life, the Federal Water Development Project Agencies, the Atomic Energy Commission and the Department of Defense.¹ All manage public lands. These agencies have dominant and corollary missions which are expressed in statutes. To carry out these missions these agencies create policies and they promulgate rules and regulations to effectuate administrative policy. These cover a wide range of activities including licensing of facilities, leasing and fees, methods of operation, relationship with user groups, planning methodologies and public hearing procedures. They are mainly aimed at the management and operation of lands under public jurisdiction. These activities can be identified as "administrative policies." In addition to administrative policies that govern public lands, private lands are also controlled by administrative policy, although these are largely by the states and their subdivisions. However, the President appears to be ready to regulate private uses of property, particularly where pollutants threaten the quality of land, water, and air, and the Congress has enacted legislation registering the sale of lots in recreational communities where lots are sold in inter-state commerce.

Policy is not only made by the executive and the departments that administer Federal programs, but by the Congress. Congressional policy is usually found in the preamble, or the "declaration of policy" section of legislation. After enactment of many separate pieces of legislation, the Congress may collect them and give them a meaning in a larger scheme by the declaration of a national policy. For example, the Housing Act of 1949 contained the following declaration:

"The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of the communities and to the advancement of the growth, wealth, and security of the Nation..."²

This policy was amended in 1965 when the Congress declared:

"The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of our people require, as a matter of national purpose, sound development of the Nation's communities and metropolitan areas in which the vast majority of its people live and work..."³

This policy was further amended in 1968 when the Congress declared:

"The Congress affirms the national goal as set forth in Section 11 of the Housing Act of 1949 of a decent home and a suitable living environment for every American family."

"The Congress finds that this goal has not been fully realized for many of the Nation's lower income families; this is a matter of grave national concern; and there exists in the public and private sectors of the economy the resources and capabilities necessary to the full realization of this goal..."⁴

The declaration of these policies by the Congress provides the basis for the enactment of various legislative programs. The enactment of Section 231, Housing for the Elderly and Handicapped; Section 232, Nursing Homes; Section 233, Experimental Housing; Section 234, Condominiums; Section 235, Interest Payment Program for Home Ownership; Section 236, Interest Payment Program for Rental Housing; and the many urban development programs are specific acts designed to carry out the basic Congressional housing policy. Many of these acts contain their own purpose, intent and findings as a further amplification of the overall housing policy of the Congress.

Not infrequently the Congress will create a committee or a special committee, which may be a mixture of Congressmen and lay persons, for the purpose of investigating a subject in depth to provide the background to establish new direction for legislative policy. Such a commission was the Public Land Law Review Commission created to help the Congress determine policy that "the public lands of the United States shall be (a) retained and managed or (b) disposed of, all in a manner to provide the maximum benefit for the general public."⁵

Both types of policies — administrative and legislative — are important and perform valuable functions. The incremental development of legislative programs, the increased concern for the quality of the environment, and more particularly, the need to relate diverse programs seem to have set the stage for a legislative declaration of policy with respect to land use.

3. Approaches to a National Policy for Land Use

There are several approaches to the development of a National Policy for Land Use. They vary in intensity and breath from,

- a) uses that consume land and water area and the projection of the demand for land and water for these uses,
- b) large-scale, essentially national, project developments such as the interstate highway system, the railroad network, or the electric power intertie,
- c) land use in urban strategies such as the creation of national parks in metropolitan areas to serve concentrations of people and provide open space, or the development of new towns to serve social and economic needs of the metropolitan area, and
- d) a comprehensive planning approach which recognizes the interdependence of man, his activities and the air, land and water resources.

Land Use Area

Land continues to be consumed to accommodate our expanding urban population. It has been estimated that almost 11 percent or 337,350 square miles of a total of almost 3,000,000 square miles of the continental United States will be required to accommodate an additional 100,000,000 person by the year 2000.⁵ Recent population estimates have tended to be revised downward so that less land would be consumed for urban purposes. However, it appears that while our population is increasing by some 50 percent, our land requirements for urban requirements for urban purposes will be increasing.

approximately 125 percent.

While these figures may not appear to be great in absolute terms, most of the urban expansion will take place on the periphery of existing metropolitan areas where land for urban purposes is in direct conflict with the need for the preservation of open space, agricultural land, and the prevention of the obliteration of the countryside, waterways, and the coastline, and the quality of the atmosphere. The potential of land use conflict appears to be inverse to the demand for land in metropolitan areas.

The United States contains almost 3,000,000 square miles of land area. It has been estimated that new transmission construction to 1990 will utilize more than 11,000 square miles of land for rights of way, compared with the 6,250 square miles now used by existing transmission. The 6,250 square miles used today is roughly 1/500 and the 11,000 square miles projected for 1990 is roughly 1/300 of the total surface of this country. In absolute terms this may not appear to be large; in relative terms it means that whereas 6,250 square miles serve 200 million people, by 1990 an additional 5,000 square miles will be necessary to serve approximately an additional 100 million people.⁷ Acreage for transmission lines in the densely populated areas is very scarce and difficult to obtain for transmission lines.

Large Scale National Project Development

The interstate highway system, which consumes land for new rights of way but which is oriented toward improving accessibility and linkage of our major metropolitan areas, is an excellent example. The completion and extension of a national recreation and open space system to include national parks, national seashores, national trails, estuaries and shoreline, wilderness areas, and all other elements which are part of a national-wide recreation and open space plan, represent a potential large-scale project development.

Urban and Land Use Growth Strategies

There are substantial differences in the economic character of the regions of the United States. These differences are expressed in terms of investment, family and per capita income, concentrations of people, and the range and number of persons employed. Improvement programs such as the Appalachian, the Four Corners, or the investment in military, aircraft and space industries, are aimed at improvement of the regions they serve. If large capital investments are made which generate employment, it can be expected that substantial related urban land expansion will emerge. England and France have found it desirable to link urban and regional planning into the national planning process. In England this took the form of new towns to serve metropolitan areas, and in France it took the form of an

elaborate incentive system to induce industrial development in other regions than Paris. The less prosperous areas were favored. Public investment budgets were established for each region and commissions on regional economic development were created.

A National Policy for Land Use may well reflect the nation's aim to raise the level of depressed metropolitan areas and regions.

Planning Approach

A comprehensive planning approach to a National Policy for Land Use should be based upon carefully selected policies. There is in planning a tendency to include everything because the planning approach emphasizes interrelationships and after all man, his activities, and the physical resources are interrelated.

The agenda for a National Policy for Land Use should include some nine or ten elements and for the present exclude discursive elements such as international trade, immigration and world population policies. They are not excluded because they have no bearing on a National Policy for Land Use, but rather because the elements suggested will require time to find acceptance and provide a guide for the nation. A National Policy for Land Use will best serve the nation if it is limited to those interrelated

policies which provide a framework for Congressional action.

There is a great need to relate people and their activities to urban concentrations and the larger region. Urban and regional planning and development need to be reconciled or we shall give way to a national environmental crisis as reflected in the increased competition for lands.

The approaches to urban planning and regional planning are fundamentally different. The former tends to consume land and other resources to accommodate growth, and the latter tends to conserve resources and restrain or restrict growth. The former may be viewed as expansionistic and the latter as conservationistic. They need not be in conflict if we are prepared to take the larger view of the interdependence or a "balance" of man, his activities, and available resources. The "balance" in planning, which is an ill-defined concept, has become a matter of immediate concern. Most often "balance" has meant a "balance of land uses" which contain elements of efficiency and environmental amenities. The deterioration of the environment has caused attention to be directed to the larger area — the region and the nation — and as a consequence "balance" has also been enlarged. An enlarged concept of "balance" recognizes relationships which provide the substance of a National Policy for Land Use and they include:

Development and Conservation

Socio-economic Improvement Programs and Capital Investment

Land, Water and Air Consumption and the Quality of the Environment

New Towns and Central City Redevelopment

Central City Growth and Regional Development

Metropolitan Growth and Urban Containment

Resource Development and Public Lands, Recreation and Open Space

Modes of Transportation — Air, Highway, Railroad, Shipping and Urban

Concentrations

B. Areal and Spatial Distribution of Cities and Urbanization

While all of the elements of a National Policy for Land Use are interrelated and interdependent, it does appear appropriate to start with the location of cities and urbanization. The concentration of people in cities and urban areas causes shock waves that are felt in remote parts of the Nation. It is only in recent years that general recognition has been made of the growth of cities and urban areas, the affluence and mobility of the population, and the deterioration of the Nation's resources.

The concentration of people in cities and the growth of urban areas has led to the creation of several theories to explain these social, economic and physical phenomena. There is no universal acceptable theory of urban growth and development. At this point we find that the theories tend to suggest the factors that bear on the areal and spatial distribution of cities and urbanization, rather than provide an explanation.

A communications theory of urban growth is predicted on the substitution of communication for transportation. An overload in transportation facilities can be accommodated by increased use of communication. However, communications are also in danger of being overloaded. How activity patterns, land use patterns, urban growth and development are derived from the theoretical bases is not yet known.

In a related theory of urban growth and development which emphasizes human interaction in both the "place" and "non-place" of the urban community, attention is directed to the interactions which take place within the urban region and within the world at large. The elements of the urban community are identified, measured, and classified. The next step would be to use the framework of the directions of growth and development which would involve an analysis of various types of activities and their resultant locational pattern.

A theory of growth which emphasizes urban form is based upon the physical implications of human interaction. An important element is goal formulation which includes the identification of goals and the specification of content of goals. Application of the theory is more adaptable to the planning of the city than for analyzing the structure and explaining how urban growth occurs.

Urban growth and development has been explained through accessibility; where accessibility has become the dominant feature of the theory. Many of these concepts are an adaptation and evolution of the Reilly gravitational pull of retail trade. They have been applied to other bases such as health and employment; however, the bases and accessibility have been inverted so that accessibility determines location and growth patterns. This concept emphasizes the physical relationships of urban structure and growth patterns. This concept emphasizes the physical relationships of urban structure and growth based

upon the location of employment, retail activities, or services, and the transportation system.

Urban growth and development as a function of market activity has had a relatively long and diverse theoretical exploration. The bases include residential space and households; agricultural, business, and residential users; rent paying ability; retail and personal service establishments; basic employment and trip distributions; and the analysis of urban systems. This group of studies has its roots in the market mechanism. Urban land uses are distributed according to supply and demand relationships. These theoretical conceptions are usually expressed in mathematical models and can simulate urban growth and structure. It is in this context that have relevance to a National Policy for Land Use.

Another group of theoretical approaches employ environmental resource analysis to suggest the constraint on urban growth and expansion. The natural resource base is analyzed which tends to emphasize the supply side of the environment as expressed in the land and water capabilities. While these approaches provide a valuable input on the natural environment, they treat too casually the goals as well as the social and economic factors that shape the form and structure of our urban areas.

This brief resume of the theoretical bases of urban growth is presented as a prelude to the areal and spatial distribution of cities and urbanization. For whatever reasons men come together to form cities, it does appear that unbridled urbanization threatens our cities, our environment, and indeed man himself. Perhaps a theory will emerge as we develop a pragmatic solution that will not only insure survival, but provide measures that gauge the improvement in the quality of life.

1. Planned Regional Urban Expansion

Despite the relative affluence of the United States, there still remain regions which are described as economically depressed. The Congress created the Area Redevelopment Administration (ARA) within the Department of Commerce. It was charged with administering inexpensive business loans, construction of public facilities through loans and grants, and the preparation of overall economic development programs. In 1962 the administration was given the responsibility for administering the Public Works Acceleration Act. The act was aimed at the creation of the greatest number of jobs in areas suffering from unemployment. In 1965 Congress passed the Public Works and Economic Development Act which increased appropriations for ARA whose name was changed to Economic Development Administration. The act enlarged the areas to receive assistance and attempted to direct investments in a few urban growth centers in effort to stimulate employment and economic development throughout the region. The act also provided for the creation for regional commissions

for the Four Corners, Ozarks, Upper Great Lakes, Coastal Plains, and New England economic development districts. The Appalachian district was established under separate legislation. The function of the commission was to evaluate the best investments and implementation strategies for their region.

The Economic Development Administration activities represent an interesting beginning to the problems of depressed regions. Their accomplishments are modest, but on the other hand, their resources have also been modest. The activities of EDA would count for much more, if there had been a conscious effort to direct investment within these regions by the Federal Government and to make it attractive for private enterprise to do the same.

We have observed that there is a tendency for regions which possess substantial industrial development to attract additional industrial development. How can this pattern be altered? How can industrial development be located in areas with unemployment, areas which lack industry, and areas which have inadequate industry? It is clear that some incentive is required. In addition to satisfying all the locational requirements of the particular industries, industry will want to be assured the sufficient infrastructure exists or can be readily supplied to serve new employees.

A new city development was once presented to the author on the following

hypothesis: if ten industries each of which would build a plant to employ 1,000 persons were to agree to build such facility in the same general location, how many people could be expected to be generated and reside in the new city? The answer was approximately 100,000 persons. While the development did not materialize, it was consciously considered by the industries. Every year the major industries make a projection of their prospective capital investments for plant facilities. Knowing this, is it not possible to direct and attract industrial location in specifically depressed regions through incentives and other devices? Based upon the limited experience of the Economic Development Administration, it would appear that investments in jobs and industrial development can be maximized when they are concentrated so as to trigger additional investments in related facilities and services. If regional objectives are tied into some national action such as allowance for a more rapid depreciation of the plant, or assurance of contracts for manpower training, or a direct Federal commitment for an installation such as Atomic Energy Commission, military, or space facilities, or a major installation such as a federally-aided airport, or, waterpower facility, or interstate highway interchange, the opportunities for regional improvement are greatly enhanced.

Planned regional expansion can make a significant improvement to the region provided that all capital improvements are coordinated to maximize the return on each. The elements necessary to support planned regional expansion have

been noted in a number of countries. They include the following:

"The adequacy of machinery to define development goals, not only aggressively but by sectors and by regions; the means that exist to coordinate development programs by sectors and by regions; the explicitness of the basic urban and regional development strategies; the quality of staff and training programs; the effectiveness of programs enlisting contributions from the private sectors; the linkages that exist among social, economic and physical elements; the capacity of local and regional organizations to handle their responsibilities; and the provision for evaluation and improvement of performance, as the program continues."⁸

Many of these ingredients exist at the regional level of the economic development regions. The big omission is a national development strategy, the coordination of national efforts with those of the state and the region, and the supporting investments by the Federal Government and private enterprise.

A further requirement of planned regional expansion is the establishment of priorities. Implicit in the establishment of priorities is the differential in investment to be made by the Federal Government in selected regions. This tends to run counter to the equity considerations in current evaluations of revenue-sharing; however, it is in accord with national interest when examined from the need to eliminate glaring inequalities in opportunity and to provide a floor for family well-being.

2. Urban Containment and Intensification

While waiting for technological improvements we see the urban environment

continues to deteriorate. Smog will be ended in five, ten, twenty, or thirty years, or so we are told. In the meantime the brown haze becomes darker and farms and forests far removed from the city wither under the toxic fumes. The disposal of solid waste becomes more difficult as available sites are consumed. Water sources are threatened by untreated sewage, unauthorized dumping of waste in stream valleys, and increased run-off and sedimentation due to advancing urbanization of the metropolitan areas. While waiting for technological improvements, the quality of the environment as well as urban life deteriorates. Even the most ardent supporters of the city, recognize that uncontrolled growth has produced problems which are unmanageable.

The difficulty we face is a determination of how big a city we can tolerate. Is there a population or area limit to our cities? When I look at New York or at Los Angeles, I would say that size produces diminishing returns in the quality of the environment and of life. Growth in our largest metropolitan areas should be slowed down or restricted. A program which prevents further expansion at the periphery and the intensification of the interior "gray areas" would serve them well. On the periphery of the metropolitan areas attention should be directed to preserving prime agricultural lands, developing a linked system of open space, scenic recreation, and land with unusual physiographic characteristics. Perhaps the land and water conservation fund should be combined with the open space fund to acquire land on the periphery of metropolitan

areas. Metropolitan parks around our major urban areas are urgently needed.

Another approach would be to place absolute limits on the continuous urban land mass. The prospect is four major urban regions in the United States — Atlantic Seaboard, Lower Great Lakes, Floridian and Californian — and a number of minor urban regions which would contain 77 percent of the total population and 11 percent of the land area of the contiguous United States.⁹ These major urban regions in their densest portions will in places be several hundred miles in length and in width.

The location of this urban growth and concentration has been simulated by Herman Kahn and Anthony J. Wiener.

"The United States in the year 2000 will probably see at least three gargantuan megalopolises. We have labeled these — only half-frivolously — "Boswash," "Chipitts," and "Sansan." Boswash identifies the megalopolis that will extend from Washington to Boston and contain almost one quarter of the American population (something under 80 million people). Chipitts, concentrated around the Great Lakes, may stretch from Chicago to Pittsburgh and north to Canada — thereby including Detroit, Toledo, Cleveland, Akron, Buffalo, and Rochester. This megalopolis seems likely to contain more than one-eighth of the U.S. population (perhaps 40 million people or more). Sansan, a Pacific megalopolis that will presumably stretch from Santa Barbara (or even San Francisco) to San Diego, should contain more than one-sixteenth of the population (perhaps 20 million people or more). These megalopolises will all be maritime. Boswash is on an extremely narrow strip of the North Atlantic Coast; Chipitts, on Lake Erie and the southern and western shores of Lake Michigan and Lake Ontario; Sansan, on an even more narrow strip on the West Coast...."

