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LAND USE POLICY AND PLANNING ASSISTANCE ACT

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KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 268

A BILL TO ESTABLISH A NATIONAL LAND USE POLICY, TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO MAKE GRANTS TO ASSIST THE STATES TO DEVELOP AND IMPLEMENT STATE LAND USE PROGRAMS, TO COORDINATE FEDERAL PROGRAMS AND POLICIES WHICH HAVE A LAND USE IMPACT, TO COORDINATE PLANNING AND MANAGEMENT OF FEDERAL LANDS AND PLANNING AND MANAGEMENT OF ADJACENT NON-FEDERAL LANDS, AND TO ESTABLISH AN OFFICE OF LAND USE POLICY ADMINISTRATION IN THE DEPARTMENT OF THE INTERIOR, AND FOR OTHER PURPOSES

FEBRUARY 6, 7, 26, 27, AND APRIL 2, 3, 1973

PART 1

Printed for the use of the
Committee on Interior and Insular Affairs

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Kansas State University
AUTHENTICATED
U.S. GOVERNMENT
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PART 1



Printed for the use of the
Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE

92-099 O WASHINGTON : 1973

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LAND USE POLICY AND PLANNING ASSISTANCE ACT

TUESDAY, FEBRUARY 6, 1973

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

The committee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Building, Hon. Henry M. Jackson, chairman, presiding.

Present: Senators Jackson, Fannin, Haskell, McClure, Hatfield, Hansen, Bartlett, Huddleston.

Also present: Jerry T. Verkler, staff director; William J. Van Ness, chief counsel; Steven P. Quarles, special counsel; and Harrison Loesch, minority counsel.

The CHAIRMAN. The committee will come to order.

OPENING STATEMENT OF THE CHAIRMAN

The purpose of this morning's hearing is to receive testimony on the Land Use Policy and Planning Assistance Act of 1973, S. 268, a bill to assist the States to develop land use programs for critical areas and uses of more than local concern.

With today's hearings, for the third time in three Congresses, the Senate Committee on Interior and Insular Affairs takes up consideration of national land use policy legislation. In the 91st Congress, this committee held 4 days of hearings and reported the first land use policy proposal—S. 3354—which I had introduced in January 1970. In the 92d Congress, S. 632 and the administration bill, S. 992, were the subjects of 10 days of hearings in the Senate: four by the Interior Committee and three each by the Commerce and Banking, Housing, and Urban Affairs Committees. On June 19, 1972, S. 632 was reported to the Senate by this committee. Three months later, S. 632 was adopted by the Senate. The Land Use Policy and Planning Assistance Act of 1973 on which today's hearing is being held is virtually identical to the Senate-passed measure of last year.

This legislation is long overdue. The continuation of the ad hoc, short-term, case-by-case land use decisionmaking during the 3 years in which the national land use policy proposals have languished in Congress has imposed unnecessary social, environmental, and economic costs upon this Nation. I believe we can and must replace the short-term, private land use decisionmaking employed all too often today with a land use policy formulation process which is long term and public. S. 268 can serve as the vehicle for the development of such legislation. The testimony to be received in today's hearings and in future hearings on S. 268 will provide important assistance to the committee as it develops such legislation.

I regard the development of land use policy legislation as one of the most important and urgent tasks facing this committee. The priority afforded this task is demonstrated by the early dates set aside for hearings. Two other steps have been taken to focus critical attention on this legislation. First, witnesses have been asked to address, either in their testimony or in a supplemental written statement, a set of questions on policy issues which were raised either in committee or in the Senate last year. Second, because of their personal interest and the interest of their committees, members of a number of Senate committees have been invited to testify and sit with the committee during its hearings on S. 268.

At this point, I would like to include in the hearing record the text of S. 268, my remarks introducing S. 268 on January 9, 1973, and the committee's report on S. 632.

(The material referred to follows:)

93D CONGRESS
1ST SESSION

S. 268

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 1973

Mr. JACKSON (for himself, Mr. BELLMON, Mr. BENNETT, Mr. CHURCH, Mr. DOMINICK, Mr. FANNIN, Mr. GRAVEL, Mr. GURNEY, Mr. HATFIELD, Mr. HUMPHREY, Mr. INOUYE, Mr. MAGNUSON, Mr. METCALF, Mr. MOSS, Mr. PASTORE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. STEVENS, Mr. TAFT, and Mr. TUNNEY) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To establish a national land use policy, to authorize the Secretary of the Interior to make grants to assist the States to develop and implement State land use programs, to coordinate Federal programs and policies which have a land use impact, to coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands, and to establish an Office of Land Use Policy Administration in the Department of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Land Use Policy and Planning Assistance Act of 1973".

TITLE I—FINDINGS, POLICY, AND PURPOSE

FINDINGS

SEC. 101. (a) The Congress hereby finds that there is a national interest in a more efficient system of land use planning and decisionmaking and that the rapid and continued growth of the Nation's population, expanding urban development, proliferating transportation systems, large-scale industrial and economic growth, conflicts in patterns of land use, fragmentation of governmental entities exercising land use planning powers, and the increased size, scale, and impact of private actions, have created a situation in which land use management decisions of wide public concern often are being made on the basis of expediency, tradition, short-term economic considerations, and other factors which too frequently are unrelated or contradictory to sound environmental, economic, and social land use considerations.

(b) The Congress finds that the task of land use planning and management is made more difficult by the lack of understanding of, and the failure to assess, the land use impact of Federal, regional, State, and local programs and private endeavors which do not possess or are not subject to readily discernible land management goals or guidelines; and that a national land use policy is needed to develop a national awareness of, and ability to measure, the land use im-

pacts inherent in most public and private programs and activities.

(c) The Congress finds that adequate data and information on land use and systematic methods of collection, classification, and utilization thereof are either lacking or not readily available to public and private land use decisionmakers; and that a national land use policy must place a high priority on the procurement and dissemination of land use data.

(d) The Congress finds that a failure to conduct competent land use planning has, on occasion, resulted in delay, litigation, and cancellation of proposed significant development, including, but not limited to, facilities for the development, generation, and transmission of energy, thereby too often wasting human and economic resources, creating a threat to public services, and invoking decisions to locate activities in areas of least public and political resistance, but without regard to sound environmental, economic, and social land use considerations.

(e) The Congress finds that many Federal agencies conduct or assist activities which have a substantial impact on the use of land, location of population and economic growth, and the quality of the environment, and which, because of the lack of a consistent land use policy, often result in needless, undesirable, and costly conflicts between the Federal agencies

and among Federal, State, and local governments, thereby subsidizing undesirable and costly patterns of development; and that a concerted effort is necessary to coordinate existing and future Federal policies and programs and public and private decisionmaking in accordance with a national land use policy.

(f) The Congress finds that, while the primary responsibility and constitutional authority for land use planning and management of non-Federal lands rests with State and local government, the manner in which this responsibility is exercised has a tremendous influence upon the utility, the value, and the future of the public domain, the national parks, forests, seashores, lakeshores, recreation and wilderness areas, wildlife refuges, and other Federal lands; and that the failure to plan or, in some cases, the existence of poor or ineffective planning at the State and local levels poses serious problems of broad national or regional concern and often results in irreparable damage to commonly owned assets of great national importance.

(g) The Congress finds that, because the land use decisions of the Federal Government, including those concerning the Federal lands, often have significant impacts upon statewide and local environments and patterns of development, a national land use policy ought to take into consideration the

needs and interests, and invite the participation of, State and local governments and members of the public.

(h) The Congress finds that Federal, regional, State, and local decisions and programs which establish or influence the location of land uses often determine whether people of all income levels and races have or are denied access to decent shelter, to adequate employment, and to quality schools, health facilities, police and fire protection, mass transportation, and other public services; and that such decisions and programs should seek to provide the maximum freedom and opportunity, consistent with sound and equitable land use planning and management standards, for all citizens to live and conduct their activities in locations of convenience and personal choice.

DECLARATION OF POLICY

SEC. 102. (a) 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, the Congress declares that it is a continuing responsibility of the Federal Government, consistent with the responsibility of State and local governments for land use planning and management, to undertake the development and implementation of a national land use policy which shall incorporate environmental, esthetic, economic,

social, and other appropriate factors. Such policy shall serve as a guide for national decisionmaking in Federal and federally assisted programs which have land use impacts and in programs which affect the pattern of uses on the Federal lands, and shall provide a framework for the development of State and local land use policies.

(b) The Congress further declares that it is the national policy to—

(1) favor patterns of land use planning, management, and development which are in accord with sound environmental, economic, and social values and which encourage the wise and balanced use of the Nation's land resources;

(2) assist State governments to develop and implement land use programs for non-Federal lands which will incorporate environmental, esthetic, economic, social, and other appropriate factors, and to develop a framework for the formulation, coordination, and implementation of State and local land use policies;

(3) assist the State and local governments to improve upon their present land use planning and management efforts with respect to areas of critical environmental concern, key facilities, development and land use of regional benefit, and large scale development;

(4) facilitate increased coordination in the adminis-

tration of Federal programs and in the planning and management of Federal lands and adjacent non-Federal lands so as to encourage sound land use planning and management; and

(5) promote the development of systematic methods for the exchange of land use, environmental, economic, and social data and information among all levels of government.

(c) The Congress further declares that intelligent land use planning and management can and should be a singularly important process for preserving and enhancing the environment, encouraging beneficial economic development, and maintaining conditions capable of improving the quality of life.

PURPOSE

SEC. 103. It is the purpose of this Act—

(a) to establish a national policy to encourage and assist the several States to more effectively exercise their constitutional responsibilities for the planning and management of their land base through the development and implementation of State land use programs designed to achieve economically and environmentally sound uses of the Nation's land resources;

(b) establish a grant-in-aid program to assist State and local governments and agencies to hire and train the

personnel, and establish the procedures, necessary to develop and implement State land use programs;

(c) establish reasonable and flexible Federal requirements to give individual States guidance in, and to condition the distribution of certain Federal funds on, the establishment and implementation of adequate State land use programs;

(d) establish the authority and responsibility of the Secretary of the Interior to administer the grant-in-aid program, to review, with the heads of other Federal agencies, statewide land use planning processes and State land use programs for conformity to the provisions of this Act, and to assist in the coordination of activities of Federal agencies with State land use programs;

(e) develop and maintain a national policy with respect to federally conducted and federally assisted projects having land use implications; and

(f) coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands.

TITLE II—ADMINISTRATION OF LAND USE POLICY

OFFICE OF LAND USE POLICY ADMINISTRATION

SEC. 201. (a) There is hereby established in the Department of the Interior the Office of Land Use Policy Administration (hereinafter referred to as the "Office").

(b) The Office shall have a Director who shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5315), and such other officers and employees as may be required. The Director shall have such duties and responsibilities as the Secretary of the Interior (hereinafter referred to as the "Secretary") may assign.

SEC. 202. The Secretary, acting through the Office, shall—

(a) maintain a continuing study of the land resources of the United States and their use;

(b) cooperate with the States in the development of standard methods and classifications for the collection of land use data and in the establishment of effective procedures for the exchange and dissemination of land use data;

(c) develop and maintain a Federal Land Use Information and Data Center, with such regional branches as the Secretary may deem appropriate, which shall have on file—

(1) plans for federally initiated and federally assisted activities which directly and significantly affect or have an impact upon land use patterns;

(2) to the extent practicable and appropriate,

the plans and programs of State and local governments and private enterprises which have more than local significance for land use planning and management;

(3) statistical data and information on past, present, and projected land use patterns which are of more than local significance;

(4) studies pertaining to techniques and methods for the procurement, analysis, and evaluation of data and information relating to land use planning and management; and

(5) such other information pertaining to land use planning and management as the Director deems appropriate;

(d) make the information maintained at the Data Center available to Federal, regional, State, and local agencies conducting or concerned with land use planning and management and to the public;

(e) consult with other officials of the Federal Government responsible for the administration of Federal land use planning assistance programs to States, local governments, and other eligible public entities in order to coordinate such programs;

(f) administer the grant-in-aid program established under the provisions of this Act; and

(g) provide administrative support for the National Advisory Board on Land Use Policy established under section 203 of this Act.

NATIONAL ADVISORY BOARD ON LAND USE POLICY

SEC. 203. (a) The Secretatry is authorized and directed to establish a National Advisory Board on Land Use Policy (hereinafter referred to as the "Board").

(b) The Board shall be composed of:

(1) The Director of the Office of Land Use Policy Administration, who shall serve as Chairman;

(2) representatives of the Department of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission; and the Environmental Protection Agency, appointed by the respective heads thereof;

(3) observers from the Council on Environmental Quality, the Federal Power Commission, and the Office of Management and Budget, appointed by the respective heads thereof; and

(4) representatives of such other Federal agencies, appointed by the respective heads thereof, as the Secretary may request to participate when matters affecting their responsibilities are under consideration.

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(c) The Board shall meet regularly at such times as the Chairman may direct and shall—

(1) provide the Secretary with information and advice concerning the relationship of policies, programs, and activities established or performed pursuant to this Act to the programs of the agencies represented on the Board;

(2) render advice, pursuant to section 502, to the Executive Office of the President and the Secretary concerning proposed guidelines, rules, and regulations for the implementation of the provisions of this Act;

(3) assist the Secretary and the agencies represented on the Board in the coordination of the review of statewide land use planning processes and State land use programs;

(4) provide advice on such land use policy matters as the Secretary may refer to the Board for its consideration; and

(5) provide reports to the Secretary on land use policy matters which may be referred to the Board by the heads of Federal agencies through their respective representatives on the Board.

(d) Each agency representative on the Board shall have a career position within his ageney of not lower than GS–15 and shall not be assigned any duties which are unrelated to

the administration of land use planning and policy, except temporary housekeeping or training duties. Each representative shall—

(1) represent his agency on the Board;

(2) assist in the coordination and preparation within his agency of comments on (i) guidelines, rules, and regulations proposed for promulgation pursuant to section 502, and (ii) statewide land use planning processes and State land use programs reviewed pursuant to title III of this Act;

(3) assist in the dissemination of land use planning and policy information and in the implementation within his agency of policies and procedures developed pursuant to this Act; and

(4) perform such other duties regarding the administration of land use planning and policy as the head of his agency may direct.

(e) The Board shall have as advisory members two representatives each from State governments and local governments and one representative each from regional interstate and intrastate public entities which have land use planning and management responsibilities. Such advisory members shall be selected by a majority vote of the Board and shall each serve for a two-year period.

INTERSTATE COORDINATION

SEC. 204. (a) The States are authorized to coordinate land use planning, policies, and programs with appropriate interstate entities, and a reasonable portion of the funds made available to such States under the provisions of this Act may be used therefor: *Provided*, That an opportunity for participation in the coordination process by Federal and local governments and agencies as well as members of the public engaged in activities which affect or are affected by State land use planning, policies, and programs is assured: *And provided further*, That nothing in this subsection shall be construed to affect the allotment of funds as provided in section 507 of this Act.

(b) Subject to the approval of Congress by the adoption of an appropriate Act, Congress hereby authorizes States possessing coherent geographic, environmental, demographic, or economic characteristics which would serve as reasonable bases upon which to coordinate land use planning, policies, and programs in interstate areas to negotiate interstate compacts for the purpose of such coordination, with such terms and conditions as to them seem reasonable and appropriate: *Provided*, That such compacts shall provide for an opportunity for participation in the coordination process by Federal and local governments and agencies as well as members of the public engaged in activities which affect or are

affected by land use planning, policies, and programs: *And provided further*, That nothing in this subsection shall be construed to affect the allotment of funds as provided in section 507 of this Act.

(c) The Advisory Commission on Intergovernmental Relations shall conduct a review of federally established or authorized interstate agencies, including, but not limited to, river basin commissions, regional development agencies, and interstate compact commissions, for the purpose of coordinating land use planning, policies, and programs in interstate areas. The Advisory Commission on Intergovernmental Relations shall report to the Congress the results of its review conducted under this subsection not later than two fiscal years after the date of enactment of this Act.

TITLE III—PROGRAM OF ASSISTANCE TO THE STATES

SEC. 301. (a) The Secretary is authorized to make annual grants to each State to assist each State in developing and administering a State land use program meeting the requirements set forth in this Act.

(b) Prior to making the first grant to each State during the three complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that such grant will be used in a manner to meet satisfactorily the requirements for a statewide land use planning process set

forth in section 302. Prior to making any further grants during such period, the Secretary shall be satisfied that the State is adequately and expeditiously proceeding to meet the requirements of section 302.

(c) Prior to making any further grants after the three complete fiscal year period following the enactment of this Act and before the end of the five complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that the State has met and continues to meet the requirements of section 302 and is adequately and expeditiously proceeding to develop a State land use program to meet the requirements of sections 303, 304, and 402.

(d) Prior to making any further grants after the five complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that the State has met and continues to meet the requirements of section 303, 304, and 402.

(e) Each State receiving grants pursuant to this Act during the five complete fiscal year period following enactment of this Act shall submit, not later than one year after the date of award of each grant, a report on work completed and scheduled toward the development of a State land use program to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305. For grants made

after such period, the State shall submit its State land use program not later than one year after the date of award of each grant to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305: *Provided*, That if no grant is requested by or active in any State after five fiscal years from the date of enactment of this Act, such State shall submit its State land use program within ninety days thereafter to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305: *And provided further*, That, should no grant be requested by or active in any State during any two complete fiscal year period after five fiscal years from the date of enactment of this Act, such State shall submit its State land use program within ninety days from completion of such period to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305.

STATEWIDE LAND USE PLANNING PROCESSES

SEC. 302. (a) As a condition of contiuued eligibility of any State for grants pursuant to this Act after the three complete fiscal year period following the enactment of this Act, the Secretary shall have determined that the State has

developed an adequate statewide land use planning process, which process shall include—

(1) the preparation and continuing revision of a statewide inventory of the land and natural resources of the State,

(2) the compilation and continuing revision of data,

on a statewide basis, related to population densities and trends, economic characteristics and projections, environmental conditions and trends, and directions and extent of urban and rural growth;

(3) projections of the nature and quantity of land needed and suitable for recreation and esthetic appreciation; conservation and preservation of natural resources; agriculture, mineral development, and forestry; industry and commerce, including the development, generation, and transmission of energy; transportation; urban development, including the revitalization of existing communities, the development of new towns, and the economic diversification of existing communities which possess a narrow economic base; rural development, taking into consideration future demands for and limitations upon products of the land; and health, educational, and other State and local governmental services;

(4) the preparation and continuing revision of an

inventory of environmental, geological, and physical conditions (including soil types) which influence the desirability of various uses of land;

(5) the preparation and continuing revision of an inventory of State, local government, and private needs and priorities concerning the use of Federal lands within the State;

(6) the preparation and continuing revision of an inventory of public and private institutional and financial resources available for land use planning and management within the State and of State and local programs and activities which have a land use impact of more than local concern;

(7) the establishment of a method for identifying large-scale development and development and land use or regional benefit;

(8) the establishment of a method for inventorying and designating areas of critical environmental concern and areas which are, or may be, impacted by key facilities;

(9) the provision, where appropriate, of technical assistance for, and training programs for State and local agency personnel concerned with, the development and implementation of State and local land use programs;

(10) the establishment of arrangements for the ex-

change of land use planning information and data among State agencies and local governments, with the Federal Government, among the several States and interstate agencies, and with members of the public;

(11) the establishment of a method for coordinating all State and local agency programs and services which significantly affect land use;

(12) the conducting of public hearings, preparation of reports, and soliciting of comments on reports concerning the statewide land use planning process or aspects thereof;

(13) the provision of opportunities for participation by the public and the appropriate officials or representatives of local governments in the statewide planning process and in the formulation of guidelines, rules, and regulations for the administration of the statewide planning process; and

(14) the consideration of, and consultation with the relevant States on, the interstate aspects of land use issues of more than local concern.

(b) In the determination of an adequate statewide land use process of any State, the Secretary shall confirm that the State has an eligible State land use planning agency established by the Governor of such State or by law, which agency shall—

(1) have primary authority and responsibility for the development and administration of a State land use program provided for in sections 303, 304, and 402;

(2) have a competent and adequate interdisciplinary professional and technical staff and, whenever appropriate, the services of special consultants;

(3) give priority to the development of an adequate data base for a statewide land use planning process using data available from existing sources wherever feasible;

(4) coordinate its activities with the planning activities of all State agencies undertaking federally financed or assisted planning programs insofar as such programs relate to land use; the regulatory activities of all State agencies enforcing air, water, noise, or other pollution standards; all other relevant planning activities of State agencies; flood plain zoning plans approved by the Secretary of the Army pursuant to the Flood Control Act of 1960 (74 Stat. 488), as amended; the planning activities of areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262-3), as amended; the planning activities of local governments; and the planning activities of Federal agencies;

(5) have authority to conduct public hearings,

with adequate public notice, allowing full public participation in the development of the State land use program;

(6) have authority to make available to the public promptly upon request land use data and information, studies, reports, and records of hearings; and

(7) be advised by an advisory council which shall be composed of a representative number of chief elected officials of local governments in urban and nonurban areas. The Governor shall appoint a chairman from among the members. The term of service of each member shall be two years. The advisory council shall, among other things, comment on all State guidelines, rules, and regulations to be promulgated pursuant to this Act, participate in the development of the statewide land use planning process and State land use program, and make formal comments on annual reports which the agency shall prepare and submit to it, which reports shall detail all activities within the State conducted by the State government and local governments pursuant to or in conformity with this Act.

STATE LAND USE PROGRAMS

SEC. 303. (a) As a condition of continued eligibility of any State for grants pursuant to this Act after the five complete fiscal year period following the enactment of this

Act, the Secretary shall have determined that the State has developed an adequate State land use program, which shall include—

(1) an adequate statewide land use planning process as provided for in section 302 of this Act;

(2) methods of implementation for—

(A) assuring that the use and development of land in areas of critical environmental concern within the State is not inconsistent with the State land use program:

(B) assuring that the use of land in areas within the State which are or may be impacted by key facilities, including the site location and the location of major improvement and major access features of key facilities, is not inconsistent with the State land use program;

(C) assuring that any large-scale subdivisions and other proposed large-scale development within the State of more than local significance in its impact upon the environment is not inconsistent with the State land use program;

(D) assuring that any source of air, water, noise, or other pollution in the areas or from the uses or activities listed in this clause (1) shall not be located where it would result in a violation of

any applicable air, water, noise, or other pollution standard or implementation plan;

(E) periodically revising and updating the State land use program to meet changing conditions;

(F) assuring dissemination of information to appropriate officials or representatives of local governments and members of the public and their participation in the development of and subsequent revisions in the State land use program and in the formulation of State guidelines, rules, and regulations for the development and administration of the State land use program; and

(G) conducting a coordinated management program for the land and water resources of any coastal zone within the State in accordance with existing or then applicable Federal or State law.

(b) Wherever possible, selection of methods of implementation of clause (2) of subsection (a) shall be made so as to encourage the employment of land use controls by local governments.

(c) The methods of implementation of clause (2) of subsection (a) shall include either one or a combination of the two following general techniques—

(1) implementation by local governments pursuant to criteria and standards established by the State, such

implementation to be subject to State administrative review with State authority to disapprove such implementation wherever it fails to meet such criteria and guidelines; and

(2) direct State land use planning and regulation.

(d) Any method of implementation employed by the State shall include the authority of the State to prohibit, under State police powers, the use of land within areas which, under the State land use program, have been designated as areas of critical environmental concern, which are, or may be impacted by key facilities, or which have been identified as presently or potentially subject to development and land use of regional benefit, large-scale development, or large-scale subdivisions, which use is inconsistent with the requirements of the State land use program as they pertain to areas of critical environmental concern, key facilities, development and land use of regional benefit, large-scale development, and large-scale subdivisions.

(e) Any method of implementation employed by the State shall include an administrative appeals procedure for the resolution of, among other matters, conflicts over any decision or action of a local government for any area or use under the State land use program and over any decision or action by the Governor or State land use planning agency

in the development of, or pursuant to, the State land use program. Such procedure shall include representation before the appeals body of, among others, the aggrieved party of interest and the local government or the State government responsible for the decision or action which is the subject of the appeal.

(f) Any person having a legal interest in land, of which a State has prohibited or restricted the full use and enjoyment thereof, may petition a court of competent jurisdiction to determine whether the prohibition diminishes the use of the property so as to require compensation for the loss and the amount of compensation to be awarded therefor.

SEC. 304. As a further condition of continued eligibility of a State for grants pursuant to this Act after the five complete fiscal year period following the enactment of this Act, the Secretary shall review the State land use program of such State and determine that—

(a) in designating areas of critical environmental concern, the State has not excluded any substantial areas of critical environmental concern which are of major national significance and require special planning and management: *Provided,* That, at the request of the Governor of any State, the Secretary shall submit to any such State a description of all areas of critical environmental concern within such State which he con-

siders to be of national significance pursuant to this subsection (a) no later than three fiscal years from date of enactment of this Act. If a request is made by a Governor to the Secretary for a description of such areas after such three fiscal year period, the Secretary shall have sixty days to comply with such request.

(b) the State is demonstrating good faith efforts to implement, and, in the case of successive grants, the State is continuing to demonstrate good faith efforts to implement, the purposes, policies, and requirements of its State land use program. For the purposes of this subsection, the inability of a State to take any State action the purpose of which is to implement its State land use program, or any portion thereof, because such action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not be construed as failure by the State to demonstrate good faith efforts to implement the purposes, policies, and requirements of its State land use program;

(c) State laws, regulations, and criteria affecting the State land use program and the areas, uses, and activities over which the State exercises authority as required in section 303 are in accordance with the requirements of this title;

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(d) the State land use program has been reviewed and approved by the Governor;

(e) the State has coordinated its State land use program with the planning activities and programs of its State agencies, the Federal Government, and local governments as provided for in this title, and with the planning processes and land use programs of other States and local governments within such States with respect to lands and waters in interstate areas; and provided for the participation of, and dissemination of information to, appropriate officials or representatives of local governments and members of the public as provided for in this title; and

(f) the State utilizes, for the purpose of furnishing advice to the Federal Government as to whether Federal and federally assisted projects are consistent with the State land use program, procedures established pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262), as amended, and title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103), and is participating on its own behalf in the programs provided for pursuant to section 701 of the Housing Act of 1954 (68 Stat. 590, 640), as amended.

FEDERAL REVIEW AND DETERMINATION OF GRANT ELIGIBILITY

SEC. 305. (a) During the five complete fiscal year period following the enactment of this Act, the Secretary, before making a grant to any State pursuant to this Act, shall consult with the heads of all Federal agencies listed in subsection (d) of this section and of all other Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use in such State, and with the National Advisory Board on Land Use Policy pursuant to subsection (c) of section 203 of this Act, and shall consider their views and recommendations.

(b) After the five complete fiscal year period following the enactment of this Act—

(1) the Secretary, before making a grant to any State pursuant to this Act, shall submit the State land use program of such State to the heads of all Federal agencies listed in subsection (d) of this section and of all other Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use in such State, and to the National Advisory Board on Land Use Policy pursuant to subsection (c) of section 203

of this Act. The Secretary shall take into consideration the views of each agency head which are submitted to him by such agency head no later than thirty days after submission of the State land use program to such agency head by the Secretary; and

(2) the Secretary shall not make a grant to any State pursuant to this Act until he has ascertained that the Administrator of the Environmental Protection Agency is satisfied that the State land use program of such State is in compliance with the goals of the Federal Water Pollution Control Act, the Clear Air Act, and other Federal laws controlling pollution which fall within the jurisdiction of the Administrator, and that those portions of the State land use program which will effect any change in land use within the next annual review period are in compliance with the standards, criteria, emission or effluent limitations, monitoring requirements, or implementation plans required by such laws. The Administrator shall be deemed to be satisfied if he does not communicate his views to the Secretary within sixty days of submission of the State land use program to him by the Secretary.

(c) The Secretary may not make any grant to any State pursuant to this Act unless he has been informed by the Secretary of Housing and Urban Development that

he is satisfied that the statewide land use planning process or State land use program of such State with respect to which the grant is to be made (1) conforms to the objectives of section 701 of the Housing Act of 1954, as amended, and to the relevant planning assisted under that section, including the provisions related to functional plans, and housing, public facilities, and other growth and development objectives, and (2) meets the requirements of this Act insofar as they pertain to large-scale development, development of regional benefit, large-scale subdivisions, and the urban development of lands impacted by key facilities. The Secretary of Housing and Urban Development shall be deemed to be satisfied if he does not communicate his views to the Secretary within sixty days after the statewide land use planning process or State land use program has been submitted to him by the Secretary.

(d) The Secretary shall determine a State eligible or ineligible for a grant pursuant to this Act not later than six months following receipt for review of the application of the State for its first grant, a report of the State on its previous grant, or the State land use program of the State as provided in section 301.

(e) Pursuant to subsections (a) and (b) of this section the Secretary shall consider the views of the heads of the Departments of Agriculture; Commerce; Defense; Health,

Education, and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission; the Federal Power Commission; and the Environmental Protection Agency.

(f) A State may revise at any time its State land use program: *Provided*, That such revision does not render the State land use program inconsistent with the requirements of this Act: *And provided further*, That any significant revision is reported to the Secretary. The Secretary shall make a temporary determination, prior to the full review of the State land use program pursuant to section 305, of whether such revision would render the State land use program inadequate for purposes of complying with the requirements of this Act, and shall inform the State of his determination.

(g) (1) In the event the Secretary determines that a State is ineligible for grants pursuant to this Act or, having found a State eligible for such grants, subsequently determines that grounds exist for withdrawal of such eligibility, he shall notify the President, who shall order the establishment of an ad hoc hearing board (hereinafter referred to as "hearing board"), the membership of which shall consist of:

(A) the Governor of a State which is not the State for which grant eligibility is in question and which does not have a particular interest in whether grant eligibility or ineligibility is determined, selected by

the President within thirty days after notification by the Secretary, or, within ten days thereafter, such alternate person as the Governor selected by the President may designate;

(B) one knowledgeable, impartial Federal official who is not an official of an agency listed in clauses (1) through (3) of subsection (b) of section 203, selected by the President within thirty days after notification by the Secretary; and

(C) one knowledgeable, impartial private citizen, selected by the other two members; *Provided,* That if the other two members cannot agree upon a third member within twenty days after the appointment of the second member to be appointed, the third member shall be selected by the President within twenty days thereafter.

(2) The Secretary shall specify in detail, in writing, to the hearing board his reasons for considering a State ineligible, or for withdrawing the eligibility of a State for grants pursuant to this Act. The hearing board shall hold such hearings and receive such evidence as it deems necessary. The hearing board shall then determine whether a finding of ineligibility would be reasonable, and set forth in detail, in writing, the reasons for its determination. If the hearing

board determines that ineligibility would be unreasonable, the Secretary shall find the State eligible for grants pursuant to this Act. If the hearing board concurs in the finding of ineligibility or withdrawal of eligibility, the Secretary shall find the State ineligible for grants pursuant to this Act. Ineligibility shall be deemed to have been determined by the hearing board if no determination in writing is made by it within ninety days of its appointment.

(3) Members of hearing boards who are not regular full-time officers or employees of the United States shall, while carrying out their duties as members, be entitled to receive compensation at a rate fixed by the President, but not exceeding $150 per diem, including traveltime, and, while away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons intermittently employed in Government service. Expenses shall be charged to the account of the Executive Office of the President.

(4) Administrative support for hearing boards shall be provided by the Executive Office of the President.

(5) The President may issue such regulations as may be necessary to carry out the provisions of this subsection.

CONSISTENCY OF FEDERAL ACTIONS WITH STATE LAND USE PROGRAMS

SEC. 306. (a) Federal projects and activities significantly affecting land use, including but not limited to grant, loan, or guarantee programs, such as mortgage and rent subsidy programs and water and sewer facility construction programs, shall be consistent with State land use programs which conform to the provisions of sections 303, 304, and 402 of this Act, except in cases of overriding national interest, as determined by the President. Procedures provided for in regulations issued by the Office of Management and Budget pursuant to the criteria specified in section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262–3), as amended, and title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103–4), together with such additional procedures as the Office of Management and Budget may determine are necessary and appropriate to carry out the purposes of this Act, shall be utilized in the determination of whether Federal projects and activities are consistent with the State land use programs.

(b) (1) Any State or local government submitting an application for Federal assistance for any program, project,

or activity having significant land use implications in an area or for a use subject to a State land use program in a State found eligible for grants pursuant to this Act shall transmit to the relevant Federal agency the views of the State land use planning agency and/or the Governor and, in the case of an application of a local government, the views of such local government and the relevant areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and/or title IV of the Intergovernmental Cooperation Act of 1968, as to the consistency of such activity with the State land use program: *Provided,* That, if a local government certifies that a plan or description of an activity for which application is made by the local government has lain before the State land use planning agency and/or the Governor for a period of sixty days without indication of the views of the State land use planning agency and/or the Governor, the application need not be accompanied by such views.

(2) The relevant Federal agency shall, pursuant to subsections (a) and (b) (1) of this section, determine, in writing, whether the proposed activity is consistent or inconsistent with the State land use program.

(3) No Federal agency shall approve any proposed activity which it determines to be inconsistent with a State

land use program in a State found eligible for grants pursuant to this Act.

(c) Federal agencies conducting or assisting public works activities in areas not subject to a State land use program in a State found eligible for grants pursuant to this Act shall, to the extent practicable, conduct such activities in such a manner as to minimize any adverse impact on the environment resulting from decisions concerning land use.

FEDERAL ACTIONS IN THE ABSENCE OF STATE ELIGIBILITY

SEC. 307. (a) The Secretary shall have authority to terminate any financial assistance extended to a State under this Act and withdraw his determination of grant eligibility whenever, in accordance with section 30, the statewide land use planning process or the State land use program of such State is determined not to meet the requirements of this Act.

(b) Where any major Federal action significantly affecting the use of non-Federal lands is proposed after five fiscal years from the date of enactment of this Act in a State which has not been found eligible for grants pursuant to this Act, the responsible Federal agency shall hold a public hearing in such State at least one hundred eighty days in advance of the proposed action concerning the effect of the action on land use, taking into account the relevant considerations set out in sections 302, 303, 304, and 402 of this Act,

and shall make findings which shall be submitted for review and comment by the Secretary, and where appropriate, by the Secretary of Housing and Urban Development. Such findings of the responsible Federal agency and comments of the Secretary and, where appropriate, the Secretary of Housing and Urban Development shall be made part of the detailed statement required by section 102(2)(C) of the National Environmental Policy Act of 1969 (83 Stat 852, 853). This subsection shall be subject to exception where the President determines that the interests of the United States so require.

TITLE IV

FEDERAL-STATE COORDINATION AND COOPERATION IN THE PLANNING AND MANAGEMENT OF FEDERAL AND ADJACENT NON-FEDERAL LANDS

SEC. 401. (a) All agencies of the Federal Government charged with responsibility for the management of Federal lands shall consider State land use programs prepared pursuant to this Act and State, local government, and private needs and requirements as related to the Federal lands, and shall coordinate the land use inventory, planning and management activities on or for Federal lands with State and local land use inventory, planning, and management activities on or for adjacent non-Federal lands to the extent such

coordination is practicable and not inconsistent with paramount national policies, programs, and interests.

(b) For the purposes of this section, any agency proposing any new program, policy, rule, or regulation relating to Federal lands shall publish a draft statement and a final statement concerning the consistency of the program, policy, rule, or regulation with State and local land use planning and management, and, where inconsistent, the reasons for such inconsistency, forty-five days and fifteen days, respectively, prior to the establishment of such program or policy or the promulgation of such rule or regulation, and, except where otherwise provided by law, shall conduct a public hearing, with adequate public notice, on such program, policy, rule, or regulation prior to the publication of the final statement.

SEC. 402. (a) As a condition of continued eligibility of any State for grants pursuant to this Act, after the five complete fiscal year period following the enactment of this Act, the Secretary shall have determined that—

(1) the State land use program developed pursuant to sections 303 and 304 of this Act includes methods for insuring that Federal lands within the State, including but not limited to units of the national park system, wilderness areas, and game and wildlife refuges, are not

damaged or degraded as a result of inconsistent land use patterns in the same immediate geographical region; and

(2) the State has demonstrated good faith efforts to implement such methods in accordance with subsection (b) of section 304.

(b) The procedures for determination of grant eligibility provided for in section 305 shall apply to this section.

AD HOC FEDERAL-STATE JOINT COMMITTEES

SEC. 403. (a) The Secretary, at his discretion or upon the request of the Governor of any State involved, shall establish an Ad Hoc Federal-State Joint Committee or Committees (hereinafter referred to as "joint committee" or "committees") to review and make recommendations concerning general and specific problems relating to jurisdictional conflicts and inconsistencies resulting from the various policies and legal requirements governing the planning and management of Federal lands and of adjacent non-Federal lands. Each joint committee shall include representatives of the Federal agencies having jurisdiction over the Federal lands involved, representatives of affected user groups, including recreation and conservation interests, and officials of affected State agencies and units of local government. Prior to appointing representatives of user groups and officials of local governments, the Secretary shall consult with the Governor or Governors of the affected State or States and with other

appropriate officials of the affected State or States and local governments. The Governor of each State shall appoint the officials of the affected agencies of his State who shall serve on the joint committee.

(b) Each joint committee shall terminate at the end of two years from the date of its establishment.

(c) Each member of a joint committee may be compensated at the rate of $100 for each day he is engaged in the actual performance of duties vested in his joint committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently: *Provided, however,* That no compensation except travel and expenses in addition to regular salary shall be paid to any full-time Federal or State official.

(d) Each joint committee shall have available to it the services of an executive secretary, professional staff, and such clerical assistance as the Secretary determines is necessary. The executive secretary shall serve as staff to the joint committee or committees and shall be responsible for carrying out the administrative work of the joint committee or committees.

(e) The specific duties of any joint committee shall be assigned by the Secretary and may include—

(1) conducting a study of, and making recom-

mendations to the Secretary concerning methods for resolving, general problems with and conflicts between land use inventory, planning, and management activities on or for Federal lands and State and local land use inventory, planning, and management activities on or for adjacent non-Federal lands, including, where relevant, the State land use programs developed pursuant to sections 303, 304, and 402 of this Act;

(2) investigating specific conflicts between the planning and management of Federal lands and of adjacent non-Federal lands and making recommendations to the Secretary concerning their resolution;

(3) assisting the States and the Office of Land Use Policy Administration in the development of systematic and uniform methods among the States and between the States and the Federal Government for collecting, compiling, exchanging, and utilizing land use data and information; and

(4) advising the Secretary, during his review of State land use programs, of opportunities for reducing potential conflicts and improving coordination in the planning and management of Federal lands and of adjacent non-Federal lands.

(f) Upon receipt of the recommendations of a joint

committee upon a problem or conflict pursuant to subsection (e) of this section, the Secretary shall—

(1) where he has legal authority, take any appropriate and necessary action to resolve such problem or conflict;

(2) where he does not have jurisdiction over or authority concerning the Federal lands which are involved in the problem or conflict, work with the appropriate Federal agency or agencies to develop a proposal designed to resolve the problem or conflict and to enhance cooperation and coordination between the planning and management of Federal lands and of adjacent non-Federal lands; and

(3) if he determines that the legal authority to resolve such problems or conflicts is lacking in the executive branch, recommend enactment of appropriate legislation to the Congress.

(g) In taking or recommending action pursuant to the recommendations of a joint committee, the Secretary shall give careful consideration to the purposes of this Act and not resolve any problem with or conflict between the planning and management of Federal lands and of adjacent non-Federal lands in a manner which would impair the national

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purposes or objectives to which the Federal lands involved are dedicated and for which they are being managed.

BIENNIAL REPORT ON FEDERAL-STATE COORDINATION

SEC. 404. The Secretary shall report biennially to the President and the Congress concerning—

(a) problems in and methods for coordination of planning and management of Federal lands and planning and management of adjacent non-Federal lands, together with recommendations to improve such coordination;

(b) the resolution of specific conflicts between the planning and management of Federal lands and of adjacent non-Federal lands; and

(c) at the request of the Governor of any State involved, any unresolved problem with or conflict between the planning and management of Federal lands and of adjacent non-Federal lands, together with any recommendations the Secretary and the Governor or Governors may have for resolution of such problem or conflict.

SEC. 405. (a) Prior to the making of recommendations on any problem or conflict pursuant to subsection (e) of section 403, each joint committee shall conduct a public hearing or provide an opportunity for such a hearing in the State on such problems or conflict, with adequate public notice, allowing full participation of representatives of Federal,

State, and local governments and members of the public. Should no hearing be held, the joint committee shall solicit the views of all affected parties and submit a summary of such views, together with its recommendations, to the Secretary.

(b) Prior to the making of recommendations or the taking of actions pursuant to subsection (f) of section 403, the Secretary shall review in full the relevant hearing record or, where none exists, the summary of views of affected parties prepared pursuant to subsection (a) of this section, and may, in his discretion, hold further public hearings.

SEC. 406. Upon request of a joint committee, the head of any Federal department or agency or federally established or authorized interstate agency is authorized: (i) to furnish to the joint committee, to the extent permitted by law and within the limits of available funds, such information as may be necessary for carrying out the functions of the joint committee and as may be available to or procurable by such department, agency, or interstate agency; and (ii) to detail to temporary duty with the joint committee, on a reimbursable basis, such personnel within his administrative jurisdiction as the joint committee may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

TITLE V—GENERAL

DEFINITIONS

SEC. 501. For the purposes of this Act—

(a) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(b) The term "local government" means any general purpose county or municipal government, or any regional combination thereof, or, where appropriate, any other public agency which has land use planning authority.

(c) The term "Federal lands" means any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except lands held in trust for the benefit of Indians, Aleuts, and Eskimos.

(d) The term "non-Federal lands" means all lands which are not "Federal lands" as defined in subsection (c) of this section and are not held by the Federal Government in trust for the benefits of Indians, Aleuts, and Eskimos.

(e) The term "areas of critical environmental concern" means areas as designated by the State on non-Federal lands where 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, or could unreasonably endanger life and property as a result of natural hazards of more than local significance. Such areas, subject to State definition of their extent shall include—

(1) coastal wetlands, marshes, and other lands inundated by the tides;

(2) beaches and dunes;

(3) significant estuaries, shorelands, and flood plains of rivers, lakes, and streams;

(4) areas of unstable soils and with high seismicity;

(5) rare or valuable ecosystems;

(6) significant undeveloped agricultural, grazing, and watershed lands;

(7) forests and related land which require long stability for continuing renewal;

(8) scenic or historic areas; and

(9) such additional areas as the State determines to be of critical environmental concern.

(f) The term "key facilities" means public facilities on non-Federal lands which tend to induce development and urbanization of more than local impact and major facilities on non-Federal lands for the development, generation, and transmission of energy.

(g) The term "development and land use of regional

benefit" means land use and private development on non-Federal lands for which there is 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.

(h) The term "large scale development" means private development on non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of the State. In determining what constitutes "large scale development" the State should consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

GUIDELINES, RULES AND REGULATIONS

SEC. 502. (a) The Executive Office of the President shall issue guidelines to the Federal agencies and the States to assist them in carrying out the requirements of this Act. The Executive Office shall submit proposed guidelines to the Secretary, the Board, the heads of agencies represented on the Board, and representatives of State and local govern-

ments, and shall consider their comments prior to formal issuance of such guidelines.

(b) The Secretary, after appropriate consultation with representatives of the States and, where appropriate, representatives of local governments, and upon the advice of the Board and the heads of Federal agencies represented on the Board, shall promulgate rules and regulations to implement the guidelines formulated pursuant to subsection (a) of this section and to administer this Act, except with respect to subsection (g) of section 305 of this Act.

BIENNIAL REPORT

SEC. 503. The Secretary, with the assistance of the Office and the Board, shall report biennially to the President and the Congress on land resources, uses of land, and current and emerging problems of land use.

UTILIZATION OF PERSONNEL

SEC. 504. Upon the request of the Secretary, the head of any Federal agency is authorized: (i) to furnish to the Office such information as may be necessary for carrying out the functions of the Office and as may be available to or procurable by such agency, and (ii) to detail to temporary duty with the Office, on a reimbursable basis, such personnel within his administrative jurisdiction as the Office may need or believe to be useful for carrying out its functions, each

such detail to be without loss of seniority, pay, or other employee status.

TECHNICAL ASSISTANCE

SEC. 505. The Office may provide, directly or through contracts, grants, or other arrangements, technical assistance to any State found eligible for grants pursuant to this Act to assist such State in the performance of its functions under this Act.

HEARINGS AND RECORDS

SEC. 506. (a) For the purpose of carrying out the provisions of this Act, the Director, with the concurrence of the Secretary, may hold such hearings, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of the proceedings and reports thereon as he deems advisable.

(b) The Director is authorized to administer oaths when he determines that testimony shall be taken or evidence received under oath.

(c) To the extent permitted by law, all appropriate records and papers of the Office shall be made available for public inspection during ordinary office hours.

ALLOTMENTS

SEC. 507. (a) Annual grants authorized by section 301 to States found eligible for financial assistance pursuant to this Act shall be made in amounts not to exceed 66⅔

per centum of the estimated cost of developing the State land use programs for the two complete fiscal year period following the enactment of this Act and amounts not to exceed one-half of such cost for the next three fiscal years.

(b) Grants pursuant to this Act shall be allocated to the States on the basis of regulations of the Secretary, which regulations shall take into account the amount and nature of each State's land resource base, population, pressures resulting from growth, financial need, and other relevant factors.

(c) Any grant pursuant to this Act shall increase, and not replace, State funds presently available for State land use planning and management activities. Any grant made pursuant to this Act shall be in addition to, and may be used jointly with, grants or other funds available for land use planning, programs, surveys, data collection, or management under other federally assisted programs.

(d) No funds granted pursuant to this Act may be expended for the acquisition of any interest in real property.

PAYMENTS

SEC. 508. The method of computing and paying amounts pursuant to this Act shall be as follows:

(a) The Secretary shall, prior to the beginning of each calendar quarter or other period prescribed by him, estimate the amounts to be paid to each State under the provisions of

this Act for such period, such estimate to be based on such records of the States and information furnished by them, and such other investigation as the Secretary may deem necessary.

(b) The Secretary shall pay to a State, from the allotments available therefor, the amounts so estimated by him for any period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which he finds that his estimate of the amount to be paid such State for any prior period under this Act was greater or less than the amount which should have been paid to such State for such prior period under this Act. Such payments shall be made through the disbursing facilities of the Department of the Treasury, at such times and in such installments as the Secretary may determine.

FINANCIAL RECORDS

SEC. 509. (a) Each recipient of a grant pursuant to this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status, disposition, and application of Federal funds and the operation of the statewide land use planning process or State land use program as the Secretary may require by regulations published in the Federal Register, and shall keep and make available such records as may be required by the Secretary for the verification of such reports and evaluations.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documenst, papers, and records of a recipient of a grant pursuant to this Act which are pertinent to the determination that funds granted pursuant to this Act are used in accordance with this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 510. To carry out the purposes of this Act, there are authorized to be appropriated to the Secretary for grants to the States not more than $40,000,000 for each of the first two fiscal years following the enactment of this Act and $30,000,000 for each of the next three fiscal years.

SEC. 511. For each of the five full fiscal years following the enactment of this Act, there are authorized to be appropriated $10,000,000 to the Secretary to be used exclusively for the administration of this Act. After the end of the fourth fiscal year after the enactment of this Act, the Secretary shall review the programs established by this Act and shall submit to Congress his assessment thereof and such recommendations for amendments to the Act as he deems proper and appropriate.

EFFECT ON EXISTING LAWS

SEC. 512. Nothing in this Act shall be construed—

(a) to expand or diminish Federal, interstate or

State jurisdiction, responsibility, or rights in the field of land and water resources planning, development or control; to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States, a State, or a region and the Federal Government; to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as new authority or responsibilities have been added by the provisions of this Act;

(c) 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; or to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

(d) as granting to the Federal Government any of the constitutional or statutory authority now possessed by State and local governments to zone non-Federal lands;

(e) to delay or otherwise limit the adoption and vigorous enforcement by any State of standards, criteria, emission or effluent limitations, monitoring requirements, or implementation plans which are no less stringent than the standards, criteria, emission or effluent limitations, monitoring requirements, or implementation plans required by the Federal Water Pollution Control Act, the Clean Air Act, or other Federal laws controlling pollution; and

(f) to adopt any Federal policy or requirement which would prohibit or delay States or local governments from adopting or enforcing any law or regulation which results in prohibition or control to a degree greater than required by this Act of land use development in any area over which the State or local government exercises jurisdiction.

[From the Congressional Record, Jan. 9, 1973]

National Land Use Policy

(By Mr. Jackson (for himself, Mr. Bellmon, Mr. Bennett, Mr. Church, Mr. Dominick, Mr. Fannin, Mr. Gravel, Mr. Gurney, Mr. Hatfield, Mr. Humphrey, Mr. Inouye, Mr. Magnuson, Mr. Metcalf, Mr. Moss, Mr. Pastore, Mr. Randolph, Mr. Ribicoff, Mr. Stevens, Mr. Taft, and Mr. Tunney)

S. 268. A bill to establish a national land use policy, to authorize the Secretary of the Interior to make grants to assist the States to develop and implement State land use programs, to coordinate Federal programs and policies which have a land use impact, to coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands, and to establish an Office of Land Use Policy Administration in the Department of the Interior, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

LAND USE POLICY AND PLANNING ASSISTANCE ACT OF 1973

Mr. Jackson. Mr. President, I introduce, for myself and several of my colleagues, Land Use Policy and Planning Assistance Act of 1973, a bill to assist the States to develop land use programs for critical areas and uses of more than local concern.

This measure would provide Federal technical and financial assistance to the States to encourage the development of better information, institutions, procedures, and methods for land use planning and management so as to remedy the increasingly evident inadequacies in much of today's land use decisionmaking. The States would be encouraged to strengthen the land use decisionmaking authority and capacity of local governments and to develop, in full partnership with those governments, land use programs concerning land use decisions which have impacts way beyond the localities' jurisdictions. The measure also provides important new authority designed to improve coordination between the public lands planning efforts of the Federal Government and the planning activities of State and local governments.

Mr. President, this measure was first introduced by me in January of 1970. After 4 days of hearings, the Senate Committee on Interior and Insular Affairs reported the proposal in December of 1970. As no floor action was taken in the 91st Congress, I again introduced the proposal early in 1971. The administration also proposed a similar measure which was featured in the President's 1971 and 1972 environmental messages to Congress. Ten days of hearings were held on the Land Use Policy and Planning Assistance Act in the Senate during the 92d Congress, four by the Interior Committee and three each by the Commerce and the Banking, Housing and Urban Affairs Committees. After numerous executive sessions and consultations with the National Governors' Conference, the League of Cities-Conference of Mayors, representatives of industry, and environmental groups, the Interior Committee again reported the Land Use Policy and Planning Assistance Act. On September 19, 1972, after considering and accepting several excellent amendments offered or endorsed by my distinguished colleagues, Mr. Bayh, Mr. Boggs, Mr. Buckley, Mr. Cooper, Mr. Fannin, Mr. Hansen, Mr. Randolph, Mr. Sparkman, Mr. Talmadge, and Mr. Tunney, the Senate passed the act by a vote of 60 to 18.

As is well known, I was and remain opposed to two successful amendments striking the sanctions from the act and reducing the funding by two-thirds. Several amendments proposed by Mr. Muskie which were not adopted did raise significant issues which deserve further scrutiny. Therefore, although the proposal I introduce today is virtually identical to the Senate-passed measure, the committee will hold hearings early in February where these issues and the critical questions of funding and sanctions can be fully explored.

Mr. President, the Land Use Policy and Planning Assistance Act is a realistic and widely favored proposal. It has received the endorsement of the administration, the National Governor's Conference, nearly 30 individual Governors, the National Association of Counties, the League of Cities-Conference of Mayors, all of the major environmental organizations, many users of the land—industry, forest products representatives, farm groups, and water resources associations—and such prestigious and varied publications as Business Week, the New York Times, the Wall Street Journal, both the Washington Post and Star, the Boston Globe, the St. Louis Post-Dispatch, the Christian Science Monitor, and the Min-

neapolis Star. The need for land use policy legislation has been identified by the Douglas Commission, the Kerner Commission, the Kaiser Committee, and the Advisory Commission on Intergovernmental Relations. Congress recognizes and must respond to this need.

The Land Use Policy and Planning Assistance Act of 1973 is of critical importance if this Nation is to meet the increasing pressures of industrialization, technological advances, population growth, and rapid urbanization, and to attain our economic, social, and environmental goals. As land use increasingly becomes the focal point for conflicts over national, State, and regional goals, public officials and private citizens alike view with dismay the chaotic, ad hoc, short-term, crisis-by-crisis, case-by-case land use decisionmaking employed all too frequently today.

Sobering statistics suggest that, unless our land use decisionmaking processes are vastly improved at all levels of government—local, State, and Federal—the United States will be unable to meet the emerging land use crisis. Over the next 30 years, the pressures upon our finite land resource will result in the dedication of an additional 18 million acres or 28,000 square miles of undeveloped land to urban use. Urban sprawl will consume an area of land approximately equal to all the urbanized land now within the 228 standard metropolitan statistical areas—the equivalent of the total area of the States of New Hampshire, Vermont, Massachusetts, and Rhode Island. Each decade, new urban growth will absorb an area greater than the entire State of New Jersey. The equivalent of 2½ times the Oakland-San Francisco metropolitan region must be built each year to meet the Nation's housing goals. In the next two decades, one industry alone—the energy industry—will require vast areas of land: New high-voltage transmission lines will consume 3 million acres of new rights-of-way, while at least 225 new major generating stations will require hundreds of thousands of acres of prime industrial sites.

In short, between now and the year 2000, we must build again all that we have built before. We must build as many homes, schools, and hospitals in the next three decades as we built in the previous three centuries. In the past, many land use decisions were the exclusive province of those whose interests were selfish, short-term and private. In the future—in the face of immense pressures on our limited land resource—these land use decisions must be long-term and public.

These and other statistics made it strikingly evident that, to avoid a national land use crisis and to advance a design calculated to meet, without dictating, national goals, values, and requirements, we must enact legislation to assist State and local governments to improve their land use planning and management capability. This view is shared by the administration, the National Governors Conference and many indiidual Governors, and almost all of the witnesses who appeared before the Senate Interior Committee in the last 3 years.

Russell Train, Chairman of the Council on Environmental Quality, stated:

It is a matter of urgency that we develop more effective nationwide land use policies and regulations . . . Land use is the single most important element affecting the quality of our environment which remains substantially unaddressed as a matter of national policy. Land is our most valuable resource. There will never be any more of it.

Not only is land finite, but unlike air, water, and many minerals and materials, land too often cannot be "recycled." Mountains carved by strip mines, wetlands dredged and filled, or streams channelized frequently cannot be returned to their former use or beauty. Land, once committed to a use today, be it social, economic, or environmental, may be unable to support uses which our children will find preferable in the future. As President Nixon noted in a letter to me—Congressional Record, September 14, 1972, pages S 14935–6:

"As a Nation we have taken our land resources for granted too long. We have allowed ill-planned or unwise development practices to destroy the beauty and productivity of our American earth. . . . The country needs this (legislation) urgently."

Future land use decisionmaking, however, should serve more than environmental values alone. It should not be viewed as mission-oriented either in the narrow sense of fostering a specific set of functional activities or in the larger sense of pursuing exclusively a specific goal, be it protecting the environment, improving social services, or increasing economic benefits. Rather, it must balance competing environmental, economic, and social requirements and values to avoid the costly mistakes of both thoughtless, precipitate development and unwarranted, dilatory opposition to benefical development.

Many of the most crucial problems and conflicts facing all levels of government in the areas of protection of environmental quality, siting of energy facilities and industrial plants, design of transportation systems, provision of recreational opportunities, and development of natural resources are the direct result of past failures to anticipate public requirements for land and to plan for its use. The economic loss, the delays, the resource misallocations, and the social and environmental costs which this failure to plan has cost the Nation are in large measure unnecessary expenses which could have been avoided had appropriate planning been undertaken earlier. The adoption of the Land Use Policy and Planning Assistance Act of 1973 and a good faith effort by the States to exercise responsibility for the planning and management of land use activities which are of more than local concern will greatly reduce needless conflicts, will avoid misallocations of scarce resources, will save public and private funds, will insure that public facilities and utilities—powerplants, highways, airports, and recreational areas—are available when needed, and will improve State-Federal relations in all areas of mutual concern.

The Land Use Policy and Planning Assistance Act of 1973 contains the best features of my previous land use policy measures, the administration's proposal, and the many recommendations received during the 3 years of committee deliberations. It contains as well significant amendments adopted on the floor of the Senate prior to its passage.

The central purpose of the proposal is to provide Federal technical and financial assistance to the States to encourage them to exercise States' rights and improve their knowledge. institutions, procedures and methods for land use planning and management. The measure also provides important new authority designed to improve coordination between the planning effort of the Federal Government and State governments.

The grant-in-aid program to the States, was reduced by amendment on the floor from $800 million over 8 years to $170 million over 5 years. The grant funds cover up to 66⅔ percent of the cost of developing the State land use programs for the first 2 years and 50 percent of the cost thereafter—reduced from 90 percent for 5 years and 66⅔ percent thereafter by amendment.

The State is required to develop a statewide planning process within 3 years. The process must include a data and information base, adequate funding, competent staff, and an appropriate agency to coordinate planning at the State level.

The State is then required to develop, within 5 years of enactment, a land-use program which focuses on four categories of critical areas and uses of more than local concern. These areas and uses are considered to be of State interest because decisions concerning them have impacts on citizens, the environment, and the economy totally out of proportion to the jurisdiction and the interests of the local zoning body or land-use regulatory entity. These four categories of areas and uses of more than local concern are: First, areas of critical environmental concern—for example, beaches, flood plains, wetlands, historic areas; second, key facilities—for example, major airports, highway interchanges and frontage access highways, recreational lands and facilities, and facilities for the development, generation and transmission of energy; third, development and land use of regional benefit; and fourth, large-scale development—for example, major subdivisions or industrial parks.

I wish to make clear that the act does not contemplate sweeping changes in the traditional responsibility of local government for land-use management. Decisions of local concern will continue to be made by local government. However, for land-use decisions which would have significant impacts beyond the jurisdiction of the local public or private decisionmakers, the act provides for wider public participation and review by the State, as representative of the large constituency affected by those decisions.

The procedure for, and the nature of, State involvement in land-use decisions are left largely to the determination of the individual States. Two alternative but not mutually exclusive techniques of implementation of State land-use programs are given: Local implementation pursuant to State guidelines and direct State planning. However, the act contains language endorsed by the League of Cities-Conference of Mayors which expresses a preference for the former alternative.

The more innovative State land-use laws of recent years support this local governments-State Government partnership. The authority of local governments—the level of Government closest to the people—to conduct land-use planning and management is in fact bolstered in the great majority of laws of some 40 States concerning areas and uses of more than local concern—wetlands, coastal zone, flood plain, powerplant siting, open space, and strip mining laws. The local-

ities are encouraged to employ fully their land use controls. State administrative review is provided only in accordance with flexible State guidelines relating only to those decisions on areas and uses that are of clearly more than local concern. And even should disapproval of a local government action result from such a review, State preemption of the decisionmaking authority would not necessarily occur; rather, in most cases, the local government would be provided full opportunity to take any of numerous actions which would comply with the State's guidelines.

The proposal would not preclude direct State implementation through State land-use planning and regulation. Hawaii and Vermont have already enacted legislation which in part calls for such direct State implementation. Other States are directly engaged in land-use planning for unincorporated areas. However, embodied in the measure is the expectation that direct State implementation, preempting local land-use planning controls, will continue to be the exception rather than become the rule and that that joint local-State government land use decisionmaking and implementation will prevail.

Another point which should be emphasized is that the Federal review of State land-use programs is to focus not on the substance of each program, but on whether each State has authority to develop and implement its program and whether it is making good faith efforts to do so. This is in keeping with the proposal's purpose to encourage better and effective land use decisionmaking at the State and local levels, and not to provide substantial new land use decisionmaking authority on the Federal level.

Guidelines for the act are to be promulgated through an interagency process with principal responsibility of formulating those guidelines residing in the Executive Office of the President. As the proposal provides for a grant-in-aid program of major dimensions which requires administration by line agency personnel, daily administrative responsibility is given to the Department of the Interior. To insure the absence of the mission-oriented bias of any existing office or bureau in the administration of the proposal, the proposal creates a new Office of Land Use Policy Administration within the Department, separate from any such office or bureau.

Certainly, the land use impacts of Federal and federally assisted programs exert the most profound influences upon local, State, and National land use patterns. Yet these programs either have conflicting land use implications or the Federal officials administering them are not full cognizant of their land-use impact. My proposal requires the Federal Government to "put its own house in order" at the same time that it asks the States to do likewise. The Secretary of the Interior is directed to consult with heads of other agencies and to form a national advisory board on land-use policy to provide interagency communication concerning the land use impacts of and policies embodied in Federal and federally assisted programs.

The act also encourages coordinated planning and management of Federal lands and adjacent non-Federal lands. Both the Federal Government and the State and local governments are required to provide for compatible land uses on adjoining lands under their respective jurisdictions. In addition, short-term ad hoc joint Federal-State committees, composed of representatives of affected Federal agencies, State agencies, local governments, and user groups, may be established by the Secretary of the Interior to study general or specific conflicts between uses of Federal lands and uses of adjacent non-Federal lands. The Secretary is directed to resolve such conflicts or, where he lacks the requisite authority, to recommend legislative solutions to Congress.

Finally, what is this measure's relationship to other land use legislation which may be introduced this Congress? Approximately 200 land-use policy bills were referred to 13 committees in the 92d Congress. The most important of these measures were: the public lands, the surface mining, the powerplant siting, and the coastal zone management proposals. Virtually all of these bills focused on individual uses or areas of critical concern and more than local significance, and encouraged the States to assume a degree of control over them. In addition, the Congress is giving increasing attention to national growth policy, in general, and various aspects of growth policy such as rural revitalization. In relation to the myriad of land use and growth policy considerations and legislative proposals which Congress may consider the Land Use Policy and Planning Assistance Act is expected to serve as an umbrella measure or an "enabling act" which would encourage the States to develop the financial, institutional and human resources, and require of the States legislation to establish the necessary machinery and procedures, to insure that,

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first, the States will be receptive to any of those considerations or proposals which become law, and second, the many planning tasks which such laws will require will be conducted effectively and not in isolation one from another.

Mr. President, the chaotic land use decisionmaking of today will insure an unsightly, unproductive, and unrewarding land resource for future generations of Americans. To avoid this unfortunate tomorrow, we must improve our land use policy, procedures, and institutions. I commend the Land Use Policy and Planning Assistance Act of 1973 to the Senate as the best vehicle to achieve this improvement.

Mr. President, I ask unanimous consent to place in the Record an undated review of the purpose and background of the Land Use Policy and Planning Assistance Act which I submitted for the Record last year, prior to Senate passage of the act and the full text of the proposal.

(There being no objection, the review and bill ordered to be printed in the Record, as follows:)

REVIEW OF PURPOSE AND BACKGROUND OF THE LAND USE POLICY AND PLANNING ASSISTANCE ACT

This review is divided into two sections:

1. A brief review of the history of government involvement in land use planning and an outline of the basic legal authority involved; and

2. A discussion of what the bill does not do and a discussion of what the bill does do.

HISTORY

1. The police power of the respective States is an inherent power of government to take such actions as are necessary and Constitutionally permissible to protect public health, safety and welfare.

2. The power to plan for and to regulate land use derives from the police powers of the individual States.

3. The Federal government has no police power to regulate lands within a State which are privately owned or owned by the State. Only the State has Constitutional authority to control and regulate these lands.

4. The Federal government does have police power authority as well as express Constitutional authority to regulate the use of the public lands.

5. The States have exercised land use controls for hundred of years in one form or another. It was only in the early part of the 20th Century, however, that the States began to do so in a broad and general way. This came with the adoption of model State laws which generally delegated zoning authority—a part of the State's inherent police powers—to units of local government. The purpose of these delegations of police power authority to counties, cities, and other units of local government was to enable them to develop master plans, to zone for permissible uses, and to establish local planning bodies.

6. The development of land use planning and local zoning was in response to very real land use problems and conflicts which had costly, wasteful, and undesirable impacts upon the public;

Dirty industrial activities would develop in the middle of residential communities;

Unsightly and aesthetically offensive developments—slaughterhouses, tanneries, etc., would drive down the value of adjacent business and residential property;

Business activities thought by many to be undesirable if not closely regulated—taverns, movie theatres, dance halls, nightclubs—would be located near schools, churches or in quiet residential areas.

Land use planning and the exercise of zoning authority were designed to deal with these and other problems of a purely local nature.

7. Prior to the development of a statutory framework for land use planning and controls the remedies available to injured parties were litigation in the courts based upon the inadequate common law doctrines of "nuisance" and "trespass."

8. Today, the growing litigation over land use questions at all levels of government—power plant siting, location of heavy industry, projects such as the trans-Alaska pipeline, etc.—indicate land use problems are no longer entirely local in scope and that the planning concepts of the 1920's are no longer adequate to the changing public values and increasingly complex problems of the 1970's.

9. Today, after a half of a century of experience, many public officials and citizens feel that traditional zoning concepts and practices leave a great deal of

room for improvement. The Act recognizes this, but "does not require . . . radical or sweeping changes in the traditional relationship and responsibility of local government for land use management." (Committee Report No. 92–869) The Act does not propose Federal zoning as it is both unconstitutional and unwise. Nor does it propose "statewide zoning" or "comprehensive master planning" which would only produce costly, dilatory, duplicative and often inflexible regulation of the vast majority of land use problems that are of concern, interest and knowledge only to the local units of government.

10. Instead, the Act encourages a continual "process of planning" wherein the right of local government to exercise land use powers is reasserted on all land use decisions and the State government is asked to join in partnership with local government on land use decisions of more than local concern, both governments acting in response to the decisions of state and local legislative bodies on substantive issues and with full citizen participation.

11. In the Act, the State governments are encouraged to assist localities with guidelines for local planning or through cooperative planning only on those land use questions which are of *more than local concern* which go beyond the boundaries of only one locality and have an impact upon a number of local units of government and which determine the shape of the future environment—decisions concerning highways, airports, and mass transit systems; major power plants and transmission corridors, areas to be preserved or closely regulated (environmental areas, flood plains) and areas for intense development (housing complexes or industrial parks).

12. The trend in most States today is to reverse the process begun in the 1920's of delegating all land use planing authority to units of local government. Increasingly States are selectively assuming an important role with respect to land use problems which are of more than local concern such as power plant siting, location of industrial parks, and the protection of park, beach, coastal or estuarine areas. Over 40 States now have laws regulating one or more critical areas or uses of more than local concern. The Act encourages this trend toward active State responsibility and the elevation of land use decisions of more than local concern to the level of government—county, regional or State—most appropriately suited to decide the question in view of all legitimate values and interests.

B. WHAT THE ACT DOES AND DOES NOT DO

The act does not do any of the following:

1. *Does not mandate, require, or allow "Federal planning" or "Federal zoning."* The zoning power is based on the State's police power and the Federal government does not have authority to zone State or privately owned lands (with the exception of the District of Columbia which is a special and unique case).

2. *Does not substitute Federal authority or review of State and local decisions on the use of State and local lands.* The Act is an "enabling act" which encourages the State to exercise "States rights" and develop land use programs. Consistent with the enabling act concept, the Federal Government is granted very little authority to review the substance of State land use programs.

3. *Does not provide inflexible Federal standards which require strict State compliance.* Specific Federal substantive requirements are ill-advised because they do not reflect the rich diversity of the States; they are invariably the lowest common denominator; States and local governments know best their own land use problems and their possible solutions; and the Federal zoning which such standards would create is plainly undesirable.

4. *Does not require comprehensive State planning over all its land.* The State land use program is definitely not to be a comprehensive statewide program which preempts the myriad of local decisions, but rather one focused on four categories of critical areas and uses of clearly more than local concern.

5. *Does not mandate State zoning, rather reasserts local zoning powers.* The States are encouraged to develop their programs not by zoning or by producing a master plan, but by reasserting the whole range of local governments' land use authority, and providing guidelines for the exercise of that authority For example, a State would not, could not, make a basic zoning decision such as on which corner shall the gas station be, but it would have a duty to provide guidelines for local decisionmaking to insure, for example, that one community does not site a massive industrial park directly adjacent to another community's recreational park or wildlife refuge.

6. *Not only does not impinge upon or alter the traditional land use responsibilities of urban government, but also does not focus on urban lands.* Unlike tradi-

tional urban and housing planning legislation this Act does not focus on only one category of land: the intensely developed land. The act encourages a balanced and rational planning process for all categories of land, including the so-called "opportunity areas"—those areas where mistakes have not already been made or irreversible actions already taken—i.e., the rural areas and areas on the urban periphery.

7. *Does not tell a State how much or what specific land must be included in the State land use program.* The extent of and type of land use to be included in the four critical areas and uses is dependent upon on how the State defines those four areas or uses, e.g., is a shoreline 100 feet wide or a mile? Does large scale development include a subdivision of 20 units or 200?

8. *Does not alter any landowner's rights to seek judicial redress for what he regards as a "taking."* The provisions of the Act do not change the body of law—Federal and State constitutions, statutes and judicial decisions—regarding the police powers and eminent domain. Any State or local restriction of property rights sufficient enough to constitute a "taking" still would require fair compensation.

The act does do the following:

1. Does require States to exercise "State's rights" and State responsibility over those land use planning and policy decisions which are of "more than local concern" and which provide the framework upon which the shape of the future is determined.

2. Does require State governments to develop a process of planning and a State land use program which is "balanced"; that is, a program which protects the environment and assures recreational opportunity, but at the same time provides for necessary social services and essential economic activities—for transportation facilities, reliable energy systems, housing, and residential development.

3. Does contain provisions which insure its compatibility with the HUD 701 planning program, with the Clean Air and Water Pollution Control Acts, with other Federal legislation, and with the Coastal Zone Management law enacted last year.

4. Does provide State government with funds—$170 million over five years—to develop State land use data inventories, to improve the size and competence of professional staff, and to establish an appropriate State planning agency.

5. Does provide the States with wide latitude in determining the method of implementing the Act—reassertion of all local land use powers with State administrative review under State guidelines such as in most State coastal zone, wetlands, flood plain and power plant siting laws, or the rare instance of direct State planning, as in Hawaii or Vermont, or the unincorporated areas of Alaska. An amendment added to the measure last year and endorsed by the League of Cities clearly established an intent that "selection of methods of implementation shall be made so as to encourage the employment of land use controls by local governments."

6. Does endorse the concept that local land use decisions should be made by local government: "The Act does not require or contemplate radical or sweeping changes in the traditional relationship and responsibility of local government for land use management. Decisions of local concern will continue to be made by local government." (page 22, Comm. Rept. No. 92–869).

7. Does provide new authority to State government and encourages coordinated State-Federal planning for Federal lands within a State's boundaries.

Calendar No. 830

92D CONGRESS
2d Session

SENATE

REPORT
No. 92-869

LAND USE POLICY AND PLANNING ASSISTANCE ACT OF 1972

JUNE 19, 1972.—Ordered to be printed

Mr. JACKSON, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany S. 632]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 632) 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 Commission and by providing financial assistance for statewide land use planning, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following language:

That this Act may be cited as the "Land Use Policy and Planning Assistance Act of 1972".

TITLE I—FINDINGS, POLICY, AND PURPOSE

FINDINGS

SEC. 101. (a) The Congress hereby finds that there is a national interest in a more efficient system of land use planning and decisionmaking and that the rapid and continued growth of the Nation's population, expanding urban development, proliferating transportation systems, large-scale industrial and economic growth, conflicts in patterns of land use, fragmentation of governmental entities exercising land use planning powers, and the increased size, scale, and impact of private actions, have created a situation in which land use management decisions of wide public concern often are being made on the basis of expediency, tradition, short-term economic considerations, and other factors which too frequently are unrelated or contradictory to the real concerns of a sound national land use policy.

(b) The Congress finds that the task of land use planning and management is made more difficult by the lack of understanding of, and the failure to assess, the land use impact of Federal, regional, State, and local programs and private endeavors which do not possess or are not subject to readily discernible land management goals or guidelines; and that a national land use policy is needed to develop a national awareness of, and ability to measure, the land use impacts inherent in most public and private programs and activities.

(c) The Congress finds that adequate data and information on land use and systematic methods of collection, classification, and utilization thereof are either lacking or not readily available to public and private land use decisionmakers: and that a national land use policy must place a high priority on the procurement and dissemination of useful land use data.

(d) The Congress finds that a failure to conduct competent land use planning has, on occasion, resulted in delay, litigation, and cancellation of proposed significant development, including but not limited to facilities for the development, generation, and transmission of energy, because of unresolved land use questions, thereby too often wasting human and economic resources, creating a threat to public services, and invoking decisions to locate activities in areas of least public and political resistance, but without regard to sound environmental, economic, and social land use considerations.

(e) The Congress finds that many Federal agencies conduct or assist activities which have a substantial impact on the use of land, location of population and economic growth, and the quality of the environment, and which, because of the lack of a consistent land use policy, often result in needless, undesirable, and costly conflicts between the Federal agencies and between Federal, State, and local governments, and thereby subsidize undesirable and costly patterns of development; and that a concerted effort is necessary to coordinate existing and future Federal policies and programs and public and private decisionmaking in accordance with a national land use policy.

(f) The Congress finds that while the primary responsibility and constitutional authority for land use planning and management of non-Federal lands rests with State and local government, the manner in which this responsibility is exercised has a tremendous influence upon the utility, the value, and the future of the public domain, the national parks, forests, seashores, lakeshores, recreation and wilderness areas, wildlife refuges, and other Federal lands; and that the failure to plan or, in some cases, the existence of poor or ineffective planning at the State and local levels poses serious problems of broad national or regional concern and often results in irreparable damage to commonly owned assets of great national importance.

(g) The Congress finds that, because the land use decisions of the Federal Government, including those concerning the Federal lands, often have a significant impact upon statewide and local environments and patterns of development, a national land use policy ought to take into consideration the needs and interests, and invite the participation of, State and local governments and members of the public.

(h) The Congress finds that Federal, regional, State, and local decisions and programs which establish or influence the location of land uses often determine whether people of all income levels and races have or are denied access to decent shelter, to adequate employment, and to quality schools, health facilities, police and fire protection, mass transportation, and other public services; and that such decisions and programs should seek to provide the maximum freedom and opportunity, consistent with sound and equitable land use planning and management standards, for all citizens to live and conduct their activities in locations of convenience and personal choice.

DECLARATION OF POLICY

SEC. 102. (a) 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, the Congress declares that it is a 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 and implementation of a national land use policy, which shall incorporate environmental, esthetic, economic, social, and other appropriate factors. Such policy shall serve as a guide for national decisionmaking in Federal and federally assisted

programs which have land use impacts and in programs which affect the pattern of uses on the Federal lands, and shall provide a framework for the development of State and local land use policies.

(b) The Congress further declares that it is the national policy to—

(1) favor patterns of land use planning, management, and development which are in accord with sound environmental, economic, and social values and which encourage the wise and balanced use of the Nation's land resources;

(2) assist State governments to develop and implement land use programs for non-Federal lands which will incorporate environmental, esthetic, economic, social, and other appropriate factors, and to develop a framework for the formulation, coordination, and implementation of State and local land use policies;

(3) assist the State and local governments to improve upon their present land use planning and management efforts with respect to areas of critical environmental concern, key facilities, development and land use of regional benefit, and large scale development;

(4) facilitate increased coordination in the administration of Federal programs and in the planning and management of Federal lands and adjacent non-Federal lands so as to encourage sound land use planning and management; and

(5) promote the development of systematic methods for the exchange of land use, environmental, economic, and social data and information among all levels of government.

(c) The Congress further declares that intelligent land use planning and management can and should be a singularly important process for preserving and enhancing the environment, encouraging beneficial economic development, and maintaining conditions capable of improving the quality of life.

PURPOSE

SEC. 103. It is the purpose of this Act—

(a) to establish a national policy to encourage and assist the several States to more effectively exercise their constitutional responsibilities for the planning and management of their land base through the development and implementation of State land use programs designed to achieve economically and environmentally sound uses of the Nation's land resources;

(b) establish a grant-in-aid program to assist State and local governments and agencies to hire and train the personnel, and establish the procedures, necessary to develop and implement State land use programs;

(c) establish reasonable and flexible Federal requirements to give individual States guidance in, and to condition the distribution of certain Federal funds on, the establishment and implementation of adequate State land use programs;

(d) establish the authority and responsibility of the Secretary of the Interior to administer the grant-in-aid program, to review statewide land use processes and State land use programs for conformity to the provisions of this Act, and to assist the coordination of activities of Federal agencies with State land use programs;

(e) develop and maintain a national policy with respect to federally conducted and federally assisted projects having land use implications; and

(f) coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands.

TITLE II—ADMINISTRATION OF LAND USE POLICY

OFFICE OF LAND USE POLICY ADMINISTRATION

SEC. 201. (a) There is hereby established in the Department of the Interior the Office of Land Use Policy Administration (hereinafter referred to as the "Office").

(b) The Office shall have a Director who shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5315), and such other officers and employees as may be required. The Director shall have such duties and responsibilities as the Secretary of the Interior (hereinafter referred to as the "Secretary") may assign.

SEC. 202. The Secretary, acting through the Office, shall—

(a) maintain a continuing study of the land resources of the United States and their use;

(b) cooperate with the States in the development of standard methods and classifications for the collection of land use data and in the establishment of effective procedures for the exchange and dissemination of land use data;

(c) develop and maintain a Federal Land Use Information and Data Center, with such regional branches as the Secretary may deem appropriate, which has on file—

(1) plans for federally initiated and federally assisted activities which directly and significantly affect or have an impact upon land use patterns;

(2) to the extent practicable and appropriate, the plans and programs of State and local governments and private enterprises which have more than local significance for land use planning and management;

(3) statistical data and information on past, present, and projected land use patterns which are of more than local significance;

(4) studies pertaining to techniques and methods for the procurement, analysis, and evaluation of data and information relating to land use planning and management; and

(5) such other information pertaining to land use planning and management as the Director deems appropriate;

(d) make the information maintained at the Data Center available to Federal, regional, State, and local agencies conducting or concerned with land use planning and management and to the public;

(e) consult with other officials of the Federal Government responsible for the administration of Federal land use planning assistance programs to States, local governments, and other eligible agencies in order to coordinate such programs;

(f) administer the grant-in-aid program established under the provisions of this Act; and

(g) provide administrative support for the National Advisory Board on Land Use Policy established under section 203 of this Act.