"The three megalopolises should contain roughly one-half of the total United States population, including the overwhelming majority of the most technologically and scientifically advanced, and prosperous intellectual and creative elements. Even Sansan will have a larger total income than all but five or six nations. Study of the United States in the year 2000 may largely be of Boswash, Chipitts, and Sansan."¹⁰

Efforts to determine optimum size cities based upon the number of people that will support institutions have always seemed a futile pursuit. Active support of institutions is a variable that is altered by education, income, mobility and changes in leisure and life style. However, it may be desirable to contain the large urban agglomerations not on the basis of optimum size, as expressed in terms of efficiency and economy, but because of the destruction of the urban community, the metropolitan open space, and the threat to life itself. There are, however, many small and medium sized cities that would benefit from increased growth. They could be provided with increased services and facilities to improve the quality of life. If they are located within a metropolitan area, growth and containment would be a function of their position in the metropolitan structure.

The redevelopment of the deteriorated or deteriorating portions of central cities at higher population densities and intensities of development is a continuing prospect. There is no apparent slackening of interest in urban renewal because the blight, the obsolescence and the deterioration continue. Intensification through redevelopment is an ongoing activity of central cities, and not all of it is publically supported. Considerable private redevelopment takes place as the character of areas and neighborhoods change.

Urban scatteration has its proponents. Scattered development provide nuclei for urban expansion; it provides open space during development; it provides

a supply of unused land for later development thereby infusing new investments into older areas; and it provides a free choice of development locations which responds to a market economy. Opposition to scatteration stems from concern about inefficiencies in the provision of services, inefficient and inappropriate use of lands, lack of a cohesive community. What is the effect of scatteration on the quality of the environment? There are some studies which indicate that scattered development tends to increase pollution. The State of California Water Resources Department simulated patterns of development to spread population more evenly throughout the State and found that scattered development tended to increase pollution. The relatively dry streams could not carry away the wastes.

The states can, and should, take a more positive role in the identification of areas suitable for urban growth. Perhaps, the statewide land use and zoning adopted by Hawaii is appropriate. A state land use plan which divides the land into four districts: urban, rural, agriculture and conservation would provide a basic land use policy decisions at the state level which would be helpful to municipalities. The designation of areas for urban expansion is in itself a determination of areas for urban containment and intensification. Without such a designation every piece of land has a potential for urban expansion and it is so regarded by most property owners, particularly if it is in a metropolitan location.

3. New Towns and New Cities

Advocates of new towns or new cities have had their ups and downs over the past 25 years. While the American model which was promoted by private enterprise emerged out of the super subdivision, rather than the English garden city, it lost even its most financially capable advocates. The major problem has been the inability to hold and finance the land over a long period of development, the large capital outlays for basic infrastructure facilities, and the vagaries of the housing market in a changing money market.

Subdivision ordinances provide for the improvements related to the individual lot, and the comprehensive general plan provide the framework for the provision of neighborhood and community facilities, but there has been no effective legal, administrative, or financial instrument that would make provision for city-wide facilities. A few new cities have been able to survive the financial crunch, but most have been abandoned.

The enactment of the Housing and Urban Development Act of 1970, TITLE 7 - URBAN GROWTH AND NEW COMMUNITY DEVELOPMENT, may provide new interest in new towns and new cities. However, the purpose is somewhat broader than new towns and new cities, which may tend to make it less usable for these purposes. Section 710 (f) reads as follows:

"It is, therefore, the purpose of this part to provide private developers and State and local public bodies and agencies (including regional or metropolitan public bodies and agencies) with financial and other assistance necessary for encouraging the orderly development of well planned, diversified, and economically sound new communities, including major additions to existing communities, and to do so in a manner which will rely to the maximum extent on private enterprise; strengthen the capacity of State and local governments to deal with local problems..."¹¹

Loans would be made available for the purpose of financing real property acquisition and land development, and also to make public service grants for the essential public services (including educational, health and safety services) for the initial period not exceeding three years. In addition, supplementary grants can be made to public agencies not to exceed 80 percent of the cost of such project for selective facilities.

Interest in this title has been lively and to date a number of applications have been made with the Department of Housing and Urban Development. The New York State Urban Development Corporation is authorized to construct new towns or new cities, but to date has tended to concentrate on projects, however, large in scale as for example the development of Welfare Island, rather than to build new towns or cities.

Section 723 of the act contains an interesting provision which provides for the demonstration of the development of new communities on federally owned lands

which may serve as models of new community development which could feasibly be carried out by other public and private developers. It would appear to be desirable to have at least one demonstration new city in which experiments of a great variety of development could be undertaken. This could include experiments in utility systems, mass building of housing in a variety of housing types, and a controlled environment — internally as well as externally — by virtue of the surrounding publically held land. Furthermore, many of the existing grant-in-aid and development projects could provide financing for the experimental new city. Private enterprise could be encouraged to participate in a variety of demonstrations and experiments.¹² Perhaps, in exchange for the opportunity to participate in new demonstrations, commitments could be obtained for the development of employment opportunities including manpower training programs. The administrative authority for the development of a new city could be contained in a state urban development corporation or shared with a federal authority.

4. New Metropolises

Considering the difficulties of getting new towns or new cities of any size into being, how is it possible to suggest that new metropolitan areas in the range of 500,000 to 2,000,000 are appropriate in the areal and spatial distribution of cities and urbanization? The difference in magnitude of a new city of, say 100,000 population, and new metropolitan area of 1,000,000 population offers

a wide range of instruments to bring the metropolitan area into actuality. Many of the instruments are similar to those suggested for the development of new cities such as tax incentives, special financing legislation, coordination of public improvements, economic development programs and manpower planning, direct federal investment in employment activities, and the coordination and concentration of federal grant-in-aid programs.

The concentration of population in a new metropolitan city is offered as an alternative to metropolitan scatteration and sprawl. Some metropolitan cities may be located on public domain land. In these cases they would be wholly new cities, separated some distance from areas of urbanization. This very separation may make them more difficult to realize. However, it may be possible to develop a cluster of metropolitan cities in the urban constellations that Pickard, and Kahn and Weiner have identified. This approach has the advantage of drawing on the people, jobs, housing, transportation and other services and skills while the new metropolitan city is under construction and development.

A new metropolitan area to accommodate 1,000,000 persons would probably require approximately 125 square miles. This is the equivalent of .8 acre per person for all urban purposes within the metropolitan city. However, it would appear appropriate to provide and protect the urbanized area with permanent open space. If the open space is limited to an additional 125 square miles then a

belt with an additional average width of two miles would be required. This does not appear to be enough separation from other major urbanized areas or metropolitan cities and casts some doubt on the constellation concept of clustered metropolitan cities, which may be more of a rationalization than urban growth theory.

The use of public lands for new cities is specifically authorized in Section 723 of the Housing and Urban Development Act of 1970.

"Upon specific authorization by the President and under applicable federal law respecting the use of federally owned lands, the secretary, utilizing funds made available for the purpose by the Congress, is authorized to plan and carry out large scale projects demonstrating the development of new communities, which shall be designed to contribute to the achievement of the purposes of this part and serve as models for new community developments which could feasibly be carried out by other public and private developers."¹³

The advantage of using the federally owned public lands is the opportunity to provide lands at nominal cost the control of the peripheral areas by insuring contiguous open space to the developed metropolitan city. Criteria for the selection and development of such a city have been suggested:

- 1) Distance from existing metropolitan or other city development of not less than 100 miles.
2. Sufficient land and adjacent permanent open space to accommodate 1,000,000 population.

- 3) Provision of water and waste disposal within a water basin area and without reliance upon the importation of water.
- 4) Emphasis on the experimental nature of planning and development as a metropolitan workshop for new technology and planning ideas.
- 5) The creation of a state chartered urban development corporation or a federal administration to administer the development with maximum opportunity for the participation of private enterprise.
- 6) Authority to tap the Federal Government, foundations, and private enterprise for experiments in the design and construction of city components — utility systems, housing for entire neighborhoods, circulation and transportation systems, and construction of commercial and industrial facilities.

In 1964 a proposal was made to accommodate the estimated population increase of 100 million persons to the year 2000 by the construction of new metropolises in the range 500,000 to 200,000 population.¹⁴ In 1969 a proposal was made recommending the building of 100 new cities of about 100,000 persons each and ten metropolitan areas averaging about 1,000,000 persons.¹⁵ Also in 1969, a proposal was made to the AD HOC Subcommittee on Urban Growth of the House, Banking, and Currency Committee for a potential of 272 large new communities ranging from 50,000 to 500,000 in size — assuming that 30 percent of the projected 100,000,000 population increase would go into such cities.¹⁶ Advocates of new cities and new metropolises appeared to be reconciled to

the accretion of most of the urbanization and settlement of population to the existing metropolitan areas. However, the range of population is as much as 50 percent to as little as 10 percent that may be located in new metropolises if there was a concerted program.

One major metropolitan city — even an experimental one — located on publically owned land would be a worthwhile undertaking. The legal basis has been created in Section 723 of the Housing and Urban Development Act of 1970. It has yet to capture someone's fancy or favor in the administration.

5. Urban Growth Corridors

Urban growth corridors or urban growth centers have been suggested as a basis for concentrating population growth. The development of the interstate highway system, rapid transit lines, railroad lines, and water transmission lines are essentially linear developments which have the potential for accommodating urban growth. When these lines are supported by "key facilities" such as a major airport, interchanges between interstate highway systems and major recreational land and facilities there is the opportunity to create a transportation node which will serve to attract and generate urbanization. This is the recognition of the historical role transportation has played in the development of new centers of urbanization.

These five sections of the Areal and Spacial Distribution of Cities and Urbanization constitute the elements of an Urban Growth Policy.

C. Distribution of Economic Activities to Serve an Urbanizing Nation

In 1790 - 5 percent of 4,000,000 people lived in cities; in 1970 - 75+ percent of 204,000,000 people lived in cities; and in 2000 - it is estimated that 85 percent of 275-300 million people will live in cities.

In recent years there have been several governmental pronouncements, from the Department of Agriculture and others, about channeling funds into rural areas and small cities. In part, this stems from a desire to head off migration to the cities to temper urban problems; in part it stems from a desire to re-capture the simple life which has become complicated by the growth of our large cities, and in part it is a bureaucratic desire to capture and administer grant monies for new programs aimed at areas under rapid urbanization. It has also been assumed that migration of blacks from the southern states to the cities of the north and west has been on the wane. Census reports indicate that this movement of people is continuing despite improved economic conditions in southern states.

Cities historically have been important magnets of employment and economic opportunity. It is the cities' other attractions, in addition to employment opportunities, that will attract and settle population. The city as a refuge, as a center of education, culture, social intercourse and other non-economic

values will assure that 85 percent of the population will live in them by the year 2000. However, if economic opportunity and urban growth continue as they have in the past, most of the population increase will settle in the existing cities and metropolitan areas. The problem which we face is how and where to locate new employment opportunities so that we do not exacerbate the problems of our existing cities and metropolitan areas.

Virtually every planning agency has been an arm of the Chamber of Commerce, because of their responsibility "to guide growth and development in accordance with a comprehensive, general or master plan." And while many are turning away from an uncritical promotion of growth: The Florida Legislature rejected funds to be used to attract newcomers to the state; Governor McCall of Oregon invites you to visit, but not to settle; and a group of concerned citizens are promoting a "Lessen Seattle," the concern over employment will continue to be paramount in planning cities, metropolitan areas, and in human settlement.

Where opportunities for employment are created, urbanization is its natural by-product. It would seem that a major element of a National Land Use Policy is the distribution of economic or employment opportunities to serve an urbanizing nation.

Let us look at the Federal Government as an employer, but more importantly at its role in generating new investment and thereby creating employment opportunities. The air-space program for a decade, although perhaps now in its decline, directed some \$7-\$10 billion per year into research and development programs. The main states to benefit from the interest in placing a man on the moon were Massachusetts, Florida, Texas and California. In addition, many other states benefitted from this government largesse. While there may have been some locational factors generated by the nature of the air-space program, there were also locational decisions created by the rank on the appropriate congressional committee. There was no requirement of an "environmental or urban impact study." Ten years ago we were not thinking in these terms. Today, I believe we would receive a public airing of the issues and perhaps the location of the facilities would include a deliberate effort to urbanize particular areas that would benefit from the investment.

While the air-space investment is a dramatic one involving billions of dollars, the United States has been investing, particularly in improved transportation—canals, railroads, ships, highways, and airplanes — throughout its history. Will we be prepared to assess the next major investment as to its impact on urbanization and its consequences on the quality of life? Until that time we would do well to explore Federal legislative and administrative devices which aid in the location of private investment in selected urbanizing areas. It means designating

areas for preferential treatment, a practice which is not new, but making the designation a matter of public policy, a practice which is. The devices, to note them briefly, are tax incentives, rapid depreciation, subventions, experimental projects and programs, investment for social policy purposes, job-creation, man-power training and welfare-related employment. To make them effective they must be considered together, perhaps in a single legislative package. Current interest in the Family Assistance Program and the Federal assumption of welfare improvements and benefits gives a new dimension and prominence to this element of a National Policy of Land Use.

D. Social Services and Facilities

This section draws on the report "Toward a Social Report" by the former secretary of the Department of Health, Education and Welfare. The report stated:

"We do have an Economic Report, required by statute, in which the President and his council of economic advisors report to the nation on its economic health. We also have a comprehensive set of economic indicators widely thought to be sensitive and reliable. Statistics on the national income and its component parts, on employment and unemployment, on retail and wholesale prices, and on the balance of payments are collected annually, quarterly, monthly, sometimes even weekly. These economic indicators are watched by Government officials and private citizens alike as closely as a surgeon watches a fever chart for indications of a change in the patient's condition." 17

The social indicators discussed in the report are important to a National Policy for Urban Growth, but also to a National Policy for Land Use. A social report with a set of social indicators would help answer questions such as:

"Are we getting healthier? Is pollution increasing? Do children learn more than they used to? Do people have more satisfying jobs than they used to? Is crime increasing? How many people are really alienated? Is the American Dream of rags to riches a reality?" Measures such as these would help apprise the nation of where it stands and whether we are making an advance.

A social report would be instrumental in the improvement of public policy making by giving them prominence and discussion, and by devising measures to determine whether public programs are accomplishing their objectives.

It is in the policymaking context that social services and facilities have relevance for a National Policy for Land Use.

The content of the social report provides the agenda for the content of this element.

1. Health and Illness

The progress made in health and life expectancy during the 20th century was slowed in the 50's and 60's. Advances in medicine and health problems have affected infants, children, and young adults but so far there have been not many significant scientific breakthroughs in the treatment and prevention of the degenerative diseases associated with the process of aging. When the United States is compared with other advanced industrial nations it is apparent we could enjoy better health and longer life even without any new breakthroughs in medical science.

2. Social Mobility

The American ideal of equality of opportunity is still held by most of the population according to a recent gallup poll. The ability to move through society and achieve whatever one's abilities may bring is reflected in improved occupational opportunities and improved opportunities in education. Recent studies indicate that there continues to be equal opportunity for most Americans. The exception pertains to blacks. The same studies show that blacks have much less occupational mobility than whites.

3. Physical Environment

If we judge the quality of our natural environment as reflected in air, water and land pollution we are probably losing rather than gaining. As to the man-made environment, the picture is mixed. The large volume of new construction has improved the nation's quality of housing. However, it has not improved in the same proportion for the poor, blacks and other minorities. The concentration of our population has reduced accessible urban open space and its very scarcity has caused many families to move outward thereby complicating the transportation problem with a direct effect on the quality of the physical environment.

4. Income and Poverty

Income is one measure of individual and family well being. While overall income levels are high, the distribution of income has remained practically unchanged in the last twenty years. The lowest 20 percent of households have consistently received 5 percent or less of personal income and less than 4 percent of total money income. However, while the distribution of income has remained practically unchanged, rising income levels have meant that fewer persons have income below the poverty line. Again, while the reduction in poverty has been impressive, when measured against the changes in the rate of growth of the gross national product and the rise in price levels, the reduction in the number of persons in poor households may not be as marked as has been assumed. Changes which appear to be in the making concerning social

insurance, public assistance, minimum wage and training programs, family assistance, and the possible assumption of welfare by the federal government have significant policy implications to a National Policy for Land Use.

5. Public Order and Safety

The crime problem confronts society with a number of alternatives. Apprehension and punishment serve as deterrents to crime, as does an increase in police strength and effectiveness. At the same time an enlargement of opportunities, and measures to improve the social context in which crime emerges, are also necessary. Crime is, in other words, an index of the health of the entire social organism.

6. Learning, Science and Art

Knowledge, intellectual skills and creative capacity of scientists and artists are an important part of the Nation's wealth. Health, national defense and the quality of the environment in future years depend upon the success of research and education now. So does the future performance of the economy. Some studies have suggested that as much as one-quarter of our growth in per capita income can be traced to increased schooling and as much as one-third to inventions and "advances in knowledge."

7. Participation and Alienation

How do our basic political and social institutions satisfy democratic values, by

encouraging participation and preventing alienation? To a large extent it does so by protecting individual liberties, including the right to dissent and the opportunity to participate in the activities of the community.

The main value of including Social Services and Facilities as an element of a National Policy for Land Use, is in the development of measures of the elusive "quality of life." The social indicators mentioned above may provide those measures.

E. A National Transportation System

A direct and simple approach to a national transportation system is one which would relate the functional elements of the system to geographic areas. The functional elements include shipping and related port facilities, airports, the interhighway system, railroads and urban mass transit. The geographic units are the world, the nation, the region, metropolitan areas, communities and activity centers. In a recent paper five levels or systems have been suggested. They are as follows:

"The interregional system should be planned basically at the state and national levels and should consist primarily of facilities required to move people and goods between regions. In some instances, as in the case of the Interstate Highway System, facilities may perform intra — as well as interregional roles."

"Regional systems should accommodate all the normal needs of the regional population for access to goods, services, education, and health and recreational facilities. They should be designed to make all of the opportunities of a region as accessible as possible to each of its residents. They should be designed to promote the individual development objectives of each region, whether concentration or dispersal, growth or stabilization, etc."