NATIONAL ADVISORY BOARD ON LAND USE POLICY

SEC. 203. (a) The Secretary is authorized and directed to establish a National Advisory Board on Land Use Policy (hereinafter referred to as the "Board").

(b) The Board shall be composed of:

(1) the Director of the Office of Land Use Policy Administration (hereinafter referred to as the "Director") who shall serve as Chairman;

(2) representatives of the Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission; and the Environmental Protection Agency, appointed by the respective heads thereof;

(3) observers from the Council on Environmental Quality, the Federal Power Commission, and the Office of Management and Budget, appointed by the respective heads thereof; and

(4) representatives of such other Federal agencies, appointed by the respective heads thereof, as the Secretary may request to participate when matters affecting their responsibilities are under consideration.

(c) The Board shall meet regularly at such times as the Chairman may direct and shall—

(1) provide the Secretary with information and advice concerning the relationship of policies, programs, and activities established or performed pursuant to this Act to the programs of the agencies represented on the Board;

(2) render advice to the Secretary and the agency designated pursuant to section 502 concerning proposed guidelines, rules, and regulations for the implementation of the provisions of this Act;

(3) assist the Secretary and the agencies represented on the Board in the coordination of the review of statewide land use planning processes and State land use programs;

(4) provide advice on such land use policy matters as the Secretary may refer to the Board for its consideration; and

(5) provide reports to the Secretary on land use policy matters which may be referred to the Board by the heads of Federal agencies through their respective representatives on the Board.

(d) Each agency representative on the Board shall have a career position within his agency of not lower than GS–15 and shall not be assigned any duties which are unrelated to the administration of land use planning and policy, except temporary housekeeping or training duties. Each representative shall—

(1) represent his agency on the Board;

(2) assist in the coordination and preparation within his agency of comments on (i) guidelines, rules, and regulations proposed for promulgation pursuant to section 502, and (ii) statewide land use planning processes and State land use programs reviewed pursuant to title III of this Act;

(3) assist in the dissemination of policy information and in the implementation within his agency of policies and procedures developed pursuant to this Act; and

(4) perform such other duties regarding the administration of land use planning and policy as the head of his agency may direct.

INTERSTATE COORDINATION

SEC. 204. (a) The States are authorized to coordinate land use planning and programs with appropriate interstate entities, and a reasonable portion of the funds made available to such States under the provisions of this Act may be used therefor: *Provided, however,* That an opportunity for participation in the coordination process by Federal and local governments and agencies as well as members of the public engaged in activities which affect or are affected by State land use planning and programs is assured: And *provided further,* That nothing in this subsection shall be construed to affect the allotment of funds as provided in section 507 of this Act.

(b) Subject to the approval of Congress by the adoption of an appropriate Act, Congress hereby authorizes such States which possess coherent geographic, environmental, demographic, or economic characteristics which would serve as reasonable bases upon which to coordinate land use planning and programs to negotiate interstate compacts for the purpose of such coordination, with such terms and conditions as to them seem reasonable and appropriate: *Provided, however,* That such compacts shall provide for an opportunity for participation in the coordination process by Federal and local governments and agencies as well as members of the public engaged in activities which affect or are affected by land use planning and programs: And *provided further,* That nothing in this subsection shall be construed to affect the allotment of funds as provided in section 507 of this Act.

(c) The Secretary shall conduct a review of federally established or authorized interstate agencies, including but not limited to river basin commissions, regional development agencies, and interstate compact commissions, and prepare recommendations for revision of organizational structures and improvement of procedures for the purpose of coordinating land use planning and programs in interstate areas. The Secretary shall report to the Congress the results of his review conducted under this subsection, together with his recommendations, not later than two years after the date of enactment of this Act. Such recommendations may include proposals for either the establishment of new entities or the use of existing agencies of two or more States and the Federal Government to coordinate land use planning and programs in interstate areas: *Provided, however,* That such entities or agencies and the procedures thereof, so recommended, provide for an opportunity for participation in the coordination process by Federal, State, and local governments and agencies as well as members of the public engaged in activities which affect or are affected by land use planning and programs.

TITLE III—PROGRAM OF ASSISTANCE TO THE STATES

SEC. 301. (a) The Secretary is authorized to make annual grants to each State to assist each State in developing and administering a State land use program meeting the requirements set forth in this title.

(b) Prior to making the first grant to each State during the three complete fiscal year period following the enactment of this Act, the Secretary shall be

satisfied that such grant will be used in a manner to meet satisfactorily the requirements for a statewide land use planning process set forth in section 302. Prior to making any further grants during such period, the Secretary shall be satisfied that the State is adequately and expeditiously proceeding to meet the requirements of section 302.

(c) Prior to making any further grants after the three complete fiscal year period following the enactment of this Act and before the end of the five complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that the State has met and continues to meet the requirements of section 302 and is adequately and expeditiously proceeding to develop a State land use program to meet the requirements of sections 303 and 304.

(d) Prior to making any further grants after the five complete fiscal year period following the enactment of this Act, the Secretary shall be satisfied that the State has met and continues to meet the requirements of sections 303 and 304.

(e) States receiving grants pursuant to this Act during the five complete fiscal year period following enactment of this Act shall submit, not later than one year after the date of award of each grant, a report on work completed and scheduled toward the development of a State land use program to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305. For grants made after such period, the State shall submit its State land use program not later than one year after the date of each award to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305: *Provided*, That if no grant is requested by or active in any State after five fiscal years from the date of enactment of this Act, such State shall submit its land use program within ninety days thereafter to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305: And *provided further*, That, should no grant be requested by or active in any State during any two complete fiscal year period after five fiscal years from the date of enactment of this Act, such State shall submit its land use program within ninety days from completion of such period to the Secretary for determination of State eligibility or ineligibility for grants pursuant to this Act in accordance with the procedures provided in section 305.

STATEWIDE LAND USE PLANNING PROCESSES

SEC. 302. (a) As a condition of continued State grant eligibility after the three complete fiscal year period following the enactment of this Act, the Secretary shall have determined that the State has developed an adequate statewide land use planning process, which process shall include—

(1) the preparation and continuing revision of a statewide inventory of the State's land and natural resources;

(2) the compilation and continuing revision of data, on a statewide basis, related to population densities and trends, economic characteristics and projections, environmental conditions and trends, and directions and extent of urban and rural growth;

(3) projections of the nature and quantity of land needed and suitable for recreation and esthetic appreciation; agriculture, mineral development, and forestry; industry and commerce, including the development, generation, and transmission of energy; transportation; urban development, including the revitalization of existing communities, the development of new towns, and the economic diversification of existing communities which possess a narrow economic base; rural development, taking into consideration future demands for and limitations upon products of the land; and health, educational, and other State and local governmental services;

(4) the preparation and continuing revision of an inventory of environmental, geological, and physical conditions (including soil types) which influence the desirability of various types of land use;

(5) the preparation and continuing revision of an inventory of State, local government, and private needs and requirements concerning Federal lands within the State;

(6) the preparation and continuing revision of an inventory of governmental organization and financial resources available for land use planning

and management within the State and of State and local programs and activities which have a land use impact of more than local concern;

(7) the establishment of a method for identifying large-scale development and development and land use of regional benefit;

(8) the establishment of a method for inventorying and designating areas of critical environmental concern and areas which are, or may be, impacted by key facilities;

(9) the provision, where appropriate, of technical assistance for, and training programs for State and local agency personnel concerned with, the development and implementation of State and local land use programs;

(10) the establishment of arrangements for the exchange of land use planning information and data among State agencies and local governments, and with the Federal Government, among the several States and interstate agencies, and with members of the public;

(11) the establishment of a method for coordinating the programs and services of all State and local agencies significantly affecting land use;

(12) the conducting of public hearings, preparation of reports, and soliciting of comments on reports concerning the State land use planning process or aspects thereof;

(13) the provision, and continuation thereof, of opportunities for participation by the public and the appropriate officials or representatives of local governments in the planning process and in the formulation of guidelines, rules, and regulations for the administration of the planning process; and

(14) the consideration of the interstate aspects of land use issues which involve two or more States.

(b) In the determination of an adequate statewide land use process, the Secretary shall confirm that the State has an eligible State land use planning agency established by the Governor of such State or by law, which agency shall—

(1) have primary authority and responsibility for the development and administration of a State land use program provided for in sections 303 and 304;

(2) have a competent and adequate interdisciplinary professional and technical staff and, whenever appropriate, the services of special consultants;

(3) give priority to the development of an adequate data base for a statewide land use planning process using data available from existing sources wherever feasible;

(4) coordinate its activities with the planning activities of all State agencies undertaking federally financed or assisted planning programs insofar as such programs relate to land use; the regulatory activities of all State agencies enforcing air, water, noise, or other pollution standards; all other relevant planning activities of State agencies; the planning activities of areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262–3), as amended; the planning activities of local governments; and the planning activities of Federal agencies;

(5) have authority to conduct public hearings, with adequate public notice, allowing full public participation in the development of the State land use program; and

(6) have authority to make available to the public promptly upon request land use data and information, studies, reports, and records of hearings.

STATE LAND USE PROGRAMS

SEC. 303. As a condition of continued State grant eligibility after the five complete fiscal year period following the enactment of this Act, the Secretary shall have determined that the State has developed an adequate State land use program, which shall include—

(a) an adequate statewide land use planning process as provided for in section 302 of this Act; and

(b) (1) methods of implementation for—

(A) exercising determinative State authority over the use and development of land in areas of critical environmental concern within the State;

(B) exercising determinative State authority over the use of land in areas within the State which are or may be impacted by key facilities, including a method for exercising determinative State authority over the site location and the location of major improvement and major access features of key facilities;

(C) assuring that local regulations do not unreasonably restrict or exclude development and land use of regional benefit;

(D) exercising determinative State authority over proposed large-scale development within the State of more than local significance in its impact upon the environment;

(E) assuring that any source of air, water, noise, or other pollution in the areas or from the uses or activities listed in this clause (1) shall not be located where it would result in a violation of any applicable air, water, noise, or other pollution standard or implementation plan;

(F) regulating large-scale subdivisions to insure the planned maximum beneficial use of land;

(G) periodically revising and updating the State land use program to meet changing conditions; and

(H) assuring dissemination of information to appropriate officials or representatives of local governments and members of the public and their participation in the development of and subsequent revisions in the State land use program and in the formulation of State guidelines, rules, and regulations for the development and administration of the program.

(2) The methods of implementation of clause (1) of this subsection (b) shall include either one or a combination of the two following general techniques—

(A) direct State land use planning and regulation, and

(B) State administrative review of land use plans, regulations, and implementation thereof of local governments with full powers to approve or disapprove.

Such techniques or any combination thereof shall include the State's authority to prohibit, under State police powers, the use of any land in a manner inconsistent with any provision or portion of the State land use program.

SEC. 304. As a further condition of continued State grant eligibility after the five complete fiscal year period following the enactment of this Act, the Secretary shall review the State land use program and determine that—

(a) in designating areas of critical environmental concern, the State has not excluded any substantial areas of critical environmental concern which are of major national significance and require special planning and management;

(b) the State is demonstrating good faith efforts to implement, and, in the case of successive grants, the State is continuing to demonstrate good faith efforts to implement, the purposes, policies, and requirements of its land use program. For the purposes of this subsection, the inability of a State to take any State action the purpose of which is to implement the State land use program, or any portion thereof, and which is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not be construed as failure by the State to demonstrate good faith efforts to implement the purposes, policies, and requirements of its land use program;

(c) State laws, regulations, and criteria affecting the State land use program and the areas and uses and activities over which the State exercises authority as required in section 303 are in accordance with the requirements of this title;

(d) the State land use program has been reviewed and approved by the Governor;

(e) the State has coordinated its land use program with the planning activities and programs of its State agencies, the Federal Government, and local governments as provided for in this title, and with the planning processes and land use programs of other States and local governments therein with respect to lands and waters in interstate areas; and provided for the participation of, and dissemination of information to, appropriate officials or representatives of local governments and members of the public as provided for in this title; and

(f) the State utilizes, for the purpose of furnishing advice to the Federal Government as to whether Federal and federally assisted projects are consistent with the State land use program, procedures established pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262–3), as amended, and title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103–4), and is participating in the programs provided for pursuant to Section 701 of the Housing Act of 1954 (68 Stat. 590, 640), as amended.

FEDERAL REVIEW AND DETERMINATION OF GRANT ELIGIBILITY

SEC. 305. (a) During the five complete fiscal year period following the enactment of this Act, the Secretary, before making a grant pursuant to this Act, shall consult with the heads of all Federal agencies listed in subsection (d) of this section and all other Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use in the State, and with the National Advisory Board on Land Use Policy pursuant to subsection (c) of section 203 of this Act, and shall consider their views and recommendations.

(b) After the five complete fiscal year period following the enactment of this Act—

(1) the Secretary, before making a State land use program grant pursuant to this Act, shall submit the State land use program of such State to the heads of all Federal agencies listed in subsection (d) of this section and all other Federal agencies which conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use in the State, and to the National Advisory Board on Land Use Policy pursuant to subsection (c) of section 203 of this Act. The Secretary shall take into consideration the views of each agency head which are submitted to him by such agency head no later than thirty days after submission of the State land use program to such agency head by the Secretary; and

(2) the Secretary shall not make a grant pursuant to this Act until he has ascertained that the Secretary of Housing and Urban Development is satisfied that those aspects of the State's land use program concerning large-scale development, development and land use of regional benefit, and large-scale subdivisions pursuant to clause (F) of subsection 303(b)(1) meet the requirements of this title. The Secretary of Housing and Urban Development shall be deemed to be satisfied if he does not communicate his views to the Secretary within sixty days of submission of the State land use program to him by the Secretary.

(c) The Secretary shall determine a State eligible or ineligible for a grant pursuant to this Act not later than six months following receipt for review of the State's application for its first grant, a State's report on its previous grant, or the State's land use program pursuant to section 301.

(d) Pursuant to subsections (a) and (b) of this section, the Secretary shall consider the views of the heads of the following Federal agencies—

(1) the Department of Agriculture;
(2) the Department of Commerce;
(3) the Department of Defense;
(4) the Department of Health, Education, and Welfare;
(5) the Department of Housing and Urban Development;
(6) the Department of Transportation;
(7) the Atomic Energy Commission;
(8) the Federal Power Commission; and
(9) the Environmental Protection Agency.

(e) A State may at any time revise its State land use program: *Provided*, That such revision does not render the State land use program inconsistent with the requirements of this title: And *provided further*, That any significant revision is reported to the Secretary. The Secretary shall determine whether such revision would render the State land use program inadequate for purposes of complying with the requirements of this title, and shall inform the State of his determination.

(f)(1) In the event the Secretary determines that a State is ineligible for grants pursuant to this Act or, having found a State eligible for such grants, subsequently determines that grounds exist for withdrawal of such eligibility, he shall notify the President, who shall order the establishment of an ad hoc

hearing board (hereinafter referred to as "hearing board"), the membership of which shall consist of:

(A) the Governor of a State other than the State the grant eligibility of which is in question, whose State does not have a particular interest in whether State grant eligibility or ineligibility is determined, selected by the President within thirty days after notification by the Secretary, or, within ten days thereafter, such alternate person as the Governor selected by the President may designate;

(B) one knowledgeable, impartial Federal official, selected by the President within thirty days after notification by the Secretary, who is not an official of an agency listed in clauses (1) through (3) of subsection (b) of section 203; and

(C) one knowledgeable, impartial private citizen, selected by the other two members: *Provided*, That if the other two members cannot agree upon a third member within twenty days after the appointment of the second member to be appointed, the third member shall be selected by the President within twenty days thereafter.

(2) The Secretary shall specify in detail, in writing, to the hearing board his reasons for considering a State ineligible, or for withdrawing a State's eligibility, for grants pursuant to this title. The hearing board shall hold such hearings and receive such evidence as it deems necessary. The hearing board shall then determine whether a finding of ineligibility or withdrawal of eligibility would be reasonable, and set forth in detail, in writing, the reasons for its determination. If the hearing board determines that ineligibility would be unreasonable, the Secretary shall find the State eligible for grants pursuant to this Act. If the hearing board concurs in the finding of ineligibility or withdrawal of eligibility, the Secretary shall find the State ineligible for grants pursuant to this Act. Ineligibility shall be deemed to have been determined by the hearing board if no determination in writing is made by it within ninety days of its appointment.

(3) Members of hearing boards who are not regular full-time officers or employees of the United States shall, while carrying out their duties as members, be entitled to receive compensation at a rate fixed by the President, but not exceeding $150 per diem, including traveltime, and, while away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons intermittently employed in Government service. Expenses shall be charged to the account of the Executive Office of the President.

(4) Administrative support for hearing boards shall be provided by the Executive Office of the President.

(5) The President may issue such regulations as may be necessary to carry out the provisions of this subsection.

CONSISTENCY OF FEDERAL ACTIONS WITH STATE LAND USE PROGRAMS

Sec. 306. (a) Federal projects and activities significantly affecting land use, including but not limited to grant, loan, or guarantee programs, such as mortgage and rent subsidy programs and water and sewer facility construction programs, shall be consistent with State land use programs which conform to the provisions of section 303 and 304 of this Act, except in cases of overriding national interest as determined by the President. Procedures provided for in regulations issued by the Secretary pursuant to the criteria specified in section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262–63), as amended, and title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat, 1098, 1103–4), together with such additional procedures as the Secretary may determine are necessary and appropriate to carry out the purposes of this Act, shall be utilized in the determination of whether Federal projects and activities are consistent with State land use programs funded under this Act.

(b) State and local governments submitting applications for Federal assistance for activities having significant land use implications in an area subject to a State land use program in a State found eligible for grants pursuant to this Act shall indicate the views of the State land use planning agency and/or the Governor as to the consistency of such activities with the program. Prior to indicating such views, the agency and/or the Governor shall consult with officials or representatives of the appropriate local governments. Federal agencies shall not approve proposed projects that are inconsistent with the program, as determined pursuant

to subsection (a) of this section: *Provided*, That, if a local government certifies that a plan or description of an activity for which application is made by the local government has lain before the State land use planning agency and/or the Governor for a period of sixty days without indication of the views of the land use planning agency and/or the Governor, the application need not be accompanied by such views and the relevant Federal agency shall make an independent appraisal of the consistency of the activity with the State land use program.

(c) Federal agencies conducting or assisting public works activities in areas not subject to a State land use program in a State found eligible for grants pursuant to this Act shall, to the extent practicable, conduct such activities in such a manner as to minimize any adverse impact on the environment resulting from decisions concerning land use.

FEDERAL ACTIONS IN THE ABSENCE OF STATE ELIGIBILITY

SEC. 307. (a) The Secretary shall have authority to terminate any financial assistance extended to a State under this Act and withdraw his determination of grant eligibility whenever the Secretary finds, and the hearing board concurs, that the statewide land use planning process or the State land use program does not meet the requirements of this Act.

(b) Where any major Federal action significantly affecting the use of non-Federal lands is proposed after five fiscal years from the date of enactment of this Act, in a State which has not been found eligible for grants pursuant to this Act, the responsible Federal agency shall hold a public hearing in such State at least one hundred eighty days in advance of the proposed action concerning the effect of the action on land use, taking into account the relevant considerations set out in sections 302, 303, and 304 of this Act, and shall make findings which shall be submitted for review and comment by the Secretary, and where appropriate, by the Secretary of Housing and Urban Development. Such findings of the responsible Federal agency and comments of the Secretary and, where appropriate, the Secretary of Housing and Urban Development shall be made part of the detailed statement required by section 102(2)(C) of the National Environmental Policy Act (83 Stat. 852, 853). This section shall be subject to exception where the President determines that the interests of the United States so require.

(c) Section 15 of the Airport and Airway Development Act (84 Stat. 219, 225) is amended by adding the following new subsection:

"(d) Any State which has not been found eligible for a grant under the Land Use Policy and Planning Assistance Act of 1972 after five fiscal years from the date of enactment of that Act, shall suffer a withholding of 7 per centum of its entitlement to Federal funds apportioned for airport development pursuant to paragraphs (A) and (B) of subsection (a)(1) and paragraphs (A) and (B) of subsection (a)(2) of this section in the following fiscal year. If such State has not been found eligible by six fiscal years from the date of enactment of that Act, it shall suffer a withholding of 14 per centum in the following fiscal year, and, if not found eligible by seven fiscal years from the date of enactment of that Act, shall suffer a withholding of 21 per centum in the following fiscal year. Funds so withheld shall be held in the Department of the Treasury until the State is determined to be eligible for a grant pursuant to the Land Use Policy and Planning Assistance Act of 1972. Upon such determination, the Department of the Treasury shall disburse to the State the funds so withheld."

(d)(1) Section 104, title 23 of the United States Code, is amended by adding the following subsection:

"(g) Any State which has not been found eligible for a grant under the Land Use Policy and Planning Assistance Act of 1972 after five fiscal years from the date of enactment of that Act, shall suffer a withholding of 7 per centum of its entitlement to Federal-aid highway funds, other than funds authorized to be appropriated under subsection (b) of section 108 of the Federal Aid Highway Act of 1956, as amended, or funds for planning and research, which would otherwise be apportioned to such State in the following fiscal year. If such State has not been found eligible by six fiscal years from the date of enactment of that Act, it shall suffer a withholding of 14 per centum in the following fiscal year, and, if not found eligible by seven fiscal years from the date of enactment of that Act, shall suffer a withholding of 21 per centum in the following fiscal year. Funds so withheld shall be held in the Department of the Treasury until the State is determined to be eligible for a grant pursuant to the Land Use Policy and Planning

Assistance Act of 1972. Upon such determination, the Department of the Treasury shall disburse to the State the funds so withheld."

(2) Subsection (f) of section 109, title 23 of the United States Code, is amended by deleting "or control of" in the first sentence.

(e) Subsection (b) of section 5 of the Land and Water Conservation Act of 1965 (78 Stat. 897, 900), as amended, is amended by adding after the second paragraph the following paragraph:

"Any State which has not been found eligible for a grant under the Land Use Policy and Planning Assistance Act of 1972 after five fiscal years from the date of enactment of that Act shall suffer a withholding of 7 per centum of its entitlement under paragraphs (1) and (2) of this subsection in the following fiscal year. If such State has not been found eligible by six fiscal years from the date of enactment of that Act, it shall suffer a withholding of 14 per centum in the following fiscal year, and, if not found eligible by seven fiscal years from the date of enactment of that Act, shall suffer a withholding of 21 per centum in the following fiscal year. Funds so withheld shall be held in the Department of the Treasury until the State is determined to be eligible for a grant pursuant to the Land Use Policy and Planning Assistance Act of 1972. Upon such determination, the Department of the Treasury shall disburse to the State the funds so withheld."

TITLE IV—FEDERAL-STATE COORDINATION AND COOPERATION IN THE PLANNING AND MANAGEMENT OF FEDERAL AND ADJACENT NON-FEDERAL LANDS

SEC. 401. (a) All agencies of the Federal Government charged with responsibility for the management of Federal lands shall consider State land use programs prepared pursuant to this Act and State, local government, and private needs and requirements as related to the Federal lands; and shall coordinate the land use inventory, planning and management activities on or for Federal lands with State and local land use inventory, planning, and management activities on or for adjacent non-Federal lands to the extent such coordination is practicable and not inconsistent with paramount national policies, programs, and interests.

(b) For the purposes of this section, any agency proposing any new program, policy, rule, or regulation relating to the Federal lands shall publish a statement concerning the consistency of the program, policy, rule, or regulation with State and local land use planning and management, and, where inconsistent, the reasons for such inconsistency, thirty days prior to the establishment of such program or policy or the promulgation of such rule or regulation, and, except where otherwise provided by law, shall conduct a public hearing, with adequate public notice, on such program, policy, rule, or regulation at least seven days prior to the publication of such statement.

SEC. 402. (a) As a condition of continued State eligibility for grants pursuant to this Act, after the five complete fiscal year period following the enactment of this Act, the Secretary shall have determined that—

(1) the State land use program developed pursuant to sections 303 and 304 of this Act includes methods for insuring that Federal lands within the State, including but not limited to units of the national park system, wilderness areas, and game and wildlife refuges, are not damaged or degraded as a result of inconsistent land use patterns in the same immediate geographical region; and

(2) the State has demonstrated good faith efforts to implement such methods in accordance with the provisions of subsection (b) of section 304.

(b) The procedures for determination of grant eligibility provided for in section 305 shall apply to this section.

AD HOC FEDERAL-STATE JOINT COMMITTEES

SEC. 403. (a) The Secretary, at his discretion or upon the request of the Governor of any State involved, shall establish an Ad Hoc Federal-State Joint Committee or Committees (hereinafter referred to as "joint committee" or "committees") to review and make recommendations concerning general and specific problems relating to jurisdictional conflicts and inconsistencies resulting from the various policies and legal requirements governing the planning and management of Federal lands and of adjacent non-Federal lands. Each joint committee

shall include representatives of the Federal agencies having jurisdiction over the Federal lands involved, representatives of affected user groups, including recreation and conservation interests, and officials of affected State agencies and units of local government. Prior to appointing representatives of user groups and officials of local governments, the Secretary shall consult with the Governor or Governors of the State or States involved and with other appropriate officials of the State or States and local governments involved. The Governor of each State involved shall appoint the officials of the affected agencies of his State.

(b) Each joint committee shall terminate at the end of two years from the date of establishment.

(c) Joint committee members may each be compensated at the rate of $100 for each day each member is engaged in the actual performance of duties vested in the joint committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently: *Provided, however,* That no compensation except travel and expenses in addition to regular salary shall be paid to any full-time Federal or State official.

(d) Each joint committee shall have available to it the services of an executive secretary, professional staff, and such clerical assistance as the Secretary determines is necessary. The executive secretary shall serve as staff to the joint committee or committees and shall be responsible for carrying out the administrative work of the joint committee or committees.

(e) The specific duties of any joint committee shall be assigned by the Secretary and may include:

(1) conducting a study of, and making recommendations to the Secretary concerning methods for resolving, general problems with and conflicts between land use inventory, planning, and management activities on or for Federal lands and State and local land use inventory, planning, and management activities on or for adjacent non-Federal lands, including, where relevant, the State land use programs developed pursuant to sections 303 and 304 of this Act;

(2) investigating specific conflicts between the planning and management of Federal lands and of adjacent non-Federal lands and making recommendations to the Secretary concerning their resolution;

(3) assisting the States and the Office of Land Use Policy Administration in the development of systematic and uniform methods among the States and between the States and the Federal Government for collecting, compiling, exchanging, and utilizing land use data and information; and

(4) advising the Secretary, during his review of State land use programs, of opportunities for reducing potential conflicts and improving coordination in the planning and management of Federal lands and of adjacent non-Federal lands.

(f) Upon receipt of the recommendations of a joint committee upon a conflict pursuant to subsection (e) of this section, the Secretary shall:

(1) where he has legal authority, take any appropriate and necessary action to minimize such conflict;

(2) where he does not have jurisdiction over or authority concerning the Federal lands which are involved in the conflict, work with the appropriate Federal agency or agencies to develop a proposal designed to minimize the conflict and to enhance cooperation and coordination between the planning and management of Federal lands and of adjacent non-Federal lands; and

(3) if he determines that the legal authority to resolve general or specific land use planning and management conflicts between the Federal Government and State and local governments is lacking in the Executive Branch, recommend enactment of appropriate legislation to the Congress.

(g) In taking or recommending action pursuant to the recommendations of a joint committee, the Secretary shall give careful consideration to the purposes of this Act and not resolve any conflict between the planning and management of Federal lands and of adjacent non-Federal lands in a manner which would impair the national purpose or objective for which the Federal lands involved are being managed.

BIENNIAL REPORT ON FEDERAL-STATE COORDINATION

SEC. 404. The Secretary shall report biennially to the President and the Congress concerning—

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(a) problems in and methods for coordination of planning and management of Federal lands and planning and management of adjacent non-Federal lands, together with recommendations to improve such coordination;

(b) the resolution of specific conflicts between the planning and management of Federal lands and of adjacent non-Federal lands; and

(c) at the request of the Governor of any State involved, any unresolved conflict between the planning and management of Federal lands and of adjacent non-Federal lands, together with any recommendations the Secretary and the Governor or Governors may have for resolution of such conflict.

SEC. 405. (a) Prior to the making of recommendations on any conflict pursuant to subsection (e) of section 403, each joint committee shall, when the public interest warrants, conduct a public hearing in the State on such conflict, with adequate public notice, allowing full participation of representatives of Federal, State, and local governments and members of the public. Should no hearing be warranted, the joint committee shall solicit the views of all affected parties and submit a summary of such views, together with its recommendations, to the Secretary.

(b) Prior to the making of recommendations or the taking of actions pursuant to subsection (f) of section 403, the Secretary shall review in full the relevant hearing record or, where none exists, the summary of views of affected parties prepared pursuant to subsection (a) of this section, and may, in his discretion, hold further public hearings.

SEC. 406. Upon request of a joint committee, the head of any Federal department or agency or federally established or authorized interstate agency is authorized: (a) to furnish to the joint committee, to the extent permitted by law and within the limits of available funds, such information as may be necessary for carrying out its functions and as may be available to or procurable by such department, agency, or interstate agency; and (b) to detail to temporary duty with the joint committee, on a reimbursable basis, such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

TITLE V—GENERAL

DEFINITIONS

SEC. 501. For the purposes of this Act—

(a) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(b) The term "local government" means any general purpose county or municipal government, or any regional combination thereof, or, where appropriate, any other public agency which has land use planning authority.

(c) The term "Federal lands" means any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except lands held in trust for the benefit of Indians, Aleuts, and Eskimos.

(d) The term "non-Federal lands" means all lands which are not "Federal lands" as defined in subsection (c) of this section and are not held by the Federal Government in trust for the benefit of Indians, Aleuts, and Eskimos.

(e) The term "areas of critical environmental concern" means areas as designated by the State on non-Federal lands where 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, or could unreasonably endanger life and property as a result of natural hazards of more than local significance. Such areas shall include—

(1) coastal wetlands, marshes, and other lands inundated by the tides;

(2) beaches and dunes;

(3) significant estuaries, shorelands, and flood plains of rivers, lakes, and streams;

(4) areas of unstable soils and high seismic activity;

(5) rare or valuable ecosystems;

(6) significant undeveloped agricultural, grazing, and watershed lands;

(7) forests and related land which require long stability for continuing renewal;

(8) scenic or historic areas; and

(9) such additional areas as a State determines to be of critical environmental concern.

(f) The term "key facilities" means:

(1) public facilities on non-Federal lands which tend to induce development and urbanization of more than local impact, including:

(A) any airport that is designed to serve for regular, scheduled air passenger service, and other airports of greater than local significance;

(B) interchanges between the Interstate Highway System and frontage access streets or highways; major interchanges between other limited access highways and frontage access streets or highways;

(C) frontage access streets and highways of State concern; and

(D) major recreational lands and facilities;

(2) major facilities on non-Federal lands for the development, generation, and transmission of energy.

(g) The term "development and land use of regional benefit" means land use and private development on non-Federal lands for which there is 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.

(h) The term "large scale development" means private development on non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of the State. In determining what constitutes "large scale development" the State should consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

GUIDELINES, RULES, AND REGULATIONS

SEC. 502. (a) The President is authorized to designate an agency or agencies to issue guidelines to the Federal agencies to assist them in carrying out the requirements of this Act. Such agency or agencies shall submit proposed guidelines to the Secretary, the Board, and the heads of agencies represented on the Board, and shall consider their comments prior to formal issuance of such guidelines.

(b) The Secretary, after appropriate consultation with representatives of the States and, where appropriate, officials or representatives of local governments, and upon the advice of the Board and the heads of Federal agencies represented on the Board, shall promulgate rules and regulations to implement the guidelines formulated pursuant to subsection (a) of this section and to administer this Act, except with respect to subsection (f) of section 305 of this Act.

BIENNIAL REPORT

SEC. 503. The Secretary, with the assistance of the Office and the Board, shall report biennially to the President and the Congress on land resources, uses of land, and current and emerging problems of land use.

UTILIZATION OF PERSONNEL

SEC. 504. Upon request of the Secretary, the head of any Federal agency is authorized: (a) to furnish to the Office such information as may be necessary for carrying out the functions of the Office and as may be available to or procurable by such agency, and (b) to detail to temporary duty with the Office, on a reimbursable basis, such personnel within his administrative jurisdiction as the Office may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

TECHNICAL ASSISTANCE

SEC. 505. The Office may provide, directly or through contracts, grants, or other arrangements, technical assistance to any State found eligible for grants pursuant to this Act to assist such State in the performance of its functions under this Act.

HEARINGS AND RECORDS

SEC. 506. (a) For the purpose of carrying out the provisions of this Act, the Director, with the concurrence of the Secretary, may hold such hearings, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of the proceedings and reports thereon as he deems advisable.

(b) The Director is authorized to administer oaths when he determines that testimony shall be taken or evidence received under oath.

(c) To the extent permitted by law, all appropriate records and papers of the Office shall be made available for public inspection during ordinary office hours.

ALLOTMENTS

SEC. 507. (a) From the sum appropriated pursuant to section 510, the Secretary is authorized to make grants provided for in this Act to States found eligible for financial assistance pursuant to this Act, the proposals of which are approved, in any amount not to exceed ninety per centum of the estimated cost of developing the State land use programs for the five complete fiscal year period following the enactment of this Act. Thereafter, grants may be made in an amount not to exceed two-thirds of the estimated cost of administering the State land use programs.

(b) Grants pursuant to this Act shall be allocated to the States on the basis of regulations of the Secretary, which regulations shall take into account the amount and nature of each State's land resource base, population, pressures resulting from growth, financial need, and other relevant factors.

(c) Any grant made for the purpose of this Act shall increase, and not replace, State funds presently available for State land use planning activities. Any grant made pursuant to this Act shall be in addition to, and may be used jointly with, grants or other funds available for land use planning surveys or investigations under other federally assisted programs.

(d) No funds granted pursuant to this Act may be expended for the acquisition of any interest in real property.

PAYMENTS

SEC. 508. The method of computing and paying amounts pursuant to this Act shall be as follows:

(a) The Secretary shall, prior to the beginning of each calendar quarter or other period prescribed by him, estimate the amounts to be paid to each State under the provisions of this Act for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation as the Secretary may find necessary.

(b) The Secretary shall pay to the State, from the allotments available therefor, the amounts so estimated by him for any period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which he finds that his estimate of the amount to be paid such State for any prior period under this Act was greater or less than the amount which should have been paid to such State for such prior period under this Act. Such payments shall be made through the disbursing facilities of the Department of the Treasury, at such times and in such installments as the Secretary may determine.

FINANCIAL RECORDS

SEC. 509. (a) Each recipient of a grant pursuant to this Act shall make reports and evaluations in such form, at such times, and containing such information concerning the status, disposition, and application of Federal funds and the operation of the statewide land use planning process or State land use program as the Secretary may require by regulations published in the Federal Register, and shall keep and make available such records as may be required by the Secretary for the verification of such reports and evaluations.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audits and examination to any books, documents, papers, and records of a recipient of a grant pursuant to this Act which are pertinent to the determination that funds granted are used in accordance with this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 510. For each of the eight full fiscal years following the enactment of this Act, there are authorized to be appropriated to the Secretary for grants to the States not more than $100,000,000 annually to carry out the purposes of this Act.

SEC. 511. For each of the five full fiscal years following enactment of this Act, there are authorized to be appropriated $10,000,000 annually to the Secretary to be used exclusively for the administration of this Act. After the end of the fourth fiscal year after the enactment of this Act, the Secretary shall review the programs established by this Act and shall submit to Congress his analysis and such recommendations for amendments to the Act as he deems proper and appropriate.

EFFECT ON EXISTING LAWS

SEC. 512. Nothing in this Act shall be construed—

(a) to expand or diminish Federal, interstate, or State jurisdiction, responsibility, or rights in the field of land and water resources planning, development, or control; to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States, a State, or a region and the Federal Government; or to limit the authority of Congress to authorize and fund projects;

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office, except as required to carry out the provisions of this Act;

(c) 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; or to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

Amend the title so as to read: "A bill to establish a national land use policy; to authorize the Secretary of the Interior to make grants to assist the States to develop and implement State land use programs; to coordinate Federal programs and policies which have a land use impact; to coordinate planning and management of Federal lands and planning and mangement of adjacent non-Federal lands; and to establish an Office of Land Use Policy Administration in the Department of the Interior, and for other purposes."

I. INTRODUCTION

1. GENERAL

The United States is blessed with vast, productive and hospitable land resources. For over two centuries, these resources were abundant enough to support the material requirements, the varied activities, and the diverse interests of this Nation's growing population. The authority of Federal and State government was applied to facilitate land development, stimulate individual land ownership, and create private rights in the public lands. The Federal land laws were primarily concerned with placing into State and private hands the vast lands purchased and conquered as our Nation expanded westward.

When landowners to whom these lands passed were seriously inconvenienced by a land use problem, their remedies lay with the judicial process and rights based on the common-law doctrines of nuisance and trespass.

With the advent of the Twentieth Century, the pressures of industrialization, technological advances, population growth, and rapid urbanization generated an increasing number of land use conflicts and resource allocation controversies. Citizens in heavily populated areas discovered the common law remedies to be inadequate to protect property interests, to assure quality living conditions, and to provide optimum use of a land base suddenly found to be finite. As a result, demands arose for government to alter its role from that of facilitating unrestricted private land development to that of imposing a measure of control on land use to protect larger public interests. Many cities, under the intense pressures of crowding and increasing conflicts generated by a totally unregulated land use decisionmaking process, began invoking the police power delegated to them by their States and proceeded to adopt and apply building codes, zoning ordinances, subdivision laws, and other land use regulations.

Today, the Nation as a whole is beginning to experience the pressures once felt in its major population centers. In all parts of the country, conflicting demands over limited land resources are placing severe strains upon economic, social, and political institutions and processes and upon the natural environment——farmers' groups oppose real estate developers; environmentalists fight the electric power industry; homeowners collide with highway planners; the mining and timber industries struggle with conservationists; shoreline and water recreation interests are pitted against oil companies; cities oppose the states; and suburbs oppose the cities.

As discussed in section III of this report, many of the present methods, procedures, and institutions for land use decisionmaking are inadequate to resolve major land use conflicts in a manner compatible with changing national goals and requirements. For the most part, today's land use controls are merely refinements upon those developed early in this century in response to a totally different set of objectives and aspirations. With a few exceptions, the land use planning and management institutions of the past have left a legacy of uncoordinated, haphazard, inefficient land use patterns which often do not reflect the legitimate interests of various and increasingly diverse constituencies. They have been and are being employed for largely negative purposes—to prohibit unpopular uses and avoid reduction in property values.

Too little attention is given to positive planning to meet projected public needs. The planning which is accomplished too frequently focuses on local problems and requirements and neglects regional and national needs. Today, public and private programs and activities often fail to honor local boundaries or urban limits in their impacts upon land use patterns. Planning has suffered as well from inadequate data bases and the lack of means to implement it. Traditional land use controls are employed infrequently to meet the policies, purposes, and proposals of planning—to advance a design calculated to meet, without dictating, future values and requirements. In addition, planning is often conducted not to balance competing demands upon the land re-

source, but to support a single demand—be it for highways, parks, housing, or industrial development. Even when not single purpose or mission-oriented, planning and other institutional means to influence private decisions where they impact on public rights have seldom reflected non-economic factors such as long-range environmental effects, housing, recreational needs, and the aesthetic aspects of the land and the development which occurs upon it. These failures of land use planning institutions have contributed to polarization on specific issues within many communities, escalated the number and intensity of land use conflicts, contributed to expensive litigation and delays in important, private economic development proposals and public programs, created a significant measure of undesirable economic instability, and, in some areas, inflicted severe environmental damage.

Sobering statistics suggest that, unless our land use decisionmaking processes are vastly improved at all levels of government—local, State, and Federal—the United States will be faced with a truly *national* land use crisis. Over the next 30 years, the pressures upon our finite land resource will result in the dedication of an additional 18 million acres or 28 thousand square miles of undeveloped land to urban use. Urban sprawl will consume an area of land approximately equal to all the urbanized land now within the 228 Standard Metropolitan Statistical Areas—the equivalent of the total area of the States of New Hampshire, Vermont, Massachusetts, and Rhode Island. *Each* decade, new urban growth will absorb an area greater than the entire State of New Jersey. The equivalent of 2½ times the Oakland-San Francisco metropolitan region must be built each year to meet the Nation's housing goals. In the next two decades, one industry alone—the energy industry—will require vast areas of land: New high-voltage transmission lines will consume three million acres of new rights-of-way, while 225 new major generating stations will require some 140,000 acres of prime industrial sites.

In short, as the Chairman of the Committee has stated:

> Between now and the year 2000, we must build again all that we have built before. We must build as many homes, schools, and hospitals in the next three decades as we built in the previous three centuries. In the past, land use decisions were made too often by those whose interests were selfish, short-term and private. In the future—in the face of these immense pressures on our limited land resource—these decisions must be long-term and public.[1]

2. SUMMARY OF MAJOR PROVISIONS

(*a*) *Committee Action*

Over the last two and a half years, the Committee on Interior and Insular Affairs has given careful consideration to S. 632 and other, related measures pending before it which are designed to improve the land use planning and management capabilities of Federal, State and local government. S. 632, as amended and ordered reported by the Committee, represents what the Committee believes to be the most realistic and sound of the provisions of the pending bills and the recommendations presented in the last two Congresses.

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[1] Remarks by Senator Henry M. Jackson upon the decision of the Senate Interior Committee to order reported S. 632, Committee on Interior and Insular Affairs, U.S. Senate, June 5, 1972.

The Land Use Policy and Planning Assistance Act of 1972 is, in the view of a majority of the Committee, critically needed to assist local, State and the Federal government to move from an era of *ad hoc*, case-by-case, crisis-to-crisis, land use decisionmaking to an era of long-range planning and management which is based on democratic processes and a full appreciation of all legitimate private and public aspirations and needs. This transition is required if the increasingly complex land use and resource allocation decisions faced by all levels of government are to be made on a rational basis and in full recognition of the requirements of future generations.

During the 91st Congress, the Committee considered and ordered reported to the Senate S. 3354, the "Land and Water Resources Planning Act". This measure was the first National Land Use Policy legislation ever considered by the Congress. It proposed a system of comprehensive statewide land use planning. S. 632 is patterned in many respects on the provisions of S. 3354, but, as ordered reported, it does not mandate comprehensive statewide planning. It is the Committee's view, after thorough consultation with the Administration, many Governors, State planning officials, and many experts and professionals in the field of land use planning, that most States now lack and probably could not develop in less than five to ten years the capacity to undertake and implement a comprehensive planning effort for their total land resource base. Accordingly, S. 632 separates out the most critical and far-reaching of land use activities—those which provide the framework, the structure and the major influences in shaping local, regional and State land use patterns—and provides assistance to the States to focus available resources and planning expertise on such activities. It is the Committee's view that the objectives of the Act are realistic and attainable. They provide a base upon which to build in the shaping of this country's future environment.

Senator Gordon Allott, ranking minority member on the committee, observed upon final Committee action on this measure: "It is hoped that this legislation will help to bring order out of the present chaotic land use conditions without unnecessarily impinging upon the rights of the individual citizen to enjoy fully his private property rights." In addition, it is not the intent of the Committee that this proposal have the effect of transferring a significant measure of authority over what have traditionally been local and State decisions on certain land use matters to the Federal government. To insure that this does not occur, there will be continuing legislative oversight to review the Act's operation.

A majority of the Committee believes that many of most crucial problems and conflicts facing all levels of government in the areas of protection of environmental quality, siting of energy facilities and industrial plants, design of transportation systems, provision of recreational opportunities, and development of natural resources are the direct result of past failures to anticipate public requirements for land and to plan for its use. The economic loss, the delays, the resource misallocations, and the social and environmental costs which this failure to plan has cost the Nation are in large measure unnecessary expenses which could have been avoided had appropriate planning been undertaken earlier. It is the Committee's view that adoption of this Act and a good faith effort by the States

to exercise responsibility for the planning and management of land use activities which are of more than local concern will greatly reduce needless conflicts, will avoid misallocations of scarce resources, will save public and private funds, will insure that public facilities and utilities—powerplants, highways, airports and recreational areas—are available when needed, and will improve State-Federal relations in all areas of mutual concern.

(*b*) *Purpose*

The purpose of S. 632 is to provide Federal technical assistance and a grant-in-aid program to the individual States to assist them in developing and improving their capacity for land use planning and management. The Act also provides important new authority designed to improve coordination between the planning efforts of the Federal and State governments.

(*c*) *Authorization*

The grant-in-aid program would have an authorization of $100 million a year for eight fiscal years. The authorization would cover up to 90% of the cost of improving planning processes and developing the State land use programs for the first five fiscal years. Thereafter, the program would cover up to 66⅔% of the costs of administering those programs. An additional $10 million a year for five years would be authorized for administration of the Act.

(*d*) *Institutions created*

The Act would be administered by the Secretary of the Interior, through a newly created Office of Land Use Policy Administration. He would be assisted in the review of State land use programs by the heads of other Federal agencies which have programs with significant land use impacts and by the Secretary of Housing and Urban Development, in particular. A National Advisory Board on Land Use Policy, composed of high level representatives of those agencies, would serve as a regular source of advice to the Secretary of the Interior and as a means of communication and coordination among the various agencies concerning Federal interests in land use policy.

(*e*) *State Planning Process*

A major purpose of the Act is to assist the States to develop a State planning process. The State planning process, required within three fiscal years of enactment, consists of adequate funding, competent staff personnel, a data and information base, and an appropriate planning agency at the State level.

(*f*) *State Land Use Program*

After the State has developed a State planning process and capability, it is required by the Act to develop, within five fiscal years of enactment, land use programs which concentrate on four categories of critical areas and uses of more than local concern. These areas and uses are considered to be of State interest because decisions concerning them have impacts on citizens, the environment, and the economy totally out of proportion to the jurisdiction and the interests of the local decisionmaker: the local zoning body or land use regulatory entity. Absent any form of regulatory control or oversight by the State, there may be no means of mitigating the adverse effects upon the

regional, State, or national populace, economy, or environment which may result from decisions, made upon purely local considerations, concerning these areas and uses. These four categories of areas and uses of more than local concern would be: (1) areas of critical environmental concern (e.g. beaches, flood plains, wetlands, historic areas); (2) key facilities (major airports, highway interchanges and frontage access highways, recreational lands and facilities, and facilities for the development, generation and transmission of energy); (3) development and land use of regional benefit; and (4) large-scale development (e.g. major subdivisions or industrial parks). The States have wide discretion in defining these areas.

(*g*) *Role of local government*

The Act does not require or contemplate radical or sweeping changes in the traditional relationship and responsibility of local government for land use management. Decisions of local concern will continue to be made by local government. It does, however, require that the States play an active role in major land use planning and management decisions which are of regional, State or national concern. The procedures for, and the nature of, State involvement are, for the most part, left to the determination of the individual States. A State may either plan directly for the areas or uses subject to the State land use program or it may reassert the authority and responsibility of appropriate levels of local and regional governments to plan and control these areas and uses and simply provide oversight through a set of State guidelines and an appeals process. (Most States have demonstrated a decided preference for the latter procedure.)

(*h*) *Federal review*

The Federal review of State progress in developing a "planning process" and a "land use program", for the most part, does not invite scrutiny of the substance of that process or program. The primary focus of the review is whether the State has authority to develop its planning process and develop and implement its land use program and whether it is making good faith efforts to do so. This is in keeping with the Act's purpose to encourage better land use decisionmaking at the State and local levels, and not to provide substantial new land use decisionmaking authority on the Federal level.

(*i*) *Sanctions*

To encourage State government to assume responsibility for the major land use activities occurring within its boundaries, in addition to the grant-in-aid incentive, the Act provides for two sanctions. Neither sanction may be invoked without an express Secretarial finding of a lack of good faith compliance, an opportunity for appeal and review by a disinterested panel, and Presidential action. The first sanction is the withholding of grant-in-aid money authorized under the Act. The second sanction, proposed by the Administration and amended by the Committee, is a phased withholding over three fiscal years, beginning at 7%, going to 14% and ending at 21%, of funds under three other Federal programs (airport development funds, primary and secondary federal-aid highway funds, and Land and Water Conservation Fund monies). This sanction may be invoked only after five fiscal years, and when the State land use program again

meets the requirements of the Act, any funds withheld must be disbursed to the State. The three programs for which funds would be withheld are deemed to have the most significant long-range and irreversible impacts upon land use patterns because of the exceptional influence they have over public and private development.

(j) Federal-State Coordination

The Act encourages coordinated planning and management of Federal lands and adjacent non-Federal lands. Both the Federal government and the State and local governments are required to provide for compatible land uses on adjoining lands under their respective jurisdictions. In addition, short term Ad Hoc Joint Federal-State Committees, composed of representatives of affected Federal agencies, State agencies, local governments, and user groups, may be established by the Secretary of the Interior to study general or specific conflicts between uses of Federal lands and uses of adjacent non-Federal lands. The Secretary is directed to resolve such conflicts, or, where he lacks the requisite authority, to recommend legislative solutions to Congress.

3. NEED

It is the view of the Committee that there is a major need for early enactment of legislation designed to assist State and local government to improve their land use planning and management capability and performance. This view is shared by the Administration, by many Governors and by almost all of the witnesses who appeared before the Committee over the past two and one-half years. Russell E. Train, Chairman of the Council on Environmental Quality, stated in testimony before the Committee: "It is a matter of urgency that we develop more effective nationwide land use policies and regulations. Land use is the single most important element affecting the quality of our environment which remains substantially unaddressed as a matter of national policy. Land is our most valuable resource. There will never be any more of it." [2]

Not only is land finite, but unlike air, water, and many minerals and materials, land too often cannot be "recycled". Mountains carved by strip mines, wetlands dredged and filled, or streams channelized frequently cannot be returned to their former use or beauty. Land, once committed to a use today, be it social, economic, or environmental, may be unable to support a different use in the future which might more closely approximate changing national requirements, values, or goals. As President Nixon noted in a letter to Senator Jackson of April 24, 1972, urging early action on the Land Use Policy and Planning Assistance Act:

> As a Nation we have taken our land resources for granted too long. We have allowed ill-planned or unwise development practices to destroy the beauty and productivity of our American earth. Priceless and irreplaceable natural resources have been squandered . . . The country needs this [legislation] urgently.[3]

It is the Committee's view that changing land use requirements and public needs make it imperative that changes in present land use decisionmaking procedures and institutions be made. The Committee

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[2] *National Land Use Policy: Hearings on S. 632 and S. 992*, U.S. Senate, 92d Cong., pt. 1, Committee on Interior and Insular Affairs, May–June 1971 (p. 98).

[3] The letter is included in section VIII, "Executive Communications".

further believes that S. 632 is designed to achieve these changes. The Committee's findings, as embodied in S. 632, are as follows:

—Land use decisions are, in fact, economic, social and environmental decisions—the uses to which land is put dictate the pace and shape of economic growth, the character and severity of social problems, and the extent to which the environment is preserved or destroyed. Land use frequently is the ultimate issue over which conflicts concerning national goals are fought and decided. If we are to avoid shaping the Nation's future by incremental, *ad hoc* decisionmaking the uses to which land resources are to be dedicated should be guided by wise planning and management at all levels of government.

—The land use planning, management, and regulation encouraged by S. 632 should not be viewed as mission-oriented either in the narrow sense of fostering a specific set of activities or in the larger sense of pursuing exclusively the goal of economic development, the goal of environmental protection, or the goal of improving social services. Rather, land use decisionmaking should be considered as a means of weighing and balancing competing environmental, economic, and social requirements and values.

—This balancing should be achieved through the creation and use of an adequate data base and an orderly procedure which would promise sufficient time to reach a reasoned and knowledgeable decision and to avoid the costly mistakes of both thoughtless, precipitate development and unwarranted, dilatory opposition to beneficial development.

—All those affected by land use decisions should be afforded the opportunity to participate in the decisionmaking. Purely local decisions should remain within the exclusive province of local public officials and local citizens. (According to an estimate by reporters of the American Law Institute, at least 90% of the land use decisions currently being made are of local significance only.[4]) Yet, land use decisions which would have a significant impact beyond the jurisdiction of the local public or private decisionmakers should be treated in a different manner. These decisions of more than local concern should also enjoy the contribution of members of the public who would be affected by the results of those decisions but who are not represented by the local decisionmakers. This should be accomplished by providing for wider public participation in significant land use decisions and for review of those decisions by the State, as representative of the larger constituency affected by such decisions.

—As many land use decisions *do* have an impact far beyond the jurisdiction and interests of the local, largely urban governmental units which make those decisions, the traditional urban focus of planning should be deemphasized in favor of a planning process which not only reflects a balance in economic, social, and environmental values but also a balance of geographical areas. Today, many of the most significant land use decisions are being made on the fringe of urban development and in the rapidly diminishing rural and natural areas of our country. It is in these areas that the greatest opportunity for effective land use planning and management exists. Land use planning and decisionmaking cannot be successful unless it truly relates in a

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[4] The American Law Institute, *A Model Land Development Code: Tentative Draft No. 3*, Apr. 22, 1971, Philadelphia (p. 5).

meaningful manner rural and natural areas, the rural-urban interface and its ill-planned or unplanned "urban sprawl", and the country's urban centers.

In short, land use planning and programs must serve as democratically-prepared guides to the future rather than as short-term permits for the activities of interest groups who have mastered and profited from the so-called "zoning game". Yet even the best, most democratic planning of the land resource is an exercise in futility unless all land use constituencies—businessmen, homeowners, conservationists, etc.—have confidence that the policies and purposes of that planning will be implemented. Too frequently land use planning is not implemented. Land use controls remain unrelated to planning or, when related, are either not exercised or, through variances and other procedures, are employed to frustrate the planning objectives. Thus, truly effective land use decisionmaking must enjoy more than democratic procedures, more than adequate information, and more than the balancing of values. It must also enjoy governmental authority and willingness to implement it.

Without the financial and technical assistance of the Federal government, the effort to upgrade land use decision-making will fail. It is the view of the Committee that the Federal government is not sufficiently wise nor prepared to lay down a series of national policies on land use to which strict adherence by the States and localities should be required. Rather, the national policy should be that the Federal government will render financial and technical assistance to the States to enable them to develop their own land use policies. The Federal review of the individual States' performances should focus on whether they have methods for, and are making good faith efforts toward, implementation of their policies and not on what is the substance of those policies.

In addition, the Committee believes the Federal government must "put its own house in order" as it asks the States and localities to do likewise. The Federal government should improve its understanding of the wide land use impacts of its many and varied activities, insure interagency coordination of those activities in order to mitigate adverse or conflicting land use impacts, and develop methods to coordinate those activities with the programs, plans, and projects of State and local governments. Finally, the Federal government should be required to establish procedures for resolving the particularly divisive conflicts which arise between Federal planning and management of public lands and State and local government plans for and regulation of adjacent non-Federal lands.

It is the judgment of the Committee that S. 632 embodies the above principles and will encourage the wise and effective land use decisionmaking required to meet the intensifying pressures upon our land base—to meet the land use crisis we face.

II. OUTLINE OF THE MAJOR PROVISIONS OF THE BILL

Outlined below are the major provisions of the Land Use Policy and Planning Assistance Act of 1972 as ordered reported by the Committee.

TITLE I—FINDINGS, POLICY, AND PURPOSE

The statement of findings includes an expression of national interest in a more efficient system of land use planning and decisionmaking and describes many of the inadequacies in the present system: emphasis on short-term economic factors, lack of understanding of land use impacts of decisions, paucity of essential data, costly delays in proposed significant development, intra- and inter-governmental conflicts, threats to proper use of Federal lands by inadequate management of adjacent non-Federal lands, lack of consideration of state and local interests and aspirations in Federal decisions, and failure to provide a truly equitable distribution of essential public services and to provide full freedom to citizens to live and to conduct their activities in locations of personal choice.

The principal policies and purposes of S. 632 would be to: favor land use planning and management which truly balances environmental, economic and social values, assist the States to develop land use planning processes and programs which focus on critical areas and uses of more than local concern, promote systematic methods of exchanging data, and develop means of coordinating Federal and federally-assisted projects having land use impacts and coordinating planning and management of Federal lands with planning and management of non-Federal lands.

TITLE II—ADMINISTRATION OF LAND USE POLICY

The bill would establish in the Department of the Interior a new Office of Land Use Policy Administration which would be independent of any existing mission-oriented bureaus or agencies. The Office would administer the grant-in-aid program; maintain a study of land resources and their use; cooperate with the States in developing standard methods for collection, classification, and dissemination of data; and develop and maintain a Federal Land Use Information and Data Center to transmit land use data between Federal agencies and to the States, local governments and members of the public.

Also established would be a National Advisory Board on Land Use Policy representing appropriate Federal departments and agencies to facilitate interagency communication on land use impacts of Federal activities, render advice to the Secretary concerning his duties under the Act, and make reports to the Secretary and to the heads of participating agencies on land use matters referred to it. The Board would enjoy the participation of representatives of and observers from Federal agencies conducting programs which have major land use impacts (representatives from: Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; and Transportation; Atomic Energy Commission; Environmental Protection Agency; observers from Council on Environmental Quality, Federal Power Commission, and Office of Management and Budget). The representatives would have full-time land use planning and policy duties in their agencies and would assist their agency heads in the review of State land use planning programs provided for in Title III.

Interstate coordination of land use planning and management is recognized as a significant problem. The Secretary of the Interior (hereinafter referred to as "Secretary") would be directed to conduct a review of existing interstate agencies and to prepare recommendations to the Congress for improving structures and procedures for coordinating land use in interstate areas. The Act would also authorize States to use funds from the Act for interstate coordination purposes and, subject to Congressional action, to negotiate interstate compacts for such purposes.

TITLE III—PROGRAM OF ASSISTANCE TO THE STATES

Title III would provide a grant-in-aid program to the States to assist the States to do two principal tasks: (1) develop a statewide land use planning process within three years and (2) establish within five years, and administer thereafter, a State land use program.

STATEWIDE LAND USE PLANNING PROCESS

Each State would be required to initiate and develop a statewide land use planning process within three fiscal years of enactment to insure that the State would possess a sound data base and the necessary staff competence and expertise to develop and administer a State land use program. The major components of the process would be (1) the inventorying of State economic, environmental, and social requirements and information and other data to serve as a base for informal land use decisionmaking; (2) the establishment of authority in a single State agency to develop and administer the State land use program, (3) the development of adequate professional expertise; and (4) formulation of methods to identify those portions of, and activities within, the State (not on Federal lands) which will be subject to the land use program.

STATE LAND USE PROGRAM

The State would then be required to develop a State land use program within five fiscal years of enactment. The State program would encompass four categories of critical areas or uses which are of significant interest to or would have an impact upon inhabitants of an area far beyond the local jurisdiction which possesses the zoning or other land use regulatory powers. These four categories of critical areas and uses are: (1) areas of critical environmental concern (wetlands, beaches, flood plains, historic areas, etc.); (2) key facilities (major airports, highway interchanges and frontage access streets or highways, recreational lands and facilities, and facilities for the development, generation, and transmission of energy); (3) development and land use of regional benefit; and (4) large scale development. No other category of uses or areas would be required to be included in the program and the State would have great flexibility in defining the four required categories.

The State need not, and indeed in most cases is not expected to, directly plan for the areas and uses within its land use program. Two alternative but not mutually exclusive methods of implementation

would be required by the Act: (1) direct State planning; or (2) State establishment of guidelines for, and administrative review of, local land use planning, zoning, and regulating. In the latter case, the State would reaffirm the authority of local governments to continue to exercize all their land use powers and, through guidelines, criteria and an appeals process, would exercise guidance and oversight over the local efforts. In most of the recent innovative State land use legislation, this local government-State partnership approach has been chosen over the less flexible and less "local" approach of direct State planning.

FEDERAL REVIEW: SUBSTANCE

With a few exceptions, the Federal review of the statewide land use planning processes and State land use programs would *not* focus on the *substance* of the State land use programs. First, as no State policies need be formulated and no State land use planning nor management need be conducted in the statewide planning process, the Federal review for the first five fiscal years would focus only on whether an adequate process (staff, data base, etc.) is being developed. The review of the State land use program five fiscal years after enactment and thereafter would be laregly limited to determining whether the State: (1) has the ability, and is making good faith efforts to implement the program; and (2) provides adequate safeguards for the participation of the public and representatives of local government in the development and administration of the program. The only truly substantive requirement would be that the State may not exclude from its program any substantial areas of critical environmental concern which are of major national significance and which require special planning and management.

NOTE: RELATION TO HOUSING AND POLLUTION LAWS AND TO OTHER PLANNING ACTIVITIES AND PROGRAMS

As noted elsewhere in this report, this Act is viewed as "enabling" legislation designed to require the States to gain the ability to develop their own land use policies and to implement those policies. It is not designed to dictate Federal policies to the States. It is expected however that certain critical land use activities or impacts requiring specific Federal policies (e.g. power plant siting, coastal zone management, surface mining) shall be the subject of other Federal legislation. The Committee believes laws already embodying policies with land use implications or planning mandates—such as housing and pollution laws—will be strengthened by the increased land use authority required of the States in this Act. To insure such a strengthening, and to insure that a State does not "forum-hop" and use funds available under this Act to replace funds available under other Federal laws the requirements of which it wishes to avoid, Federal review would include three additional determinations: (1) The State land use program must be coordinated with other planning activities and programs of the Federal government, regional entities, other States, State agencies, and local governments; (2) the program must be coordinated with the regulatory activities of all State agencies enforcing air, water, noise, or other pollution standards and must assure that no violations of any applicable air, water, noise or other pollution

standard or implementation plan occur in areas or uses within the program's compass; and (3) the State must be participating in the programs provided for in section 701 of the Housing Act of 1954, as amended.

FEDERAL REVIEW: PROCEDURES

The Secretary of the Interior would perform the principal review functions of the statewide land use processes and State land use programs. In addition, the heads of Federal agencies which have programs with significant land use impacts and are represented on the National Advisory Board on Land Use Policy would review the processes and programs and make recommendations to the Secretary for his consideration. Finally, the Secretary of Housing and Urban Development not only would have the general review authority of the other agency heads but also would be directed specifically to study the development and land use of regional benefit and large scale development components of the State land use programs. The Secretary of the Interior should not determine grant eligibility unless the Secretary of HUD is satisfied that those components meet the requirements of the Act.

Should the Secretary determine a State ineligible for grants under the Act, an appeals process for the State would be provided. The President would be directed to appoint an ad hoc hearing board composed of a Governor of a neutral State, an impartial Federal official, and a knowledgeable, impartial private citizen selected by the Governor and the Federal official. The hearing board would report in writing whether it concurs with the Secretary's determination of ineligibility. Only upon concurrence of the hearing board could the Secretary's determination of ineligibility stand.

INCENTIVES

The grant program would provide $100 million annually for eight years. For the first five years, funds would be disbursed to the States at 90% of the cost of developing the State land use programs. For the next three years, the States would receive funds for 66⅔% of the cost of implementing and administering the programs. Grants would be allocated to the States on the basis of regulations of the Secretary which would take into account the amount and nature of each State's land resource base, population, pressures resulting from growth, financial need, and other relevant factors. To administer the grant program and other activities conducted pursuant to the Act, $10 million annually would be authorized for five years.

An important, additional incentive for the States would be the requirement that Federal projects and activities significantly affecting land use must be consistent with the State land use programs developed pursuant to the Act. This requirement would be waived only in cases of overriding national interest, as determined by the President.

FEDERAL ACTIONS IN THE ABSENCE OF STATE ELIGIBILITY

If a State is determined ineligible for grants by the Secretary and the ad hoc hearing board concurs, financial assistance under the Act would be terminated. Furthermore, where any major Federal action significantly affecting the use of non-Federal lands would be proposed

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after 5 years in an ineligible State, a public hearing would be held on that proposed action's impact on land use and the findings of the responsible Federal agency and the comments of the Secretary and, where appropriate, of the Secretary of HUD, would be made part of the statement required by section 102(2)(C) of the National Environmental Policy Act. Again, this requirement would be subject to exception upon determination of the President.

Finally, a State found ineligible after five years from enactment would suffer a withholding of funds from three grant-in-aid programs over a three-year period at a rate of 7% the first year, 14% the second, and 21% the third. Upon a determination of eligibility, the funds withheld from a State would be disbursed immediately to it. The three grant-in-aid programs were carefully chosen. Two of them—the development program of the Airport and Airway Development Act and the primary and secondary (not Interstate) Federal-aid highway programs—were selected because of their extraordinary impact upon land use patterns and the urbanization they generate. Absent the coordination of plans for these highways and airports with State land use programs which meet the requirements of the Land Use Policy and Planning Assistance Act, the purposes of the act would be frustrated. To balance the withholding of these development funds and to insure that those who hold development in disfavor do not attempt to frustrate a State's efforts to become eligible in order to force the invocation of the sanctions and inhibit such development, the third grant-in-aid program to which the sanctions would apply would be the Land and Water Conservation Fund. (In response to a letter from the Chairman of the Committee, Frank Bracken, Legislative Counsel, Department of the Interior, made a computation of the funds which would be withheld from each State in the first fiscal year should the State be found ineligible after 5 years from the date of enactment. See section VIII, "Executive Communications", for his letter of June 12, 1972 and the computation which was attached thereto.)

TITLE IV—FEDERAL-STATE COORDINATION OF THE PLANNING AND MANAGEMENT OF FEDERAL LANDS AND ADJACENT NON-FEDERAL LANDS

This title addresses a particularly divisive, difficult, and chronic conflict over land use: use of Federal lands versus use of adjacent non-Federal lands. The committee considered the question of whether to attach to this Act a Public Lands title. However, upon the understanding that the public land policy proposals now pending before the committee will receive full consideration, it was the consensus of the committee that such a title should not be added to S. 632. It was felt that the public land policy proposals are sufficiently complex and far-reaching to warrant separate consideration. Furthermore, to attach a Public Lands title to this act would have the effect of encouraging the improvement of two very different planning systems (the Federal system for Federal lands and the State and local system for non-Federal lands) without assuring resolution of the conflicts between the two systems. This is not to say, however, that development of mechanisms for coordination of the two systems should await the separate consideration of the public land policy proposals. Title IV was specifically added to provide such mechanisms to insure better coordination

and early resolution of conflicts between planning and management of Federal lands and adjacent non-Federal lands.

The title would have two requirements for consistency of uses between Federal lands and adjacent non-Federal lands. First, the Federal land management agencies would be required to report the consistency (or where inconsistent the "paramount national policies, programs, and interest" which justify the inconsistency) of their programs, policies, rules, and regulations for the Federal lands with State land use programs. Second, the State land use programs would be required to provide and apply methods for insuring that Federal lands, particularly National parks, game and wildlife refuges, and wilderness areas, are not degraded by inconsistent land use patterns (such as unsightly strip developments or highly-polluting industrial facilities) in the same immediate geographical region.

Furthermore, the Secretary would be directed to establish, on his own determination or upon the request of a Governor, Ad Hoc Federal-State Joint Committees (with maximum two-year life spans), composed of representatives of affected Federal agencies, State agencies, local governments, and user groups, to investigate, with hearings where warranted, and make recommendations to the Secretary concerning general problems with or specific conflicts over planning and management of Federal lands and of non-Federal lands. In addition, these committees would advise the Secretary, as he reviews the State land use programs, of opportunities for enhancing coordination between each State program and Federal lands planning and management.

The Secretary would be directed to resolve particular conflicts involving Federal lands within his authority; to work with other Federal agencies to arrive at solutions for conflicts involving Federal lands within their jurisdictions; and to report biennially to Congress on: (1) the progress of, and his recommendations to improve, the coordination of planning for and management of Federal lands and adjacent non-Federal lands, and (2) at the request of a Governor of an affected State, any unresolved conflict, together with his recommendations and that of the Governor for its resolution.

TITLE V—GENERAL

REPORTING REQUIREMENTS

The Secretary would be required to report biennially to the President and the Congress on land resources, uses of land, and current and emerging problems of land use. In addition, after the end of the fourth fiscal year after enactment, the Secretary would be directed to review the programs established by the act and submit to Congress his analysis and recommendations for amendments to the act. (As noted above the appropriation authorizations for administration of the act would terminate after five full fiscal years. The latter reporting requirement would precede this termination. The termination of grant-in-aid funds would occur only after eight full fiscal years in order to preserve the financial incentive to the States to implement the State land use programs prepared by the end of the fifth full fiscal year. It is contemplated that the removal of the authorization of administration funds after five fiscal years will trigger a careful analysis of the operation of

this Act and provide an opportunity for any appropriate amendments or revisions. The eight year termination date for authorization of grant funds would provide a second opportunity for review of the program after implementation of the State land use programs, including the possible imposition of sanctions, will have been experienced.

The President would be authorized to designate an agency or agencies to issue guidelines to the Federal agencies to assist them in carrying out the requirements of the Act. The Secretary of the Interior would promulgate rules and regulations to implement the guidelines and to administer the Act.

This title also includes the authorization for appropriation, the allotment formula, the savings clauses, and definitions of the critical areas and uses, "Federal lands", and "non-Federal lands". In addition, contained therein are standard provisions for detail of personnel, technical assistance, hearings, and financial records.

III. BACKGROUND

1. GENERAL

Reflected throughout this nation's political, economic, and social history is the traditional concept that land is a commodity to be bought and sold, used and depleted by its owner as he sees fit, with a minimum of governmental involvement or guidance. Rather than questioning and testing this concept in the face of rapidly changing land use patterns, government and citizen alike have simply altered the concept to fit a situation of limited supply and called into play governmental controls to insure the concept's survival. These controls—zoning ordinances, building codes, etc.—nearly always took the form of "thou shalt not" commandments which were often severely restrictive. And yet they were largely devoid of sound land use planning or management policies. The continuing perception of land as a scarce commodity, which these largely negative controls perpetuate, was described most succinctly albeit unwittingly, by Will Rogers when he admonished us to "Buy land, they ain't making any more of it."

The utility of this traditional concept of land must be questioned in light of the severe pressures placed upon the land by continued population growth; increasing urban and industrial development; expanding transportation systems; the fragmentation of governmental entities exercising land use powers; and the increased size, scale and impact of private actions. A growing number of public officials and private citizens, upon feeling and perceiving the impacts of these pressures, are speaking of a "national land use crisis" which threatens orderly economic growth and environmental quality.

To meet the emerging crisis, this traditional concept of land and the land use controls which reflect it must be revised and made responsive to changing values and needs, modern technology, increasing land use demands, and the desire of the American people to be involved in decisions which will shape this Nation's future. Land must be considered as more than a commodity to be bought, sold, and consumed; rather it should be viewed as a finite resource to be husbanded. This process of change in the prevailing land use concept and in traditional land use policies, institutions, and procedures can and should be stim-

ulated by Federal legislation which would provide financial and technical encouragement to enable States to exercise "State rights" in land use decisionmaking.

The Committee believes the "Land Use Policy and Planning Assistance Act of 1972" would meet the challenge for Federal "enabling" legislation. It would encourage the employment of land use controls to implement sound land use planning and management policies. The States *would* be encouraged to exercise "States rights" and assume the responsibility of developing State planning processes and land use programs and lending guidance to local land use planning and management efforts. The Federal Government *would* provide the necessary financial and technical assistance to the States and would, at the same time, "put its own house in order" by developing mechanisms for intragovernmental and intergovernmental coordination of land use policies, programs, and activities which have significant land use impacts.

2. A BRIEF HISTORY AND CRITIQUE OF LAND USE CONTROLS IN THE UNITED STATES

The traditional concept of land as a commodity can be traced to the earliest days of our nation's history. The English companies formed to colonize America were in large part real estate companies organized to speculate on the vast New World lands. The resentment of early settlers of these lands over Great Britain's attempts to regulate land use and ownership in a manner contrary to the traditional land concept contributed to the revolutionary opposition. The American claim to ownership of the New World land and to the right of unrestricted land use was asserted in the Declaration of Independence and the Treaty of Paris of 1783. When the Constitution was drafted the last vestiges of the "socage" system of land tenure requiring an oath and tribute to the original owner were eleminated and replaced by a system of "allodial" tenure in fee simple which vested in the property owner all the requisite rights to treat land as a commodity.

During the century following independence, this concept of land was reflected not only in the actions of the many individuals who surged West to settle upon virgin land, but also in Federal policies toward, and laws relating to, that land. Much of the public domain passed into private lands and our public land laws were written to meet the national demand for private ownership, requirements for revenue, the need for early settlement of the new territory, and the desire to foster economic growth and commerce. Governmental controls over land use were minimal, restricted for the most part to the confines of the common law doctrines of nuisance and trespass.

This year, we are celebrating the centennial of the founding of the first unit of our national park system, the Yellowstone National Park; an event which presaged the end of an era of abundant land for all people and all uses. By 1900, the rapid process of land disposal had succeeded in moving over half of the original public domain into state or private ownership.

Land use controls came to the forefront after the turn of the century against this backdrop of the steadily receding western frontiers. This Nation's land base first appeared finite to the growing body of

citizens who dwelled in the nation's burgeoning cities. The threat to health and safety and to the value of the commodity, the price of land, which the crush of city life evoked could not be countered by individual action or application of the doctrines of nuisance or trespass. Thus, the urban citizenry turned to government and the police power to safeguard the larger public interest in individual land use decisions.

Under the rubric of protection of the public health, safety, and welfare, cities began to place various restrictions on urban land use. In the 1880's, San Francisco and Los Angeles limited the location of launderies. Height restrictions were first placed on buildings in Washington, D.C. in 1889, and, in 1909, Boston's height regulations were upheld by the U.S. Supreme Court. Numerous cities enacted fire district ordinances prohibiting the building of wooden structures in designated areas. In 1867, New York first enacted a law restricting tenement lot coverage and by 1908, New Jersey, Pennsylvania, and Connecticut and the cities of Chicago, Boston, and Cleveland had adopted comparable legislation. Then, in 1916, as a result of efforts of Fifth Avenue merchants to protect their fashionable shopping area from the expanding garment district, New York City adopted a zoning resolution which set the basic pattern for zoning ordinances to the present day. In 1926, the constitutionality of such zoning ordinances was upheld by the Supreme Court in the historic case of *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365.

This new and stronger manifestation of the police power, the zoning authority, could not be exercised by the cities unless their State governments authorized them to do so. As the power to zone emanates from the constitutional authority of the State, the State had to grant it directly to classes of municipal government or extend it to them through general State enabling acts. In 1924, the Department of Commerce published a model Standard State Zoning Enabling Act (SZEA), which, when adopted by a State, delegated the State's authority to zone land to its municipalities.

By 1925, nineteen States had enacted statutes substantially similar to the SZEA. During the early Thirties, localities in most of the remaining States gained authority to enact zoning ordinances. At a somewhat slower pace, the States also adopted in one form or another, a second model statute issued by the Department of Commerce: the Standard City Planning Enabling Act. Among other things, this measure added subdivision regulations to the various land use controls which localities could employ and placed major responsibility for administering those regulations in local planning boards.

The varied and complex land use controls in use today by some 10,000 local governments are, to a large extent, merely refinements upon the land use controls developed and validated in the first third of this century. These controls enabled local governments for the first time to place significant restrictions on private land use to protect the larger public interest. Yet, in keeping with the traditional concept of land, for the most part the larger public interest was and is interpreted to be protection of property values and the economic value of land. The dependency of most cities upon property taxes serves to reinforce this prevailing purpose of land use controls.

Protecting property values called for a governmental role which was essentially negative. Similar to the nuisance doctrine, land use

controls were intended largely to prohibit inappropriate uses of the land and not to guide appropriate land use. These controls were, at best, only tenuously related to land use "planning." Few States considered it important for the broader public interest whether any local government actually engaged in planning; whether the controls and the development they controlled were in accordance with a plan; whether such a plan, where it existed, promoted the public interest of the local community; and even whether an existing plan of local government adversely affected the public interest of larger areas such as the region or the State as a whole.

In the absence of State concern or guidance, the cities (and, for that matter, the courts) came to treat the decidedly negative local land use regulations as though they embodied whatever planning was considered necessary. Thus, rather than guiding planned development, land use controls have lent protection to virtually unplanned development. Whether land use decisions have been left to the market place or to local regulations absent a planning base, inefficient, unsightly, and often costly land use patterns have resulted. For example, open spaces valuable for recreation, greenbelts or just a break in the carpet of urbanization have succumbed to private development catering to the one-acre recreational homesite dreams of our nation's city-dwellers. Land uniquely suitable for certain uses, such as major airports, has been preempted for other uses which possess far less demanding criteria. And unwanted but essential projects, such as powerplants, have met with wasteful delays and been sited finally in locations of least public and political resistance, but often without consideration for sound developmental and environmental needs.

Where planning has been conducted it has too often been mission-oriented or single purpose. Planning of this nature seldom relates specific missions or purposes to a balanced range of national goals. Planning for particular kinds of activities leaves the planner and the citizen with narrow "either-or" decisions, often on a case-by-case basis. Because the planning concerns only one kind of activity only the need for facilities to support that activity is examined. In short, consideration of long-term alternative uses of the land is seldom mandated and even less often achieved in single-purpose planning. The highway planning of the recent past provides an excellent example of the failure of single purpose planning. Planners have routed highways through parks where land is invaluable for recreation but cheap for roadbuilding; carved up low income districts with commuter access roads—thus effectively destroying any sense of community; poured additional highway lanes into cities unable to cope with more automobile traffic and air pollution; and sited major interchanges without regard to the unplanned and often unanticipated growth centers which they generate.

Too frequently, even the best of recent land use planning—planning which considers a broad range of values and requirements—has been for missions or purposes writ large: the pursuit of economic growth (planning for high tax ratables such as industrial parks on scarce, undeveloped coastlines and shorelines or on land suitable for housing), of environmental protection (the planning for maximum open space and exporting pressures for housing, commercial districts, and schools

into the next jurisdiction), or of social betterment (planning for housing developments and subdivisions and massive use of recreation areas without carefully considering, and seeking ways of diminishing, the impact upon the environment).

Furthermore, because land use controls have seldom been linked to a planning base, plans too frequently are divorced from any institutional mechanisms for their implementation. Too many resplendently color-coded plans, single purpose or not, have been left to collect dust on administrators' shelves. Without implementation—without adequate institutions, methods, and procedures—plans, planning techniques, and the planners themselves are not tested by experience.

The much greater pressure to which urban land areas are subject, the almost total delegation of State authority over land use to cities, and the frequent failure of cities to plan, and where they have planned, their inability to plan on a regional basis, have insured a distinctly urban bias and coverage to land use controls. Traditionally, those most concerned with land use controls have been urban residents, municipal officials, and "city planners."

Yet, as the Chairman of this Committee has stated:

> [Land use problems do] not pause at the periphery of the ever-widening circle of land dedicated to or held for urban use. Urban dwellers today place demands upon rural land miles and sometimes several states away from their homes. Los Angeles' power needs have brought air-polluting power plants and land-polluting strip mining to the Navajo and Hopi lands of Black Mesa in Arizona and New Mexico. Waste disposal problems have forced consideration of such solutions as the shipment of refuse hundreds of miles beyond our cities' boundaries. And along our shores and in our mountains escape from the cities has become the unattainable goal of those who in seeking second homesites create second suburbias.[1]

Furthermore, at the interface between rural and urban land, on the so-called "urban fringe", exists what has been termed "the worst of our land use problems: the urban sprawl, the 'slurbs', which reduce the quality of our physical and social environments. Rather than accommodating urban densities, urban sprawl spreads urban populations across vast areas of land—idling and ending the productive use of far too much of it." [2] Since, with each passing decade, new urban growth will cover an area greater than the entire state of New Jersey, this interface will continue to lengthen, absorbing more unplanned, rural, and open land. Proper land use decisionmaking along this interface is impossible unless it is conducted on a planning base which, absent an urban bias, truly relates and coordinates rural and urban land uses.

This urban bias is also detrimental to efforts to achieve wise and efficient land use patterns in predominately rural areas—areas where the opportunity to achieve a better design for tomorrow still remains.

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[1] *National Land Use Policy: Background Papers on Past and Pending Legislation and the Roles of the Executive Branch, Congress, and the States in Land Use Policy and Planning* (hereinafter referred to as "National Land Use Policy Background Papers"), Committee on Interior and Insular Affairs, U.S. Senate, April 1972 (p. 5).

[2] Ibid., p. 4.

Finally, this urban focus and the almost full delegation of land use controls which contribute to it have also encouraged fragmentation of land use authority: The Douglas Commission estimated that, in 1969, some 10,000 governments were exercising land use controls.[3] This Committee subscribes to the proposition of local control over matters of local concern. However, the deleterious effects upon proper land management produced by such a balkanization and proliferation of governmental entities practicing land use controls are both numerous and profound where there is no on-going effort at the State and regional levels to relate and coordinate local land use plans and policies.

First, the constant wasteful competition to import certain land uses (largely economic) to build a tax base and to export unwanted land uses (often environmental or social) to avoid a drain on revenues is magnified several times over as the number of competitors increases.

Second, this situation of numerous and often overlapping jurisdictions having land use powers leads to a practice particularly destructive of land use planning: "forum-hopping". Both developmentalists and environmentalists "forum-hop": the former dangling the promise of high tax ratables before communities so revenue-poor they are compelled to reject even the effort of quantifying and balancing non-economic values; and the latter invoking the threat of endless administrative and judicial delays before decisionmakers who can offer neither a single procedure to which to require adherence nor a single decisionmaking forum in which to compel participation.

But, third, and perhaps more serious is the conflict with democratic principals produced by this multi-jurisdictional assumption of land use powers. The intensifying pressures upon our land base and the increasing size, scale and impact of decisions affecting land use have created a situation in which local, public and private decisionmakers are making land use decisions for far larger constituencies than they in fact represent. A citizen may significantly suffer from or enjoy the impacts of decisions to site an airport, grant a subdivision permit, widen a highway, fill wetlands, purchase park land, etc., made not by his community but by the municipality located downstream, downwind, across the road, or up the street from him. Yet, neither he nor the public officials for whom he has voted may be able to effectively participate in these decisions. Again, absent institutions and procedures which provide a measure of overview and effective coordination, this problem is multiplied with each additional division of land use authority in the same geographical area.

3. THE IMPACT OF FEDERAL AND FEDERALLY-ASSISTED ACTIVITIES

The land use problems currently experienced by many units of local government are aggravated by the impact of Federal activities and the lack of any institutional means to control and regulate that impact. As noted in the First Annual Report of the Council on Environmental Quality, in addition to the obvious effects upon non-Federal lands of decisions on the management and use of Federal lands, there is "a myriad of Federal loans, grants, projects, and other

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[3] National Commission on Urban Problems, *Building the American City: Report to the Congress and the President,* December 1968 (p. 208).

programs enacted for specific public purposes [which] has direct impact on the use of land. The most significant Federal activities include the highway, airport, and mass transit programs, the sewer and water grant programs, home mortgage assistance, open space funding, agricultural subsidies, planning assistance, the location of major Federal facilities, and water resource projects." [4]

[Federal grant-in-aid programs which call for a planning component and Federal procedures which license activities with significant land use impacts serve to reinforce, if not force, local single purpose planning.] Federal programs to assist State or local planning projects seldom bear implementation requirements; and, in the few cases where such requirements do exist, adherence is only infrequently required. Balkanization of land use controls is encouraged whenever Federal funds for planning are channelled past State and regional governments and down to the smaller jurisdictions empowered to conduct land use planning. [Often when regional planning *is* mandated in Federal programs the "region" is solely urban in character and compass.]

And, as Senator Jackson noted in his statement introducing S. 3354 (S. 632's precursor) in the 91st Congress, the problem of participation of the public and their elected officials also abides in Federal and federally-assisted activities:

> There are many land use decisions made by the Federal Government which require greater participation by State and local government. Often the Federal Government is seeking the use of a local community's most valuable assets: its land and environment. We must guarantee not only that the use of these assets is necessary, but that it is made in accord with the highest and best standards of land use and environmental management.[5]

Two further weaknesses not discussed previously, which exist in planning processes and land use programs at all levels of government, are highlighted in Federal activities by virtue of the magnitude of their impact. These are: (1) the failure to coordinate programs which have a land use impact (and the concomitant failure to recognize the potential land use impacts of such programs), and (2) the conduct of land use planning and decisionmaking without, or on an inadequate base of, data.

Concerning the former, the Committee Chairman noted:

> At the Federal level we are already beginning to see and to reap the results of our past failure to . . . [properly plan and manage the uses of our land]. Increasingly we are finding instances where Federal funds which have been expended to preserve a part of our natural heritage or to create new recreational opportunities are coming into serious and, often,

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[4] *Environmental Quality*, the First Annual Report of the Council on Environmental Quality, August 1970 (p. 191). A table on, and description of, 112 Federal land-oriented programs, grouped according to function under two major headings—natural resources and physical development, is found in *National Land Use Policy Background Papers*, Committee on Interior and Insular Affairs, U.S. Senate, April 1972 (pp. 79–94). A shorter listing of Federal programs having land use impacts is contained in *Environmental Quality*, the First Annual Report of the Council on Environmental Quality, August 1970 (pp. 193–197).

[5] Congressional Record, January 29, 1970, (p. 838).

totally unnecessary conflicts with other federally funded programs such as highway and airport construction, communications, national defense facilities, and water resource development.

I am not too concerned that there is occasional conflict between these different Federal programs. The wide range of goals and objectives which the National Government seeks to achieve will, of necessity, involve some competition and conflict over priorities, over funding, and over the use of a specific land resources. Our political system was designed to resolve conflicts of this nature. I am confident that it is capable of doing so in an intelligent manner.

I am, however, very concerned that many of these conflicts which have centered around incompatible uses of the same land resource have been totally unanticipated and unintended. These conflicts have simply been the result of poor planning procedures. They have not placed at issue important questions of national priorities, goals, and objectives. These conflicts have resulted from a lack of coordination; a failure to relate national programs to local aspirations; and an institutional inability to factor in the full range of national and local values as a part of the planning process for specific Federal projects.

[At the present time a whole host of agencies are deeply involved in land-use planning. . . . Most of these plans are necessary and desirable. The problem is this, however: To date, no one in the Federal Government has ever put these plans together to see if they are consistent, to see if they make sense, and to see if they are compatible with local goals and aspirations.]

As a result, there are needless and costly conflicts between agencies and departments of the Federal Government, between State and Federal Government, and between State and local government.[6]

Of course, the most flagrant example of lack of coordination between levels of government, and one of the most difficult to correct, involves the planning and management of Federal lands. [In the Western states where lands owned or held in trust by the Federal Government constitute anywhere from 29% to 95% of each State's land mass,[7] planning for or regulating non-Federal land under present law is made very difficult by the inability of local and State governments to obtain sufficient knowledge of, much less an input in, Federal land management decisions.] (This problem is exacerbated by the checkerboard pattern of Federal holdings which still exists in many areas.) By the same token, the quality of Federal lands, particularly national parks, wildlife refuges, and wilderness areas, can be and is often threatened by unplanned or poorly planned land use patterns on their periphery—patterns which could be avoided with better intergovernmental co-

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[6] Congressional Record, Jan. 29, 1970 (pp. S836–S837).

[7] Alaska, 95.3%; Arizona, 44.6%; California, 44.3%; Colorado, 36.3%; Idaho, 63.9%; Montana, 29.6%; Nevada, 86.4%; New Mexico, 33.9%; Oregon, 52.2%; Utah, 66.5%; Washington, 29.4%; and Wyoming, 48.2%. From *One Third of the Nation's Land,* Public Land Law Review Commission, June 1970 (p. 327).

operation and coordination. The problem of coordination of planning and management of Federal lands and of non-Federal lands was emphasized in *One Third of the Nation's Land*, the report of the Public Land Law Review Commission.[8]

The failure to coordinate either on an intra-governmental or intergovernmental basis is usually unintentional. The decisionmakers are simply unaware of the land use impacts of their decisions. The Chairman has cited a subject of hearings of this Committee as an example of this lack of awareness at the Federal level:

> [W]e have conducted too many of our programs and activities in inexcusable ignorance of their often contradictory and deletrious effects. Illustrative of this was the Everglades Jetport controversy. In the Senate Interior Committee hearings in June 1969, three prestigious Federal agencies were . . . [found to be] undertaking activities—flood control, airport development, and national park and recreation programs—in compliance with their mission-oriented guidelines but with little appreciation of the contradictory, self-defeating, and environmentally destructive land use impacts of those activities.[9]

The second problem highlighted by Federal activities is the failure to provide an adequate data base for land use planning or for decisions concerning activities which have significant land use impacts. Again a Committee experience exemplifies the problem: Four years ago, Congress wrestled with a final decision on the issue of whether dams would be constructed in the vicinity of the Grand Canyon. Last year, this Committee held a series of hearings on the Four Corners power question, considered by many to present an equal or greater threat to the environment. The issues involved were much the same—growing West Coast energy needs and environmental protection—but in neither case, when the first decisions were made, were the issues properly addressed with data sufficient to identify the various options and their potential environmental, economic, and social consequences.

4. THE EMERGING ROLE OF THE STATES

As the limitations of locally-administered, traditional land use controls have become increasingly evident, a number of States have taken a leadership role and begun to reassume a portion of the land use authority previously delegated to local municipalities over half a century ago. Many of the early State efforts involved applying land use planning and authority solely to areas beyond the urban boundaries, thus filling a vacuum where no controls existed and avoiding direct conflict with localities which had already applied land use controls. Although the rural conservation districts established in the 1940's and 50's enjoyed a mild form of planning and regulatory authority, even this limited power was rarely utilized.

In 1961, the Hawaii legislature enacted legislation requiring a comprehensive statewide zoning plan. Under the zoning program, the

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[8] *One Third of the Nation's Land: A Report to the President and to the Congress*, The Public Land Law Review Commission, June 1970 (throughout, but particularly pp. 57–65).

[9] *National Land Use Policy Background Papers*, Committee on Interior and Insular Affairs, U.S. Senate, April 1972 (p. 7).

State was divided into four classifications: agricultural, conservation, rural, and urban. While policy for development was to be established at the State level, State and local cooperation was called for in the administration of the zoning program.

In the last decade, other States have taken an innovative, leadership role in what the authors of a report commissioned by the Council on Environmental Quality have termed "the quiet revolution in land use controls." [10] Four other States have instituted State level land use controls of a relatively comprehensive nature: Colorado, Vermont, Maine, and Florida (pending a favorable referendum).

Some eighteen States have adopted significant State level controls over certain critical areas of more than local significance, such as coastal zones, shorelines, wetlands, flood plains, and unorganized areas.[11]

A growing number of States are also exercising State authority over critical uses of more than local significance. At least, seven States have enacted laws regulating siting of power plants and transmission lines.[12] In addition, there are the development authorities of New York, Tennessee, Kentucky, Maryland, and Rhode Island; the State strip mining, scenic easement, environmental quality, waste disposal, and mobile homes laws; laws establishing procedures to overcome exclusionary zoning and laws providing tax benefits for the purpose of preserving open space.

Finally, in addition to assuming land use controls for themselves, several States have been active in the creation of a small, but growing, number of interstate and intrastate regional entities which possess significant, land use planning authority.[13]

The fact that some fourteen States are actively engaged in studies aimed at improving State land use planning and control mechanisms is evidence that the movement toward a new State role in land use planning and management is gaining momentum.[14]

Thus, a majority of the States have already adopted the position that a State must reassume a sufficient portion of the police powers delegated to the localities to assure wise land use decisionmaking in areas and for uses of more than local significance. With the notable exceptions of Hawaii and Vermont, in most cases where legislation has been enacted, the States have not adopted the responsibility to conduct comprehensive land use planning. Rather, in the realization that such a step would be costly and duplicative of local efforts, the States have reaffirmed the prerogative of localities to plan, zone, and otherwise regulate land, but subject to State input in the form of guidelines and

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[10] Bosselman, Fred and Callies, David, *The Quiet Revolution in Land Use Control,* the Council on Environmental Quality, December 1971.

[11] Alaska (zoning power in unorganized areas); California (San Francisco Bay Conservation and Development Commission); Connecticut (tidal wetlands); Delaware (Coastal Zone Act); Georgia (coastal marshlands); Maine (shoreland zoning); Maryland (wetlands); Michigan (scenic rivers, Great Lakes and flood plains); Minnesota (shoreland development and flood plains); Montana (flood plains); Nebraska (flood plains); New Jersey (wetlands); New York (Hudson River Valley and St. Lawrence—Eastern Ontario Commissions, Agricultural District Law, Adirondock Park Agency); North Carolina (beach erosion and coastal wetlands); Oregon (water areas of the state); Rhode Island (coastal resources management, protection of intertidal salt marshes, coastal wetlands, freshwater wetlands); Washington (coastline protection); Wisconsin (shoreland zoning and flood plains).

[12] California, Illinois, Maryland, New York, Oregon, South Carolina, and Washington.

[13] The most notable are: The New England River Basins Commission, The Hackensack Meadowland Development Commission, The Twin Cities Metropolitan Council, the San Francisco Bay Conservation and Development Commission, and the Lake Tahoe Regional Agency.

[14] Arizona, Colorado, Georgia, Idaho, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Washington, and Wisconsin.

criteria under which the localities exercise their land use controls. These States, in effect, have created a unique local government—State partnership which provides maximum authority to the local governments to guide land use, but also provides the opportunity for the State to contribute the benefits of a wider perspective.[15]

5. TOWARD A NEW FRAMEWORK FOR DECISIONMAKING

A wide consensus has developed that this emerging role of the States should continue, that Federal assistance should encourage such a trend, and that Federal initiatives are necessary to assure intergovernmental and intragovernmental coordination of land use decisionmaking.

In their criticisms of the performance to date of State and local land use controls, the Douglas Commission, the Kerner Commission, the Kaiser Committee, the Advisory Commission on Intergovernmental Relations, the National Estuarine Pollution Study and the National Estuarine Inventory, and other study commissions have all contributed to this consensus. In 1970 and again in 1971, The National Governors Conference adopted a policy position supporting a bolder and more innovative State role in land use planning and regulations and calling for strong Federal legislation in support of new State efforts in this direction. In addition, legislation similar to the Land Use Policy and Planning Assistance Act has been called for by associations representing nearly every level of government: including the Council of State Planning Agencies, National Service to Regional Councils, National Association of Counties, and League of Cities-Conference of Mayors.

The hearing record on S. 632 and S. 992 amply documents the breadth of this consensus; developmentalists and environmentalists, urbanists and ruralists alike have expressed support for land use policy legislation. Representatives of users of the land which have advocated national land use legislation include the Chamber of Commerce, National Association of Home Builders, National Farmers Union, National Grange, Forest Industries Council, and the American Forestry Association. Environmental organizations advocating such legislation include the Conservation Foundation, National Audubon Society, National Wildlife Federation, and Sierra Club. Finally, water interests have also stressed the need for such legislation. They include the National Water Resources Association, Southern Water Resources Conference, and New England River Basin Commission.[16]

A strong catalyst for the continued emergence of the new State role in land use planning and management has been the recently circulated Model Land Development Code,[17] a product of more than ten years of effort by the reporters of the American Law Institute. This Code

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[15] Three recent survey reports summarize the new role for States in land use management and decisionmaking: *The State's Role in Land Resource Management,* a report prepared by Richard G. Rubino and William R. Wagner for The Council of State Governments (1972); *The Quiet Revolution in Land Use Control,* prepared by Fred Bosselman and David Callies for The Council on Environmental Quality (1971); and *Managing the Environment: Nine States Look for New Answers,* prepared by Elizabeth H. Haskell, et. al., for the Woodrow Wilson International Center for Scholars (1971). A review of these and other studies is found in *National Land Use Policy Background Papers,* Committee on Interior and Insular Affairs, U.S. Senate, April 1972 (pp. 95–101).

[16] A summary of the eight days of hearings on the S. 3354 (S. 632's precursor in the 91st Congress) and S. 632 and S. 992 (92d Congress) is contained in *National Land Use Policy Background Papers,* Committee on Interior and Insular Affairs, U.S. Senate, April 1972 (pp. 27–38).

[17] American Law Institute, *A Model Land Development Code: Tentative Draft No. 2,* Apr. 24, 1970, and *Tentative Draft No. 3,* Apr. 22, 1971 (Philadelphia).

served as a point of departure for the recent Florida legislation and is being studied carefully by a number of States, including Washington and Wisconsin, as a possible model for their proposals for State land use legislation.

Federal recognition of this "quiet revolution in land use control" can be inferred from the approximately two hundred land use policy bills pending before thirteen Committees of Congress. The most important of these measures are: the public lands, the surface mining, the power plant siting, and the coastal zone management proposals. Virtually all of these bills focus on individual uses or areas of critical concern and more than local significance, and encourage the States to assume a degree of control over them.[18]

In relation to the myriad of pending land use policy bills, the Land Use Policy and Planning Assistance Act is considered by the Committee to be an umbrella measure, an "enabling act" to give the States the financial wherewithal, and require of the States legislation to establish the necessary machinery and procedures, to insure that (1) the States will be receptive to the pending bills and (2) that the many planning tasks these bills will require will not be conducted in isolation one from another.

IV. LEGISLATIVE HISTORY

The first National Land Use Policy Act, S. 3354, (S. 632's precursor), was introduced on January 29, 1970 by Senator Henry M. Jackson. Cosponsors of the measure included Senators Allott, Anderson, Bible, Church, Cranston, Curtis, Gravel, Harris, Hart, Hartke, Hatfield, Jordan of Idaho, Mansfield, McGovern, Metcalf, Moss, Nelson, Packwood, Ribicoff, Stevens, Williams of New Jersey, Yarborough, and Young of Ohio. Hearings were held on March 24, April 28 and 29, and July 8, 1970. The Committee reported S. 3354, as amended, on December 14, 1970, but no floor action was taken in the 91st Congress.

On January 26, 1971, Senator Jackson introduced S. 632, identical to S. 3354, as reported. In his Environmental Message to Congress of February 8, 1971, the President discussed his own National Land Use Policy proposal. This proposal was subsequently introduced by Senators Jackson and Allott (by request) on February 17, 1971 as S. 992. Amendments to S. 992 were featured in the President's Environmental Message to Congress on February 8, 1972 and were introduced by Senators Jackson and Allott (by request) on March 6, 1972. Hearings on S. 632 and S. 992 were held on May 18 and June 7, 22, and 23, 1971.[19]

Senator Mathias introduced S. 2554, a measure similar in many respects to S. 632, on September 21, 1971. Senator Allott followed with S. 3175, similar to S. 992, on February 15, 1972. Finally, Senators Jordan and Allott introduced S. 3177, title I of which is identical to S. 3175 and title II of which contains the provisions of S. 2450, the

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[18] Lists of bills pertinent to land use policy in the 91st and 92d Congress, a chronology and discussion of past, significant land use policy legislation, and a review of land use jurisdiction of Congressional Committees and Subcommittees, are contained in *National Land Use Policy Background Papers,* Committee on Interior and Insular Affairs, U.S. Senate, April 1972 (pp. 39–78).

[19] A summary of the hearings is contained in *National Land Use Policy Background Papers,* Committee on Interior and Insular Affairs, U.S. Senate, April 1972 (pp. 27–38).

Public Land Policy Act also proposed by Senators Allott and Jordan.[20]

S. 632, as reported by the Committee builds upon the best features of all the bills considered by the Committee over the past two and a half years, but particularly those of S. 632 and S. 992. In addition, a number of new approaches not contemplated in previous proposals were introduced, thereby improving the measure ultimately reported. A summary of the major provisions of the bill as reported by the Committee is set out in section I of this Report. Cosponsors are Senators Allott, Anderson, Bible, Bellmon, Church, Gravel, Hatfield, Hollings, Jordan of Idaho, Magnuson, Metcalf, Moss, and Stevens.

V. COST OF THE BILL

In accordance with subsection (a) of section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that the new obligational authority which would be incurred in carrying out S. 632 would be as follows:

1. $800 million, at $100 million annually, in Federal appropriations over an eight full fiscal year period following enactment for grants to the States.
2. An additional $50 million, at $10 million annually, in Federal appropriations over a five full fiscal year period following enactment for administration by the Secretary of the Interior of programs under the Act.

VI. SECTION-BY-SECTION ANALYSIS OF THE BILL

SHORT TITLE

The short title of the Act is "Land Use Policy and Planning Assistance Act of 1972."

TITLE I—FINDINGS, POLICY, AND PURPOSE

FINDINGS

SEC. 101.

This section sets forth the Congressional findings which require the enactment of this Act.

The first finding is that there is a national interest in a more efficient system of land use planning and decisionmaking. It recognizes that population growth, technological advancement, and economic expansion, fragmentation of governmental entities exercising land use controls, and the increased size, scale and impact of private actions, have created an inefficient and costly system of land use decisionmaking which is often based on expediency, inadequate information, short-term economic considerations, and other factors unrelated to sound land use policy. (Subsection (a).)

A second finding is that all levels of government and private enterprise share a lack of understanding of the land use impacts of their

[20] Written and chart-form comparisons of S. 632 and S. 992 and a discussion of the differences between these two bills and S. 2554, S. 3175, and S. 3177 are contained in *National Land Use Policy Background Papers,* Committee on Interior and Insular Affairs, U.S. Senate, April 1972 (pp. 15–20, 211–212).

programs and that a national policy is needed to develop an institutional awareness of and ability to measure such land use impacts. (Subsection (b).)

A third finding is that adequate land use data is lacking and methods for data collection, analysis and dissemination are not readily available. A national land use policy must place a high priority on remedying this lack of necessary data and information. (Subsection (c).)

A fourth finding is that poor land use decisionmaking has resulted in delay, litigation and cancellation of significant needed developments. These include power plants, transmission lines and other public services. The delays have wasted human and economic resources, have threatened public services, and have resulted in the siting of developments according to public and political pressures and not according to a sound and rational system for balancing and assessing relevant environmental, economic, and social land use considerations. (Subsection (d).)

A fifth finding is that Federal agencies often conduct or assist activities which have substantial impacts upon land use, location of population and economic growth, and the quality of the environment. Because of the lack of a coherent and consistent policy, these impacts are often contradictory and the activities which generate them are frequently in conflict with other federal activities and with State and local plans and programs. Undesirable and costly land use patterns result from the absence of such a policy. Federal policies and programs must be coordinated with public and private decisionmaking in accordance with an express national land use policy if inefficiency, waste and duplication are to be avoided. (Subsection (e).)

A sixth finding is that land use planning and management on adjacent non-Federal lands have a great influence on the values and the future of the public domain, the national parks, forests, seashores, lakeshores, recreation and wilderness areas, wildlife refuges, and other Federal lands. As demonstrated by the land use conflicts recently associated with the Everglades National Park in Florida, poor planning and management of adjacent non-Federal lands have often resulted in irreparable damage to national assets which are owned by all of the people. (Subsection (f).)

A seventh finding parallels the sixth: Federal land use decisions, including those concerning the Federal lands, have significant impacts upon State and local land use patterns, and, therefore, greater State, local, and public participation in Federal land use planning, management and decisionmaking is required. (Subsection (g).)

The final finding is that public decisions and programs which affect land use often determine whether people of all income levels and races have or are denied equal access to housing, employment, quality schools and other public services. The Committee intends that a sound land use policy should provide the maximum freedom for all citizens in our democracy to live and to conduct their activities in locations of convenience, diversity, and personal choice. (Subsection (h).)

DECLARATION OF POLICY

SEC. 102.

This section contains the Congressional declaration of policy for the administration and implication of the Act.

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The general statement of policy includes the recognition that to promote the general welfare and to provide for the wise application of Federal resources to strengthen the environmental, economic and social well-being of the American people, the Federal government, consistent with State constitutional authority and delegated local land use responsibilities, must undertake to develop a national land use policy, which incorporates environmental, esthetic, economic, social, and other appropriate factors. This policy is to serve as a guide for national decisionmaking in all Federal and federally assisted programs which have land use impacts. Furthermore, this policy should provide a framework for the development of State and local land use policy. (Subsection (a).)

In particular, the Act declares it to be national policy to—

—favor patterns of land use planning, management, and development which are in accord with publicly recognized environmental, economic and social values and which encourage wise and balanced use of the country's land resources;

—assist State governments to: develop a land use planning process and capability and to implement land use programs for non-Federal lands which will incorporate environmental, esthetic, economic, social, and other factors; develop a framework for formulating, coordinating, and implementing State and local land use policies; and improve upon present State and local land use planning and management efforts with respect to areas of critical environmental concern, key facilities, development and land use of regional benefit, and large-scale development;

—facilitate increased coordination in the administration of Federal programs and in the planning and management of Federal lands and adjacent non-Federal lands; and

—promote the development of systematic methods for the exchange of land use and related data among all levels of government. (Subsection (b).)

The section on policy closes with the declaration that intelligent land use planning and management can and should be a singularly important process for preserving and enhancing the environment, for encouraging beneficial economic development, and for maintaining conditions capable of improving the quality of life. (Subsection (c).)

PURPOSE

SEC. 103.

In this section are stated the purposes of this Act. The purposes are to—

—establish a national land use policy to assist the States to more effectively exercise their constitutional responsibilities for land use planning and management through the development and implementation of State land use programs designed to achieve economically and environmentally sound land uses (subsection (a));

—establish a grant-in-aid program to assist the States to develop and implement the State land use programs (subsection (b));

—establish reasonable and flexible Federal requirements to give guidance to the States in developing their land use programs and to

condition certain Federal assistance on the establishment and implementation of adequate State land use programs (Subsection (c));

—establish the responsibility of the Secretary of the Interior to administer the grant-in-aid program, to review the State land use programs, and to assist the coordination of Federal activities with the State land use programs (Subsection (d));

—develop and maintain a national policy with respect to federally conducted and federally assisted projects having land use implications (Subsection (e)); and

—coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands (Subsection (f)).

TITLE II—ADMINISTRATION OF LAND USE POLICY

OFFICE OF LAND USE POLICY ADMINISTRATION

SEC. 201.

This section establishes within the Department of the Interior an Office of Land Use Policy (hereinafter referred to as the "Office") to, among other things, administer the grant-in-aid program under this Act. To insure the absence of any mission-orientation in the administration of the program, the Office is to be separate from any existing bureau or agency in the Department. (Subsec. (a).)

The Office would have a Director, appointed by the President with the advice and consent of the Senate, to be compensated at the rate provided for in level V of the Executive Schedule Pay Rates, and other officers and employees as may be required. The Secretary of the Interior is directed to assign duties to the Director. (Subsec. (b).)

SEC. 202.

This section prescribes the following duties of the Secretary, acting through the Office—

—administering the Act's grant-in-aid program;

—conducting a continuing study of United States' land resources and their use;

—cooperating with the States in developing standard methods and classifications for the collection of land use data and in establishing procedures for the exchange and dissemination of land use data so as to reduce the costs to the States of maintaining an adequate data base;

—maintaining a Federal Land Use Information and Data Center, with whatever regional branches the Secretary determines necessary, which would have on file: plans for federally initiated and federally assisted activities which have direct and significant land use impacts; whenever practicable and appropriate, the plans and programs of state and local governments and private enterprises which are of more than local significance; statistical data and information on past, present and projected land use patterns also of more than local significance; studies of methods for collection, analysis and evaluation of land use data and information; and whatever other land use information the Director deems appropriate;

—making the Data Center's information available to all levels of government and the public;

—consulting with other Federal officials administering Federal land use planning assistance programs in order to coordinate those programs; and

—providing administrative support for the National Advisory Board on Land Use Policy established pursuant to the next section. (Subsection (a)–(g).)

NATIONAL ADVISORY BOARD ON LAND USE POLICY

SEC. 203.

As noted in section III of this report, activities and programs of the Federal government have often exacerbated existing problems in land use planning and management. This is due to the largely unintended and often conflicting land use impacts of those activities and program. Inter-agency communication on land use matters is a first step toward minimizing the adverse effects of such programs and activities. This section is designed to facilitate such communication.

It directs the Secretary to establish a National Advisory Board on Land Use Policy (hereinafter referred to as the "Board"), the principal task of which is to encourage inter-agency communication on land use matters. (Subsec. (a).)

The Board would be composed of the Director of the Office who would serve as Chairman, representatives of eight departments and agencies which have programs with significant land use impacts (Departments of Agriculture; Commerce; Defense; Health, Education, and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission, and the Environmental Protection Agency); observers from the Council on Environmental Quality, the Federal Power Commission, and the Office of Management and Budget; and representatives of any other agencies which the Secretary may request to participate when matters affecting their jurisdictions are being considered. (Subsec. (b).)

The duties of the Board (which must meet regularly as the Chairman directs) are to include:

—providing the Secretary with information and advice concerning the relationship of the Act's policies and programs to the programs of the agencies represented on the Board;

—rendering advice to the Secretary and the guideline-making agency (see Sec. 502) concerning proposed guidelines, rules, and regulations;

—assisting the agencies represented on the Board and the Secretary in coordinating the review of statewide planning processes and State land use programs assisted under this Act; and

—providing reports to the Secretary on land use matters referred to the Board by the Secretary or the heads of Federal agencies represented on it. (Subsec. (c).)

To assure that the Board is a working and an expert entity, the agency representatives on the Board must be a GS–15 or above and must have no other duties than administration of land use planning and policy, except temporary housekeeping or training duties. Specific duties of each representative assigned by this subsection include representing his agency on the Board; assisting in the coordination and preparation of his agency's comments on guidelines, rules, and regulations for the Act and on the statewide land use planning proc-

esses and state land use programs; assisting in dissemination of policy information and in the implementation of the Act's policies and procedures in his agency; and performing such other land use duties which his agency head directs him to do (Subsec. (d).)

INTERSTATE COORDINATION

SEC. 204

Coordination of land use planning and management in interstate areas is a particularly difficult, but necessary, task if truly effective land use decisionmaking is to be conducted. This section authorizes the States to coordinate their land use efforts with appropriate interstate entities and to use a reasonable portion of the Act's funds to do so. The only restrictions are that this must not affect the allotment of funds to each State and that opportunity is provided for the participation of the public and Federal and local governments. (Subsec. (a).)

The States are also authorized, subject to the same restrictions and to Congressional legislative approval, to enter into interstate compacts to better coordinate their land use planning and management. (Subsec. (b).)

Finally, the Secretary is directed to review federally established or authorized interstate agencies, including but not limited to river basin commissions, regional development agencies, and interstate compact commissions, and prepare recommendations for improvement of organizational structures and procedures for better interstate coordination of land use planning and management. He is also directed to report to Congress no later than two years after enactment concerning the establishment of new, or the use of existing, interstate entities for land use planning coordination purposes. The same restriction concerning governmental and public participation in State initiatives in interstate coordination found in the above two subsections applies to any interstate institutions or procedures recommended by the Secretary. (Subsec. (c).)

TITLE III—PROGRAM OF ASSISTANCE TO THE STATES

SEC. 301.

This section authorizes the Secretary to make annual land use program grants to the States to assist them in developing State land use programs which meet the requirements of this title. (Subsec. (a).)

During the first three fiscal years after enactment, prior to making the first grant the Secretary must be satisfied that a State will use the funds to meet satisfactorily the requirements for a statewide land use process found in Section 302. For any further grants during this period, the Secretary must be satisfied that the state is adequately and expeditiously proceeding to meet the Section 302 requirements for the process. (Subsec. (b).)

Prior to making any further grants after three fiscal years and before five fiscal years from enactment, the Secretary must be satisfied that the State is meeting the Section 302 requirements and is adequately and expeditiously proceeding to meet the requirements for a state land use program found in Sections 303 and 304. (Subsec. (c).)

Prior to making any further grants after five fiscal years from date of enactment, the Secretary must be satisfied that the State has met

and is continuing to meet Sections 303 and 304 requirements for a State land use program. (Subsec. (d).)

(d) For determination of grant eligibility, during the first five fiscal years after enactment the State must submit to the Secretary a report on work completed and scheduled toward developing its land use program. Thereafter the State must submit its land use program for determination of grant eligibility no later than a year after the date of award of each grant. If no grant is active in or requested by a State after five fiscal years from enactment, the State must submit the program for determination of grant eligibility within ninety days. Furthermore, if no grant is active in or requested by any State during any two fiscal year period after the five fiscal years from enactment, the State must submit its program within ninety days after the period ends for determination of eligibility. (Subsec. (e).)

STATEWIDE LAND USE PLANNING PROCESSES

SEC. 302.

Each State is required to have developed an adequate statewide land use planning process by the end of three fiscal years from the date of enactment.

The primary purpose of this process is to insure that a State has an adequate base of professional expertise and data to make wise and informed land use policy and planning decisions in developing its State land use program. Therefore, the statewise land use process must include—

—an up-to-date inventory of the State's land and natural resources;

—an up-to-date statewide data base concerning population densities and trends, economic characteristics and trends, and directions and extent of urban and rural growth;

—projections of the nature and quantity of land needed and suitable for recreation and esthetic appreciation; agriculture, mineral development, and forestry; industry and commerce, including the development, generation, and transmission of energy; transportation; urban development, including the revitalization of existing communities, the development of new towns, and the economic diversification of existing communities which possess a narrow economic base; rural development, taking into consideration future demands for and limitations upon products of the land; and health, educational, and other state and local governmental services;

—an up-to-date inventory of environmental, geological, and physical conditions which influence the desirability of various land uses;

—an up-to-date inventory of State, local government, and private needs and requirements concerning Federal lands within the State;

—an up-to-date inventory of governmental organization and financial resources available for land use planning and management within the State and of State and local programs and activities which have a land use impact of more than local concern;

—the establishment of methods for identifying areas and uses to be included in the State land use program (areas of critical environmental concern, key facilities, large-scale development, and development and land use of regional benefit (see sec. 501));

—the training of state and local land use planning and management personnel;

—the establishment of arrangements for exchanging land use data on an intra- and inter-governmental basis and with the public;

—the establishment of a method for coordinating State and local programs and services significantly affecting land use;

—the conducting of public hearings and preparation of reports on the statewide land use planning process;

—the provision of opportunities for participation of local governments and the public in the statewide land use process and in the guideline- and rule-making for administering the process; and

—the consideration of interstate land use issues (Subsec. (a).)

In the determination of an adequate statewide land use process, the Secretary must also confirm that the State has an eligible State land use planning agency, which must have primary authority for developing and administering the State land use program required by sections 303 and 304. In addition, the agency must have a competent interdisciplinary staff, make use of consultants as needed, and have authority to conduct public hearings and to make available to the public all land use documents and data. Finally, the agency must coordinate its activities with the planning activities of all State agencies undertaking federally financed or assisted planning programs insofar as such programs relate to land use; the regulatory activities of all State agencies enforcing air, water, noise, or other pollution standards; all other relevant planning activities of State agencies; the planning activities of areawide agencies designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966; the planning activities of local governments; and the planning activities of Federal agencies. (See "Note" in section II for a discussion of the relationship of this Act with other Federal laws which mandate land use planning.) (Subsec. (b).)

STATE LAND USE PROGRAMS

SEC. 303.

The States are required to have developed an adequate State land use program by five fiscal years from enactment (two years after having developed the statewide land use process).

The focus of this program should be only the 10% (according to an estimate of the American Law Institute) of land use decisions which impact upon citizens who are not represented by the decisionmaker: the local zoning or land use regulatory authority. The program is to provide democratic decisionmaking for critical areas and uses of more than local concern by encouraging participation of those citizens who would feel the impact of local decisions concerning those areas and uses and by providing guidance by the State, as representative of the affected, larger than local constituency.

First, to insure that the State land use program enjoys an adequate base of data and expertise, the program is required to continue to have a statewide land use planning process which meets all the section 302 requirements (Subsec. (a)).

Secondly, as noted below in the analysis of section 304, this Act is concerned less with the substance of the State land use program than with whether the program can and will be implemented. Therefore, the State land use program is required to have methods of implementation to accomplish certain tasks—

—exercising determinative State authority over use and development of land in areas of critical environmental concern; areas which are or may be impacted by key facilities, including site location and the location of major improvement and access features of key facilities; and large-scale development of more than local significance in its impact upon the environment;

—assuring that local regulations do not unreasonably restrict or exclude development and land use of regional benefit;

—assuring that any source of air, water, noise, or other pollution within the areas or from the uses to which the State land use program applies shall not be located where it would result in a violation of any pollution standard or implementation plan (see "Note" in section II for discussion of the relationship of this Act to the pollution laws);

—regulating large-scale subdivisions to insure the planned maximum beneficial use of land;

—periodically revising the State land use program to meet changing conditions; and

—assuring dissemination of information to and participation of local governments and members of the public in the development of the State land use program and in the guideline- and rule-making for the administration of the program. (Clause (1) of subsec. (b).)

These methods of implementation must include two alternative, but not mutually exclusive techniques: direct State planning and regulation of State administrative review of local land use plans and regulations and their implementation with full powers to approve or disapprove. (The latter approach which reasserts full local authority to devise and apply land use controls and merely establishes State oversight is expected to be the more widely employed approach. See "The Emerging Role of the States" in section III and the discussion on section 303 in section II for a discussion of this subject.) The technique or combination of techniques which is adopted must include the State's authority to prohibit, under State police powers, the use of any land in a manner inconsistent with the State land use program. (Clause (2) of subsec. (b).)

SEC. 304.

This section concludes the requirements which a State land use program must meet in order to continue State eligibility after five fiscal years from enactment. As in section 303, almost all the requirements concern a State's authority and ability to implement its land use program and do not invite the Secretary to scrutinize the substance of the program. The principal exception is the requirement that the State has not excluded from the areas of critical environmental concern in its program any substantial areas of critical environmental concern which are of major national significance and require special planning and management. (The Committee wishes to emphasize that these nationally-important areas must be substantial in area, require very careful planning and management efforts to insure their quality, and be of more than casual and passing importance. The Committee also expects that, using the study of land resources conducted by the Office (in section 202(a)), the Secretary, at a State's request, will inform that State well before the five fiscal year deadline for submission of its land use program of the areas he considers to be of major national significance pursuant to this requirement.) (Subsec. (a).)

In addition, the State is required to be demonstrating good faith efforts to implement the purposes, policies, and requirements of its land use program. However, it is emphasized that failure to demonstrate good faith efforts shall not be construed from the inability of a State to take an action to implement any portion of its land use program when that action is impeded or prevented by an injunction issued by any court of competent jurisdiction. (Subsec. (b).) In keeping with the Act's emphasis on State authority and implementation, two additional requirements are that those laws, regulations and criteria of the State which affect the State land use program and the activities and uses within the program's compass must meet the requirements of this title (subsec. (c)), and that the State land use program has been reviewed and approved by the Governor (subsec. (d)).

To insure that the State land use program is developed in a truly democratic manner: First, in the statewide land use process requirements of section 302, the State is required to have the methods to coordinate, on an intra- and intergovernmental basis and in interstate areas, its program with other planning activities and programs, to disseminate information, and to allow participation of local government and the public. Secondly, in this section's requirements for the State land use program, the State must now be implementing those methods. (Subsec. (e).) The State is also required to utilize for the purpose of furnishing advice to the Federal Government as to whether Federal and federally assisted projects are consistent with the State land use program, procedures established pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and title IV of the Intergovernmental Cooperation Act of 1968, and is required to participate in the programs provided for in Section 701 of the Housing Act of 1954, as amended. (See the "Note" in section II for a discussion of the relationship of this Act with the Housing Act of 1954 and other Federal laws which mandate land use planning.) (Subsec. (f).)

FEDERAL REVIEW AND DETERMINATION OF GRANT ELIGIBILITY

SEC. 305.

This section details the procedures for review of the States' performances to determine grant eligibility and continued grant eligibility. These procedures include an automatic appeals process from an original, negative finding. To insure inter-agency coordination on land use matters, to avoid any mission-oriented bias, and to draw on various professional skills and expertise, interagency communication procedures are mandated in the review process.

During the first five fiscal years after enactment, before making a grant, the Secretary must consult with and consider the views and recommendations of the heads of agencies listed below and of all other Federal agencies for the programs of which significantly affect land use in the State in question, and with the Board. (Subsec. (a).)

After five fiscal years from enactment, the Secretary must follow the same review procedure. However, there is a thirty day time limit on submission of recommendations to the Secretary from the various agencies. Furthermore, the Secretary of Housing and Urban Development is required not only to submit his general recommendations but to declare whether he is satisfied with the large-scale development, de-

velopment and land use of regional benefit and large-scale subdivision components of the State land use program. The Secretary of the Interior is not to determine grant eligibility unless the Secretary of HUD is satisfied that those components meet the requirements of this Act. Due to these extra duties, the time limit for the Secretary of HUD is sixty days. The Secretary of HUD is deemed to be satisfied if he does not communicate his views to the Secretary within that period. (Subsec. (b).)

The Secretary has a six month time limit in which to make a determination of eligibility. (Subsec. (c).)

The heads of the following Federal agencies must be consulted in the review process; the Departments of Agriculture; Commerce; Defense; Health, Education and Welfare; Housing and Urban Development; and Transportation; the Atomic Energy Commission; the Federal Power Commission; and the Environmental Protection Agency. (Subsec. (d).)

Revisions in a State land use program are expected and permissible except when inconsistent with the requirements of this title. The State must submit the revisions to the Secretary for a determination of consistency. (Subsec. (e).)

APPEALS PROCESS

A determination of State grant ineligibility by the Secretary is not final. Rather, upon such a determination, the President must order the establishment of a three member ad hoc hearing board. The three members include: the Governor of a State other than the one judged ineligible selected by the President within thirty days (if the Governor appoints a representative this must be done within ten days of the President's appointment of the Governor) ; one knowledgeable, impartial Federal official, who is not a member of an agency represented on the National Advisory Board, also selected by the President within thirty days; and a knowledgeable, impartial citizen selected by the first two members within twenty days, or if they cannot agree, by the President within twenty days thereafter. (Clause (1) of subsec. (f).)

The Secretary must specify to the hearing board in writing his reasons for determining ineligibility. The hearing board is to hold whatever hearings and receive whatever evidence it feels necessary and then specify in writing, spelling out its reasons, whether it finds the Secretary's determination of ineligibility to be reasonable. If the hearing board determines such a finding to be unreasonable, the Secretary must find the State eligible for grants under the Act. If the hearing board concurs in the finding of ineligibility, the Secretary must find the State ineligible. The hearing board is deemed to have concurred with the Secretary if it makes no determination within ninety days of its appointment. (Clause (2) of subsec. (f).)

Compensation for members is to be fixed by the President at not greater than $150 per diem plus travel expenses and a per diem in lieu of expenses while travelling. The Executive Office of the President provides administrative support for the hearing boards and the President is authorized to issue regulations concerning the boards. (Clauses (3) through (5) of subsec. (f).)

CONSISTENCY OF FEDERAL ACTIONS WITH STATE LAND USE PROGRAMS

SEC. 306.

This section provides a strong, additional (to the grant funds) incentive to the States to develop adequate State land use programs in the requirement that Federal activities must be consistent with State land use programs which meet the requirements of this title.

Consistency with State land use programs of all Federal projects and activities significantly affecting land use, including but not limited to grant, loan or guarantee programs, such as mortgage and rent subsidy programs and water and sewer facility construction programs, with State land use programs which meet this title's requirements is required. Exceptions are possible in cases of overriding national interest, as determined by the President. Consistency is to be determined by procedures prescribed by the Secretary in line with the criteria specified in section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and title IV of the Intergovernmental Cooperation Act of 1968. (Subsec. (a).)

State and local governments submitting applications for Federal assistance for activities having significant land use implications in an area subject to a State land use program which meets this title's requirements must indicate the views of the State land use planning agency and/or the Governor as to the consistency of such activities with the program. The agency and/or Governor must consult with the local governments prior to certifying the activity. However, to insure that a local application is not overly delayed by inaction at the State level, if no certification is made within sixty days, the local government may forward the application to the relevant Federal agency and that agency must make an independent appraisal of the activity's consistency with the State land use program. Again, inconsistent activities must not be approved by Federal agencies. (Subsec. (b).)

Federal agencies conducting or assisting public works activities in areas not subject to a State land use program meeting the requirements of this title must conduct those activities so as to minimize any adverse impact on the environment resulting from decisions concerning land use. (Subsec. (c).)

FEDERAL ACTIONS IN THE ABSENCE OF STATE ELIGIBILITY

SEC. 307.

This section calls for certain Federal actions when States are judged to be ineligible for grants under the Act.

First, at any time, if a State is determined ineligible for grants or if eligibility is withdrawn by the Secretary with the concurrence of the ad hoc hearing board, the Secretary has authority to terminate assistance to that State under this Act (Subsec. (a).)

Second, where any major Federal action significantly affecting the use of non-Federal lands is proposed after five fiscal years from enactment in a State found ineligible for grants under this title, the responsible Federal agency must hold a public hearing in that State at least 180 days prior to the proposed action concerning the effect of that action on land use, taking into account the requirements of this title. The findings of the responsible Federal agency and the comments of the Secretary and, where appropriate, of the Secretary of HUD, must

be made part of the statement required by section 102(2)(C) of the National Environmental Policy Act. This requirement is subject to exception upon determination of the President. (Subsec. (b).)

Finally, a State found ineligible after five fiscal years from enactment would suffer a withholding of funds from three grant-in-aid programs over a three fiscal year period at a rate of 7% the first fiscal year, 14% the second year, and 21% the third year. These funds would be held in the Treasury and be disbursed immediately to the State when it is determined eligible for grants under this Act. The funds subject to withholding are: (a) those for airport development provided for pursuant to the Airport and Airway Development Act; (b) federal-aid highway funds other than Interstate Highway funds or funds for planning or research; and (c) funds from the Land and Water Conservation Act of 1965, as amended. (See "Federal Actions in the Absence of State Eligibility" discussion in section II for a discussion of sanctions described in this paragraph.) (Subsections (c), (d), and (e).)

TITLE IV—FEDERAL-STATE COORDINATION AND COOPERATION IN THE PLANNING AND MANAGEMENT OF FEDERAL AND ADJACENT NON-FEDERAL LANDS

This title addresses a particularly divisive, difficult, and chronic land use conflict: that between the use of Federal lands and the use of adjacent non-Federal lands. The title requires a degree of compatibility between the uses of Federal land and the uses of adjacent non-Federal lands and provides a mechanism and procedures for resolution of general and specific conflicts between the planning and management of Federal lands and adjacent non-Federal lands.

SEC. 401.

This title contains two requirements for compatibility between the planning and management of Federal lands and non-Federal lands.

First, the Federal land management agencies must coordinate (except where "paramount national policies, programs, and interests" justify the lack of coordination) their programs, policies, rules, and regulations for the Federal lands with State land use programs which meet the requirements of title III and with State and local land use inventory, planning and management activities on or for adjacent non-Federal lands. (Subsec. (a).) Any Federal agency proposing any new program, policy, rule, or regulation relating to the Federal lands must publish a statement concerning the consistency (or the reasons for the inconsistency) of the proposal with State and local land use planning and management thirty days prior to the taking effect of the proposal. Furthermore, except where otherwise provided by law, a public hearing on the proposal must be held at least seven days prior to final publication of the statement. (Subsec. (b).)

SEC. 402.

Second, the States in their State land use programs must possess, and make good faith efforts to apply, methods for insuring that Federal lands, particularly National Parks, wilderness areas, and game and wildlife refuges, are not degraded by inconsistent land use patterns in the same immediate geographical area (such as unsightly strip de-

velopments or development which promises a high degree of air, water, or noise pollution). The section 305 procedures for determining grant eligibility apply to this additional requirement for State land use programs.

AD HOC FEDERAL-STATE JOINT COMMITTEES

SEC. 403.

Ad Hoc Federal-State Joint Committees are to be established to consider and make recommendations concerning the resolution of generic and specific conflicts between planning and managemet of Federal lands and adjacent non-Federal lands. It is expected that most conflicts over the uses of Federal lands and adjacent non-Federal lands are not of sufficient magnitude or difficulty to warrant the establishment of these committees and the undertaking of procedures outlined below. However, the very existence of the mandate to create these committees, particularly at the request of a Governor, serves as an "action-forcing" device to encourage early resolution of those minor conflicts. Furthermore, this mandate provides, for the first time, a process to resolve the more significant land use conflicts which have not been resolved before for lack of such a process.

The Secretary, at his discretion or upon the request of the Governor of any State involved, is directed to establish these joint committees. Each joint committee must include representatives of the Federal agencies which have jurisdiction over the Federal lands involved, representatives of affected user groups, including recreation and conservation interests, and officials of local governments. The Secretary must consult with the State and local governments involved prior to appointing local officials and representatives of user groups. The Governor of each State appoints the officials of affected State agencies. (Subsec. (a).)

Each joint committee is limited to a two-year life span. (Subsec. (b).) Members of joint committees may be compensated at the rate of $100 per diem and travel expenses, including a per diem in lieu of subsistence, while traveling. However, only the travel expenses may be paid to full-time Federal or State officials. (Subsec. (c).)

The joint committees are to have the services of professional and clerical staff and of an executive secretary. (Subsec. (d).)

The Secretary is directed to assign duties to the joint committees. These duties may include—

—conducting a study of, and making recommendations concerning methods of resolving, general problems with and conflicts between inventory, planning, and management activities on or for Federal lands and on or for adjacent non-Federal lands, including, where relevant, the State land use programs;

—investigationg and making recommendations concerning specific conflicts between planning and management of Federal lands and of adjacent non-Federal lands;

—assisting the States and the Office of Land Use Policy Administration in developing systematic and uniform methods for collecting, exchanging, and utilizing land use data; and

—advising the Secretary, during his review of State land use programs, of opportunities for reducing potential conflicts and improving coordination in the planning and management of Federal lands and adjacent non-Federal lands. (Subsec. (e).)

Upon receipt of the recommendations of a joint committee, the Secretary is directed to take any appropriate or necessary action to minimize conflicts involving lands within his authority, to work with other Federal agencies to arrive at solutions for conflicts involving Federal lands within their jurisdictions, and, where he determines the Executive Branch lacks the legal authority to resolve conflicts between planning and management of Federal lands and adjacent non-Federal lands, to recommend enactment of appropriate legislation to Congress. (Subsec. (f).)

The Secretary is directed to give careful consideration to the purposes of this Act and not resolve any conflict in a manner which would impair the national purpose or objective for which the Federal lands involved are being managed. (Subsec. (g).)

BIENNIAL REPORT ON FEDERAL-STATE COORDINATION

SEC. 404.

The Secretary is directed to report biennially to the President and Congress concerning problems in, and recommendations for improvement of, the coordination of planning and management of Federal lands and of adjacent non-Federal lands, the resolution of specific Federal lands—adjacent non-Federal lands conflicts, and, at the request of the Governor of any State involved, any unresolved conflict, with any recommendation he and the Governor or Governors may have for its resolution.

SEC. 405.

This section provides for hearings, where warranted, by the joint committees in the States where conflicts exist; and where no hearings are warranted, provides for solicitation of the views of all affected parties by the joint committees and a submission of summaries of such views together with the committees' recommendations to the Secretary. The Secretary is directed to review in full the relevant hearing record or summary of views, and may hold public hearings, prior to making any recommendations or taking any actions to resolve a particular conflict.

SEC. 406.

This section provides for provision of information and detail of personnel for temporary duty to the joint committees from Federal agencies and federally established or authorized interstate agencies.

TITLE V—GENERAL

DEFINITIONS

SEC. 501.

This section contains eight definitions. The last four definitions concern the four categories of critical areas and uses which would be covered by a State land use program. These definitions are highly flexible in that the State is expected to further define, either legislatively or through guidelines, these critical areas or uses in the process of developing its program.

—The definition of "State" is a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

—The definition of "local government" is any general purpose county or municipal government, or regional combination thereof, or where appropriate, any other public agency which has land use planning authority.

—The definition of "Federal lands" is any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management of the land, except lands held in trust for the benefit of Indians, Aleuts, and Eskimos.

—The definition of "non-Federal lands" is all lands which are not "Federal lands" as defined above or are not held by the Federal Government in trust for the benefit of Indians, Aleuts, and Eskimos.

—The definition of "areas of critical environmental concern" is areas as designated by the State on non-Federal lands where 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, or could unreasonably endanger life and property as a result of natural hazards of more than local significance. Such areas are to include: coastal wetlands, marshes, and other lands inundated by the tides; beaches and dunes; significant estuaries, shorelands, and flood plains of rivers, lakes and streams; areas of unstable soils and high seismic activity; rare or valuable ecosystems; significant undeveloped agricultural, grazing, and watershed lands; forests and related land which require long stability for continuing renewal; scenic or historic areas; and such additional areas as a State determines to be of critical environmental concern.

—The definition of "key facilities" is: (1) public facilities on non-Federal lands which tend to induce development and urbanization of more than local impact, including: any airport that is designed to serve for regular, scheduled air passenger service, and other airports of greater than local significance; interchanges between the Interstate Highway System and frontage access streets or highways; major interchanges between other limited access highways and frontage access streets or highways; frontage access streets and highways of State concern; and major recreational lands and facilities; and (2) major facilities on non-Federal lands for the development, generation, and transmission of energy.

—The definition of "development and land use of regional benefit" is land use and private development on non-Federal lands for which there is 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.

The definition of "large scale development" is private development on non-Federal lands which, because of its magnitude or the magnitude of its effect on the surrounding environment, is likely to present issues of more than local significance in the judgment of State. In determining what constitutes "large scale development" the State should consider, among other things, the amount of pedestrian or vehicular traffic likely to be generated; the number of persons likely to be present; the potential for creating environmental problems such as air, water, or noise pollution; the size of the site to be occupied; and the likelihood that additional or subsidiary development will be generated.

GUIDELINES, RULES, AND REGULATIONS

SEC. 502. The President is authorized to designate an agency or agencies to issue guidelines to the Federal agencies to assist them in carrying out the requirements of the Act. Prior to formal issuance, proposed guidelines must first be submitted to the Secretary, the Board, and the heads of agencies represented on the Board for their comments. (Subsec. (a).)

The Secretary is directed to promulgate rules and regulations to implement the guidelines and to administer the Act, after consultation with State representatives, local officials, the Board, and heads of agencies represented on the Board. (Subsec. (b).)

BIENNIAL REPORT

SEC. 503. This section directs the Secretary, with the assistance of the Office and the Board, to report biennially to the President and the Congress on land resources, uses of land, and current and emerging problems of land use.

UTILIZATION OF PERSONNEL

SEC. 504. This section authorizes Federal agencies to furnish information and detail personnel on temporary duty on a reimbursable basis to the Office of Land Use Policy Administration, upon the request of the Secretary.

TECHNICAL ASSISTANCE

SEC. 505. This section authorizes the Office to provide, directly or through contracts, grants, or other arrangements, technical assistance to any State eligible for grants under this Act.

HEARINGS AND RECORDS

SEC. 506. This section authorizes the Director of the Office, with the concurrence of the Secretary, to hold hearings, take testimony, receive evidence and print and distribute proceedings and reports. (Subsec. (a)). The Director is authorized toadminister oaths (Subsec. (b)) and to the extent permitted by law, all appropriate records and papers of the Office are to be made available for public inspection during ordinary Office hours (Subsec. (c)).

ALLOTMENTS

SEC. 507. From the sums appropriated for grants pursuant to section 510, the Secretary is authorized to award grants in amounts not to exceed ninety percent of the cost of developing the State land use programs for the first five fiscal years after enactment and in amounts not to exceed two-thirds of the estimated costs of administering the programs thereafter. (Subsec. (a).)

The allocation of grant funds is to be made on the basis of regulations of the Secretary which must take into account the amount and nature of each State's land resource base, population, pressures resulting from growth, financial need, and other relevant factors. (Subsec. (b).)

Any grant under this Act must increase, and not replace, State funds presently available for State land use planning activities. In addi-

tion, any grant under this Act must be in addition to, and may be used jointly with, grants or other funds available for land use planning surveys or investigations under other federally assisted programs. (Subsec. (c).)

No funds granted under this Act may be expended for the acquisition of any interest in real property. (Subsec. (d).)

PAYMENTS

SEC. 508.

This section sets forth the method of computing and paying to the States the amounts provided for in the Act. The amounts paid to the States must be estimated by the Secretary prior to the beginning of each calendar quarter or other period prescribed by him. Estimates for each period are to be based on records and information furnished by the State to the Secretary as he finds necessary. (Subsec. (a).)

The Secretary must adjust his estimated amount for each pay period by that amount for any previous pay period by which the State was paid either a greater or lesser amount than that which should have been paid. Payments to the States are to be made through the disbursing facilities of Department of the Treasury. (Subsec. (b).)

FINANCIAL RECORDS

SEC. 509.

This section requires each State receiving funds pursuant to the Act to provide the Secretary with reports and evaluations containing information concerning the status, disposition and application of Federal funds and the operation of the statewide land use planning process or State land use program. State reports and evaluations must contain information required by the Secretary as stipulated in regulations published in the Federal Register. The State must also make available to the Secretary any records which he requires to verify State reports and evaluations. (Subsec. (a).)

Access must be provided to those books, documents, papers and records of any State receiving funds under the Act which the Secretary, the Comptroller General of the United States, or any other duly authorized representative may require for the purposes of audit to determine that funds granted are used in accordance with the Act. (Subsec. (b).)

AUTHORIZATION OF APPROPRIATIONS

SEC. 510. A sum of $100 million annually is authorized to be appropriated to the Secretary for grants to States under the Act for each of the eight fiscal years after enactment.

SEC. 511. A sum of $10 million annually is authorized to be appropriated to the Secretary for administration of the Act for each of the five fiscal years after enactment. After the end of the fourth fiscal year, the Secretary is directed to review the programs established by this Act and submit to Congress his analysis and recommendations for amendment to the Act. (See section II, for a discussion of the reason for the termination of the authorizations in two steps.)

EFFECT ON EXISTING LAWS

SEC. 512. This section contains the savings clauses. In particular, nothing in the Act is to be construed—

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—to expand or diminish Federal, interstate or State jurisdiction, responsibility, or rights in the field of land and water resources planning, development, or control; to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States, a State, or a region and the Federal Government; or to limit the authority of Congress to authorize and fund projects (Subsection (a));

—to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this Act (Subsection (b));

—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; or to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico (Subsection (c)).

VII—COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs by majority vote in executive session on June 5, 1972 recommends that S. 632, as amended, be enacted.

Pursuant to subsection (b) of section 133 of the Legislative Reorganization Act of 1946, as amended, the following is a tabulation of votes of the members of the Committee on Interior and Insular Affairs on a motion to report S. 632, as amended, favorably to the Senate:

YEAS 13		NAYS 3
Jackson	Allott	Fannin
Anderson	Jordan	Hansen
Bible	Hatfield	Buckley
Church	Bellmon	
Moss		
Burdick		
McGovern		
Metcalf		
Gravel		

VIII. EXECUTIVE COMMUNICATIONS

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 11, 1971.

Hon. SPIRO T. AGNEW,
President of the U.S. Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed is a draft of a proposed bill "To establish a national land use policy to authorize the Secretary of the Interior to make grants to encourage and assist the States in the preparation and implementation of 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."

We recommend that the bill be referred to the appropriate committee for consideration and we recommend that it be enacted.

This legislative proposal was referred to in President Nixon's message on the environment, which was submitted to the Congress on February 8, 1971. In it President Nixon stated:

"The use of our land not only affects the natural environment but shapes the pattern of our daily lives. Unfortunately, the sensible use of our land is often thwarted by the inability of the many competing and overlapping local units of government to control land use decisions which have regional significance.

"While most land use decisions will continue to be made at the local level, we must draw upon the basic authority of State government to deal with land use issues which spill over local jurisdictional boundaries. The States are uniquely qualified to effect the institutional reform that is so badly needed, for they are closer to the local problems than is the Federal Government and yet removed enough from local tax and other pressures to represent the broader regional interests of the public. Federal programs which influence major land use decisions can thereby fit into a coherent pattern."

The proposed bill encourages the States to exercise their responsibility more fully to deal with certain critical land use problems of more than local impact. Under the proposal Federal grants would be made to assist States in developing and managing land use programs. Grants for up to 50% of cost would be made to develop State land use programs, including plans covering selected areas, and laws or regulations necessary to implement the programs.

Grants would also be made for up to 50% of the cost of managing State land use programs which meet certain requirements set forth in the draft bill. For example, the programs should include methods for inventorying, designating and exercising control over the use of land within areas of critical environmental concern or areas impacted by key facilities, as well as methods for controlling large-scale development and methods for assuring that local laws and regulations do not restrict development of regional benefit, and for controlling land use around new communities.

The proposed bill authorizes the President to designate an agency to issue guidelines to assist Federal agencies in carrying out the requirements of this Act. I understand that the President intends to give this responsibility to the Council on Environmental Quality.

While the Department of the Interior is assigned the primary responsibility for the administration of this program, the Department of Housing and Urban Development will share this responsibility with regard to those aspects of the State land use program dealing with large-scale development, key facilities, development and land use of regional benefit and new communities.

A section-by-section analysis of the bill is enclosed.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Land Use Policy Act of 1971."

FINDINGS AND DECLARATIONS OF POLICY

SEC. 101. (a) The Congress hereby finds and declares that decisions about the use of land significantly influence the quality of the environment, and that present State and local institutional arrangements for planning and regulating land use of more than local impact are inadequate, with the result:

(1) that important ecological, cultural, historic and aesthetic values in areas of critical environmental concern which are essential to the well-being of all citizens are being irretrievably damaged or lost;

(2) that coastal zones and estuaries, flood plains, shorelands and other lands near or under major bodies or, courses of water which possess special natural and scenic characteristics are being damaged by ill-planned development that threaten these values;

(3) that key facilities such as major airports, highway interchanges, and recreational facilities are inducing disorderly development and urbanization of more than local impact;

(4) that the implementation of standards for the control of air, water, noise and other pollution is implied;

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

(6) that the usefulness of Federal or federally-assisted projects and the administration of Federal programs are being impaired;

(7) that large-scale development often creates a significant adverse impact upon the environment.

(b) The Congress further finds and declares that there is a national interest in encouraging the States to exercise their full authority over the planning and regulation of non-Federal lands by assisting

the States, in cooperation with local governments, in developing land use programs including unified authorities, policies, criteria, standards, methods and processes for dealing with land use decisions of more than local significance.

DEFINITIONS

SEC. 102. For purposes of this Act: (a) "Areas of critical environmental concern are areas where uncontrolled development could result in irreversible damage to: important historic, cultural, or aesthetic values, or natural systems or processes, which are of more than local significance; or life and safety as a result of natural hazards of more than local significance. Such areas shall include:

(1) Coastal zones and estuaries: "Coastal zones" means the land, waters, and lands beneath the waters in close proximity to the coastline (including the Great Lakes) and strongly influenced by each other, and which extend seaward to the outer limit of the United States territorial sea and include areas influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, sounds, embayments, harbors, lagoons, inshore waters, channels, and all other coastal wetlands. "Estuary" means the part of the mouth of a river or stream or other body of water having unimpaired natural connection with the open sea and within which the sea water is measurably diluted with fresh water derived from land drainage;

(2) shorelands and flood plains of rivers, lakes and streams of State importance;

(3) rare or valuable ecosystems;

(4) scenic or historical areas; and

(5) such additional areas of similar valuable or hazardous characteristics which a State determines to be of critical environmental concern.

(b) "Key facilities" are public facilities which tend to induce development and urbanization of more than local impact and include the following:

(1) any major airport that is used or is designed to be used for instrument landings;

(2) interchanges between the Interstate Highway System and frontage access streets or highways; major interchanges between other limited access highways and frontage access streets or highways; and

(3) major recreational lands and facilities.

(c) "Development and land use of regional benefit" includes land use 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.

(d) "State" includes the 50 States of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

PROGRAM DEVELOPMENT GRANTS

SEC. 103. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to make not more than two annual

grants to each State to assist that State in developing a land use program meeting the requirements set forth in section 104 of this Act. Such grants shall not exceed 50 percent of the costs of program development. Prior to making the first grant, the Secretary shall be satisfied that such grant will be used in development of a land use program meeting the requirements set forth in section 104. Prior to making a second grant, the Secretary shall be satisfied that the State is adequately and expeditiously proceeding with the development of a land use program meeting the requirements of section 104.

(b) States receiving grants pursuant to this section shall submit to the Secretary not later than 1 year after the date of award of the grant a report on work completed toward the development of a State land use program. A State land use program meeting the requirements of section 104 of this Act shall satisfy the requirements for such a report.

(c) The authority to make grants under this section expires three years from date of enactment.

PROGRAM MANAGEMENT GRANTS

SEC. 104. Following his review of a State's land use program, the Secretary is authorized to make a grant to that State to assist it in managing the State land use program. Successive grants for this purpose may be made annually to any State resubmitting its land use program for review by the Secretary. Grants made pursuant to this section shall not exceed 50 percent of the cost of managing the land use program. Grants authorized by this section shall be made by the Secretary only if, in his judgment:

(a) The State's land use program includes:

(1) a method for inventorying and designating areas of critical environmental concern;

(2) a method for inventorying and designating areas impacted by key facilities;

(3) a method for exercising State control over the use of land within areas of critical environmental concern and areas impacted by key facilities;

(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;

(6) a method for controlling proposed large-scale development of more than local significance in its impact upon the environment;

(7) a system of controls and regulations pertaining to areas and developmental activities previously listed in this subsection which are designed to assure that any source of air, water, noise or other pollution will not be located where it would result in a violation of any applicable air, water, noise or other pollution standard or implementation plan;

(8) a method for periodically revising and uprating the State land use program to meet changing conditions; and

(9) a detailed schedule for implementing all aspects of the program.

For purposes of complying with paragraphs (1) through (7) of this subsection (a), any one or a combination of the following general techniques is acceptable: (i) State establishment of criteria and standards subject to judicial review and judicial enforcement of local implementation and compliance; (ii) direct State land use planning and regulation; (iii) State administrative review of local land use plans regulations and implementation with full powers to approve or disapprove.

(b) In designating areas of critical environmental concern, the State has not excluded any areas of critical environmental concern to the Nation.

(c) In controlling land use in areas of critical environmental concern to the Nation, the State has procedures to prevent action (and, in the case of successive grants, the State has not acted) in substantial disregard for the purposes, policies and requirements of its land use program.

(d) State laws, regulations and criteria affecting areas and developmental activties listed in subsection (a) of this section are in accordance with the policy, purpose and requirements of this Act; and that State laws, regulations and criteria affecting land use in the coastal zone and estuaries further take into account:

(1) the aesthetic and ecological values of wetlands for wildlife habitat, food production sources for aquatic life, recreation, sedimentation control, and shoreland storm protection; and

(2) the susceptibility of wetlands to permanent destruction through draining, dredging, and filling, and the need to restrict such activities.

(e) the State is organized to implement its State land use program.

(f) the State land use program has been reviewed and approved by the Governor.

(g) the Governor has appropriate arrangements for administering the land use program management grant.

(h) the State, in the development, revision, and implementation of its land use programs, has provided for adequate dissemination of information and for adequate public notice and public hearings.

(i) the State has: (1) coordinated with metropolitan-wide plans existing on January 1 of the year in which the State land use program is submitted to the Secretary, which plans have been developed by an area-wide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966;

(2) coordinated with appropirate neighboring States with respect to lands and waters in interstate areas;

(3) taken into account the plans and programs of other State agencies and of Federal and local governments.

(j) the State utilizes for the purpose of furnishing advice to the Federal Government as to whether Federal and Federally-assisted projects are consistent with the State land use program, procedures established pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968.

FEDERAL REVIEW OF GRANT APPLICATIONS AND STATE LAND USE PROGRAMS

SEC. 105. (a) The Secretary before making a program management grant pursuant to section 104, shall consult with the heads of all Federal agencies which conduct or participate in construction, development or assistance programs significantly affecting land use in the State, and shall consider their views and recommendations. The Secretary shall not approve a grant pursuant to section 104 until he has ascertained that the Secretary of Housing and Urban Development is satisfied that those aspects of the State's land use program dealing with large-scale development, key facilities, development and land use of regional benefit, and new communities meet the requirements of section 104 for funding of a program management grant.

(b) The Secretary shall take final action on a State's application for a grant authorized under section 104 not later than six months following receipt for review of the State's land use program.

CONSISTENCY OF FEDERAL ACTIONS WITH STATE LAND USE PROGRAMS

SEC. 106. (a) Federal projects and activities significantly affecting land use shall be consistent with State land use programs funded under section 104 of this Act except in cases of overriding national interest. Program coverage and procedures provided for in regulations issued pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968 shall be applied in determining whether Federal projects and activities are consistent with State land use programs funded under section 104 of this Act.

(b) After December 31, 1974, or the date the Secretary approves a grant under section 104, whichever is earlier, Federal agencies submitting statements required by Section 102(2)(C) of the National Environmental Policy Act shall include a detailed statement by the responsible official on the relationship of proposed actions to any applicable State land use program which has been found eligible for a grant pursuant to section 104 of this Act.

FEDERAL ACTION IN THE ABSENCE OF STATE LAND USE PROGRAMS

SEC. 107. Where any major Federal action significantly affecting the use of non-Federal lands is proposed after December 31, 1974, in a State which has not been found eligible for a program management grant pursuant to section 104 of this Act, the responsible Federal agency shall hold a public hearing in that State at least 180 days in advance of the proposed action concerning the effect of the action on land use taking into account the relevant considerations set out in section 104 of this Act, and shall make findings which shall be submitted for review and comment by the Secretary, and where appropriate, by the Secretary of Housing and Urban Development. Such findings of the responsible Federal agency and comments of the Secretary or the Secretary of Housing and Urban Development shall be part of the detailed statement required by Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq*). This section shall be subject to exception where the President determines that the interests of the United States so require.

AVAILABILITY OF FEDERAL EXPERTISE

SEC. 108. (a) The Secretary shall provide advice upon request to States concerning the designation of areas of critical environmental concern to the Nation.

(b) Federal agencies with data or expertise relative to land use and conservation shall take appropriate measures, subject to appropriate arrangements for payment or reimbursement, to make such data or expertise available to States for use in preparation, implementation, and revision of State land use programs.

GUIDELINES

SEC. 109. The President is authorized to designate an agency or agencies to issue guidelines to the Federal agencies to assist them in carrying out the requirements of this Act.

ALLOCATION OF FUNDS

SEC. 110. (a) Funds for grants authorized by sections 103 and 104 of this Act shall be allocated to the States based on regulations issued by the Secretary which shall take into account State population and growth; nature and extent of coastal zones and estuaries and other areas of critical environmental concern and other relevant factors.

(b) No grant funds shall be used to acquire real property.

(c) A refusal by the Secretary to provide a program development or program management grant authorized by this Act shall be in writing.

MISCELLANEOUS

SEC. 111. (a) The Secretary shall develop, after appropriate consultation with other interested parties, both Federal and non-Federal, such rules and regulations covering the submission and review of applications for grants authorized by sections 103 and 104 as may be necessary to carry out the provisions of this Act.

(b) A State receiving a grant under the provisions of section 103 or 104 of this Act, the agency designated by the Governor to administer such grant, and State agencies allocated a portion of a grant shall make reports and evaluations in such form, at such times, and containing such information concerning the status and application of Federal funds and the operation of the approved management program as the Secretary may require, and shall keep and make available such records as may be required by the Secretary for the verification of such reports and evaluations.

(c) The Secretary, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of a grant recipient that are pertinent to the grant received under the provisions of section 103 or 104 of this Act.

(d) Nothing herein shall be interpreted to extend the territorial jurisdiction of any State.

(e) Nothing herein shall be construed to imply Federal consent to or approval of any State or local actions which may be required or prohibited by other Federal statutes or regulations.

APPROPRIATION AUTHORIZATION

SEC. 112. (a) There are hereby authorized to be appropriated not to exceed $20,000,000 in each fiscal year, 1972 through 1976, for grants authorized by sections 103 and 104 of this Act, such funds to be available until expended.

(b) There are hereby authorized to be appropriated such sums as may be necessary for the Secretary of the Interior and the Secretary of Housing and Urban Development to administer the program established by this Act.

SECTION-BY-SECTION ANALYSIS

The proposed bill would establish a National Land Use Policy to encourage the States to plan and regulate land use in certain critical areas.

Section 101.—Declares Congressional findings that present State and local institutional arrangements for planning and regulating land use are inadequate and have resulted in haphazard land development and the loss of important environmental values. It is in the national interest to encourage and assist the States in strengthening the institutional framework for planning and controlling the use of non-Federal lands.

Section 102.—Contains definitions. "Areas of critical environmental concern" are areas where uncontrolled development could result in irreversible damage to important values. Such areas include coastal zones and estuaries and other similar areas. "Key facilities" are public facilities which tend to induce development of more than local impact, such as airports and highway interchanges. "Development and land use of regional benefit" means private development, the regional need for which outweighs a local conflicting interest.

Section 103.—Authorizes the Secretary of the Interior to make two successive annual grants of up to 50% of the cost to States of developing a land use program. Prior to receiving the second grant, the State must submit a report of its progress in developing a program.

Section 104.—Authorizes the Secretary to make grants of up to 50% of the cost to States of managing their land use program. Such grants will be made only if the State program, in the Secretary's judgment, meets certain specified criteria. It must include methods for inventorying, designating and exercising State control over areas of critical environmental concern and areas impacted by key facilities, a method for assuring that local regulations do not restrict land use and private development of regional benefit, a policy for influencing the location of new communities, a method for controlling the use of land around new communities, a method for controlling proposed large-scale development of more than local impact on the environment and a detailed schedule for implementing all aspects of the program. The program must not exclude areas of critical environmental concern to the Nation and must take into account the unique values and fragile nature of coastal zones and estuaries, particularly coastal wetlands. The program must also meet certain other organizational and procedural requirements.

Section 105.—Requires the Secretary to consult with Federal agencies with activities or programs affecting land use before making a program management grant. The Secretary shall not approve such a grant unless the Secretary of Housing and Urban Development is

satisfied that those aspects of the State land use program dealing with large-scale development and key facilities, development and land use of regional benefit, and new communities meet the requirements of section 104. The Secretary shall act on a program management grant application within 6 months after receipt of the State's land use program.

Section 106.—Establishes a requirement for consistency of Federal projects and activities with State land use programs. It also requires that Federal agencies submitting environmental statements pursuant to the National Environmental Policy Act include a detailed statement of the relationship of the proposed Federal action to any applicable State land use program which has been found eligible for a management grant.

Section 107.—Requires that where a State has not been found eligible for a management grant, any major Federal action significantly affecting the use of non-Federal lands proposed after December 31, 1974, must be preceded by a public hearing at least 180 days before the proposed action, followed by detailed findings upon which the Secretaries of the Interior or Housing and Urban Development will be allowed to comment, unless the President determines that the interests of the United States are to the contrary.

Section 108.—Authorizes the Secretary to provide advice upon request to States about areas of critical environmental concern to the Nation and directs Federal agencies to share pertinent expertise with the States.

Section 109.—Authorizes the President to designate an agency to issue guidelines to assist Federal agencies carrying out their responsibilities under the Act.

Section 110.—Authorizes the Secretary to allocate grant funds to the States on the basis of State population and growth, extent of coastal areas and areas of critical environmental concern and other relevant factors. No grant funds shall be used by the State to acquire real property.

Section 111.—Authorizes the Secretary to develop, in consultation with other interested parties, rules and regulations covering the submission and review of grant applications and to require reports concerning the status and operation of the program. It requires that certain records be kept and authorizes the Secretary and the Comptroller General to audit and examine such records. It further provides that nothing in this Act shall extend State territorial jurisdiction or be construed to conflict with other Federal statutes or regulations.

Section 112.—Authorizes the appropriation of $20 million in each fiscal year 1972 through 1976 for grants to States. It further authorizes the appropriation of such sums as necessary for the Departments of Interior and Housing and Urban Development to administer the program.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., April 12, 1971.