"In general, regions would contain from 5,000 to 20,000 square miles; the capabilities of the transportation system and the overall patterning of settlement would determine their size and shape. Some basically rural or wilderness regions might be even larger."

"Planning for transportation (and other aspects of development) at the regional level must be greatly accelerated. In most areas, regions must yet be delineated and planning started. Transportation policies and programs should be organized around and should support the concept of planning and development at the regional level and the establishment of governmental and other mechanisms for implementation. Because of the lack of planning at this level, priority should be given to its initiation and advancement."

"Metropolitan systems should be planned for areas of up to 250 or 300 square miles. In most instances, such systems will be designed to serve areas that are relatively completely developed to urban use. They should also be planned to link clusters of separate but closely spaced communities."

"In the case of official metropolitan areas, some progress in establishing organizations and preparing and implementing plans has been made. However, the need to link clusters of smaller, freestanding communities has been reflected in organization and planning action in only a few isolated instances. Major efforts should be made to extend the "metropolitan" concept to such areas."

"Community systems should be provided to serve up to 100 square miles, but usually less than 50. They would provide access to metropolitan and/or regional systems and would accommodate the substantial amounts of short-distance travel found in most areas each day. Such systems would be adequate to serve many of the smaller official metropolitan areas. However, they would be supplemental to the metropolitan and regional systems provided in larger urban areas."

"Center systems should be provided in many areas of intense activity, such as medical and college campuses, central business districts and transportation terminal areas. These systems must be designed to move people (and possible goods) relatively short distances between centers of activity, parking and destinations, and various other heavily used facilities." ¹⁸

F. Water Resources

The Water Resources Planning Act of 1965 established the policy with respect to the conservation, development, and utilization of water and related land resources. It also established the Water Resources Council to carry out the policy by giving it the following functions:

- "1. To maintain a continuing study and prepare periodically an assessment of the adequacy of supplies of water necessary to meet the water requirements in each water resources region in the United States and of the national interest therein.
2. To maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation.
3. To appraise the adequacy of administrative and statutory means for coordination and implementation of the water and related land resources policies and programs of the several Federal agencies, and to make recommendations to the President with respect to Federal policies and programs.
4. To establish, after consultation with appropriate interested Federal and non-Federal entities and with the approval of the President, principles, standards, and procedures for Federal participation in the preparation of comprehensive regional or river basin plans, and for the formulation and evaluation of Federal water and related land resources projects.
5. To coordinate schedules, budgets, and programs of Federal agencies in comprehensive interagency regional or river basin planning.
6. To carry out its responsibilities with regard to the creation, operation, and termination of Federal-State river basins commissions.
7. To receive plans or revisions thereof submitted by river basins commissions and to review and transmit them, together with their recommendation to the President.
8. To assist the States financially in developing and participating in the development of comprehensive water and related land resource plans." 15

These functions are an extension of the policies pertaining to water. Currently, the National Water Commission has a series of studies nearing completion which will undoubtedly lend new perspective to the national role with respect to the conservation, development and utilization of water and related land policies.²⁰

G. Agriculture and Agricultural Lands

In recent years the United States has shown a persistent tendency toward over-production of agricultural products. The United States produces 50 percent more agricultural products than it needs. The nation could probably accommodate an additional 100,000,000 persons without increasing land for agriculture or productivity requirement.

Our agricultural policy is worthy of Alice in Wonderland. There are so many contradictions in agricultural policy that it is difficult to find a handle so as to relate to a National Policy for Land Use. Productivity has increase while the amount of land in agriculture has decreased. Despite substantial subsidies for non-production, the United States still produces considerably more than it could possibly consume. Large-scale industrial production has dominated agriculture, while we continue to prop-up the small farm.

A program to inventory, classify and prevent the utilization of Class A lands would appear to be a minimum program. Yet, despite the decrease of Class A lands many which have been buried under concrete and asphalt, the Nation has been able to produce food and fiber for its needs. Nevertheless, because of our dependency on agricultural requirements to sustain life there is an urgent need to rationalize agricultural policy as an element of a National Policy for Land Use. Part of this policy may very well look to the non-metropolitan areas which lie outside of the economic orbit of the larger metropolitan centers to determine their position and requirements.

H. Fuel, Power and Energy

If agricultural policy is difficult to come to grips with what can we say about a policy for fuel, power and energy? Resources For the Future stated in its 1970 annual report,

"Numerous policies at state and federal levels have a significant impact on the structure and functioning of the energy and mineral industries in the United States. The policies are so diverse in their origins and development that their overall impact on the industries' performance is frequently obscure. Conflicting views are often held within the industries themselves as well as among the government agencies concerned, the scholars who have engaged in specialized analyses, and the general public."²¹

The problems of oil import quotas, depletion allowances, location of transmission lines and atomic energy installations, and their effect on the environment in the face of continuing increased demand, pose many problems. It is estimated that the 8 percent growth of electrical energy, which has been the rate in the past, leads to a doubling in nine years. However, 90 percent of the growth in the power generation in the last 30 years has been caused by higher per capita consumption. The Federal Power Commission estimates that if recent growth rates are to be maintained, by 1990 it will be necessary to quadruple electrical energy and double the production of natural gas.

The sharply rising demand for fuel power and energy increased the vulnerability of the extractive resources, atomic installation locations, the location of transmission lines and other elements of the fuel, power and energy system. The need to relate these elements to a National Policy for Land Use is urgent.

I. Open Space and Outdoor Recreation System

The Nation's need for recreational facilities continues to mount each year, and the demands of outdoor recreation men place increasingly heavy demands on our rivers, forests, and scenic attractions. Vast areas of land have always been owned by the Federal Government and have offered potential sites for recreational opportunities.²²

Following World War II, recreation demand boomed as the country's population became larger, richer, and more mobile. Intensive public use of National Parks and Monuments resulted in severe damage to their fragile resources and wildlife.

The demand for most recreational activities will continue to grow significantly. The demand will be greatest close to population centers, but it will also be strong in areas up to 100 miles for overnight trips, and up to 500 miles for vacation trips. The federal lands will feel the impact of demand particularly for vacations from all major cities in the 48 continental states, from a large number of cities for weekend and overnight demand, and from western cities for day trip demand.

The National Park Service, after making a study of federal and state lands in the 50 states, recommended in 1964 a standard of 6r acres per 1,000 population

within 50 miles or 1.5 hours travel time. When it is realized that 85 percent of the day trip demand, 37 percent of the overnight trip demand, and 7 percent of vacation demand in 1965 expressed in activity days occurred within 50 miles of the place of residence, the importance of land availability in this zone is evident. There are few cities in the United States which have federal lands accessible within 50 miles. The land supply for most urban demand, therefore, will have to be non-federal. Using the standard of 65 acres per thousand population, each 1,000,000 persons means a requirement of 65,000 acres. To determine the availability of area of such magnitude requires inventories of all land owning agencies in the urban metropolitan area.

The inventory of outdoor recreation is the beginning of a process which should lead to the completion of an open space and outdoor recreation system to include linkages between parks, recreation areas, national monuments, wilderness areas, national trails, wild rivers seashores, state and local recreation systems and private open spaces for agriculture, grazing forests, and other open space uses within the metropolitan area. The system of open space and outdoor recreation within and around metropolitan areas is needed not only to serve the metropolitan population with recreation lands, but to provide relief from continuous urbanization and its threat to the environment and the population it serves. Such a system is a necessary element of a National Policy for Land Use.

J. Direction and Opportunity for Private and Corporate Investment

The changing character of the American economy with its mixture of public and private features may present many new opportunities for investment. What is to be made of an economy which in a single year has seen the post office go to private operation and the railroads to public?

It would seem that new public, private and quasi-public corporations with authority and investment capabilities are in the making. A few years ago we had the COMSAT model which provided for a combination of 50 percent ownership by existing corporations and 50 percent by new investment to stockholders at large. An urban development corporation based on the New York State model may provide the umbrella for legal authority to attract private enterprise in the reconstruction of existing urban areas, development of new cities and metropolises. The development represents a potential in the hundreds of billions of dollars and the need is great. To bring these seemingly diverse activities together and to provide the means for their achievement, national guidelines are required which should be reflected in a National Policy for Land Use.

REFERENCES

- ¹"Regional and Local Land Use Planning," Public Land Law Review Commission, Herman D. Ruth + Associates, 1969.
- ²Section 2, Housing Act of 1949.
- ³Section 2, Housing and Urban Development Act of 1965.
- ⁴Section 2, Housing and Urban Development Act of 1968.
- ⁵78 Stat. 982, as amended, 43 U.S.C.
- ⁶"Dimensions of Metropolitanism," (Research Monograph 14), Washington, D.C., Urban Land Institute, J. P. Pickard, 1967.
- ⁷Report to the Vice President and to the President's Council on Recreation and Natural Beauty, 1969.
- ⁸Nations and Cities, Houghton Mifflin Co., Boston, Lloyd Rodwin, 1970, p. 271.
- ⁹J. P. Pickard, "Dimensions in Metropolitanism," (Research Monograph 14), Washington, D.C., Urban Land Institute, 1967.
- ¹⁰"The Next Thirty-Three Years: A Framework for Speculation," Herman Kahn and Anthony J. Weiner, Daedalus, Summer, 1970, pp. 718-719.
- ¹¹Section 710. (f) Housing and Urban Development Act of 1970.
- ¹²Section 723. Housing and Urban Development Act of 1970.
- ¹³Op. Cit.
- ¹⁴Daniel W. Cook, New Urban Frontiers: New Metropolises for America, 1964.
- ¹⁵Donald Canty, ed., The New City, New York: Praeger, 1969.
- ¹⁶J. P. Pickard, Presented estimates to the Ad Hoc Subcommittee on Urban Growth of the House Banking and Currency Committee. July 22, 1969.

- 17 "Toward a Social Report," U.S. Department of Health, Education, and Welfare, 1969. p. xi.
- 18 "Recommendations for a National Transportation Policy," Rodney E. Engelen, Presented at the American Institute of Planners Policy Conference, January, 1971.
- 19 "The Nation's Water Resources," U.S. Water Resources Council, Washington D.C., 1968, p. xi.
- 20 Annual Report for 1970, National Water Commission, Washington D.C., December 31, 1970.
- 21 Annual Report 1970, Resources for the Future, Inc., Washington D.C., December, 1970. pp. 63-64.
- 22 "Outdoor Recreation Use of the Public Lands," Public Land Law Review Commission, Herman D. Ruth + Associates, September, 1969.



NATIONAL ASSOCIATION OF HOME BUILDERS

National Housing Center

1625 L STREET, N.W., WASHINGTON, D.C. 20036

JOHN A. STASTNY
PRESIDENT

STATEMENT OF
NATIONAL ASSOCIATION OF HOME BUILDERS
before the
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
UNITED STATES SENATE
ON PLANNING LEGISLATION
July 14, 1971

Mr. Chairman and Members of the Subcommittee:

My name is Stanley Waranch. I am a home builder from Norfolk, Virginia and I appear before you today as first Vice President and Legislative Chairman of the National Association of Home Builders. Our organization, as you know, consists of over 54,000 members in 494 affiliated associations, and our members build about two-thirds of the housing annually constructed by professional builders.

We appreciate this opportunity to appear before you today to express our views on land use and planning legislation now pending before this Subcommittee and elsewhere in the Senate. As home builders, we have a direct interest in all actions the Federal Government might take to encourage state and local governments to carry out comprehensive planning. As our population grows and the demand for housing increases, the need for a rational, organized

approach to how the nation's land is to be used becomes more and more apparent.

THE SECTION 701 PROGRAM

We have supported HUD's Section 701 comprehensive planning program, first enacted in 1954 and greatly expanded over the years as the need of state and local governments for planning assistance has increased. This program has probably been more instrumental than any other single factor in making comprehensive planning an acceptable function of government in this country. With 701 assistance, community after community has developed land use and other plans for the purpose of guiding future development.

We believe that the present emphasis in the 701 program on the key relationship of housing to other land use and development decisions must be maintained in any revision of the 701 program or made a part of any new or expanded planning assistance programs enacted by the Congress.

This is because, over the years, we found that many communities in their planning did not give full cognizance to the need for housing sites for families of all income levels. In far too many cases, they made no allowance for housing sites for families of low or moderate income. In fact, in some instances, plans prepared with assistance under the 701 program were aimed at excluding lower income housing through recommendations for large-lot zoning and other tactics. In other cases, communities developed detailed plans for the attraction of industry but made no allowance for housing those who would be employed by the new industry.

To rectify this, NAHB in 1968 urged the Congress to amend the 701 program to require that all planning carried out with its assistance contain a housing element which would give proper recognition to the housing needs and land use requirements for housing of the community. The Congress, we are glad to say, adopted our suggestion and enacted such a provision in the Housing and Urban Development Act of 1968.

In its administration of the program, HUD has used this 1968 provision to require that all 701 assisted planning for the first time give proper recognition to the housing needs of low and moderate income families and the facilities for serving such housing. We also consider this part of the 701 program to be an essential element in attempting to meet the national housing goals plan which was enacted by the Congress in that 1968 Act. The Title II language in S. 1618 now before you definitely should contain this housing element and, if acted on by this Committee, should be amended in this respect.

I would like now to turn to the particular matters pending before the Subcommittee. These as I understand it are four. The first is S. J. Res. 52 which would provide an additional authorization of \$100 million for the open-space land program and \$50 million for the 701 program. Secondly, there is the evaluation of the progress that is being made by the President's Domestic Council in developing a national urban growth policy pursuant to Title VII of the Housing and Urban Development Act of 1970. The third is Title II of S. 1618 which would rewrite and expand the present 701 program. And the fourth is, as we understand it, the impact of other pending land use and planning legislation

on the proposals before this Subcommittee.

Let me treat quickly with the first two. As I have indicated, we have long supported the 701 program. We have also supported the open-space land program which provides grants to help communities to acquire and develop land for parks and similar purposes. Whether the specific amounts requested in S. J. Res. 52 are necessary, we frankly are not in a position to evaluate and we would certainly defer to the wisdom of this Subcommittee on that matter.

As to the progress which the Domestic Council may be making in developing an urban growth policy, we have no knowledge. We presume, of course, the Council is following through on the mandate contained in Title VII of the 1970 Act and we hope that the Council in developing this policy will give proper recognition to the nation's housing needs. To that end we would encourage the Congress, if it deems it appropriate, to reemphasize to the Council the key position that housing must have in any national urban growth policy.

TITLE II OF S. 1618

Title II of S. 1618 represents a major departure from the present 701 program. The proposed language would apparently retain much of the authority for what can now be done under the 701 program, but it would expand that program's scope considerably. This is done by placing strong emphasis on the need to assist communities in their efforts to carry out and manage the general decision making process involved with planning and its implementation.

We endorse this concept of assisting state and local governments to carry out the actions they have decided are desirable. We question, however, whether the complete rewrite of 701, as proposed under Title II, is the proper means of achieving this desirable end.

The language of Title II leaves it uncertain as to whether the different agencies and levels of government which presently can be assisted under 701 will continue to be eligible for assistance. Furthermore, the proposal does not make clear what planning activities could be assisted but it drops the excellent definition of comprehensive planning which is now in the law.

Most importantly, however, Title II does not retain some of the mandates presently in Section 701 which we believe are very important. For instance, Title II does not contain the emphasis in Section 701 for coordination of planning activities between governmental jurisdictions, especially on a metropolitan or regional basis. Also, as noted earlier, Title II does not contain the present 701 requirement that each comprehensive plan contain a housing element.

We believe that the principal goal sought by Title II -- assistance to communities in their management efforts -- could be accomplished by simply adding a new subsection to Section 701 authorizing expanded assistance under the 701 program for management activities. We recommend that this be done. The present 701 approach is a workable one and it should be retained. By contrast, no one knows what would occur under the drastically revised approach proposed in Title II because of the uncertainty as to the meaning of much of the language.

A STATEMENT OF HOUSING GOALS

We suggest one further amendment to Section 701 to build upon the present requirement that each comprehensive plan contain a housing element. This would be a requirement that the housing element include a statement of housing goals, in addition to assessing the status of housing in the area being planned as it now does.

This statement of goals would deal with the number of housing units needed for all income levels (including low and moderate income) over a three to five year period, taking into consideration the needs of the region or metropolitan area in which the community is located. We believe this is the next logical step flowing from the action of the Congress in 1968 establishing national housing goals. Such goals can only become a reality if the states, their regions, and their communities undertake the development of housing goals for their own areas.

One of the main deterrents to meeting national housing goals is a lack of proper consideration to housing needs by local communities in their development of policy with respect to land use within their jurisdictions. Each state and each locality must recognize a responsibility to make it possible for housing to be provided for all who might reasonably be expected to need various types of housing. Only when this happens will it be feasible to expect a chance of success in achieving our national housing goals. On this matter, I have attached a resolution adopted by our Board of Directors at its meeting here in Washington on May 24.

With respect to our proposal on housing goals, we are attaching proposed amendments to Section 701 and Title II of S. 1618. The amendment of Title II would require that any planning assisted under it contain a housing element, as presently required under Section 701. It would also require that this housing element include a statement of housing goals. We have also included a series of additional recommended amendments to Title II which would give proper recognition to the importance of housing in any comprehensive planning assisted under it.

NATIONAL LAND USE POLICY

The fourth matter before this Committee is legislation pending before the Senate Interior Committee which would have the effect of establishing a major additional Federal involvement in land use planning. I am referring specifically to S. 632 and S. 992.

These bills have the common goal of providing a means for the establishment of a national land use policy and for assistance to states in preparing state land use plans. S. 632 would do this through an expanded Water Resources Council which would be given this responsibility at the Federal level, while S. 992 would place the responsibility in the Department of Interior.