Senator HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: This is in response to your request for the Advisory Commission on Intergovernmental Relations' views on S. 632, the Land and Water Resources Act of 1971. While the ACIR has not

taken a specific position on all the issues raised in S. 632, it has adopted several policy positions having a bearing on the bill.

Urban Growth and Planning.—In its 1968 report on *Urban and Rural America: Policies for Future Growth*, the ACIR recommended "* * * the development of a national policy incorporating social, economic, and other considerations to guide specific decisions at the national level which affect the patterns of urban growth." In an earlier report, *Fiscal Balance in the American Federal System*, the Commission stressed the importance of a strong well-staffed State planning program directly under the Governor. The Commission concluded that the planning function should include formulation for the consideration by the Governor and legislature of comprehensive policies and long-range plans for the effective and orderly development of human and material resources of the State. More specifically, the Commission in its *Urban and Rural America* report recommended "* * * the development of State policy incorporating social, economic and other considerations to guide specific decisions at the State level which affect patterns of urban growth." The States were urged to "* * * give consideration both to the national policy and to the views of local governments in the formulation of State plans and policy dealing with urban growth."

Grant Consolidation.—The Advisory Commission in its 1967 report *Fiscal Balance in the American Federal System*, recommended "* * * that the Congress and the President strive toward a drastic decrease in the number of separate authorizations for Federal grants * * *" In the same report, the Advisory Commission further recommended "* * * consolidating in so far as possible into a single Congressional enactment a set of planning requirements both functional and comprehensive to be applicable to Federal grant and aid programs, both present and future * * *"

The following comments are those of the staff only, although some of the discussion relates to those general policy positions of the Commission stated above:

"The purposes of the bill are not inconsistent with the ACIR's basic position on the need for a national urbanization policy.

"Yet, it might be appropriate to consider this legislation within the broader context of such a national policy, which in the long run will probably emerge as a consequence of piecemeal consideration of measures such as this. Legislation introduced in the last session of Congress (H.R. 13217 and S. 3228, "Balanced Urbanization Policy and Planning Act of 1969") implemented ACIR recommendations concerning comprehensive and functional planning assistance grants. Title III of these bills sought to develop an intergovernmental system of planning and coordination that buttresses the development of a national urbanization policy. The following principles set forth in Title III are pertinent to S. 632 as land use is basic to other kinds of planning:

> "(a) comprehensive planning assistance is confined generally to general purpose units of government and one set of areawide multi-jurisdictional agencies within a State is used (unless no overall State assistance program is established);
>
> "(b) comprehensive planning must be consistent with that of the next larger jurisdiction (which complements the thrust of Title IV of the "Intergovernmental Cooperation Act of 1968");

"(c) functional plans must be consistent with comprehensive planning and not inconsistent with the functional plans of the next larger jurisdiction;

"(d) emphasis is placed upon the States if they choose to take up the challenge laid down by this Title, but bypassing is permitted to localities and areawide jurisdictions if this responsibility is rejected;

"(e) an attempt is made to place the allocation of funds on a formula basis, rather than on an across-the-board project basis; and

"(f) finally, immediate responsibility for administering the program is assigned to the Department of Housing and Urban Development, but operating within broad guidelines to be established by the Executive Office of the President.

"Enactment of this broad comprehensive and functional planning grant program admittedly is a difficult assignment. Extensive institutional arrangements would have to be made in both the executive and legislative branches of the Federal government.

"We are concerned that possible conflict, overlap, or duplication may occur between the categorical program activities proposed by the bill and those now being carried out in the Department of Housing and Urban Development's comprehensive planning assistance (701) program. A substantial amount of the funds granted under the 701 program have gone to States and local governments for land use planning and related activities. The provisions of the existing 701 program already authorize grants which would accomplish much of what is sought by S. 632 in encouraging land use planning. Consideration then might be given to increasing the funding level of 701; to assure that an adequate amount is reserved for land use planning, Congress could specify that 40 to 50 percent of 701 funds be earmarked for grants to States, river basin commissions, and interstate agencies. Alternatively, 701 might be folded into S. 632.

"We feel it is essential that the land use planning component of urban growth policy, as proposed by S. 632, be integrated with the broader comprehensive planning process encompassing the full spectrum of physical, social, human and economic issues. To accomplish this objective, we feel that HUD should be assigned with the responsibility for disbursement of grant funds for land use planning.

"However, in evolving the organization and procedures for carrying out the broad purposes of S. 632, Congress ought to consider assigning to an identifiable unit of the Domestic Council those policy responsibilities set forth in Title I. Moreover, the importance of relating national land use policy with the development of a national urban growth policy as called for in Title VII, Part A, of the 'Housing and Urban Development Act of 1970' should be underscored. Therefore, we would urge that the Land and Water Resources Council not be established as an independent unit, charged with policy and program functions, apart from those responsibilities that Congress has already called for in the development of a national urban growth policy. At the very least, S. 632 should be amended to make clear that its purposes provide an institutional framework to implement Title VII of the 'Housing and Urban Development Act of 1970.'"

"To ensure coordination of Federal agency activities with statewide land use plans, we feel that responsibilities for this function must rest

with the Office of Management and Budget in the Executive Office of the President. In short, we are suggesting that the policy, coordination, and grant disbursement responsibilities under the Act should rest with the Domestic Council, OMB, and HUD, respectively.

"Finally, the far-reaching effects of S. 632 and similar bills emphasize the necessity for Congress to provide within its standing committee structure a means to assure continuing systematic review and study of the progress toward a national urban growth policy. While the ACIR does not presume to say whether this responsibility should be exercised by select or special committees, we do feel that a decision must be made for effective oversight of the kind of new responsibilities envisaged by S. 632."

You and your committee are to be complimented for developing and deliberating on this wide-ranging omnibus legislation. We appreciate the opportunity to comment on this bill.

Sincerely,

WILLIAM R. MACDOUGALL,
Executive Director.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 17, 1971.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department 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."

We recommend that in lieu of S. 632 there be enacted S. 992, the Administration's National Land Use Policy Act of 1971.

S. 632 expands the scope of the Water Resources Planning Act to include as an additional function of the Water Resources Council, the administration of a national land use policy and program which is contained in title III of the bill.

Titles I, II and IV of S. 632 are basically the original Water Resources Planning Act rewritten to reflect the expanded function of the Water Resources Council, renamed the "Land and Water Resources Council", and to expand the duties of the river basin commissions to include coordination of land use activities.

Title III of S. 632 is the most significant addition to the Water Resources Planning Act. It creates "A National Land Use Policy and program of assistance to the States". The extensive statement of findings, policy and purpose which preface title III vividly outlines the need for far-reaching changes in the ways in which land use decisions are made in this country. It cites the irreparable environmental damage, the waste of human and economic resources, and the proliferating urban sprawl which has resulted from lack of planning and coordination in land use decisions. Issues of lasting concern to the well-being of a State, region or even the Nation are frequently decided on the basis

of expediency or the short term economic benefit to individuals or local communities, to the detriment of the broader interests.

On February 8, 1971, in his message to the Congress on the environment, President Nixon stated:

"The use of our land not only affects the natural environment but shapes the pattern of our daily lives. Unfortunately, the sensible use of our land is often thwarted by the inability of the many competing and overlapping local units of government to control land use decisions which have regional significance.

"While most land use decisions will continue to be made at the local level, we must draw upon the basic authority of State government to deal with land use issues which spill over local jurisdictional boundaries. The States are uniquely qualified to effect the institutional reform that is so badly needed, for they are closer to the local problems than is the Federal Government and yet removed enough from local tax and other pressures to represent the broader regional interests of the public. Federal programs which influence major land use decisions can thereby fit into a coherent pattern."

On February 11, 1971, this Department sent to Congress the Administration's proposed bill to establish a national land use policy. This bill has been introduced and is now pending before your Committee as S. 992. For reasons discussed below, we feel that S. 992 will better accomplish the important objectives common to both bills than S. 632, and we recommend that S. 992 be enacted in lieu of S. 632.

Both bills are directed at the same basic problem and there are many similarities in the proposed solutions. Both recognize that the States have primary constitutional authority for land use regulation and both would encourage, by means of Federal grants, the States to exercise this authority better. Grants are conditioned upon compliance with specific statutory criteria which largely consist of procedural directives. The State must establish a land use planning agency with sufficient authority to develop methods for controlling certain types of land use. Both bills provide for coordination of State plans with plans of other States, Federal agencies or other interested parties.

Both bills require Federal actions and federally-supported activities generally to conform to federally approved State plans.

Of all man's activities, his use of the land has the most far-reaching impact on the environment. Adverse impacts are often irreversible, and as pressures from population and economic growth expand, the number of adverse impacts will increase. To reverse trends which could in a few life times cause irretrievable damage to the natural values formed through billions of years, will require nothing less than a profound reshaping of the institutions and attitudes that make up the pattern of land use in this country; attitudes towards property and natural resources that date back to the American frontier and before.

This will not be accomplished overnight, or by a single piece of legislation. It will certainly require the efforts of all the sectors of our society working together to provide a quality environment based on ecologically sound principles of development.

The National Environmental Policy Act and other specific pollution control measures have brought us closer to this goal. S. 992 and S. 632 are intended to be a next logical step. The principal difference between

them is, in our view, that S. 632 tries to cover so much ground in a single stride that its directives sometimes lack clarity and sharp focus. The efforts it seeks to promote are likely to be too widely diffused to achieve its objectives. The expressed aim of S. 632 is to develop a national land use policy incorporating "ecological, environmental, esthetic, economic, social and other appropriate factors." The bill further states that the policy would favor ecologically sound land use planning, management and development and, at the same time, foster beneficial economic activity in all States and regions of the United States, favorably influence patterns of migration to make available to the American people a wide range of scenic, environmental and cultural amenities, revitalize rural communities, facilitate coordination of Federal programs, and systematize methods for the exchange of land use, environmental and ecological information.

This charter is so all encompassing that its objectives are not brought into sharp focus and the effort it engenders will, we feel, be diffused too broadly to accomplish meaningful results.

Much of the effort it promotes is directed at developing planning data and data exchange centers. The immediate problem is not, in our view, attributable to lack of good plans but to the lack of effective methods to implement them. Until the institutions which control land use are restructured, the further accumulation of planning data would be largely fruitless.

SELECTIVE IDENTIFICATION OF PRIORITIES

The Administration's bill is more selective and specific and for that reason, we feel has a greater probability of achieving its overall aims. It concentrates on what we consider the two most immediate aspects of the problem: reforming the State institutions in which land use decisions of more than local concern are made, and coordinating Federal programs or federally supported programs which have an impact on land use.

The State agency provided for in the Administration's bill would not, as in S. 632, be responsible for planning and control of land use for virtually the entire State. S. 992 recognizes that the great majority of land use decisions are of purely local interest and should continue to be made locally. The Administration's bill would require the State agency to regulate only those land use decisions which the State decides are of more than local importance.

Narrowing the scope of the bill in this way serves two purposes. First, it concentrates State and Federal resources on the most critical problems; and second, it limits State involvement in local affairs to those issues of State or regional importance. Where the State does become involved, it will not always be to the detriment of local interests. A Statewide planning agency may provide a stability and continuity necessary for certain types of development. Other issues will involve decisions which might not result in increase of the local tax revenues, normally an important consideration to any community, but which might produce greater long term benefits to the community as, for example, by assuring available recreation areas to attract future residents.

As the States gain experience in developing methods to effectively implement land use plans, they and the Federal agency which admin-

isters the program, will develop a better grasp of the type of planning data which is relevant to effective land use planning.

FEDERAL JURISDICTION

A major specific difference between S. 992 and S. 632 is the provision for Federal jurisdiction over the program. S. 632 gives Federal administrative control to an expanded Water Resources Council whereas the Administration's bill places primary administrative responsibility in the Department of the Interior with provison that no program management grant will be approved unless the Secretary of Housing and Urban Development is satisfied that those aspects of the State program dealing with large-scale development, key facilities development of land use of regional benefit and new communities meet the bill's requirements for such grants.

The Department of the Interior has leading land and natural resource management expertise in the Federal government. The Department of Housing and Urban Development has leading expertise in urban planning. Both Departments currently conduct or sponsor a great number of Federal programs which would directly relate to and require coordination with approved State land use plans. Accordingly, we feel that S. 992 is highly preferable in this respect.

ORGANIZATION OF STATE AGENCY

S. 632 contains some fairly specific requirements for the make up of the State agency. (§§ 304, 305). S. 992, in keeping with the Administration's objective of giving maximum responsibility to the States, provides simply (§ 104(g)) that the Governor shall develop the organizational basis for the program. Following this principle the Administration's proposal provides a variety of acceptable methods for implementing the program ranging from court enforcement of State set standards to outright State regulation or joint State-local regulations with a provision for the State to override the locality in cases of more than local impact. Land acquisition authority is intentionally omitted. State acquisition is regarded as the least desirable means of accomplishing sound environmental planning since it is costly and tends to discourage constructive innovation. Moreover, the burden of managing the acquired land might divert the agency from its principal objective.

COASTAL ZONE

The Administration's bill gives specific attention to the coastal zone which includes river estuaries, coastal marshes and all other coastal wetlands. These areas are choice targets for developers. When filled they provide easily developed, choice waterfront property. Marine biologists have long realized that these areas are essential breeding grounds and nurseries for much of the marine population. To destroy our coastal wetlands may produce short term economic gain but greater long term losses.

Since the principal threat to these coastal areas is essentially land based activity, we are treating the coastal zone problem in the broader context of comprehensive land-use policy.

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To assure that coastal zone and estuarine management receive the priority attention of coastal States, S. 992 would identify the coastal zones and estuaries as "areas of critical environmental concern" and require that a State's land use program include a method for inventorying and designating such areas. Further the Secretary would be authorized to make grants for program management only if State laws affecting land use in the coastal zone and estuaries take into account (1) the aesthetic and ecological values of wetlands for wildlife habitat, food production sources for aquatic life, recreation, sedimentation control, and shoreland storm protection and (2) the susceptibility of wetlands to permanent destruction through draining, dredging, and filling, and the need to restrict such activities. Most important, perhaps, funds for program development and management would be allocated to the States under regulations which must take into account the nature and extent of coastal zones and estuaries.

S. 632 makes no specific provision for the problems of the coastal zone.

PROGRAM DEVELOPMENT GRANTS

The Administration's bill provides two annual "program development grants" conditioned on expressed intent to use the money to develop a land use program meeting the requirements of the Act. S. 632 embodies the same concept of a program development grant with two differences: it extends the period of eligibility from two to five years and adds nine specific conditions for "continued grant eligibility" during the five years. It is unclear to what extent each condition must be met by the end of each year. In any event we feel that two years is sufficient time to develop the basic program and that successive grants could be conditioned upon specific accomplishments.

AUTHORIZED FUNDING

A major difference between the two bills is the amount authorized and the sharing formula. S. 632 authorizes $100 million annually with the Federal government paying up to 90% of the costs in the first five years and 66⅔% thereafter. S. 992 authorizes $20 million annually for fiscal years 1972 through 1976 with the Federal government paying up to 50% of all costs.

The lower amount provided by S. 992 is consistent with its selective identification of priorities. We feel that Federal dollars are better spent by concentrating efforts on the areas where the needs are greatest and the objectives more specific. Several States are already moving toward some of the objectives of S. 992. Today all States have some form of planning department as compared with only 39 in 1960. A number of States have laws meeting some of the requirements of the Act and the number is increasing. Therefore we feel that the amount of funds and the sharing ratio provided in S. 992 for grant assistance is reasonable.

FEDERAL PROGRAMS RELATION TO STATE PLANS

Neither bill includes Federal land within the State plans. Both bills require that except in case of overriding national interest, Federal programs and federally assisted programs shall be "in accordance" (S. 632) or "consistent" (S. 992) with approved State plans.

S. 992 provides that where a State has no approved plan any major Federal action proposed after December 31, 1974 which would significantly affect the use of non-federal lands must be preceded by a public hearing at least 180 days in advance, to determine the effect of the action on land use. We feel that this is preferable to the provision of S. 632 which, if a State fails to submit a Statewide land use plan within 5 years after the issuance of regulations by the council, would prohibit any new federally supported action which "may have a substantial adverse environmental impact or which would or would tend to irreversibly or irretrievably commit substantial land or water resources" in the State unless the President intervened for the sake of public health, safety or welfare. It is unclear what would constitute a plan for the purposes of this provision.

Accordingly, for the reasons recited above, we recommend that S. 992 be enacted in lieu of S. 632.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of S. 992 is in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

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]

Accordingly, our comments will focus on these aspects of the bills.

We believe that the licensing and relicensing of hydroelectric 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 suply 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 certificating pipeline facilities, the existence of which might be held inconsistent with a State land use plan. The Federal Power Act and its legislative his-

[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 . . ."

tory 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 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 exclusive 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 de-

lays which might otherwise impair vital utility services and energy supplies.

S. 632 and S. 992 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.

JOHN N. NASSIKAS,
Chairman.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., October 22, 1971.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your request for a report 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."

The President's Environmental Message to Congress, dated February 8, 1971, proposed legislation to establish a National Land Use Policy which will encourage the States, in cooperation with local governments, to plan for and regulate major developments affecting growth and the use of critical land areas. He proposed that this be done by establishing methods for protecting land of critical environmental concern, methods for controlling large-scale development, and improving use of lands around key facilities and new communities. This proposal was submitted to Congress by the Secretary of the Interior and introduced on February 25, 1971, as S. 992.

This Department has reviewed S. 632 and the Administration's bill S. 992, both proposing establishment of a National Land Use Policy. While we concur with many of the objectives of S. 632, we recommend enactment of S. 992 since it is specifically oriented to present critical land use problems.

The Office of Management and Budget advises that there is no objection to the presentation of this report and that enactment of S. 992 would be in accord with the program of the President.

Sincerely,

J. PHIL CAMPBELL,
Under Secretary.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 8, 1972.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: On February 11, 1971, I forwarded to Congress on behalf of the Administration a proposed "National Land Use Policy Act of 1971". Hearings on that bill, S. 992 and other similar legislation, have been held before your Committee, and we understand the Committee is in the process of preparing its report.

I cannot overly stress the importance of this legislation. Land is our most basic and most abused resource. As the President said in his environmental message last year, "The use of our land not only affects the natural environment but shapes the pattern of our daily lives. Unfortunately, the sensible use of our land is often thwarted by the in-

ability of the many competing and overlapping local units of government to control land use decisions which have regional significance." The Administration's proposal represents a crucial step towards reshaping the patterns of land use in closer harmony with wise environmental concepts.

During the past year this topic has received a great deal of public attention. The Council on Environmental Quality released in December, 1971, a study of the latest developments in the land use laws of several States. The Congressional hearings stimulated useful public debate.

In his environmental message to Congress today, the President reiterated his concern with abuse of our land resources and stressed the need for early action to promote responsible land use practices. Because of the importance he attaches to that topic, and as a result of the public attenion which it has received, the President proposed two amendments to broaden and strengthen the Administration's proposal. The first would clarify the scope of State land use regulatory programs explicitly to include control over the siting of such key facilities as major airports, highways and recreation facilities. The second would provide sanctions against any State which failed to implement an adequate land use program.

The legislation submitted last year provided in part that to qualify for Federal funding the State land use program must include a method for exercising control over areas impacted by key facilities. Key facilities were defined as public facilities which tend to induce development and urbanization of more than local impact including major airports, highways and rcreation facilities. Decisions as to the actual siting of such key facilities can, of course, dictate the uses to which the surrounding lands subsequently are put. Thus, we believe it desirably clearly to require that the States' land use programs include methods for exercising control over key facility site location, as well as major improvements and access features of such facilities.

Under our proposal of last year, the principal incentive for States to develop land use programs was the Federal matching grants for program development and program management. We now are persuaded that economic sanctions as well as grants should be provided to assure State action. Recognizing the significant effect which key facilities can have on broad land use patterns, the sanctions which we propose would reduce the amount of financial assistance under those Federal programs with the most far-reaching effect upon land use—airport and highway construction and recreation facilities. The proposed reductions would apply to any State which has not developed an adequate land use program by June 30, 1975. Any funds withheld from States which have not implemented adequate land use programs would be diverted to States complying with the National Land Use Policy Act, since complying States would be better able to make sound decisions with respect to activities with major land use impacts.

Attached to this letter is proposed language which would accomplish the objectives set forth above. In addition, in view of the passage of time since the proposal was introduced, the dates contained in certain sections (listed on the attachment) must be revised.

I urge that the Congress adopt these recommended amendments and act promptly to complete its consideration of this vitally important legislation.

The Office of Management and Budget has advised that enactment of S. 992, with the amendments recommended herein, would be in accord with the program of the President.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

ATTACHMENT

1. Amend section 104(a)(3) by adding: "including a method for exercising State control over the site location and the location of major improvements and major access features of key facilities."

2. Amend section 107 to add "(a)" before the word "Where" at the beginning of the paragraph and to add the following new subsections:

"(b) Section 15 of the Airport and Airway Development Act (P.L. 91–258, 84 Stat. 227) is amended by adding the following new subsection:

"'(d) Any State which has not been found eligible for a management grant under section 104 of the National Land Use Policy Act by June 30, 1975, shall suffer a reduction of 7% of its entitlement to Federal funds apportioned for airport development pursuant to paragraphs (A) and (B) of subsection (a)(1) and paragraphs (A) and (B) of subsection (a)(2) of this section, in fiscal year 1976. If that State has not been found eligible by June 30, 1976, it shall suffer a reduction of 14% in fiscal year 1977, and if not found eligible by June 30, 1977, shall suffer a reduction of 21% in fiscal year 1978. Any funds so withheld shall be included in the aggregate of airport and airway development funds and shall be made available to States found eligible for financial assistance under section 104 of the National Land Use Policy Act according to the criteria prescribed for the apportionment of such funds, excluding for purposes of computation any State or States found ineligible for financial assistance under section 104 of the National Land Use Policy Act.'"

"(c)(1) Section 104, title 23 of the United States Code is amended by adding the following subsection:

"'(f) Any State which has not been found eligible for a management grant under section 104 of the National Land Use Policy Act by June 30, 1975, shall suffer a reduction of 7% of its entitlement to Federal-aid highway funds exclusive of planning and research which would otherwise be apportioned to such State in fiscal year 1976. If that State has not been found eligible by June 30, 1976, it shall suffer a reduction of 14% in fiscal year 1977, and if not found eligible by June 30, 1977, shall suffer a reduction of 21% in fiscal year 1978. Any funds so withheld shall be included in the aggregate of Federal-aid highway funds and shall be made available to States found eligible for assistance under section 104 of the National Land Use Policy Act according to criteria prescribed for the apportionment of Federal-aid highway funds, excluding for purposes of computation any State or States found ineligible for financial assistance under section 104 of the National Land Use Policy Act.'"

"(c)(2) Section 109(f), title 23 of the United States Code is amended by deleting 'or control of' in the first sentence.

"(d) Subsection 5(b) of the Land and Water Conservation Fund Act of 1965 (P.L. 88–578, 78 Stat. 897) is amended by adding after the second paragraph the following paragraph:

"'Any State which has not been found eligible for a management grant under section 104 of the National Land Use Policy Act by June 30, 1975, shall suffer a reduction of 7% of its entitlement under paragraphs (1) and (2) of this subsection in fiscal year 1976. If that State has not been found eligible by June 30, 1976, it shall suffer a reduction of 14% in fiscal year 1977, and if not found eligible by June 30, 1977, shall suffer a reduction of 21% in fiscal year 1978. Any funds so withheld shall be included in the aggregate of land and water conservation funds and shall be made available according to the criteria prescribed for the apportionment of such funds, excluding for purposes of computation any State or States found ineligible for financial assistance under section 104 of the National Land Use Policy Act.'"

3. Change short title to read: "National Land Use Policy Act of 1972"

4. Amend sections 106(b) and 107 by changing "1974" to "1975".

5. Amend section 112 to change "1972 through 1976" to read "1973 through 1977".

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, the National Land Use Policy Act of 1972, now before your Committee is one of the top priority pieces of environmental legislation of this Administration. I have been following very closely the progress of your Committee as it has been considering this legislation, and I want to commend the Committee for its efforts and for the very considerable progress which it has made in reconciling the various proposals into what I hope will be a landmark piece of legislation.

Committee Print number three combines many of the strong points of both S. 992, the Administration's proposal, and S. 632, the bill which you have sponsored. Frank Bracken, Legislative Counsel of this Department, has furnished the minority and majority counsels of the Committee a list of amendments which would bring Committee Print number three closely in line with the Administration's proposal. I attach a copy of that list for your easy reference.

Of the amendments set forth on that list, there are five which I consider particularly important.

Amendment numbered 5 would correct what I consider to be a major defect in the Committee Print. As drafted, section 302 would condition State eligibility for grants on the preparation of a variety of inventories, projections, and other planning data. Some of these are phrased so broadly as to require an almost endless effort, making the grant eligibility criteria uncertain and diverting the States efforts from what we consider to be the most critical land use issue which is

land use controls. We, therefore, propose prefacing section 302 with language which would require simply a process for inventorying resources, projecting trends and gathering data.

Amendment numbered 12 would require the States to develop land use controls after three years instead of after five years as the Committee Print now provides. The effect of amendments numbered 5 and 12 is to require the States to concentrate on the critical aspect of the land use problem and to require it sooner.

Amendment numbered 20 parallels number 12 by imposing the sanctions after three years instead of after five.

Amendments numbered 21 and 22 reduce the sharing ratio to fifty percent and the authorized funding to $20 million annually for Fiscal Years 1973–1977. This lower level of funding is consistent with the more selective effort which we feel should be encouraged.

There are a number of other amendments which would enhance the bill. The ones mentioned above are, however, particularly important and would, in my view, result in an effective land use bill.

Again let me commend the Committee for its effort.

Sincerely yours,

ROGERS C. B. MORTON,
Secretary of the Interior.

AMENDMENTS TO SENATE COMMITTEE PRINT 3 DATED MARCH 13, 1972

1. Page 6, line 17, strike all after ";" through line 20.

2. Page 7, after line 8, add new subsections (d) and (e) as follows:

"102 (d) The Congress further finds and declares that decisions about the use of land significantly influence the quality of the environment, and that present State and local institutional arrangements for planning and regulating land use of more than local impact are inadequate, with the result:

"(1) that important ecological, cultural, historic and aesthetic values in areas of critical environmental concern which are essential to the well-being of all citizens are being irretrievably damaged or lost;

"(2) that coastal zones and estuaries, flood plains, shorelands and other lands near or under major bodies or courses of water which possess special natural and scenic characteristics are being damaged by ill-planned development that threaten these values;

"(3) that key facilities such as major airports, highway interchanges, and recreational facilities are inducing disorderly development and urbanization of more than local impact;

"(4) that the implementation of standards for the control of air, water, noise, and other pollution is impeded;

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

"(6) that the usefulness of Federal or federally assisted projects and the administration of Federal programs are being impaired; and

"(7) that large-scale development often creates a significant adverse impact upon the environment.

"(e) The Congress further finds and declares that there is a national interest in encouraging the States to exercise their full authority over the planning and regulation of non-Federal lands by assisting the States, in cooperation with local governments, in developing land use planning process including unified authorities, policies criteria, standards, methods, and processes for dealing with land use decisions of more than local significance."

3. Page 9, line 9 through page 11, line 3, strike and substitute in lieu:

"SEC. 202. The Secretary, to the extent he deems necessary to carry out the purposes of this Act,

"(1) develop and maintain a Federal Land Use Information and Data Center, with such regional branches as the Secretary may deem appropriate, which has on file such information pertaining to land use planning and management as the Secretary deems appropriate and useful;

"(2) cooperate with the States and interstate agencies in the development of standard methods and classifications for the collection of land use data;

"(3) make the information maintained at the Data Center available to Federal, interstate, State, and local agencies involved in land use planning and to the public;

"(4) consult with other officials of the Federal Government responsible for the administration of Federal land use planning assistance programs to States, their political subdivisions, and other eligible agencies in order to coordinate such programs; and

"(5) administer the grant program established under title II of this Act."

4. Page 11, line 4 through page 13, line 19, strike.

5. Page 16, line 16, strike and insert in lieu: "land use planning program which shall include a process for—"

6. Page 16, lines 17–19, strike.

7. Page 17, lines 16–19, strike.

8. Page 18, lines 2 and 6 and page 19, line 1, strike "The establishment of a method for".

9. Page 18, line 20, strike "The establishment of arrangements for".

10. Page 18, lines 14–19, strike.

11. Page 19, lines 7–10, strike.

12. Page 19, after line 12, insert language from page 21, line 9 to page 23, line 15 (renumbered as appropriate).

13. Page 19, line 14, change "process" to "program".

14. Page 20, line 18–21, strike.

15. Page 20, lines 22–24, strike.

16. Page 21, lines 1–8, strike.

17. Page 28, line 7 to page 30, line 10, strike.

18. Page 31, line 13, change period to comma and add "as determined pursuant to subsection (a) of this section".

19. Page 31, line 17, strike all after "agencies" through "section 302;" on page 31, line 20

20. Page 33, line 19, strike and insert in lieu "by June 30, 1975, shall".

Page 33, line 19, strike "The following" and insert "1976" after "fiscal year".

Page 33, line 20, strike and insert in lieu "eligible by June 30, 1976"

Page 33, line 21, strike "The following".

Page 33, line 22, insert "1977" after "Fiscal year" and strike "Seven years from the".

Page 33, line 23, strike "date of enactment of that act" and insert in lieu "June 30, 1977".

Page 33, line 24, strike "The following" and add, "1978" after "Fiscal year

21. Pages 34 and 35, subsections (d) and (e) should be similarly amended.

22. Page 36, line 9, change "ninety" to "fifty".

Page 36, line 10, add a period after "programs".

Page 36, lines 11–14, strike.

23. Page 36, line 19, after "need," add "extent of coastal zone,"

24. Page 38, line 19, change $100,—" to "$20,—".

Page 38, line 20, strike "annually" and insert "in each of fiscal years 1973–1977"

THE WHITE HOUSE,
Washington, April 24, 1972.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: There are three legislative proposals pending before your Committee I consider particularly important in this Nation's comprehensive effort to protect our environment. They are: the National Land Use Policy Act (S. 992), the Mined Area Protection Act (S. 993), and the National Resource Lands Management Act (S. 2401).

The first two proposals were among those which I set out in my environmental message to the Congress of February 8, 1971; the National Resource Lands Management Act was submitted by the Interior Department later in 1971. In my environment message in February of this year, I proposed amendments to strengthen the National Land Use Policy Act. I am encouraged by the facts that hearings have been held by your Committee on all three bills and that all three have received strong public support. I am also pleased to note that the Committee has held several executive sessions on the Land Use Bill. However, none of these bills has yet been reported out of the Committee.

Over the past several years your Committee has consistently played an important role in this country's environmental awakening. I know, therefore, that you share my sense of the significance of this legislation.

As a Nation we have taken our land resources for granted too long. We have allowed ill-planned or unwise development practices to destroy the beauty and productivity of our American earth. Priceless and irreplaceable natural resources have been squandered. These three

proposed laws are aimed at changing all this. Their common objective is to place decisions regarding land use in the broader perspective of environmental protection, and to assure maximum foresight and comprehensive planning in the utilization of our physical resources.

The proposed National Land Use Policy Act would restructure the institutions which govern land use in this country to better reflect regional considerations in those land use decisions—the great majority—whose impact spills over local jurisdictional boundaries. It would require States to control large scale development; to control development in areas of critical environmental concern and in areas impacted by such key growth-inducing facilities as highways, airports, and major recreation facilities; to guide the siting of highways and airports; and to insure that development of regional benefit is not unfairly excluded by local regulation.

The proposed Mined Area Protection Act would make land reclamation and environmental protection an integral part of all mining operations. States would be required to establish a permit program based on approval of a mining and reclamation plan in advance of operations.

The proposed National Resource Lands Management Act would establish a comprehensive policy, based on multiple use and environmental protection, for the management of 450 million acres of public land by the Bureau of Land Management in the Department of the Interior. It would give the Secretary of the Interior broad authority to implement the policy.

The country needs these bills urgently. And as you well know the time for action by the 92nd Congress is growing short. I urge your Committee to move ahead rapidly on this important legislation. The staff of the Department of the Interior and the Council on Environmental Quality will continue to cooperate with your Committee in every way possible.

I am taking the liberty of forwarding a copy of letter to Senator Allott.

Sincerely,

RICHARD NIXON.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C. June 12, 1972.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed, as you requested by letter dated June 6, 1972, is a computation of the amounts which would be withheld from States under section 307 of committee print number 5 of the National Land Use Policy bill. It is similar to the list furnished the House Interior Committee except that Interstate Highway funds are not included.

Sincerely yours,

FRANK A. BRACKEN,
Legislative Counsel.

Enclosure.

[Thousands of dollars]

State	Highway	Airports	L. & W.C.F.	Total	7 percent
Alabama	25,006	1,601	4,133	30,740	2,152
Alaska	51,104	8,253	2,154	61,511	4,305
Arizona	18,151	2,038	3,297	23,486	1,644
Arkansas	17,386	1,228	3,019	48,633	3,404
California	99,955	7,263	17,848	125,066	8,755
Colorado	21,926	2,013	3,578	27,517	1,926
Connecticut	15,081	844	4,299	20,224	1,416
Delaware	5,926	172	2,418	8,516	596
Florida	35,355	2,563	6,674	44,592	3,121
Georgia	31,321	1,984	4,778	38,083	21,666
Hawaii	6,546	288	2,609	9,443	661
Idaho	11,651	1,345	2,358	15,354	1,075
Illinois	60,982	3,617	10,205	74,804	5,236
Indiana	31,038	1,823	5,427	38,288	2,680
Iowa	26,172	1,500	3,547	31,219	2,185
Kansas	25,150	1,717	3,307	30,174	2,112
Kentucky	21,454	1,379	3,819	26,652	1,866
Louisiana	22,202	1,613	4,299	28,114	1,968
Maine	8,397	732	2,502	11,631	814
Maryland	18,937	1,165	4,991	25,093	1,757
Massachusetts	25,411	1,567	6,338	33,316	2,332
Michigan	49,023	3,594	8,422	61,039	4,273
Minnesota	32,384	2,166	4,437	38,987	2,729
Mississippi	18,691	1,235	3,044	22,970	1,608
Missouri	35,533	2,156	5,134	42,823	2,998
Montana	18,523	2,227	2,376	23,126	1,619
Nebraska	19,763	1,452	2,877	24,092	1,686
Nevada	12,055	1,665	2,402	16,122	1,129
New Hampshire	5,794	317	2,404	8,515	596
New Jersey	31,815	1,926	7,201	40,942	2,866
New Mexico	16,388	1,954	2,555	20,897	1,463
New York	86,519	5,347	15,928	107,794	7,546
North Carolina	31,613	2,021	4,790	38,424	2,690
North Dakota	13,294	1,142	2,301	16,737	1,172
Ohio	55,268	3,318	9,749	68,325	4,783
Oklahoma	24,046	1,624	3,568	29,238	2,047
Oregon	19,232	1,884	3,392	24,508	1,716
Pennsylvania	59,107	3,628	10,667	73,402	5,138
Rhode Island	7,345	258	2,755	10,358	725
South Carolina	16,734	1,092	3,462	21,288	1,490
South Dakota	14,032	1,243	2,329	17,604	1,232
Tennessee	26,946	1,585	4,360	32,891	2,302
Texas	83,190	6,566	9,929	99,685	6,978
Utah	12,546	1,452	2,799	16,797	1,176
Vermont	4,979	247	2,208	7,434	520
Virginia	28,656	1,769	5,056	35,481	2,484
Washington	22,907	1,849	4,322	29,078	2,035
West Virginia	11,933	780	2,938	15,651	1,096
Wisconsin	31,215	2,040	4,830	38,085	2,666
Wyoming	11,154	1,450	2,162	14,766	1,034
District of Columbia	6,591	192	927	7,710	539
Total	1,386,427	102,884	243,000	1,756,775	123,007

IX. CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXXIX of The Standing Rules of the Senate, changes in existing law made by the bill, S. 632 are as follows:

Section 15 of the Airport and Airway Development Act 84 (Stat. 219, 225) is amended by adding the following new section:

"(d) Any State which has not been found eligible for a grant of the Land Use Policy and Planning Assistance Act of 1972 after five fiscal years from the date of enactment of that Act shall suffer a withholding of 7 per centum of its entitlement to Federal funds apportioned for airport development pursuant to paragraphs (A) and (B) of subsection (a)(1) and paragraphs (A) and (B) of subsection (a)(2) of this section in the following fiscal year. If such State has not been found eligible by six fiscal years from the date of enactment

of that Act, it shall suffer a withholding of 14 per centum in the following fiscal year, and, if not found eligible by seven fiscal years from the date of enactment of that Act, shall suffer a withholding of 21 per centum in the following fiscal year. Funds so withheld shall be held in the Department of the Treasury until the State is determined to be eligible for a grant pursuant to the Land Use Policy and Planning Assistance Act of 1972. Upon such determination, the Department of the Treasury shall disburse to the State the funds so withheld."

Section 104, title 23 of the United States Code, is amended by adding the following subsection:

"(g) Any State which has not been found eligible for a grant under the Land Use Policy and Planning Assistance Act of 1972 after five fiscal years from the date of enactment of that Act shall suffer a withholding of 7 per centum of its entitlement to Federal-aid highway funds, other than funds authorized to be appropriated under subsection (b) of section 108 of the Federal Aid Highway Act of 1956, as amended, or funds for planning and research, which would otherwise be apportioned to such State in the following fiscal year. If such State has not been found eligible by six fiscal years from the date of enactment of that Act, it shall suffer a withholding of 14 per centum in the followng fiscal year, and, if not found eligible by seven fiscal years from the date of enactment of that Act, shall suffer a withholding of 21 per centum in the following fiscal year. Funds so withheld shall be held in the Department of the Treasury until the State is determined to be eligible for a grant pursuant to the Land Use Policy and Planning Assistance Act of 1972. Upon such determination, the Department of the Treasury shall disburse to the State the funds so withheld."

Subsection (f) of section 109, title 23 of the United States Code, is amended by deleting "or control of" in the first sentence.

Subsection (b) of section 5 of the Land and Water Conservation Act of 1965 (78 Stat. 897, 900) is amended by adding after the second paragraph the following paragraph:

"Any State which has not been found eligible for a grant under the Land Use Policy and Planning Assistance Act of 1972 after five fiscal years from the date of enactment of that Act shall suffer a withholding of 7 per centum of its entitlement under paragraphs (1) and (2) of this subsection in the following fiscal year. If such State has not been found eligible by six fiscal years from the date of enactment of that Act, it shall suffer a withholding of 14 per centum in the following fiscal year, and, if not found eligible by seven fiscal years from the date of enactment of that Act, shall suffer a withholding of 21 per centum in the following fiscal year. Funds so withheld shall be held in the Department of the Treasury until the State is determined to be eligible for a grant pursuant to the Land Use Policy and Planning Assistance Act of 1972. Upon such determination, the Department of the Treasury shall disburse to the State the funds so withheld."

X. MINORITY AND ADDITIONAL VIEWS

MINORITY VIEWS OF SENATORS FANNIN AND HANSEN

The major resource of early colonial America was a seemingly endless supply of land which could be sold or granted to potential settlers.

Following independence, the Federal Government continued to acquire land and dole it out through a variety of legislative procedures to settlers who would either purchase or make some valuable use thereof.

As America changed from a rural to an urban-oriented community, city life brought with it a rash of new social and economic problems.

To meet the influx of undesirable spin-offs of an urban society, the courts recognized a new concept which had been hidden under the umbrella of the legal repository of state police power. This concept was zoning. Zoning has been used time and time again during the last hundred years in an attempt ot relieve the socio-economic pressures of this country.

The problems which face virtually every urban center in our nation today bear simple witness to the success of zoning meeting the ills of urban expansion.

There is no doubt that zoning in certain local instances has led to a more ordered and proper evolution of communities resulting in improvement of the environment, health, safety, comfort, and welfare of its citizens. But there is little doubt that the record attests to the fact that zoning has proven not to be a sure remedy of urban plight.

As time has passed and local zoning has apparently proven unable to do its job of solving and expanding society's problems, the solution has seemingly been to isolate the planning decisions further and further from the local community—to rely on some higher governmental entity to resolve local problems.

The bill which has been ordered reported contains punitive provisions for those states which do not submit acceptable land use plans for those areas and covering those uses which are agreeable to the Secretary of the Interior.

On the other hand, a preliminary portion of the bill, Section 101 (f), says, "The Congress finds * * * that the primary responsibility and constitutional authority for land use planning on nonfederal lands rests with State and local governments * * *"

We agree with this provision. The responsibility and authority for land use planning within a state is the prerogative of the states which should not be usurped by the Federal government.

If Congress enacts a law which only gives lip service to this principle and then turns around and forces the states to submit to what the Federal government may decide is best for it, then we sincerely believe that one of the last remaining vestiges of state police power will have been usurped.

In this instance, state police power means the right and responsibility of the people of a state, through their state and/or local governments, to decide what is best for them in the way of zoning or planning for zoning within that state.

Legal consultants have advised us that the matters to which this bill relates, and may be made to relate in its federal administration, are clearly a matter within the police power of the states. Those are matters which our Constitution specifically reserved to the states. One citation from a legal treatise says "no rule in Constitutional law is better settled than the principle that all property is held subject to the right of the state reasonably to regulate its use under police power." (16 American Jurisprudence Second 565)

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Another legal treatise reports that Congress cannot require a state by "economic coercion" to give up or compromise any part of its authority, control and supervision of duties falling within its police power. It goes on to say, however, that if a state's sovereignty is maintained and its acts voluntarily as a result of Congressional financed inducement, rather than economic coercion, it may make arrangements with the Federal government for the effectuation of its duties. (81 Corpus Juris Secundum 870, 895)

Such a voluntary arrangement of a state with the Federal government has been upheld by the Supreme Court.

We believe any layman must agree with us that when the reported bill, in the Section entitled "Sanctions for Non Compliance," stipulates that every state which has not been determined eligible for grants within five years (regardless of whether it wants such grants) begins to have its federal funds for airports and airways, highways and recreation facilities cut back at a rate of an additional seven per cent per year, there is nothing voluntary at all about this bill. It, we believe. constitutes "economic coercion."

No one denied that there are a growing number of land use problems being created coincidental to the expansion of our population, but the hearings revealed that the states are moving to develop new approaches for solving them. In recent years, ten states have adopted some mechanism for a state land use plan under their state police power. The awareness of the states to the problems parallel or have preceded the Congressional awareness.

Thus, some states have authorized or directed land use planning. Others have not yet experienced need or justification sufficient to warrant such legislation.

If the states need help in meeting their problems, the Federal government can play a proper role in resolving the problem by making funds available to the states. In such event, Congress might wish to obtain assurances from states which elect to draw on those funds, that they would be used for the intended purpose. In such a voluntary situation the people of the state would preserve a viable option, the choice of whether or not to participate. The reported bill gives no such option.

Land use regulation and zoning are important tools to be used to meet local expansion problems, but these are not the only tools. Air and water pollution standards, the Environmental Policy Act, and a myriad of Agency regulations have all been developed with a view of protecting the environment and the health, safety and welfare of a community—all of which leads to the question of why the Federal Government must impose on the states a system of land use regulation.

There is a good deal of support for the relative desirability of a state exercising its police powers by the establishment of standards. For example, regulations can be adopted so that a subdivision, if developed, would have to include adequate roads and utilities, including sewage treatment plants, play grounds and sufficiently large areas upon which schools and other public buildings could be constructed. This approach would seem to have considerable advantage over presently implemented zoning regulations.

The story of bribes, kick-backs, hidden interests and other forms of graft and corruption are all too common to believe that zoning is the panacea it is purported to be by some.

The city of Houston, Texas, compares very favorably with other great American cities. It is unique in that its development has come about to a remarkable degree in a climate uniquely devoid of customary zoning regulations.

Restrictive covenants offer an opportunity for those great and growing numbers of citizens who wish to join together in assuring the continuance of conditions pleasing to them and, under that type of restricted development, their goals are accomplished without the arbitrary imposition of a zoning board's decision upon a property owner.

The pending land use legislation provides a cumbersome superstructure whose authority lies with the Secretary of the Interior to determine those private lands which must be the subject of land use planning. According to the bill, the states must submit a plan for use of designated areas of "critical environmental concern." The bill then goes on to identify areas of "critical environmental concern" to include:

(1) coastal wetlands, marshes, and other lands inundated by the tides;

(2) beaches and dunes;

(3) significant estuaries, shorelands, and flood plains of rivers, lakes, and streams;

(4) areas of unstable soils and high seismic activity;

(5) rare or valuable ecosystems;

(6) significant undeveloped agricultural, grazing, and watershed lands;

(7) forests and related land which require long stability for continuing renewal;

(8) scenic or historic areas; and

(9) such additional areas as a State determines to be of critical environmental concern.

Under this definition there is little doubt that the Secretary of Interior could determine that any private land within any state is of critical environmental concern and necessarily a part of a state land use plan.

If the plan submitted to the Secretary of the Interior does not include areas which he determines are of critical environmental concern, then the Secretary can refuse the state plan and impose economic sanctions against a state by cutting off a certain percentage of the state allotments from the Airport and Airway Development Act, the Federal Aid Highway Act, and the Land and Water Conservation Fund.

If the Secretary of Interior is to have authority over specified private lands within a state which are determined to be of critical environmental concern, a mechanism should be established so that the states can review the areas of interest to the Secretary before economic sanctions are invoked. When this bill comes to the floor of the Senate, we shall introduce an amendment to effect this procedure.

Another weakness in the bill is in the review process which is established if the Secretary determines that a certain state plan is unacceptable or incomplete. In this situation the state whose plan is in question may appeal it before a review board.

The problem is that the board is made up of a governor of a state and a federal official who are appointed by the President. It is then up to the Presidential appointees to appoint a third board member.

The method for setting up the board's membership does not lead one to conclude that a state would have an impartial hearing.

We agree with President Nixon's statement of the purpose of his administration when he said:

"Our ultimate purposes are many: To restore to the States their proper rights and roles in the Federal system with a new emphasis on and help for local responsiveness; to provide both encouragement and the necessary resources for local and State officials to exercise leadership in solving their own problems; to narrow the distance between people and the government agencies dealing with their problems; to restore strength and vigor to local and State governments; to shift the balance of political power away from Washington and back to the country and the people."

The reported bill is not in accord with that statement in our opinion.

The magnitude of the Federal program as reflected by the annual authorization of $110 million a year for the first 5 years and $100 million a year for the remaining 3 years of the program is just one more indicia of why this bill should not have been reported. There are no statistics to justify such a sum; and, in this critical period of burning inflation, this amount only adds more fuel to the fire.

Likewise, this vast sum reflects a financial base from which a federal preemption of the zoning prerogative could be accomplished.

Under the reported bill, the loss of state control may not be readily apparent upon its enactment; but it has happened so often as to almost be an established rule that once a state is placed under a federal program involving approval of "state plans" by an official in Washington, upon penalty of the loss of federal funds, the autonomy of the state has been compromised.

After that, the "natural" course of events seems to be more and more direction from the federal bureaucracy and less and less input by state and local officials until virtually one hundred percent federal control evolves.

We cannot support a land use planning bill which lays the foundation for that result.

PAUL J. FANNIN,
U.S. Senator.
CLIFFORD P. HANSEN,
U.S. Senator.

ADDITIONAL VIEWS OF MR. BUCKLEY

I subscribe in general, if not in every detail, with the views expressed by Senators, Fannin and Hansen.

There are a number of areas where there is a legitimate federal concern in the use to which private and state-owned lands is put. I fear, however, that the legislation under consideration will take us far beyond the line which ought to divide state and federal responsibilities. Furthermore, it will bring pressures to bear, backed by economic sanctions, which may erode to an undesirable degree the lines which now divide state and local responsibilities.

Finally, we come to the question as to who is to make the ultimate judgment as to whether the state land use programs submitted to the Secretary of the Interior will in fact meet the objectives of this legislation. The Committee staff tried to be reassuring on this point in the memorandum prepared for the members of the committee describing the bill. The memorandum stated that "* * * the (federal) review would be for the purpose of determining whether the (state) program will be effective, not whether it is 'good' or 'bad'." I am not convinced that this would in fact be the result in practice. Is it really reasonable to expect that a Secretary would not find some procedural reason for disapproving a program which he in fact believed to be bad?

JAMES L. BUCKLEY,
U.S. Senator.

The CHAIRMAN. Senator Fannin, ranking minority member of the committee, has a statement which, without objection, will be included in the hearing record at this point.

(The statement of Senator Fannin follows:)

STATEMENT OF HON. PAUL J. FANNIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Mr. Chairman, with the realization that huge as it is, the land base of the United States is finite, the time has come for an integrated system of land use planning. The hour has struck for statewide land use plans and programs across the country.

The Federal Government should sponsor the planning process and the formulation of State programs, but this leadership must not become a Federal interference in State affairs.

The use of and the planning for lands within the State boundaries is peculiarly a State function. In the 11 public land States in the West, both the planning processes and the prospective State programs are complicated by the large and in some cases overwhelming acreages of public lands. Any cohesive State plan and the accomplishment of a State program must have full and complete access to the planning policies and processes of the managing Federal agencies. We must be certain that Federal management is consistent with and furthers the purpose of State planning.

Perhaps the most felt need in formulating land use programs is the necessity of interlocking the requirements and concerns of local administrative agencies and governmental subdivisions with the broader problems of regional and statewide entities.

Probably ninety percent or more of land use decisions are now—and should continue to be—made at the local level, but it is the other ten percent which impact our environment, promote unacceptable modes of growth, and cause unbalanced population concentration.

As a result of this ten percent factor the State and local government becomes burdened with budgetary, social and economic woes.

In this bill we should promote local and State coordination, encourage institutional reform in State governments by directing their attention to the issue, and so far as the public land States are concerned, we should make certain that Federal programs are consistent with the objectives of sound and efficient State planning.

I anticipate that in accordance with the administration's policy of decentralization, of strengthening State governments, and of putting decision-making authority closer to the grassroots, the deliberations of this committee will result in a land use bill accommodating these objectives.

The close and effective cooperation of State agencies such as the fish and game departments with the Bureau of Land Management and National Park Service exemplifies the nature of the relationship we must have between State and Federal agencies if our planning program is to be fully successful.

In my own State of Arizona legislation currently under consideration would create a department of natural resources which in conjunction with existing State agencies would have the responsibility for developing a State land use plan. As I have indicated, it is essential in a State such as Arizona with vast public lands that Federal managing agencies cooperate fully with the State planning authority.

Although Arizona has not yet enacted legislation to provide for the coordinated land planning approach which is envisioned in the proposals before the Congress, it is with pride that I mention that Arizona is among those States which have taken the lead in authorizing a State agency to designate areas suitable for power plant and transmission line siting.

In this connection, I would hope that we consider the advisability of clearly giving States the responsibility to designate areas for key facilities as well as areas of critical environmental concern.

Another essential element of this legislation should be provisions which will help expedite land use planning decisions in both the States and Federal agencies. Too often the proper development of land to meet public needs is unduly delayed because of the time incurred in review and applications by a variety of interested agencies. Sound environmental economic and social land use considerations must

be made in a manner which will encourage not only orderly but also timely planning decisions.

I would also call attention to the fact that it is the responsibility of the Federal Government to complete the inventory of its lands and appropriate classifications which reasonably complement present existing uses of adjacent private and State lands. Although in limited instances the use to which the adjacent non-Federal lands have been put are perhaps in conflict with the existing or highest and best use to which the public lands may be put, it should be the goal of the land planning agency to complement the expected highest and best uses rather than permit the present use to unduly influence the eventual use of the adjacent property.

One aspect of land use planning which has received little attention is that of how Indian lands will fit in the picture. Exclusion of reservation land from the planning process could be detrimental either to the Indians or to lands adjacent to the reservations. One question to be considered is whether Indian representatives should have the opportunity to participate in the planning process.

Mr. Chairman, the very issue of land use planning once again demonstrates that we are a nation of States—very close in bond but vastly different in character and in the problems we face. There are States which are densely populated and highly developed. There are other States, such as Arizona, which still have an abundance of wide open spaces. It is in a State such as mine, and others in the West, where we have the greatest opportunity to benefit from statewide land use planning.

The CHAIRMAN. The Chair is privileged to begin the hearing this morning with testimony from Senator Hollings, who, I believe, has another committee meeting to attend at this very hour, and I gather would like to file his statement for the record and make some brief comments.

Senator HOLLINGS. That is the case.

The CHAIRMAN. We want to say, Senator Hollings, how much we appreciate your cooperation and assistance, in developing national land use legislation and your pioneer work on the coastal zone legislation which was enacted into law last year. We are delighted to have you as our first witness.

STATEMENT OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator HOLLINGS. Thank you very much, Mr. Chairman and colleagues.

As the chairman has indicated, we have our first executive session of the Post Office and Civil Service Committee this morning. As a chairman of the Committee on Postal Operations we are trying to commence hearings on problems within the Postal Service.

I do appreciate the opportunity to file this statement as the chief proponent of the Magnuson Coastal Zone Management Act. I should emphasize, as the chairman indicated, I worked in conjunction with our Interior Committee friends, specifically Chairman Jackson and others, who were very helpful in the enactment, particularly on the Senate side, of this Magnuson Coastal Zone Management Act. And we so worded the legislation in its final version as to have no conflict between any future enacted land use policy act, which this committee is sponsoring, and the National Coastal Zone Management Act which has become the law of the land.

My apprehension, which you will see in my prepared testimony—my major concern is that we don't absorb or eliminate the coastal

zone program at the National Oceanic and Atmospheric Administration (NOAA) or seem to assume such an absorption is necessary in order to achieve a land use program in the United States.

The Coastal Zone Management Act was well conceived after many years of study by numerous groups and agencies, including the Stratton Commission, which included not only Members of both Houses of Congress, but of industry, of the executive department, specifically the Assistant Secretary of the Interior. They determined that problems of the coastal zone are particularly unique, as the President noted in his signing of this bill last October. After nearly 10 years, we were able to have this NOAA-operated program written into law. But now, by way of budget allocation, there has been an elimination, in a sense, of NOAA's Coastal Zone Management Act, because the administration has refused to seek funding for the program, and in contrast, has requested provision for $20 million for the proposed land use program at the Interior Department, which has yet to be the law of the land.

I think the confusion exists between the Congress and the President. I don't see why there should be confusion, or why we should come up this morning and listen to Administration witnesses say it is their policy to eliminate what we in the Congress found necessary, and reject what was signed into law 90 days ago by President Nixon.

With these remarks, Mr. Chairman, I am going to take the liberty of filing for the record my full statement. I would be glad to answer any questions about it.

The CHAIRMAN. May I express my appreciation for your help, Senator Hollings, and I share your concern about the importance of moving at once to implement the Coastal Zone Management Act for which you worked so long and hard with Senator Magnuson. I think we might save time, I know you are in a hurry, by saying that if members have any questions you could come back at a later time and answer them. You are invited, as well, to join us here in listening to the testimony during these hearings.

Does anyone have any immediate questions? I note that none of the members have any questions at this time.

Thank you very much.

Senator HOLLINGS. Thank you very much for your courtesy.

The CHAIRMAN. I would like to place in the hearing record at this point a statement of Senator Magnuson, a cosponsor of S. 268, concerning the same general subject addressed by Senator Hollings.

(The prepared statements of Senators Hollings, Magnuson, and Moss, follow:)

STATEMENT OF HON. ERNEST F. HOLLINGS, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Mr. Chairman, the Land Use Planning and Policy Assistance Act which you introduced on January 9th is, as you have stated, the same as S. 632 as it was passed on the floor of the Senate on September 19th of last year.

A number of substantial amendments were made to the reported version during the two days of debate which took place.

As the Committee knows I have supported the concept of the land use planning bills which were considered in the 91st Congress as well as in the 92nd.

The general concept is the same as that of the Magnuson Coastal Zone Management Act of 1972 which also was considered in both the 91st and 92nd Congresses.

It is significant to me that the Nixon Administration had no land use planning bill to offer in the 91st Congress and it was not until the 92nd Congress that the

Administration submitted its bill, S. 992. S. 992, as is well known, was not the result of the Administration's development of proposed soluton. Instead, S. 992 was only a modification of the results of the initiative taken by Senator Jackson and this Committee, the Committee hearings which were held and the labor and considered judgement of the Committee which, I believe, rewrote the entire bill at least twice in the 91st Congress to further refine it.

When S. 632 came to the floor of the Senate last September, it was known to the Commerce Committee and its Subcommittee on Oceans and Atmosphere, of which I am Chairman, that the land use bill contained language which included portions of the coastal zones of our nation.

Our Committee's coastal zone bill was still pending, but it was my understanding that if it should become law then the land use bill would in no way apply to the coastal zones to which the Magnuson Coastal Zone Management Act of 1972 applies. To deal with the possibility of both bills subsequently becoming law, I personally offered no amendments to the land use bill in September but, instead, Senator Jackson and I made a "legislative history", during the floor debate, which affirmed the agreement between Senator Jackson, Senator Magnuson and me. There is no doubt in my mind that the clear language of that colloquy clearly stated our agreement that these two programs would be separate programs working side by side with one responding to the needs of land areas for adequate management and the other responding to the needs of our ocean and the water and land areas which are connected to it and which are mutually interdependent upon each other for their ecological survival.

As the members of this Committee know, subsequent to September, 1972, the Coastal Zone Management Act of 1972 became law. This occurred on October 27, 1972, following agreement of the Conference Committee on October 15th and acceptance of that report by both bodies of the Congress.

If the Coastal Zone Management Act of 1972 (Public Law 92–583) had been law in September, or if we had been absolutely sure that it would become law, then S. 632, pursuant to the agreement with Senator Jackson, would have been amended to recognize its existence, responsibility and authority in order to eliminate ambiguity, avoid duplication and prevent an overlap of funding, among other things.

But, of course, P.L. 92–583 was not law at that time, and, since we knew that the administration opposed it, we had no way of knowing whether the President would sign it even if Congress approved it.

This, then, is the reason S. 268 now contains language pertaining to the coastal zone which is necessarily already included in the Coastal Zone Management Act of 1972.

That language in S. 268, I submit, should and must be stricken and language needs now to be inserted in it recognizing that there *is* a Coastal Zone Management Act. (For example, the land use bill has a section entitled "Existing Laws".) This will be not only entirely logical and rational, but it also will be in accordance with the agreement which was stated on the floor of the Senate on September 19th which I am, with the permission of the Chairman, going to submit for inclusion in the record of these hearings. (Note—submission is pages S. 15161 and S. 15162 of the Congressional Record of September 19, 1972)

Mr. Chairman, members of the Committee, the reason for my appearance here today is not because of a belief that I must formally make a presentation to this Committee rather than relying upon Senator Jackson and the Committee to recognize the prior understanding and commitment.

S. 268 is only the language of S. 632 as it was passed by the Senate prior to the time the Coastal Zone Act was signed into law, and I know the Committee does not intend that it be reported without necessary Committee amendments.

My primary purpose for appearing is that it is my understanding (although I have not seen it yet) that the administration's recommendation for land use legislation to be enacted by the 93rd Congress attempts to ignore the fact that Congress has enacted, and the President signed, a separate and distinct statutory program for our extremely environmentally critical coastal zone.

This action by the administration is reprehensible to any person who has any concern for, and knowledge of, the utmost urgency attendant with helping our states properly and comprehensively deal with the separate and distinct problems of our nation's coastal zones.

Congress recognized this need when it passed the coastal zone bill and we thought the President had recognized it when he signed the Coastal Zone Management Act of 1972 on October 27th of last year. But, of course, that was a few days prior to the November 7th elections.

I would like to briefly call your attention to what the President said when he signed P.L. 92–583 on October 27, 1972. He said, in part:

"S. 3507, the Coastal Zone Management Act of 1972—provide(s) for rationale management of a *unique* national resource—The number of people who use our coastal zones is rapidly increasing and so are the purposes for which those areas are utilized. . . . Yet these same areas, it must be remembered, are the *irreplaceable breeding grounds for most aquatic life.*

He went on to say,

"S. 3507 locates administrative responsibility for this program in the Department of Commerce rather than in the Department of Interior as I would have preferred—and as I called for in my proposed Land Use Policy Act. *This action is not sufficient reason in my judgment for vetoing the bill* but does underscore once again the importance of creating a new Department of Natural Resources, as I have recommended."

Mr. Chairman and members of the Committee, it is beyond belief to me, the coastal states, coastal environmentalists and coastal scientists that only 90 days later the President is now trying to veto the bill. He has requested Congress not to appropriate any funds for attending to our desperate coastal problems under the Coastal Zone Act, and he has also failed to recognize the existence of the Coastal Zone Management Act of 1972 in his recommendation for the Land Use Bill. On the other hand, he requested 20 million dollars for the Land Use legislation, even though it is not yet law.

It appears that these actions mean only one thing: the Administration, notwithstanding the President's signing of P.L. 92–583 and his accompanying statement, continues in its position that the coastal zones do not need the immediate and separate efforts of the federal government and that the decision of Congress and the signature of the bill into law have no meaning whatsoever.

I, therefore, wish to call the attention of this Committee to a few essential points:

1. Right from the beginning of the 92nd Congress, consideration by the House Merchant Marine and Fisheries Committee and the Senate Commerce Committee, it was known that the Administration had aborted its previous support of a separate coastal zone management program and as grounds, had stated that its land use bill should also include these coastal areas.

The hearings in both Committees dealt extensively with this concept and witness after witness of the highest scientific and environmental, as well as nonfederal government, stature testified again and again that the coastal zone management program could in no way be considered similar to a program or programs for the planning and management of inland land areas. Instead, it was conclusively shown that coastal waters are, as the President said, "unique", requiring an entirely different management regime. Our hearings are replete with the explanations of how and why these land and water areas interact with each other and require an individual, very technical, land and water management program.

2. Because of the rapid development in the coastal zones and the concurrent deteriorating related marine and land environment systems the states are much more conscious of the need to take action on behalf of the coastal zones and, essentially all that is required for many states is the immediate effectuation of the federal program we adopted last year. However, if they must wait for a comprehensive national land use program, many years of delay will result. The testimony, however, was unequivocal that the coastal zone problem simply cannot wait that long or any further at all.

3. Adding to the delay which would result is the fact that these coastal states obviously cannot obtain a statewide comprehensive land use law and program nearly as easily and as early as they can obtain authority for, and establish, a coastal zone program if they could accomplish a statewide land use program at all. The citizens of the states more easily accept, and desire, a coastal zone program as opposed to a statewide land use program because: (a) they recognize the dire need for the coastal program; (b) they are willing to relinquish control of the coastal area to the state government but are not necessarily willing to relinquish it for the entire state; (c) many more local governments and people will have to be "sold" in order to achieve a statewide land use program; (d) a coastal program alone will cost the state and its taxpayers much less than a statewide comprehensive land use program; (e) coastal zone management requires a specialized scientific management which will be diluted by combining it with the state land use program forestalling proper attention to the coastal zone even if the state can, and does, achieve a statewide land use program.

4. The committees of both Houses gave full attention to the position of the Administration that there should only be one program and, based upon thoughtful consideration, concluded that the Administration was wrong.

The Committee Reports reflect this. For instance:

(a) On the House side the Report of the Merchant Marine and Fisheries Committee said, "The coastal zone problems are related to but are significantly different from problems of overall land use. It is for this reason that your Committee did not agree with the position of the various departmental witnesses who . . . proposed *that the solution to those problems should be merged under an overall land use policy* . . . The problems of the coastal zone . . . are significantly unique and should be treated in a separate program. . . ."

(b) The Senate Commerce Committee Report includes the following:

". . . Why single out the coastal zone for special management attention? *The argument has been made that . . . there should only be one policy and one system of management. But experience has shown us that . . . diverse systems are often needed.*"

On March 14, 1972 at the request of Senator Hollings, S. 582 (the predecessor of S. 3507, an original Committee Bill) was recommitted to the Committee. "Changes were made so as to clear up conflicting matters of jurisdiction . . . (and) . . . to make the bill compatible with proposed land use legislation as proposed by the Administration."

". . . The inner boundary of the coastal zone is somewhat flexible . . . *to allow coordination with the proposed National Land Use Policy legislation (S. 992).*"

". . . 'Secretary' is defined as the Secretary of Commerce who has jurisdiction over (NOAA). Administration of such a coastal zone program by NOAA was originally recommended in the final report of the Commission of Marine Science, Engineering & Resources. After careful review, the Committee believes NOAA is the best qualified agency to undertake this complex task. . . ."

(c) On the floor of the Senate, in the discussion of the Coastal Zone Management Act, its relationship to the land use bill was recognized. Among other things, I said, "There were some who felt that certain provisions within S. 582 were in conflict with the proposed land use legislation . . . (w)e have worked over the entire bill. . . . *The Committee has created a bill which dovetails with the proposed land use legislation.*"

(d) The issue was considered on the House floor and a movement there led to a hotly debated, but, finally, a barely successful, attempt to change "Secretary of Commerce" to "Secretary of Interior" in the House bill. There still would have been an independent program, but administration by NOAA in Commerce would have been deleted.

(e) Thus, the bill went to Conference with a primary issue being who is the proper administrator of the Coastal Zone program. The result of that Conference was an agreement that a separate coastal zone management program administered by NOAA was required. The Conference Report contains the following:

"The Conferees adopted the Senate definition of 'Secretary' to mean the Secretary of Commerce. As the bill was passed by the Senate, and as a companion bill was reported by the House, it was provided that the administration of the Coastal Zone Management Act should be the responsibility of the Secretary of Commerce, and it was expected that actual administration would be delegated to the Administrator of . . . (NOAA) . . . The rationale . . . was based on NOAA's capability to assist State and local governments in the technical aspects of coastal problems . . .

"The conferees adopted a final approach which acknowledges the validity of many of the arguments advanced to justify . . . the Department of the Interior . . . The lands (to be) included in the 'coastal zone' have been limited to those which have a direct and significant impact upon coastal water. Secondly, those lands which have been traditionally managed by the Department of the Interior, or the Department of Defense . . . covered by existing legislation have been excluded. Thirdly, it is provided that upon enactment and implementation of national land use legislation . . . the Secretary of Commerce shall coordinate with and obtain the concurrence of the Federal official charged with . . . the national land use program . . . The concurrence procedure will take place . . . when the coastal zone program is submitted for original approval under title 306 or when a modification is proposed . . . Also where the coastal zone program already exists in a State, when the . . . land use program is proposed, the necessary changes . . . as outlined in section 307(g) would be accomplished . . .

"Therefore what the conferees agreed upon was basically a water related coastal zone program administered by the Secretary of Commerce . . . . *This compromise recognizes the need for making the coastal zone program fully compatible with the national land use program while making use of . . . NOAA . . . in the Department of Commerce in managing the nation's coastal areas.*"

Both Houses, therefore, directly and affirmatively decided this issue although the administration seeks to hide its head in the sand and ignore the resulting Act (which the President signed) not only by failing to request the necessary funds for the states involved, but by continuing the effort to give the coastal zone program to the Interior Department by supporting a land use bill which would give concurrent authority to the Interior Department over these coastal areas already provided for in P.L. 92–583.

5. When this land use bill was debated on the floor of the Senate, I remember well the expressions of concern of many Senators, a number of whom are members of the Senate Interior and Insular Affairs Committee. These Senators were deeply concerned that this land use legislation might eventually result in a giant bureaucracy with unprecedented centralized control over our states, local governments and our people.

I say to those Senators who are concerned with this possibility that maintaining a separate program for our coastal areas, even if one agency could properly manage both, will certainly act as a "balance wheel" to the land use program for all of the rest of the nation. It is well recognized that a certain degree of decentralization is often necessary to counteract the "evils" of massive bureaucracy.

6. The Coastal Zone Management Act of 1972 so recognizes the close proximity of the death of many of our coastal environments that it has a provision for federal funding for the state management program in segments so that the states can move "post haste" to manage the most critical areas first. If the administration is successful in keeping the coastal zone language in this Committee's land use bill and then requires the states to go that route by making no monies available under the Coastal Zone Act, there not only is no provision in the land use bill for segmental funding, just the opposite will be required because of the necessity of having a statewide program with many components of which coastal zones are only a small part.

7. By supporting the inclusion in the land use bill of what has now recently been designated by Congress as a separate and distinct program, the administration jeopardizes the passage of any land use bill at all.

In addition to the rightful concern of the members of the Commerce Committee here in the Senate, I believe the floor debate last year on the land use bill demonstrated that members of other Committees do not wish to see a land use bill move forward with a precedent in it for including laws and programs for which their committees have legislative responsibility. It is obvious that if S. 268 should be reported with this language in it pertaining to coastal areas covered by P.L. 92–583, such a precedent would be established.

8. Again for those who are apprehensive about establishing this national land use planning effort, it should be noted that the Coastal Zone Act certainly provides good *test* machinery. If the President had recommended supplemental funding for the states under the coastal zone bill in the current fiscal year and in FY 1974, by the time any nationwide land use program is ready for implementation the experience in the coastal zone program, I am sure, could be extremely helpful to the administration and to the Congress.

Dr. William Hargis, Director of the Virginia Institute of Marine Science, said in the Senate hearings, "Solutions worked out in the coastal zone can serve as a model for solutions of broader problems of upland land use planning and management."

9. As I said on the floor of the Senate, the Senate Commerce Committee was quite responsive to the concerns of the Interior Committee about our coastal zone bill. We responded to that concern in a responsible and serious manner. I do not believe any Senator could say that we did not do all that was necessary.

Now, I am here today addressing a problem involving a conflict between language in the land use bill and a law enacted by Congress which emanated from the Senate Commerce Committee.

I feel certain that this Committee will not respond to the efforts of the Administration to sound the death knell for the Magnuson Coastal Zone Bill or give the President an excuse for withholding the funds from that program.

I have several amendments which should be made. They delete the wetlands,

beaches, estuaries and dunes, etc., provisions of the land use bill; provide that the land use bill should not conflict with the Coastal Zone bill and further include language identical to the language in the Coastal Zone Act (Sec. 307(g)) which now only unilaterally provides for coordination of the two separate programs.

STATEMENT OF HON. WARREN G. MAGNUSON, A U.S. SENATOR FROM THE STATE OF WASHINGTON

Mr. Chairman, I am pleased to endorse, wholeheartedly, the statement made by Senator Hollings.

As Chairman of the Senate Commerce Committee which reported S. 3507, the Coastal Zone Management Act of 1972, as the author of that legislation, and as a Senator from the State of Washington, I was gratified when Congress adopted that Act last year and when President Nixon signed it into law.

I am now grievously concerned with the subsequent developments which appear to indicate that the administration does not believe that it is required to implement that law nor, apparently, that it is worthy of implementation.

I have just recently been contacted by officials of my State of Washington reaffirming their support of, and the State's need for, the Coastal Zone Management Act of 1972. They also have advised me of their desire that the Act be effected now as a separate program rather than being delayed and possibly ensnarled in Congress' subsequent considerations of the national land use legislation for the interior of the nation.

On August 8, 1969, when I introduced S. 2802, my initial coastal zone management legislative proposal, in the 91st Congress, I noted the great importance to our nation of its coastal zone and the exigent need for immediately providing the states with a federal program of assistance to permit them to "take up the cudgel" of properly protecting and managing land and water uses within that coastal zone before its unique environment was destroyed to the detriment of all who rely upon it. (Which, I hasten to add, is almost 100% of our population!)

As I said then, it is the very wealth of the coastal zone for commerce, natural resources, recreation, scenic beauty and other benefits to mankind which has led to its eminently endangered status, and it is these same attributes which require the implacement of curative and protective mechanisms for the future.

This is a task which the states realize must be undertaken. Most coastal states are already proceeding beyond the problem recognition phase into the problem solving phase. The voters of Washington State have just approved a Shorelines Management Act aimed at the sound management of that state's coastal zone. So have the voters of the State of California. The Coastal Zone Management Act of 1972, encourages and facilitates this assumption of state responsibility.

The hearings of the Commerce Committee, Subcommittee on Oceanography, began in December, 1969, and continued in the 91st and 92nd Congresses preceded by an extensive history of careful examination of the problem and possible solutions. That long history of expert examination culminated in a recommended solution which was carried forth into the law.

I would like to briefly mention only some of the prelegislative history in order to convey to this Committee the strength of the foundation upon which the Commerce Committee built when it thoughtfully and deliberately created a national coastal zone management program separate from a land use program for the vast internal areas of this country, as Senator Hollings described.

The Coordinating Committee on Oceanography of the National Academy of Sciences worked in this area during most of the 1950's. In 1959, the successor to the Committee issued a report calling for the undertaking of programs to understand, and eventually manage, the oceans including our coastal zones. Also, in 1959, the House Oceanography Subcommittee held hearings on governmental efforts to manage the marine environment and, in June 1959, with Senator Jackson as a cosponsor, I introduced Senate Resolution 136 to establish a national policy to strengthen the entire field of oceanography.

The Commerce Committee itself has, for many years, undertaken considerations resulting in legislation beneficial to marine and coastal environments and their inhabitants and has grown in its knowledge and understanding of the subject of our coastal zones. The 1965 hearings of the Commerce Committee on ocean related programs and the need to coordinate them culminated in enactment of the Marine Resources and Development Act of 1966. The Marine Resources and Development Act created the cabinet level National Council on Marine Resources chaired by the Vice President.

After a year of work by the Marine Resources Council, the Commission on Marine Science, Engineering and Resources ("Stratton Commission") began its full year study under the Act which resulted in the publication in 1969 of its final report entitled "Our Nation and the Sea," which I am sure the members of this Committee recall.

Subsequent to the publication of the Stratton Commission Report, I introduced the first coastal zone management bill. That bill and the resultant Coastal Zone Management Act of 1972, (Public Law 92–583), carried forward the considered conclusions of the Stratton Commission and the results of years of consideration in the Congress as well as in the states and in the private sector. The Stratton Commission Report recommended coastal zone legislation to provide a unified land and water management program for the nation's coasts, including the Great Lakes.

As the Committee can appreciate, the law which is now on the books for the management of the nation's coastal zones was clearly not a hastily conceived measure but was the outgrowth of at least two decades of conscious awareness of the challenge and a combination of public and private endeavors exploring alternatives and agreeing upon the best means of accomplishing the desired result.

My State of Washington, for one, is vitally concerned with the removal of all impediments to implementation and funding of the Coastal Zone Management Act of 1972 as I previously mentioned. Governor Evans of Washington wrote, in 1970, asking for enactment of the Coastal Zone Management Act (Subcommittee on Oceanography hearings, 91st Congress, pg. 1165). He so cogently stated "no matter how well a coastal zone management bill is drawn, lack of money to implement it will greatly reduce its effectiveness."

In making this statement, which is an obvious understatement, Governor Evans was speaking of the state coastal zone bills which the State of Washington was considering at that time and he was appealing for federal legislation which would enable Washington to receive federal financial assistance. Governor Evans of course, did not contemplate that Congress might pass the law, and the President sign it, but that the Administration might subsequently attempt to withhold life's breath from it by intentionally seeking to halt its funding on grounds that the law is not broad enough and should first, be combined with land use legislation for the balance of Washington and the nation.

Governor Evans' letter emphasized the immediacy of the situation for Washington. [For instance, he noted that the Washington Department of Natural Resources alone has responsibility for approximately 1,400 miles of tidelands, 6,700 acres of harbor acres and 1,000 square miles of navigable tide waters, among other coastal zone areas.]

In all, Washington has 3,026 miles of tidal shoreline. This includes the shoreline along the Strait of Juan de Fuca, along Puget Sound and around the island in Puget Sound.

I need only mention the shipping, commercial fishing, pleasure boating and scenic beauty of the inlets and bays in the Puget Sound region to demonstrate how important immediate implementation of the Coastal Zone Management Act is to our state and the entire country. As an example, Seattle is one of the great seafood ports of the world and most of that seafood is dependent upon a healthy and viable coastal environment at least at some stage of its life cycle.

In addition to Governor Evans' letter in our hearing record, we had several witnesses representing various Washington groups who testified or submitted statements and letters in favor of the Coastal Zone Management Act of 1972.

Legislatively in Washington, on May 21, 1971, the Washington "Shorelines Management Act of 1971" became law. Its history dates back to at least 1969 when the Ocean Beaches Committee of the Washington Environmental Council became concerned with regulating "haphazard development presently taking place on the seacoast". That initiative led to the drafting of legislation for consideration by the Legislature in 1970, and the first hearings were conducted on January 19, 1970, preluding one of the deepest considerations of a legislative proposal in the State's history. This law did not become "permanent" until the November 1972 General Election in which it was affirmatively approved by the voters of the state in lieu of approach to coastal zone management which had been placed on the ballot by initiative largely as a result of the efforts of the Washington Environmental Council.

Therefore, in Senator Jackson's and my state, the process to achieve state coastal zone management legislation has not been hasty. Unquestionably, it represents the will of the people of our state and is *not* a statewide land and water use law but is directed solely to the state's coastal zone.

The Washington law declares "There is . . . a clear and urgent demand for a planned, rational and concerted effort, jointly by federal state and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines."

Mr. Chairman and members of the Committee, it is my intention to follow the mandate of the people of the state as well as Congress, for a separate *federal* coastal zone program including the federal funds necessary to assist it in creating the effective coastal zone regulatory mechanism called for in the Washington law for which the people voted at the polls only a few days after the President signed the Act which the Commerce Committee and its Oceanography and Atmospheric subcommittee had shepparded through the federal legislative process and which would provide the necessary federal participation. I believe the people of Washington and other similarly situated coastal states were entitled to believe that this federal law meant immediate federal assistance to them in their efforts to save their coastal margins.

Because the administration has decided not to budget monies for this essential program and has, instead, obviously reverted to its position taken during the 92nd Congress that the coastal zone program should not be a separate program, but, instead, should be part of the national land use legislation which this Committee is considering, I ask that this Committee, as it amends S. 268, to be certain that any indication for believing that the needs of the coastal zone can or will be attended to under the provisions of the land use bill be removed from availability to the administration. Then, if Congress appropriates the funds for passing on to the states under the Coastal Zone Management Act of 1972, regardless of the budget request, there will be no room for ambiguity with respect to any decisions of the administration to attempt to preclude the states from receiving those funds for their coastal zones.

I submit that it does not serve the interests of the nation for there to be any possible ambiguity on the part of Congress in this matter by reporting legislation which is capable of an interpretation which constitutes any part of it to be duplicative of the important environmental act we passed in the last Congress. The lines should be clear so that the decisions also will be clear to those who must make them and to those who will interpret them and live with them.

With the permission of the Chairman. I am submitting for inclusion in the hearing record, a copy of the Washington Shoreline Management Act of 1971.

STATEMENT OF HON. FRANK E. MOSS, A U.S. SENATOR FROM THE STATE OF UTAH

Mr. Chairman, the time has come for land use planning. This country, large as it is and diverse in its gathering of the human population from the crowded tenement district of New York City to a roadside population of three in a corner of the western desert, is coming to a realization of a need for land use planning. And our planning must be national in scope.

The need for power in California has resulted in the use of land in my own four corners area of the Southwest. The energy crisis is forcing us to take an overall look at our national needs, to realize that we can no longer take actions in isolation one from the other and that foresight and planning must come before it is too late.

A sound and rational system for balancing the various considerations necessary in our land use is essential to the progress and well being of this country. We must recognize that our country's land resources are the basis upon which this country has prospered; that there are more of us to use those resources than ever before, and that those resources are finite and must be used in a wise and intelligent manner.

The wise use of our nation's land will hopefully solve a great many of our environmental problems. In the solution of those problems, there are other factors to be considered such as economic and social as well as environmental. A wise land use planning should recognize and balance these needs.

I recognize that the U.S. constitution places land use regulation in the states under the police powers, but I also recognize the fact that geographic patterns—land and water—do not recognize manmade boundaries, and a local unit of government such as a municipality has neither the capability or the jurisdictional clout to effect unified control of a regional ecological system. In the public domain states the comingling of Federal and state land is such that only through a unified cooperative effort involving Federal and state authorities can we achieve a modicum of success in land use planning.

I believe land use is a national responsibility and that that responsibility can be met by establishing a policy and providing the states with funds and expertise to meet land use problems. The land is both a resource and a commodity, and national legislation must reflect that premise.

The CHAIRMAN. If there is no objection, the Chair will suggest that the administration witnesses could all came forward and sit at the table together.

I think this arrangement will save time and effort.

We are delighted to welcome the Secretary of the Interior, Rogers C. B. Morton, and Russell E. Train, Chairman of the Council on Environmental Quality, and John R. Quarles, Jr., an Assistant Administrator for Enforcement and General Counsel for the Environmental Protection Act.

The chairman would suggest, if it is agreeable, that all three witnesses first make their statements and then we can proceed to the questions. I think that will avoid duplication, and make for a better record. Is there any disagreement to that?

Mr. Secretary, you may proceed now in your own way, and then I will call on Mr. Train and Mr. Quarles.

STATEMENT OF HON. ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, ACCOMPANIED BY KENNETH BROWN

Secretary MORTON. Mr. Chairman and members of the committee, as always it is a distinct pleasure for me to appear before this committee today to discuss a subject vital to the future of this Nation: the enactment of a land use policy and planning assistance act.

I have testified on this legislation in two prior Congresses, the first time as a Congressman and cosponsor, the second time as Secretary of the Interior. I can say, therefore, with some assurance that I know how vital this legislation is and that it is a high priority of my Department and of this administration. It is a keystone of the President's environmental program.

Mr. Chairman, it is clear to all by now that the future quality of life of this country will depend heavily on how well we can plan for and anticipate the consequences of the development which will occur in coming years. I will not dwell on this point since it has been amply covered by testimony in previous years.

I would merely point to the fact that while Congress has been deliberating some States have been moving to improve their land use planning and decisionmaking processes. This movement has been referred to as a "quiet revolution" in a recent review of State land use legislation. This movement is beginning to bear results. During the course of these hearings I am sure that the initiatives now underway in Vermont, Florida, Colorado, and Hawaii will be discussed. We recognize that the efforts in these States and others are evidence of the concern and capability which needs only to be encouraged and assisted.

The proposals before the committee, S. 268, and the administration's proposal which will be submitted shortly in connection with the President's environmental message, will encourage the quiet revolution to spread. The two proposals are similar in approach to S. 632, as it passed the Senate last year. We want to continue the productive dialog which the Congress and the Executive have had in the past on land use legislation and build on its foundation.

The administration's proposal will have some significant differences from S. 268, but most of the same basic concepts. I will briefly describe the similarities first and then the differences.

The basic purpose of both bills is to encourage and assist States to improve their land use planning and decisionmaking processes and to develop land use control systems in several important areas.

In the decisionmaking area States would be required to reassert their inherent constitutional authority to review and override, if necessary, local decisions which have an impact beyond the local jurisdiction. S. 268, and the administration's proposal focus on four important types of land use and development: areas of critical environmental concern; key facilities; large-scale development; and areas of significant natural hazards. In addition, the administration bill adds new communities and the lands surrounding new communities and development and land use of regional benefit.

I want to emphasize a point on which I think there has been some confusion. This bill does not provide for Federal control of land use decisions. There is no intent in this bill to undermine State and local authority. The entire purpose of this bill is to require States to develop a process for asserting their authority and for building up their planning capability. The Federal Government has no intention of second guessing State and local land use decisions.

The bill actually extends State control rather than diminishing it. The bill requires that Federal programs and activities, including those on Federal lands, which significantly affect land use, must be consistent with State land use programs, except in cases of overriding national interest.

There are a number of significant differences between S. 268, and the administration's proposal. These will be discussed in detail in the Department's report on S. 268, and I will merely highlight them here.

First, we have a provision for sanctions if a State fails to develop a plan within 3 years.

We believe that the objective of improving the land use decisionmaking process at the State level is too important to rely on Federal grants alone. The location of airports, highways, and recreation lands are powerful determinants of land use and development patterns. States which will not attempt to control the growth which those facilities induce should receive less Federal funds with which to construct those facilities than those States which will control such growth. In addition, this legislation will require some States to make changes in the very delicate relationship between the States and their constituent local governments. In some States this is already taking place but in others it could prove a highly difficult task notwithstanding a genuine desire on the part of the State to do so. A strong sanction provision in the bill could enhance the States' ability to accomplish the necessary internal changes.

Second, we would increase the Federal share of the cost of managing a State's program from 50 percent to 66⅔ percent. This is consistent with most of the other Federal planning grant programs and is particularly appropriate, we feel, where a significant penalty is imposed for failure to establish grant eligibility.

Third, we would require that States merely develop a method for inventorying their resources and projecting their needs whereas S. 268 requires them to develop the actual inventories and projections. This

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will be a costly process in most States and we fear could consume all the States' energies to the neglect of the institutional reform which we consider vital.

A fourth difference, which is more of form than substance, is that we have deleted the provision for an Office of Land Use Policy Administration since we feel that the internal organization of the Department should remain flexible, so that as programs change the organization can be modified as efficiency and other factors dictate.

In fact, however, we intend to administer this program through an office like that provided in S. 268. We have established an Office of Regional Planning whose primary function during its year of existence has been to develop the capability to implement this legislation. This office will operate independently of the existing bureaus within the Department which have responsibilities for land or water resource management.

The Office of Regional Planning has had extensive discussions with State officials concerning the shape which a Federal land use program should take. In October it sponsored four nationwide regional symposia on this subject.

At those sessions three important points were emphasized time and again:

First, State planning officials strongly endorse Federal land use planning legislation to support and encourage State action.

Second, State land use legislation can be the mechanism whereby special purpose planning programs can be better integrated.

And third, legislation of this nature should be implemented by local government to the maximum extent possible and consistent with its intent.

Through the Office of Regional Planning, the Department is coordinating training sessions in the use of remotely sensed information, a national symposium to discuss a common land use classification system; and a selected number of projects in cooperation with State governments which will utilize the interdisciplinary expertise of Federal agencies to assist the States in meeting the requirements of existing State legislation.

While there are a number of other important differences between the two bills, they are not of any great significance, and I think our time could best be spent if I responded to particular questions.

Before concluding I would like to make a final point. Last year Congress passed the Coastal Zone Mangement Act of 1972. That bill sets up a management program for the coastal zone very similar to the program which the land use legislation would provide for all the States' land and water resources.

In signing the Coastal Zone Act into law last fall, the President described it as an important first step toward a more comprehensive land use control program. Also, after noting that administration of the Coastal Zone Act would be in the Secretary of Commerce and the proposed administration of the national land use bill would be in the Secretary of the Interior, the President reiterated his support for his proposed Department of Natural Resources "so that we can reverse the trend toward the fragmentation and fractionalization of Federal programs and begin to coordinate our environmental efforts more effectively."

The President is recommending again the early establishment of a Department of Natural Resources which include the NOAA, the organizational unit within the Department of Commerce charged with administering the Coastal Zone Act.

Therefore, the relationship of the Coastal Zone Act to the national land use bill will depend on the progress that Congress makes on legislation to establish the new Department. If a Department of Natural Resources has been or is about to be established by the time land use legislation is enacted, then administration of the two programs would be vested in a single secretary and there would be no problem. If that is not the case, we will then need to consider at some point whether there is a need for any special language in the land use bill or whether, as I believe entirely possible, any problems can be settled administratively.

In conclusion I would like to urge prompt action on this bill.

The decisions we make now will determine the extent to which the problems of the past will be avoided and the promise of the future will be fulfilled. I am firmly convinced that the legislation we are considering today will go a long way toward achieving that goal.

The CHAIRMAN. Thank you, Mr. Secretary.

Mr. Train.

STATEMENT OF RUSSELL E. TRAIN, CHAIRMAN OF THE COUNCIL ON ENVIRONMENTAL QUALITY

Mr. TRAIN. Thank you, Mr. Chairman.

Mr. Chairman, Senator Fannin, and members of the committee, it is a pleasure for me to testify once again on proposed national land use policy legislation and again to urge prompt action by the Congress on this very high priority need. The President strongly recommended national land use policy legislation in his environmental messages in both 1971 and 1972. He will do so again in his forthcoming environmental message to be submitted shortly and the administration's specific proposal will immediately follow. I intend today only to touch upon a few major features of the legislation which I think need emphasis.

Our views on this legislation are well known, as we have had the benefit of extensive consultations with your committee over almost 3 years on this issue, and our proposal takes cognizance of your efforts in this important area.

The history of this legislation is equally well known and the issues have been exhaustively considered. The President in 1971 submitted the administration's proposal for a National Land Use Policy Act, which was a major subject of his environmental message of that year.

I would point out, Mr. Chairman, that the administration has been very active early in the administration, very active in this overall area. The coastal zone legislation was in fact the subject of recommendations in 1969 by the administration. When our Council on Environmental Quality came into being in 1970 we immediately got into the land-use area and our first annual report on environmental quality in August 1970 called for a national land-use policy.

The President first proposed his national land-use policy legislation in 1971, and addressed the subject again in his 1972 environmental message and recommended the addition of strengthening amendments

to require a process for State siting approval over airports and highways and to impose specific sanctions on States which failed to qualify for grants. In the last session of the Congress, this committee reported out the bill and it was passed, with amendments, by the Senate last fall.

The country needs this legislation now. In my opinion, improved land use is the No. 1 environmental priority facing the Nation today. The problems of air and water pollution have tended to seize public attention because of their obvious and immediate impacts on human health and well-being. Our Nation has responded to this concern, and we have moved aggressively to bring these problems under control. Certainly, we still have a long way to go before we can begin to be satisfied with air and water quality levels. Yet we have turned the corner in dealing with pollution and we are beginning to see positive evidence of improvement in specific areas. In most cases, we have seen the remarkable recovery capacity which is demonstrated by the natural environment.

Thus, as we reduce or stop the introduction of pollutants into the air or a waterway, the natural biotic systems recover and air and water quality can be restored. In the case of land use, however, man-induced changes are more apt to be irreversible. The drained wetland, the flooded valley, the farmland that is subdivided or paved can never be restored in any practical sense. Thus, land-use decisions tend to be permanent and thereby limit future options. As President Nixon said in transmitting our Council's First Annual Report on Environmental Quality to the Congress in August 1970:

> The uses to which our generation puts the land can either expand or severely limit the choices our children will have.

With a growing population and, even more importantly, with a population that continues to concentrate in ever greater densities, it is imperative that we make these land use choices wisely. Thus, effective land use policy should not be looked upon as a matter of stopping decisions or of restricting freedom of choice but rather of assuring that choices are made wisely, that a full range of alternatives is considered, and that decisions which impact broadly on society are made in a process which gives reasonable opportunity for the interests of society as a whole to be taken into account. To quote the President again from the same message:

> The time has come when we must accept the idea that none of us has a right to abuse the land, and that on the contrary society as a whole has a legitimate interest in proper land use.

The country needs this legislation now. While there are honest differences of opinion over certain provisions, as will be reflected in the administration's proposal, we cannot afford delay. This committee has made, and is continuing to make, commendable progress to bring the issue of land use before the American people. This has been the first essential. In many ways, what we need most is a new perception about the land. We have tended to take the land for granted, perhaps because of our frontier tradition. We need now to develop a sense of stewardship for the land. Indeed, in no area of our life as a people is there a greater opportunity for personal and community responsibility than exists with respect to land use.

It is worth reviewing for a moment what this legislation is all about. First, we are talking about land-use controls at the State level—not just "planning," or "coordination," or "information gathering." The purpose is to put teeth in the planning process—not just call for more plans.

Secondly, the emphasis is on major or significant land-use issues which tend to have regional impact—such as the protection of critical environmental areas, the control of growth-inducing key facilities, the control of large-scale development, and assuring development of regional benefit. It is not concerned with purely local land-use problems.

And, thirdly, the emphasis in this legislation is on the role of the States. The approach is not to shift authority over land use to the Federal Government, or even to remove from small units of local government the vast majority of public decisions over land use. It is rather to encourage the States to establish a process for identifying and controlling those major land-use decisions which require a broader review than that provided solely by the current fragmented approval processes at the local level. As long as the necessary processes are established, the Federal Government will not attempt to second guess the land-use decisions that result.

This legislation does not seek to dictate precisely how the States should work out relationships with their local governments on these issues, for variety and experimentation are far more desirable than some arbitrary structure dictated from the Federal level. But the bill must be specific enough as to the kinds of land-use problems the State must control, otherwise vagueness is simply substituted for rigidity. For this reason, the administration will again seek provisions to clarify that "key facilities," subject to State control both as to siting and secondary impact, must at a minimum include major airports and highways. To do less will invite State laws that avoid control of some of our most significant growth-inducing projects.

This legislation should deal with the process by which State and local governments affect their public authority over land development and conservation. The States should be encouraged to create the structure for affecting and controlling land development of regional importance. While the legislation must direct the States to include at a minimum certain specific types of development, such as mapor airports and highways, and certain lands of environmental importance, such as wetlands, flood plains, and historic areas, it ought to be flexible as to how the State actually administers its program.

While the land-use legislation covers virtually all major forms of development and conservation, it should not be looked upon as the "end all" to every specific land-use problem. The complex problems of powerplant siting and the control of strip and underground mining are two examples of land-use issues that require more specific legislation. The land-use bill, then, should be viewed as broad, enabling legislation, within which the State structures the process of land-use controls and planning, and under which more specific issues may be dealt with in detail.

As the Council study of last year. *The Quiet Revolution in Land Use Control*, indicated, a few States have already acted to bring order out of the current chaos of fragmented land use planning and control—Vermont, Hawaii, and Florida legislating statewide, and States like

California, Delaware, and Massachusetts legislating over particular areas such as their coastal regions. But there are only a few States in this category. And those which have passed such legislation have done so only under conditions of almost crisis proportions. We cannot wait for environmental disaster in every State to make the difference. Nor, in good conscience, should we.

This brings me to my final point about this legislation. It needs sanctions—tough sanctions—or it will never work. We have over the last few decades been parceling out moneys through a variety of Federal programs hoping that good results would naturally follow. This is particularly true of the various planning assistance programs that sprang up in profusion during the 1960's. Many have argued that if the land use bill simply contains sufficient money, the job will get done. I disagree. In the first place, the major issue confronting the States is not so much financial as it is political namely, the relationship between States and local government over who exercises what powers over land development. Most assuredly, better planning is needed, and this cannot be done cheaply. But it is the premise of the Administration's approach that without sanctions in the bill, prospects for truly effective State land use control will be compromised.

These sanctions should be statutorily explicit and not subject to administrative compromise by any review board. States without adequate land use programs would lose a graduated amount, from 7 to 21 percent, of their highway trust funds, airport construction funds, and land and water conservation funds. If the Congress means business, the bill should say so.

A number of important land use studies are under preparation at the Council. As a follow up to our study of State land use initiatives, the Council will be releasing to the public late this spring a report which assesses the constitutional limits of land use controls.

The Council and the Department of Housing and Urban Development recently contracted a study to assess nationwide current phenomena of recreational land sales and leisure home development. As I am sure all of you on the committee are aware, the tremendous growth potential in this industry, when contrasted with the current low level of planning and controls in most rural areas, could spell environmental degradation at an unprecedented scale in some of America's most beautiful landscapes. In many cases, the tactics employed to induce sales is nothing short of scandalous. It is imperative that we examine this issue now before our future options are foreclosed.

I bring to your attention two other studies contracted by the Council in cooperation with the Department of Housing and Urban Development and the Environmental Protection Agency which should help us to better understand the complex of public and private decisions which result in current patterns of urban development on the fringe of metropolitan areas. The first of these, for which a contract has already been signed, will examine the environmental and economic costs to the public of alternative patterns of residential and commercial development on the urban fringe. By examining a variety of living patterns—single homes, apartments, townhouses, clusters, and mixes of these types, as well as alternative concepts of commercial development—we hope to determine the long-term public costs and environmental effects that alternative patterns will entail. The second study will attempt to develop a method of predicting the growth of major

development-inducing public facilities, such as highways and intercepter sewers. All of these studies will help us to recognize and understand better the land use problems we view as a nation.

As a final point, I would reiterate my own personal concern as well as that of the entire administration, that we get moving. There is no environmental problem more serious right now than our current land use dilemma. I repeat my conviction that improved land use is this Nation's No. 1 environmental priority today. The consequences of our current land development trends affect not only our environment and our natural resources, but our social well-being as well. Much of our future is now being shaped by land use changes, many of which are virtually irreversible.

I read only this past Sunday that in our neighboring State of Maryland it is estimated that 30,000 acres of agricultural land are being lost each year to real estate development and speculation alone. The problems of land use are rapidly reaching crisis proportions.

The public is finally awakening. Over the last 3 years it has been a lonely battle simply to get public attention focused on land use issues.

Mr. Chairman, I would note in the six hearings before this committee on land use, the room was empty and I invite your attention to the fact there is only standing room today.

But that has changed now, as public concern is beginning to coalesce. I urge this committee to use this momentum to make the National Land Use Policy Act a reality.

Chairman JACKSON. Mr. Quarles.

STATEMENT OF JOHN R. QUARLES, JR., ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND GENERAL COUNSEL, THE ENVIRONMENTAL PROTECTION AGENCY

Mr. QUARLES. Mr. Chairman and members of the committee, I am pleased to have this opportunity to appear before your committee in support of legislation to establish a national land use policy and provide assistance to the States for development and administration of land use control and regulation.

Previous hearings before your committee have amply demonstrated the need for such legislation. They have also shown the wide support that such legislation enjoys. I commend you, Senator Jackson, and your committee for the forcefulness that you have shown in this area and urge you to report, and the Congress to pass, land use legislation quickly.

The basic land-use problem may be stated briefly in this manner: tremendous—indeed, unprecedented—pressures are producing man-made environments which are often insensitive to the nature of the ecosystems and historic or other important values of the American landscape. These changes, in turn, produce yet more development which only worsens the situation.

Rather than design with nature, man obliterates it, or ignores it until significant and sometimes irreversible damage has been done.

The administration, the Congress, the States, and the public, I think are realizing what has happened. Two factors have become very clear: the need for long-range planning and control that integrates environmental, economic, and social concerns; and the need to ecourage the States to exercise their resposibility for land use decisions involving

areas or types of development which are important to more than just one municipality.

The President will be proposing legislation to establish the land use policy and assistance program that I mentioned at the outset. The Department of the Interior—which would be given the responsibility to administer it—has addressed the features of the proposal in its testimony. I would like, therefore, to spend a few minutes telling you why I believe, from an environmental point of view, this legislation is necessary and what it can accomplish.

Many land use problems vary with the location of developments and their geographic relation to each other. These activities impinge—often unintentionally and undesirably—upon each other. We see a graphic illustration in our own backyard, in the growth caused by two major developments, which happen to be transportation facilities—the Capital Beltway and Dulles Airport. Shopping centers have proliferated at beltway interchanges. They lead, in turn, to developments designed to attract the crowds that come to the shopping centers. Industrial and housing developments exist in areas of Fairfax and Loudoun Counties near the airport where there was nothing 10 years ago—and there are loud and continual arguments about future "growth."

Some of these developments may have effects that are "good"—or at least not harmful—for our environment and life style; some may have "bad" effects. But how much thoughtful attention was given beforehand to the likelihood of any of these effects?

The Congress and the administration have both long recognized that land use decisions are basic to the preservation of environmental quality and that a sound knowledge of environmental factors should underlie land use decisions.

Environmental regulatory legislation has been on the books for several years, and has recently been strengthened—most notably, with the enactment of the Clean Air Act Amendments of 1970 and the Federal Water Pollution Control Act Amendments of 1972. These have given the Federal Government strong new authority to set and enforce standards for the discharge of pollutants from individual facilities.

These authorities deal primarily, however, with the operation of a facility after it has been built. What we need is a process which will identify possible effects beforehand and base decisions on location of facilities and developments upon those assessments.

Some Federal legislation to address this aspect of environmental quality does exist. The National Environmental Policy Act, of course, provides for assessment of the environmental impacts of "major Federal actions" before they commence. NEPA has required Federal agencies to analyze the environmental effects of their proposals, and to subject these analyses to the scrutiny of the rest of the Government.

As excellent an impact as NEPA has had, its effect must necessarily be limited in the context in which we are talking today. It applies only to "major Federal actions." Its application is made on a project-by-project basis. Finally, the analysis and review take place in the short range—they do not address projects which may be undertaken many years hence, but rather projects which are sometimes ready to be gotten underway.

The Environmental Protection Agency has received authority, in the two laws that I mentioned earlier, to address questions of siting, and to undertake, support, or require environmental planning.

The address to siting problems in the area of air quality is authorized principally in section 110 of the Clean Air Act, which requires the establishment of State implementation plans for meeting national primary and secondary ambient air quality standards. "Land use and transportation controls" are among the methods States may use to achieve the standards. In addition, the State plan must contain a procedure to review the siting of new sources of emissions which are subject to standards of performance.

The Federal Water Pollution Control Act Amendments of 1972 similarly contain provisions for review of siting and for land use controls, most notably in section 208, which provides for areawide waste treatment management plans. The State must have a program to regulate the location of facilities which might result in discharges in areas designated for coverage under its plan.

Several nonpoint sources of pollution such as construction and mine runoff must be identified, and procedures to control them to the extent feasible must be established. "Land use requirements" are among the procedures that must be employed.

Land use controls are an important method of abating pollution from nonpoint sources; they are also—in the sense of facility siting—a means of preventing it from point sources.

In addition, several other sections of the Federal Water Pollution Control Act Amendments authorize us to do research or sponsor State programs which must necessarily address land use. Among these are the provisions for research and development grants, mine water pollution control demonstration projects, and guidelines for various pollution control methods.

These kinds of activity mesh closely with the purposes of national land use legislation. They are, however, subject to the deficiency that they address only one medium which may be polluted—air or water (although the "non-water quality environmental impact" of water pollution control methods must be assessed).

What is needed, therefore, are policies and programs which are addressed to State actions, in addition to Federal actions; Broad geographic Scope; and a combination of media and forms of pollution—air, water, land.

I believe that both the administration's proposal and your bill, Senator Jackson, would provide for this.

These policies and programs are reflected both in your legislation and the land use proposal which the administration will submit in connection with the environmental message.

Mr. Chairman, I cannot stress enough the importance of this legislation to environmental protection. It complements the specific research, standard-setting, and enforcement programs which the environmental Protection Agency administers. On behalf of the Administrator I can assure you the support and assistance of the Environmental Protection Agency in your efforts to enact what we consider to be perhaps the most important environmental legislation which will come before this Congress.

Mr. Chairman, Mr. Ruckelshaus had wanted to present this testimony and he was required to attend other hearings dealing with the impoundment issue where he is testifying this morning. Had it not been for that conflict he would have been here. He asked me to express his personal interest in this land use legislation and his concern for rapid progress on it.

If I might add one further comment, I would say much of the testimony I have given has attempted to sketch the interrelationships between the air and water pollution problems which we are coping with and the general land use factors that have got to be resolved for an acceptable resolution of the overall problem.

I think the Los Angeles situation exemplifies superbly how these all tie in together. There is an air quality problem, which cannot be solved without an effective address of the land use problems.

There are many, many other examples, but I mention that because it is so timely and illustrates the point so well.

The CHAIRMAN. Thank you, Mr. Quarles.

I want to thank each and all of you for an excellent articulation of the philosophical and practical problems that exist in this area.

I would like to begin on a philosophical note. All three of you have spoken of the enabling concept approach embodied in the pending measure and likewise the administration's proposal which is to be submitted. You speak of the purpose of the two proposals as the strengthening of State and local land use decisionmaking. A further purpose, if I may quote from Mr. Train's statement, is "not to shift authority over land use to the Federal Government." I think this is a key point which we must face head on.

In this regard, I am sure you saw the rather lengthy article in the Wall Street Journal on February 2, and the article in essence said that the Jackson bill and the administration's bill both focus only on the easy problems. They focus on the land use planning and management process at the State and local levels rather than establish specific Federal land use policies.

(The article referred to follows:)

[From the Wall Street Journal, Feb. 2, 1973]

THE UNSOLVED PROBLEMS OF LAND USE

(By Dennis Farney)

WASHINGTON.—It is a curious paradox.

And as author William H. Whyte has noted, it seems to reoccur every time the urban planners unveil another hopeful attempt to reconcile Mammon with Nature, and growth with the American landscape. The occasion is marked by a cheerful luncheon of civic notables. There are bright maps, convincing narrations by urbane planners, and always, there is the paradox.

For the plans always call for "the most sweeping exercise of governmental power over commercial and business interests," Mr. Whyte noted in his book, "The Last Landscape." So why are these very interests invariably among the most enthusiastic applauders at the civic luncheon? "I am always amazed," he wrote, "at the euphoria" of such gatherings.

Maybe the euphoria is revealing. Mr. Whyte decided. Maybe everybody applauds the plan because nobody really expects it to accomplish much.

The plans "get everybody off the hook," he explained. ". . . [They] do not confront people with immediate and difficult choices. They vault over the messy present and near future. They take the big view. They make everybody feel bold." They offer, in short, the illusion of change without the consequences of change.

Maybe something similar happened in the U.S. Senate last fall.

There, in the last hours of the 92nd Congress, Senators passed the National Land Use Policy and Planning Assistance Act of 1972. Congress then adjourned before the House had acted. While the Senate debate was hardly euphoric, there was something curiously muted about the way this bill moved through committee hearings and out onto the Senate floor, a curious lack of intense debate both inside and outside the Senate. Curious, because on its face, the bill is a far-reaching answer to a problem of tremendous complexity.

It is the problem of preserving environmental quality in the face of inexorable urban growth that, by one projection, will consume the equivalent of New Hampshire, Vermont, Massachusetts and Rhode Island over the next three decades. "In the past, many land use decisions were the exclusive province of those whose interests were selfish, short-term and private," asserts the bill's primary Senate sponsor, Democrat Henry Jackson of Washington. "In the future . . . these land-use decisions must be long-term and public."

ENCOURAGING THE STATES

Accordingly, the Jackson bill would encourage states to assert zoning authority over key decisions of regional importance, thus reclaiming some of the power they delegated to local government decades ago.

Specifically, they would be asked to limit development around regional facilities like highway interchanges; to protect the integrity of "areas of critical environmental concern" like wetlands and historic districts; and to pass on the location of such things as major new subdivisions and regional sewage treatment plants. It is a law that could affect more than 100 federal programs, all 50 states, some 90,000 units of local government and a whole range of public and private interests.

"This could affect the whole economy, from the guy who wants to preserve every blade of grass to the guy who wants to develop every blade," says a Washington environmental lobbyist who favors the bill but is frankly awed by its implications. "My God! this is going to be a new ball game!"

It could be, given the way that land use is inextricably bound up with social, environmental and economic concerns. "Land use," a Senate committee report has observed, "frequently is the ultimate issue over which conflicts concerning national goals are decided."

So why has there been so little conflict over the bill itself? Why is everybody applauding at the civic luncheon?

For the Jackson bill is supported by a remarkably diverse collection of interests: the Sierra Club and the National Association of Home Builders, the White House and the AFL–CIO, the Friends of the Earth and the Forest Industries Council, The New York Times and The Wall Street Journal, to name a few. Is it really possible to get this diverse assemblage together under one tent without compromising the bill into impotence?

It is if the bill is carefully drawn, argue both administration officials and aides to Sen. Jackson. They say the important thing about the bill is that it doesn't prescribe solutions from Washington. It is neither conservation-oriented nor development-oriented; it simply establishes a process by which each state may reconcile one to the other in the state's own way.

The central notion of the bill is that land use planning can be "a way of balancing development and preservation demands," says Steven P. Quarles, the Senate Interior Committee counsel who had a major hand in drafting it. The federal task right now is to encourage states to build this mechanism. Some federal guidelines to the states already are emerging piecemeal in other legislation, and more will be necessary later. But right now, "we just are not all-knowing enough to establish a set of balanced policies that would be anything more than the lowest common denominator."

In other words, once explained Presidential Assistant Leonard Garment, "the policy is to change the problem." Maybe this is a wise approach. Maybe states are so diverse in their needs and problems, maybe land use planning still so inexact a science, that Washington should give states the widest possible latitude.

But then again, maybe the Jackson bill is popular only because it focuses on the easy problem and vaults right over the hard ones. The bill is surely a step in the right direction. Yet maybe, unless Congress comes to grips with those tough problems, the bill will prove a disappointment to those who now expect basic changes in the way the nation uses, or misuses, its land.

The Senate never fully came to grips with the tough questions last year, and the result was that some fundamental issues were hastily debated and resolved at the worst possible place and time, on the Senate floor during that body's hectic rush

to adjournment. Two issues, in particular, seem certain to arise again this session.

The first: What penalties, if any, should Washington impose on states that refuse to take land use planning seriously?

Both the White House and Sen. Jackson wanted to penalize laggard states by withholding progressively larger chunks of federal highway, airport and other aid until they acted. But the Senate stripped the bill of any penalties, leaving only the lure of federal aid under the new program—authorized at $170 million over five years—as an inducement to state action.

Even without sanctions, it's true, some states, like Vermont, already have moved aggressively to control land use. More will do so, one argument goes, as pressure intensifies.

Just the same, some knowledgeable people think it would only make sense to require all states to start planning at the same time, to anticipate problems before the pressure becomes unbearable. "The only real arena is the states," says former Interior Secretary Stewart Udall, "and the way to spur the states is through the kind of sanctions Jackson had."

The other question: Should Washington review the substance of a state's plan, or merely the process by which it hammered out the plan?

Both Sen. Jackson and the White House argue for a sharply limited federal role. If one state defines its "areas of critical environmental concern" one way and another state another, this should be of no concern to Washington. If one state's plan is heavily weighted toward development and another's toward conservation, so be it.

Federal substantive review is "simply bad politics," says William K. Reilly, a land use planning expert who helped draft the administration's position. "We wouldn't have gotten Senate passage if we had said, 'Don't develop your wetlands, don't develop your steep slopes,' and so on. That's simply not a solution that anybody would accept."

So the Senate-passed bill would limit Washington mainly to making sure that each state's "process" is open and democratic, and that the state is really gearing up to carry out its plan. As for "policy," the act would simply encourage planning "in accord with sound ecological, economic and social values," the "wise and balanced" use of resources, and other generalities.

THE CRITICS' CASE

Sen. Muskie and other critics say this is no policy at all.

"The bill would establish a bureaucratic maze unequalled in the history of the federal government, all of this to implement a policy which, in fact, is nonexistent," argued Thomas C. Jorling in a letter introduced into the debate by Sen. Muskie. ". . . It is infinitely preferable to have Congress say what it intends rather than simplistically assume a federal bureaucracy can somehow translate nothing into something."

Mr. Jorling, formerly minority counsel to the Senate Public Works Committee and now director of environmental studies at Williams College, noted that Chairman Russell Train of the President's Council on Environmental Quality supports the Jackson bill, Mr. Jorling continued:

"Perhaps Mr. Train believes that the development of flood plains is poor land use. That loss of agricultural land to [urban] sprawl is poor land use, that rapid loss of wetlands is poor land use . . . but unless Congress establishes these as policy, the federal bureaucracy will be helpless in the face of competing economic forces that are deeply rooted in our social fabric."

When the Senatae solidly rejected Mr. Muskie's proposed guidelines, he voted against the Jackson bill. The guidelines, however, foreshadow the kind of questions almost certain to rise again. They would have:

—Barred any development that failed to conform to existing federal air and water pollution laws;

—Barred development of flood plains, "except where no alternative exists";

—Sharply restricted development of "agricultural land of high productivity," as determined by the Department of Agriculture;

—Favored, as a general policy, redevelopment in natural areas.

Valid objections can be raised against such criteria, of course, and even Sen. Muskie presented them only as general concepts to be refined in debate. Much of the Midwest, to take just one example, is "agriculture land of high productivity"; is Mr. Muskie proposing to bottle up Chicago inside its present boundaries? Applying the guidelines could be a very complicated business.

But this, really, is the point: land use is complicated. Any attempt to change existing patterns is going to jangle a vast web of public and personal habits, plans, expectations, hopes and fears. A remarkable cross-section of society seems to agree that the web ought to be jangled, that today's national land use patterns are wasteful and destructive and ought to be changed. Doesn't it then make sense to thrash out some national guidelines for change in congressional debate?

It would be easier, certainly, to simply establish a "process" and let others grapple with the question of substance; a civic banquet, after all, is more pleasant that a noisy town meeting. Yet a town meeting accomplishes things that a banquet does not. For when a town meeting ends, real decisions have been made and real things happen as a result. And in the end, it can be argued, reality is more satisfying than illusion.

The CHAIRMAN. I would appreciate it if you gentlemen would comment on that judgment. I feel this is a very, very important decision which we must make; whether we are going to require, in effect, Federal zoning. There will be amendments on the floor, as you gentlemen know. You know my views on this. We receive enough mail already on our proposal—mostly favorable—but if we are going to get into the zoning business, we are to expand the ability of the Federal Government to intervene in, and substitute its own judgment for, State and local land use decisionmaking.

Maybe you would like to comment. I am talking about on purely State and local lands, not Federal lands.

Mr. Secretary.

Secretary MORTON. Mr. Chairman, of course the President's policy is based on returning the decisionmaking powers to the State government, and is based on the fact that rigid Federal controls are improper. This, of course, is due to the distance that the Federal establishment is from the problem. I don't think anybody believes that the wisdom exists in the Federal establishment to really become a planning and zoning commission for all of the States and all of the local governments. I believe if you think the matter all the way through as to how this could possibly work, and if you know anything about the process of Government, you conclude that a national land use policy will be a mosaic of State land use policies and State land use programs.

The custodian attitudes that exist in the States for control over their own property is forcing us to turn away from any concepts of superimposing zoning regulations or land use controls or the development of land use plans on the part of the Federal establishment.

I believe very strongly if we do not use the national principles, if we do not encourage the States to do it, even though there are many in and out of the Government that think that the responsibility for doing this should be placed in the Federal establishment, that it couldn't possibly be done. I don't think the States would respond favorably. I don't think there would be the improvements that are necessary to get hold of the problem. I don't think the objectives which Mr. Quarles pointed to in his own testimony could be reached through a Federal device.

If we are going toward federalization of land management, land planning, and land control, you come down to the question: What is the State for, what purpose does it serve? The States have basic responsibilities under the Constitution and under their own constitutions to manage their resources. The most important resource, of course, of any State is its land. I cannot understand any real good argument for placing the actual land use control responsibility with the Federal

Government. I do not think it could exercise that control even if given the authority by the Congress.

The CHAIRMAN. Thank you, Mr. Secretary.

Mr. Train, do you want to comment?

Mr. TRAIN. Yes, Mr. Chairman, I would like to because I think you have to put your finger on what is doubtless the gut issue in this whole land use question.

I think that whoever characterizes the approach taken in your bill, the administration's bill, as the easiest road is being overly simplistic in their understanding of what is involved here. But your bill and the administration's proposal have attempted to bring about a basic institutional reform in the political institutions of this country, in the way they make land use decisions. That is a far more difficult process and objective to achieve than simply attempting to dictate from Washington specific standards or guidelines for dealing with wetlands or flood plains or similar concerns.

I would have real constitutional concerns about the Federal Government attempting to abrogate to itself the basic authorities over land use. But aside from the constitutional allocation of authority and powers, we have some very real practical problems. At the present time we are dealing with a situation where land use decisions are in fact generally made at the local level. To suddenly attempt to move that from the local level to the Federal level, I think, would result in political resistance and popular resistance that we couldn't possibly overcome. I think it is impractical from that standpoint and undesirable.

As Secretary Morton has pointed out very eloquently, we are a country of great diversity and we should not try to force the land use decisions of the entire Nation, covering land and water, into one mold created here. I think that what we have here is a very revolutionary proposal to bring about a basic shift in political power as it deals with land use in the United States, but it is a shift from local to State government, with the Federal Government undertaking land use responsibility only in specific areas where the Federal interest is very plain, such as on its own lands or where there is a very plain interstate concern, as in powerplant siting or strip-mining control. But this should only be by specific legislation and not by some kind of umbrella law as that article suggested. I would point out that was not a Wall Street Journal editorial position but a column.

The CHAIRMAN. I think the writer was being very fair. He was trying to give both approaches to the problem and I thought it gave us an opportunity to comment.

Mr. Quarles.

Mr. QUARLES. Land use problems are not as simple as air and water pollution problems, even though these are not simple either. We are not talking here about an evil that can simply be legislated against or which can be controlled by establishing a standard. It is a matter of making the institutions work so that there can be a proper balancing.

We have encountered problems in our pollution control programs, of making the local institutions work more effectively. In the city of Cleveland, where we have had one of our most intensive enforcement actions, the nature of the abatement action was fairly easily settled

upon, but what hung up the program was disagreement between the city and the communities as to what responsibility each would have.

We have uniformly found these problems have to be resolved in the local setting by the local political leaders and other leaders of the communities affected.

The land use problems are going to have to be solved by successful handling in the local context. The role that the Federal Government has had in some of these pollution problems, and can have in the land use area, is to bring some pressure to bear and force these issues to be considered and dealt with by the local citizens.

Therefore, the process type of approach can have a tremendous impact and probably is the only constructive way to approach the problem from the Federal level.

The CHAIRMAN. The Chairman might make an observation or two. It seemed to me Mr. Train raised the constitutional question. We have to start from the premise that the police power, as far as zoning is concerned, is a matter of State purview. I know of no law or constitutional doctrine that will permit the Federal Government to zone non-Federal land.

Philosophically what I observe is that the problem facing us is that the States, and reference has been made to this, politically have not been able to handle the problem of developing relatively comprehensive and balanced land use decisionmaking capability. This is not the only problem they have not been able to handle.

We have heard a great deal over the past decade about the invasion of State rights. I think an historical review would reveal that States rights have been adversely affected because States have failed fully to exercise States rights.

I would entitle this pending bill as an Act to Require the States To Exercise States Rights. This is the heart of the matter, how much do you nudge the States, that is No. 1; how much push do you put behind it; how much help do they need, and where is the funding to come from? It seems to me the next thing is to identify the land uses or areas to which States should address themselves to in developing land use programs. These are the key areas of more than local concern: environmentally fragile areas, large-scale development, and so on. These key areas are peculiar to each of the 50 States. For the Federal Government to move in in a decisionmaking role or appellant role or for us to impose a requirement that the final decision must rest with the Federal Government in each and every land use or zoning decision would burden this Government with a bureaucracy unheard of in the history of man.

One amendment offered last year on the floor would have required that, if a farmer were going to dispose of a small piece of land, he would have to go all the way up through the procedural processes through the Secretary of Agriculture. I could just see a minor problem up here on the Hill with mail, among other things.

There is something else that has not been mentioned. To me the great source of erosion in our democratic society has been the lack of a strong public participation process. I think if we are going to have a good environment and going to have better land use decisionmaking both as to the environment and as to development, local citizens must participate. If you substitute an action forcing procedure for an

Uncle Sam-knows-best approach and people come out of Washington, arrive in a town and to tell the local citizens how to take care of their own business, we will be contributing to the erosion of the democratic process and participation process.

On the contrary, this legislation should encourage the local community to look beyond its own city or county limits and obtain a broader prospective on the impacts of their land use decisions.

Instead, now some 80,000 different public entities within the 50 States are making land use decisions upon considerations which are frequently too parochial. But it is a far too simplistic and erroneous response to suggest that the remedy is to require the Federal Government to make the decisions, fundamental decisions, in zoning and land use planning.

I just have two questions. I am concerned about the funding. You recall that in S. 632, last year we provided to the States in grant-in-aid funds, $800 million over an 8-year period. The administration proposal was for a total of $100 million in grant funds. As you know, on the floor, the funding was lowered from $800 million in 8 years to $170 million in 5 years. Furthermore, we provided for 90 percent of the cost to be covered by grant funds. This was amended down to 66⅔ percent for 2 years and 50 percent thereafter. I am wondering what kind of funding you will be recommending when you send your final comments up, Mr. Secretary?

Secretary MORTON. I think $170 million is a figure we have in mind. I would like to make one comment on that. I think it is pretty hard to predetermine the price of this operation. Here we are having an institutional reform and we are providing 66⅔ percent of the cost of that reform, and I think the price at this point in time as to what it will cost the various States to do this is to a degree academic. I would rather start out relatively low and review this process as it proceeds, not only through a monitoring and overseeing, but also from a financial point of view so that as we move forward we can tell what the price is and also could encourage some thrift in doing the job. The appropriation, as I understand it, would provide $40 million for the first 2 years and $30 million for years 3, 4, and 5.

I don't see any way, really, at this point in time, you can have a meaningful dialog or argue the case for $800 million or $150 million. It seems to me this gives the thing a real substantive start and at the end of each year, I think the Congress ought to take a look at it.

The CHAIRMAN. I think it is going to be woefully inadequate if you start out that way. Because if you divide that $40 million among 50 States and with the nudge which the States need, I must confess that is not much incentive and not much help. Because the data inventory—and we can disagree about how much inventory—alone requires a strong financial commitment. I don't see how we can get much of a start with that kind of funding.

Are you saying that you are going to be flexible and that we will see what the demand is, in effect, and if there is the demand and the real need, you are going to ask for more money, is that an unfair inference?

Secretary MORTON. I don't think that is unfair at all. I think one of the things that has to be taken into consideration, is that many States basically have developed the machinery, but not necessarily all of the policies. Many States, those that we mentioned plus a good many

other ones that have not yet been mentioned in testimony here, have moved pretty well along in the development of inventories of their resources and have begun to institutionalize themselves in this direction. I really don't know how much money it would take the State of Maryland, for example, to fully implement the overall objectives of this bill in terms of what they have left to do in relationship to what they have already done. I have the feeling this could be done, Mr. Chairman, with much less money than you would estimate at first blush, because these States have all reformed their cabinets and reorganized themselves. Most of them now have a department of natural resources, which is in the inventory business. I believe we are a little bit further along in the State process than perhaps $800 million would indicate.

I do not in anyway think that this legislation is not the most important legislation environmentally that we can enact, because I do; but I think most of the States are getting along pretty well and I think if we would start out at $40 million a year, which is almost $1 million a State then—if this is woefully inadequate at the end of the second year, let's take a look at it and see what we can do.

Our big problem is to know where to level off these programs and try to come up with some sort of reasonable priority package that stays within a solid and sound revenue ceiling.

The CHAIRMAN. The recent hearings which your Department held in the field indicated that there was a strong consensus for a need for considerably more money. I would agree we will have to work a little bit by trial and error, but we must give the assurance to the States that as they develop their programs conscientiously there will be sufficient financial support. Otherwise the States with all of their problems—especially now as so many of these other Federal problems, upon which they have depended are being taken away—will be unable to meet their mandates of S. 268. I think there is an attitude of great concern about Federal help in these matters.

Mr. Quarles.

Mr. QUARLES. The basic problem that is going to be confronting the States is political. It is going to be a question of whether the various forces within a State structure are ready to face up to and make tough decisions. That is not going to be affected by the levels of staffing and funding provided.

In the water pollution control experience, we have been operating planning programs for a number of years, on $10 million a year, and now moving up to $20 million and are ready to go up to $40 million. That program has had wrenching impact upon the society.

This program is going to stand or fall on whether the people within the States are ready to confront the problems and make the decisions.

The CHAIRMAN. I think a great deal will depend too on the sanctions. While on that point, you know, the bill, S. 632, which we have reported out last year, had sanctions. Those sanctions, although less stringent than those proposed in the original S. 632, were tough indeed. The sanctions were, in fact, similar to those proposed by the administration. However, when we went to the floor, we found little sympathy for the sanctions and they were deleted.

I am wondering if you would indicate the sanctions that you are going to propose now in your bill or when you send up your comments on S. 268. There was a reference to it.

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Mr. TRAIN. Mr. Chairman, I set these out in my statement, and if I can find this, on page 8, we would propose that where a State did not come up with an adequate land use program, the State would lose a graduated amount starting at 7 percent and going up to 21 percent across the board of their highway trust fund, airport construction funds, and land and water conservation funds. As I recall, these funds which would be withheld, would be allocated proportionately to these States that do qualify. So that there is both a sanction against the nonqualifying States and a little additional carrot for these who do.

If I can go back to your question just before this, Mr. Chairman, if we are in fact dealing with a process, the amount of money is not terribly important. This is not to belittle the amount of money, but I don't think our efforts to reform the process of making these decisions can be determined by the amount of money put up. I think the efforts within the States indicates that fairly moderate amounts of money are involved in these procedural reforms.

The State of Colorado, is one of the States that has instituted wide land use decisionmaking reform. I believe this has been done at the level of $350,000 to $400,000 annually.

The State of Vermont, which has been very forward in its thinking and has likewise instituted a statewide land use control program is, I believe, funding that at a level of around $1 million or maybe a little less.

It is within these ranges of magnitude that we are probably dealing. I agree that the smaller amounts on that side, the more important the sanctions become, which is the point you made.

The CHAIRMAN. What is the rationale for not funding the Coastal Zone Management Act?

Senator Hollings was here this morning and, of course, in his statement he goes into that. The administration supports land use legislation and it supports the critical areas and uses approach. The Coastal Zone Management Act is a land use act and is the most critical area within the administration's own perspective. It would appear to me that this law warrants full support.

Mr. TRAIN. Mr. Chairman, I believe it is the administration's position that pending a decision on the overall national land use policy legislation it is very difficult and probably not very useful to allocate substantial sums of money to the administration of the coastal zone management program. Those levels of funding can really only be determined properly when this program is enacted as we surely hope it will be.

The CHAIRMAN. It would seem to me that immediate funding of that act would allow the 30 coastal States to staff up and gain valuable experience for the wider task S. 268 would mandate. However, are you at least prepared to fund both as soon as the land use legislation has been enacted?

Mr. TRAIN. Looking at both programs together in the overall, the administration will be ready to provide adequate funding for the overall land use program; yes. Now, we also look to the adoption and creation of a department of natural resources in hopefully the very near future and this would enable the Federal Government then to bring together in one administrative agency full responsibilities for coastal zone and national land use legislation, together, which I think would be the ultimate resolution of the problem you have just raised.

The CHAIRMAN. Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman.

Gentlemen, I have been very impressed with your statements and I think we all have a common goal. However, I am a little confused as to just how we are going to reach it.

Statements were made that may be in conflict.

Mr. Quarles referred to proper balancing. Mr. Secretary, you spoke of the maintenance of State control on page 3 of your statement in which you said that the bill does not provide for Federal controls over land use decisions. But, then you comment that State control should be extended rather than diminished.

I think we would like to have cohesive State plans which recognizes the objective of encouraging the States without enforcing a Federal plan. Accordingly, Mr. Chairman (Train), would you explain your remarks on page 8 of your statement which states that sanctions should be tough or the legislation will never work. Of course, as our chairman illustrated, these tough sanctions were evidently not acceptable on the floor of the Senate, because they were removed. Should not the administration policy respect this precedent in providing matching grants for national land use program?

Do the States have the right to apply solely at their own discretion for matching grants to a national land use program? Is the program being forced upon the States or will it be something for which they have an option?

Mr. TRAIN. The States, of course, are not compelled by this legislation, either by administration legislation or Senator Jackson's bill to adopt statewide land use control programs. The administration would provide, as Senator Jackson's bill, certain matching funds, if they do, and after a period of time certain losses of other funds if they do not. So, to that extent, there is pressure, hopefully brought upon the State to adopt statewide land use control programs, but they are not compelled to do so.

Senator FANNIN. Your response raises my question—What would the administration recommend?

Would the sanction policy be recommended for a limited period of time, the first 5 years, 10 years, or indefinitely? Please clarify your recommendations, rather than comment on the stipulation in the bill. For the moment let's not refer back to the language in the Jackson bill when it was submitted on the floor of the Senate.

Mr. TRAIN. Senator, these will be the administration's position, in the bill, which it will send up shortly, and that was the purpose of putting them in my statement. There will be a difference in timing. I believe under Senator Jackson's bill there is a period of 5 years following the passage of the legislation before the State would actually have to develop a program of control. The administration believes that this appeared to be telescoped much more than that, and as I recall we will be proposing a 2-year period rather than the 5 years, and likewise the stages of sanctions would come into effect following that same 2-year period, I believe.

Secretary MORTON. Ken Brown is our legislative counsel, he has been involved in the drafting of the legislation.

Senator FANNIN. Mr. Secrcetary, if I may explain my point in this inquiry. In reference to the statement by Mr. Train, could the

Federal Government indirectly force the States to participate by denying approval of other plans. Subject to grants, such as the statewide recreation plan? What is the policy of the Federal Government regarding the disparity between the recommendations of your Department and Mr. Train in his statement? There seems to be a great variance of desires, especially concerning sanctions.

Secretary MORTON. I don't think there really is, Senator Fannin. What we have as an objective, if the bill is passed that will be sent to Congress, is that we have a national land-use plan. At the same time, it is recommended that a national land-use plan has got to be a system of State land-use plans. As the chairman said earlier this is recognition of a State right and also the incentive both from a financial point of view and from a penalty point of view to carry out that State's right.

I think what your question is, let's say a State wants to sit it out, what happens to that State as we go downstream vis-a-vis the sanctions or any other element in this bill.

Senator FANNIN. That is part of it. I am trying to determine where a State would fit in the program in the event the State was implementing its plan and the Federal Government comes along and endeavors to impose these sanctions? In fact, the Federal Government would dictate to the State. It would be far different than the exploration of the bill on page 3 of your recommendations by comparison to what you would want in the bill.

Mr. BROWN. Senator, are you talking in terms of other programs you have mentioned?

Senator FANNIN. I am first asking whether or not the administration will recommend that these sanctions be utilized as has been brought out by Mr. Train, or whether we would follow the recommendations of the Secretary as illustrated on the page there? I feel there is a great variance in these two points.

Secretary MORTON. If the State came up with a land-use program which was acceptable and carried out the spirit of the act and the dimensions of the act in institutionalizing it and did not apply for grant money which I think is a very hypothetical case, I can't see any reason why the State would have any sanctions applied against it, providing they have carried out the purpose of the act within their own institutions.

Senator FANNIN. I think that is the conflict which would be in contention.

Secretary MORTON. I think we have got to realize that the Congress isn't setting up the goal of a land use policy for the United States as sort of a voluntary exercise that you can get into or not get into. If you choose to get into the program, you get 66⅔ of the funding and if you get into the program and fail to abide by the rules, you have some money taken away from you.

I think the purpose of the legislation is to try to establish a national land-use policy which is in itself a system of State land-use plans, and therefore, I feel that the purpose of this act does require that the States either fish or cut bait.

Mr. TRAIN. Senator Fannin, I am not sure exactly which portion of Secretary Morton's statement gave rise to the problem, but I assure

you neither he nor I intended any difference on these points in our statements.

Mr. QUARLES. Senator, I think perhaps, that can be clarified by a sentence on top of page 3 of Senator Morton's statement, which says, "requires States"——

Senator FANNIN. Yes, it says the bill actually would extend State control rather than diminishing it. That is not in conformity with Chairman Train's statement on page 8. This is what I have tried to clarify.

Mr. TRAIN. We are trying to increase the power of the States vis-a-vis local government. In the sense that State authority over land use will be enhanced by this policy, there would be no diminution of the authority of the States.

Senator FANNIN. I can't agree that if these sanctions, as outlined in your statement, the States would be in a position which the Secretary states on page 3. I don't want to prolong this discussion. I take the position that there is a great difference between the positions which you and the Secretary take.

Mr. BROWN. Senator, under this bill, as I understand it, the State has a good deal of latitude as to the development of its program and implementation of its programs. The Federal Government would simply set some fairly broad parameters here, and at that point the State has that authority, and exercises control and develops it itself. The only interference, if you want to call it that, is forcing the State to do that developing through these sanctions.

Senator FANNIN. It is pretty hard for me to understand how you would have these sanctions which manadate that the States perform certain services or take certain actions while there still is not any control by the Federal Government?

Secretary MORTON. Senator Fannin, you are saying you question the right of the Federal Government to require the States to have such a plan, and if they fail to have such a plan, you question the right to impose sanctions on the States, which, in effect, is a loss of autonomy or control at the State level.

Senator FANNIN. Mr. Secretary, you have gone beyond my feeling in the matter. I am in agreement that the States should have its planning. I am in agreement that from the standpoint of an overall program it is necessary for the States to be involved in a coordinated effort.

I would now like to ask a few hypothetical questions regarding what actions you take with respect to certain matters.

With respect to the need to obtain national resource inventory, will the Federal Government, as requested by the States, reschedule priorities in order that all resources located within the State can be considered together? It is essential that the State and Federal Government work together. I question whether or not the States are in accord with your objectives. Although I can appreciate what Mr. Train desires I just am unable to tie this together with the statement of the Secretary. Would you please comment on these questions for the purpose of clarification.

Secretary MORTON. There is a requirement in the bill for complete coordination, requiring the Federal Government to coordinate with

the States in the whole area of the Federal interest. Actually, the States gain a little—again the upper hand in one sense, which I think they need and that is that Federal Government is required to coordinate with them on the impact of the management of the Federal lands or non-Federal lands in the States, and I think this is an important consideration. This actually gives the States a handle over the Federal interests in their States.

Senator FANNIN. You are saying that the land programs should cover Federal lands?

Secretary MORTON. Yes, cover the impact, the management, the utilization of Federal lands in the States.

The CHAIRMAN. Mr. Secretary, in S. 268, we cover the questions raised here. We want the Federal management of Federal lands consistent with the zoning management, or control of the State lands, especially in immediately adjacent areas and we wrote that into the act.

Let me read from the section-by-section analysis of sections 401 and 402 of S. 268.

SECTION 401

This title contains two requirements for compatibility between the planning and management of Federal lands and non-Federal lands.

First, the Federal land management agencies must coordinate (except where "paramount national policies, programs, and interests" justify the lack of coordination) their programs, policies, rules, and regulations for the Federal lands with State land use programs which meet the requirements of title III and with State and local land use inventory, planning and management activities on or for adjacent non-Federal lands. (Subsec. (a).) Any Federal agency proposing any new program, policy, rule or regulation relating to the Federal lands must publish a statement concerning the consistency (or the reasons for the inconsistency) of the proposal with State and local land use planning and management thirty days prior to the taking effect of the proposal. Furthermore, except where otherwise provided by law, a public hearing on the proposal must be held at least seven days prior to final publication of the statement. (Subsec. (b).)

SECTION 402

Second, the States in their State land use programs must possess, and make good faith efforts to apply, methods for insuring that Federal lands, particularly National Parks, wilderness areas, and game and wildlife refuges, are not degraded by inconsistent land use patterns in the same immediate geographical area (such as unsightly strip developments or development which promises a high degree of air, water, or noise pollution). The section 305 procedures for determining grant eligibility apply to this additional requirement for State land use programs.

Secretary MORTON. Section 401 says Federal lands management agencies shall consider State land use programs prepared pursuant to this act and State and local government and private needs and requirements related to Federal land and shall coordinate land use inventory, planning, and activities, and so forth, which I think carefully sets out the coordinating responsibility and cooperative responsibilities.

Senator FANNIN. Mr. Secretary, I am satisfied, but I am not satisfied from the standpoint of need for the tough sanctions proposed by Chairman Train. These sanctions will never work. This is what concerns me.

Mr. TRAIN. Senator Fannin, to reiterate again, it is not my personal proposal, this is the administration's position. It was the position last

year in legislation and it will be the administration's position in the bill that will be sent up shortly. As to the justification for sanctions, it has two parts. One, it is a mechanism for bringing force to bear on the State of a monetary nature to encourage them to develop adequate land use control programs. That is the first purpose.

The second purpose is that it is our strong feeling that to invest Federal moneys in highway programs, in airport programs, in recreation programs, in States that refuse to adopt adequate statewide programs for the control of growth around such facilities is not good land use management and from that standpoint therein lies a justification for the loss of such funds.

Senator FANNIN. Do you agree this sanction goes beyond that which was proposed in the bill which actually extends State control rather than diminishes it? With these stipulations—that the sanctions can be applied—I don't see how we can have our cake and eat it too. This is not in conformance with that which the Secretary states.

We have covered this issue, but on another matter, through the planning process the States would classify areas of critical environmental concern. Would they also designate areas for "key facilities"?

Mr. TRAIN. As I pointed out in my statement, the administration believes that the reference to key facilities should specify highways, major highways, highway interchanges, and airports. We do believe these are obvious examples of major growth inducing facilities and a State to have an adequate plan and program should without any doubt include such facilities. So that is one rather small but still substantial amendment we believe should be in the bill.

Senator FANNIN. I am concerned about the likely duplication of planning effort. And unnecessary costs. It has been the desire of the sponsor of this bill to try to eliminate these duplications. The proposed funding is considerable. As time passes the funding-operating costs will build. The national environmental policy acts brings to mind the magnitude of the budget and personal impact. No one anticipates the man-years required in each of the affected agencies.

Will you please provide for the record a 5-year projection of budget and costs including that which will be indirectly allocated throughout the Federal Government.

Secretary MORTON. I will be glad to supply that, from the Department of Interior's point of view.

(The material referred to follows:)

FIVE-YEAR PROJECTION OF BUDGET AND COSTS

Assuming that the proposed Land Use Policy and Planning Assistance Act is enacted during this session of Congress in substantial form as recommended by the Administration, it is our estimate that the cost in man-years and dollars is as follows:

	1974	1975	1976	1977	1978
Fiscal year:					
Man-years	78	85	85	85	85
Amount	$1,716,000	$1,926,000	$1,984,000	$2,044,000	$2,105,000

These costs based on what it would cost to implement the Administration's proposal include projected expenditures for development and promulgation of regulations and guidelines; the development and administration of the grant-in-

aid program; and general administration of the land use legislation. Included in the latter are costs associated with the Director and his staff, administration, research and development, education and training, support for the proposed National Advisory Board on Land Use Policy, the coordination of technical assistance, and clerical expenditures.

This projection of administrative costs associated with the Federal implementation of the Administration's proposal does not include expenditures for developing and managing a Federal Information and Data System, the Presidential Ad Hoc Hearing Board, and the Ad Hoc Federal-State Joint Committees, all of which are provided for in S. 268 but omitted from the Administration's initiative.

The CHAIRMAN. Thank you, Senator Fannin.

I would like to have printed in the record at this point materials concerning the four regional symposia on implementation of State and local land use planning held by the Office of Regional Planning of the Department of the Interior. I am particularly pleased to read that, first, it was the consensus of the symposia participants that the funding level of S. 632 as it passed the Senate is inadequate; and, second, a majority of the participants favored strong sanctions. The emphasis on the need for a good data base prior to formulating specific policies is also worthy of note.

(The material referred to follows:)

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

November 22, 1972

Memorandum

To: Participants, USDI-Sponsored Land Use Symposia

From: Director, Office of Regional Planning

We want to again thank you for your participation in our recent symposia on national land use planning. These informal discussions have been a most productive and valuable learning experience for us.

Having completed our synthesis and analysis of the symposia, we are now evaluating options for follow-up activities based on the issues, problems and needs identified at the symposia. The Council of State Planning Agencies is currently developing proposals for high priority demonstration projects, which we hope to initiate soon. We have recently initiated a series of discussions with the newly-established Office of Coastal Zone Management (OCZM) in the National Oceanic and Atmospheric Administration, Department of Commerce. Our mutual goal is to establish the close working relationship required to ensure coordinated administration of the Coastal Zone Management Act and proposed national land use planning legislation. Toward this end, several members of our staff are being detailed to work with Robert W. Knecht, Director of OCZM. In another effort, we have asked the Conservation Foundation to sponsor a forum in early December to explore issues related to the public participation process for land use related programs. As other follow-up plans develop, we will contact you.

For your use, we have enclosed one copy of the following materials:

(1) summary of major points of symposia discussions,

(2) list of symposia participants,

(3) Texas Land Use Conference Report (draft);

(4) typed version of charts used at the symposia.

In addition, you will soon receive a copy of the final report of the Texas Land Use Conference and a copy of a land use planning study for the Willamette Valley, Oregon.
Please contact us if we may be of assistance or if you have any additional suggestions on follow-up. We greatly appreciate your cooperation and assistance to date, and we intend to do our best to continue to develop a mutually productive working relationship.

Enclosures

cc: Governor's Designee

Frank Carlson
for Lance Marston

United States Department of the Interior

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ISSUES IN IMPLEMENTATION OF LAND USE PLANNING ON NON-FEDERAL LANDS:

A Summary of Informal Discussions With State Government Participants in USDI-Sponsored Symposia on National Land Use Planning

WASHINGTON, D. C.
OCTOBER 17-18, 1972

ST. LOUIS
OCTOBER 19-20, 1972

DENVER
OCTOBER 24-25, 1972

SAN FRANCISCO
OCTOBER 26-27, 1972

INTRODUCTION

During October 17-27, 1972, the U.S. Department of the Interior sponsored four, regional, one and one-half day symposia for the primary purpose of obtaining State perspectives on issues, problems and needs in land use planning and management. Participants in these informal discussions consisted of a variety of planning officials from 49 States as well as Puerto Rico, the Virgin Islands, and American Samoa.

USDI staff members who attended all four symposia have prepared the following summary, which is based on their perception of the views expressed on major points of discussion by State participants. Any misinterpretations are strictly unintentional. The following additional considerations should be kept in mind when reviewing this summary:

(1) views presented do not necessarily represent official State or Federal policy or position,

(2) "consensus" means that a majority of participants clearly concurred.

Many of the items in this summary relate to national land use planning legislation, most specifically, the Land Use Policy and Planning Assistance Act of 1972, S.632 as passed by the U.S. Senate on September 19, 1972.

1. ISSUE: NEED FOR NATIONAL LAND USE PLANNING LEGISLATION

   CONSENSUS: participants believe strong national legislation is needed now. Reason: to support and encourage State action.

2. ISSUE: ROLE OF LAND USE PLANNING PROGRAM

   RESPONSE: most States seeking a mechanism for effective comprehensive planning...majority of participants look to land use planning as the "linchpin" to accomplish integration of categorical and/or functional planning programs.

3. ISSUE: SCOPE OF LAND USE PLANNING PROGRAM

   RESPONSE: many participants support a comprehensive land use planning program..."critical areas only" approach is too restrictive...use it only when comprehensive program is politically infeasible.

   RECOMMENDATION: national land use planning legislation should provide strong incentives for States which implement more than the minimum required program.

4. ISSUE: POLICY FRAMEWORK FOR PLANNING

   CONSENSUS: planning must take place in the context of public goals and policy guidelines. Without a national and State policy framework, it would be planning without sufficient direction.

   RESPONSE: many participants felt that national legislation should articulate a more specific national policy relating to the quality of life, national growth goals, population size and distribution, energy, etc. However, there was a general feeling that this was not politically feasible.

   RECOMMENDATION: national legislation should require State land use planning programs to include public goals and policy setting; no specification as to the mechanism to be used.

5. ISSUE: SHOULD NATIONAL LEGISLATION INCLUDE PENALTIES AGAINST STATES WHICH DO NOT IMPLEMENT APPROPRIATE LAND USE PROGRAM.

   RESPONSE: sanctions must be coupled with incentives

   RECOMMENDATION: majority of participants believe national land use legislation must contain strong sanctions coupled with strong incentives

6. ISSUE: STATE AUTHORITY TO CONDEMN AND ACQUIRE PRIVATE LAND

   RESPONSE: national legislation should require State land use programs to include provisions for acquisition by condemnation and other means.

7. ISSUE: TIME FRAME REQUIRED FOR STATE IMPLEMENTATION OF LAND USE PROGRAM MANDATED BY NATIONAL LEGISLATION

   (1) RESPONSE: implementation time frame must allow adequate time for State legislature to meet to authorize and fund State program.

   (2) RESPONSE: 3 and 5 year requirements in S.632 as passed by 92nd Congress may be too restrictive.

8. ISSUE: TAX REFORM

   RESPONE: effective land use planning is contingent in large part upon reform of property tax assessment procedures.

9. ISSUE: FUNDING

   CONSENSUS:

   (1) quality of program and implementation time frame are dependent on total funding level, Federal share, and duration of Federal funding;

   (2) S.632 as passed by Senate in 92nd Congress had totally inadequate funding provisions;

   (3) all Federal programs should strive for consistent cost sharing ratio;

   (4) amount of State share is as important as total level of Federal funding.

   RECOMMENDATIONS:

   (1) increase total funding level based on reliable estimate of cost to implement program required under national legislation.

   (2) increase Federal share to at least 66 2/3% and preferably 90%.

   (3) extend duration of Federal funding beyond 5-year period.

   (4) national legislation should permit use of other Federal funds and/or in-kind services to be used for State share of funding.

   (5) national legislation should provide for integrated grant applications for all Federal planning programs in a State.

   (6) redirect and/or consolidate funding from categorical planning programs to enable effective coordination with State land use planning programs.

   (7) provide special revenue sharing for State planning.

10. ISSUE: FEDERAL GUIDELINES FOR IMPLEMENTATION OF LAND USE PLANNING MANDATED BY NATIONAL LEGISLATION

CONSENSUS:

(1) Federal Government should be concerned primarily with general results of State implementation, but not the nuts and bolts.

(2) guidelines should allow maximum flexibility for State to implement program in whatever way best suits their particular situation.

(3) guidelines must take into account whatever practical limitations the States are operating under; e.g., if inadequate funding is provided by national legislation, States will not be able to implement highest quality program.

(4) guidelines should be coordinated with guidelines of all related Federal programs.

RECOMMENDATIONS: when national legislation is passed, Federal lead agency should sponsor regional symposia and utilize other mechanisms to specifically obtain State assistance in drafting guidelines.

11. ISSUE: FEDERAL COORDINATION

CONSENSUS:

(1) Federal agencies should first "put their own house in order"

(2) proliferation of Federal agencies and fragmentation of responsibilities creates more problems for States than they solve. States spend too much time going to too many meetings with different Federal agencies.

(3) urgent need for effective coordination of related Federal planning programs; e.g., HUD 701, land use planning, coastal zone management, transportation, air and water quality, rural redevelopment.

(4) many Federal agencies are talking to the States regarding land use planning. A lead agency must emerge.

(5) It is unreasonable to expect States to be able to force Federal coordination.

(6) there is need for all Federal agencies to be organized on a consistent basis with regional headquarters in the same city.

RECOMMENDATIONS:

(1) national legislation should have a specific, strong requirement for Federal program coordination, with one Federal agency designated as lead agency for land use planning.

(2) do not create new coordinating mechanisms--utilize existing ones.

(3) Federal Regional Councils

(a) offer the best potential for Federal coordinating mechanism.

(b) must include natural resource agencies...imperative that social and natural resource programs be pulled together.

(c) Chairmen of FRC's should be independent from line agencies... perhaps appointed by President.

12. ISSUE: COMPATIBILITY OF FEDERAL PROGRAMS WITH STATE LAND USE PLANNING PROGRAMS

CONSENSUS:

(1) provision in S.632 for Federal program compatibility with State land use planning program is good, but what specifically would that mean? How would one determine when an overriding national interest existed that should pre-empt the State program?

(2) A-95 review process has problems, but States have invested much effort in developing it; it holds potential for being effective Federal-State coordinating mechanism.

(3) in States with significant amounts of Federal public lands, it will be difficult to develop effective State land use planning without Federal cooperation and coordination for public lands planning and management.

13. ISSUE: MECHANISMS FOR INTRASTATE COORDINATION

RESPONSE: national land use planning legislation would result in government reorganization in many States.

CONSENSUS:

(1) national legislation should allow maximum flexibility so each State can determine its own best mechanism for implementation and coordination. Many States will use land use planning and implementation to program integration and coordination.

(2) to maximum feasible extent State land use planning program should be implemented by local government.

14. ISSUE: RELATION OF INDIAN LANDS TO STATE LAND USE PROGRAM

RESPONSE: need for national legislation to resolve issues relating to State land use programs and lands owned by or held in trust for Indians.

15. ISSUE: PUBLIC ACCEPTANCE OF LAND USE PLANNING PROGRAMS

RESPONSE: there is and will be a public acceptance problem of varying degrees in various States.

CONSENSUS: one of priority needs now is education programs for the general public as well as for government personnel.

16. ISSUE: PUBLIC PARTICIPATION IN LAND USE PLANNING

CONSENSUS: States concerned about time, effort, and cost of citizen involvement mechanisms.

RECOMMENDATION: national legislation should include only general requirement for citizen involvement.

17. ISSUE: APPLICATION OF REMOTE SENSING TECHNOLOGY

RESPONSE: the EROS system described by USDI appears to offer a more cost-effective system of data acquisition and utilization.

RECOMMENDATION: immediate training opportunities offered by USDI re application of remote sensing.

18. ISSUE: STANDARDIZED LAND USE CLASSIFICATION SYSTEM

CONSENSUS: there is an immediate need for a standardized national land use classification system.

RECOMMENDATION: As soon as possible, agreement should be reached between Federal agencies and between Federal and State agencies on the system to be used.

19. ISSUE: RESOURCE AND LAND INFORMATION SYSTEM

RESPONSE:

(1) wide variation in participants' opinions regarding nature and extent of data and information needs.

(2) there is a clear need for an information system that integrates natural resource and socio-economic data. It is not clear whether RALI is designed to fill this need.

(3) States have immediate needs for accelerated delivery of base maps and other information products as well as a catalogue of information sources and systems.

RECOMMENDATION:

(1) too many Feds are trying to push their individual data systems as the one for the States to use. The Feds need to get coordinated first.

(2) development of any integrated information system should be based on an extensive user needs survey and demonstration projects.

(3) Interior should get its own information systems integrated as a first step.

20. ISSUE: INTERGOVERNMENTAL ASSISTANCE NEEDS

RESPONSE:

(1) there is a need for Federal agencies to provide coordinated assistance now in support of State land use planning programs.

(2) at the present time, policy and administrative issues are as important or more important than technical problems in implementing land use planning programs.

(3) one of priority needs at all levels of government is development of trained personnel with the interdisciplinary skills necessary for effective land use planning.

(4) intergovernmental cooperation is needed to solve "state-of-the art" problems, including development of better planning methodologies and employment of new technology.

USDI-SPONSORED SYMPOSIUM ON NATIONAL LAND USE PLANNING

October 17-27, 1972

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USDI-SPONSORED SYMPOSIUM ON NATIONAL LAND USE PLANNING

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October 17-27, 1972

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USDI-SPONSORED SYMPOSIUM ON NATIONAL LAND USE PLANNING

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October 17-27, 1972

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OBJECTIVES OF DEPARTMENT'S OCTOBER LAND USE SYMPOSIA

OBTAIN STATE PERSPECTIVES ON ISSUES, PROBLEMS AND NEEDS IN LAND USE PLANNING & MANAGEMENT

OBTAIN STATE PERSPECTIVES ON IMPLEMENTATION OF NATIONAL LAND USE LEGISLATION

IDENTIFY DOI INITIATIVES TO PROVIDE TECHNICAL & PLANNING ASSISTANCE TO STATES

FACILITATE INTERGOVERNMENTAL ASSISTANCE PROGRAMS SUPPORTING STATE LAND USE PLANNING & MANAGEMENT

NATIONAL LAND USE LEGISLATION

PROVIDES RESOURCES AND INCENTIVES TO STATES TO ESTABLISH A PROGRAM TO INVENTORY, DESIGNATE AND MANAGE CRITICAL ENVIRONMENTAL AREAS AND LAND USES OF MORE THAN LOCAL SIGNIFICANCE.

SHARED FEATURES OF LAND USE LEGISLATION (NON-FEDERAL LANDS)

STATES ARE IMPLEMENTING AGENTS, NOT FEDERAL GOVERNMENT

REQUIRES PROGRAMS AND INSTITUTIONAL CHANGES, NOT COLOR-CODED PLANS

FOCUS IS CRITICAL AREAS, AREAS OF MORE THAN LOCAL CONCERN

FEDERAL PLANNING AND PROJECTS MUST COMPLY WITH STATE PROGRAMS

SPECIFIES FEDERAL-STATE-LOCAL COORDINATING MECHANISMS FOR PLANNING & DECISION-MAKING

FEDERAL FUNDING BY GRANTS-IN-AID TO STATES

KEY FEATURES OF SENATE PASSED LAND USE POLICY
AND PLANNING ASSISTANCE ACT (JACKSON S.632)

REQUIRES 3 YEAR PLANNING PROCESS: FOCUSES ON CRITICAL INVENTORYING ENVIRONMENTAL AREAS, AREAS IMPACTED BY KEY FACILITIES, AND LARGE-SCALE DEVELOPMENT AREAS.

REQUIRES 5 YEAR PLANNING PROGRAM TO DESIGNATE AND CONTROL CRITICAL ENVIRONMENTAL AREAS AND LAND USES OF MORE THAN LOCAL SIGNIFICANCE.

FUNDING:	40M/YR FOR 2 YRS: 30M/YR FOR 3 SUCCEEDING YRS
FEDERAL SHARE:	2/3 FIRST 2 YRS: 1/2 THEREAFTER
SANCTIONS:	TERMINATION OF ASSISTANCE; HEARING BOARD CONCURRENCE
COORDINATION:	FEDERAL-STATE-LOCAL MECHANISMS REQUIRED FEDERAL PROGRAMS CONSISTENT WITH STATE PROGRAMS
ADMINISTRATIVE:	DEPARTMENT OF THE INTERIOR; PROGRAM REVIEW BY HUD & EPA
INFO SYSTEM:	FEDERAL LAND USE DATA AND INFORMATION; REGIONAL BRANCHES

LAND USE LEGISLATION

WILL

-FUND STATE EFFORTS TO INVENTORY, DESIGNATE AND REGULATE LAND USE IN CRITICAL AREAS

-ESTABLISH MECHANISMS TO COORDINATE FEDERAL-STATE-LOCAL LAND USE DECISIONS

-PROMOTE DEVELOPMENT OF SYSTEMATIC METHODS FOR EXCHANGE OF LAND AND OTHER ENVIRONMENTAL INFO

-LINKS HUMAN AND NATURAL RESOURCE PLANNING

WON'T

-IMPOSE FEDERAL PLANNING ON STATE OR LOCAL GOVERNMENT

-PROVIDE FUNDS FOR ACQUISITION OF LAND OR COMPENSATION FOR PUBLIC LIMITATIONS ON USE OF PRIVATE LANDS

MAJOR QUESTIONS RAISED BY LAND USE LEGISLATION

-ARE THE STATES REQUIRED TO UNDERTAKE THIS PROGRAM?
WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

-HOW MUCH WILL THIS PROGRAM COST THE STATES?
CAN OTHER FEDERAL GRANTS OR SERVICES-IN-KIND BE UTILIZED IN LIEU OF DIRECT STATE PAYMENT?

-WHAT IS MEANT BY THE TERM "PUBLIC PARTICIPATION" IN THIS LEGISLATION?
EXTENT OF INVOLVEMENT: ARE PUBLIC HEARINGS ENOUGH?

-WHAT IS THE FEDERAL GOVERNMENT DOING TO COORDINATE ITS OWN LAND PLANNING AND DEVELOPMENT PROJECTS?