We agree with the national need to look at our shrinking land resources and to plan for the most effective use of these resources. We are concerned, however, that these bills fail to give adequate consideration to the housing needs of our citizens and to the necessity for land on which this housing can be built.

We expressed these concerns in a statement to the Interior Committee on July 6, 1971, a copy of which is attached.

Our strong feeling is that the Department of Housing and Urban Development should have the prime responsibility of administering any Federal program concerning itself with the development of a national land use policy. This is reflected in a resolution adopted at our Board of Directors meeting in May, 1971.

We believe there is a direct conflict between what is presently carried out under the 701 program (and similarly proposed under Title II of S. 1618) with regard to state land use planning and what is proposed in the area of state land use planning under both S. 632 and S. 992. Further, the management aspect of Title II of S. 1618 certainly seems in conflict with the proposed program management grants under Section 104 of S. 992.

There should be only one entity in the Federal Government principally responsible for state land use planning, and this should be HUD. There are land use considerations, of course, which fall within the particular expertise of the Department of Interior and of the Water Resources Council and these must be recognized. Any land use planning assisted by the Federal Government must be carried out with proper recognition of the standards laid down by these agencies. This is true today, for instance, with respect to the preparation of a state outdoor recreation plan with assistance from the Land and Water Conservation Fund, where coordination between HUD and the Interior Department is provided for.

We believe that this Committee, with its long experience in dealing with the housing and urban development problems of our nation, is best capable of overseeing legislation which provides for the development of a national land use policy and state-wide land use plans. We therefore urge this Committee to assert the initiative and responsibility it has long experienced in this area. This could be done by developing legislation jointly with the Interior Committee.

Such a joint effort by the two Committees could result in legislation that recognizes HUD's prime responsibility in overall land use planning. At the same time it could properly recognize the role of such agencies as the Interior Department and the Water Resources Council in assuring that the environment and our natural resources are protected from adverse development. This we believe would be a major step forward in this nation's efforts in the area of land use planning.

To illustrate our concern, I am attaching a series of amendments to S. 992 which we believe are necessary, as a minimum, to assure a proper consideration of the nation's housing needs in any planning conducted under its auspices. This demonstrates the potential for confusion that arises if a dual path is followed by the Congress and the Administration in approaching the development of a national land use policy to be effectuated in state land use plans. We hope this will not happen.

We urge upon this Committee, as we have urged the Interior Committee, the undertaking of a joint effort to develop one Federal program to assist in land use planning. We will be glad to work closely with this Committee and

the Interior Committee, as well as with the Administration, in helping to develop such a program. In no event, however, do we believe that either the Interior Department or the Water Resources Council should be given primary responsibility for the land use planning which is so vital to housing and urban development.

I thank you again for this opportunity to present this statement.

NAHB RESOLUTION

May 24, 1971
Washington, D. C.

LOCAL GOVERNMENTAL AFFAIRS COMMITTEEIMPLEMENTING NATIONAL HOUSING GOALS

WHEREAS, the responsibility of the Home Building Industry is to house all Americans, and

WHEREAS, the Home Building Industry has the ability and desire to achieve this goal, and

WHEREAS, implementation of our national housing goals is not occurring at a rate sufficient to meet our country's housing needs, and

WHEREAS, policies with respect to the control of land and production of housing by all levels of government, including those currently proposed at the federal level, greatly limit the potential of the housing industry to implement these housing goals,

NOW, THEREFORE, BE IT RESOLVED that giving the home building industry the opportunity to implement national housing goals shall be a major element of land control and housing policy by all levels of government with primary leadership provided by governmental departments responsible for housing, which shall be the Department of Housing and Urban Development at the national level, and

BE IT FURTHER RESOLVED that implementation of our national housing goals by these departments shall include the adoption of specific numerical housing goals, or targets, which goals should (1) reflect the housing needs of all income levels, (2) relate to the national housing goals, and (3) be reviewed periodically to meet changing local needs, and

BE IT FURTHER RESOLVED that the development of a commitment to implement housing goals must involve both the public and private sectors of the community, and the establishment of the increasing importance of said goals at all levels must be a primary objective of our Association and its allies, and

BE IT FURTHER RESOLVED that NAHB strongly support a program of incentives and rewards for those governments which adopt and implement balanced housing goals.

ATTACHMENT B

NAHB HOUSING GOALS AMENDMENTSSection 701

Section 701(a) of the Housing Act of 1954 is amended by inserting before the last sentence the following:

"Such housing element shall include a statement of housing goals for the area planned, which estimates the number of standard housing units needed to be produced within the area for each of the succeeding three to five years to provide housing for families and individuals of all income levels who might reasonably be expected to seek such housing within the area based on projected population growth, rate of family formations and the removal of existing standard and substandard housing units from the market. In case of an individual community, the housing needs of the metropolitan area or region in which the community is located shall be taken into consideration in addition to those of the community itself."

TITLE II OF S. 1618

Add to Section 203 a new Subsection (c) by inserting between lines six and seven on page 22 the following:

"(c) Planning and management programs assisted under this title shall include a housing element. The housing element shall be prepared in conjunction with the comprehensive land use plan of the state or locality and shall give consideration to the housing needs and the land use and community facility requirements for housing in such state or locality. Such housing element shall include a statement of housing goals for the area planned, which estimates the number of standard housing units needed to be produced within the area for each of the succeeding three to five years to provide housing for families and individuals of all income levels who might reasonably be expected to seek such housing within the area based on projected population growth, rate of family formations and the removal of existing standard and substandard housing units from the market. In case of an individual community, the housing needs of the metropolitan area or region in which the community is located shall be taken into consideration in addition to those of the community itself."

Amendment C

NAHB Suggested Amendments to Title II of S. 1618

Section 201

- (1) Page 19, line 21 add at end: "housing, environmental,"
- (2) Page 20, line 2 add at end: "It is also the purpose of this title to assist in the achievement of national housing goals and objectives by encouraging and assessing the development of local, area-wide and State housing goals."

Section 202

Page 20, line 18 add at end: "housing needs,"

Section 203

Page 21, line 24: after "economic" insert "housing,"

Section 205

Page 23, line 17: after "social" insert "housing,"

Section 206

Page 24, line 25: after "social" insert a comma and "housing, environmental,"



NABHB
NATIONAL ASSOCIATION OF HOME BUILDERS
National Housing Center

JOHN A. STASTNY
 PRESIDENT

1625 L STREET, N.W., WASHINGTON, D. C. 20036

July 6, 1971

The Honorable Henry M. Jackson
 Chairman
 Committee on Interior and Insular Affairs
 United States Senate
 Washington, D. C.

SUBJECT: S. 632 and S. 992

Dear Mr. Chairman:

On behalf of the National Association of Home Builders, I would like to request that this statement and the enclosures be included in the hearing record on S. 632 and S. 992.

These bills relate to a matter of extreme interest to our Association and its members -- land use. Adequate and available land is essential to the production of housing for the nation's citizens and the proper allocation of this land between various competing interests is a matter of prime governmental concern.

Recognizing this, we submitted to your Committee last year a detailed statement on S. 3354, the forerunner of S. 632 in this Congress. I am enclosing a copy of that letter, dated July 27, 1970. The points raised in that letter are pertinent to the provisions of S. 632 and S. 992 in that they point out our great concern that any development of a national land use policy or any large-scale land use planning must take into consideration the nation's housing needs.

Since last year, our Association has had a further opportunity to consider these proposals and during our Board of Directors meeting here in Washington on May 24 and 25, 1971, adopted a resolution with respect to National Land Use Policy. This resolution, a copy of which is enclosed, took cognizance of the bills pending in this Congress involving national land use programs and policy and recognized the need to tie together national urban growth programs and policy with any national land use policy. It further recognized that the Department of Housing and Urban Development, because of its past extensive experience in these areas, was in the best position to coordinate and effectuate national land use

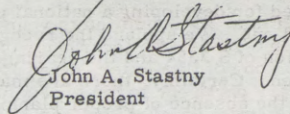
programs and policy. Accordingly, our Board of Directors unanimously resolved "that any and all Federal programs and policy established to affect land use nationally be specifically administered by and through the Department of Housing and Urban Development."

It is our feeling that HUD with its pre-eminent responsibilities in the field of urban matters, with over 70% of our population living in urban areas, and with its responsibility to implement the national housing goals established by the Congress in the Housing and Urban Development Act of 1968 is in the best position to balance the needs of our citizens for adequate housing and facilities to serve that housing with the need to preserve our nation's environment and natural resources.

Certainly HUD would be expected and should be required to call upon the advice of such agencies of government as the Department of Interior and the Water Resources Control Board in those areas in which they are most knowledgeable. However, housing and the proper development of communities in which this housing is to be located must be of prime concern in the development of any national, state, or local land use policy.

We appreciate this opportunity to present our views on this extremely important legislation. We would be happy to explore our concerns further with the Committee staff if you desire.

Sincerely,


John A. Stastny
President

enclosures



NABHB
 NATIONAL ASSOCIATION OF HOME BUILDERS
National Housing Center

NATHANIEL H. ROGG
 EXECUTIVE VICE PRESIDENT

1625 L STREET, N.W., WASHINGTON, D.C. 20036

TELEPHONE (202) 737-7435

July 27, 1970

The Honorable Henry M. Jackson
 Chairman
 Committee on Interior & Insular Affairs
 United States Senate
 Washington, D.C.

SUBJECT: S. 3354

Dear Mr. Chairman:

On behalf of the National Association of Home Builders I would like to request that the comments set out herein be included in the hearing record on S. 3354.

The National Association of Home Builders represents a membership of approximately 51,000 people. These members are affiliated in 481 local and state associations throughout the country. We estimate that our members build two-thirds of all the homes and apartments constructed by professional builders.

The need for developing a national policy with respect to the use of land is a critical one. We applaud the recognition of this need as demonstrated by the introduction of S. 3354 and the hearings your committee has conducted on this legislation. Certainly, there are many examples of poor land use which have occurred in the absence of proper planning and which serve as ample testimony for the need to improve planning for the future.

However, we view with concern the absence in this legislation of a statement of national policy with respect to the use of land for housing. A housing element should, without question, be a vital part of any plan for the use of land, and in particular a national plan. Planning for housing must have top priority, for without adequate housing for all people, the preservation of lakes, streams, forests, and all the rest is meaningless.

This legislation indicates an unwillingness to continue to leave to chance -- or to the whims of governments acting independently of each other -- planning for environmental, recreational and industrial purposes. But these are not the only problems. Improper planning for the location of housing has been just as destructive to our environment. Far too often, land controls

have encouraged the very worst in land development; urban blight, suburban sprawl, haphazard development and destruction of natural amenities.

Even more tragic, is the misuse of such controls to thwart efforts of government and private industry to provide a supply of adequate housing for all our people. Such practices as excessive large-lot zoning, unnecessarily high subdivision standards, exclusion of multi-family dwellings, excessive administrative delays in granting approvals and many others, have had a profound effect on the supply of housing. By unduly limiting the number of housing units that can be built near to centers of employment and commerce, and by thus raising the price of land and the housing thereon, access to adequate housing is denied to a large segment of our population.

A national land-use policy should recognize the responsibility of every unit of government assuming its share of the national housing goals adopted by the Congress in the 1968 Housing Act. These goals, which contemplate the provision of a decent home and a suitable living environment for every American family, can be ultimately met only through full local participation.

The importance of housing as part of land-use planning is recognized in the 701 comprehensive planning program administered by the Department of Housing and Urban Development. This program now provides grant assistance to state, regional and local bodies for the development of comprehensive land-use plans. In 1968 there was added to this program, at the urging of our Association, a requirement that each plan contain a housing element which took into consideration the present and prospective housing needs of the area. As the result of this legislative change, HUD has prescribed far-ranging and thorough regulations that recognize the importance of housing in 701-assisted planning. We commend these regulations to your attention.

A closely related matter, deserving special attention in the development of a national policy with respect to land, is the importance of fostering the prompt and orderly provision of community facilities. The nature, extent, cost, direction, and manner of land development for housing and other purposes is inseparably linked to the construction of sewers, water lines, roads, utilities, etc.

We are alarmed over provisions in this legislation which would seem to encourage states to acquire land for implementation of a state plan. While we do not quarrel with government acquisition of a reasonable amount of land for recreation, parks and conservation, or for the provision of other public facilities, we vigorously oppose the acquisition of land by government either for future commercial and residential development or to block or delay proper

son

subdivision and development. Such practices defeat what we firmly believe should be the prime objective of any land use plan: assurance of the availability of an adequate supply of land at a reasonable price for development in an orderly manner for the needs of all people with due regard to the preservation of natural amenities. Given proper planning and enlightened regulation by all levels of government, private industry can meet the housing needs of the 1970's and at the same time preserve our most precious resource, land, for the use and enjoyment of generations to come.

In conclusion we would like to raise one further but basic point. This point relates to the possible conflict that would arise, if this legislation is enacted in its present form, between the Land and Water Resources Council and the Department of Housing and Urban Development. As we mentioned above, HUD administers the 701 comprehensive planning grant program. Through this program HUD provides assistance to, and supervises planning by, practically every planning agency in this country from the interstate level to the village level. In addition, HUD has important responsibilities with respect to coordinating area-wide planning requirements that apply not only to its development grant programs but also to those of other departments of the Federal Government, such as, Interior and Transportation.

Unless there is an ordering of the responsibilities between the Council and HUD in this field of planning for the development of the nation's land and the establishment of an effective coordination mechanism, we are seriously concerned that there may result confusion over what their respective roles are to be. Along this line, we suggest that the Committee may wish to consult with the Banking and Currency Committee, whose Subcommittee on Housing and Urban Affairs has exercised for many years a significant role in the field of land-use planning. This Committee should be able to make an important contribution to the devising of legislation which adequately provides for the planning of the use of the nation's land especially with respect to the nation's housing needs.

Sincerely,

Joseph B. McGrath
Legislative Counsel

NAHB RESOLUTION

May 24, 1971
Washington, D. C.

NATIONAL LEGISLATIVE AND LAND USE
AND ENGINEERING COMMITTEESNATIONAL LAND USE POLICY

WHEREAS, HUD is now deeply involved in national urban growth programs and policy, and

WHEREAS, national urban growth policy is an integral part of national land use policy, and

WHEREAS, the Department of Housing and Urban Development is now in the best position to coordinate and effectuate national land use programs and policy, and

WHEREAS, there are now pending in Congress certain bills involving national land use programs and policy to be administered by and through agencies other than the Department of Housing and Urban Development,

NOW, THEREFORE, BE IT RESOLVED that any and all Federal programs and policy established to affect land use nationally be specifically administered by and through the Department of Housing and Urban Development.

NAHB SUGGESTED AMENDMENTS TO S. 992Section 101

- (1) Page 2, line 4: after "influence the" add "place where American families may live and the".
- (2) Page 2, line 7: add a new paragraph (1) and renumber succeeding paragraphs accordingly

"(1) that the expanding population and housing needs of the United States can be adversely affected by restrictive limitations on community development stemming from local land use actions and decisions."
- (3) Page 2, lines 11 and 15: delete "are being" and substitute "may be".
- (4) Page 2, line 18: delete "are inducing" and substitute "can induce".
- (5) Page 3, line 5: delete "are being" and substitute "may be".
- (6) Page 3, line 6: delete "often creates" and substitute "can create".

Section 103 and 104

Grants should be at a higher level, at least 75%, to offer a greater inducement to states--which are already financially hard-pressed--to develop land use plans consistent with national policy.

Section 104

Page 10, add between lines 16 and 17 a new subsection (k).

"(k) The State's land use program contains a housing element prepared in conjunction with the comprehensive land use plan of the State which gives full consideration to the housing needs and the land use and community facility requirements for housing in the State. Such housing element shall include a statement of housing goals for the State, which estimates the number of standard housing units needed to be produced within the State for each of the succeeding three to five years to provide housing for families and individuals of all income

levels who might reasonably be expected to seek such housing within the State based on projected population growth, rate of family formations and the removal of existing standard and substandard housing units from the market. Such housing element shall also include a means of establishing local and regional housing goals in those areas which do not develop such goals on their own and of assuring that such State, regional and local housing goals are implemented."

Section 105

- (1) Page 10, line 25 delete "he" and on page 11, line 1 delete "has ascertained that".
- (2) Page 11, line 3: insert after "with" the following "the housing element, "

Section 107

Page 12, line 19: delete "where appropriate, "

Section 108

Page 13, between lines 12 and 13 add a new subsection "(c)" as follows

"(c) The Secretary of Housing and Urban Development shall provide advice and assistance upon request to states, counties, and cities, or other local jurisdictions, with respect to the development of their housing goals."

Section 110

- (1) Page 13 line 20 after "Secretary" add a comma and the following: "and approved by the Secretary of Housing and Urban Development, "
- (2) Page 13, line 21 after "growth;" insert "State housing and community development goals;"

Section 111

- (1) Page 14, line 6 after "parties," add "including the Secretary of Housing and Urban Development, "
- (2) Page 15, line 6 after "which" add "fail to comply with Title VIII of the Act of April 11, 1968 (PL 90-284) or which".

WESTERN STATES WATER COUNCIL

POSITION PAPER OF THE WESTERN STATES WATER COUNCIL ON NATIONAL LAND USE
POLICY LEGISLATION

The eleven states of the Western States Water Council are vitally interested in those bills in the current Congress which contemplate that the states will engage in comprehensive land use management programs which could lead to regulation of:

- (a) Non-federal land use;
- (b) Siting of power plants and facilities;
- (c) Coastal zone management;
- (d) Mined land regulation and reclamation, and
- (e) Federal land use.