REQUIREMENTS FOR STATES (S.632)

3-YEAR PLANNING PROCESS (SEC. 302)

INSTITUTIONAL

-STATE LAND USE PLANNING AGENCY

-COORDINATION OF STATEWIDE LAND USE DECISIONS

-INTER- AND INTRA- STATE LAND USE INFO EXCHANGE

CITIZEN PARTICIPATION

-PUBLIC HEARINGS

-OPPORTUNITIES FOR INVOLVEMENT

PLANNING

-INVENTORY

--LAND AND NATURAL RESOURCES

--ENVIRONMENTAL, GEOLOGICAL, PHYSICAL CHARACTERISTICS

--ECONOMIC AND POPULATION CHARACTERISTICS AND TRENDS

-ASSESSMENT OF FEDERAL AND NON-FEDERAL LAND NEEDS FOR:

RECREATION, AGRICULTURE, MINERAL DEVELOPMENT, FORESTRY, INDUSTRY AND COMMERCE, TRANSPORTATION, URBAN DEVELOPMENT, RURAL DEVELOPMENT, PUBLIC FACILITIES

-CRITERIA AND METHOD FOR DESIGNATION OF:

--CRITICAL ENVIRONMENTAL AREAS

--AREAS IMPACTED BY KEY FACILITIES

--LARGE-SCALE DEVELOPMENT

REQUIREMENTS FOR STATES (S.632)

5-YEAR PLANNING PROGRAM (SEC. 303, 304)

INSTITUTIONAL

-IMPLEMENTATION: DETERMINATIVE STATE AUTHORITY BY

-DIRECT STATE LAND USE PLANNING AND REGULATION

AND/OR

-STATE ADMINISTRATIVE REVIEW WITH POWER TO APPROVE OR DISAPPROVE

IN AREAS OF CRITICAL ENVIRONMENTAL CONCERN, AREAS IMPACTED BY KEY FACILITIES, AND AREAS OF LARGE-SCALE DEVELOPMENT

CITIZEN PARTICIPATION

-DISSEMINATION OF PROGRAM INFORMATION

PLANNING PROCESS

-UPDATE AND REVISE LAND USE PROGRAM

-INSURE THAT FEDERAL LANDS ARE NOT DAMAGED BY INCONSISTENT LAND USE PATTERNS IN ADJOINING AREAS

A SUMMARY OF

Findings and Recommendations as

Developed by

A TEXAS CONFERENCE ON LAND RESOURCE MANAGEMENT

as
Sponsored by
Office of the Governor, Division of Planning Coordination
State of Texas

and

The Council of State Planning Agencies
Council of State Governments

at

San Antonio, Texas
Hilton Palacio del Rio Hotel
August 21-22, 1972

Preliminary Draft - For Review Only

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Preliminary Statements

from the

TEXAS CONFERENCE ON LAND RESOURCE MANAGEMENT

Palacio del Rio, San Antonio

August 21-22, 1972

Responses from participants and observers who attended the exploratory Conference on Land Resource Management for Texas held in San Antonio on August 21-22, indicate that the Conference successfully achieved both of its main objectives. The Conference resulted in an agreement on what the participants considered to be the most feasible approach to an effective system of land resource management for the State of Texas, and it also treated a number of issues which other states might weigh when designing their own land resource management efforts. Thus, the objectives of the co-sponsors, the Governor's Office of the State of Texas and the Council of State Planning Agencies, were attained.

In reaching a concensus or understanding for an approach to land resource management for Texas, the conferees demonstrated that diverse public and private interests can be brought together in the early stages of discussions on the subject and produce positive results. The open exchange of ideas and airing of concepts about land resource

management among varied interests (representing the private sector and all levels of the public sector) resulted in the realization that (1) an effective program will require coordination between all levels of government and between all agencies within any single level of government; (2) local governments should continue to serve as the prime implementors of any program; (3) a program should relate to facilitating the positive aspects of growth and development as much as it does to controlling the negative aspects of unguided and uncontrolled growth and development; and (4) a program should consider a reasonable balance between the environmental, economic and social interests of the citizens of a state. The Conference has given rise to a unique opportunity that should be seized upon to develop a greater understanding about the need for more effective land resource management.

In more specific terms, the results of the Conference were expressed in the following format:

A. A position statement on a land resource management system for Texas.

B. A set of recommendations and principles to guide the development of a state land management program.

C. A set of suggested roles and responsibilities for each level of governmental participation in a Texas land resource management program.

The specific wording of each of the elements in the above format is as follows:

A. The Adopted Position Statement:

The proposed Land Resource Management Program for Texas is intended to put the State Government in a position to exercise a limited degree of guidance and control over growth and proper development of the State, in order to improve the quality of life of its citizens while at the same time preserving the processes of local governments and rights of private land owners. The role of State Government is to be focused on those decisions pertaining to land and related resource uses which have substantial impacts beyond the boundaries of local governments in which the use is located. The system is to revolve around the designation of areas and developments of critical State concern, and the establishment of principles, standards and criteria to guide the use of those areas and developments.

A system of land resource management is not merely a program of land control, of preventing abuses or protecting and preserving critical areas. Rather, it is a guide to the State in the management of land and related resources directed at achieving the goals and objectives that the State adopts for its future growth and development. The system must provide an acceptable balance between the protection and preservation of critical environmental resources and at the

same time provide wise use and development for an adequate quality of life to its expanding population.

B. Recommendations and Principles to Guide the Development of a State Land Resource Management Program:

1. There is a legitimate and emerging new role for state and regional governments in any effective system of land resource management. These roles should compliment, support and strengthen the existing local role in land management and continue a strong local self-determination. The recommended structure and scope of state and regional roles should:

   a. Follow the basic features of the proposed American Law Institute Model Land Development Code (See Attachment #1).

   b. Consider the adaptation of the American Law Institute code as reflected in the Florida approach to critical area management as one source of further guidance in developing the State's Land Resource Management Program.

   c. Make effective use of the existing coordinating mechanisms and agencies available at state and regional levels, where appropriate and capable, in lieu of any completely new approach.

2. Acknowledge the continuing need and justification for the existing local role in land use planning and management,

and provide the needed incentives, means and authorizations for expanding and improving the local capability.

3. Propose specific enabling legislation to provide local governments with authority and means for exercising effective land resource management program. Such proposed powers and programs should be consistent with the provisions of any adopted State land development program.

4. Encourage the increased utilization of intergovernmental agreements, understandings and contracts in the provision of efficient and effective local land resource management programs.

5. Ensure that nothing in the proposed State Land Resource Management Program can be construed as authorizing any governmental agency to adopt rules, regulations or orders which are unduly restrictive of private rights or constitute a taking of property or rights without just compensation.

6. Take into consideration existing land uses and patterns, private property rights and the well-being of the general public, and build upon already existing institutions, programs and capabilities of each level of government in an effort to strengthen and improve those mechanisms which have already proven effective.

7. Define mutually acceptable fiscal and administrative relationships between state, federal, regional and local governments; and between each level of government and the private sector, in an equitable intergovernmental system of land resource management.

8. Improve both intra- and inter-governmental cooperation and coordination in functional planning activities in order to facilitate the establishment and implementation of a Land Resource Management Program.

9. Provide for adequate participation and consideration of economic and social problems and programs in land use policy and planning processes.

10. Coordinate and improve the collection and utilization of data and information needed in support of all phases of establishing and implementing a Land Resource Management Program.

11. Conduct and assist in needed research related to improved decision-making capabilities for land resource management.

12. Provide and facilitate means of general public participation, including adequate opportunities for private property owners, in any decision-making processes related to the Land Resource Management Program.

13. Develop a system of information dissemination and education aimed at better public understanding of the purposes,

benefits and mechanisms of a Land Resource Management Program.

14. Maintain some degree of flexibility in the early stages in the development of a program in order to accomodate the expected requirements of pending federal land use policy legislation.

C. Suggested Roles and Responsibilities for Each Level of Governmental Participation in a Texas Land Resource Management Program.

1. State Level Roles and Responsibilities:

a. Legislative

1) Consider legislation which meets immediate needs and concerns, such as improved local regulation of development in unincorporated areas.

2) Consider additional legislation designed to strengthen interagency and interfunctional coordination as related to land resource management planning and administration.

3) Consider legislation which requires and facilitates the collection of information and the use of existing state, regional and local planning efforts relating to land resource management.

4) Consider legislation which would permit the establishment of a broadly representative entity for guiding the development of a State Land Resource Management Program. The necessary funding for such an entity would be part of this legislation, and provisions should be included to ensure the entity's responsiveness to the electorate.

b. Executive

1) Make appointments to the proposed State Land Resource Management entity, with legislative confirmation.

2) Exercise the Governor's responsibility as the State's Chief Planning Officer to coordinate and guide the policy formulation and planning processes of a Land Resource Management Program.

3) Continue to provide staff support and participation in interagency planning and coordination.

4) Recommend needed enabling legislation.

c. Interagency Council on Natural Resources and the Environment

1) Provide advisory assistance to the proposed State Land Resource Management Program entity through

the Council's Advisory Committee on Land Resource Management.

2) Provide data and other supportive assistance to the entity. The Council's Natural Resources Information System (NRIS) could be a vehicle for this assistance.

3) Continue to provide the coordination and cooperation in interagency planning needed to ensure an effective and integrated interfunctional planning process.

4) Participate in evaluating any proposed policy or planning recommendations on land resource management.

d. A Texas Land Resource Management Entity

1) Activities supportive to establishing land resource planning or policy formulating processes.

a) Examine, evaluate and rank alternative futures and goals of the State of significance to land use decisions.

b) Examine and evaluate the likely economic, social and environmental consequences of attaining the identified goals.

c) Examine and evaluate the potential costs of alternative approaches to conducting a land resource management planning program aimed at achieving adopted goals.

2) Actual planning and administrative activities.

a) Guide the development of standards and criteria for identifying and designating areas and developments of critical State concern, in the context of a Statewide planning process.

b) Provide for regional procedures and inputs in identifying and designating areas and developments of critical regional concern.

c) Provide the necessary guidelines for administration and regulation of designated critical areas and developments at each level of government participation.

d) Encourage local governments to adopt and administer effective land use and development programs.

e) Provide for regional and state review and evaluation of local planning and regulatory programs with relation to designated critical areas and developments and make provisions for State intervention in these areas in cases of local default.

f) Ensure that adequate protection of private rights and interests are provided through equitable and readily accessible appeals procedures at each level of government.

g) Provide for needed public information and participation in the planning and administration of a State Land Resource Management Program through hearings, reports and other media.

3) Regional Roles

a) Provide the services, information and participation in a State Land Resource Management Program as delegated by legislative, executive or other directives.

b) Participate in establishing criteria and guidelines for identifying and designating areas and developments of critical regional concern.

c) Prepare regional development plans which coordinate and incorporate local plans and programs.

d) Provide needed advisory assistance in policy considerations and establishing effective local planning activities.

e) Establish mechanisms for regional hearings, public participation, appeals procedures and other processes which support good public information, understanding and acceptance of a Land Resource Management Program.

4) Local Roles - Cities, Counties, Other Local Governments.

a) Continue to provide the major share of planning, administration and application of land resource management programs in order to ensure a high level of local self-determination.

b) Assimilate and use new land resource management capabilities and mechanisms as provided by enabling legislation.

c) Make more effective use of available authorization for interlocal and intergovernmental cooperation, agreements and contracts.

d) Provide strong local leadership and input to regional plans, policies and other aspects of a Land Resource Management Program.

e) Improve local appeals procedures to ensure adequate protection of private rights and interests.

The Model Development Code

In process for over ten years, the ALI Model Land Development Code is to be not only a modern replacement for the Standard State Zoning Enabling Act and Standard City Planning Enabling Act, which form the basis for delegation of powers to local governments by most states, but incorporates a much broader range of powers and responsibilities at all levels of government. A summary description of the twelve major articles of the code follows:

Article 1. General Provisions--contains the basic grant of power to those classes of local government selected by the enacting state. The meaning of "development," the most significant term in the Code, is detailed here to define and delineate the scope and form of powers granted to local government.

Article 2. Power to Regulate Development--details the basic grant of powers to local governments for regulating land development by public or private interests, whether for single parcels of land, or for large areas. Also provides the procedures for local agencies to consider applications for development.

Article 3. Development Plans and Powers of Planning Governments--provides guidelines for local planning and grants additional powers to those governments which have adopted official land development plans. Planning guidelines are centered primarily on physical development objectives. Reservation of lands for public uses is an example of additional powers for "planning governments."

Article 4. Acquisition and Disposition of Land by Governmental Agencies--concerns use of powers to acquire and dispose of lands by eminent domain, purchase, sale, etc.

Article 5. Termination of Existing Land Use--prescribes the regulatory mechanisms available to local governments for influencing preexisting uses and structures.

Article 6. Compensation for Development Regulation--establishes standards and principles to which public authority must conform in regulating land-use, with provision for compensation or relinquishment of control where loss of value arises from regulation.

Article 7. State Land Development Regulation--reserves for the state certain powers of land development regulation; requires local governments to deny development permits unless state or regional standards are met; establishes state districts of critical concern; specifies controls for large-scale developments; creates Official Map powers; and provides for a state Land Adjudicatory Board.

Article 8. State Land Development Planning--requires organization of state and regional planning agencies and advisory committees; adopts general powers dealing with intervention in judicial and administrative proceedings, hearings, and appointments; provides criteria for applications for state or federal grants or loans; details the procedures and content of state land development plans; and permits the creation of a Long Range Planning Institute.

Article 9. Judicial Review--brings to bear the experience of judicial review under state administrative procedure acts on litigations involving governmental land development regulation.

Article 10. Enforcement--still in process, this Article will prescribe the enforcement measures available to each level of governmental operations in securing compliance with land development regulations.

Article 11. Public Records of Land Development Plans and Controls--requires the integration of publicly imposed restrictions on land-use into the public land record system.

Article 12. Financial Provisions--to standardize process of seeking and qualifying for federal or state grants-in-aid for local developments.

The model code, as enabling legislation, contains broad provisions of general applicability for most states. Not all states and local governments will choose to enact all of its provisions. The model permits flexibility and deviation to accommodate state and local needs and conditions. At the same time, it provides a high degree of coordination and uniformity in policy, planning and management at the respective governmental levels, which is desirable for an effective unified system.

The model code's primary reliance on physical development planning and management, with only general reference to social, environmental and other development objectives is a feature needing further consideration.

THE FLORIDA APPROACH TO LAND RESOURCE MANAGEMENT*

The Florida approach to Land Resource Management, which is patterned after Article 7 of the American Law Institute's Model Development Code, puts state government in a position to exercise a limited degree of control over growth and development of the state, while preserving the processes of local government and rights of private land owners. The role of the state is focused on those land use decisions which would have a substantial impact upon more than one locality.

Under this approach, the state (the Governor and the Cabinet) is empowered to designate specific geographical areas as "areas of critical state concern," and to establish guidelines for the development of those areas. Areas of critical state concern can include (1) environmental, historical, natural or archeological resources of regional or statewide importance; (2) an existing or proposed major public facility or major public investment; or (3) a proposed area of major development potential.

After an area has been designated as an area of critical state concern, the local government (or governments) having jurisdiction is given the opportunity to write regulations to implement the established state principles and administer the regulations. If the local government fails to conform to the principles, the state is then empowered to act in default of local action.

The state is also empowered to adopt guidelines and standards for determining "developments of regional impact." In general, developments of regional impact are those which would have a substantial effect upon more than one locality. When permits are requested for developments which have been identified as having regional impact, the local government must consider (1) the conformity of the proposed project to a state land development plan and (2) its regional effect as analyzed by the regional planning agency in the area in which the project is located.

In Florida, the Division of State Planning is responsible for making recommendations regarding areas of critical state concern and the principles for determining developments of regional impact. Local governments and regional planning agencies are provided the opportunity to have an input to these recommendations. The Division is also

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*This review focuses on some of the major aspects of the Florida Environmental Land and Water Management Act of 1972; it does not cover all sections of the Act.

responsible for (1) approving local land development regulations in areas of critical state concern, (2) assisting local governments in the preparation of their regulations, and (3) writing the development regulations in the event the local government fails to adopt adequate regulations.

There is also established a land and water adjudicatory commission, to hear and rule on administrative appeals from development orders by local governments relative to areas of critical state concern and developments of regional impact.

The Florida approach does not diminish private property rights, for the same constitutional protections which apply when local governments enforce land regulations apply to the regulations under the act. Further, property rights acquired under local regulations prior to the designation of an area as one of critical state concern or a development of regional impact are expressly protected.

The CHAIRMAN. The Chair wishes to place in the record several articles. I call the attention of the members of the committee that Robert Cahn, former member of the Council on Environmental Quality, who is back with the Christian Science Monitor as environment editor, has written very well on land use in a six-part series called "Land in Jeopardy," which shows the damage being done and that may be done by that part of the land sales industry dealing in remote subdivisions. Few of these rural subdivisions, which cover hundreds of thousands of acres, are based on any State or local land-use plan. If there is no objection, I will have the articles placed in the record at this point.

(The articles by Robert Cahn follow:)

LAND IN JEOPARDY

By Robert Cahn
Environment editor of
The Christian Science Monitor

ANOTHER REPRINT FROM THE CHRISTIAN SCIENCE MONITOR®

LAND
IN JEOPARDY

Fast-sell developers: U.S. scandal

By Robert Cahn
Environment editor of
The Christian Science Monitor

Washington

Across America, buyers and conservationists alike are protesting financial and environmental harm caused by installment selling of remote land.

Too often, dreams of vacation and retirement homes or of "get rich quick" investments are turning to the dust of unfulfilled promises.

Too often, the future of rural or wilderness areas is being preempted by haphazard development.

The broad brush of criticism against pernicious practices of the industries splatters over legitimate land developers, some of whom seek to protect both the environment and the interests of the purchasers. And the voices of many citizens who are satisified with their purchases are drowned out by the louder voices of criticism.

High pressure used

Yet in an industry unable so far to correct its own abuses, and with minimal federal or state regulation, the excesses appear to outstrip the constructive elements. Most of the developers use high-pressure, hard-sell tactics after attracting prospects through massive advertising and promotion featuring free dinner parties, gifts of merchandise, vacation certificates, and telephone solicitation.

Criticism began several years ago as scattered complaints from citizens who claimed they had been duped by such tactics into sinking large sums of money into sometimes worthless real estate. Now it has grown into a cause that has elements of a national scandal.

At a series of public hearings held recently in 17 major cities, federal officials heard hundreds of citizens charge land sellers with misrepresentation and fraud. The office of interstate land-sales registration of the Department of Housing and Urban Development (HUD) in Washington now receives more than 250 complaints a week.

Meanwhile, aroused by the national publicity over the efforts of developers to subdivide two large areas within New York State's Adirondacks Park, environmentalists in many parts of America are organizing to fight irreversible changes wrought by the bulldozer and builder in once wild parts of the nation's coastline, wetland, foothill, mountain, and desert habitats.

Dimensions unknown

The actual dimensions of the installment land-sales industry are unknown because no statistics are kept. But they are vast. Experts estimate some 10,000 companies may be operating although only about 2,600 have registered with HUD's land-sales registration office. They range from "mom and pop" outfits subdividing and selling off the family ranch or farm to corporate giants such as Boise Cascade, International Telephone & Telegraph, and Tenneco, which have entered the field in recent years.

The top half-dozen companies now control more land than the entire state of Rhode Island. Probably a dozen companies are selling out of holdings in excess of 100,000 acres each.

The problem has international aspects. Several major U.S. developers sell their lots to buyers including American servicemen in Europe and South America. An increasing number of complaints are coming from these foreign buyers.

Here is a land-management disaster calling for strong governmental action. It also demands a new degree of alertness from would-be buyers of "second homes."


LAND
SALE
FREE VACATIONS
FREE
LUNCH

LAND IN JEOPARDY-1



Installment land sales have become a multi-billion-dollar business. Some quality developers have sold buyers satisfactory, well-planned property for retirement, recreation, or investment. But many others have exchanged nearly worthless land for good money while ruining the countryside. This, the first of six articles, outlines the dimensions of an American land-management disaster.

There's no such thing as a free lunch

Washington

"IT'S A NATIONAL DISGRACE," SAYS one congressman. "It's a quasi-legal racket with a license to steal," writes a Connecticut woman in a complaint to a federal agency.

The object of their disaffection, and of a growing number of citizens, is the multi-billion dollar installment land-sales industry in which undeveloped rural or wilderness land is sold for second homes, recreation homes, retirement homes, or for investment.

Stories of disillusionment, told in complaint letters, are arriving at the rate of 250 each week at the federal Office of Interstate Land Sales Registration (OILSR) in the Department of Housing and Urban Development (HUD).

"I purchased three acres . . . near Albuquerque two years ago," wrote an Arlington, Va., woman. "When I flew out to inspect the property, the salesman said the whole area would be built up in two years and I would be able to sell and make a profit. So I bought seven more acres. I have it now more than half paid for but it is a vast desert and the building activity is still 10-15 miles from my land with no sign of any possible habitation. I have sunk my life savings into this property and the monthly payments are draining me financially."

A young Illinois couple who wrote to ask Ralph Nader's Public Interest Research Group to look into their problems with a developer expressed a widely felt despair. "I suppose we could build if we didn't need any water, gas, electricity, or sewer," wrote the wife. "None of the salesman's promises have materialized and our dream is turning into a nightmare."

Vital questions

Beyond the financial woe it inflicts on individual buyers, this land boom by ballyhoo is having major impact on the land itself and on the environment.

Decisions about where millions of Americans should be encouraged to migrate are left to land speculators while states and localities give up by default any public say in land use or growth policy. Few public authorities are yet asking the vital questions: Should a new community be placed in a certain place just because one individual has been able to assemble a large tract of land cheaply? What alternatives have been considered and by whom?

The average nearby resident does not know or question until too late just what effects a new development may have on his life or on his taxes.

Few question what provisions have been made to see that the development satisfies the growing environmental conscience in the nation. Does the land have sufficient water to supply the development without depriving neighbors of their supply? Can water pollution be prevented? What irreversible environmental changes will be made to the land? And finally, or perhaps primarily, is this land that should be preserved intact for future generations?

Once centered in Florida, where in the 1920's the sale of lots underwater became a national joke, the industry has boomed along with an affluent and mobile American society. The industry's tentacles reach across the nation and even stretch overseas.

Not that all land sales are bad. Some types of developments serve useful purposes, especially when a legitimate market for homesites exists, where environmental protections are provided, and where the developer provides utilities and services at the start, or is adequately financed and bonded to guarantee their completion.

Setting the scene

However, these articles will focus on the abuses of the installment sales part of the industry dealing in rural land and, in particular, on activities that are bringing demands for stricter federal and state regulation. They will suggest needed land-policy reforms and outline the considerations wise land buyers should remember.

The scenario of a typical land installment-sales operation might read something like this: Developer finds cheap rural land for sale and buys or takes option to buy. He cuts land into small lots, often smaller than city lots. He bulldozes roads and may even pave a few streets. He puts in swimming pool, country club, and minimum of improvements. On land bought for $300 an acre or less, he sets price at $4,000 or more a lot with four lots to the acre.

He then launches elaborate sales campaigns. He sends out large mailings of a brochure picturing the country club or an artist's sketch of the completed "new community." He hires a sales force to run "free" dinner parties. During these, guests are subjected to an intense sales pitch from expert salesmen who offer a "money-back" guarantee with hidden strings. Or the developer issues thousands of low-cost vacation certificates to lure prospects to site. Or he hires a battery of telephone salesmen to reach prospects. Or he sets up sales rooms at tourist attractions such as Las Vegas and Reno casinos or even at spots Americans frequent overseas.

A land merchandiser may advertise his project as a new community in the making. He may prepare a core area of higher-priced lots complete with improvements. He may even require the purchasers of those lots to build within a year or two.

But most of the land consists of comparatively cheaper priced lots in the boondocks, lots that may not even be adequately surveyed. The buyer, if he reads the fine print carefully enough, might discover that "this property is unimproved, unsurveyed, without roads or improvements and not useful for building purposes."

Lots of this type are sold as investments for the future. Development of roads and improvements is promised, or implied, 10 years later when all the purchasers' installments are paid and when the core area ostensibly will have grown out to the boondocks site. If the buyer wants to build before the improvements are in, the developer will attempt to switch him, via a trade-in, to a higher-priced lot in a buildable area or to another nearby project.

Cape Coral example

One of the few "raw land" subdivisions to actually become an independent, planned new community is Cape Coral, on Florida's gulf coast near Fort Myers. It was started in 1958 by Gulf American Land Corporation. It now is owned by the biggest, in terms of sales volume, of the developers, GAC Properties. Cape Coral has 18,000 residents who purchased and built in a small core area of the

61,000-acre development.

Cape Coral residents have fared reasonably well, although the amount of building, 6,000 homes in 14 years, is far behind projections.

However, thousands of other buyers from all parts of the nation who purchased land several miles from the core area still cannot build if they want to because of lack of roads, sewers, and utilities. And they find that instead of their original $3,000 to $5,000 lot having doubled or tripled in worth during the 7 to 10 years they were paying on it, plus paying interest, as they thought would happen, it appears to be worth much less than when they bought it — if they could find a purchaser.

Gullibility faulted

Those who buy on the 10 percent down, long-term deals are at least partly responsible for their own predicament. Their ranks are heavily sprinkled with lawyers, doctors, dentists, and merchants, as well as relatively low-income wage earners, pensioners, and young couples starting out. It is hard to understand how normal citizens who might ponder for weeks and carefully check comparative values before deciding on a $300 television or refrigerator, can at one free dinner after a 90-minute sales pitch and with no time to think it through, sign a contract committing themselves to a $10,000 investment in land 3,000 miles away.

Perhaps it can be explained when one looks more closely at the slickness of the sales promotions, as will be done in a later article, and considers the normal reliance of most Americans on "money-back" guarantees.

But basically the lack of sales resistance by many people to this land-buying spree can be traced to the hoped-for fulfillment of dreams: the dream of the landless to own a piece of America; the dream of the city-bound to get into the wide open spaces; the dream of the snowed-in Northerner to have year-round sunshine living in Florida or the Southwest; and the dream of making it rich by investing in land.

Too often, however, the dream is only an illusion.

Need for regulation

Although most of the major developers and many smaller ones are attacked in the complaints received by federal and state agencies over the past year, some of the companies do keep all their promises, control their sales material, and satisfy their buyers. But when an industry is unable to regulate itself, as has been the case with this one, the stigma of the unethical tends to rub off on all.

The latest association in the industry, the American Land Development Association (ALDA), which represents about 500 developers, but none of the very large installment land-sales companies, last summer adopted a 10-point code of ethics which took a stand against false advertising, declared for environmental objectives, and even renounced the doctrine of "buyer beware" in favor of on-site inspection and full disclosure.

ALDA has no real control over its members. Three days before the ALDA's annual convention last October, it was embarrassed when the federal government announced grand jury criminal indictments alleging misrepresentation and fraud at a Georgia subdivision whose developer was a member of the ALDA. One of the company officers named in the indictment was then serving, but now has resigned, as chairman of the board of the ALDA.

No one knows how extensive the installment land-sales industry is. Some observers estimate the amount spent on raw-land purchases, excluding urban subdivision land, to be in excess of $5 billion a year. And this probably is low.

GAC Properties Inc., which was having financial problems and lost money in 1971, sold land to 25,597 purchasers during the year and ended the year with $414.6 million in contracts receivable.

The estimated number of developers given by the ALDA is "in excess of 10,000." Land sellers are required to register their developments and disclose certain facts with HUD's Office of Interstate Land Sales Registration (OILSR). The agency at present lists 4,431 subdivisions from about 2,600 developers who have land to sell in 49 states, all except North Dakota.

Many companies qualify for exemption from the federal law which requires registration from companies with more than 50 lots, or when all lots are five acres or larger, or when the seller contracts to erect a building on the lot within two years.

Distrust voiced at HUD

"I don't trust any of the figures about numbers of developers," says HUD's tough, aggressive Interstate Land Sales administrator, George K. Bernstein, who has just completed 17 hearings in major cities around the country to listen to complaints of citizens. "The hearings showed that many, many developers have not bothered to register," he adds. "We are going to try to track them down."

Florida has the most subdivisions registered with HUD — 815 — and Albert L. Baker, director of the state's Division of Florida Land Sales, estimates more than 500 developers are selling in the state, with about 200,000 new lots registered each year. Several large companies control more than 100,000 acres each for developmental purposes in the state.

California, with 561 subdivisions registered with HUD, may have the biggest annual dollar total in installment land sales. Boise Cascade sold more than $300 million worth of lots at 18 recreational sites within the state over the past five years. California City, a subdivision in the Mojave Desert, covers 100,000 acres, with sales in excess of $100 million.

Arizona, New Mexico, and west Texas bear the bulldozed scars of raw land developments, especially around Tucson, Albuquerque, and El Paso, to indicate that their states are prime areas for retirement-home exploitation. One authority estimates that one million acres of Arizona have already been sold in remote subdivisions. And 461 subdivisions are registered with HUD.

Land Buyers Guide—1: Beware of gifts

When you are approached by someone — on the street, through the mails, or on the phone — offering you something free in exchange for a few minutes of your time, remember the first rule of the prudent consumer: "There is no such thing as a free lunch."

It may be an offer of a gift, a meal for two, a Las Vegas show, a low-cost vacation, a boat ride, a bargain, a discount, a promise of quick profits.

It may not even mention that the purpose is to promote installment sale of remote land. But there is always some gimmick.

No business can operate for long giving things away. The consumer always pays for whatever appears to be free.

And if the salesman says, "you can get $500 off if you sign today," you can be fairly sure the selling price already has been raised $500 to take care of this.

Sales pitch aimed at GIs

Overseas, some of the same large developers are hawking their wares to Vietnam soldiers on "rest and recreation" at Hong Kong, Bangkok, and several other Asian cities. The newspaper Stars and Stripes, in a series of articles published last month, estimated that U.S. companies sell $30 million worth of land a year to American military and civilian personnel in Europe.

Americans touring in Rome, Spain, and London are sold land in Florida and the Southwest, after being approached at tourist attractions or outside the American Express office with "free dinner" offers.

Europeans and South Americans, anxious to invest outside their countries, are purchasing, sight unseen, undeveloped U.S. land at prices they do not realize are highly inflated.

In Norway, 97 citizens who invested several hundred thousand dollars in Florida swampland that cannot be built upon, now are trying to get their money back from a New York-based corporation with assets over $100 million.

And in a reverse thrust, Americans are also taking the often large risks of buying land on installment in foreign countries. Developers have filed registrations with HUD to sell land in Mexico, the Bahamas, Spain, Israel, Canada, France, the British West Indies, British Honduras, the New Hebrides, Costa Rica, Ireland, Australia, Colombia, and Jamaica.

Although the amount of rural land being subdivided still appears to be on the increase, at least as can be measured by HUD registrations, many of the major developers and some smaller ones now are experiencing financial difficulties. A combination of factors hit the industry in 1972, putting many developers on the defensive for the first time, sharply reducing profits, and bringing promises of corrective measures against sales misrepresentations.

County and state governments imposed new restrictions. HUD's hearings, civil and criminal lawsuits against developers, and revelations by citizen crusaders produced a spate of publicity that turned on caution lights for many potential buyers.

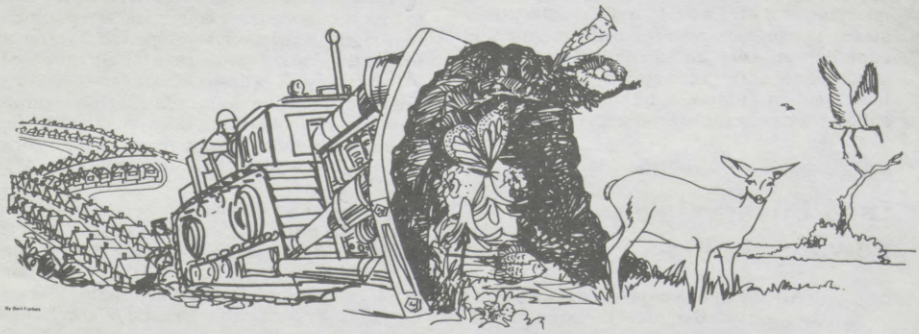
And Congress began to rumble.

Rep. Morris K. Udall (D) of Arizona, the congressman who labels the problem a "national disgrace," is preparing new legislation to tighten control of the industry.

"Land-sales abuses are robbing future generations of their right to have a quality environment just for the benefit of a few speculators," says Mr. Udall. "We must act to stop this rape of the land before it is too late."

LAND

IN JEOPARDY -2



Battling the bulldozer —the big land threat

In spite of some well-planned efforts, glamorous-appearing "second home" developments threaten serious ecological damage across America as they attract hundreds of thousands of permanent or part-time residents to areas often ill-prepared to receive them. Second of six articles.

Adirondack Park, N.Y.

WHEN THE "VACATION HOME" land developer meets citizens who want to keep a park as a park, something has to give.

That is why controversy over a 24,345-acre site within the boundaries of New York's 6 million acre Adirondack Park has erupted into a national cause celebre.

That is why lobbyists for developers and citizens environmental groups vie to push their conflicting views on state legislators who must soon vote on a proposed use plan for the 3.7 million acres of private land within park borders.

Their conflict represents a tension felt across America as installment land-sales development projects threaten "instant urbanization" of rural or wilderness areas or preempt potential future conservation lands. This is forcing state and local governments to face two key issues:

1. How to deal with the growth policy and land-use aspects of potential new population centers promoted by large land sales developments in remote areas.

2. How to cope with immediate problems of pollution, soil erosion, water shortage, or ecological disruptions posed by the development plans.

Areas of friction

These issues are particularly troublesome in Florida, California, New Mexico, and the Poconos of northeastern Pennsylvania, as

well as in New York, where they now are so sharply in focus.

Last spring, the Horizon Corporation of Tucson, one of America's major installment land-sales companies, ventured out of its bailiwick to purchase the Adirondack site from a lumber company. The developer's plans were disclosed privately to officials from the neighboring village of Colton (population: 400) and St. Lawrence County. They included subdividing the property into 6,000 to 10,000 lots. Horizon expected an eventual population of more than 25,000. Some would stay the year-round. Most would be summer or winter vacation residents.

The Horizon plan, plus another company's proposed 18,500-acre vacation-home development near Tupper Lake, also within the park boundary, brought conservation forces into battle. The Citizens to Save the Adirondack Park soon drew 2,000 members and hired one of the nation's top conservation attorneys to seek ways to halt the Horizon development.

On the other side are Colton village officials, nearby landowners who would benefit from development, and other growth boosters. These interests are determined that the conservationists will not be allowed to block future expansion inside the park boundaries. They argue that growth is needed to aid an economy that is depressed in some areas. Also, more than one-third of the private land is owned by 626 large landholders, some of whom might want to sell their holdings to land developers.

The Adirondacks fight is focused on a land-use plan recently proposed by the Adirondack Park agency to be submitted to the Legislature Feb. 1, and on which hearings now are being held throughout the state. The plan would drastically limit the number of dwellings per acre allowed on much of the private land and might prevent or seriously hamper new subdivisions in remote areas.

Greater issue seen

This western edge of the park, not too far from the Canadian border, is not majestic Adirondack wilderness of the type found 50 miles to the east near Mt. Marcy. It is comparatively flat. It has been logged. It has 60 miles of roads. But as you drive along a narrow, dirt road within the tract, especially when the fall colors are in full display, park qualities are still there: woods and meadows, swamps, streams, and absolute quiet except for chattering birds and squirrels.

What would be left of these features if there were a house every hundred feet? What would remain if the streams were dammed for lakes, if stores, gasoline stations, laundromats, schools, and the like were added to service the residents?

Conservationists see an issue here that transcends the value of this one small piece of the park. They feel they are in a war. They feel that a score of other land developers are ready to move in if Horizon wins.

Title claimed

In Florida, for example, several state agencies, the Army Corps of Engineers, and the U.S. Department of Interior are contesting with a number of Florida developers on dredging problems. At Cape Coral, the former Gulf American Land Corporation development now owned by GAC Properties, Inc., had a permit to dredge only 100,000 yards for an access channel. The developers, however, dredged 5 million yards, filled 172 acres of state-owned lands, and sold lots on the land. To settle the dispute, GAC is giving to the state 9,500 acres of marshland on Fakahatchee Strand, just west of Everglades National Park.

The state claims title to some Marco Island land on which the Deltona Corporation has already sold 9,000 lots; many of them still need to be filled in order to be developed. The corporation has offered to give the state 4,000 acres of adjacent islands in exchange for permission to dredge 17.2 million cubic yards for landfill and canals.

A newly announced $500 million subdivision on Estero Bay near Fort Myers Beach has brought protests from conservationists and some state officials who claim that much of the land was state trust land illegally given by the state to the developer. In these controversies, the state is not without blame for past actions in giving away land or rights in an effort to promote development.

Dredging, necessary for many Florida rural real-estate developments at times, has been devastating to natural conditions.

Fish nurseries

The mangrove-lined estuaries of southern Florida and the grassy marshes of northern Florida are among the most biologically productive fish nursery grounds on earth. But when deep cuts are made for canals and the dredged material is piled high above the natural level, the productivity is wiped out. The area often becomes almost sterile.

Then when the developers landscape the subdivision, a standard imported item, the coconut palm, and acres of turf replace the indigenous oaks and pines or the dense mangrove and undergrowth, which had served as a filter. Many of the canals deadend in stagnant green water polluted by increased nutrients from fertilizers and sewage.

No natural impediments

A danger that may not be discovered until too late is the possibility of saltwater intrusion into coastal water supplies caused by extensive pumping to drain swampland for building sites.

"With no mountains or gorges, Florida has no natural impediments to man-made changes," says Joel Kuperberg, director of the state's Internal Improvement Fund, which controls state-owned lands. "Florida is like a big bag of silly putty," he adds, "and it is being reshaped irreversibly in the hands of the big subdivision developers."

The newest large project in Florida, ITT Community Development Corp's. Palm Coast, is producing environmental problems although the developer claims to have spent $1 million on environmental planning, says it will not build on tidal wetlands, and is devoting much land to open space. Homes now are being built in an attractive, well-planned core area set around canals. But most lots are sold in undeveloped sections.

The 100,000-acre development accounts for one-third of the land in Flagler County. The current population of 4,500 would be overwhelmed by the 750,000 people projected by ITT when the development is complete. Neither state resource officials nor local citizens were involved in the original planning for the project.

Establishment of a company-controlled water district that would regulate sewage and drainage now is being contested by the state. The state and federal government are also concerned about the impact of 200 miles of canals planned by ITT. They have embargoed any further canal connections to waterways.

The state's department of pollution control is embroiled in hearings and controversy with four major developers and 30 smaller ones after having denied water certification for new subdivisions. The Deltona Corporation on Marco Island, Punta Gorda Isles, General Development Corporation at Port Charlotte, and GAC properties at River Ranch Shores have been denied permits. And Cavanaugh Leasing Corporation is selling lots and digging 33 miles of canals at Rotunda West, although it has not yet applied for water-pollution control certification.

Land Buyers Guide—2: Be environmentally aware

Even if the property looks appealing, before signing an agreement to purchase a lot for a future vacation or retirement home, ask questions about water supply, sewage disposal, and other things that may be vital to a pleasant environment.

Will trees be saved? How much land is provided for open space? Is the property on a flood plain? If so, what safeguards are there against flooding? Is the house to be built on fill? How much will it cost for water connection? Is the water supply sufficient?

Sewage arrangements are especially important. Does the local county have laws banning or restricting septic tanks? They may allow them in the development today, but not in five years when density is higher and you are ready to build. If not satisfied with the answers you get, show the property report to your local environmental citizen leaders and get their advice.

Finally, try to visualize what the environment would be like in this now secluded, quiet haven if the developer were to sell all the lots and you had wall-to-wall neighbors, five houses to the acre, crowded recreation areas, and all the urban environmental problems you are seeking to escape.

Growth effects sketched

"We are having problems with 95 percent of the land sales developments that are adjacent to any water," says Bernard A. Barnes, certification officer for the Florida Department of Pollution Control.

The effects of unregulated growth on agriculture and small towns are most visible in central Florida near Disney World, where many urban subdivisions and rural installment land-sales operations have sprouted.

Land prices have shot up like a Cape Kennedy missile. With tax assessments escalating, farmers can no longer afford to keep their land in agriculture. This produces overnight millionaires, but it radically changes the face of central Florida.

For a town like Kissimmee, 15 miles from Disney World, (1970 population, 7,119 present total according to the chamber of commerce, 18,000) a tremendous burden on services has evolved with little increase, so far, in tax revenues. A newly started 20,000 kw. electric power plant, expected to meet the town's needs for years to come, is already inadequate.

Foothill subdivisions

Sewage service is near capacity and being doled out on a first-come, first-served basis to

new applicants. Those who start home or motel construction today get no assurance of sewer service for years to come. The estimated cost for expanding sewage treatment facilities to meet projected demands is $7 million — $3 million higher than the city's entire annual budget.

Meanwhile, in California the state's Division of Soil Conservation reported in 1970 that 500,000 acres of land had been carved up in foothill subdivisions during the previous five years, resulting in polluted streams, loss of fish and wildlife habitat, severe erosion, and sedimentation.

At Lake Tahoe, shared by California and Nevada, one developer was halted by court action because construction activities were causing erosion and polluting the lake. And due largely to pressure from proposed subdivision developments in what was wilderness a few years ago, the Tahoe Regional Planning Agency drastically restricted future growth by dropping the zoning limit by two-thirds. Instead of the planned 700,000 daily limit for daily use of the 200,000-acre Tahoe basin by residents and recreation visitors, the agency has set building regulations to keep the maximum daily use at 216,000.

Damage identified

A report on a coastal area near San Francisco by two expert geologists concluded that a new land-sales development, Oceana Marin Property, is "subject to very active landsliding." They strongly suggested that the planned development would be unsuccessful. They advised that "some of the proposed buildings and roads will eventually slide down the bluff toward the sea."

A 1970 "memorandum of facts" by the California Environmental Quality Study Council, an advisory group to the governor, stated that in one area, Nevada County, 160 miles or 37 percent of the stream mileage had been damaged by siltation, stream bank alterations, and domestic waste discharges resulting from subdivision development. The study council also said that much of the land being subdivided is deer winter range already in critically short supply.

Water availability

In the Shelter Cove subdivision in Humboldt County in northern California, the council said, roads, drainage ditches, and some utilities were washed out by heavy rains and required replacement by the county soon after all the lots were sold at a cost to taxpayers of $2 million.

In New Mexico, the availability of water has been a central issue. Experts estimate that, given the present demands for water, the state's supply can only support 850,000 people without taking away from farming or industry or without tapping exhaustible groundwater. The population now is 1 million, and more than 1 million acres have already been subdivided in remote areas. Sales of New Mexico lots for future building are being strongly promoted across the nation.

Whatever water is taken from underground to supply the needs of these developments will be at the expense of existing users. The Albuquerque City Commission recently voted to deny extension of water and sewage lines to any subdivisions outside of the city limits.

In the Poconos, this relatively small, mountainous sector of northeastern Pennsylvania has become a much-sought-out recreation area. An estimated 35,000 to 45,000 lots have been sold at high prices for vacation homes, mostly to urban residents of New York, New Jersey, and Pennsylvania. Trees have been bulldozed mercilessly in many of the more than 100 rural land-sales developments. To make every lot accessible, roads have been constructed, often without regard for soil runoff and erosion. Small lots are frequently laid out four or five to the acre. Some are on steep slopes or in floodplains. Worse problems are yet to come when the lots are paid for and more people start to build.

Mostly septic tanks

A recent survey by Lehigh University showed that, among Pocono developers contacted, 89 percent said they supplied no sewers, thus forcing most home builders to use septic tanks. Yet the Pike County Soil and Water Conservation Commission says that the county's soils "are not suitable for septic-tank systems because of shallow soil conditions, tight substrata, and a high water table. Erosion and excessive surface runoff are creating problems in most areas of development." And in Monroe County, state and township regulations now require satisfactory soil percolation tests before granting septic-tank permits.

In the Poconos, as is the case throughout the nation where remote land is sold for vacation or retirement homes or for investment, the environmental problems of a subdivision often directly affect the purchaser of a lot. The immediate or future environmental costs frequently are hidden from the prospective customer of installment land sales. This requires more stringent state and federal control of developers and consumers who are alert to find the truth before signing for a 10-year, $10,000-or-more purchase contract.

LAND IN JEOPARDY -3

Caution: Land salesmen at work

Customers and reputable developers alike suffer as high-pressure-investment, land-sales companies resort to gimmicks, half-truths, or outright fraud to sell often worthless property for "second homes." This, the third of six articles, tells of what to be wary.

Miami

FACING A HEARING PANEL OF federal land-sales agency officials, Russell Boyle related his tale of woe. It could have been told by many another buyer of remote land sold for "investment" or "second homes."

His tale began in 1964 when Mr. Boyle and his wife attended a sales-promotion party in Pittsburgh. That evening they signed a contract for $6,700 to buy a five-acre parcel of land in Golden Gate Estates in southwestern Florida.

Two months later they went to see their Florida purchase. The miles of wilderness they viewed from the realtor's small plane was not what they had envisioned. As they were about to sign a form canceling the deal, however, the salesman made what appeared to be an extremely attractive counteroffer — a five-acre, commercial-zoned site that had just become available.

Mr. Boyle's story unfolded early last month at a hearing sponsored by the federal Department of Housing and Urban Development's (HUD's) office of interstate land-sales registration (OILSR). He said that the salesman for Gulf American Land Corporation, subsequently bought by GAC Properties, Inc., told him the better lot would cost only $9,750. "And the salesman assured us that within two years we could sell it for $30,000," recalled Mr. Boyle. "He said it was the opportunity of a lifetime. So we tore up the cancellation, traded in the five acres that wouldn't be buildable for 10 years, and sank our life savings into paying off the entire amount so we could avoid $1,400 interest."

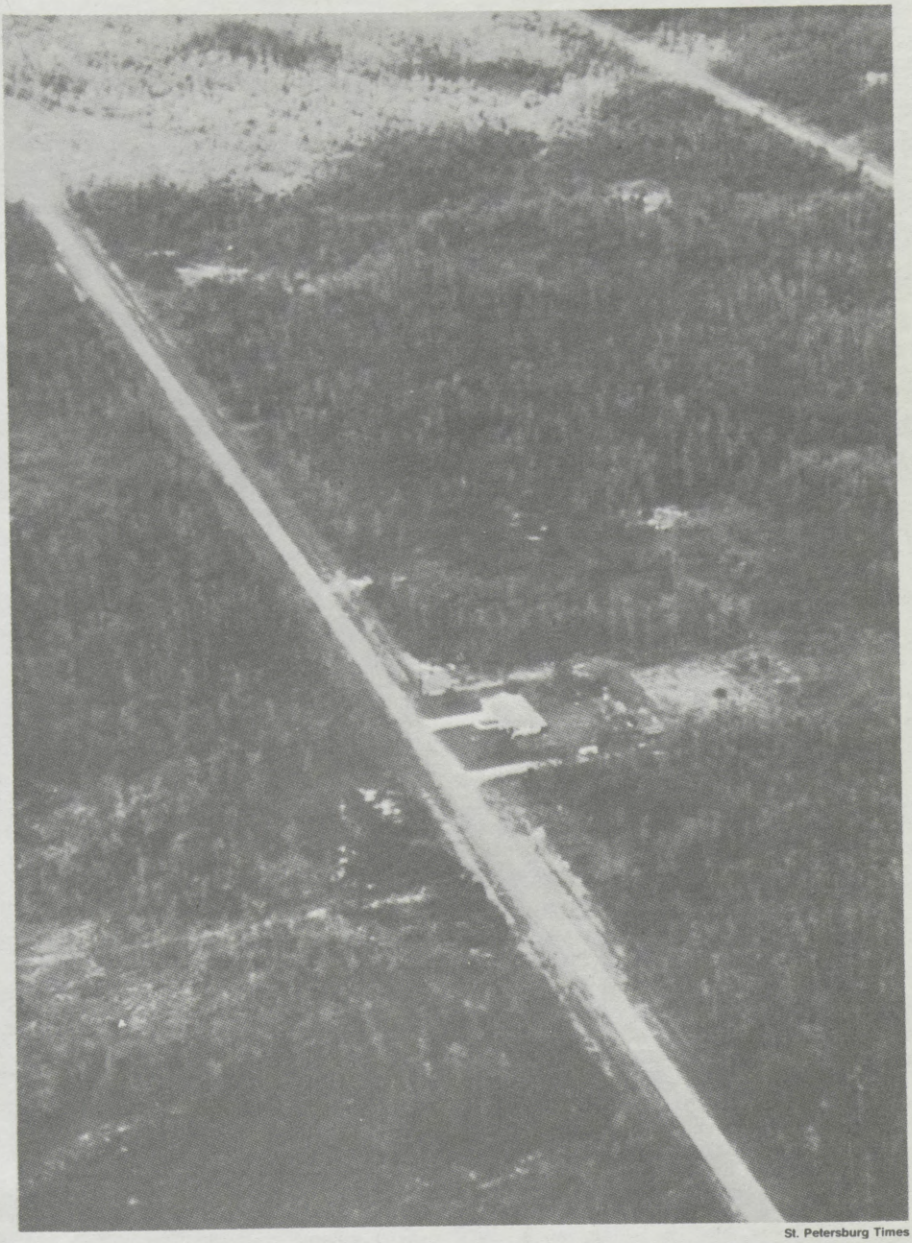
What a . . . dud!

The Boyles moved to Hollywood, Florida, not long afterward and two years later realized their "opportunity of a lifetime" was a dud. A realtor near Golden Gate told them their land might be worth $3,000 — if they could find a buyer.

Last March, when they visited their five acres, it was still undeveloped. Except for graded roads, the entire 113,000-acre area was trees, grass, and marsh. No telephone, no sewage, no canals connecting to the Gulf Coast as promised. No commercial development anyplace. Building permits for all of Golden Gate Estates in 1972 totaled only $1,000 worth. The nearest neighbor is more than six miles away. And there is no market for the Boyle lot.

Change the particulars, and Russell Boyle's complaints were echoed in the 17 cities at which hearings were held. Frequently, the citizens admitted they had been foolish in acting too quickly and not checking out the deals. Many had been looking for an easy profit. Some were possibly giving one-sided testimony, unfair to the developers.

But they all had one thing in common — the dream of owning a piece of America for retirement, of moving to a newly started town, of enjoying a second "recreation" home, or of making an investment. Many



St. Petersburg Times

Wald and Mary Mitchell enjoy seclusion while development marks time at Florida's Golden Gate Estates

were still shelling out large sums each month. They were shoring up a wavering belief that they eventually would come out all right and fearing to stop payments and lose their stake plus doing possible harm to their credit rating.

Not that all installment land sales are bad. The number of known dissatisfied customers so far is relatively small, but growing. Thousands of people, especially those who bought for the purpose of immediate building in newly started towns or communities or in vacation-home developments around the country, have found varying degrees of satisfaction.

Happier endings, now

Wald and Mary Mitchell from Akron, Ohio, who also bought in Golden Gate Estates in 1964, have a happier ending to their story than the Boyles. Gulf American promised to clear their 2½ acres, plant shrubbery, and build a house for them. Mr. Mitchell retired. They moved to Florida. Although many of the promises were not kept, their house was completed in 1969.

What had been described in advertisements as "the world's largest subdivision in the strategic path of progress" has not materialized. The Mitchells have no neighbors. They believe they are the only land buyers to have completed a house on any of the 73,268 lots sold to date.

But except for not having a telephone, which would cost $2,880 to install, and having had to personally set backfires to save the house when a forest fire swept the drained swampland, the pioneering Mitchells have "no complaints."

"We love it out here," says Wald Mitchell. "No kids trampling your grass. And no busybodies around."

A somewhat different kind of self-avowed "satisfied land buyer" was uncovered at the HUD hearings held in Detroit. Clarence R. Clawson told interstate land-sales administrator George K. Bernstein he had been buying lots since 1964 and is confident they are good investments.

Through attending land-sales dinner "parties" in Detroit, and by answering advertisements in periodicals, Mr. Clawson has purchased from five developers a total of 15 lots in Florida, Nevada, New Mexico, and Arizona. Over the nine years this 28-year-old bachelor has invested $22,000. Sometimes he finds it difficult to dig up the $297 he pays monthly on his lots. His salary as a toy salesman at a department store is not much higher than the land payments. But he firmly believes all the promises that have been made to him about facilities that will be built. He believes the value of his property is rising every year as the developers report to him.

In spite of such varied customer satisfaction, Mr. Bernstein points out that 250 complaint letters arrive each week at OILSR headquarters bringing allegations of misrepresentation, shady dealings, and outright fraud.

"The abuses we have learned about are incredible," says Mr. Bernstein. He explains he scheduled the HUD hearings partly to get greater public awareness of the potential hazards in purchasing remote land on an installment basis. "I think it is important to let the American public know as forcibly and as frequently as possible that they are dealing with an industry that, while it contains reputable and honest developers, also contains quite a few crooks, both in management and among salesmen. And if the citizens don't act with utmost caution, they are going to be taken."

Slide show comes next

One of the most popular sales devices is the free dinner party, usually given in a small banquet room of one of the good restaurants or hotels of a city. The "guests," whose interests were whetted by direct mail or telephone, come with the expectation of hearing a sales presentation.

What they are not prepared for is the intensity and skill of the sales pitch. The operation is based on getting the prospects' signatures on a sales contract before they have time to think about whether the investment is a good one or whether it meets their specific needs.

Following dinner, a talk and film or slide show is presented on the virtues of land buying and of this particular development. Often the scenes are from another project of the developer — "this is what yours will look like." Television, movie, and sports stars appear in many of the promotional movies. Sometimes they are part owners of the companies. An "adviser," or "investment counselor," will start the sales pitch, with one salesman to each small table. He softens up the prospects with a primer on why land is such a good investment.

("Did you ever stop to think that the only thing you can't manufacture is earth? The world can never get any bigger. But the population will get bigger. So land will get scarcer and scarcer. And that's why the best investment in the world is a piece of earth.") He may have a choice quote from Andrew Carnegie or Bernard Baruch at tongue-tip to prove his point.

Then he tells about this particular subdivision, what the developer is going to do and why it's a great buy.

About this time one of the "consultants" at another table may jump and shout: "Put a hold on lot No. 122."

Often as not, this is a plant, and the "buyers" at that table are shills. But it has its effect, and pressure mounts. The salesman says he has only a few lots that can be offered this evening. He hints that the company plans to raise prices next week. Now is the time to buy. He is authorized to give a $500 discount to buyers who sign tonight.

Above all, the salesman works toward a "close" — to get the prospect to sign something. He may say it is only a reservation, or an option to buy, that he really isn't selling anything, and that there is a money-back guarantee.

Rush to 'close'

"It is not the type of 'close' that is most important, but how many times you try to close," says a training guide for salesmen issued by one developer. "Too many salesmen wait too long to close and are baffled when the customer says 'no.' The reason is that he has not used enough trial closes. As in all facets of selling, management is not interested in salesmen, only closers."

The much-touted, money-back guarantee contains important stipulations in the fine print. To get out of most "sales contracts," buyers must visit the site, usually at their own expense, within six months or a year. They must take a company-guided tour of the subdivision and, on the spot, fill out a form saying that the lot they bought is not what it was represented to be. Even then, a skilled salesman may switch the buyers to another and ofter higher-priced lot which "suits you better" or "just has to double in value in two years time."

Under federal law, developers are required to furnish buyers a property report listing key statements about the condition of the land, the availability and approximate costs of sewer, water, and other utilities, and so forth. Sometimes the property report is given only at the time of signing. It may be buried among a sheaf of papers.

If the prospect says, "I'll have to think it over," or "I just want to show it to my lawyer, but I'll be back," the pressure increases. Another salesman (Mr. Jones, our "vice-president") may take over to try to "close." In the jargon of the business, there are no "be backs." If the client has time to think it over, chances are he won't be back.

Some companies, such as Horizon Corporation, shun the party techniques. Their sales efforts are centered on having the salesman come to a prospect's home.

Regardless of whether an individual has bought at a party or some other form of presentation, it is the practice of most major developers to get the client to visit the site as soon as possible. The companies whose land is attractive and who have some development under way — a pool, a country club, a few homes built — find that most buyers who visit the site do not cancel. A good salesman at the site can always paint a picture of what might be there when the project is complete. Or the buyer, who may have a long-suppressed pioneer spirit, may feel challenged by the raw land.

Some installment subdividers sell only at the site. They depend on full-page ads with varied gifts and cut-rate lots to lure prospects to the area. Rarely is the low-priced "come-on" lot shown to the prospect. The salesman says it wouldn't be good enough for the prospect's needs. But he just happens to have a much better deal at a higher price.

Salesmen at such highly advertised subdivisions often go far beyond the facts of a property report. Often they do not turn over the report until the prospect signs the sales contract. Claims from buyers of salesman misrepresentation are frequent, especially as to completion dates for lakes or other amenities. The salesmen hide such key details as the fact that the county won't allow a home-builder to use septic tanks while the developer has no plans for sewage disposal.

Land Buyers Guide—3: Be pressure proof

Many installment land salesmen try to create an atmosphere of buyer hysteria — that all around you are buying, that you'll miss a great opportunity if you don't act now, that the price will go up and the good lots will be sold. Don't let the salesman pressure you into a hasty decision by saying, "What will you know tomorrow that you don't know today?" You may know a lot more tomorrow, especially if you take the property report and copy of the sales contract home, study them and show them to a lawyer, or someone you know with knowledge of real estate. Examine your family's long-range priorities in the light of a 7- or 10-year payoff.

Don't fall for the line: "We're not selling anything, just taking a reservation; and anyway you can always get your money back if you're not satisfied." The document you sign may turn out to bind you for 10 years of payouts. If you wait and think it over, you may still decide it is right for you to buy. But at least it will be a decision arrived at rationally.

Car radio crackles

On a tour of the site, the two-way radio in the salesman's car may crackle with announcements . . . "put a hold on lot C-256. . . . Scratch A-21, I have a buyer."

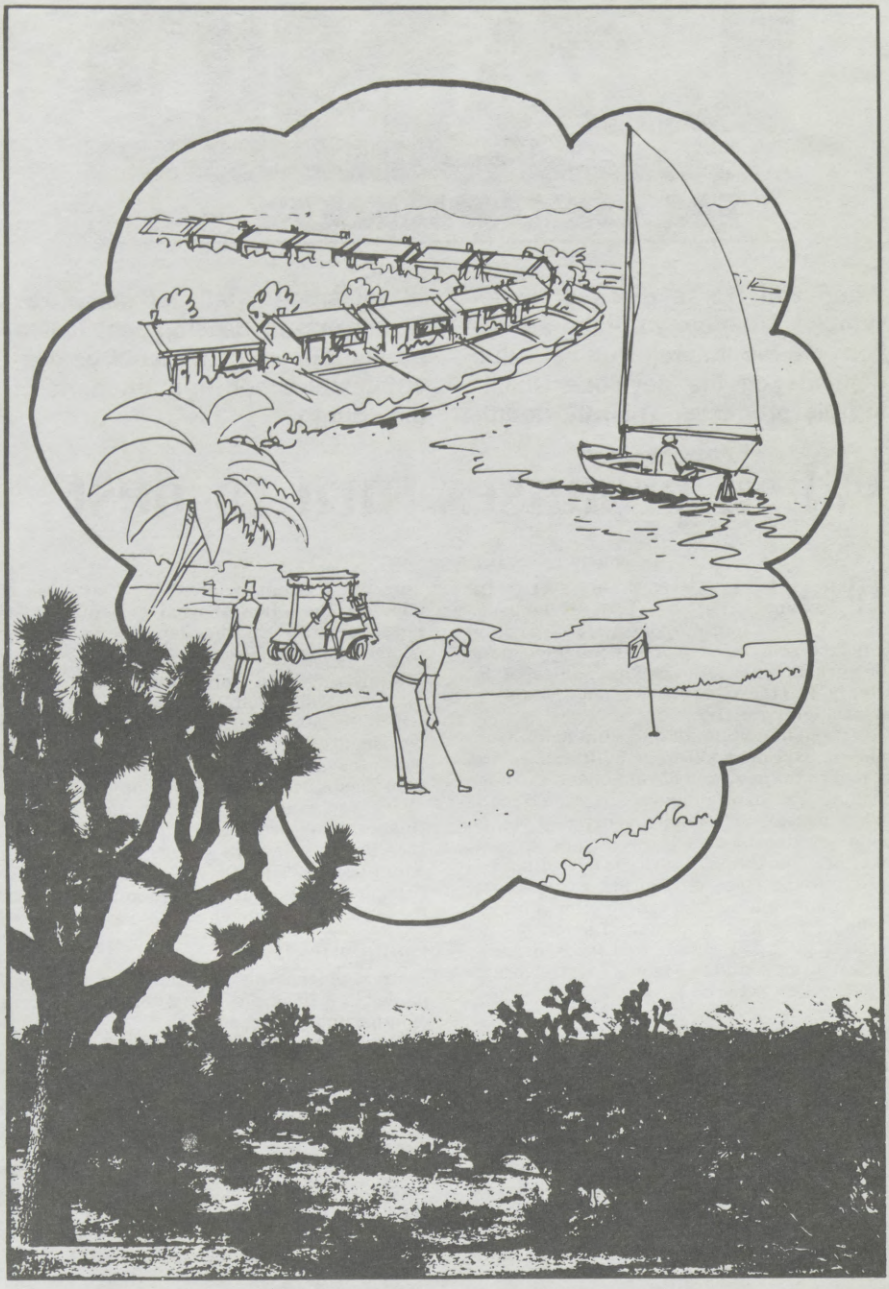
One complaint to HUD said that when he and his salesman arrived at a lot, another salesman with clients were just arriving. The two salesmen almost came to blows over who had rights to sell the lot. His salesman finally prevailed, so he bought the lot. Later he found out the whole affair had been staged to pressure him into buying.

The newest center for land hucksterism is Las Vegas where an estimated $300 million worth of installment sales were made in 1972 to non-Nevada residents by non-Nevada companies selling mostly non-Nevada land.

Meanwhile the old telephone pitch has been made into a profitable venture by a number of land merchandisers operating in Miami. The south Florida investigator of the state land-sales division says 39 "boiler-rooms" now operate in which from 2 to 20 salesmen make several thousand calls a day all over the nation using WATS (wide-area telephone service).

In their cubbyholes, these fast-talking salesmen use prepared "scripts" cleared with Florida authorities, although they often deviate from them. The "front" call is the initial offer of land. It goes to names obtained from lists acquired or purchased. The "drive" call later puts pressure on promising prospects to send in a check. The "load" call is to those who have already bought once. Its purpose is to load them up with more land.

Although the percentage of sales is small, the system pays off, especially when the salesmen make more than 5 million calls a year. Needless to say, much of the property sold this way is inaccessible swampland.



The dream and the reality

LAND IN JEOPARDY -4

When you buy a piece of undeveloped America, you take an option on the future. But its value depends on the developer fulfilling his promises. This, the fourth of six articles, tells of unrealized hopes and of development halted by bankruptcy or by legal or governmental action in many parts of the country.

When promises turn to dust

Washington, D.C.

FORTY-FIVE MILES WEST OF Atlanta, the lake bed at Treasure Lake is half dug out, a dam partially built, the golf course nearly complete. Along the streets, markers display names of lot buyers. But the sales office is out of action — at least temporarily.

Just outside of Santa Fe, sand drifts from piles placed near yet-to-be-built golf course greens at the new land development, Colonias de Santa Fe. Signs along vacant ground read: "club house" or "tennis courts." Lots on unpaved streets also show buyers' names. But here, too, the sales office is not selling.

Near Cape Haze on Florida's Gulf coast, the fading billboard reads: "Portofino — Italian Riviera in Florida." Behind it, tattered flags, a few canals that lead nowhere, vacant streets, and two tennis courts. No sign of activity anywhere.

Evidence accumulates

In many other states the telltale evidence accumulates. Land developments are halted in midstride or have become dormant. Some have financial problems. Some are being sued by federal or state agencies or by citizens. Some have run afoul of environmental restrictions and cannot get necessary construction permits.

"The vacation home seeker who buys the future, not the present, has to be especially cautious," says Richard H. Heidermann, chief of enforcement for the federal government's Office of Interstate Land Sales Registration (OILSR). "However good intentioned and honest the developer may be — and unfortunately many are not — that is not enough. The value of what is being sold is based entirely on the developer's making good on his promises."

Many of these premature subdivisions differ basically from the new communities in which the developer first builds the lake, golf course, utilities, and improvements and then sells the lots or lots and dwelling units combined. Some vacation homesite developers use whatever capital they have to finance their promotional campaigns. They then use the down payments for salesmen's commissions. Thus they depend on cash flow from buyer's monthly payments to finance the promised improvements.

Companies listed

Mr. Heidermann lists some of the companies that have recently entered some form of bankruptcy proceedings:

The Wendell West Company of Seattle with large subdivisions in Washington, Arizona, Texas, Pennsylvania and New Mexico, Cochise College Park and Great Southwestern Land Company in Arizona, Four Seasons of Georgia. He lists operations that have been shut down because of lawsuits or for environmental reasons — Boise Cascade's 19 subdivisions in California and Nevada, Lake Havasu Estates in Arizona, Charnita in Pennsylvania, and Lake Winnebago in Missouri.

When a developer fails to deliver on his promises, either because of his own actions or due to factors he claims are outside his control, it brings disappointment and distress to purchasers. Every time federal officials

have to consider taking an action against a developer, Mr. Heidermann says, they weigh carefully the potential harm to buyers against the possibly more serious harm that may come from not taking enforcement action, especially when it may mean hundreds or thousands of others becoming victims of a developer's mistakes or malfeasance.

Limits of the law

"The law provides only that developers fully disclose the facts of operation and use ethical practices," says Mr. Heidermann. "But when they continue misrepresentation or illegal practices after we have warned them, we have no choice."

The Land Sales Registration Office, which administers the federal law, has been criticized for its registration procedures. The law itself is basically weak, requiring only disclosure of the pertinent facts. The developer is allowed to prepare his own property statement. OILSR accepts what the developer says, checking only the documents submitted. Admittedly, the small office, which must split its 60 people among registration, enforcement, and administrative duties, is inadequate to investigate all of the more than 4,400 subdivisions now registered.

This incomplete scrutiny of registration is used to advantage by some developers. They note in their advertising that the subdivision is registered with the Department of Housing and Urban Development, thereby giving it an unofficial aura of approval. Few readers know that the HUD property report stipulates that registration does not constitute a recommendation or endorsement.

Investigators hired

OILSR has received some praise for its enforcement activities, especially since the appointment last March of George K. Bernstein as administrator. Mr. Bernstein hired six ex-FBI men as special investigators to supplement the four staff investigators. He held public hearings in 17 cities to encourage citizen complaints. He has encouraged and assisted the Justice Department in starting criminal actions against flagrant violators of the act.

The latest case to result in a criminal conviction concerned two subdivisions south of Kansas City — Lake Winnebago and Lake Winnebago South. The developer, Robert V. Steinhilber, started a dam to form a lake. He sold 400 lots on "Lake" Winnebago, promising, and so stating in official registration records sent to OILSR, that a 304,000-gallon water tank and a water purification plant were under construction.

More than 160 homes had already been built by the time complaints began to arrive. These charged that neither the water tank nor purification plant had even been started. They also charged that all properties were being served through a single one-inch water line from a town seven miles away. At times water uses were restricted.

Developer convicted

When the developer also started Lake Winnebago South, he sold more than 300 lots, some on the edge of a proposed lake. Then the federal government obtained an indictment based on alleged false statements made to HUD. Last month, Mr. Steinhilber was

Land Buyers Guide—4: Know your seller

In buying land on installment you are buying the future. It is important to examine the record of the seller and see if he appears capable of making the future a reality. Find out if he has posted bonds or is putting part of the sales income into escrow to assure completion of the facilities promised.

What liens are there on the property? Are there protections for your investment in case the developer goes broke? Has he let construction contracts for the work to be done?

When you visit the site, look at what has already been completed and judge his future standards by what he has done. Is the development well-planned, or is it all "front"? How candid are the answers you get about taxes, and future assessments? If answers are evasive, be wary.

Ask what happens when all the lots are sold and the developer leaves. Who will pay for the maintenance of the community buildings and roads? At what point will the property owners have to pay? What is being done with assessments paid by purchasers into a property owners association?

Before purchasing, contact others who have bought and see if they are satisfied with their deal. To find out if buyers have made complaints against the developer, contact local consumer organizations, the state real estate commission or consumer agency, or write to the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, Washington, D.C. 20410.

convicted and given a three-year sentence. The case now is being appealed.

Meanwhile, the subdivider has been in bankruptcy proceedings for over a year. Home and lot owners are in a quandary. Buyers who built around "Lake" Winnebago won't have a lake until the dam is completed. That will cost more than $350,000. They are hoping someone can be found to take over the properties.

In another case, Treasure Lake of Georgia has also run into trouble recently. There, the developer used television spots and other advertising showing people swimming, riding, and playing golf and tennis. The ads did not mention that the scenes were taken at another subdivision.

William and Cherry Siebert, a young Atlanta couple, visited Treasure Lake of Georgia in May, 1971. They were curious about the development. But they had no plans to buy land. Before they left, though, they were purchasers of a lot.

Buyer sues

"The salesman assured us that the lake would be finished within 120 days, the golf course and clubhouse within a year, the swimming pool soon," recalls Mr. Siebert. "We could buy a $5,500 lot with only 10 percent down and pay it off in seven years. Meanwhile, we could use the golf, tennis, boating, and other facilities.

"He told us the lot would appreciate 35 percent annually. And if, at any time, we were not satisfied, Treasure Lake would sell the land for us at a substantial profit."

Mr. Siebert claims that during the tour the salesman had a two-way radio switched on which several times announced lots being sold that day to other buyers. This produced a feeling that, unless they acted fast, they would miss out. The Sieberts also encouraged his father to come out a few weeks later. The elder Siebert purchased a "lakefront" lot for $16,495.

A year later, none of the salesman's promises had come true, says the younger Siebert, who, with his father, has filed a $25 million class-action civil suit to void all Treasure Lake sales contracts, and collect damages. "Treasure Lake was still only a big hole in the ground with little construction activity, our sewer lines had not been started, no clubhouse or swimming pool had been built," William Siebert says.

Complaints filed

Other Georgians, and some buyers from other states, also became disenchanted with their land purchases. They complained to federal and state authorities. Investigations were started by the federal trade commission and by the federal Office of Interstate Land Sales Registration together with the U.S. attorney for the Northern District of Georgia. The FTC issued a proposed complaint in July, 1972, alleging that Treasure Lake of Georgia and its parent company, Great Northern Development Company, used false and misleading advertising and also violated the Truth in Lending Act while selling.

In October a federal grand jury in Atlanta issued a 22-count indictment, charging four corporate officers and eight salesmen with misrepresentation and fraud.

Listed in the indictment are false advertising, use of high pressure sales tactics, promises of completion dates that were never met, and preparation of plans for construction of water and sewer service for only 900 of the 3,600 lots in the subdivision.

The 2,000 lot buyers at Treasure Lake of Georgia may get their lake and at least some of what they feel was promised to them. Westinghouse Credit Corporation, which had been financing Treasure Lake and its parent company, has taken over control and now is working to complete the facilities substantially as represented to buyers in the property report.

Developer settles

On the other side of the country, Boise Cascade is trying to extricate itself from a much more massive array of lawsuits as it attempts to complete an out-of-court settlement of charges by the State of California, and by five citizen class-action lawsuits, all alleging fraud and misrepresentations. Boise Cascade had sold $360 million worth of land in 19 subdivisions in California and Nevada. Yet according to the lawsuits and numerous complaints received by government agencies and consumer groups, recreational amenities and utilities were not completed in many subdivisions, or in some cases, not even started.

Last month, in a settlement proposal accepted by the litigants, Boise Cascade offered $24 million to buyers who want cash refunds. It also offered $34.5 million in maintenance and assurance of promised developments for those who decide to keep their lots. Now the company is seeking to get out of the recreation land-sales business. It would like other companies or associations of property owners to take over its projects across the nation.

Meanwhile, enforcement efforts by HUD's Office of Interstate Land Sales Registration has halted a number of other developers. Twenty-four companies agreed to voluntary suspensions of sales for failure to disclose facts in their property reports. And 47 more were suspended after formal proceedings.

In addition to the Steinhilber conviction, two other developers were sentenced in

federal courts. Edward L. Parker of Miami was fined $5,000 for selling lots at two North Carolina developments without registering with HUD or providing property reports to purchasers. Charles G. Geotis of Danvers, Mass., was given a two-year sentence for fraudulent use of mails, for failure to file required details about land he was selling, and for selling lots by misrepresentation and deception.

Costs can skyrocket

In New Mexico, the Colonias de Santa Fe development now is halted because of environmental, legal, and administrative actions. These have been suspended by OILSR for misstatements and misrepresentations in their disclosure statement.

Also, the City of Santa Fe and the state say the developer has not complied with local ordinances. The availability of water for the development has been questioned. And a federal court of appeals in Denver has ruled that, even though the land is being leased from the Tesuque Indians, an environmental impact statement must be prepared before development can continue.

A number of subdivisions have been halted by state, local, or federal agencies on environmental grounds. While most of these suspensions are temporary, the costs of putting in the required environmental measures often may be more than an underfinanced developer can afford. In any case, the delays may force increasing construction costs above what had been planned. As a result, lot owners may find themselves forced to pay large assessments to meet costs the developer had been expected to pay. Otherwise, the whole project may fail.

Despite protests from some developers that OILSR administrator Bernstein has been treating the land-sales industry unfairly, Mr. Bernstein shows no signs of stopping his outspoken opposition to the practices of the industry.

"I believe the idea that an agency such as ours should be an extension of the industry is all wrong," says Mr. Bernstein. "I feel we are in an adversary position with the land-sales industry. Our responsibility is to the people who purchase, not to the developers. And because the abuses of the industry are as widespread as they are, the consumers need all the help they can get."

LAND
IN JEOPARDY -5

What is land really worth?

While some buyers have found land in remote areas a good investment, many others would have done better simply to put their money into the bank. This, the fifth of six articles, points up the many factors that can tarnish the glitter of the vision of profits from buying land on installment.

California City, Calif.

FOR A NEW TOWN DESTINED AT its birth in 1959 to attract a million citizens, and literally sold halfway around the world, California City appears to be making a slow start. The lonely city-limits sign on the desert road several miles from town reads "population 1,900."

Intent on learning more about this 100,000-acre, installment land-sales development in the Mojave Desert 110 miles northeast of Los Angeles, we stopped at the information center. Although we said we weren't buyers, just lookers, the sales representative pointed us in the direction of the Galileo Estates section, his "favorite place," and gave us a tract map.

Miles of desert

The map, with its neat numbered squares in bright colors to denote various zones, was just like one for suburbia. Areas were set aside for open space, commercial and industrial use. There were residential blocks for 641 lots, most of them smaller than one-quarter acre.

When we arrived after crossing 13 miles of desolately beautiful mountain-rimmed desert, we could understand why they call this type of development "premature subdivision." We found graded dirt roads, some faded wooden street signs, and stark desert for miles around.

One of these small lots would cost from $3,500 to $4,500, payable in 10 years when the services and people are scheduled to move out to it — if water then is available. Most of those who buy, do so for investment. If they want to build immediately, they can get land at slightly higher prices in the already-developed core area.

But what really would a lot be worth in Galileo Estates or in other California City subdivisions? Is the purchase of land both here and in hundreds of other future-oriented subdivisions sold throughout the nation really a good investment?

Subjective value

To one who seeks a home here in this high country desert with its quiet, clear beauty and extreme cold and heat, the value of a lot becomes subjective. It may well be worth any price one is willing to pay, although the aesthetic value might be greatly reduced if and when the foreground of this tableau is filled with the accoutrements of congested suburban America, 20 homes to the block.

As an investment, installment land purchases in remote areas can be considered in two ways — as the developer presents it in his sales talks and literature or as it might be seen by a discriminating potential buyer with some knowledge of the economics of the land sales business.

"Why land?" asks a brochure published by California City's parent company, Great Western Cities, Inc. It explains that, if you buy in a new community where there is a good pattern of growth, your land increases



By Robert Cahn

'Premature subdivision: . . . dirt roads . . . faded street signs . . . stark desert for miles'

in value because you are buying at the start of a rise and not near the top.

The brochure quotes state Board of Equalization statistics showing that California property "increases in value about $400 per second. In other words," reads the brochure, "in the time it took you to read this short paragraph, the value of California property increased a little over $2,000."

A clinching point is made by showing how banks, savings-and-loan associations, and insurance companies can do it for you. Why can't you do it for yourself?

"The sooner you start, the more money you will make. This simple philosophy of investment is the keynote to success and has been the foundation of many a millionaire's bank roll," the brochure adds. And it winds up with a quote from Andrew Carnegie: "Ninety percent of all millionaires become so through owning real estate. More money has been made in real estate than in all industrial investments. The wise young man or wage earner of today invests his money in real estate."

Misleading sales pitch

Advertisements for this desert land that led many buyers to the dotted line, formerly featured the statements that California City was the 10th largest (in area) incorporated city in the United States, and was the site for "America's largest intercontinental airport" with 100,000 passengers per year by 1980. "We believe that land in such selected growth areas (California City) is a good and safe investment and offers great profit potential for investors."

The advertisements and sales pitches along these optimistic lines had to be changed, however, after a cease-and-desist order issued last October by the Federal Trade Commission.

"In truth and fact," the FTC said, Kern County, in which California City is located, increased its population by only 11 percent from 1960-1970 while the average rate of growth for all California counties was 25 percent; California City may not be successful in competing for residents with older areas cities closer to the Los Angeles area; the growth potential would be diminished if the (controversial) proposed airport was not built; and "California City's record to date does not indicate that profits will be made by all persons buying land at respondents' price after owning it for a reasonable amount of time."

More costs later

As for the argument in favor of "buying at the start of a rise and not near the top," the investment brochure of California City does not mention that the "start" for investment profit was really made 14 years ago by developer N. K. Mendelsohn. He bought 100,000 acres in 1959 for $109 an acre, and by the time he sold out to Great Western in 1969, he had sold 32,000 lots to people in the United

Land Buyers Guide—5: Know your rights

If the subdivider is offering 50 or more unimproved lots, the project must be registered with HUD's Office of Interstate Land Sales Registration (OILSR) in Washington.

The Interstate Land Sales Act of 1968 provides that unless you receive a property report 48 hours before signing a sales contract, you have the right to revoke the contract within 48 hours. This right can be waived by the buyer except in some states, such as California, where the buyer has a 14-day absolute right to cancel for any reason.

If the facts in the property report are misrepresented, you can cancel and sue the developer. If you received no property report you can cancel and get full refund of all your money.

You have other rights under the Federal Trade Commission's truth-in-lending law which requires disclosure of the true rate of interest. It gives you the right to revoke the contract within 72 hours if you plan to use the property for your principal residence.

You do not have a legal right to take a contract home and study it. But it is normal for a person planning to sign a long-term contract for thousands of dollars to be able to take it home or to show it to a lawyer. No responsible salesman would be afraid to let you do this. If he says you cannot or that it is not legal you should be wary.

If you feel any of your rights have been violated, contact a local attorney. Also send your complaints to the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, Washington, D.C. 20410. Send them as well to the real-estate commission or consumer agency in your state.

States, Germany, and the Philippines for $102 million.

The prospective buyer at California City might consider whether the quoted purchase price is all he would have to pay.

A careful reading of the property report which must accompany each sales contract, shows that water, streets, and roads are covered by a deferred improvement plan which obligates a lot purchaser to pay at least $900 over 100 months. But the improvements promised by the developer do not need to be made until 1981. They can be postponed thereafter until at least 10 percent of the property owners in the tract ask for them.