These bills recognize the desirability of achieving orderly growth, coordinating major services, protecting the environment and generally improving the quality of life. However, such bills generally ignore existing state laws and current state, interstate and federal-state efforts to accomplish these aims. Enactment of such bills would delay and could have an adverse effects on current water and land resource planning and development. Such bill introduce the element of federal policy determination into the development and management of non-federal lands with little or no specific guidance to the substance of that policy. State compliance is encouraged, if not compelled, by provisions for severe economic sanctions thru loss of federal funds.

The tenor of the bills is in support of the proposition that Congress would intend the federal establishment to abide by the overall policies and most of the specific of approved State Plans. However, none of the bills contain criteria by which it could be determined whether federal agencies were complying with approved State Plans; nor generally are there any procedures set forth by which a state could raise the issue and secure enforcement of the Congressional policy as set forth in the bills.

None of the current bills deal affirmatively with a number of the substantive and procedural issues which are of the utmost concern to the states; rather, they provide authority for federal administrative determination of those issues. If experience is a guide, administrative policy development would influence the states to do some things that the statutes did not contemplate.

We believe that state and local agencies should have primary responsibility for the development and implementation of state land use plans which must include as an essential element land use plans for federally-owned lands developed in cooperation with the responsible federal agency.

The Western States encourage proper land use planning and management. By commenting on various bills relating to a National Land Use Planning Policy, the Western States Water Council does not endorse their passage. Any enacted National Land Use Policy Act should encourage the states to adopt a land use and management plan by assistance through funding following the patterns of the Water Resources Planning Act of 1965 (P. L. 89-80).

CERTIFICATE

I hereby certify that the foregoing is a true and accurate copy of a Position Paper adopted by the Western States Water Council at their Twenty-Third Meeting held July 8, 1971, Portland, Oregon.

THOMAS E. CAHILL,
Executive Secretary.

STATEMENT OF THE NATIONAL URBAN COALITION

INTRODUCTION

The National Urban Coalition is pleased to have the opportunity to comment on S. 632 (Land and Water Resources Planning Act of 1971) and S. 992 (National Land Use Policy Act of 1971).

Since September, 1970, the Coalition has operated a clearinghouse for planners, lawyers, developers, public officials and others actively working on strategies to overcome landuse controls that inhibit or prevent the appropriate location of low- and moderate-income housing. Some of the major lawsuits that have been filed on this issue have been assisted through the network of contacts

built up through the clearinghouse. In addition, the Coalition prepared a brief on its behalf and that of many other organizations that sought unsuccessfully to persuade the United States Supreme Court that mandatory referenda on low-income housing permits localities to exclude the poor and in effect racial minorities from the use of land for residential purposes. (See appended memorandum)

A major concern of the Coalition has been public education on the need to formulate landuse policy to facilitate the introduction of housing opportunities for citizens of low and moderate income and racial minorities throughout metropolitan areas. We regard the increasing racial and economic polarity in metropolitan areas as the major urban growth problem facing the nation.

As the President observed, in his recent statement on housing policy, the continued confinement of racial minorities to the central city is not simply a denial of decent housing. It is a denial of access to jobs, to good schools, to public services and a healthy environment. It results in "wasted human potential and stunted human lives". It "engenders unwarranted mistrust, hostility and fear".

Metropolitan Growth and Social Growth

There are now 76 million Americans living in suburban areas, 64 million in central cities and only 63 million outside metropolitan areas. Metropolitan areas accounted for more than four-fifths of total national growth in the past ten years, and such areas have grown more rapidly than the national average since 1900.

Experts believe it is most likely that the proportion of our population now living in metropolitan areas (over $\frac{2}{3}$) is likely to increase in the years ahead even if migration into such areas were to be reduced below current levels.

The black population proportionally resides in these metropolitan areas more than do whites (74% to 68%). But within such areas the proportions of the races residing in central cities and suburbs is very disparate: 80% of the black population lives in central cities, while only 40% of the whites do so. While there was an absolute increase of blacks in the suburbs, this remains very small as a percentage in each metropolitan area. For cities over 500,000, the white population declined 1.9 million over the decade, while the black population increased by 2.2 million. Blacks as a proportion of central city population increased from 16 to 21 percent during the 60's.

Poverty Disparities

The median income for white families residing in central cities and suburban rings has shown increasing economic disparities in the last decade. In 1959 white median income in the suburban ring areas was somewhat higher than that in the central cities: \$8,486 to \$7,881. Ten years later the gap has widened: \$11,155 to \$9,797. Whereas Negro family median income in 1959 was higher in the central city than in the suburbs (\$4,840 to \$4,383) the economic ghettoization of the central city is now reflected in the figures for Negro families as well. Those in suburban rings had a median income in 1969 of \$6,986, while Negro families in the central city had a median income of only \$6,136. Thus the central city is increasingly the only haven of poor whites and blacks.

The transformation of our urban areas into black and poor central cities and white and affluent suburbs has serious implications for American society. It is bound to complicate efforts to desegregate public education, to overcome fiscal disparities in metropolitan areas and achieve necessary cooperation among different local jurisdictions and different levels of government.

Equality and Ecology

Our metropolitan population will not only grow as a proportion of our total population. Its growth in absolute terms will be staggering under even conservative projections. It is estimated, for example, that to accommodate the anticipated urban population to the year 2000 would require building a city the size of Tulsa every month for the rest of this century.

The level of anticipated growth will put a severe strain on the existing institutions that allocate our land, housing and transportation resources, particularly in connection with growth that is regarded as fiscally burdensome (i.e., most forms of residential development).

There is some evidence already that jurisdictions may be strengthening their existing landuse controls and building regulations in an effort to thwart growth pressures that require new schools, sewers, fire stations and the like.

In addition, the current concern with preserving or enhancing the ecological balance of the land may undergird local preferences to avoid further development. Environmental groups allege that indiscriminate suburban sprawl has allowed landuse and development that may degrade the environment and, in one case, have sued to bring about reform of landuse controls.

On the other hand, civil rights and development groups allege that suburban landuse restrictions keep out lower income housing, maintain a "white noose" around the city and hamper the achievement of national housing goals.

Potential conflicts of values have appeared in some instances. In one case involving local exclusion of nonprofit housing sponsored by a black group, the countervailing claims asserted to obstruct the proposed development was the desire for open space and avoidance of sewer overload. In other instances the maintenance of scenic open space has been asserted to justify large-lot zoning, refusals to rezone for higher density housing or other techniques that are exclusionary in motivation or effect.

The future of rational metropolitan growth will depend in good measure on reforms which reconcile ecological and egalitarian values. A strategy which removes final landuse control decisions from localities to protect both values may be the point of convergence.

Jobs and Housing

Studies and census bureau data indicate that the geographic expansion of metropolitan areas and the shift of population to the suburbs has been accompanied by a growth of industrial and business activities outside the central cities. Economic decentralization has progressed at different rates in different metropolitan areas, but it is a firmly established national trend.

In ten metropolitan areas cited in the President's 1971 Manpower report, almost 80% of the employment growth in manufacturing in the 1960's took place in suburbs, as did 78% of retail trade employment growth and 68% of wholesale trade employment growth. The report also noted that there are records of journeys to work involving reverse commuting in which disadvantaged workers spend up to 5 hours a day traveling by bus, with six transfers, to go to and from jobs paying \$2.00 or less an hour. The exclusion of lower income housing from the suburbs, and the suburban favoritism of mass transit schedules and routing, contribute to disparities that undermine national manpower policies.

The use of land, particularly land for housing, is pertinent to any strategy that addresses this situation. A truly balanced and comprehensive national landuse policy must confront the problem of metropolitan residential apartheid.

In addition, the extent to which national landuse policies encourage a stable supply of sites for low- and moderate-income housing will determine the extent to which the production of such housing can fuel economic growth for peacetime purposes.

S. 632

In this context, S. 632 requires substantial revision. It is not designed to respond comprehensively to the urban growth pressures in metropolitan areas, and the Water Resources Council would not be an appropriate agency to administer national landuse policy that purported to do so.

It is essential to recognize that the increasing pressures of urban growth are leading many communities to take actions to prohibit or severely restrict further residential development. The property tax, and the fragmentation of landuse planning and control, have balkanized our metropolitan areas. Any national landuse policy may, in a valid attempt to prevent indiscriminate and poorly planned development, play into the hands of exclusionary pressures which will be only too happy to discriminate. But they will discriminate against the poor and minorities.

It is questionable whether S. 632, in its present state, can address this kind of urban growth problem without thoroughgoing revision. For example, it would require, in Title III, an additional finding that:

"The delegation by the States of land use controls to localities with respect to residential uses has permitted the latter to ignore regional and metropolitan housing needs, particularly for low and moderate income persons."

Many other changes would then be required throughout the rest of the bill to reflect this finding. We would be happy to suggest such detailed changes if a basic finding of this nature were agreeable to the sponsors of the legislation.

S. 992 proceeds from a similarly ecological, rather than egalitarian, premise. However, we find it preferable to S. 632 in that it does contain (Sec. 104(a)(4)) a provision to encourage states to assure that local regulations "do not restrict or exclude development and land use of regional benefit". The bill defines (Sec. 102(c)) such development and landuse as "land use and private development for which there is a demonstrable need effecting the interests of constituents of more than one local government which outweighs the benefits of any applicable restrictive or exclusionary local regulations". This provision could reflect a developmental priority for housing, but it should be made more explicit. In particular, the definition of Sec. 102(c) should be amended to add the following words:

"Including any publicly assisted housing which is consistent with a regional or metropolitan plan to meet housing needs, or which in the absence of such a plan is acceptable to the Secretary of Housing and Urban Development."

To undergird this policy, we would suggest that the findings and declarations of policy in Sec. 101 contain language similar to that recommended for findings in S. 632 and that Sec. 105(a) be clarified to indicate that no program management grant may be made without the approval of the Secretary of Housing and Urban Development with respect to this matter. The Committee may wish to review, in this connection, the recent guidelines issued by the Department of Housing and Urban Development relative to financing of subsidized housing to determine whether the language suggested above should recognize their existence.

SANCTIONS

Assuming that a national landuse policy act responsive to the concerns expressed in this statement were to be enacted, the question of sanctions for noncompliance would arise. Neither bill has much "teeth" in it, but S. 632 contains a provision now which causes concern. Were a state plan to provide, for example, that no federally subsidized housing could be developed in a locality without local referendum on the project—a device that could be used to frustrate housing for lower income and minority groups (see Appendix A)—there would be presented a question concerning federal approval of such a plan (under existing provisions of S. 632 such a question might not even arise). Assuming disapproval of the plan, the sanctions of Sec. 315(a) seem nonresponsive to the hypothetical defect or, worse, self-defeating in that it might imply federal withdrawal of subsidies for public housing, an action which some interests in a state might wish to promote.

CONCLUSION

Both bills are based on landable objectives to control unwise development which misuses or wastes land, one of our most precious resources. But each bill, especially S. 632, fails to emphasize the importance of reforming our national landuse policies to meet our national housing goals. Each bill, especially S. 632, lacks explicit recognition of the fact that ecological values are increasingly being asserted as excuses for not approving housing developments required throughout metropolitan America. Some of these countervailing environmental concerns are genuine; many are not.

Both bills fail to recognize that localities desire to enhance their tax base by attracting industry and by limiting other forms of landuse which they regard as negatively impacting that tax base. Usually this takes the form of restricting residential development housing families with school-age children. It is possible to devise landuse policies which respond to social values and ecological values; both bills respond basically only to the latter.

In addition, neither bill recognizes that the cost of land is the fastest rising element of the initial cost of housing. Large-lot zoning, excessive building size requirements or front footage minimums, bedroom count limits, refusals to permit multifamily or cluster development—all of these contribute to pricing new housing out of reach of almost half the families in America.

Landuse policies in our metropolitan areas are exercised by thousands of local jurisdictions who are now encouraged to follow a "beggar thy neighbor" approach. The interests of suburban areas, as conceived under the present balkanized system of landuse controls, conflicts with a rational metropolitan housing strategy.

At present the state delegation of such powers is devoid of any reasonable standard for their exercise.

What a national landuse policy ought to encourage, and under appropriate circumstances require, is the provision of a metropolitan planning process to establish housing goals and to further establish the power of the States—or if necessary the federal government with respect to federally assisted developments (including federally assisted housing)—to override local landuse determinations that conflict with approved metropolitan planning. At the same time, considerable voice could be retained at the neighborhood level respecting secondary considerations of housing design and amenities.

In this connection, we have some concern with a recent decision of the United States Supreme Court (*James v. Valtierra*) which some observers have construed as sanctioning the exclusion of the poor from localities. As an aid to the Committee, and others interested in this urban growth issue, we are appending to this statement a memorandum prepared by The National Urban Coalition on the limitations of that decision.

We would be pleased to work with the Committee to perfect either bill if it desires to alter them to reflect the considerations expressed in this statement.

THE MEANING OF THE SUPREME COURT DECISION IN JAMES V. VALTIERRA

The United States Supreme Court, in a 5-3 decision, recently reversed a lower court ruling that California's mandatory public housing referendum law was unconstitutional. The National Urban Coalition submitted a friend of the court brief, in which numerous other professional, civil rights, consumer, labor and business organizations joined, urging the affirmance of the lower court decision.

We are deeply disappointed by the narrow majority ruling. This case appeared to offer the Court the opportunity, consistent with past decisions, of reaching a result that would have countered trends toward racial and economic polarity in metropolitan areas.

Perhaps the explanation for the result is found in the fact that for forty years the Court has turned away cases challenging building and zoning regulations of local government or deciding the few cases pertinent to this area on a perfunctory or procedural ground.

Two lines of cases had developed over the years. One, involving racial discrimination in housing, saw the Court strike down: racially restrictive covenants, private racial discrimination in the sale or rental of housing, attempted state outlawing of open-occupancy laws, and a local requirement that such open-occupancy laws be submitted to referendum before talking effect. A different line of cases, not involving explicit racial discrimination, had also developed in recent years. In these cases, official "discrimination against the poor" in regard to certain basic rights was forbidden by the Court. Many lawyers believed these cases, which outlawed the poll tax and required states to permit indigent criminal defendants to appeal their cases without paying for trial transcripts, could easily merge with the race cases in the housing area where economic and racial discrimination are often combined.

It is well known that localities use discrimination against low-income housing as a means to exclude racial minorities. But these techniques, by and large, do not involve the use of referendums, which became the focus of the *Valtierra* case. In that sense, it was unfortunate that this case was the first to arise in the Supreme Court because it seemingly pitted the reality of local economic/racial discrimination against the values inherent in the electoral process.

Now that a decision has been rendered, the question arises as to its meaning for future efforts to overcome the exclusion of the poor and minorities from decent housing in a suitable environment. Future litigation, and the policies of public officials and private parties, should be based on a clear understanding of what the Supreme Court did *not* decide as well as what it did decide. A great deal of initial comment on the decision was not able to draw the distinctions that become apparent on more mature consideration.

Many leading legal experts have been consulted in analyzing the decision. The following conclusion, however, is that of The National Urban Coalition and does not necessarily reflect the views of all of those consulted.

In our view the Supreme Court specifically decided that the mandatory referendum on public housing required by California law does not single out persons advocating low-income housing for procedural burdens which no other group

in California must face in seeking to influence public decisions. In other words, the poor are not so uniquely disadvantaged by California law as to have been denied equal protection. The Court observed, in support of this conclusion, that mandatory referendums are required for approval of state constitutional amendments and certain other local public actions; moreover "California statute books contain much legislation first enacted by voter initiative, and no such law can be repealed or amended except by referendum." We believe that the Court's legal conclusion was erroneous. But that is clearly the Court's holding and it was clearly influenced by the peculiarities of California law and history.

The majority opinion, however, also implied that even had the poor been singled out and disadvantaged by the mandatory referendum, the equal protection clause might not forbid such a special electoral burden, presumably on the ground that California's interest in assuring a high degree of plenary voting on local and state affairs was rational, particularly in the light of its rich history of referendums on many issues.

Some experts believe the majority's statement that a "lawmaking procedure that 'disadvantages' a particular group does not always deny equal protection" means that this decision undermines the claim of the poor, as distinct from that of racial minorities, to special protection against state-imposed disadvantages in regard to basic rights.

Although this is a possible interpretation, a much more limited reading may be justified. The *Valtierra* opinion was concerned only with a challenge to a state law on its face, a law that dealt with political procedures for allocating local decision-making power in making local public policy. The decision has established that such a procedure is not constitutionally challengeable, *on its face and without consideration of its motive or its impact in particular localities* or without some showing that the procedure itself rests on racial distinctions. The majority, by referring repeatedly to the case as an attack on a "procedure", or a "lawmaking procedure", or a "governmental structure"—and not as an attack on a denial of housing opportunities to the poor—emphasizes this critical distinction between process and result.

The distinction may be illustrated in another way. The Court has held, for example, that a locality or state may not deprive the poor of the right to vote through the imposition of a poll tax, and that it may not in effect deprive the indigent criminal defendant of his rights to appeal by charging for trial transcripts. Whether this deprivation were decided upon by a referendum, or by a local legislative body, or a mayor, would be irrelevant. We can now conclude that on the question of the access of the poor to decent housing, the *manner* in which a locality makes decisions that may deprive them of their rights is constitutionally irrelevant. In other words, the issue remains: Are there actions which a governmental jurisdiction *must* take, or previous official acts it *must* reverse, regardless of who within the jurisdiction—mayor, council, zoning board or electorate—makes decisions?

The decision tells us, then, that whatever may be the basic underlying rights of the poor with respect to access to decent housing, the mere submission of such an issue to the electorate does not deprive them of those rights without an examination of surrounding facts in regard to their needs and the housing policy of the locality. Of course, in situations where race is explicitly involved in the submission of issues to the electorate, such a referendum on its face does have a stigmatizing impact which impairs the rights of racial minorities without regard to the substantive injury to the rights of such a minority. Therefore, in brief, the *Valtierra* decision may say nothing more than that a referendum requirement that does single out the interests of a group other than a racial minority does not on its face "add insult to injury"—that is, deny equal protection of the law.

The Court, having disposed of the case on the process issue, never reached the question of "injury"—the core question that will ultimately have to be confronted: What are the constitutional obligations of localities to provide decent housing for the poor and racial minorities, either by affirmative action or by undoing the results of negative governmentally imposed land use controls that frustrate private efforts to meet these needs?

The decision, moreover, is also limited in other ways. First, it deals only with public housing, where the locality exercises affirmative entrepreneurial efforts to produce low-income housing. Footnote 4 of the Court's opinion indicates that a major premise for the result is the assumed cost to the local community of public housing (which is not on the tax rolls), assumptions that do not apply

to moderate-income housing which is taxed as any other privately owned and managed property.

Second, in the light of California history—the law in question dated back to 1950 when the non-white occupancy in public housing was much lower than today and when federal civil rights policy was non-existent in housing—the question remains open as to whether *new* laws similar to California's would be immune from challenge, given the racial climate and federal policy now applicable to subsidized housing. Nor do we regard this opinion as shutting off challenges to *specific* referendums—under either old or new laws—in factual situations where the discrimination against minorities and the poor can be shown in the motivation or the effect on a particular occasion.

And, as has been generally observed, where local exclusionary policy is motivated to deny, or acts in effect to deny, decent housing for racial minorities, the equal protection clause is as potent as ever in overcoming such constraints.

In summary, then, legal strategists available to overcome local exclusion of the poor and minorities remain manifold in both state and federal courts. Where substantive rights to decent housing in a suitable living environment have been injured and the courts have found them to be, no referendum will "cure" a violation of those rights.

STATEMENT OF CHARLES A. KNOTT, CHAIRMAN, LEGISLATIVE AFFAIRS
COMMITTEE, NATIONAL ASSOCIATION OF INDUSTRIAL PARKS

Mr. Chairman, and members of the Committee, I welcome this opportunity to submit a statement on behalf of the National Association of Industrial Parks concerning the proposal for a national land use policy. I regret that it was impossible for me to personally appear before you.

The National Association of Industrial Parks represents the owners and developers of industrial and office parks throughout North America. Membership includes many nationally known companies who are in the industrial park industry as well as many smaller entrepreneurial type companies and individuals who have traditionally been the backbone in providing the economic development of this great country.

The members of NAIP are vitally concerned with anything that effects the quality of environment for that in turn affects their product-developed land. One of the major factors contributing to the success of the industrial park industry is the location of industrial parks in areas that compliments the environment.

To say that all land developers are concerned about pollution and its effects upon our environment would be folly; however, I feel quite safe in saying that a great majority of NAIP members are very much concerned.

Quite contrary to what many "extremists" think, developers are human and like to breathe clean air and drink clean water as much as any one. They are concerned about their fellow man and they are concerned about the proper use of our great but limited resource, land.

Industrial park developers have been working with many areas of government (particularly planning boards and zoning commissions) from the very beginning. Most of these agencies, although hampered by unrealistic rules and regulations, are, nevertheless, diligent in their efforts to insure orderly growth. Likewise, most states have competent development and planning agencies quite capable to develop, implement and enforce ordinances pertaining to the protection of our environment that transcend local boundaries.

It is our belief that the states should be given more time to develop and implement legislation where needed without direct supervision from the federal level. The cry throughout the land for more attention to our environment will make even the stubbornest states act quickly and effectively.

We commend the efforts of the Administration and this Committee for its work in developing a national land use policy; however, we sincerely and strongly believe that effective, orderly economic growth can take place in this country without federal controls.

The National Association of Industrial Parks pledges its good offices to the end that the environment will be protected for this and future generations, and at the same time permit orderly economic development that is so vital to this country and the entire world.

STATEMENT OF DONALD I. HOVDE, MADISON, WISCONSIN, CHAIRMAN, REALTORS'
WASHINGTON COMMITTEE OF THE NATIONAL ASSOCIATION OF REAL ESTATE
BOARDS

I appreciate this opportunity to testify on behalf of the National Association of Real Estate Boards* on the bills S. 632 and S. 992, which would establish a National Land Use Policy and provide assistance to the states for land use planning under federal guidance and control.

Any federal legislation which attempts to aid the state and local governments in their land use planning immediately raises serious problems with respect to the amount of federal control which may be imposed directly or indirectly on the local decision-making process. The primary responsibility and constitutional authority for land use planning and control of non-federal lands rests with the state, and, by virtue of state delegation of powers, the local governments.

We therefore seriously question the wisdom of any federal legislation—no matter how well intended—which represents, albeit indirectly and discretionary, an infringement by the federal government of a local government's land use planning authority.

We sincerely believe that such infringement is implicit in both bills, S. 632 and S. 992.

The Administration bill, S. 992, involves the federal government in three distinct areas of land use control. These are: (1) areas of critical environmental concern, (2) areas impacted by key facilities such as highways, airports, etc., and (3) areas of development which are of regional benefit.

Our Association recognizes a role of the federal government in the first two areas of concern cited above.

No one can question the need for effective and rational land use planning for the nation's areas of critical environmental concern. The preservation or protective development of these areas is of paramount importance to all the citizens of the country. The lack of planning in the past for land use in important environmental areas has contributed to the erosion of our national environment. If this trend is not reversed the ecological heritage of future generations will be severely impaired. We therefore fully support those sections of S. 992 and S. 632 which provide aid to the state for the planning of its areas of critical environmental interest; however, any federal intrusion into this area should be limited to those land use decisions which, because of their national interest, affect the citizens of the country rather than the citizens of a single state or locality.

The involvement of the federal government, however, in financing the promulgation and enforcement of statewide land use plans for land developments "of regional benefit" represents, in our considered opinion, a poorly disguised attempt to erode and restrict the power of local governments to zone the use of land.

Section 104 of S. 992 provides that a state, in order to qualify for federal grants, must include in its statewide land use plan:

"(4) a method for assuring that local regulations do not restrict or exclude development and land use of regional benefit;

"(5) a policy for influencing the location of new communities and a method for assuring appropriate controls over the use of land around new communities;"

"Development and land use of regional benefit" is defined so as to include development affecting the interest of constituents of more than one local government.

For example, under (4), above, a housing project which involves a market for renters or home buyers in a contiguous community (such as the inner city of a metropolitan area) would no longer be subject to local zoning control if the federally-approved statewide land use plan preempted local authority in such matters. A decision by federal authorities that the housing project was "of regional benefit" would be enough to force the state to set aside the local zoning decision.

It is not mere coincidence that, as a prerequisite for approval of any grant, the Secretary of Housing and Urban Development must be satisfied that adequate state control is reserved for "development and land use of regional benefit."

S. 632 also makes it clear and unmistakable that it is the intent of the drafters that statewide land use plans, to qualify for federal grants, must include author-

*The National Association of Real Estate Boards consists of approximately 1,600 Boards of Realtors located in every state. The combined membership of these boards is approximately 500,000 persons engaged in the business of selling, managing, and appraising residential, commercial, industrial and farm real estate.

ity to over-ride local decisions involving, for example, the construction of a public housing project in a suburb against the wishes and desires of the local community and to the home owners' adverse interest. This is clear from a reading of Section 305 of the bill.

Concern over the great damage to our environment because of the abuse of the land must not be the pretext for usurpation of the power of local governments to zone for land uses which are not of critical environmental concern.

Local officials are in a better position to reflect local priorities and to create most meaningful plans for the use of the land within their corporate limits.

Therefore, we endorse approval of national land use policy legislation pending before the Committee, subject to elimination of any references to land use other than those of critical environmental concern and areas impacted by key facilities such as highways, airports, etc., which are of national significance. We strongly recommend the deletion of any language in the pending bills which would limit in any way the power of local governments to zone for the use of the land.

STATEMENT OF SOUTHERN CALIFORNIA EDISON CO.

Southern California Edison Company (Edison) appreciates the opportunity to present these comments concerning S. 632 and S. 992, proposed legislation to provide for a national land use policy.

Edison is a California corporation engaged as a public utility in the production, transmission, and distribution of electrical power in portions of central and southern California. Its service area approximates 50,000 square miles, and the population it serves is estimated to exceed 7,000,000 people.

The net peak demand on Edison's electrical system in the year 1970 was 8,274 MW. It is currently estimated that the net system peak demand will double over the next decade. It is essential, of course, for Edison to add generating resources to its system sufficient to enable it to meet the future electric demands of its customers and to enable it to do so reliably.

The ability of Edison, and other electric utilities throughout the nation, to construct needed generating resources on a timely basis is becoming increasingly limited because of two principal factors. The first is opposition to projects by citizens and citizen groups principally concerned with environmental matters. The second is the current proliferation of overlapping regulatory reviews and inconsistent governmental policies pertaining to the issuance of licenses, permits and other regulatory approvals.

For example, a current Edison nuclear generation project involves some eighteen federal, state and regional regulatory approvals, and a current Edison fossil-fueled generation project has been substantially affected by reason of a jurisdictional dispute between a state and local agency.

While the foregoing may at first blush appear to be of little consequence, the potential for delay and the potential effects of delay can be staggering. The nuclear project referred to above involves in some cases single and in many cases multiple reviews and approvals by the United States Atomic Energy Commission, the United States Army Corps of Engineers, the United States Coast Guard, the California Public Utilities Commission, the California Resources Agency, the California State Water Resources Control Board, the California Department of Public Health, and the California Regional Water Quality Control Board, San Diego Region. A delay in acquiring a necessary regulatory approval would in all likelihood result in delay of the entire project. Additionally, there is a growing tendency for regulatory delays to have a tandem effect, because a given regulatory approval is often a prerequisite to another regulatory approval.

Delay in construction of needed electrical generating facilities results in decreased electrical reserve margins and decreased electrical system reliability. As electrical reserve margins become increasingly inadequate, the probability of interruptions of electrical service becomes increasingly great. Moreover, once electrical reserve margins become inadequate, it is extremely difficult to catch up again.

While a few may deem it undesirable, it is nevertheless true that our nation is heavily dependent upon electricity as an energy resource. A moment's reflection on the massive disruptions occasioned by the northeast blackout and the electrical power shortages and blackouts that have recently occurred in some areas makes clear the continuing need for timely development of adequate and reliable electric generating resources.

The goals of protecting and enhancing our environment on the one hand and providing adequate and reliable electrical energy resources on the other must be accorded balanced treatment. One major step toward achieving such a balance that can be taken now is elimination to the fullest extent possible of overlapping regulatory reviews and inconsistent regulatory policies.

It is in this context that Edison respectfully submits the following specific comments and suggestions concerning the proposed national land use policy legislation:

1. RELATIONSHIP TO PROPOSED POWERPLANT SITING LEGISLATION

A number of bills are pending before this Congress which deal with comprehensive powerplant siting legislation. The impact of bulk power supply facilities upon land use will be a consideration in the determination of whether proposed facilities should be authorized under powerplant siting legislation. If a powerplant siting bill is enacted, the implementing procedures under a land use policy bill should be coordinated with the procedures under a powerplant siting bill in order to avoid duplicative and overlapping procedures.

2. AVOIDANCE OF TANDEM EFFECT

Licensing procedures for bulk power supply facilities generally now cause what many call a "tandem effect". The tandem effect results from a number of separate steps leading toward the final approval of a project. In the tandem process, each approval in a series of steps is necessary before going on to the next. This tandem effect inevitably disrupts and extends project scheduling. It may also force major design decisions to be made at a very early stage in the project. This would likely prevent taking advantage of improvements in the state of design art during the normal planning and construction period.

Edison's concern with respect to the land use policy legislation is that a final determination that the project comply with the state land use policy may be required before action may be taken under the procedures of a powerplant siting bill, if such a bill is enacted. If both a powerplant siting bill and a land use policy bill are enacted, it should be made clear that the regulatory mechanisms under both bills may be conducted concurrently and not in tandem.

3. ONE-STOP PROCEEDING AND AVOIDANCE OF DELAYS

Once a plant siting approval mechanism has reached a final decision, it should bind all other agencies claiming jurisdiction over portions of the same issues. The land use policy legislation contemplates that land use policy will be implemented at the state level. Such implementation may or may not involve a special permit system. Edison is concerned that decisions in connection with the implementation of a state land use policy plan may be delayed with the result that essential new electrical generating or transmission facilities could also be delayed with the result that the public would be deprived of much needed sources of power and energy. Delays in putting new equipment on the line will result in increased use of older equipment, and deferral of scheduled maintenance. This, in turn, will result in increased breakdowns on the older equipment and more interruptions and power shortages. Some areas of the country are currently facing brownouts and possibly even major blackouts. If new generating plants continue to be delayed, there will be additional serious power shortages and blackouts.

Edison is also concerned that the implementation of a state land use policy plan may result in the veto of any electrical generating project or transmission line that is inconsistent with the land use policy plan without appropriate consideration to the overall public interest. This concern may be expressed in another way; i.e., Edison believes that a single purpose regulatory scheme (such as land use) should not result in a veto of a project that may be in the total public interest. If such a project is subject to a licensing system, the agency exercising the right to approve or disapprove the project should consider all aspects of the public interest.

If power plant siting legislation is passed, and a state level plant siting approval agency is created, this agency should have preemptive jurisdiction over all questions involved in the siting of the proposed facility, including land use policy questions. In the event of an inconsistency between a land use policy plan and the location of a proposed facility, the powerplant siting agency should

be able, in balancing the total public interest, to authorize on a one-stop basis the construction of the proposed facility where such construction is in the total public interest.

Southern California Edison Company thanks you for the opportunity to present this statement.

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS.

Washington, D.C., June 24, 1971.

Hon. HENRY M. JACKSON,

Chairman, Committee on Interior and Insular Affairs, U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: The National Association of Regulatory Utility Commissioners (NARUC)* is concerned with the interface between the above legislation and the following power plant siting legislation which has been the subject of hearings before the Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce:

(1) H.R. 1079, a bill proposing the Electric Powerplant Siting Act of 1971;

(2) S. 1684, H.R. 5277, H.R. 5389 and H.R. 6526, duplicate bills proposing the Power Plant Siting Act of 1971, which is the legislation requested by the Administration;

(3) H.R. 6970, a bill proposing the Electric Power Supply and Environmental Protection Act, which is the bill introduced and supported by Mr. Macdonald of Massachusetts;

(4) H.R. 6971, a bill to secure bulk power supplies adequate to satisfy the mounting demands of the people of the United States, which is the bill prepared by Vice Chairman John A. Carver of the Federal Power Commission;

(5) H.R. 6972, a bill proposing the Electric Power Coordination Act of 1971, which is the bill supported by Commissioner Lawrence J. O'Connor, Jr., of the Federal Power Commission; and

(6) S. 1915 and H.R. 7045, duplicate bills proposing the Federal-State Electric Power Environmental Protection Act, which was introduced at the request of the NARUC (Cong. Rec.: March 30, 1971, pp. H2197-H2201; May 20, 1971, pp. S7470-S7482).

The concept of general land use legislation as proposed by S. 632 and the concept of power plant siting legislation are inherently in conflict since they both deal in different fashions with the same subject, *i.e.*, electric generation and transmission facilities. This conflict has apparently been avoided in the case of the Administration's land use legislation (S. 992) and power plant siting legislation (S. 1684) because Section 7(a) of the latter provides that decisions thereunder "shall be conclusive on all questions of siting, *land use*, State air and water quality standards, public convenience and necessity, esthetics, and any other State or local requirements . . .". Emphasis supplied.

Due to the unique problems of power plant siting and the need for timely construction of power plant facilities consistent with the achievement of environmental goals, we respectfully urge that any land use legislation reported by the Committee shall clearly provide that decisions made thereunder shall not be preemptive of decisions made under Federal or State power plant siting legislation. At the very least, State agencies engaged in the regulation of electric utilities should be assured a role in the decision making process under general land use legislation with regard to power plant siting issues.

Power must keep pace with the rapid expansion of population and industry expected in the next two decades. Sometimes over-looked in the welter of arguments over pollution is the realization that the Nation's future power needs are indeed staggering.

Our country is continuing to experience an exponential growth in the demand for energy. For the power demands expected in 1990, the electric industry alone faces installation of nearly one billion kilowatts of new generating capacity during the next two decades.

This expansion of generating capacity is roughly equal to quadrupling the Nation's present electric generating facilities. The 1990 plant will be three times that of the 1971 plant, producing nearly six trillion kilowatt hours.

*The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within its membership are the governmental bodies of the fifty States and of the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of carriers and utilities. Our chief objective is to serve the public interest by seeking to improve the quality and effectiveness of government regulation.

The demand for electric power has been doubling about every 10 years. Per capita consumption has recently been increasing about five times as fast as population, while in the past 100 years the population has tripled but energy consumption has increased 15 times.

By 1990, electric utilities must add 200,000 circuit miles of new bulk transmission facilities, with about half expected to be extra-high-voltage lines requiring rights-of-way of 200 feet or more. The land requirements for these facilities is impressive—more than 3 million acres, or 4,850 square miles, equal to a right-of-way two miles wide spanning the Nation from New York to Los Angeles.

In view of the tremendous growth needs of the electric industry and its direct effect upon the standard of living of the American people, we believe that power plant siting must be specifically dealt with by Federal and State legislation which should take precedence over general land use legislation.

Please incorporate the text of this letter in the record of the hearings of the Committee on S. 632 and S. 992.

With warm regards and best wishes, I am,

Sincerely yours,

GEORGE I. BLOOM, *President.*

NATIONAL COAL ASSOCIATION,
Washington, D.C., July 2, 1971.

HON. HENRY M. JACKSON,

Chairman, Committee on Interior and Insular Affairs, Washington, D.C.