Property taxes plus

A property tax now is charged and the buyer may be subject to assessment for retirement of general obligation bonds already issued by the city, A $200 fee is required for recreational privileges but can be used for other purposes by the city.

No sewage disposal system is contemplated. Costs for a septic tank will be at owner's expense, and septic tanks could be banned by county health authorities if population density becomes too great. Also the purchaser will be required to pay for extension of electricity and telephone which might be costly.

Opponent's figures — no profit

The property report also notes — in capital letters — that "A purchaser who contemplates future resale of his lot or parcel should consider the possibility of competition with the developer and with sellers of other lots which have surfaced roads, water, and other amenities."

To date, 42,886 lots or parcels have been recorded. Most of them have been sold. Yet fewer than 3 percent of the subdivided lots have houses on them.

In another part of California, District Attorney Harold Berliner of Nevada County has compiled figures about the pluses and minuses of installment sales buying. Mr. Berliner holds environmental credentials as one of the founders of California Tomorrow, a statewide citizen group. He has been battling vacation-home subdividers for many years through speeches and writings and in the courts.

For the investor who hopes for resale profits, he offers an example based on the experience of buyers at a typical development in his county. "To buy a $10,000 lot, the buyer puts $1,000 down and pays off the balance over 10 years," he says. "His principal, interest, taxes, and assessments for recreation and maintenance would come to $19,460.98 before he got his deed. And over the 10 years, all kinds of things could happen to delay completion of the project.

"But if the buyer had put the same monies regularly into an account paying 5 percent interest at a savings-and-loan association, he would at the end of 10 years have $30,464.02 on deposit with no risk or bother. Just to break even, on resale, and allowing for 10 percent commission, the lot would have to increase in value 338 percent of the original price — unheard of in such subdivisions. But so many

lots in these subdivisions are now on the market for resale that most sellers take large losses."

Put money in a bank

For the buyer planning to build a vacation or retirement home when the lot is paid for, Mr. Berliner says: "By putting the money in a savings and loan, *earning* instead of *paying* interest, and saving years of maintenance and taxes on a vacant lot, the family would have the advantage of being able to choose their own lot wherever they want it when they are ready to build and not be stuck with an earlier decision they may regret a decade later."

Mr. Berliner also criticizes subdividers for cutting up the land far ahead of any possible use. He points out that, over the past 10 years in Nevada County (population 26,346), permits have been given to subdividers for the sale of 19,317 lots. Yet only 319 homes were built during that time.

As buyers of these lots soon discovered, the hidden costs can pile up. Some are buried in the small print of a property report. Others may arise when the developer finds he cannot complete a project at the cost predicted and assesses land buyers for the difference. Also, the county may decide that septic tanks will no longer be allowed. Then land buyers are assessed for central sewers and hookups.

Bills that jolt

In states where developers pay the taxes and do not give deeds to purchasers until the contract is paid up, buyers may get a jolt with their first tax bills. With improvements being made and houses being built, the tax assessor increases the assessment many times over what the developer had been paying on raw land.

An example of the extra costs not always mentioned by salesmen can be found in the experience of a Washington, D.C., woman who mailed in a coupon for "information" about Rotunda.

This is a new development of Cavanagh Communities Corporation in a remote area off Florida's gulf coast, 40 miles south of Sarasota.

She soon had a phone call from a Cavanagh representative in Florida offering her a five-day, all-expense-except-transportation vacation to see the site.

Then came a large package of materials, including a sales contract, to be signed and returned with down payment of $45 for a $4,360 lot in "Rotunda Villas."

Extra charges

The contract listed finance charges of $2,105. The balance of $6,420.87 to be paid in 146 payments (12 years). The prospect was also asked to sign a statement saying she would not be using the property as a principal residence and that she had read the Florida offering statement (property report) enclosed.

In bright red capital letters on the first page of the offering statement was information not given in the phone call. The buyer's proportionate share of the cost of water facilities, drainage, and roads "is approximately $2,475 per lot," to be paid starting 60 months after signing. The buyer's share of sewerage "is approximately $1,692." To this should be added $250 for water hookup, $300 for sewage hookup, and an annual assessment of about $30. Here are another $5,077 in hidden costs on top of the $6,420.87.

While, these examples in Florida and California are typical, hidden costs vary greatly from state to state and development to development. In Florida, for instance, the developer usually pays the taxes, often assessed on the basis of raw land valuation, until the buyer's contract is finally paid off. Only then does the buyer get a deed.

California requires the developer to furnish a deed encumbered by the mortgage for the unpaid balance to the buyer after the sales contract is signed. The buyer must then pay the taxes.

California's 'fair' valuation

California, alone of the states, requires sellers of land located outside of the state to have their land evaluated by appraisers from the California Department of Real Estate. If the selling price of lots is found to be excessive, the sellers are ruled not to have met the law's requirement that prices be "fair, just, and equitable."

As a result, none of the major installment land-sales companies is registered to sell in California. This law does not apply to California land being subdivided. But the State Real Estate Department may write into a California developer's property report the assessed valuation of the land for purposes of showing potential taxes.

Land value means something quite different to the developer. At a 1970 hearing of the Arizona State Property Tax Appeals Board, GAC Properties, Inc., complained that lots at its Rio Rico development were assessed too high.

The Santa Cruz County tax assessor had set a value on the one-third acre lots at $1,600. The GAC thought the assessment should be $185 because improvements had not yet been put in. But the GAC was asking buyers to pay about $5,000 for these same lots. Half of the selling price, the GAC claimed at the hearing, represented sales expense and the cost of future improvements. The GAC has sold

23,127 out of 31,664 lots at Rio Rico, but has fewer than 250 homes completed.

Developer's valuation

Further indication of how a major developer considers the value of the land being sold is evidenced by a prospectus put out by a Wall Street investment firm for a 1970 debentures issue for GAC Properties Credit Inc. The prospectus states that "the price at which the GAC Properties sells land under installment contracts does not reflect the current market price for cash purchases of comparable developed or undeveloped land." And the prospectus adds: "There is no significant resale market for installment land contracts."

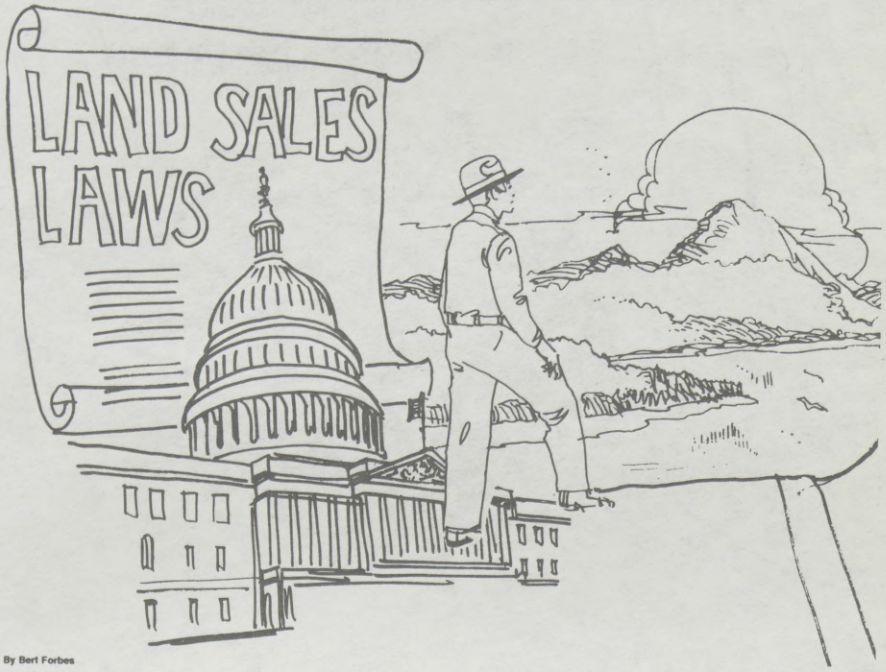
Because of the extraordinarily high promotion and commission costs in the industry, a down payment of even 10 percent often leaves the developer in the hole financially even if he is selling the land for 50 times what he paid for it.

Such deficit financing, especially for smaller, underfinanced developers, means that they are on a merry-go-round needing cash flow from volume sales to build the improvements promised to buyers, but losing money at the start for each lot sold.

If the developer can hold out long enough, he can make millions. But he can also go bankrupt — and the resulting ghost subdivisions now litter many parts of the nation.

LAND

IN JEOPARDY-6



By Bert Forbes

What is being done abou

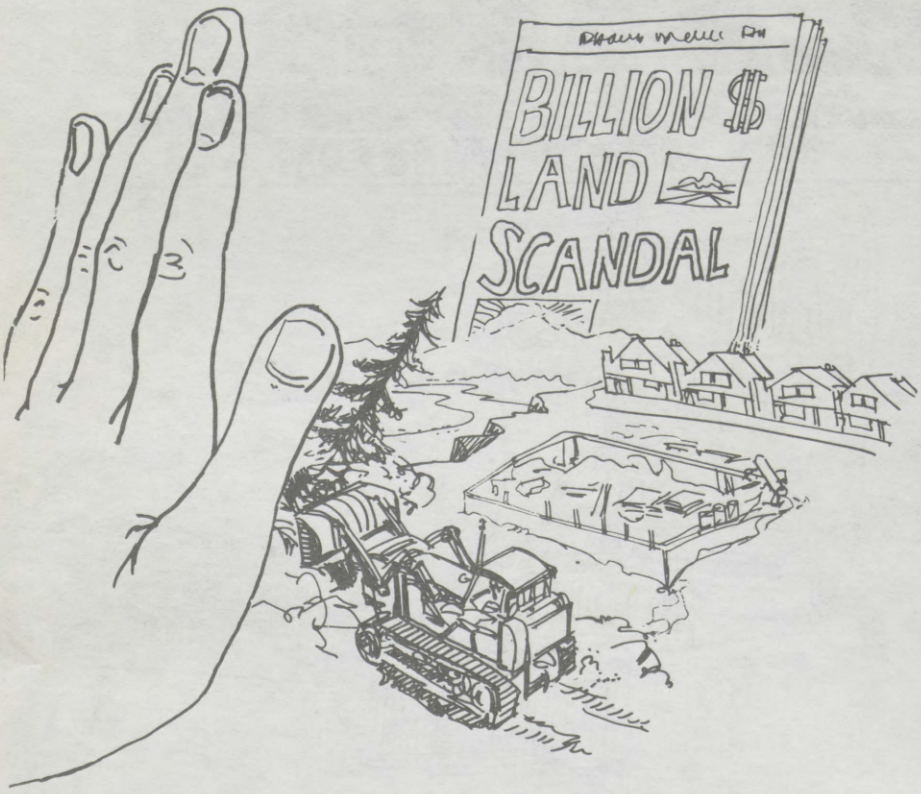
Washington

IN THE CRAMPED, SPARTAN OFfices of the Retired Professional Action Group, a cadre of retired citizens organizes to battle abuses by land developers across America.

Most of them had written to Ralph Nader's Public Citizen, Inc., asking how to help his work. They have signed on as members of a newly formed Nader task force that, among other things, will seek out evidence of illegal land-sales activities.

Meanwhile across town at the House of Representatives, Congressman Morris K. Udall (D) of Arizona seeks support for two proposed bills he has authored. The legislation would place added consumer and environmental controls on subdividers who are selling millions of acres of the nation's rural and wilderness land, including big chunks of Arizona.

And in Santa Fe, N.M., as a new session of the New Mexico Legislature opens, a block away, Sally Rodgers, Harvey Mudd, and Brant Calkins gather interested citizens at the Clearing House to plot strategy. They will try to defuse industry-lobbying efforts which last year narrowly defeated a strong bill to control and regulate the sale of subdivisions that now cover more than a million acres of the state.



installment land sales

These activities typify a growing undercurrent of resistance to the sales tactics and land-development actions of the installment land-sales industry. Many land-sales companies feel its pressure at their most vulnerable point, the cash drawer, as prospective buyers become more cautious. Almost overnight windfall company profits have turned into huge corporate losses. Some elements of the industry now look inward and seek ways of correcting abuses and improving their public image.

New disclosure law backed up

Nevada, for example, has a new disclosure law augmented by stiff regulations on advertising and promotion. State real-estate administrator R. E. Hansen, with assistance from federal investigators, has been cramping the style of developers who have been using the Las Vegas gambling and vacation center as the locale for their biggest off-site sales operations. Where a year ago 16 developers were running major operations out of sales rooms located just off of casino floors, only six companies now are operating. And the biggest seller, GAC Properties, Inc., has dropped from 11 sales teams to three.

GAC is the largest of the land-selling companies in terms of volume. It is the

subject of much consumer and environmental criticism. Now it is in the midst of major changes, GAC officials say. According to Edward J. Wren, vice-president for public relations, the sales force has been cut from 2,000 to approximately 550, sales sessions are being monitored by professional investigators, and services of salesmen who engage in misrepresentation have been terminated. Instead of the former concentration on land sales (91 percent of the present sales volume), emphasis now will be placed on increasing home construction at GAC subdivisions. GAC's high-pressure telephone sales operation and vacation certificate programs have been eliminated.

Legislative battles now are shaping up in a number of states as conservation and consumer groups seek stronger controls. Generally, states have a long way to go. While 39 of them have some form of control over remote land sales, many vest jurisdiction in a real-estate commission dominated or heavily influenced by subdividers.

No states provide adequate manpower or investigative funds to land-sales supervisory organizations that are established. And no state yet has a model law in this field.

California leads the way

California now leads the way with its 14-day unwaivable right for buyers to cancel a land-sale agreement, its appraisal of fair value for out-of-state lots marketed in California (although it has no such requirement for California land), its requirement for surety performance bonds, and its framework for environmental controls by counties.

New York State law is strict on out-of-state sales. The inspection of proposed subdivisions is better there than in most states. And the state attorney general's office has been praised for its work in getting restitution for buyers victimized by misrepresentation.

Florida has a weak law. It gives little support or funds to its land-sales division. The 1972 state land-use law should help protect the environment when implemented. But the desires of most citizens not to tarnish the state's image or ruin the land are not as yet reflected in political action.

For its part, the federal government's ability to cope with corporate, consumer, and environmental problems associated with the industry remains inadequate. The Federal Trade Commission, Securities and Exchange Commission, and postal inspectors work on a few flagrant violations of existing law but they are not equipped to discover or investigate most abuses. The Office of Interstate Land Sales Registration (OILSR) of the Department of Housing and Urban Development (HUD) tries hard to correct abuses. Its capability also is limited by size, budget, and legislative authority.

What can be done to correct some of the consumer and environmental abuses pointed out in previous articles in this series?

To protect the consumer, several actions could be taken:

— Passing a law for federal appraisal of "fair value" pricing for all lots to be sold in interstate commerce, similar to the California requirement for out-of-state land.

— Requiring developers to have surety bonding under federal su9ervision to guarantee performance of all proposed improvements.

— Requiring federal licensing of salesmen.

— Requiring prior approval of a developer's advertising by federal or state agencies, or restricting of advertising to those elements of a subdivision already completed.

— Providing a longer "cooling off" period that is nonwaivable, so that buyers can have an opportunity to think over their actions and cancel sales agreements made during a high-pressure sales pitch.

— Passing a law to give an individual the right to sue for himself and others in a class action regarding alleged fraud in installment land sales.

To protect the land requires difficult actions at many levels. The possibilities include:

— Provision that environmental-impact statements be required for all proposed subdivisions before any actions are taken by the developer to alter the natural resources.

— Provision that all zoning, dredging, draining, or sewage permits be in hand before any lots are sold, and that an adequate water supply be assured for maximum allowable density if people should build on all the lots offered.

Most needed, however, is a method for states to control location of subdivisions. This requires state and county land-use plans, and state and county officials willing to withstand the pressures from developers to get exemptions once plans are adopted.

A first step would be for Congress to pass the proposed national land-use policy act which would require states to inventory their natural resources and devise plans, under federal standards, to protect critical areas. As part of state plans, regulations should specifically require that all applications for remote subdivisions be in conformity with the environmental carrying capacity and the population-density criteria set by state and local governments.

Many other actions could be taken, but are not currently feasible. A change in tax structure to penalize those who speculate with land has been suggested. And formation of an independent federal regulatory agency just to control installment land sales is sometimes voiced but not currently being

considered either by the administration or by Congress.

Clearly, in an industry where fraud and high-pressure tactics exist, the average citizen needs more than normal protection. But even more important is the urgency for environmental safeguards, not just because of laws prohibiting harm to the land, but because of a too-often-forgotten ethic: Man is a steward of the land. He has a responsibility to future generations to insure that those who inherit the earth will have something worth inheriting.

What do you think should be done?

This questionnaire appeared at the end of the series when it ran in the Monitor, with a request that readers fill it out and mail it in. It is included here as a concise recap of the series.

1. Promised facilities

Many people buy land on the basis of what the development will be like in the future, expecting lakes, ski slopes, roads, and adequate utility services. These facilities will only become a reality if the seller has the money or takes the action to install them. Complaints from numerous buyers indicate that facilities promised are not delivered. To solve this problem, federal law should:

(A) Require developers to post performance bonds prior to making sales, to guarantee the installation of promised facilities.
(B) Require the sales contract to list all promised facilities and legally bind the seller to complete them.
(C) Require that the improvements and facilities be completed before allowing any sales in the development.
(D) Leave the situation as it is. Anything that requires bonds or pre-completion money would hamper development and would raise the price of lots.

2. Cooling-off period

Some people sign installment sales land contracts hastily without thorough consideration. Most buyers who send complaints to federal and state agencies say they never would have bought if they had "thought it over." Most land companies admit that the vast majority of sales are made the first time they meet a buyer. To solve this problem, federal law should:

(A) Provide the following specific period of time during which the buyer may revoke his contract for any reason whatsoever and get his money back.
2 days ( ) 3 days ( ) one week ( ) two weeks ( )
(B) Provide a cancellation period which cannot be waived by the buyer despite offers he may get from a developer.
(C) Allow no cancellations except for fraudulent sales practices. It is not up to the government to protect buyers as long as the developer has made full disclosure in a property report. A deal is a deal and people should live up to obligations.

3. Solicitation

Many prospects for land sales are lured into signing contracts by elaborate advertising sent through the mail or by sales pitches made by telephone, at free dinner parties, or in conjunction with free gifts or vacations. Later, they may find that the land is not as it was represented. To solve this problem, developers should:

(A) Be required to submit all advertising to the government for approval before use.
(B) Be required to advertise only those facilities which already exist or whose provision is guaranteed by bonding.
(C) Be required to perform everything advertised.
(D) Be required to incorporate all advertised promises in the sales contract.
(E) Not be interfered with. The gov-

ernment should not act as a censor. Federal Trade Commission laws now cover fraudulent advertising adquately.

4. Sales practices

Some people are induced to buy land by exaggerated statements about potential profits, by promises made by salesmen, money-back guarantees, offers to resell property for the buyer at any time, or by verbal assurances that the contract only makes a "reservation" for a lot and not a commitment to buy it. To solve this problem:

(A) The government should appraise the land to reveal its present and projected value. It should require this information to be used in advertising and property reports.
(B) All salesmen for installment subdividers should be required to obtain a federal license.
(C) Developers should be required to advise all purchasers in writing that they do not buy back or resell the land for buyers unless they actually do provide this service.
(D) All that is needed is better enforcement of the present federal Land Sales Act and the Federal Trade Commission's regulations which prohibit unfair, deceptive, or fraudulent sales practices. No new legislation is needed.

5. Environment

Premature subdivision of land before adequate state land planning has taken place may harm natural areas that should be preserved for future generations. Development activities such as building roads, destroying trees, digging canals, and making artificial lakes may lead to pollution or other environmental problems. I believe that:

(A) States should require all remote subdivisions to conform to a land use plan prepared by a public agency as a prerequisite for selling any lots.
(B) Developers should not be allowed to sell any land until all pollution control and land-use permits required for lakes, canals, sewage, or solid-waste disposal have been authorized by federal agencies.
(C) Bonds should be required of developers to compensate for damage to the environment.
(D) Resort-land developments for vacation homes should provide recreational open space more ample than in ordinary subdivisions.
(E) State and local authorities already adequately provide for prior environmental control of such developments. No new regulations are needed.

6. Federal regulation

Many observers feel that the federal law regulating the developers is not strong enough and that there are loopholes in the law. The industry itself is opposed to strict regulation. The government should:

(A) Increase regulation of the industry.
(B) Decrease it.
(C) Be allowed to represent complaining buyers in civil class action suits for damages.

7. Personal experience

Have you:
(A) Ever been solicited to buy such land?
(B) Been promised gifts or free vacation trips to buy land?
(C) Ever purchased land in remote subdivisions?

8. If you bought land, did you:

(A) See the land before you bought it?
(B) See a lawyer before buying it?
(C) Build a house and live in it?
(D) Cancel your contract and forfeit your money?
(E) Cancel your contract and get your money back?
(F) Make a profit from selling it?
(G) Take a loss in selling it?
(H) Feel generally dissatisfied with your deal?
(I) Feel generally happy with your deal?

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A Monitor editorial

The land: to dress and to keep it

The scandal-tainted development of huge tracts of land in the United States, explored in the six-part series just completed by this newspaper's environment editor, Robert Cahn, touches all citizens. Regardless of whether or not one is living in states where haphazard development is threatening environmental harm; regardless of whether or not one has bought, or is thinking of buying, a house-lot in some yet-to-be-developed remote site; regardless of whether one lives in a crowded city or in a rural area ripe for speculators and exploiters, every American is affected by the problem.

Land, as the hucksters themselves argue when pushing for a "close" with a reluctant potential buyer, is a limited natural resource. People are not. The population is expanding. And the value of land is directly related to the demand for it. More people, more demand, more money.

As the Monitor series points out, unscrupulous operators are misusing this centuries-old formula of land values — and potential profits — as shamelessly today as the con man of earlier years who greeted immigrants just off the boat with offers to sell them the Brooklyn Bridge. Sad to say, in this era which we like to consider far more sophisticated, there are still thousands of innocents who should know better, but do not. The inevitable result: enormous profits to less than honest land speculators, and endless hard-luck stories from those who find they have purchased acreage so remote in time and space from such necessities as electricity, water, sewage, and telephone service as to be worthless in their lifetimes.

* * *

But what of those visionary new Utopias which actually do begin to take shape on the landscape? Too often new towns are being carved out of wilderness areas without any reference whatever to county or state land-use planning. Or without reference to the ecological framework within which they must exist.

Where the first kind of phony land scheme primarily hurts the finances of the gullible purchaser, the second hurts everybody. The automobile and airplane have exposed some of America's most beautiful but inaccessible spots to get-rich-quick land schemers. As a result we are witnessing the rise of new developments, some with highly uncertain futures, in every part of the country — from Florida's sandy marshlands to California's spectacular coastline, from Vermont's lush green hills through Pennsylvania's wooded mountains, to Arizona's bleakly beautiful desert.

Where such schemes do "succeed," that is in terms of actually getting houses and supporting government and commercial services packaged together, what is the result? What economic base exists to support the future of such new towns? Do they offer a potential for steady, sturdy, useful development as good places for Americans to live? Will they function, as they should, as population safety-valves for the over crowded metropolitan areas? Or are they tomorrow's future slums?

* * *

These questions and others need to be thought through. Their answers must be anchored in facts and these facts must be made public so that future development can be kept under public scrutiny and control. New state laws are needed. Buyers must be protected from hard-sell salesmen, with such laws as California's "cooling off" proviso, allowing a buyer to cancel a sales agreement within 14 days. With developers operating on a national basis, even internationally, the federal government should use its powers to regulate interstate commerce to intervene in fraudulent schemes. It should beef up the existing underfunded, understaffed Office of Interstate Land Sales Registration so that it can do the job its energetic administrator wants to do.

In addition to the series of consumer protection proposals outlined in the Monitor series, the federal government should pass a long overdue national land use policy act. Not until Congress leads the way with such an act can the states be

expected to do the job, which is primarily theirs to do, of inventorying their land resources and planning its intelligent development or conservation.

That land scandals of the kind exposed by Mr. Cahn's series can still occur in the United States reveals that the old American chimera of limitless land, open to all comers to exploit for personal profit, continues to delude public thought. Belatedly, thoughtful observers are beginning to recognize that this continuing rape of the land is a betrayal of the trust which gives each new generation the land in stewardship, with a mandate "to dress it and keep it" for the next generation.

A reawakening of this sense of trust seems to be taking place. Now it must be translated into laws and policies to control future land use. If so, then the experiences of those who have suffered economic loss and dashed hopes from development frauds and failures may at least have contributed to the future by helping convince their contemporaries that America's latest wave of land fever must be the last.

[From the Christian Science Monitor, Apr. 6, 1973]

LAND IN JEOPARDY

What You, the Reader, Say Should Be Done About Land Sales

(1,016 readers favor more regulation—18 readers favor less regulation)

(By Robert Cahn, Environment editor of The Christian Science Monitor)

Recently this newspaper published a six-part report on the billion-dollar business of installment land sales. The report found that while some companies have done a good job, others have gypped the public and ruined the environment. Today's page analyzes reader response to a questionnaire (reprinted below) which accompanied the final article in the Jan. 17-24 Monitor series.

WASHINGTON.—"Land developers have failed to control themselves. Therefore, controls must be applied."

This comment from a Stamford, Conn., reader typifies many of the 1,449 replies received by March 1 to a questionnaire published with the final installment of the recent six-part series on the abuses of the installment land-sales industry.

A total of 1,015 individuals (70 percent) would tighten regulation of the industry. Only 18 people (less than 1 percent) would decrease regulation.

Readers of the series were also overwhelmingly in favor of increased environmental protection for the land. Seventy-two percent indicated that developers should not be allowed to sell any land until all pollution control and and-use permits required for lakes, canals, sewage, or solid-waste disposal have been authorized by federal agencies.

Only 2 percent said that no new regulations are needed to preserve the land.

A majority also favored:

(58 percent) requiring developers to post performance bonds to guarantee installation of promised facilities.

(61 percent) requiring developers to advertise only those facilities which already exist or whose provision is guaranteed.

(56 percent) requiring written warning from developers that they do not resell land for the buyer when this is indeed the case.

(58 percent) requiring developers to conform with state land use planning before selling any lots.

All but 17 of those answering indicated they would extend the present federal 48-hour "cooling-off" period in which a buyer can revoke his sales contract and would make it irrevocable (the right can now be waived). Fifty-five percent said they favored a two-week cooling-off period.

Survey Called Helpful

"The Christian Science Monitor survey shows that, once again, the American public is far head of our institutions in its awareness of a serious environmental problem and in its willingness to have something effective done about it," commented Sen. Gaylord Nelson (D) of Wisconsin. Senator Nelson has introduced the second home and subdivision regulation bill which would require developers, before any lots are sold, to acquire a permit from a state land use planning agency and to conform with environmental safeguards.

Rep. Morris K. Udall (D) of Arizona, sponsor in the House of both consumer and environmental legislation, said the Monitor readers' response would help in corroborating the need for new laws.

"The number and character of the responses to the Monitor survey show that the people are simply fed up with the poorly planned and underfinanced developments as well as with shoddy land-sales practices," said Mr. Udall.

"In addition," he said, "I am hopeful that this significant response to the Monitor's questionnaire will demonstrate the need for passage of the bill strengthing the disclosure provisions of the InterState Land Sales Act. Congress must move on these two fronts to save the remaining land and protect the consumer."

Administrator George K. Bernstein of the Office of Interstate Land Sales Registration (OILSR) of the federal Department of Housing and Urban Development (HUD) believes that the current act requires some changes to better protect the public. He says amendments now are being drafted.

"The conclusions of the Monitor readers certainly reflect the general tenor of consumer complaints we have received," Mr. Bernstein said.

"It will be difficult to argue against the need for some greater federal regulatory role if states do not very significantly increase their efforts to regulate developers," he added.

Replies to the Monitor questionnaire came from every state, from Canada, and from service men overseas. Many of the readers gave comments and signed their names, although this was not provided for in the question form. Some comments extended to several extra pages.

Federal Regulation Opposed

Although the majority of replies advocated increased regulation, many readers opposed federal regulation, or expressed philosophical doubts.

"The federal government already has too much to do with our lives as it is," commented a man from San Juan Capistrano, Calif. "We are utterly tired of being taken care of. The American people should act like big boys and girls and think and look before they buy."

Manuel S. Klausner of Los Angeles said he believed the series "has been strongly biased in favor of stronger government controls, and accordingly I would expect the response to your questionnaire to be highly distorted in support of the 'knee-jerk' pass-more-laws approach.

"I hate to see increasing government involvement and controls in areas where the individual should accept some responsibilities. However, I do think that government controls are necessary to protect the environment."

"All reports show that land developers have failed to control themselves," wrote Shirley Haner of Consumer Information Services, Stamford, Conn. "Therefore, controls must be applied."

Eighty-one percent of the replies indicated the readers had been solicited to buy land in remote subdivisions, and 73 percent of the people said they had been promised gifts or free trips. About one-fourth of those replying said they had purchased land in remote subdivisions, and 61 percent of the buyers said they had seen the land before buying it. The purchasers were exactly evenly divided as to whether they felt "generally dissatisfied" or "generally happy" with their transactions.

OILSR Chief of Enforcement Richard H. Heidermann said that testimony received at public hearings and complaints received by mail indicate that the dissatisfaction frequently does not occur until several years after purchase.

"Buyers continually confuse the developer's selling price with the true market value," Mr. Heidermann said. "And some developers periodically notify purchasers that prices of similar lots or the value of their land has increased. When the purchasers complete their contract they often find that promised improvements have not been made and that the resale value is considerably less than the price they have paid."

"Second Home Concept

Several readers complained about the philosophy of the "second home" concept.

"Ecological damage is related to too many people. And to multiply that by having two houses is absurd," commented a woman from Emigrant, Mont. "If people's own sense of responsibility cannot lead them to reduce their luxuries, then the government must."

A reply from a woman in Burnaby, B.C., noted that simpler living style is needed. "I think one home is enough in most cases, in view of environmental warnings," she wrote.

"Very few people can afford a second home," noted a reader in Santa Rosa, Calif. "A person who considers a second home should consult his banker and be told if his income warrants such an investment."

Many questionnaires asked for advice on where and how to resell lots, something neither this newspaper nor the federal government is able to give.

A particularly difficult decision for many people is whether or not to continue paying on installment contracts.

"A land sales contract is like having a tiger by the tail," commented a man on Orlando, Fla. "We bought land and can't afford to forfeit the money, and can't afford to keep paying $59 a month. And it has no resale value compared to what I have in it."

A Wisconsin couple wrote that they bought three lots under pressure and now have "to much money invested to let them go. There is no way we can find to resell, and we badly need this money now."

"We did not really need this property" wrote a woman in St. Joseph, Mich. A reader who described himself as a "senior citizen" said all his money "is in these lots and I am forced to live near poverty to pay the exorbitant real estate taxes."

A number of replies place the blame on salesmen. They advocated strict licensing laws and more developer responsibility for salesmen's tactics.

Lack of Quality, Ethics

An El Paso, Texas, man wrote that he had worked for four land developers and resigned each position for the same reason: "lack of quality and ethics in operation." I regret my own sales tactics and wish I could return all monies collected from my customers," he said. "Installment land sales is truly a national disgrace. Would that every citizen could read this series, then do something to ameliorate the deplorable situation."

Another reader said: "The tap root of the whole problem is the salesman and his endless lies. Salesmen should by federal law be held directly responsible for their tactics."

But another reader who identified himself as a salesman said a licensing law was not the answer. "As a salesman, I can assure you that requiring licenses will not improve the morality of the sales force. The employers have the real control over the way they want their land marketed."

Several people called attention to the need for better education at home and in schools.

"Begin showing parents and teachers they must teach the young that one never gets something for nothing," commented a Denver woman. "Apparently it is too late for adults to learn now."

Mr. Dean C. Armstrong of Carmel, Calif. commented that from 40 years experience in the consumer credit field he had found few people read the fine print in a contract. "A mandatory course in high schools stressing the importance of 'read before you sign' would help reduce the present unwise practice," he wrote.

Mrs. William A. Cole from Salt Lake City, who forfeited the down payment on a lot, commented that: "I learned a lesson of 'sales resistance' at the age of 21. It was worth the price to me."

Not all are taken in by high-pressure sales tactics though. In answer to the question about free gifts, a St. Louis man commented: "Five years ago I received a free transistor radio from a land sales company, but never bought any land. The firm went bankrupt. However, the radio still works."

Support for honest developers was registered by a number of people. "Some companies are no doubt on the up and up and should not be penalized for what the others have done," said a New York State woman.

Many of those responding felt strongly that the most important factor was protection of the land.

"I own land that could be subdivided," wrote a woman from Seattle, Wash. "But I would be willing to submit to any good legislation—our earth must come first."

The Questions That Were Asked

1. Promised facilities

Many people buy land on the basis of what the development will be like in the future, expecting lakes, ski slopes, roads, and adequate utility services. These

facilities will only become a reality if the seller has the money or takes the action to install them. Complaints from numerous buyers indicate that facilities promised are not delivered. To solve this problem, federal law should:

	Percent
(A) Require developers to post performance bonds prior to making sales, to guarantee the installation of promised facilities	59
(B) Require the sales contract to list all promised facilities and legally bind the seller to complete them	54
(C) Require that the improvements and facilities be completed before allowing any sales in the development	28
(D) Leave the situation as it is. Anything that requires bonds or pre-completion money would hamper development and would raise the price of lots	1

2. Cooling-off period

Some people sign installment sales land contracts hastily without thorough consideration. Most buyers who send complaints to federal and state agencies say they never would have bought if they had "thought it over." Most land companies admit that the vast majority of sales are made the first time they meet a buyer. To solve this problem, federal law should:

	Percent
(A) Provide the following specific period of time during which the buyer may revoke his contract for any reason whatsoever and get his money back:	
2 days	1
3 days	3
1 week	17
2 weeks	55
(B) Provide a cancellation period which canot be waived by the buyer despite offers he may get from a developer	35
(C) Allow no cancellations except for fraudulent sales practices. It is not up to the government to protect buyers as long as the developer has made full disclosure in a property report. A deal is a deal and people should live up to obligations	18

3. Solicitation

Many prospects for land sales are lured into signing contracts by elaborate advertising sent through the mail or by sales pitches made by telephone, at free dinner parties, or in conjunction with free gifts or vacations. Later, they may find that the land is not as it was represented. To solve this problem, developers should:

	Percent
(A) Be required to submit all advertising to the government for approval before use	21
(B) Be required to advertise only those facilities which already exist or whose provision is guaranteed by bonding	61
(C) Be required to perform everything advertised	38
(D) Be required to incorporate all advertised promises in the sales contract	53
(E) Not be interfered with. The government should not act as a censor. Federal Trade Commission laws now cover fraudulent advertising adequately	3

4. Sales practices

Some people are induced to buy land by exaggerated statements about potential profits, by promises made by salesmen, money-back guarantees, offers to resell property for the buyer at any time, or by verbal assurances that the contract only makes a "reservation" for a lot and not a commitment to buy it. To solve this problem:

	Percent
(A) The government should appraise the land to reveal its present and projected value. It should require this information to be used in advertising and property reports	37
(B) All salesmen for installment subdividers should be required to obtain a federal license	28
(C) Developers should be required to advise all purchasers in writing that they do not buy back or resell the land for buyers unless they actually do provide this service	56
(D) All that is needed is better enforcement of the present federal Land Sales Act and the Federal Trade Commission's regulations which prohibit unfair, deceptive, or fraudulent sales practices. No new legislation is needed	23

5. Environment

Premature subdivision of land before adequate state land planning has taken place may harm natural areas that should be preserved for future generations. Development activities such as building roads, destroying trees, digging canals, and making artificial lakes may lead to pollution or other environmental problems. I believe that:

	Percent
(A) States should require all remote subdivisions to conform to a land-use plan prepared by a public agency as a prerequisite for selling any lots	58
(B) Developers should not be allowed to sell any land until all pollution control and land-use permits required for lakes, canals, sewage, or solid-waste disposal have been authorized by public agencies	72
(C) Bonds should be required of developers to compensate for damage to the environment	31
(D) Resort-land developments for vacation homes should provide recreational open space more ample than in ordinary subdivisions	34
(E) State and local authorities already adequately provide for prior environmental control of such developments. No new regulations are needed	2

6. Federal regulation

Many observers feel that the federal law regulating the developers is not strong enough and that there are loopholes in the law. The industry itself is opposed to strict regulation. The government should:

	Percent
(A) Increase regulation of the industry	70
(B) Decrease it	1
(C) Be allowed to represent complaining buyers in civil class action suits for damages	48

7. Personal experience

Have you:	Percent
(A) Ever been solicited to buy remote land	81
(B) Been promised gifts or free vacation trips to buy land	73
(C) Ever purchased land in remote subdivisions	24

8. If you bought land

Did you:	Percent
(A) See the land before you bought it	61
(B) See a lawyer before buying it	8
(C) Build a house and live in it	10
(D) Cancel your contract and forfeit your money	9
(E) Cancel your contract and get your money back	13
(F) Make a profit from selling it	6
(G) Take a loss in selling it	8
(H) Feel generally dissatisfied with your deal	43
(I) Feel generally happy with your deal	43

EDITOR'S NOTE: Percentages may total more than 100 since many people checked more than one option per question.

The CHAIRMAN. Senator Haskell.

Senator HASKELL. Thank you, Mr. Chairman.

Mr. Train, perhaps you are the one I should address this question to.

When we adopted our air pollution act and our water pollution act we had certain minimum standards we put in the bills and then the States could adopt more stringent standards if they saw fit.

In your opinion, are there any minimum standards that would be applicable in the area of land use, and if so, what are they?

Mr. TRAIN. That is a rather tall order you have given me, Senator.

Senator HASKELL. I think it is important.

Mr. TRAIN. It is a fair question and a matter that received lots of attention.

Mr. Quarles addressed this in one of his early answers to a question. He pointed out that essentially in setting air and water quality standards we were dealing usually with quantitative measurements of value which can be fixed and ascertained, monitored, and so forth.

Within the area of land use, in many ways we are dealing with matters that can't be quantified. I suppose the best example of that would be simply the protection of esthetic quality to a landscape. In land use we are dealing with value judgments and these tend to be subjective.

There are, of course, in the land use area, certain kinds of standards which can be imposed.

For example, at local levels many jurisdictions have lot size requirements, 1 acre, 2 acres, next to the shores, something of that sort. There are septic tank requirements.

Senator HASKELL. I am talking about broader standards—perhaps it would be more appropriate to call them policies or concepts. I concur with the chairman and with you gentlemen that we certainly don't want to get into the zoning business. But I am looking for this: Are there any broad concepts or policies concerning land use that you, as an expert in this field, feel should be applied to any State land use program?

Secretary MORTON. Maybe I can help a little bit on that, Senator. Obviously, a program that the States developed would have to receive approval in terms of its substantive procedures and in terms of its relationship with its neighboring States and any regional consideration that would evolve.

Already some States, like the State of Iowa, for example, have erosion control standards in the areas where erosion is a problem.

We also have seen the need for some flood plain standards for what you can do and what you cannot do on unprotected flood plains. It is commonsense to not build a whole complex system of structures and having them washed away.

I think these are the kinds of qualitative standards that we would be looking for in a State program, whether they have covered the issue of erosion, which would be entirely different, for example, in Maryland than it would be in some other State in the West where you have different amounts of rainfall, different soil characteristics.

You have already standards in the development of housing in terms of density, population density. But I don't see any area in this bill where we should add on in terms of amendments, standards that the

States would have to comply with, because I think this can be done in the approval process and I don't believe—and would be done in a matter of negotiation with the State as opposed to putting standards qualitative or quantitative in legislation like this.

If we do that, it seems to me we are coming back over into the philosophical area of Federal control.

I think this would be a great mistake.

Senator HASKELL. Mr. Secretary, in the approval process, there would be Federal approval or disapproval of the adequacy of the State program. Am I correct in that?

Secretary MORTON. No, I think this again has to be carefully handled and is a very sensitive subject. If the approval process was one of yes or no on the details of the plan, why then we would be again going right into Federal control of this.

I think actually the States themselves have so much more wisdom in terms of what it takes to develop good land use planning in any given State. I think the approval we would exercise is, have they carried out the spirit of this act, have they made an inventory of their resources, have they established a system of control, not only what the controls actually are.

Because if we take that approach, then what we are doing is simply putting ourselves into the position of saying, yes, we want you to have a land use plan, not that it is going to be like this or we are not going to approve it.

I think on the other hand there should be a dialog, but I think that if the spirit of the act has been carried out, the State has formed its institution, has set up its controls, does know what its resources consist of, then I think the Federal Government must accept that.

Senator HASKELL. I guess, Mr. Secretary, what I am addressing myself to is what is the spirit of S. 268. Is the spirit of the bill to be sure that the State has gone through a process and then——

Secretary MORTON. I think you can be sure that if the State has exercised a responsibility over its resources, primarily its land resources in terms of the preservation of the values and in terms of the proper environmental development, and if the State has done a good job, one State one way, another one the other way, but if they have a handle on the situation, then I think the spirit of this act has been fulfilled.

Senator HASKELL. Mr. Secretary, I don't know whether I should address my next question to you or Mr. Train, but let's assume that as in my State, the Rocky Mountains go right down the middle.

Secretary MORTON. We don't intend to move that.

Senator HASKELL. No, we don't. But the people congregate on the eastern end. Let's say my State goes through its process and inventories its lands and uses, and it comes to the conclusion that we really want a strip city along the eastern Rocky Mountains, and we want it about 140 miles long and 10 miles wide, which is a real possibility if present trends continue. This could very easily occur.

Let's assume my State having gone through the process comes to that conclusion. What would, in your opinion, under this act, what would the Federal administrative agency do? What would they say?

"Well, you have gone through the procedures, this is fine?" What would you do?

Mr. TRAIN. I think the concept of the bill is that if the State does in fact have an adequate system of controlling that kind of growth, of which it does have the power, and if after full public participation, consideration of the alternatives, the State decides to permit that particular growth and assuming that no area of national concern is involved, because our bill does provide an exception in that case. It is the theory of this legislation that the States would go ahead in that fashion. Now, that is a very broad generalization.

Senator HASKELL. Thank you.

We would not overrun the Air Force Academy, so we wouldn't have anything of national concern.

Let's assume the prevailing wind——

Mr. TRAIN. There are national parks and forests, just as, for example, the proposed Everglades Jet Port was cited in close proximity to the Everglades Park. It was decided this was a matter of national concern and that land-use decision was impacting on an area of critical national concern.

So there are matters involved in the area you described other than the Air Force Academy.

Senator HASKELL. Let's assume now that the prevailing wind is from the south, which it is not, but let's assume it is. I am sure that Senator Hansen's State wouldn't do this; what I am suggesting, my State might do to him. Let's assume that the prevailing wind is from the south and my State having cooperated and sat down and saying we cooperated with the State of Wyoming—decides that we will put all of our industry in a solid block, on Colorado land, along the Colorado-Wyoming border and this is going to be our only industrial area, and the wind is from the south. What would your administrative agency do in that case?

Mr. TRAIN. I would say in a general sense we would consider this to be a decision which would have been the authority of the people of Colorado.

This is not to say it might not have trouble with the people of Wyoming, but we do have a political arrangement in this country which has State boundaries and State authorities.

I would say the answer is the State can go ahead and do what you described.

Senator HASKELL. Thank you very much. That is all I have.

Mr. TRAIN. Now the bill does provide for the relationship of State land-use plans to ambient air quality standards and water quality standards, which must be established, and they must be in conformity with those standards. So we have an impact of the air quality and water quality legislation on the case you have described.

Senator HASKELL. Let me address another question to Mr. Quarles.

It is my understanding that Los Angeles is invoking the authority granted under the Clean Air Act, has provided there would be no more powerplants built in the Los Angeles area.

This, in turn, has had an influence in locating substantial powerplants in the four corners area, of which my State is one of them. In

effect, the air pollution control officers of southern California serve as some sort of a superzoning officials for the whole Southwest region.

Now, I am concerned at a lack of coordination. Should there not be coordination—after all your air actions to protect air quality affect land use. And my State and Senator Fannin's State and others are affected by the location of powerplants which air quality standards have virtually dictated and how do you propose to integrate this land use legislation with your authority under the Clean Air Act?

Mr. QUARLES. I think that the specific mechanisms of integration are partly outlined in the provisions of the Senate bill and partly something that will have to evolve after whatever legislation is passed.

But it is very clear that there needs to be a close integration of the work that the Environmental Protection Agency is doing with the work under the land-use legislation, because there is continuous overlap of the problems in such a manner that if the air and water and other specific pollutants that our agency is responsible for managing are not included in the land-use decision, then those land-use decisions will adversely impact the air quality and water quality.

And likewise, if decisions that we might make dealing with water and air problems do not incorporate the broader considerations of land use, then our decisions might not go to the ultimate public interest.

Senator HASKELL. Do you feel there is adequate authority granted in this land-use legislation so we can achieve that type of coordination?

Mr. QUARLES. Yes; I think there is.

Senator HASKELL. Thank you very much.

Senator Hansen.

Senator HANSEN. Thank you very much.

I want to make certain that I understand clearly the witnesses responses to the previous questions. My first question will follow along in the same vein as that asked by Senator Fannin.

I note that the Secretary says on page 3 of his statement that, however, I note what Chairman Train says on page 8 of his statement, and I refer specifically to the last paragraph:

> these sanctions should be statutorily explicit and not subject to administrative compromise by any review board. States without adequate land use programs would lose a graduated amount from seven percent up to 21 percent of their highway trust fund, airport constructions funds and land and water conservation funds.

Now, you regard this bill as giving the States the right to determine their own destinies. You say this adds to the States' power.

Would it be fair to say that it adds to the States' power to determine their destinies provided that the States decide to exercise authority in a manner consistent with this bill, and if they do not do that, then it most certainly does not add to State authority. Is that a fair statement?

Mr. TRAIN. Yes.

Senator HANSEN. My next point pertains to the sanctions which were deleted from last year's bill on the Senate floor. Mr. Reporter, I ask you make a note that on page 87 of S. 632, last year's bill, the sanctions are listed.

I read from that bill:

> The secretary shall have authority to terminate any federal assistance extended to a state under this act and withdraw his termination whenever the

Secretary finds, and the hearing board concurs, that the statewide land use planning process or the state land use program does not meet the requirements of this Act.

In other words, it gave authority to the Secretary of the Interior to make this determination. If he found the State program failed in this regard, then under the sanctions to be imposed up to 21 percent given to the State could be withheld. I think Chairman Train testified those moneys should be distributed to other States whose plans were in compliance.

This would apply to funds granted pursuant to the Federal-aid Highway Act of 1956, section 5 of the Land and Water Conservation Act of 1965, and the Airport and Airway Development Act.

Now, Mr. Quarles testified that he thought, and I am paraphrasing what you said—and if I misquote you, I hope you will correct me—that the basic questions are political, and you doubted that the States are ready to face up to these tough questions. I gather it is your feeling, Mr. Quarles, that Congress is better prepared to face up to these tough political questions than are State legislatures, State Governors, and others. Is that a fair conclusion?

Mr. QUARLES. I believe there is such an up-welling of concern over the inadequate land use programs that we have had in the past, such a rapidly intensifying desire for action, that we are going to find action at all levels of Government is coming about very rapidly.

The proposed legislation would be an important Federal reflection of the problem and the need for the Federal Government to take action on the problem.

Yet, that Federal act would be of a nature that would complement State action to deal with these problems.

Now, we know in the absence of any Federal prodding at all many States are making dramatic changes in their system of regulation over land use decisions.

There are Governors and State legislators who are facing up to these questions and beginning to make some of the tough decisions.

On the other hand, there are many instances in which that is not being done. If we can borrow a leaf from the water and air pollution control programs, it is clear that when a problem goes to a point that the misuse, abuses are so severe that the citizens are writing to their Congressmen, and there is a demand for a tremendously strong Federal role in solving these problems.

This bill does not provide a tremendously strong Federal role, but it does provide a Federal role which we feel is going to be helpful to the States: to help provide encouragement to them and to provide support to the Governors and legislators who want to deal with these problems, and help them very effectively perform the major role. The role that ultimately the Federal Government should play in this area is a supporting role.

Senator HANSEN. The chairman has testified, and I think certainly that Chairman Train has testified that he does not believe the bill S. 268, has tough enough sanctions in it.

As a matter of fact, the chairman said it does not have any sanctions in it. In a small way I may be responsible for that situation occurring last year on the floor.

I gather this present bill does not satisfy you gentlemen in going far enough within the sanctions you think are necessary in order to

assure that States will take the kind of action which Mr. Quarles says would reflect the concern of individuals who write to their Congressmen.

I would like to point out that the sanctions you favor are precisely what I understand was rejected by the Senate last year. I think the chairman stated his position in this regard.

Let me say that having heard from the Governor of one of our States, my State of Wyoming, I am not sure that State legislators are any less conscious of public pressure, or are any less available to receive mail than Members of Congress. When it comes to the job of implementing tough laws, State governments are pretty accessible to the public. If we pass the kind of bill that is being talked about and hoped for here, I understand that you might well want to have the responsibility for such measures placed on the shoulders of State government. It would not be a very pleasant situation to have to justify some of the things that could result from the kind of bill you recommended.

The Federation of Rocky Mountain States has said if we include land areas within the States where the surfaces are 25 percent or more Federal ownership, and add the land in which the subsurface is owned by the United States, the Federal Government impacts about two-thirds of the Rocky Mountain land area.

I point this out, Senator Haskell, because I think you touched upon a vital subject when you refer to Colorado's attitude about the Air Force Academy. Actually this bill goes further than that. I am not talking about last year's bill, but the bill before us. On page 39, it provides that as a condition of continued eligibility for grants that the Secretary shall determine that the State land use program developed pursuant to sections 303 and 304 of this act includes methods for insuring that Federal lands within the State, including but not limited to units in the national park system, wilderness areas, and game and wildlife refuges are not damaged or degraded as a result of inconsistent land use patterns in the same immediate geographical region.

It has been pointed out by the department of economic planning and development in my State of Wyoming that if this review which impinges so heavily on the Federal quality, in the Federal land area, such as national parks, wilderness areas, and so forth, were to extend only 1 mile onto privately owned lands, that the Federal Government's control over the State will increase. According to their statistics, the extent of Federal control in Wyoming is 52 percent, and this would increase to 72 percent if the Secretary reviewed adjacent lands. This says nothing about the minerals under our lands. Federal ownership of minerals in Wyoming extends to over 70 percent of all of the lands in the State.

Now, to refer, once more, Mr. Quarles, to you, may I ask did you happen to read the President's state of the Union message delivered on the 2d of February?

May I ask it be included in the record at this point.

(The President's message follows:)

[From the Congressional Record, Feb. 2, 1973]

STATE OF THE UNION—MESSAGE FROM THE PRESIDENT (S. DOC. NO. 93-3)

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the President of the United States, which was ordered to lie on the table and to be printed:

To the Congress of the United States:

The traditional form of the President's annual report giving "to the Congress Information of the State of the Union" is a single message or address. As the affairs and concerns of our Union have multiplied over the years, however, so too have the subjects that require discussion in State of the Union messages.

This year in particular, with so many changes in Government programs under consideration—and with our very philosophy about the relationship between the individual and the State at an historic crossroads—a single, all-embracing State of the Union Message would not appear to be adequate.

I have therefore decided to present my 1973 State of the Union report in the form a series of messages during these early weeks of the 93rd Congress. The purpose of this first message in the series is to give a concise overview of where we stand as a people today, and to outline some of the general goals that I believe should pursue over the next year and beyond. In coming weeks, I will send to the Congress further State of Union reports on specific areas of policy including economic affairs, natural resources, human resources, community development, and foreign and defense policy.

The new course these message will outline represents a fresh approach to Government: an approach that addresses the realities of the 1970's, not those of the 1930's or of the 1960's. The role of the Federal Government as we approach our third century of independence should not be to dominate any facet of American life, but rather to aid and encourage people, communities, and institutions to deal with as many of the difficulties and challenges facing them as possible, and to help see to it that every American has a full and equal opportunity to realize his or her potential.

If we were to continue to expand the Federal Government at the rate of the past several decades, it soon would consume us entirely. The time has come when we must make clear choices—choices between old programs that set worthy goals but failed to reach them and new programs that provide a better way to realize those goals; and choices, too, between competing programs—*all* of which may be desirable in themselves but only *some* of which we can afford with the finite resources at our command.

Because our resources are not infinite, we also face a critical choice in 1973 between holding the line in Government spending and adopting expensive programs which will surely force up taxes and refuel inflation.

Finally, it is vital at this time that we restore a greater sense of responsibility at the State and local level, and among individual Americans.

WHERE WE STAND

The basic state of our Union today is sound, and full of promise.

We enter 1973 economically strong, militarily secure and, most important of all, at peace after a long and trying war.

America continues to provide a better and more abundant life for more of its people than any other nation in the world.

We have passed through one of the most difficult periods in our history without surrendering to despair and without dishonoring our ideals as a people.

Looking back, there is a lesson in all this for all of us. The lesson is one that we sometimes had to learn the hard way over the past few years. But we did learn it. That lesson is that even potentially destructive forces can be converted into positive forces when we know how to channel them, and when we use common sense and common decency to create a climate of mutual respect and goodwill.

By working together and harnessing the forces of nature, Americans have unlocked some of the great mysteries of the universe.

Men have walked the surface of the moon and soared to new heights of discovery.

This same spirit of discovery is helping us to conquer disease and suffering that have plagued our own planet since the dawn of time.

By working together with the leaders of other nations, we have been able to build a new hope for lasting peace—for a structure of world order in which common interest outweighs old animosities, and in which a new generation of the human family can grow up at peace in a changing world.

At home, we have learned that by working together we can create prosperity without fanning inflation; we can restore order without weakening freedom.

THE CHALLENGE WE FACE

These first years of the 1970s have been good years for America.

Our job—all of us together—is to make 1973 and the years to come even better ones. I believe that we can. I believe that we can make the years leading to our Bicentennial the best four years in American history.

But we must never forget that nothing worthwhile can be achieved without the will to succeed and the strength to sacrifice.

Hard decisions must be made, and we must stick by them.

In the field of foreign policy, we must remember that a strong America—an America whose word is believed and whose strength is respected—is essential to continued peace and understanding in the world. The peace with honor we have achieved in Vietnam has strengthened this basic American credibility. We must act in such a way in coming years that this credibility will remain intact, and with it, the world stability of which it is so indispensable a part.

At home, we must reject the mistaken notion—a notion that has dominated too much of the public dialogue for too long—that ever bigger Government is the answer to every problem.

We have learned only too well that heavy taxation and excessive Government spending are not a cure-all. In too many cases, instead of solving the problems they were aimed at, they have merely placed an ever heavier burden on the shoulders of the American taxpayer, in the form of higher taxes and a higher cost of living. At the same time they have deceived our people because many of the intended beneficiaries received far less than was promised, thus undermining public faith in the effectiveness of Government as a whole.

The time has come for us to draw the line. The time has come for the responsible leaders of both political parties to take a stand *against* overgrown Government and *for* the American taxpayer. We are not spending the Federal Government's money, we are spending the taxpayer's money, and it must be spent in a way which guarantees his money's worth and yields the fullest possible benefit to the people being helped.

The answer to many of the domestic problems we face is not higher taxes and more spending. It is less waste, more results and greater freedom for the individual American to earn a rightful place in his own community—and for States and localities to address their own needs in their own ways, in the light of their own priorities.

By giving the people and their locally elected leaders a greater voice through changes such as revenue sharing, and by saying "no" to excessive Federal spending and higher taxes, we can help achieve this goal.

COMING MESSAGES

The policies which I will outline to the Congress in the weeks ahead represent a reaffirmation, not an abdication, of Federal responsibility. They represent a pragmatic rededication to social compassion and national excellence, in place of the combination of good intentions and fuzzy follow-through which too often in the past was thought sufficient.

In the field of economic affairs, our objectives will be to hold down taxes, to continue controlling inflation, to promote economic growth, to increase productivity, to encourage foreign trade, to keep farm income high, to bolster small business, and to promote better labor-management relations.

In the area of natural resources, my recommendations will include programs to preserve and enhance the environment, to advance science and technology, and to assure balanced use of our irreplaceable natural resources.

In developing human resources, I will have recommendations to advance the Nation's health and education, to improve conditions of people in need, to carry forward our increasingly successful attacks on crime, drug abuse and injustice, and to deal with such important areas of special concern as consumer affairs. We will continue to improve our Nation's efforts to assist those who have served in the Armed Services in Vietnam through better job and training opportunities.

We must do a better job in community development—in creating more livable communities, in which all of our children can grow up with fuller access to opportunity and greater immunity to the social evils and blights which now plague so many of our towns and cities. I shall have proposals to help us achieve this.

I shall also deal with our defense and foreign policies, and with our new approaches to the role and structure of Government itself.

Considered as a whole, this series of messages will be a blueprint for modernizing the concept and the functions of American Government to meet the needs of our people.

Converting it into reality will require a spirit of cooperation and shared commitment on the part of all branches of the Government, for the goals we seek are not those of any single party or faction, they are goals for the betterment of all Americans. As President, I recognize that I cannot do this job alone. The Congress must help, and I pledge to do my part to achieve a constructive working relationship with the Congress. My sincere hope is that the executive and legis'ative branches can work together in this great undertaking in a positive spirit of mutual respect and cooperation.

Working together—the Congress, the President and the people—I am confident that we can translate these proposals into an action program that can reform and revitalize American Government and, even more important, build a better life for all Americans.

RICHARD NIXON.

The WHITE HOUSE, *February 2, 1973.*

Senator HANSEN. I think it would be illuminating to read what the President says about turning the tough decisionmaking process back to the States. He is talking about returning power to the people, and yet I don't find anything in his message, which I read over very carefully, to support the position that you all are taking here this morning. It seems to me you are saying on the one hand only Congress stands tall enough and has the courage and perspective to know what is best for the people.

We are going to write a law that says certain things will happen and certain directions will be taken, but only provided the States go in that direction will their State powers not be diminished. I would request that you point out, I won't ask you to now, but if you would like to later call it to my attention how the President's state of the Union message of February 2, can be reconciled with your testimonies. The President endorses the concept of revenue sharing, the idea of giving States monetary support to solve problems. How you can reconcile his position with the sanctions which you endorse that were stripped from last year's bill? I would be very much interested in your answer.

I have no further questions.

Mr. QUARLES. May I respond to that?

Senator HANSEN. Certainly.

Mr. QUARLES. Senator, I believe that in addressing the basic questions it is not wise to try to bring one ideological cut-and-dried answer to any specific legislative needs. Rather, each of these problems has to be viewed in its own context. We have found that even in an administration that has been making very serious efforts to place more of the responsibility in the States and in local governments, there has been an extension of the Federal authority in the environmental area which seems to present a certain paradox.

I believe the key to the paradox is the recognition that in some of these areas, there are in the local and State political structures dynamics which do not adequately reflect and support and protect elements of the public interest.

The forces working in favor of business development are stronger, typically, in the local political structures. This is the basic reason why local zoning has failed to do the job in providing for good land use programs. The administration proposal is designed to recognize this

developing legislative need by setting forth a framework within which there is a Federal role, an important Federal role. I think I agree wholly with the statements you have made suggesting that it does in some respect curb the complete discretion of the State government.

However, at the same time, there is a clear focus on the State government as the critical decisionmaking point in the process. The results which will come out of this process will be predominantly controlled by the forces that operate within the State structure, through the State legislatures, at the State capitols. They will be tilted to some extent perhaps toward greater environmental protection and in favor of those values which have not been adequately protected within the past 20 years.

I don't believe there is anything in this proposal which is in conflict with the President's belief about the way the overall Federal-State relationship should be developed, or with his emphasis on trying to put more responsibility and more money at the State level.

Finally, you referred to the point as to whether we were recommending the same schedule of sanctions that was voted against by the Senate last year and I think the answer to this is, yes, we are recommending these provisions essentially for reconsideration.

There are many issues that are being raised once again for reconsideration and we hope that all persons in the Senate will look on this as an open question and reach a different result this year.

Senator HANSEN. Mr. Chairman, I have no desire to try to have the last word here.

Senator HASKELL. Senator Hatfield.

Senator HATFIELD. Mr. Chairman, I would like to shift for just a moment and perhaps beam in on one small facet of this problem. I would like to illustrate this problem.

First, I am a cosponsor of this bill and supporter of this proposal. I come from a State that has established a program and has established a department of environmental quality, which has been in the process of making some of those tough decisions. But I also am very concerned about what is going to occur at the Federal Government level to coordinate better the existing programs and resources.

We can talk about land use and we can talk about it in the abstract as something that is beautiful on paper, but I think we have to face some very tough decisions on the Federal level in terms of implementation.

I would not want to imply here by certain examples that you gentlemen hold the responsibility, but I would like to use them for illustration.

Let me say for the record that the Federal Government in its administration and handling of Federal forest lands today has permitted over a period of time 5 million acres of land to be unreforested. And when the Senate Appropriations Committee added to the budget request for reforestation of these lands we find that $3 million of that was impounded.

This is hardly the kind of exemplary program at the Federal level that we could expect the States to want to emulate. We have to view this in the contexts of villages. We are talking about people when we talk about land use planning. It relates to people and the pattern of

how society has developed so that we have a greater concentration of people in the urban areas.

In my State we have had the State department of environmental quality say to certain villages you must establish sewer and water programs as of a certain date. This is mandatory.

But these small communities have been deprived by Federal preemption of tax moneys. They couldn't sell their bonds in the bond market if they voted upon it for sewer and water programs.

Second, their tax base is diminishing because the general trend is toward the urban center compounding the problem for the urban center and land use.

So they apply to the various agencies of the Federal Government for assistance in developing sewer and water programs to correct the pollution problem and to anticipate complying with such land use regulations as established by the State.

FHA has provided such assistance for communities under 5,000. We have as of this date 57 communities in my State which have applied and qualified for grants totaling $8.3 million. And yet the notice was given that such programs have been terminated until further notice and $108 million of appropriated funds that would go to correct these problems at the local community level is impounded.

Now, we talk about land use policy and the need for coordinating, and I am not implying that you individually or your agencies are solely responsible, but I think there should be resource planning at the Federal level. As to how the resources of the Federal Government are going to assist the States in implementing the responsibility of not only coming up with a plan but one that is workable.

Let us not forget two basic statistics. Forty-eight percent of the Nation's poor are now living in the rural areas of America. Three-fifths of the Nation's housing needs are in communities of 2,500 population or less.

All this has implications in this whole land use problem.

In my hometown of 5,300 people, we have one of the most interesting and unusual estuaries on the west coast. A sea-grant marine college is located across the beach.

Before the sea-grant college can expand, it has to have sewer and water, and that system has to be put under the bay, across to connect with the south beach. EDA had been applied to for a water grant; EPA for a sewer grant.

Here we are with a Federal installation benefiting this whole Nation and a local community responding to fulfill their responsibility. We have received notice that EDA is going out of business, but we still have hopes that EPA is going to assist in the sewer problem.

But if we can't get the water problem solved now, we are going to have to dig a ditch for the sewer and dig another ditch at another time for a waterline.

These are examples I am citing, which illustrate why I think we must not look only to the State or the local government to make decisions. I think we have to do a better job of coordinating the—we have reduced our capacity to really implement. I want to see plans developed, but not only developed. I want them implemented.

We are talking here pretty much in the abstract this morning. We still haven't really gotten down to other than just money related to the

development of these plans. I am now moving to implementation which involves the key sewer and water problem.

FHA and HUD sewer and water moneys have been impounded, and that sewer and water is a key to any small community.

I am really making a statement more than asking questions, but I believe the record should be rounded out in using this as an example of the Government's need to coordinate its agencies or resources. Maybe you would like to respond.

Secretary MORTON. In a very brief way, Senator Hatfield, I can respond that I can't recall a year when the Federal Government didn't spend all of the tax money raised, all of the bond money raised, and all of the money from the sales of resources.

I think what you are going after is the priorities on which those are spent.

Senator HATFIELD. You mean they did not spend the appropriated amounts?

Secretary MORTON. I said they spent all of the moneys they collected as taxes, all of the money they received from the sale of bonds, and all of the money they received from the sale of resources.

Senator HATFIELD. Plus a deficit.

Secretary MORTON. Yes. So the question is really getting down to what the priorities are for spending the funds that are available.

I, coming from a rural area and having been involved in small communities, couldn't agree with you more. I think we got overly urban oriented for awhile. I think the pendulum is beginning to swing back to the real problem.

I think in the whole area of resource management the great step forward would be the establishment of a DNR which would bring the tradeoffs and the balancing into one institution—I think the Congress itself, having served there, I think I can be more critical, does not have an overview, and every committee is engaged primarily in an effort to sponsor not only the authorization, but also the appropriation for their specific interest, and when we added all of that together at the end of the process there were more obligations on the part of the Federal Government then there were funds to carry out programs.

Senator HATFIELD. Mr. Secretary, I am not in disagreement with what you say. I have to come back and reiterate the fact that it is one thing for us to sit here and devise all sorts of new responsibilities or encouraging State and local governments to assume new and additional responsibilities, to encourage them by supporting their area of the planning level in setting up such plans.

What I am saying is there is a big gap between that role of the Federal Government and then recognizing the necessity of resources to implement such plans or what the responsibilities are.

I will think that it is a question of priorities, but it is also a question of being realistic as to whether or not what responsibilities we are providing the tools.

One time President Eisenhower said he wanted to return many responsibilities to the States and he was amazed there was not immediate thundering applause. Interestingly enough the Governors were listening, but didn't hear anything about returning resources. So they were questioning the whole bit and rightfully so.

I think I am raising that case. Do we have recognition of what resources are necessary to make it possible for the State to carry this out?

I am speaking now not from theory, but from hard bitter experience, from listening to county courts and local administrators lambast the Governor of my State for having imposed these restrictions on land use, and he says we don't have the tools to comply with those orders.

Secretary MORTON. My only comment again is thank God there are people like you in the Senate who feel this way.

Senator HATFIELD. I appreciate your support, in last November, too.

It bothers me when I see the 5-or-6-billion-dollar increase in defense budget, and I see we are not adding anything in the other part of the budget, we are deducting.

I am merely saying——

Secretary MORTON. I think that is what your appropriations Committees are for, for the evaluation of these requests.

Senator HATFIELD. What good does that do when we make a different evaluation than OMB?

Secretary MORTON. Are you talking about an infinitesimal amount of the total outlays in a given year when you talk about impounding funds? In my point, I have $4 or $8 billion impounded in different areas.

Actually under the real definition of impoundment there is about $200 million out of a budget of $2.7 billion and that is really for management reasons, and for reasons that are more or less mechanical.

I think if you are talking about major percentages, 20 percent, 30 percent of the money is impounded, so the intent of Congress is completely off the track, that is a different ball game.

Senator HATFIELD. Mr. Secretary, I appreciate——

Mr. TRAIN. Could I comment.

Senator HATFIELD. Let me give one response.

I appreciate the Secretary's comments, because he put a figure on a very profound point. Many of these programs do not demand the funds that the military line items demand and this is where I think we are being penny wise and pound foolish.

Where we can invest, say a few million dollars, and the return on these dollars invested are so much greater, so much greater, and will really be so much more meaningful this whole effort to get wise land use and conservation, than some of the billions we are spending in areas where we have not had reduction and impoundments. I cannot accept impoundment on the basis they are only a small amount when I have seen it applied in about every social area, and never applied on the military, which requires the biggest portion of the budget.

I think you did put your finger on an important thing. We can get so much more return over that investment of a few million alone, plus the fact we have not reduced our miiltary budget at this point.

Mr. TRAIN. Senator, I think we would agree with you, that the Federal Government itself should do a far better job in resource management, and resource policy than it has in the past, no question about it. But that at the same time, and whatever deficiency there might be in that regard, on which I would readily agree with you, is no reason for not acting on this legislation.

In many ways the expenditure of Federal funds on highways and on airports and sewer and water programs in the context of uncontrolled growth, unplanned growth, unregulated growth is really not sound resource management and what we are trying to do here is create nationally, but with the States carrying the ball, a framework for rational decisionmaking as it affects growth on the land and in that context then, also do a better job of resource allocation and management.

Senator HATFIELD. Thank you very much, Mr. Chairman.

Senator HASKELL. Senator McClure.

Senator MCCLURE. Thank you very much.

In view of the hour I will be very brief. I was interested in the exchange that has taken place this morning, particularly with respect to some of the questions that Senator Fannin and Senator Hansen asked, somewhat contrasted with the statement that the chairman earlier made, with respect to the fact that this bill and the administration's policy leaves to States the discretion to make their own plan. I share that philosophy.

I think that is an approach we ought to take. I think all three of you gentlemen have very well delineated the administration's policy, that the Federal Government should act as a catalyst, act as an assistant, should act as a planning process, but not dictate the result of that process.

My question is whether or not S. 268 which is pending before us actually carries out that philosophy, whether or not S. 268 as written actually goes beyond that and dictates to the States what some of the results should be as well.

I am confused by some of the language that has been used in the dialog when the chairman refers to zoning. While I think land use planning is not zoning, it is less than that, and it is more than that, and it is not precisely that at all.

In response to questions, Mr. Secretary, you said you would require approval of the State plan. If you can approve or disapprove of the State plan you can dictate the requirements.

Secretary MORTON. We do not do that.

Senator MCCLURE. If I could I would like some clarification.

Secretary MORTON. First, Senator McClure, we have not finished our report on this bill which we feel in some respects does go too far.

For example, we think the institution and the State should accomplish a method for getting the inventories, ways and means of attacking the problem and, therefore, we are not substantively either approving or disapproving the results.

Hopefully, this would never occur, because if it did then you would have a qualitative control over State land use by a Federal agency and, I think, we want to avoid that at all cost. That is why we do object to some of the language in this bill, S. 268 and are preparing a report to delineate our objections to that. There are differences that do exist between this legislation and the proposed legislation which we will have up concurrently with the environmental message.

What you have hit upon is the very hard core of this, does the Federal Establishment have control over the qualitative elements in the Idaho, for example, land use plan, or does it not.

We are not intending to achieve any kind of qualitative control, except to make sure that the State itself has searched its soul, has done a good job of institutionalizing itself and has not only a plan, and I am sorry that Senator Hatfield has left, but is in command of the situation and can actually make decisions and is making decisions in respect to the implementation of its plan.

This is a delicate area, and this is one I think the Congress must think about a great deal and we have to think about a great deal, otherwise we will end up with a Federal zoning plan and, in my opinion, it will not work.

Senator McCLURE. I appreciate your clarification, because of your earlier statement that would require secretarial approval of a plan. That disturbed me.

Secretary MORTON. That was a bad choice of words, I should have said eligibility of a plan.

Senator McCLURE. The reason I stress this, I think this is the very crux of the whole discussion as to how we approach this. My acceptance of the sanctions that have been suggested will be completely determined by our approach on that problem, because if the Federal controls are extended only to the requirement that the State go through the process and come up with a plan but not the results of that process, I can support the sanctions, because I think the States should be forced to come up with that plan. I think we have that legislative public interest, but if we send it beyond that, I will be opposed to the sanctions certainly.

I hope to make this record just as clear as it is possible to make on that point.

Secretary MORTON. Any such bill that was passed that would transfer the responsibility from the State to the Federal Government or give the Federal Government a sense of control over the actual procedure and plans in the State would be totally unacceptable to me and, I think, to the administration.

Senator McCLURE. I thank you very much and I want to commend you all three for the statements you have made.

There are some things, Mr. Train, statements you have made that are particularly applaudable. I refer specifically to the water and air pollution, which can correct themselves more readily than abuses in land planning.

There is one thing Senator Hatfield touched upon that troubled me a great deal. That is, while we are looking to the States to do this, we have not addressed ourselves to the ability of the State to tackle the job.

I don't believe the grants being proposed will give the States the financial muscle that is necessary to do it, and to do it in the time frame set for it in the legislation.

I think in the analysis last year, it was the expectation of the Federal Government that it would require about 60 people in the Federal Establishment to monitor this and accomplish this, which is another way of saying the whole burden will be on the States.

Secretary MORTON. One of the things I am objecting to is an establishment of a great big bureau in the department dealing with this, because knowing how these things start, we can end up with a large land planning organization that would be reaching for more

and more. Therefore, I would prefer it be a very small office involved in what are clearly delineated as Federal responsibilities in this area.

Senator McClure. I would like to underscore one other thing. That is, at the same time the Federal Government is requiring this of the States, it is not requiring the means by which the States can do it in the initial stages, in order to give the States the financial capacity while we are gearing up to do the job.

I sit over here with four former Governors, and that somehow inhibits my discussion of this thing, but the States don't have the money to undertake this thing unless we give them assistance.

Senator Hatfield pointed out where instead of giving assistance, we remove it, and I look at the woeful lack of management funds on public lands.

We desire the highest possible criteria of management and give them nothing to do with it. OMB has in the past few years—I see in the budget we are taking money out for forest highways, because we can take that out of sales, robbing the local schools and counties of the very thing that was promised them half a century ago, when they were going to get 25 percent of the proceeds. And we haven't adopted any taxes yet to take the place of that.

We recognize the burden thrown on local government, to assist in running and building schools in Federal impact areas and those moneys are taken away from us.

At the same time we are going to thrust more burdens on the States. I think there is a little myopia here, where the President is saying we have overexpectation, what can be done and—it is going to cost the State government a lot if they do what that requires them to do.

Secretary Morton. I would be willing to make you a wager that the greatest return on investment of Government expenditures by our generation will be rewarded in the generation that follows us more in the area of land use planning and the orderliness of growth and the establishment of a compatability between structures and works of man and the rest of nature than any other expenditure that is made by the Government in our time.

Senator McClure. I am assuming that is a rhetorical wager, because I am not sure either of us are going to be around to collect.

Secretary Morton. I didn't interpret your last speech as a lobby for higher taxes.

Senator McClure. I think until the Federal Government keeps some of the commitments it has made, it shouldn't be asking others to meet commitments.

Secretary Morton. I assume you are referring to all of us in the Federal Government.

Senator McClure. Yes, I am. At the same time we do that, it disturbs me when the Federal Government retreats from responsibility, and I think they are retreating to some degree in its approach to this problem, and I feel strongly if the Federal Government wants to own two-thirds of my State, by golly, it better pay the bill.

Secretary Morton. The people of America own two-thirds of the State.

Senator McClure. Oh, baloney. The Federal Government when granting land to our State reserved mineral rights. They had no legal

right to do that. They said to us in Idaho, you can come in, but you are second-class citizens.

Maybe we will get some attention to the public land management policy that we ought to have. I get bothered when you start talking about forest management and you say the people of the United States own it, but you people in Idaho are going to pay the bill.

Secretary MORTON. If you will recall, last year we got some bills before the committee in the House, and we didn't get a single thing passed.

Senator MCCLURE. I know that. We are asking the States to do something that the States do not have the financial resources to do. If we mean what we say, and if Congress means what it says, it better have some standards here. And if Congress means what it says, it better recognize the financial obligation imposed by the legislation.

Secretary MORTON. We have done what we think is a good evaluation of the financial requirements of this and I think what I said earlier to Chairman Jackson was that I believe it should be reviewed.

I would rather start on a more modest scale and work up, rather than plunge a lot of money into this program, which would be an incentive to develop a lot of inefficiencies in the program.

Senator HASKELL. Excuse me, will the Senator yield for a moment? I was going to suggest a 1 o'clock recess. Now we can continue and ask these gentlemen to return at 2:30. On the other hand, if it is possible for you to finish your questions, Senator——

Senator MCCLURE. I have one question.

In that field, for instance, start slowly and start requiring the States to do things. Maybe a good example of what we have done is in recreation, land and water conservation. We have asked the States to set up a recreation plan and start making plans of what they will do with the money in this fund that is assured to them under this program, and then when they get their plans all completed we start taking the money away from them.

I think there has been a little more consistency on the part of the Federal Government.

Senator HASKELL. Senator Bartlett.

Senator BARTLETT. I would like to yield to Senator Buckley.

Senator HASKELL. Senator Buckley.

Senator BUCKLEY. If these three gentlemen were to be administering this bill in perpetuity, I believe their approach and mine would coincide. I question whether the kind of bill we are apt to pass will, in fact, limit the actual power of the Secretary to that of determining whether or not procedural steps have been followed.

At some point a value judgment will be made by a future Secretary, at which point there are ways of finding this procedural clause.

Furthermore, if we move ahead on the assumption that localities will not meet their own responsibility then we will create pressures on the States to deprive localities of acting on their own initiative.

Mr. Quarles says the zoning boards notoriously value business development over other forms of land use. I wonder if that is as true today as it was a few years ago, and I wonder if that will be true tomorrow? I would hate to see this proceed. That is all I have to say.

Senator BARTLETT. This is covering almost identically the ground of one question, Mr. Secretary.

In your opinion in Senate bill 268, do the States have the freedom to come up with the results on their own?

Secretary MORTON. I think they do, Senator Bartlett. The States have moved a long way. I think Senator Buckley's point that the zoning institutions at the local level of government have recognized some of their errors of the past and are beginning to develop a much more balanced point of view. Now I think the States are moving in this direction.

I think this will be a stimulus to getting the States moving more rapidly and with better institutions. But the answer is that I really believe, and I am convinced that the interest in the States is such that they will come to their own conclusions, develop their own plans, and really with a minimal interference or influence from any external sources, including the Federal Government.

Senator BARTLETT. Mr. Secretary, why does this bill not include Federal lands? I know in your earlier statement you said you thought that it did and it does require coordination, but as you were saying it did, I noticed some heads up here shaking it did not.

Secretary MORTON. Federal actions involving Federal lands have to be coordinated with the State plans and the State plan has to be considered by the Federal agencies in developing any sort of disposition of, or use of Federal lands and in that sense they are involved.

They are not involved in the sense that the State plan would include proposed actions for disposition of Federal land.

It is our responsibility on the Federal side to coordinate with the States.

Senator BARTLETT. Why is the Federal Government not required on Federal lands and installations to develop a plan consistent with the State plan and then implement that plan?

Secretary MORTON. In some areas we are. We are required to develop a land use plan for northern Alaska north of the Yukon.