DEAR SENATOR JACKSON: The National Coal Association represents the principal producers and distributors of most of the nation's commercially mined bituminous coal. The member companies operate in twenty-six of the fifty states on private as well as publicly owned lands. The enactment, therefore, of federal land use policy legislation would have an effect upon the coal industry.

These comments are submitted with respect to S. 632 and S. 992 which propose the establishment of a National Land Use Policy. Because of the broad scope of the proposed legislation and the significant impact it would have on all aspects of land use planning, we believe it is quite beyond our province to comment on the bills in their entirety. Consequently, the National Coal Association does not take a position as to the need for a National Land Use Policy nor whether the pending legislation would provide the most realistic approach for achieving the stated objectives. However, we do wish to raise certain points with respect to coal as well as other minerals for consideration by the Committee in its deliberations.

The coal industry is concerned that the proposed legislation does not give sufficient consideration to the fact that coal, as well as other minerals, are uniquely different from many other natural resources such as forests and agricultural products. New trees and crops are renewable assets and can be grown in many different areas. Land use planning for agricultural, recreational, residential, commercial and industrial purpose can take advantage of innumerable sites depending upon the criteria to be established.

However, nature has already done most of the planning for coal and other minerals. Since man cannot grow minerals in the earth, coal must, of course, be mined where it can be found. In view of the importance of coal to our energy-oriented economy, especially with the limited reserves of our other hydrocarbon fuels, a land use policy should recognize as a priority use the necessity to permit the full development of our coal reserves.

There must also be an express recognition that mineral extractive operations are only a temporary use of the land and, thus, lands should be categorized and considered in terms of their multiple benefits to man. Inherent in this multiple-use concept is the assumption that we can no longer disqualify the use of land for different purposes at different times. Therefore, land well suited to supply premium coal close to a major urban market area for a period of years, could after that time, be classified as best suited for low-density residential use, open space or industrial use. This is particularly true in view of what can be done today through sound, effective reclamation of surface mined areas.

It is also essential to take into account the fact that most of our mineral resources lie hidden beneath the earth's surface and only a small percentage of these reserves have been adequately explored so as to be clearly identifiable. With the exception of the known deposits, it will be extremely difficult, if not

impossible, to determine which lands are best suited for mineral use as required by the proposed legislation.

In addition, advances in technology are continually developing new methods to aid in the discovery and identification of our mineral resources so that areas which today are considered without coal or mineral potential may hold promise for tomorrow. To decide upon a particular land use for future development which excludes mining, simply because no known coal or mineral deposits exist there today, could foreclose vast areas to the search for vital coal and mineral resources. It would, of course, preclude the development of these potential reserves. A realistic land use policy must assure that as much land as possible remain open for exploration and development of our mineral resources.

Because of the urgent need to reevaluate and redetermine our national fuels and energy policy, this Committee is, pursuant to Senate Resolution 45, undertaking such a study. We believe the development of a land use policy should, with respect to coal and other fuels, await the clear enunciation of a national fuels and energy policy in order to be coordinated with its aims.

It would be appreciated if these comments could be made part of the record.

Sincerely,

CARL E. BAGGE, *President.*

NATIONAL WATER RESOURCES ASSOCIATION,
Washington, D.C., July 1, 1971.

HON. HENRY M. JACKSON,

Chairman of the Senate Interior and Insular Affairs Committee, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: For the record of hearings on legislation to establish a National Land Use Policy, I forward a statement addressed to you. This statement is by an ad hoc Committee of this Association, and is supplemented by the following:

ORGANIZING

Nearly six years ago, PL 89-80 required the Water Resources Council to establish procedures for the evaluation of water and related land resources projects. About three years ago several committees of the Congress both adjured the Water Resources Council to get on with that job, and also offered advice about aspects of it. Yet, the prospective procedures—long since exposed to public comment—are not established.

Perhaps the assignment of the Vice-President of the United States to chair a Land and Water Resources Council (as proposed in S. 632) would overcome the dissensions which have caused the long delay. But—lacking assurance that a Vice-President has time for the task, convinced that members of the Cabinet do not really have time for the Council, and for other reasons—our ad hoc committee proposed a new Board to manage national land policy (as on Page 3, par. VI of the Committee's testimony, attached).

PRIORITIES

Further, the Congress has already established policies and programs which have great influence upon land use, private and public, throughout the Nation. Recent examples of far-reaching effect are:

Title I (National Environmental Policy) of PL 91-130.

Title IX (Rural Development) of PL 91-524.

Title VII (Urban Growth and New Community Development) of PL 91-609.

But those policies—"add ons" to earlier policies and programs affecting land use—may enhance the needs for:

A system of priorities, as set forth so strongly in Environmental Quality, a report of CEQ to President Nixon of last August, and

A "policy framework", as found lacking by the National Goals Research Staff in its report to the President of July 4, 1970.

Thus, our ad hoc committee suggests that the priority action of any National Land Use organization would be to unify—and to direct toward an outline of what people want the United States to be—those actions of the Federal Government which influence land use. When some successes in those two tasks are demonstrated, then Federal guides for planning the uses of private lands would be in order.

Sincerely,

CARL BRONN.

NATIONAL WATER RESOURCES ASSOCIATION,
Washington, D.C., June 23, 1971.

HON. HENRY M. JACKSON,
Chairman, Interior and Insular Affairs Committee, U.S. Senate, Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I reside and practice law in Twin Falls, Idaho. I submit a statement today at the request of an Ad Hoc Committee on National Land Policy appointed by the National Water Resources Association.

Please understand that the views expressed in this statement are those of the Ad Hoc Committee, authorized during 1970 by the Association to respond to Chairman Jackson's request for assistance in working out prospective legislation. I attach to this statement a brief sketch of the backgrounds of the Ad Hoc Committee members, at Tab C.

In presenting the position of the NWRA as to the bills under consideration, we wish to make some specific recommendations. In addition, we hope to make some observations which we think are obvious concerns in formulating a national land use policy.

I. THE COMPLEXITIES OF EXISTING FEDERAL JURISDICTIONS

An effective land use policy would reach into the workings of almost every department of government and many of the independent agencies. Tab A hereto is a list of agencies, though by no means complete, which presently influence land use policies. Also listed therein are functions or activities which influence land use, as specifically set out in federal law, regulation, or doctrine.

We can conclude from the remarks of Herman Ruth, found at Tab B herein, that we need to first rationalize, or make homogenous, the policies, practices, and doctrines of the federal government with regard to national land uses. Having accomplished the coordination of the federal departments and independent agencies over the use of lands of this country, the federal government would then be in a better position to issue guides to the States for master planning the use of state and private lands.

II. PRESENT BILLS DO NOT SET POLICY

It is imperative that before comprehensive land use legislation is enacted the federal government should establish objectives and then carefully examine the procedures by which the objectives will be reached. The methods of problem solving can only be resolved after our objectives are known and the information is gathered as to how these objectives are going to be obtained.

Our committee definitely has problems finding the objectives of land use planning in both bills. We suggest that the bills should list objectives, even to the point of designating which objectives are more important than others.

III. NATIONAL OBJECTIVES (GOALS) AND THEIR RELATIVE PRIORITY

We submit that the Congress and the Administration have not had a great deal of success with setting national goals and priorities. In fact, the National Goals Research Staff, in its report of July 4, 1970, entitled "Toward Balanced Growth, Quantity with Quality," concludes that the American people have not yet decided what sort of country they want this to be. Are we prepared to enact a land use planning bill to enforce a land policy which at present is an undefined concept?

The complexity of the problem of national goals and the far-reaching effect of a national land policy certainly must be caveats to the Congress to proceed with caution in guiding the states to plan the use of private property. We suggest that the government must intensify efforts to clarify their own objectives and to categorize them according to degrees of urgency.

IV. IMPLEMENTING A NATIONAL LAND-USE POLICY

In the event that the objectives of the land policy are sorted out and categorized according to degrees of urgency and priorities, where does our government obtain the superexperience and super-perceptibility to man and staff a federal entity for guiding the planning of all land uses. We suggest that a cautious start would better foster a mature approach of people and organizations in conceiving and implementing a national land use policy.

V. LET'S DON'T FORGET FRAGMENT PLANNING

In most parts of the western United States, land planning without regard for water planning would indeed be futile. To a degree, the use of land is dependent upon the availability of water of suitable quantity and quality. From this standpoint, allocation among competing uses determines the shape of the development. We recognize that the bill reported last year included concern for water planning. Our Committee is not certain whether the Water Resources Council is the best of choices for relating land and water. We note that the Water Resources Council will disappear were President Nixon's Department of Natural Resources to be created. Thus, our Committee would suggest the study of an organization different from that proposed in either bill.

VI. PROPOSED ORGANIZATION

Our Ad Hoc Committee would offer for the deliberations of this Committee and staff the idea of a new federal entity to guild a national land use policy and to oversee its application. We would suggest the creation of a Board. The President would appoint the Chairman with the advice and consent of the Senate. Members of the Board would be appointed by designated members of the President's cabinet and designated independent agencies. Members would retain the office support within their departments or agencies of origin, but first call upon their services would be by the Chairman of the Board. Each member would be responsible to the Chairman for output, but responsive to his department or agency for input. The variation of this organization of the Board is to expand it with non-federal appointees. The President would appoint one former governor, perhaps a former mayor of a city with a population in excess of one-quarter million persons. Others to be appointed by the President would be former elected officers of smaller cities and counties. The Board itself would be responsible for grant-in-aid programs, generally as proposed in either of the two bills before the Committee. We suggest that the law, initially, require the Board to give priority to an overview of federal planning under existing programs which now affect the use of lands.

Assuming that national goals and priorities can be delineated, a Board such as the one suggested above for national land use planning would apply its work to federal lands, to urban concentrations, and to all state and private lands as well.

The ideas presented here are in a raw state. Should your Committee choose to have your staff study these ideas, our own group would try to answer any inquiries or assist in any way that we might.

We thank you for the privilege of inserting this position paper in the official record of the Hearings on S. 632 and S. 992.

Respectfully submitted,

JOHN A. ROSEHOLT, *Chairman.*

AMERICAN MINING CONGRESS,

June 28, 1971.

HON. HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.*

DEAR SENATOR JACKSON: The American Mining Congress offers its comments on S. 632 and 992 which, if enacted, would establish or provide for a National Land Use Policy.

The American Mining Congress is a national trade association of United States companies that produce most of the nation's metals, coal, and industrial and agricultural minerals. The member companies operate on public and privately owned lands in all of the 50 states. The industry would thus be affected by the passage of federal land use policy legislation.

The industry is concerned that the proposed legislation, particularly S. 632, does not adequately recognize the dominant nature of mineral estates. Under the general laws of property a minerals estate severed from the surface ownership is the dominant estate. The owner of the minerals, in the absence of some restriction or contrary agreement, owns the right to reasonable use of the surface to extract the minerals. The rationale for the rule is simple—the ownership of the minerals is without value if access to the minerals is denied by the surface owner.

Except for areas of known mineral occurrences, it is not feasible to identify lands which are best suited for mineral development and are important for

mineral purposes. Such identification would be required by section 305 of S. 632. Minerals, by their nature, are usually hidden and the value of land for mineral purposes can be established only by comprehensive exploration and development. Only the smallest fraction of our national land resource has been so studied. Moreover, lands not best suited or important for mineral purposes today may be predominately important for such purposes at another time.

Land use planning must envisage periodic changes in the importance of lands for changing uses. Changes in the highest and best surface uses can, from time to time, be rather readily ascertained. If, however, a land use plan should prevent exploration and development of mineral deposits because land is zoned or committed to prescribed surface uses, the importance of the land for mineral purposes would never be known.

The mining industry supports the preservation of certain land areas with unusual and unique value. As a general policy, however, lands valuable for a particular surface use should not be closed to the evaluation of their importance for mineral purposes. It is submitted that any land use policy legislation should provide suitable exceptions for the exploration for and identification and development of mineral deposits regardless of the highest and best use of the surface estate.

The deliberations of the Congress on land use policy legislation should take cognizance of the recently adopted policy of the federal governments that it is in the national interest to foster and encourage the development of mineral resources and reserves (Act of December 31, 1970, P.L. 91-631, 84 Stat. 1876). Land use policy legislation should encourage and not discourage the implementation of the Federal Mining and Minerals Policy.

Finally, we express our concern that state land use plans, as contemplated by S. 632, could carve up the land mass on a large-scale basis and lock in certain lands for use only for specific purposes indefinitely. Such a policy could lead to inefficient use of land area unrelated to the needs of the community and nation. This concern was expressed in the supplementary views to the Report of your Committee dated December 4, 1970, on S. 3354, 91st Congress, 2d Session.

Thank you for the opportunity to comment on this most important legislation.

Sincerely,

HOWARD L. EDWARDS,
Chairman.

STATEMENT OF STEPHEN C. KAYE, ATTORNEY, NEW YORK, N.Y.

I am Stephen C. Kaye, an attorney concerned with land use planning and practicing in the field of real estate law. I have constant contact with zoning and other municipal legal requirements affecting the use of real property and with practices and plans of real estate developers. I welcome the proposal to establish a National Land Use Policy and strongly encourage the passage of legislation in this area.

The definition of what a National Land Use Policy should be is, in embryonic and general form, set forth in S. 992. I am sure this policy will be redefined and refined over the years as public thought is directed towards such issues. Land Use Policy should be a growing and changing concept, and thus the original definitions should be left in a general state. The important concept is that a National Land Use Policy Act will encourage land planning activities, and will provide a legal foundation for local legislation which is presently inadequate to meet the social policies of the nation.

The first step towards implementation of a policy is to encourage land use planning by federal, state, regional and local bodies. In this respect, S. 632 outstrips S. 992 in that it provides 90% grants to States and is more specific in delegating planning responsibilities.

A fault with both bills is their lack of teeth. Both bills offer the incentives of funding, but funding alone will not bring about the degree of regulation which is socially desirable. Some states might make good use of the opportunities afforded by the S. 992. Others, however, will themselves be too impecunious or disinterested to take advantage of the legislation. A 90% initial funding with progressive curtailments to 50% might be an acceptable compromise. I strongly support a strengthening and broadening of the proposed National Land Use legislation. It has been suggested that federal spending, direct or indirect, for highways, airports, Department of Defense installations, and all major HUD insurance commitments or grants, should be conditioned upon a State's having

met the requirements of Section 104 of S. 992 and that the proposed federal or federally aided project be in accordance with the state (or the regional or local) land plan. I support such a condition, and urge that the arguments which defeated that suggestion be re-examined.

The thrust of the Act and of the land use policy should be to require all government programs that have an effect on land use be in accordance with the National Land Use Policy.

I can conceive of no program, except perhaps emergency defense measures, which should not or could not give consideration to the National Land Use Policy. If there were some reason why that policy should have to be changed to permit a higher priority use, there should of course, be machinery to permit a variance from the Policy. Those who have an interest in using a certain land area, including federal, state or local government agencies, should compete for that use in a forum where all views can be heard, including the views of those people who live in an area. Certain agencies of our government have done more than give lip service to participatory democracy; others, however, look at public hearings as a safety valve, and after the steam has blown off, the agency sets its intended program into action, whether it be a road, a housing project or a power plant. The public hearing notion should include the role of the agency as pleader, not as decision maker and rule maker. Thus the highway department should have to compete for land use with others, and the decision making body should be able to weigh the competing uses against standards established in the National Land Use Policy and the other federal, state or local legislation.

We are at a point in time where we require a paramount law of the land. The sovereign will must be expressed in a simple, rational law, not in a multitude of conflicting federal and state laws, where the conflicts are resolved either in the courts or in totally political ways. When it is not clear whether a federal highway can penetrate a state or national park, or whether a jetport can destroy a national shoreline, because the sovereign has not expressed its will in a clear manner, then it is time for the sovereign to speak. New legislation of a paramount character expressing a national policy and providing for democratic processes should be adopted.

I urge that planning grants be made to encourage land planning for *all presently undeveloped lands which the local or regional planning authority deems necessary or proper for a comprehensive regional plan*. The lands described in Section 104 of S. 992 might be entitled to priority in such planning, but land planning, and federal funding, should not be restricted to those areas.

The urban sprawl which has occurred to date only around urban centers will soon be seen in areas now remote. The proposed developments of land companies for sites scattered in present wilderness or agricultural areas makes it a matter of grave national concern to bring all presently underdeveloped land under a form of rational, planned, land use regulation.

There are at least a dozen major U.S. corporations and many small ones which have acquired vast tracts of land, sometimes over 30,000 acres, for recreational, new town or commercial exploitation. The concern of these companies is not the environment, but profits. They will be motivated to exploit their investments with the profit motive foremost; the land is the raw material; nature the victim. The countryside can be expected to receive the same sympathetic treatment as the buffalo herds. These companies have the financial and physical power to lay waste vast tracts in about the same time as it took to devastate the buffaloes.

The only federal law which presently affects such large scale developments are full disclosure laws which come into play in the retailing of the land.

The power to regulate large scale developments of more than local impact should include the power to regulate areas surrounding the development and the location of such development in a region. The location of a new town should not be the prerogative of a single land owner alone. The only way to harness the energies of the present generation of land developers on the scale of IT & T, Boise Cascade, General Electric, Walt Disney, Connecticut General, etc. in a positive way is to impose a degree of regulative control which will be strong enough, with sufficient funding and sufficient managerial talent to implement the efforts of the land developers.

Pitted against the giants are small municipalities, equipped only, at best, with their local zoning ordinances. Often there is not even a zoning regulation; and then the only restraint is a self-imposed one. While the practices of developers are improving, profits are still paramount. Even well-intentioned developers spiral amenities down as profits become squeezed and planning standards imposed by government are a fundamental necessity.

The National Land Policy Act should, I suggest, incorporate machinery for preserving open spaces, including the preservation of grazing and agricultural land, especially on the fringes of presently intensively developed areas. Florida citrus groves, California farmland and Long Island potato fields can become national assets rather than the raw material for further urban sprawl. Outright acquisition is presently the only sure techniques of preserving open spaces. Protective easements, a concept of partial taking, a reliance on the commerce clause, if incorporated into federal land use legislation and power is then delegated to the States, will provide land planners with much needed powers to constitutionally meet the challenge to our limited national land resource that will be faced in the last years of this century.

Local and state bodies are presently helpless to meet the existing challenge, and they are by no means up to meeting the coming challenge. To expect zoning powers, or eminent domain powers, to meet the operative power of the private and public forces at work is like expecting a slightly patched up, souped up DC-4 to fly to the moon. I suggest that even the Environmental Protection Laws, the Conservation Laws and Air Pollution Laws are only a souped up version of our 19th century heritage grounded on property rights and the notion that land is exclusively a matter of local concern.

A restrained federal response to the planning needs of the nation can take the form of a delegation of planning responsibility to states, and through states, to regional and local planning authorities. The benefits of the democratic process should be grafted to each level of planning responsibility.

What I propose is a comprehensive land planning act, with federally derived powers, to provide a national system of land planning activity at the state or regional level. The act should encompass those useful concepts and techniques that have long been in practice for both restraining and promoting land development. Amenity, open space, remote space, greenbelts, conservation areas, protection of particular trees or stands of trees, protection of historic buildings or areas, protection of viable agricultural areas, development of new towns, regional centers, villages, the compensation of property owners, and the administration of a planning apparatus, are concepts which deserve examination and possibly statutory treatment in a National Land Use Policy Act. The example of the English Town and Country Planning Acts should be examined. The concern for providing growth and expansion should be tempered by a recognition that the limited countryside is a precious national asset which deserves protection, and which like a national treasure, should be spent sparingly and in accordance with plans accounting for both immediate and long range needs. The attached editorial reflects the kind of planning which this country can now begin to implement.

I encourage the committee to expand the scope of the bills before it, as stated above, to enable and encourage states and regions, including interstate regions, to adopt state-wide or regional land planning.

I would also encourage Congress to enact, perhaps in a companion bill, legislation to encourage the planning profession to meet the challenge of an expanded National Land Use Policy Act. The planning profession in this country is in an embryonic stage, and just as the engineering profession in the early 1950's required federal support, so does the planning profession in the 1970's need both funding and public support on a national level.

NORTHWEST MINING ASSOCIATION,
Spokane, Wash., May 7, 1971.

HON. HENRY M. JACKSON,
*U.S. Senator from Washington,
 Old Senate Office Building,
 Washington, D.C.*

DEAR SENATOR JACKSON: It is our understanding that the Committee on Interior and Insular Affairs will hold hearings shortly on S. 632, "National Land Use Policy Act," and S. 992, "National Land Use Policy Act." We would appreciate being informed of the schedule for the hearings on these acts as well as any which may be held on S. 921, the "Public Domain Lands Organic Act of 1971." We would also appreciate the Committee's consideration of the following statement relative to the related bills S. 632 and S. 992.

Both of these bills as well as S. 921 are aimed at development of Land Use Policy. As you stated in your introductory remarks (to S. 632) on February 5th, there is a crying need for mechanisms which "can provide the American people with land use planning and decision making which can go far toward eliminating conflict, maximizing public participation, and providing for land use patterns that will enhance environmental values and the quality of life while, at the same time, meeting the Nation's growing demands for raw materials, goods, and services." The bills attack separate parts of the overall problem. S. 632 establishes a national policy council composed of administrators, regional commissions of administrators, and also a system for the council to encourage and threaten the states into land use planning action. S. 992 provides as to non-federal lands for the Secretary of Interior to encourage and apply pressure on the states, particularly as to any areas he finds to be of "critical environmental concern." S. 921 provides for absolute authority in the Secretary of Interior, free of any of the restrictions of present law, to control the use of BLM lands; it also contains a new "Wilderness Act" as to any roadless area over 5000 ac. in extent.

Our first comment goes to all three bills; none of them provides for the earlier-quoted "public participation" which we consider to be an essential for any mechanism which will be capable of providing an equitable, balanced policy for land use. On the contrary, all three bills propose that Congress delegate all or part of its constitutional authority over the public lands to Executive agencies. To put the matter directly, we find this objectionable on a number of grounds, theoretical, technical, and practical. In our view:

1. To the extent that the citizen actively manages his affairs through his elected representatives or directly, democratic government will succeed and grow in strength. To the extent that his affairs are "handled" by a large, remote, impersonal institution, the citizen is inevitably reduced to an emasculated, regimented consumer of institutional largess and/or sanctions. We feel that the drift toward "Statism" can best be countered by fostering "participatory democracy".

2. Technically, as in our national government with its division of powers, the proper form of organization is one in which the planning and policy-making function, the administrative function, and the function of adjudicating disputes and appeals are clearly separate. It was stated that one of the goals of the proposed legislation is "eliminating controversy". That existing controversy is fostered by the current management system in which, by fiat, the administrators arbitrarily withdraw or permit the use of lands on the basis of the relative pressures applied by various user groups (particularly the "non-use" users). It is difficult to see that the institutionalizing of the control by the administrators will end the current costly and wasteful anarchy among conflicting pressure groups.

3. On practical grounds, any genuine attempt to evaluate vast land areas such as comprise the public domain presupposes technical competence in a number of fields and an intimate knowledge of local conditions wherever a problem occurs. This requirement itself suggests that the planning and policy deciding body should incorporate the broadest possible spectrum of expert opinion, and that all reasonable options should be left open wherever possible for as long as possible. The complexity of the land use decision process is perhaps most dramatically pointed up when the sub-surface is considered. In a few areas, of course, there is adequate visible geologic evidence that the earth's crust to reasonable depth very likely contains only common rocks, minerals, and concentrations of the elements. In most areas, however, the evidence is "permissible" for mineral deposits in our terms; the sub-surface exploration needed to disprove the ground has not been done, and whatever evidence is available

is clearly inadequate in respect to unknown future demands for different mineral commodities, and future technologies in mineral exploration not yet devised.

Perhaps the most practical argument against relying on the bureaucracy to make widely-acceptable, settled land use decisions is the lesson from experience that it never has. It is almost a truism that in government bureaus (and large corporations), policies become institutionalized and rigid; the structure becomes unresponsive to new ideas, changing demands, or unusual cases. In a word, we feel the use of land is a matter far too important to be left to some department. We recently outlined our thoughts as to the proper make-up of a Land Use Planning Board in my letter of April 30th to Representative Aspinall on his H.R. 7211 (Public Land Policy Act of 1971), a copy of which was forwarded to you. In summary, we urge your consideration of amendments to the three bills which will result in a wide and deep public involvement in the land use planning process.

Specifically, on S. 992 (Sec. 102, pp. 3 and 4) the authority in the Secretary of the Interior, or subsequently the governor of a state to unilaterally designate "areas of critical environmental concern" is too broad. Since it is intended that such designations would result in the zoning out of many uses in such areas, our concern is that the criterion of criticality should be very precisely defined. As it stands, the secretary or governor is given blanket authority wherever "uncontrolled development *could* result in irreversible damage to important historic, cultural, or esthetic values, or natural systems or processes which are of more than local significance," including wherever there is a stream, or an ecosystem, or scenery, or "similar valuable" areas, etc. As the bill stands, any area could be a "critical" one and the bill could result in statewide zoning by administrative fiat. Since zoning has potential effects on the local and personal affairs of every segment of economic life, any zoning system must clearly be based on the broadest possible citizen participation and acceptance, from the local level up.

Our second comment on the three bills will be brief. All of them embody the assumption that because some environmental degradation has taken place in the densely populated areas and as a byproduct of industrial activity, it is necessary to forbid or restrict any use which is a popular one or has an industrial taint. In our view what in fact follows from the assumption is that urban and industrial pollution should be controlled, and population expansion, and overconsumption discouraged. As to the land, with imaginative planning and development of adequate facilities, degradation can be kept to the unavoidable minimum. We do not feel that the proper role of government in land use matters should be paternalistic—locking up the people's patrimony in order to save it from them. It's role should be responsive—meeting the real needs and expectations of the public through an adequate system of planning and management.

In the west mining occupies almost an inconsequential fraction of the land. With mined-land reclamation laws in effect in most states and coming in the others (with the backing of the mineral industry) there is a minimal problem, if any, in future adverse environmental effects from our industry. Our industry's ability to continue to meet "the Nation's growing demands for raw materials" is precisely our ability to locate and develop more than a ton of new ore for every ton of our present reserve as it is used up. To the extent that the laws fail to recognize this reality and to encourage exploration and development, the increasing scarcity of mineral commodities will inexorably lower the quality of life.

We urge that any land use policy legislation contain a provision that the subsurface of all lands must remain open to exploration and development unless and until it can be shown, upon thorough investigation and report by the U.S. Geological Survey, that any block of land proposed for withdrawal from mining use does not contain any significant amount of any element in concentrations exceeding its crustal abundance, nor any rocks or minerals other than common varieties.

We will look forward with interest to your comments on these suggestions.

Sincerely yours,

RUSSELL H. W. CHADWICK,
President.

SUPPLEMENTARY STATEMENT OF RUSSELL CHADWICK, ON BEHALF OF THE
NORTHWEST MINING ASSOCIATION

I am Russell Chadwick, president of the Northwest Mining Association of Spokane, Washington. I am an independent consulting geologist with twenty-five years of experience in exploration geology. Our association is comprised of some

600 firms and individuals who are interested in the mineral industries in Washington, Oregon, Idaho, Montana and Alaska. We request the committee's consideration of our letter of May 7, 1971, to Senator Jackson containing some generalizations on the subject bills, and of the following comments which are directed solely at the problem of the sub-surface in the land planning process. Broadly, our concerns with that process are two—that it recognize the special nature of the sub-surface and allow for future mineral exploration and development, and that those citizens with the responsibility for, and knowledge of mineral resources are directly involved in the process.

In the geologists' view, "land" is preeminently the lithosphere, the crust of the earth, with all its complexity and resources. The history of civilization is the history of man's discovery and ingenious use of metals and other natural resources to enrich his existence. The hoped-for continued development of man is inescapably based on mineral raw materials to support his plans—in adequate quantities at reasonable cost—just as is the extension of decent standards of living to the "have-nots", and the maintenance of the quality standard now enjoyed by the "haves". The problem of providing adequate materials is the problem of finding enough of the rare elemental or mineral concentrations which we call mineral deposits, each fixed at a geologically-determined position in the crust. When such a treasure is found, it seems to the geologist almost a truism that its use would constitute the highest value to the community of the land at that point. This is reflected in the universal retention of mineral rights by governments in their disposition of land.

More specifically, the interface between land-use planning and the thinking of the mineral industry exhibits the following features:

1. As recognized in S. 632 (Sec. 102), rational planning starts with an inventory, but sub-surface resources are not amenable to observation and tabulation like surface resources.

2. At any given point and time a complete inventory of the litho-system is a very formidable and unjustifiably expensive task, considering solely the hundreds of valuable elements, minerals and rocks which are a part of regular commerce.

3. In those areas where the surface geology has been mapped at a reasonably large scale and studied, some reasoned guesses may be made as to the probability of occurrence of certain broad categories of geologic materials, eg: mercury deposits are unlikely unless young volcanic rocks are present. So also, where reconnaissance geochemistry has been run on a sufficiently detailed pattern, it is possible to ride out the presence of outcropping deposits of the elements tested for with a fair degree of confidence. Experience in economic geology, however, cautions against reliance on any one study. Many ore bodies never did outcrop at the surface; many valuable minerals are undistinguished in appearance and are only recognized after being subjected to laboratory tests.

4. Geology is an observational discipline, like most of the natural sciences. To the earth scientist, the existing geologic data and literature is dependent on what portion of the total possible facts the particular reporting geologist chose to observe, according to his theories, how experienced he was, how strict in his observations both as to quantity and quality, etc. The point is that, short of having a report of a reliable physical test of a given block of ground, there is no data available which will permit a lay person to sit in an office and objectively pass judgment on the sub-surface values of that block.

5. Almost regardless of the data available and of the amount of exploratory work done at a given time, one cannot evaluate all the subsurface resources of land for all time because of:

- (a) The changing nature of demands in general, eg: uranium, selenium, rare earths, etc. in recent years.

- (b) The changing nature of local demands for industrial minerals, building materials, to support new local industries producing items formerly imported at high cost.

- (c) Changing geophysical, geochemical and geologic exploration techniques which permit us to "see" underground further than we now can.

- (d) Changing technologies which permit the use of different or lower-grade raw materials than those in present use, eg: taconite iron ore made usable in recent years by new magnetic separation and pelletizing processes.

6. As recognized by Congress in promulgating a National Minerals Policy, maintenance of a substantial flow of minerals from domestic sources is vital for economic health in a competitive world. To the extent that our own production is inadequate to supply our needs and to affect the world price structure, we will

either have to pay whatever price is asked, do without, or what—exert diplomatic—military power? Eg. the recent Libyan oil price boost of 40 percent.

7. Many of the scenic mountain areas, which are the cause of disputes among recreationists, believers in non-use, the natural resource producers, and others, are of particular importance to the mineral industry for a very good geologic reason. Many of these areas are rugged and high because they were recently the site of mountain building—of catastrophic structural, metamorphic, intrusive and erosional activity. In turn, it is in areas of such activity that the chemical high-temperature, and mechanical processes capable of effecting concentrations of elements or minerals are operative. Furthermore, in many of these mountainous areas, the disturbance has exposed a significant cross-section of the crust and a variety of strata and rock units.

Without belaboring the point, the mineral industry feels it ought to participate in any national land-use planning process on the ground of its special knowledge of and responsibility for the subsurface, which is outside of common knowledge. We also urge that any land-use planning legislation provide for the subsurface of all lands to be left open for exploration and development unless and until it can be clearly shown, upon reliable investigation, that it does not contain actually or potentially valuable resources which would be lost to the community if such development was barred by law.

FEDERATION OF ROCKY MOUNTAIN STATES, INC.,
 Washington, D.C., July 16, 1971.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
 Washington, D.C.,

DEAR SENATOR JACKSON: Thank you for the invitation to present a statement on S. 632 and S. 992, bills to establish a National Land Use Policy.

I write not only as President of the Federation, but also as a former Governor of the State of New Mexico, as Director of the Institute for Social Research and Development at the University of New Mexico, and as former chairman of the Institute on State Programming for the 70's at Chapel Hill, North Carolina.

All this experience has convinced me of the great need for the type of legislation that you and your Committee have been endeavoring to promulgate—setting a policy framework for the proper development of the land resources of this country, and providing incentives and assistance to states to coordinate and direct growth into proper patterns. We have found that very few states were really prepared with the proper legislation, organization and personnel to cope with the great development problems anticipated for the 1970's, much less plan for them. Planning the physical systems within which our economy operates and exercise of traditional state constitutional responsibility in land and community development, along with channeling Federal functional aids into proper patterns, are legitimate functions of state government. In fact, it may be said in our federal political system, as much as possible must be done at the state level. Your committee's concerns would strengthen this capacity to handle growth at the state level.

The Federation of Rocky Mountain States, Inc., is the nation's only interstate organization of state governments and the private sector devoted to the proper development of a major geographic and economic region. Founded in 1967, the Federation's Board consists of the Governors of the six participating states and leading representatives of the private sector. The Federation works through planning, research, education and communications in such areas of concern to the Rocky Mountain region as transportation, natural resources, urban development and the arts and humanities.

During 1970, the Federation began a Regional Planning Program focusing initially on laying the framework for concerted effort on transportation, new communities and housing. As a result, all six states have enacted a similar set of administrative and legislative arrangements enabling regional cooperation in proper development. Building on this 1970 effort, the Federation during 1971 is continuing its Regional Planning Program focusing on land use. Imminence of Federal legislation was a primary reason for selection of this area as top priority by our six Governors—we want to be prepared to cooperate with the Congress and the Federal government—as well of course as the private sector—in developing the proper set of tools. To this end we are stressing a four-point work program:

A. An interstate land use survey and adaptation of the most advanced regional methods, including computerized mapping, preparation for satellite survey inputs, environmental analysis using the scientific inputs of resource agencies and the critical area policies or conservationist groups.

B. Developing, in cooperation with the National Governors' Conference and the Council of State Governments, model state legislation for land use monitoring and control (to be as consistent as possible with the legislation your Committee is considering). This model legislation will be published in CSG's *Suggested State Legislation for 1971*.

C. Pursuing recommendations of the Public Land Law Review Commission through coordinating joint interstate conferences, review of alternative legislation, interaction between Federal and state public lands through the vehicle of state/community investment plans; and

D. Preparing for a major water projection study to meet the water requirements of mineral industries, urban and agricultural growth and the long-range economy of the region and the nation.

Our experience has shown that a "crisis" reading" approach by state and local agencies is all too common but wholly inadequate. What is needed is a longer-range, deeper, multi-purpose kind of planning to avert the complex environmental problems facing the nation. More particularly, zoning and subdivision control measures, by themselves, are extremely weak as they apply only after the fact and usually are administered by levels of government with proper scale and scope to anticipate areawide impacts. In the West, resource planning and standards must come before zoning and regulatory efforts, and this means the strongest and longest-term Federal support for state land use planning.

Our six states look forward to cooperating with you in further development of legislation to meet these need, and to harmonize activities of Federal and state agencies.

Please be assured that I or my staff will be pleased to meet with you and the Committee staff to further refine these consideration.

I would request that this statement appear in the record of your Committee deliberations.

Yours sincerely,

JACK CAMPBELL, *President.*