Senator BARTLETT. What I am reminded of in my own State—I thought there was a good point made earlier—that with good foresight and planning many mistakes can be eliminated.

We have found with some problems when mistakes were made the Federal operations on bases were involved and it was difficult to get any action.

There was no planning that we could see, but it was difficult to get compliance with our State laws and local laws.

I am asking here—and I support the idea of looking to the future and trying to avoid the pitfalls—why is not the Federal Government requiring itself to avoid the pitfalls in this area?

Senator HASKELL. Mr. Secretary, is it not true that Senate bill 424, before this committee, would require you to plan for the public lands?

Secretary MORTON. What is the title?

Senator HASKELL. National Resource Lands Management Act.

Secretary MORTON. Yes; this is true.

In Interior we are seeking the authority from the Congress to do precisely what you are talking about on the lands under our jurisdiction, primarily the public lands or BLM lands.

As we go downstream, we would like to develop the same kind of master plan technology on Indian lands that we have now on national

parklands. These plans should be integrated carefully into the State plans.

It is the zone around the parks that is a sensitive zone in terms of environment. Those are the things we seek. The Organic Act would really give us the opportunity to manage the public lands and develop management plans for them and this is a bill that we hope to get through the Congress this year. We failed last year.

Senator BARTLETT. Am I correct or incorrect when I see the hoped for objectives to be achieved by the States and the requirements to achieve those are different from that of the Federal Government in this bill?

Secretary MORTON. The objective for a land use plan for a given State, of course, is also the objective of the Federal Government in achieving through the development of State plans a national land use policy and, I think, we all seek the objective together.

I am not quite sure I understand you.

Senator BARTLETT. Does this Organic Act match the same requirement laid down in S. 268?

Secretary MORTON. Yes, it gives us an opportunity to move forward with a much more sophisticated development of the multiple-use sustained yield philosophy of the public lands and to give us the opportunity to move parallel as far as public land planning is concerned, as to what will be carried out in this bill in the States.

Senator BARTLETT. Mr. Secretary, I am going to try to make this a short question.

Under terms there are Federal lands, non-Federal lands and then areas of critical environment concern. I assume that all of the lands of the States would come under the two definitions, Federal land or non-Federal land, and then under the areas of critical environmental concern, are such areas as the areas of unstable soils and undeveloped agricultural grazing land, forest land, and then the whole list of specific lands.

Could you tell what is not included under the area of critical environmental concern? Or to put the question another way, we have non-Federal land, which would be the private land or the area of critical environmental concern, what is the difference?

Secretary MORTON. You have named the kind of lands that are of critical environmental concerns, one where development should be limited because of nature. Wetlands, for example.

Senator BARTLETT. Could you list the lands that are not?

Secretary MORTON. Most farmlands would——

Senator BARTLETT. Farmland comes under this?

Secretary MORTON. No. This should include all lands.

Senator BARTLETT. It says undeveloped agricultural, grazing lands. If that is the case, why is that in there and why would unstable soils be listed under this area?

Senator HASKELL. The hour of 1 o'clock having arrived, Senator, we can ask these gentlemen to come back so you can submit more questions.

Senator BARTLETT. Yes.

Senator HANSEN. Would the Secretary respond to the question in writing? I would like to know what he is including.

Secretary MORTON. Yes, I will.

(The information requested follows:)

ANSWERS BY THE DEPARTMENT TO QUESTIONS BY SENATOR HANSEN

According to Sec. 401(e) of the Administration's proposal, "areas of critical environmental concern" are to be designated by the State on the basis of the following criteria:

(1) Areas which are non-Federal lands;

(2) Areas where uncontrolled development could: (a) result in irreversible damage to important historic, cultural, aesthetic values or natural systems or processes; or could (b) unreasonably endanger life and property as a result of natural hazards.

(3) Areas which are of more than local significance; and

(4) Shall include the following categories:

(a) coastal wetlands, marshes, other lands inundated by tides;

(b) beaches, dunes;

(c) significant estuaries, shorelands and floodplains;

(d) areas of unstable soils and with high seismicity;

(e) rare or valuable ecosystems;

(f) significant agricultural, grazing and watershed land;

(g) forests and related land which require long stability for continuing renewal;

(h) scenic or historic areas; and

(i) addititonal areas as the State determines.

In addition, Sec. 202(c) of the Administration's bill specifies that the Secretary shall determine that in designating areas of critical environmental concern, the State has not excluded any areas of critical environmental concern as defined above, to the Nation.

Based on the above provisions, it can be concluded that the following areas would not be included within the meaning of "areas of critical environmental concern" as defined by the Administration's bill:

(1) Federal lands as defined by the Act;

(2) areas of purely local significance;

(3) areas where uncontrolled development could not result in irreversible damage to important historic, cultural, aesthetic values or natural systems of processes of more than local significance; and

(4) areas where uncontrolled development could not unreasonably endanger life and property as a result of natural hazards of more than local significance.

(Whereupon, at 1 p.m., the committee was recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

We resume our sitting this afternoon to continue the testimony in connection with the Land Use Policy and Planning Assistance Act of 1973.

We are very pleased to have as our opening witness this afternoon, two most distinguished Governors; Gov. Robert B. Docking of Kansas; and Gov. Wendell Ford of Kentucky.

And, before we proceed, I thought that we would adopt a procedure where we would hear first from Governor Docking, then from Governor Ford and then ask questions of the two of you.

Also, before we proceed, I would like to express my appreciation that Senator Dee Huddelston, the new Senator from Kentucky, is here; and he is going to join with us in our discussion this afternoon.

STATEMENT OF HON. WALTER DEE HUDDLESTON, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator HUDDLESTON. Thank you, very much, Mr. Chairman.

I want to take great pride in presenting to you and the committee the Governor of Kentucky, Wendell Ford, who in just over a year, in his tenure as Governor of the Commonwealth, has established an outstanding record in the area of environmental control and in the area of endorsing environmental legislation for the benefit of all of the citizens of our State.

I am certain his comments on this subject will be of great value to the committee, and the committee will want to give them proper consideration in its deliberations.

The CHAIRMAN. Governor Ford, I want to say you have done a great job, and I want you to know that Senator Huddleston is off to a good start up here, and I am delighted he is going to be a member of the permanent Subcommittee on Investigation which I will be chairing during this session of Congress.

I think you are in a unique position to open the afternoon session speaking as you do from long experience in connection with what I think is one of the great problems facing the Nation. How best to plan for the future?

We fair-minded and equal-minded people have an opportunity to address ourselves to the problem. So, you may proceed in your own way.

STATEMENT OF HON. ROBERT B. DOCKING, GOVERNOR OF THE STATE OF KANSAS

Governor DOCKING. Thank you, Mr. Chairman.

Mr. Chairman, thank you for this opportunity to present my views on S. 268, the proposed Land Use Policy and Planning Assistance Act of 1973.

Mr. Chairman, this proposed bill will make possible a new era in controlled land uses in the United States. Most importantly, it will encourage States and local governments to accept responsibility for planning land uses and enforcing local policies. As Governor, I have resisted Federal encroachment of State responsibilities. I firmly believe Kansans know best for Kansas. It is the thrust of this bill to place renewed faith in the States and local governments to plan adequately and to implement land use policies which will preserve the environment and promote a quality of life in each State. It is for this expression of faith in the States that I congratulate Senator Jackson and the cosponsors of this bill.

How we use the land often determines whether an area can provide adequate shelter, employment, quality schools, health facilities, police and fire protection, mass transportation and other public services. The pioneer ethic in America of freedom to own land and use it as wished has been revised by the demands of a growing population. Our early methods of settling property and property-use differences by common law or in the courts has been replaced with regulations developed and enforced by governments.

Consequently, proliferating city and State-adopted zoning ordinances, building codes, subdivision laws and other regulations has led to delay, litigation and cancellation of significant development—wasting human and economic resources. Inconsistencies in policies regulating land use often has resulted in needless, costly and undesirable conflict among Federal, State and local governments. The proposals in S. 268 could provide the basis for a concerted effort to coordinate existing and future Federal policies and public and private decision-making in accordance with a national land use policy. It could provide freedom of opportunity consistent with planning and management for the future.

The problem of land management and proper use on a national level cannot be underestimated. According to Federal estimates, between now and the year 2000, the Nation will build again all that it has built before—as many homes, schools and hospitals in the next three decades as have been built in the past three centuries. Urban sprawl is expected to consume an additional 18 million acres. Although the problem is more acute in urban centers—and a great many of the urban problems have not yet reached our State—Kansans are concerned about preventing and controlling the difficulties that have developed with urbanization.

I am here today to relate to you the concerns of Kansans for sound planning and management of land use while maintaining freedom of opportunity and local policy control and enforcement.

Land use control in the past has meant zoning. As a former mayor of my home city, Arkansas City, Kans., I know the problems associated with urban zoning—particularly the anguish which results from enforcement and the eyesores and social problems resulting from non-enforcement.

Land use control must be more than zoning to prevent degradation or damage; it must accentuate the positive aspects of a planned sequence of events. I am pleased to see planning stressed in S. 268, but are we presently wise enough or experienced enough to say that what we plan is any significant degree better than the present situation? When speaking of land use planning in Kansas, many persons bristle at the thought that someone is going to tell them what to do with their property—a sacred item and to many persons, their last bastion of independence. Can we assure these people that by accepting control their lives will be enhanced? In all honesty we probably could not do so today; however, this must be our goal. Land use policy must contain within it incentive for an educational program. An awareness of the need to control certain aspects of our daily lives to insure an environment and quality of life suitable for our children must be awakened. We find many persons think our Nation's environmental problems as the Government's responsibility, not theirs.

Land use policy should not be a mold into which people are forced. It should not be circumscribed with deadlines or threats of penalties if deadlines are not met precisely. Undoubtedly, some areas of the country can accept the new concepts of land use control more rapidly than others. In Kansas, I anticipate delay and prolonged debate about agency organization and authorizing legislation to meet the criteria in 302(14)b of S. 268. These debates and attending public discussion are

valuable forms of information and are in themselves an educational experience. I suggest that more than 3 years be considered for the preliminary phase of the State's eligibility for financial assistance. I am suggesting that a period of 7 years be considered for a more practical time goal for accomplishing the ends suggested in the bill.

There is a need for trained personnel. There is really little experience in the broad field of land use planning. Land use will be controlled only so long as the planners have the wisdom to sense what people are willing to accept. Planners must be far more than landscape architects—they also must be combinations of sociologists, political strategists, economists, demographers, teachers, engineers, architects, astute diplomats, and have good commonsense.

Efforts to introduce standards of planning into the legislation at this time would be premature. There simply is not enough experience to determine what these standards should be.

I suggest that land use planning research be sponsored somewhat in the manner that water resources research is now sponsored. Experimentation and research should be fostered and encouraged.

The Secretary of Interior will have a National Advisory Board on Land Use Policy. This Board appears to be composed of Federal personnel only, with State and local interests advisory to the Board. In keeping with the title of National Advisory Board it should be composed of an equal number of Federal and non-Federal people. I believe this would be more valuable to the Secretary and would be more readily acceptable to the States and local areas which have responsibility for carrying out the act.

With regard to the funding, I prefer that there not be two levels of funding. May I suggest that a formula be set for a period of, say, 7 years, then reviewed with the idea that Federal assistance will be continued. Planning will not be finished. It will never be. Many States will terminate the work if the assistance funds are terminated. The level of funding may not be nearly as important as its continuity.

In closing may I say again that land use policy and planning on the scope envisioned in the bill will open a new era. I support the concept but please do not make it so complex that good men get bogged down in administrative procedure and never achieve the desired end—land use enhancement.

I appreciate so much, Senator, your giving me the opportunity to appear before your committee on this very important subject.

The CHAIRMAN. Thank you, Governor Docking, for a very fine statement. And we will defer questioning until we have heard from Governor Ford.

Governor Ford, we are delighted to have you join us in trying to get the best information we can in working out the legislation in this area.

You may proceed now in your own way.

STATEMENT OF HON. WENDELL FORD, GOVERNOR OF THE STATE OF KENTUCKY

Governor FORD. Thank you, Senator Jackson.

Senator Jackson and distinguished members of this committee, I appreciate the opportunity to discuss land use planning with you, a subject of far-reaching and critical implications. Perhaps no other topic affects every citizen more, than the use of our land.

I appear before this hearing as Governor of Kentucky. I believe that many of my fellow Governors share my feelings, and I serve as vice chairman of the natural resources and environmental management committee of the national Governors' conference. However, I do not speak for anyone this afternoon, other than the citizens of Kentucky.

The concept of land-use planning is not new. Historically, individual agencies responsible for specific projects or programs have planned the use of land. Cities have had land-use ordinances, and counties are developing countywide plans for land use. Farm organizations have been involved in this subject since the late 1930's.

In the last session of the Congress, the Senate passed legislation dealing with land-use planning. The President has stated that such legislation should be given high priority in the current Congress. I trust this attitude will prevail through the necessary allocation of funds; otherwise whatever is accomplished becomes a futile exercise in academics.

Land-use planning is an area of governmental intervention which many of us wish was unnecessary. Yet we have come to the conclusion that it is necessary. Pessimists say civilization is doomed already by our greedy consumption of the earth's resources and the resulting impact on the environment. Optimists picture a much better world based on technological development. I prefer to side with the optimists, but if we are to benefit from technological gains, there must be an orderly process in which to apply new ideas, techniques, and knowledge.

Actually, we aren't addressing ourselves to the present. Whatever action is taken must assure that our children and their children enjoy the heritage of open spaces, natural beauty, and a clean environment. We must assure a harmonious development, a balanced economy, even food to eat for those for whom we hold this country in trust.

As a people, we have come to the conclusion that this is the only way we can have a balance between development—yes, progress—and protection of our environment.

We are actually a hybrid society, part free enterprise, part Government controlled. Let us, in this endeavor, permit the full input of all concerned, rather than assigning land use solely to Federal dictation.

I support S. 268 because it recognizes a need, yet gives States the opportunity to move first. In my opinion, this is the proper course, since States are in the best position to reflect the individual citizen's urgency and desires.

States can assure local government and citizen input, and this is deserved as programs are contemplated in a matter as far-reaching as this.

Therefore, I am convinced we all would prefer that States have the opportunity to develop land-use plans before the Federal Government is forced by necessity to assume the entire responsibility.

If States, with congressional encouragement and assistance, can provide and implement their own programs, the question of constitutionality of Federal policing powers will not have to be resolved.

In Kentucky, I classify land-use planning as a "preventive" measure. Fortunately, we are not in the undesirable position of having to act through crisis, where often even greater instability is created.

We still have open spaces we can protect; natural resources we can conserve; natural beauty we can preserve; and a natural heritage we can maintain to pass on to our children. With planning, we can continue economic development which does not conflict with environmental and ecological priorities. With planning, we can guarantee the reservation of agricultural lands to assure adequate production of food and fiber.

With a land-use system in operation, all users of the land can be confident that their needs will be protected, an orderly development in the use of land can proceed, and the disorganized abuse of land can be prohibited.

I support S. 268 because I feel strongly that States should be granted flexibility in developing their own land-use plans. Not only does each State have its individual geophysical makeups, Kentucky, for example, has many varying geophysical regions within its own borders.

Each State may have widely varying existing mechanisms for assimilating the necessary data on which to base a plan. For example, we in Kentucky have 121 water and soil conservancy districts which already have begun gathering the type of data necessary to implement land-use planning. These districts each have their own full-time staff and engineer. Kentucky, as other States, is entering into use of the National Aeronautics and Space Agency's remote sensing abilities to help inventory, then monitor, the State's existing and potential land uses.

I am convinced some method of agreement between States for contiguous areas of like geophysical characteristics is necessary. The provision for compacts would provide this method.

I am opposed to sanctions being imposed on other federally funded programs. However, I believe it will be Congress' responsibility to provide a mechanism to assure that one State's land use plan is not jeopardized by the failure of other States to comply. This mechanism should be provided for use if States do not show acceptable progress in the funding period of S. 268.

Permission to enter into compacts and assurances of a good faith effort by all States are important to States like Kentucky. We share borders, most of them river-basin borders, with more States than any other, with the exception of our neighbor, Tennessee. Yet, I am hopeful that cooperation among States can be accomplished without Federal Government intervention.

Kentucky has been anticipating and preparing for this day. As a candidate for Governor, I recognized that some planning action was necessary. During my first 14 months in office, much has been accomplished to gather geophysical baseline data.

Our 121 conservancy districts are within 2 months of completing an inventory of present land use, land use capabilities, water resources, and mineral resources. We have gathered information on population and growth patterns and transportation systems. Our cost breakout for this basic data gathering is about $750,000 per year.

In addition, our initial efforts to utilize NASA's remote sensing capability will cost some $275,000. I anticipate that the continuing cost of updating information will remain about the same, since it will require continued onsite inspections, and could cost more as more detailed information is necessary.

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We anticipate a greater expenditure in obtaining more qualified personnel to assemble this information; to gather local government and public input, and then to implement the plan. In other words, good land use planning will not come cheaply. States are now faced with ever-increasing demands for services, and limited resources with which to provide them.

I urge adoption of an allocation formula which takes into consideration the varied geophysical makeup of States such as Kentucky. We have some 1,400 miles of navigable waters, plus many hundreds of miles of smaller streams. These waters and their basin areas will be critical in terms of planning priority. I would prefer to see the percentage of Federal participation as originally proposed by Senator Jackson and his colleagues, and I would hope the funding will be increased.

I believe the actual cost of this joint effort will depend upon what the Federal Government is going to require of the States. I hope we don't get into another impoundment mess where requirements are legislated by Congress but the funds to meet the requirements are withheld by the executive.

Clean water legislation is an excellent example. In the amendments of 1972 to the Clean Water Act, the formula for allocation of funds was changed from population and mileage of waterways bases to a "needs" base, penalizing States such as Kentucky because we had been working at meeting our needs. Although dropping, from 1.6 percent of funds appropriated to 0.6 percent, we weren't hurting too badly because Congress had appropriated more funds. What really hurt was the President's impounding of more than half the funds appropriated.

In Kentucky, our Federal participation for construction of sewerage facilities has dropped from $75 million to $33 million over the biennium. At the same time, the Federal Government is telling us that we have less time than before to meet clean water guidelines. Federal legislation tells us we must have all streams clean enough for all uses by 1983. To provide the sewage treatment facilities to make this possible will take about $2.5 billion or $250 million per year. The new Federal participation is supposed to be 75 percent, which would be some $187 million per year. Yet, we have been cut to only $33 million over the current biennium.

I cite this point to emphasize what I fear can happen to good and much-needed legislation such as this you are considering. I hope you will keep this in mind as you finalize the bill.

In closing, I support S. 268 because it recognizes the national concern and the need for land-use planning. Yet, it recognizes that we must achieve a balance between land as a resource and land as a commodity. S. 268 recognizes that we must achieve a balance in which our concerns for the environment—which is essential to life—and our concerns for the social climate—which is essential to stability—do not infringe upon our right to property—which is essential to liberty.

S. 268 recognizes that it is the State, working through local governments, which can best assure this balance. This philosophy must be maintained.

Thank you.

The CHAIRMAN. Thank you, Governor, and we want to thank both of you gentlemen for very fine statements.

I just wanted to say at the outset that in introducing this legislation, my main effort has been to try to help the States, in effect, exercise more fully the rights of the States or States rights.

Under the Constitution, only the States have the right, the police power to deal with the problem of land use planning and I recognize that. I recognize the problem that the Governors face and that is a real one that we face in all States politically when you have some governmental entities within a State having overlapping jursidictions in zoning.

Would you agree on that?

Governor FORD. Yes, sir.

Governor DOCKING. Yes.

The CHAIRMAN. In my State of Washington, we have approximately 2,000 governmental entities which can intervene in a zoning issue or land use planning area.

In the United States there are 80,000 such governmental entities. What I have found in talking to Governors is that they will make a recommendation to the legislature, but the legislature runs into problems trying to reconcile the conflicting political forces on the subject of land use planning.

The various governmental entities do not want to give up something they already have. What is your comment on that?

Governor FORD. Senator, in Kentucky we are beginning to reorganize our State government and to eliminate many of the overlapping services and overlapping responsibilities that we have been faced with. We have just reorganized a new department of national resources and environmental protection and we are bringing all of this area under one heading.

We are going to the metro system where by a vote of the people we are bringing the county and city together in one local government.

The citizens are beginning to be aware of the problem we face. You might call it the wart on the elephant, so far as the governmental size in this particular area.

Progress is being made by the Governors in this area of reorganization. The most emotional thing we get into is all of us understand the problems of ordinances and planning and zoning. It becomes an emotional thing, and this is where the man's home is his castle, and when you begin to plan for the future, you run into this emotional problem.

The CHAIRMAN. You run into that today at various levels of government, whenever you try to restrict the use of a man's property for a given purpose because of an overriding interest or State interest or whatever it may be.

That is basically it, isn't it?

Governor FORD. The problem you run into locally with the planning and zoning group or permit processes, they process permits rather than plan on how their community is going to grow. We are going to have to turn that around.

Governor DOCKING. In Kansas, one thing I think has made a considerable difference is your metropolitan areas. We have given them the right to annex 3 miles around, which I think is pretty standard

and I think it is going to lead to more orderly development of some of these areas.

But as you mentioned, it was not without a good deal of controversy.

I might call your attention to the fact that the national Governors' conference has policy positions on land-use management.

The CHAIRMAN. We will be delighted to receive that Governor Docking.

By the way, while we are talking about the Governors' conference, I think I might raise the question to both of you gentlemen now, you are aware that there is a difference of opinion between my approach on the funding for grants-in-aid to the States than that presented by the Administration.

The Administration's approach has been for a funding at, I believe, $20 million per year over a period of 5 years. And our approach in S. 632 of last year was to provide funding at a level of $100 million per year for 8 years. Unfortunately, a successful amendment on the floor reduced that $800 million grant program to $170 million.

There is a point of view, as expressed this morning, that no one really knows what the funding requirements will be. Therefore, the Administration takes the position they are going to start out with a rather small grant-in-aid effort.

I wonder if you gentlemen would be good enough to take this matter up with the Governors' conference and submit a statement of the cost of developing State land-use programs?

We need to know a lot more about this and I think it will be very helpful to the committee because we, frankly, do not have the best figures, we do not claim to have, but I noticed, I believe, in your testimony, Governor Ford, you were up closer to $1 million now in some of your land-use planning, some $700 odd thousand.

Governor FORD. This is just one phase of it.

The CHAIRMAN. We are talking now about dealing with all of the significant land-use problems within a given State in terms of a long-range plan and design.

So, I think it would be extremely helpful to us if you would be good enough to obtain a statement on funding needs from the Governors' conference. Their staff, I am sure, could contact the various Governors' offices to obtain that information.

Governor DOCKING. We will be glad to.

Governor FORD. Senator, this happens to be the committee of which I am vice chairman, and I will see that is on the agenda in our meeting here in Washington, on the 28th of February and the 1st of March.

The CHAIRMAN. If we can get something before that, Governor, it would be helpful. I hope to get a bill out of this committee this month, with the help of my colleagues.

(The material requested was not received in time for inclusion in the record.)

Governor FORD. Senator, if you need that information, you will have it before you get your bill out.

The CHAIRMAN. On page 3 of your testimony, Governor Docking, you mention the need for an incentive for educational programs. I am wondering whether we should provide for educational extension work or something of that kind?

Governor DOCKING. I think it would be very helpful. I can see a great many problems in public acceptance and public desirability when you get to legislating on a person's right to his property.

I think an educational purpose, where it is desirable, will make it much more desirable.

The CHAIRMAN. One of you made reference to the National Advisory Board. I think you did, Governor Docking. You mentioned that that Board should have equal representation from the Federal side and from the State or local side. Is that what you have in mind?

Governor DOCKING. Yes.

The CHAIRMAN. Would your idea be to have territorial representation, or what would be your suggestion on it?

Governor DOCKING. I think probably it should be segments of gubernatorial representation and local representation, as well as Federal.

The CHAIRMAN. We have the Governors' Conference, we have the various conferences of mayors, and then you have your county officials too.

There are three levels of government really primarily involved in land use planning and control.

Governor DOCKING. This is what I had in mind.

The CHAIRMAN. Thank you very much.

Senator McClure.

Senator MCCLURE. Thank you, Mr. Chairman.

I thank you Governors for your statements here, not only your statements but the concern you have exhibited by the fact you came here.

I think that speaks loudly, sometimes more loudly than press releases issued from your respective capitols.

Governor DOCKING, you suggest it would be perhaps practically impossible to implement the requirements of this legislation in less than 7 years; is that correct?

Governor DOCKING. That, of course, is just a ball park figure. I was thinking, to move along, it is going to take a great deal of public acceptance. I think there will be a lot of delays in the legislature. Certainly from my experience as mayor of a town, when you change your zoning legislation it is rather a dramatic experience for some people.

Senator MCCLURE. A short period of 5 years has been suggested, in some legislation, 3 years in other proposals.

Do you think either of these would perhaps be restrictive enough where it would be difficult for you to implement this in your State?

Governor DOCKING. Well, I think it would be much easier in Kansas, because I know we don't have some of the real problems some of the other States will have with it. I think rather than just a banging out of the program, there will be a great deal of willful resistance. It will take time.

Senator MCCLURE. Governor Ford, I notice in your statement you make rather strong opposition to the imposition of sanctions, but you suggest we must find some mechanism. What do you suggest if we do not have sanctions?

Governor FORD. If you funded this program adequately, and I think we have in Kentucky, the legislative authority to move forward with this program, that legislative-wise the Governor always

tries to get through the legislation, the hard legislation, the first session, and in the second one try to glide it through.

The point I want to make, Senator, as far as sanctions in other areas, that you start impounding highway funds, you impound these funds or sanctions in these other areas.

I think if you were going to get into this ball park, there has to be a mechanism where grown men can figure out a way to get it done. I am high on compacts. I think we have to have it in our State. I have the unfortunate position of more States bordering Kentucky than any other State, other than Tennessee, and most of our problems will be in water basins.

We go back to our air problem. We have the ability of having regional commitments that have the authority to have more stringent regulations than the State would apply. This would be crossing borders of a State.

This mechanism, some way to put us together, if it has to be sanctions, it has to go down to that, after your 5 years, then you have to make that judgment at that time. But I would prefer to find some other mechanism and work toward that, at the end of this 5 years, if it is not working or some States are jeopardizing others, then you will have to take a cold hard look at that time.

Senator McClure. I will point out, this committee, last year reported out a bill that had sanctions in it, and called for withholding highway funds, airport and airway funds, and water conservation funds. The committee in the House did likewise after prolonged and lengthy debate. Apparently, neither committee of the Congress has been able to find other means, and I was wondering if you had an answer?

Governor Ford. If I had an answer, I probably wouldn't be here, Senator.

When will these sanctions be applied, at the end of the 5-year term?

Senator McClure. That is the general consensus.

Governor Ford. Then we have an opportunity to comply, educate, to work in this area, to develop compacts and to do all of this, and hold out the possibility then that sanctions will not be necessary. Usually sanctions are applied where it hurts the most and where it would deprive the State government being able to drive on with programs and projects. You talk about programs, and highways, you talk about these things that the States all need and you hit the vital organ so to speak, so if there is some way you can keep from delving into every part that the State needs, and keep it to one thing.

Senator McClure. I understand your point, and certainly I think each of us would prefer that the Federal Government did not even have to entertain the thought of having to enforce against the States a congressional mandate.

I think unless somebody comes up with a better idea this legislation is apt to contain it. It has been suggested that the proposal of the Administration is perhaps not adequate. The Senate measure on the floor of the Senate last year, contained an appropriation authorization of $40 million for each of the first 2 fiscal years and $30 million a year for the 3 years after that.

Would this amount seem to be adequate and, if not, would you have an amount which might be more adequate?

Governor DOCKING. Senator, I think Governor Ford and I will poll the various Governors. I don't know what would be an adequate amount.

Governor FORD. We are talking about in my statement there of $1 million a year for Kentucky for a fact-finding gathering technique and the expertise and qualified people to put this data together, and the continuing cooperation that is needed in this area. Senator, I would not dare venture a ball park figure just for my State. After some days of giving it thought and seeing how far we want to go with NASA and other things, and this whole area, you have to take each State and look at its geography and that sort of thing.

We are in a preventive stage, where some of the other States will be in the area of trying to cure what they have. We are trying to prevent arriving at the position some other States have already arrived at.

Senator MCCLURE. You feel that the grant level from the Federal Government should be adequate to cover all of costs or should it be a sharing grant?

Governor DOCKING. I think a sharing grant.

Senator MCCLURE. What level do you think?

Governor DOCKING. I think the State should have some chips in the game.

Governor FORD. I am one of the fortunate Governors in the United States who does not have a legislature in session, so I am not wrestling with a budget.

We are in this position with the impoundment of funds. We should have looked a gift horse in the mouth, maybe, revenue sharing.

Now that revenue sharing is coming, we should have taken those funds to fill the gaps of impounded funds. So, we are not in a position to tell you now what the States are going to be able to do, because we don't know about the impoundment of funds or what the next budget is going to be and say to you how far we can go.

Senator MCCLURE. I recognize that difficulty and I share your concern about the burden imposed upon the States. It is my own feeling that if the Federal Government is going to require the States to do certain things, then the Federal Government has a requirement in seeing that the States can do it.

Governor FORD. In our sewage treatment requirements to clean up our streams in Kentucky by 1983, it would cost $2.5 billion of which the Federal Government would pay 75 percent, which would be $187 million and equally between now and 1983.

They have just reduced our funds from $75 million in the last biennium to $33 million in the coming biennium, and I need $134 million to do what the Federal Government is requiring us to do by 1983.

If they make these requirements they ought to pay it, and 75 percent, you ought to keep your word somewhere along the way.

If we are going to put chips in and budget for it and proceed, then we ought to be assured that the other part is coming so we can continue with our work at home.

Senator MCCLURE. You don't expect the State would have the entire discretion for the implementation of these plans without having paid a part of the bill?

The Administration has made quite a point over the last 18 months, in the land use proposal, that the Federal Government should act as a catalyst to assist the States and provide some incentive for the States to act in this field, but has been quite insistent upon the point that the Federal Government should not make the ultimate decision, but should leave it to the States to make the final decisions of the land use plans. The Administration has drawn the line that it would require the States to employ the methodology to go through the process, consider certain factors, but the Federal Government would not dictate the end result of that planning process.

And I will assume that you agree with that approach?

Governor DOCKING. Yes.

Governor FORD. Down home at Yellow Creek they say you point with pride and view with alarm. If you are going to act as a catalyst and you want States to do all of these things, then the Administration is going to have to afford the States what they were led to believe or expect. You cannot tell us something in October and then in February turn around 180 degrees. We cannot prepare our budgets and do these things. If you are going to act as a catalyst and provide certain material things for us on a local or State basis, then you will have to consult, because we cannot put our wheels into motion unless the other end keeps its word, too.

Senator MCCLURE. My point was whether the ultimate decision should rest in the States rather than the Federal Government. My question is whether you agree with that or whether you think the Federal Government should have the final say?

Governor FORD. I think the State should have the final say, but I go back to the point where you will not let one State jeopardize another State's position. There is——

Senator MCCLURE. There are some overriding national concerns.

Governor FORD. This is an overriding national concern which you want to give the States an opportunity to work out for themselves. If you don't work it out in 5 years, then you should take a look at it and see what you want done in the national interest.

Senator MCCLURE. Again, the distinction I am making is rather a critical decision as far as I am concerned. The legislation which has been submitted by the administration in the past Congress, which they say will be sent down this time, requires that the States go through a planning process, but it says except in instances of overriding national concern, the ultimate discretion shall be with the States rather than the National Government.

Land use plans should be reviewed by the Federal Government for their adequacy. The Federal Government will have the say as to what——

Governor FORD. On page 8 of my statement, I said we are actually a hybrid society, partly free enterprise and partly government control.

Senator MCCLURE. My question is which part of the government controls, State or Federal?

Governor DOCKING. Senator, I agree with your first statement. I believe the Federal Government should review and approve the procedure, but the ultimate decision should lie with the States.

The CHAIRMAN. Senator Haskell.

Senator HASKELL. Thank you, Mr. Chairman.

Gentlemen, I would be most interested in knowing what you believe is the feeling in your State towards the adoption of an overall land use plan. Just about 3 or 4 years ago in Colorado people felt it was highly desirable. I learned today that Oregon is much ahead of us, and I am interested whether or not you have public acceptance for this concept in your respective States.

Governor DOCKING. I think there will be problems in getting large public acceptance. I think everybody is in agreement that land use planning is desirable, but the problem, I think, is in the details.

Governor FORD. I would say we are moving in the direction of general public acceptance, because of the 121 conservation districts that are working in Kentucky. The impact of the State department of commerce and their assistance in local development, local planning, and zoning and the effort of the State to help control this through a master plan approval in various areas.

I think it is something that has been accepted and is on its way of having, I think, total acceptance.

There will be those who oppose it on a constitutional basis and that sort of thing, but I think the general acceptance is well on its way.

Senator HASKELL. Thank you.

Just one more question.

Would you feel that it would be helpful or would you feel that it would be unhelpful if there were some very broad general guidelines or suggested broad standards to guide States in their plans? Or would you prefer to have it where each individual State individualistically has the last word as to what type of plan was adopted? I am not talking about anything specific, getting down into specific details, any more than where you fellows want to get into where the filling station goes in each locality. But I mean general guidelines which give you broad direction.

Governor DOCKING. Federal guidelines, Federal procedure, and Federal methodology, but with the decision, the ultimate decision resting with the State.

Governor FORD. I would agree. I think we should have broad guidelines, but each State having flexibility to move in a general area to reach the ultimate goal.

Senator HASKELL. You would, for example, favor the broad guidelines. There are some people who say there shouldn't be any guidelines at all. I am addressing my question; should there be absolutely no guidelines or should there be some broad, general guidelines for a State?

Governor FORD. I would say it almost will be necessary to have broad general guidelines so that we would all be, the 50 States would be going in the same direction, just like setting up a corridor for a highway, Senator. A highway has to be somewhere within this corridor and we should be somewhere within this corridor within our approach to solving this question.

The CHAIRMAN. Then there is another area.

You and I, Governor Ford, might not have the problem, but Governor Docking and I being neighbors might have the problem.

My State of Colorado might suddenly decide to do something that impinged on Kansas and had, in effect, located big industrial development on your border and overloaded your school systems and that kind of thing.

The question comes in these interstate areas. The bill says everyone will cooperate, but should there be some kind of Federal mechanism so that if my State, for example, didn't cooperate, the conflict could be worked out. What do you feel, Governor?

Governor DOCKING. As a practical matter, Senator, there is quite a camaraderie among the Governors, and there has been since my privilege as serving as Governor. For instance, in the Ozark Regional Commission, among the Governors there have been quite a few changes. I think they worked out these point problems that have arisen. I don't see that any Governors have ironclad impasses.

Senator HASKELL. You feel the States could work out the problem of neighborliness themselves?

Governor DOCKING. I feel they could and it has been my observation that has been in the past.

Governor FORD. Senator, I might bring this point up. I think the compacts are important, if we—we have Ohio, West Virginia, and Kentucky in a compact. I think we can work these things out and the compact is an important area for us to work, particularly as I say, in Kentucky, where we border more States than any other State than Tennessee. We have seven States and Tennessee borders eight.

Senator HASKELL. Thank you, sir.

Thank you, Mr. Chairman.

The CHAIRMAN. I think Senator Huddleston has a comment he would like to make.

Senator HUDDLESTON. Just this, Mr. Chairman. Some reference has been made, and very properly so, I believe, of the acceptance of the public, or the acceptance of the property owners to this concept of land use and land control.

We have had some examples in Kentucky that might be pertinent to this question, in that several years ago in the general assembly we provided for countywide planning and zoning. This was an extension beyond what formerly had been the idea of having planning and zoning in the urban areas and municipality areas.

At first it was not very well received. In the rural areas in particular there was horror at the idea somebody might tell a farmer where he could build his barn.

However, in recent years, some of these same counties that were so concerned at that time have moved in this direction, as more and more development occurred, more factories built, more subdivisions and shopping centers. So I think there is a movement of the general attitudes toward this concept and perhaps it is an idea whose time has come.

The CHAIRMAN. I think Senator Huddleston made a very good point. In other words, there has been an admission at the State legislative level that you have to expand the base of zoning in many instances beyond the city to the county, to a larger land area.

I would say, gentlemen, that it is obvious to me that we must tackle interstate problems. It is a tough political problem and probably an educational problem. There are areas of commonality that affect all States, and which, whether we like it or not, has to be subject to long-range planning that cuts across local, political boundaries. This is where all of the trouble comes.

I am referring, of course, to the energy problem. I refer to the need to identify the transmission corridors, siting and location of power units whether they are thermal or hydro or whatever. The same applies to highways, airports, and so on. There must be some coordinated effort that involves a panoramic view of the whole country put together by the States on a cooperative basis. Without this effort we are going to be in a mess to put it mildly. We are already arriving there now in the energy area. I certainly appreciate the problems which you face and very deeply appreciate the headaches involved. It is so hard to explain to the inhabitants of the small town, for example, that what they do there can affect the larger interests, county, or the State. An improper location of a given economic facility could adversely affect people in another county and so on.

It is matters that impact beyond the immediate local situation which we have to concern ourselves with here. If zoning were confined to decisions at the local level and those decisions only affected the immediate environment of the particular local constituency, we would not have any problem at all. But, with the rapidity of growth—the need to rebuild again America in the next three decades everything we took three centuries to construct—points to the need for better and wider land use decisionmaking.

I think you have made an excellent contribution to the dialog, and I want to compliment both of you gentlemen for your statements.

Senator Fannin and Senator Hansen have come in since your testimony.

Do you have any comments?

Senator FANNIN. I must apologize for not being here. I did not hear the testimony, so would not have any questions.

The CHAIRMAN. Senator Hansen.

Senator HANSEN. Thank you very much, Mr. Chairman.

Governors, we are very pleased indeed to have you here.

Senator Fannin and I, as you may possibly know, have borne some of the responsibilities that are yours. I would like to ask you, do you regard some of the "stick" provisions in last year's bill appropriate? They aren't in the bill right now. I speak of the powers the Secretary would have been given under S. 632 last year to withhold from you up to 21 percent of highway funds, airport improvement funds, and land and water conservation funds if the programs which the States were to evolve did not meet the criteria that are provided for in the bill as judged by the Secretary of the Interior. Would you like to see that sort of language put into this present bill?

Governor DOCKING. I would not like to see it.

Governor FORD. Capital N–O.

Senator HANSEN. Let me ask you, What about the review mechanism in case a State should wish to appeal a decision arrived at under this legislation?

I think the present provision in S. 268 is that if a State should not come up with a satisfactory plan, insofar as that determination may be made by the Secretary, you could go through an appeals process. Your appeal would be heard by a hearing board composed of the following: A Governor of a State which is not the State for which grant eligibility is in question and who does not have a particular interest in whether grant eligibility is determined, that person would be

selected by the President; one knowledgeable, impartial, Federal official, who is not an official of the involved agency; also, one knowledgeable private citizen to be chosen by the other two members, provided, that if the other two members cannot agree upon a third member, then the President would select such a third person.

What would be your attitude to such an appeals board?

Governor DOCKING. I don't know. It seems rather complicated to me, Senator. I would like to see the Federal Government give guidelines as to the procedure and methodology of setting up the plans but leave it to the judgment of the States themselves as to the final decision, which I think would mean this board would not be necessary.

Governor FORD. I agree. I would hate to see the States be required to go before a select committee named by the President of the United States.

Actually when you get down to it, he would select one and if they couldn't agree, you would appoint the other, and then say to the States, you have to come before this tribunal and be adjudged.

I would hope a mechanism could be worked out where the States could do their thing, so to speak, be able to have the citizen input and arrive 5 years from now at a program that would be appropriate for all.

Senator HANSEN. This morning when I was questioning one of the administration's witnesses, Mr. Quarles, he made the point, and I will have to try to relate to you what I interpreted his statement to mean, that those guidelines, and the objectives that the Administration feels are necessary in order to assure the kind of environment that we would like to have in the future, can be developed only by the Congress through national legislation. He left the impression, at least with me, that Governors and State legislators would be more easily persuaded by the business interests within a State. He implied that State governments, because of their close proximity to many business interests, not maintain the type of objectivity that he seemed to feel was necessary in drafting the kind of legislation we need.

I would like to ask Governor Ford to comment on that observation. I am sure I have not quoted Mr. Quarles accurately. I have done the best I can.

Governor FORD. Let me see if I understand. The inference was made that the Federal Government should set down the guidelines that the States should adhere to.

Senator HANSEN. I call attention to the President's message on the state of the Union, given on February 2. I think if you had an opportunity to read it, you would agree that he stressed the desire to decentralize government that is to put the decisionmaking responsibilities back at the State and local level. He feels that these people are more precisely familiar with State and local problems, and can do a better job in solving them than can National Government. Through national legislation and grant-in-aid programs and all that bit that we have known in the past. I mentioned this and said it seemed to me that the position taken by the Administration's witnesses this morning was not consistent with the President's message.

I don't see how you can reconcile the position the administration's witnesses were taking in saying that you people and the State legis-

lators don't have the capacity or freedom of action to come up with the kind of program that will assure the best public interest.

Governor FORD. There will be a constitutional question here, I suspect, in the long run, if the States are not given the responsibility to develop this plan over a 5-year period, and have citizen input and legislative direction.

I think this is the proper approach.

Are you saying to me now in the testimony you received this morning what we find so much as the President saying one thing in his direction and the department heads come in saying another? I am in that problem right now when I am helping a Federal agency in helping the policeman at a local level, and another agency comes in saying I cannot give them a raise in salary. You are explaining here what has been going on at the State level for a long time.

I do hope the bill will have broad guidelines so one State does not jeopardize the position of another.

Senator HANSEN. If I can be a little more precise on this. Precisely: I gained the impression from Mr. Quarles this morning that he maintained that Governors and members of State legislatures would not be willing or would like the ability to come to grips with these problems dealing with land use management problems. I can't think it would be fair to say that State and local governments would be swayed by business interests in the States, and that Congress knows best, and is above this local or State concern that might envelop State governments and prevent you from doing what you think is best.

Governor FORD. I want to refute what the gentleman said this morning as far as Kentucky is concerned.

In the last session of the legislature we passed probably one of the best pieces of environmental protection legislation ever formulated by a State legislature.

We have not only the ability to plan within a community, we have planning and zoning on a countywide basis that has been passed by our State legislature.

We are not afraid to come to grips with the problem. There is no big brother coming and looking over our shoulder. We have 138 men and women in our legislature trying to face up to the future. We have that kind of an approach in Kentucky, and I don't think we are going to let industrialists and those sort of people sway our legislature.

Sure we have a fight, and that is what makes our game so interesting, and if you didn't have a fight it would be so easy. I think we are operating in the right direction.

If they are fearful, I would suggest to Mr. Quarles he visit the State and find out what the legislature and Governors are doing.

Senator HANSEN. Thank you very much, Governor.

I would like to invite Governor Docking to comment on that.

Governor DOCKING. I disagree strongly with Mr. Quarles. In every State with which I am acquainted the Governor and the legislature would have the public interest at heart. I think he does a disservice to State government by inferring that we do not place the public interest first.

Senator HANSEN. Thank you very much.

The CHAIRMAN. Thank you, gentlemen.

We want to compliment you for your helpful counsel and testimony here this morning.

I hope we can further improve upon the bill as a result of your testimony.

Thank you.

Governor FORD. Thank you.

Governor DOCKING. Thank you.

(Subsequent to the hearing, the committee received a statement from Governor Sargent of Massachusetts, which follows:)

Statement of Governor Francis W. Sargent (Massachusetts)
Senate Committee on Interior and Insular Affairs
on the proposed Land Use Policy and Planning Assistance Act
of 1973

I welcome this opportunity to participate in your hearings on the proposed Land Use Policy and Planning Assistance Act of 1973.

As you have pointed out many times, most of the nation's domestic problems can be traced to decisions as to how our land is used. Too often, these decisions have been based on expediency, tradition, short term economic considerations and factors often unrelated or contradictory to the real concerns of a sound land use policy.

Over the next thirty years, national urban growth will consume the equivalent of the areas of New Hampshire, Vermont, Massachusetts and Rhode Island combined. By 1980, such growth will absorb land and water areas greater than the entire state of Massachusetts. The gravity of the problem is compounded by our determination to continue to construct hospitals, office buildings, homes, schools and industrial parks as a process of expedient choice, not well-conceived planning.

In Massachusetts, we mirror the results of unplanned and undirected growth and development. Many of our most scenic areas have been blighted by undisciplined growth. We have allowed our urban areas to expand with little thought for the quality of life of those that live in the city. Our problems become more serious year by year as our available open space decreases. I am of the firm belief that there is not an acre of land in this state that is not now being eyed for one type of development or another.

In the interest of constructive and supportive criticism, I would like to comment on several features of this bill which are of concern to our state.

1. It is essential that this legislation does not become simply another categorical grant program, but a mechanism through which all authorized resource planning programs can be coordinated, including the water quality, coastal zone, outdoor recreation and rural development measures recently enacted by Congress. In the meantime, it is essential that these planning programs should be initiated and funded immediately, and they should be allowed to proceed individually. We cannot afford

additional delays.

2. We believe that an approach to land use planning should actively encourage improved coordination within and between federal, state, regional and local agencies. In essence, the planning process is as important as the planning product. However, the major responsibility for the planning itself must lie within the states and their regional agencies, not with a federal agency in Washington. Only if a state defaults in fulfilling this responsibility should the federal government directly intervene.

3. Massachusetts is particularly appreciative of the provisions encouraging interstate coordination. We intend to utilize the existing New England River Basins Commission for such purposes, thereby encouraging secure linkages between land and water resource planning within the entire New England region.

4. We are extremely concerned by the limited funding and the reduced cost-sharing features of the present Act. If we are to establish an effective national land use program which will coordinate many of the existing planning programs, we must provide adequate financial

support. I would suggest 100 million dollars per year for five years as a bare minimum. The nation cannot afford halfway measures to insure wholesale and proper land usage. (My figure does not take into consideration the possibility of reimbursement expenses.)

5. Although the National Advisory Board on Land Use Policy is a laudable proposal, states must be given a co-equal role with federal agencies in policy discussions, and not a separate advisory role. Furthermore, state representatives must be selected by the states themselves, not by a federal agency on their behalf. You simply cannot effectively dictate land use policies affecting a broad spectrum of regions and areas from Washington without full state participation.

If your proposed legislation is approved by the Congress, Massachusetts is prepared to participate immediately. Last year, I directed my cabinet agencies to form a state Land Use Policy Council within which all functional planning programs would be carried out. Chaired by my Secretary of Communities and Development, the Council includes the Executive Offices of Administration and Finance, Environmental Affairs, and Transportation and Construction.

Special interagency task forces are even now at work in the fields of land use planning, transportation, water quality, coastal zone management and rural economic development.

Moreover, Massachusetts was the first state in the nation to develop a comprehensive planning program under the amendments to the Federal Water Pollution Control Act. This pioneering program has established a close working relationship between the state's resource agencies and the thirteen regional planning commissions scattered across the state.

Finally, under the proposals for state government reorganization, now pending before the Massachusetts legislature, the Commonwealth's three hundred agencies would be consolidated within ten new cabinet departments, each containing significant capabilities for program and policy planning.

In short, Massachusetts regards the proposed Land Use Policy and Planning Assistance Act as national legislation that is of the highest priority. I am hopeful that your Committee will report the measure early in this session and that the Congress will follow your leadership.

The CHAIRMAN. Our next witness is Dr. Gordon J. MacDonald, director of environmental studies program at Dartmouth College.

I am delighted to welcome the former distinguished member of the Council of Environmental Quality, in fact an original member of the Council established pursuant to the act of January 1, 1970—the National Environmental Policy Act.

Dr. MacDonald has distinguished credentials. I need not go into them now, but he is an outstanding physicist among the many other disciplines in which he works—the list is long.

We want to extend our cordial welcome, Dr. MacDonald.

I will not be able to stay through all of the testimony, and I am asking Senator Haskell to preside in my absence.

STATEMENT OF DR. GORDON J. MacDONALD, DIRECTOR OF ENVIRONMENTAL STUDIES PROGRAM, DARTMOUTH COLLEGE

Dr. MACDONALD. Mr. Chairman, it is indeed a privilege to appear before your committee to discuss what I consider to be a subject critical to maintaining and improving our Nation's environment. I had the pleasure during my membership on the Council on Environmental Quality to work on earlier versions of the proposed legislation. At that time, and during the debate on the bill in the last Congress, I supported its major features with enthusiasm. Today I wish to raise serious misgivings about the approach taken by the proposed legislation and suggest an alternative means which at least should be seriously considered. My change in views has come about as a result of some study of how Vermont Act 250, a most progressive piece of land use legislation, can and will be implemented as well as from an analysis of the experience of other States and localities in implementing land use legislation. I underline implementation. The development of strong land use control law has been shown to be possible. I question whether, in its current form, it can be made to work.

My approach is based on three conjectures with which any reasonable man will agree.

1. We, as a society, have been much better tax collectors than regulators. This is an often quoted observation, but what evidence I have seen, in particular in comparison with other countries, seems to support this thesis.

2. Zoning as a regulatory tool has in general not been effective, variances are the rules rather than the exception. The underlying reasons for these failures include the inability of local units of government to consider larger regional questions, the failure of the citizens affected to become involved in the decisionmaking process often because of a lack of notice and information and on occasion the failure is associated with the venality on the part of responsible officials.

3. Regulatory measures, and in particular zoning, can and do distort unnecessarily the market system. Arbitrary zoning decisions have over the years enhanced or decreased the market value of land in artificial and often capricious ways.

Having asserted these three truths, I must make a small diversion before ploughing into the rich soil of my legislative proposal. I think it is unproductive to look at the problems of land use without a comparable, searching examination of property taxes. At present, property

taxation is the main source of revenue for local governments, providing something like $40 billion this year. There are wide variations in tax rates with tax rates in cities often higher than those in adjoining suburbs where the income per individual can be several times higher. The effects of property taxes on land use are many and varied. For example, under the present taxing system, large areas of vacant, close-in suburban land, as well as central city sites that could be renovated or rebuilt, are withheld from the market in the expectation of large price increases. The land is taxed at low effective rates, in relation to realistic market value, and building improvements are subject to relatively greater tax burdens. Consequently, land prices are high in urbanizing areas and developers "leap frog" out to cheaper land for residential development. As a result, less than optimal size communities are created, the cost of providing basic services, water, sewage, education is increased and the commuter problems are intensified and suburban sprawl exacerbated. This is a single example of the intimate interrelationship between property taxation, zoning and land use. I will return to this later; but rather than leave your curiosity unsatisfied, I believe we must move away from property taxation as the base for local revenue and move more vigorously for revenue sharing, both special and general.

The alternative to classical regulatory zoning involves two concepts: (1) Land classification for priority use and (2) user charges.

By land classification, I mean, in part, a description of the land area in terms of soil and subsoil parameters, its vegetation, its natural animal life, its surface and ground water characteristics, its social and geographical setting—in brief, both the ecological and social character of the land. On the basis of this information, much of it already available through the work of the U.S. Geological Survey, the U.S. Census Bureau, and the Agriculture Department's Soil Conservation Service, as well as the great variety and strengths of the State agencies, at least a preliminary judgment can be made of the carrying capacity of the land. By carrying capacity I mean how land can be used in a way that its basic character can be preserved over the next generations. A marsh, once dredged and filled, will never return to its original and highly biologically productive state. A steep slope once developed for residential and scenic homes, a practice too often followed in southern California, will erode, shift and slide, never to be the same again.

In this connection I applaud section 302 of S. 268. The provision for the preparation and continuing revision of the description of the character of the land and the ways it might be used is critical to land use management. What S. 268 does not make as explicit as it might is the productive role that several of the Federal agencies, with long experience in the scientific basis for land management, could play.

In terms of scientific requirements, land description is a relatively straightforward concept. Use priorities or land classification do indeed require value judgments and should involve, insofar as possible, the intangibles—the value of esthetics, of history, of peoples' perceptions of nature and of nature's values. Again the scientific basis is on relatively good grounds. For example we know the biological productivity of swamps and marshes as well as desert scrub. These lands all play essential roles in maintaining the health of our overall ecological system. Their values can be assessed in terms of how they contribute to the health of the world about us.

Who should undertake the task of land classification? I believe this should be a State responsibility, with the State working with local units of government. The Federal role should be limited to the provision of scientific data of general interest as it does today.

A land classification system can lead to a priority classification of land use. Some land, already developed or of limited value in the ecological sense could be given highest priority for heavy industrial development. Other lands because of soil and precipitation characteristics would have the highest priority use for agriculture or rangeland. Still others for historical and social reasons should be mantained and enhanced for residential and commercial purposes.

The job of land classification and priority assignment is neither simple nor easily carried through. I would suggest a phased approach using the priorities given in S. 268. The Secretary of Interior should be required to develop in 3 months of enactment the criteria defining what is meant by environmentally critical areas. I find the definition in the legislation and prior report unsatisfactory. These criteria would be provided to the States. Similarly, the Secretary of Interior, the Secretaries of Transportation and Housing and Urban Development would, within 6 months of enactment, develop guidelines defining areas critical to development. Finally, the Secretary of Interior together with the Secretary of HUD would within 9 months develop and promulgate criteria defining regions of importance to regional development.

The States would then be required, and funded through a grant program, to define and develop priority uses of lands within 2 years of the issuance of the relevant criteria.

The Secretary of Interior should be empowered to declare a State ineligible for grants under this act, if, within 2 years the State has not carried out this classification and assigning of priorities. The procedure for such a determination may have to be complex, but would probably be no worse than the complexities involved in S. 268.

Of one thing I am sure, aside from restrictions on grants, the law should not be coercive in any sense. The State should and I believe would recognize that it is in its own best interest to manage its lands. State after State has recognized this—Colorado, Hawaii, and Vermont for example, have all acted, and by last Sunday's paper Maryland has recognized the problem.

By use, I do not mean very strict and confining definitions. Rather, I would leave it up to the State to establish the land priority classification and definition of same. For example, heavy industry, light industry, dense residential, light residential, agricultural, recreational, wilderness might be a beginning.

Let me now turn to the second basic concept that I alluded to in my opening remarks—user charges.

By user charge, I mean a tax based on the difference between use priority and actual use. If an industry wishes to locate on a wetland it should be allowed to do so, provided that it is charged to an extent commensurate to the total cost to society of that use—on an annual basis, the cost to fisheries, wildlife, recreation, and so on. On the other hand, the State may value its wetlands so highly that all development should be prohibited. Such prohibitive zoning should be allowed in the same way that the discharge of highly toxic materials should be prohibited.

Unlike the property tax, the user charge would not be a means of raising revenue but rather a way of employing the market mechanism to influence land-use decisions. Revenues raised by user charges would be employed in part to improve the land classification system—which would be thought of as a dynamic system—and to administer the user charge system. Revenues over and above that required for implementation of the process could very well be employed to increase land holdings benefiting the general public.

The analogy of land-use charges to pollution charges is clear. However, there are important differences. The need for pollution charges has been lessened by the fact that standards to protect health can be and have been set. We have no similar standards for land, but we can begin to define priority uses for land. In fact, in land use we may have an important advantage. We can begin to use a charge system before standard setting becomes a way of life despite that fact that the basis for zoning legislation has been with us for 50 years.

Many questions can be raised about moving away from zoning to land classification and charges. Why will the institution responsible for land classification be less responsive to development pressures? In part I think the required scientific data base plus a system of public hearings will help. How will the user charges be determined and how can one be assured that they will be high enough to discourage damaging development? These are tough and serious questions since they focus attention on the long-term real value of land as opposed to the immediate market value. This is a problem that needs attention and public discussion. I do believe we are beginning to develop a methodology that can help generate the required data. Will the land classification system and user charge system generate another bureaucracy? To this I would only argue that history shows that we have been much better tax collectors than regulators.

The proposals I have discussed will work only if we carry out another major reform. Any new system of land use planning or of user charges superimposed on the existing land and property tax system can only bring about intensified chaos. In my view, we must move away from property tax as the major source of local revenue to revenue sharing, both general and special, recognizing that in the end this may mean higher Federal taxes. Clearly this cannot be accomplished overnight. A start toward revenue sharing has been made and we should accelerate along this path.

The subjects I have briefly touched on will in large measure influence the nature of our country for decades hence. They cannot and must not be divorced from issues of energy, transportation, and so on. I will give only one illustration. Suppose the decision is taken to generate a large fraction of electricity by breeder reactors that then transmit their power through conventional power lines. That decision will limit in major ways the possible "life styles" of the future. Economic forces will work toward further centralization and urbanization. More of the population will likely be concentrated in the great megalopoli as the giant generators of power bring people and industry together. Alternatively, a fuel cell-solar cell energy system allows the flexibility for a more dispersed population as well as for concentrations. The point is: we must recognize the vast land use implications of energy decisions; clearly this committee has been acutely aware of these relationships over the past years.

I have talked of management, of decisionmaking, of changing the way we put things together. But all of this skirts what to me is so vital for the future, the preservation and enhancement of the love of land, the development of Leopold's land ethic. The attitudes and perceptions of people in various parts of New England illustrate what I mean. In Vermont, with its largely agricultural history, there is a deep sense of the values associated with her lands. In northern New Hampshire the views are far different. The economy has in the past been based on lumbering—trees were there to be cut down and there was no attachment to the land. In Vermont there is Act 250; in New Hampshire there is no such law, nor much hope for one in the near future.

Management systems, models, computers, can all help, but they cannot replace the wise appreciation of nature when she is healthy. If we are to make progress in the future, we need to build on that important attachment and feeling that man has and can develop for the land about him.

The CHAIRMAN. Thank you, Dr. MacDonald, for a very thoughtful and provocative presentation.

It raises a number of questions in my mind. You have put in so many very few things, and it's a little hard in a hearing to explore them with you. I would like to, perhaps, sit down with you at another time and explore them further.

I think that a large part of your statement in drawing on the already existing resources for the classification of lands is not contradictory to the bill we are now discussing.

What happens to be basically contradictory to the bill to me—and perhaps, I have missed something—is your suggestion of taxation based upon use rather than, as we do theoretically now, fair market value. You know, of course, that we are faced with constitutional limitations. And have you consulted with any lawyers as to how the Federal Government could possibly impose a different method of taxing property on a State? I happen to be a lawyer. I do have an immediate reaction that probably it cannot be done constitutionally; but maybe you have explored this with somebody in depth.

Dr. MACDONALD. Mr. Chairman, I have indeed. Since the first question that comes to mind, is, of course, whether a system of user charges—and I would prefer the term "user charges," rather than "taxes," as a way of describing my proposal—could be held viable under the Constitution.

The answer I have received is: Yes, provided we make the distinction of using the charges as a management system rather than as a way of raising revenue or of manipulating the use of lands for purposes other than the overall social purposes; that is, the overall needs of the country as a whole.

I think it is a difficult question. I think it is one that should be discussed. I raised it to promote such a discussion.

The CHAIRMAN. When you talk of the constitutionality of this "user fee," we will call it, not "taxes," are you talking about the imposition of a tax by the State legislature or the National Congress?

Dr. MACDONALD. By the State. My specific proposal—and I did not want to go into the details—is that the State would set up a commission with the responsibility for establishing the basis for a land classifica-

tion system; the priority of use of each piece of land. There would then be no user charge attached to the land if the land is used for its highest priority. Let's say the land is classified primarily as a viable rangeland, and it is used as rangeland; then there would be no use charge attached to it.

At the other extreme, there is an estuary. Its primary use would be to maintain biologic productivity, and its lowest use would be for heavy industrial development. Heavy industrial development would be permitted provided the industry wishing to use that land paid the charge set by the State.

These charges, in my view, would vary from State to State. This should be a State responsibility and not a Federal one.

Senator HASKELL. It occurs to me, Dr. MacDonald, that in the bill you are suggesting that the State could classify its land if it wanted to. It might adopt your suggestion, but it would be up to each individual State to decide whether it wanted to.

Dr. MACDONALD. Mr. Chairman, these are precisely the terms in which I would answer. I would like to see some incentive for States to experiment with this, and with other ways of managing land. We have managed land through the method of zoning and regulations for a long time, and I think we have not adequately explored the use of economic measures to improve land management. And my proposal is why not experiment and provide for that experimentation within the legislature.

Senator HASKELL. Thank you, Dr. MacDonald.

The CHAIRMAN. Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman.

Dr. MacDonald has unique ideas, and I would say that some of them would work to control some of the serious problems we have in this country. I wonder, perhaps, have you received this idea from some group or country that experimented in any way in this type of arrangement.

Dr. MACDONALD. There is no counterpart to my knowledge of this system of land use management. In Britain, to some extent, there is land classification and control of land based on a method to control its carrying capacity.

There is no amendment to use market forces to influence land use management decisions in the sense I have described. This would be a new experiment.

Senator FANNIN. In the State of California—I lived in California—we have corporations like the McCullough Corp. building new cities. It is certainly a radical change from anything I have ever heard considered. I am wondering shouldn't this be tested in some program such as McCullough has.

Are you familiar with that project?

Dr. MACDONALD. Yes, Senator Fannin. I would think this is one approach. I would hope the term "radical" would not be applied to the concept.

Senator FANNIN. A radical change. Some agreed we should do more in that regard; and others, like Houston, object to anything like that being done. We have extremes both ways, and now I don't mean to indicate it is extreme on the other side, but I do feel that too much of a de-

parture from what we are doing now has been considered in this particular legislature.

I think it merits study, experimentation, because it would accomplish many of the objectives that we have. I agree with you in that respect, but I don't know how successful it will be. For instance, in rural communities where they have been accustomed to going their way all of these years; and of course we even have some of the States where they hesitate to have a complete program which I think is necessary because of their ability to get along with local communities. And some of the State people feel this bill would assist in that regard, and they set the principles; and some offer few programs that would make it possible for them to do what they have not had the nerve to do previously because of the controversial issues involved.

How would a program like this operate in communities in Arizona or California?

Dr. MACDONALD. Let me respond to the first part of your question, Senator Fannin, because the second part contains some ideas clearly untested.

My worry is that enactment of the present legislation would set zoning regulations for decades and generations to come. I would argue that before taking that course perhaps we should do some of this experimentation, the kind of experimentation we find in the McCullough project.

Let's try it out before establishing a national land use policy that is totally regulatory in character.

Senator FANNIN. I don't know that McCullough has ever thought of user charges, but we know in California they are now forced, because of the interpretation of the courts, to change their property tax laws. I can see how there could be some benefits involved, but I don't see how in this legislation we could ever change from a taxation program to user charges without taking several years to get the laws through.

Dr. MACDONALD. I completely agree with you. As I tried to emphasize in my testimony, I don't think it is profitable to try to discuss land use without discussing property taxation at the same time. The two issues are closely intertwined. I gave only one example. I can give you 15 others, Senator Fannin. I know you are familiar with these kinds of problems.

Senator FANNIN. I agree with you we have a very serious problem with property taxation. We must look into the different proposals that have gone through recently and what we are doing about this at the present time. And I am not arguing with you at all. Changes must come about. I am trying to think along the lines that any of these recommendations that you have made could be adaptable to this present legislation.

Senator HASKELL. Would the Senator yield. I believe Dr. MacDonald has to leave here at 4 o'clock.

Dr. MACDONALD. I believe the air service to New Hampshire is such that it is not the optimum and I do have to leave.

Senator HASKELL. Senator Buckley.

Senator BUCKLEY. Under the circumstances, I want to say I have read your paper with interest and care, and I shall not delay your departure.

The CHAIRMAN. Senator McClure.

Senator MCCLURE. One of the difficulties of the present taxing structures that inhibits rational implementation of policy, the difficulty of undertaxation not forcing the changes to take place. Isn't it true that market value taxation also forces changes? Market values boost the prices and the property owner cannot afford to maintain the open spaces, like in many area farmers are being forced out of the ability to maintain it in agriculture and have to sell into subdivisions.

Dr. MACDONALD. Yes.

Senator MCCLURE. I wanted to make the point it cuts both ways.

Dr. MACDONALD. Yes, it cuts both ways.

Thank you, Mr. Chairman.

Senator HASKELL. Mr. Bosselman.

We are delighted to have you here, Mr. Bosselman.

As my colleagues know, Mr. Bosselman, a Chicago attorney, is one of the reporters associated with the American Law Institute's efforts in developing a model land development code. He is also coauthor of the Council on Environmental Quality's study, "A Quiet Revolution in Land Use Controls."

We are delighted with your appearance here today, Mr. Bosselman.

STATEMENT OF FRED P. BOSSELMAN, ASSOCIATE REPORTER FOR A MODEL LAND DEVELOPMENT CODE, AMERICAN LAW INSTITUTE, COAUTHOR OF "A QUIET REVOLUTION IN LAND USE CONTROLS"

Mr. BOSSELMAN. Thank you, Mr. Chairman and members of the committee.

I will try to summarize my statement.

I supported this bill back in 1970 when we testified in behalf of the general concept of it. We testified subsequently before other committees including the committee in the House of which Senator McClure was a member last year.

There are three issues which I would like to direct your attention to. I think at least the first two have been discussed at length today.

I think it is important that the bill have the sanctions in it, whether they are the sanctions proposed by this committee last year or some other formal sanctions.

I think it is important that those be in the bill. It is not that the States don't want to adopt land use legislation, and is not that you have to force them into it, because as the two Governors testified this afternoon, they both agree that there was great support from their State for the passage of this type of legislation, but as they pointed out, it is going to be a real fight.

Everybody agrees we ought to have land use legislation of some sort at the State legislation, but they don't agree on just what that legislation should contain.

Also you can somehow establish a meaningful deadline for the States and tell them they have to take action by such and such a date, there is going to be a tendency on their part to put off making such decision; namely, because such decisions are tough political decisions to make.

I think there has to be some kind of sanctions.

The second issue is the issue you have substantive policies in the bill. I am scared of this process, and I think once you start putting substantive policies in the bill, there is the chance before it comes out of the Congress there will be some substantive policies suggested by some interest groups that will hamper the States in achieving what they want to do rather than helping.

If you feel it is important to put policies into the bill, I think it is equally important that they be as general and as flexible as possible; because the fact is there is no one here in Washington familiar enough with the land-use problems of the various States which differs so completely from each other, that they can sit down here and write nice sounding policies that will be useful in every State.

The third issue, the question of development of regional benefit which was in the bill in the form that it left the committee last year addressed rather fluently, and then as a result of floor amendments the bill as it passed the Senate was rather inconclusive in its discussion and development of regional benefits.

The concept of regional benefit is an important one. It means there are many kinds of development for which it is now extremely difficult to find sites. Some of the examples are sanitary land fills, airports, low-income housing, and other types of development that is absolutely essential in a State, but which creates a lot of local opposition.

It is important, I think, that the States adopt legislation that will enable them to find sites, and that will help in portraying this bill not only as a spot development bill, but a bold bill in trying to develop desirabe development.

Thank you.

Senator HASKELL. Thank you, Mr. Bosselman.

I have no questions.

Senator Fannin.

Senator FANNIN. I yield to the Senator from New York.

Senator HASKELL. Senator Buckley.

Senator BUCKLEY. Thank you, Mr. Chairman.

I like what you say about the substantive policies. We need not build into legislation that which we mandate.

I take it then you are in favor of the legislation which would cause the States to go through the process of examining their land inventory and considering the use, but you would not want to go beyond that stage, is that correct?

Mr. BOSSELMAN. I would not want the Federal legislation to go beyond this stage of requiring the States to go through the process of reexamining their land use.

Senator BUCKLEY. And developing a plan?

Mr. BOSSELMAN. Yes, for the most part, I agree with that.

If the Congress can establish policies that are sufficiently general that the States themselves would agree that, well, surely in the process of examining our land uses and developing the plan we would consider that policy and consider this policy, then I would suppose there is no particular harm in putting policies into the bill. However, if you start getting into detailed, substantive policies, such as some of those suggested on the floor of the Senate, such as you should not develop steep slopes or you should never develop prime agricultural land, these are generalizations that sound nice, but when you try to apply

them to particular land use decisions there is going to be constant need for exception.

I think it is important not to have any policies of that type at least in the bill.

Senator BUCKLEY. You have great experience, I understand, with the drafting of State legislation looking toward land use management.

Mr. BOSSELMAN. Yes, I have some experience.

Senator BUCKLEY. One thing that concerns me in this country; too often the Federal Government jumps into the details of policy. If the Federal Government were to develop a very modest approach, that is not to intervene, do you believe we will have a problem of States moving forward?

Mr. BOSSELMAN. I don't believe you would have a problem at all. You would have a lot more legislation at the State level this year if it were not for the fact that this bill has been pending for 3 years. This bill is actually delaying many States from moving ahead. They don't want to start into their program and find that Congress has set standards that would lead them in a different direction.

I think it is important for Congress to move this bill as quickly as possible. If it were possible to pass this bill early in the session, it might still be possible for many State legislatures to take action this year. If this bill is delayed to the end of the session——

Senator BUCKLEY. If the Congress declared it had no such legislation, would the States move?

Mr. BOSSELMAN. Yes, I think the States would move if the committee said let's kill it right now, but I am hopeful that is not the case.

Senator BUCKLEY. A number of the early witnesses said local zoning boards cannot be entrusted to maintain the integrity of their land use patterns.

In your experience has this also been true, No. 1; and No. 2, do you see a growing national concern over the need for proper land management?

Mr. BOSSELMAN. Senator, some of my best friends are on zoning boards, and I think it is not true that zoning boards are uniformily neglecting their duties. Many of them are doing their duties very well. When you realize how many hours of unpaid labor we are getting out of people who have other jobs and spend long evenings in many cases in local government, long evenings into the morning——

Senator BUCKLEY. Could I rephrase my question? Have you detected any movement in the attitudes of zoning boards which would reflect a better understanding of the long-term needs of land management so they are less apt to allow exceptions?

Mr. BOSSELMAN. There is a much greater awareness on the part of the public to the zoning process than there was 10 years ago, so the zoning boards feel themselves under the scrutiny of the public. So I think to a large extent the performance of zoning boards is going to be a lot different than it was 10 years ago. However, whether that difference is purely an advantage is arguable. My friends in the development industry will certainly say it is not in demand. More and more they are finding zoning boards do decide cases merely by a show of hands and not by the merits of a particular project. I think you can get arguments on both sides of the fence as to that question.

As to whether or not the zoning boards are likely to improve their

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performance, if Congress passes this legislation, I think it is certainly true if the States pass legislation such as the legislation that recently passed in Florida giving a State agency some supervisory power over the action of local zoning boards, so these boards know that in major cases at least there is a possibility that their decisions might be appealed and subjected to a full public hearing before the Governor and cabinet, as is true in that case of that State, it will certainly make them a lot more careful in their decisions.

Senator BUCKLEY. Do you feel that the legislation under consideration should encourage the States to adopt such a structure, or do you feel the Federal legislation should be neutral?

Mr. BOSSELMAN. I think under the bill as presently written, that would be one alternative presently available to the States and not one that is mandatory; and I think that is the way it should be.

Senator BUCKLEY. Thank you very much.

Senator HASKELL. Senator McClure.

Senator MCCLURE. As you might have anticipated since you did appear before a committee that I was a member of, I appreciate your report. I very much appreciate your appearance and testimony here today.

I am in the main very much in agreement with it. I am puzzled by one thing I believe you can answer for me. You say the Federal Government should not dictate to the States what the results should be. Then you come down hard in favor of sanctions because in your words, they will help accomplish the head knocking we need.

It seems to me there is to some degree an inconsistency between those two statements.

Mr. BOSSELMAN. I think it is important, Senator, to have the sanctions so the States will go through the process of analyzing, where the sanctions are designed to make sure they go through the process, not to produce any specific result. I think that 5 years from now or 10 years from now after the States have gone through this process, if it is apparent to the Congress there are a lot of problems of an interstate nature such as the hypothetical Colorado-Wyoming situation that was raised earlier, then it may be time for Congress to come back with additional legislation.

At this point I don't think you know whether it is needed until you insist each State goes through its process and comes up with a land use program.

Senator MCCLURE. I appreciate the answer, and the reason I asked the question is I think there is a basic misunderstanding by many people. They fail to make the distinction of the requirements to go through the methodology and the right of the Federal Government to dictate the results. I think that is crucial. I noticed in our questioning of Governor Ford earlier it seems to me he failed to grasp that distinction.

It seems to me we must clearly bring that forward and that is the purpose of my question. I think in your answers you have clarified again that we can indeed require States to go through a process and apply sanctions, if necessary to require them to go through the process, without dictating to them the results that they must achieve.

I think that is the crux of the entire argument, as I see it at this point. I agree with each one of the three points you have made.

The Government must, I think, come in and have some direction on development.

There are some instances where multi-States are involved in the decision. I think you must be a little more specific, have a few more guidelines and some Federal Government direction.

I take it that is the direction your statement is going.

Mr. BOSSELMAN. Yes.

Senator MCCLURE. I would like to mention what was in our report and earlier comments and testimony—that for 50 years we have been involved in zoning. Land use planning is different than zoning. It is less specific. It is broader. It goes further in some directions and not as far in the other directions as classical zoning. The development of our ethics of free capitalism and individual freedom in this country for centuries, down through Roman and English history, has encompassed the necessity for the sanctity of property ownership; that if the man who owns his property is not wholly free, then his incentives have been reduced.

The zoning originally was a balancing of property rights. You can't use your land in a way which damages my property. So, there was no real conflict on that basic ethic. So, land use planning goes beyond that concept.

We are now beginning to say you can't use your property that way because I don't want you to, which is a far different matter than simply balancing conflicting property rights, in any judgment. I think you share that.

Mr. BOSSELMAN. I think we are becoming, of course, more aware of the extent to which the use of land damages society or the ecology or the environment in ways we never thought of 50 years ago.

In 1926 when the *Euclid* case was decided. If the argument was made that the filling of the wetlands would harm the fishing 100 miles away, they would have laughed at you. We are becoming much more aware that the use of land will have more serious harmful effect. We aren't moving away from the old concept of saying to a man he can't use his land because it is going to hurt somebody else. We are interpreting that to include a degree of harm that we were not aware of before.

I agree there are important constitutional rights involved and I think it is important to say this bill is not changing the constitutional right of landownership, nor is it reducing in any way the rights they now have.

The States have already granted the local governments such severe powers to limit the use of land that there is very little more than could be done to the poor landowner than is now being done in many communities by local zoning.

I think that issue is likely to be raised in State legislatures and it is important to make the point you are not trying to impose greater restrictions on the use of land, but merely changing the process somewhat.

Senator MCCLURE. Thank you.

I think your statement and comments have been very instructive.

Senator HASKELL. Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman.

I do commend you for an excellent statement, well thought out, and very effectively presented.

The need for flexibility is recommended and fairly well handled in the bill. The regional impact of development is vital as the sanctions would effect the process.

We need to have a method—a methodology—to encourage the State development plan. This is a need in which you are vitally involved. You will agree that the problem with sanctions is the severity. Don't you think this is the issue which has evolved from the testimony?

Mr. BOSSELMAN. Yes, and, of course, the various jurisdictional problems within the Congress, generated by an attempt to hold to sanctions which are in the domain of other committees.

Senator FANNIN. This is something which will be very difficult to include in legislation. We found this to be true last year.

I ask if we can have a bill which would encourage and give assurance to the States that their respective plans would not be subject to sanctions to the extent that were considered last year in the bill before the change was made? Of course, the bill before us today does not include those sanctions. I think it has a better chance of being enacted. Would you favor this bill, S. 268, in its present form if we could develop a method by which the States would cooperate rather than not having a bill passed?

Mr. BOSSELMAN. Yes. I think I would, Senator.

The question of sanctions does not have to be faced this year. You are talking about beginning a process in which the States will not be submitting plans for 3 to 5 years for the most part.

If 2 years from now it is apparent that only half of the States applied for grants or are working on such a program, then it might be important to reconsider sanctions.

Senator FANNIN. The States are making progress and are interested in accomplishing the common goals. Perhaps it would be unwise to have the sanctions in this legislation if the severity of the sanctions is such that it is going to be an impediment to the program and the legislation.

Mr. BOSSELMAN. I think it is important that all of the States eventually adopt this type of program, because unless a State is confident that its neighbors are also going to go through this process, you are liable to run through serious problems.

Can Wyoming afford to regulate this type of industry if in fact Montana is not?

Senator FANNIN. I agree with you and believe that we have an opportunity to pass the legislation during this session of Congress, but I just doubt it would be approved with the proposed sanctions.

I do not feel it is essential to have the sanctions. I am hoping it will work out without them.

Thank you very much for your very valuable testimony.

Senator HASKELL. Thank you, Mr. Bosselman, very much indeed.

(The prepared statement of Mr. Bosselman follows:)

STATEMENT OF FRED BOSSELMAN, ASSOCIATE REPORTER FOR A MODEL LAND DEVELOPMENT CODE, AMERICAN LAW INSTITUTE; COAUTHOR OF A QUIET REVOLUTION IN LAND USE CONTROLS

I am pleased to have the opportunity to appear in support of S. 268, the "Land Use Policy and Planning Assistance Act of 1973." In recent years a substantial part of my professional practice has involved the type of state legislation this

bill is designed to encourage. First, working with Professor Allison Dunham on the American Law Institute's project to draft a Model Land Development Code. Second, as a consultant to the President's Council on Environmental Quality and co-author with David Callies of the Council's report on new state land use legislation "The Quiet Revolution in Land Use Control." And third, as a consultant to a number of different states that are interested in drafting new land use legislation.

In the process this experience has reaffirmed my conviction, as originally expressed in the testimony Professor Dunham and I gave in support of the first version of this bill, in 1970, that the bill will provide very valuable support to the states in their almost universal desire to reform their state land use legislation.

Because my testimony and that of Professor Dunham and Richard Babcock on behalf of the American Law Institute's model code project is already of record in numerous appearances before this and other Congressional committees in regard to this legislation I won't repeat the praise we have already spread on the record. Instead I would like to express very briefly my opinion on three specific issues that have been raised in regard to the bill.

The need for flexibility. I haven't visited all the state capitals in this country to discuss the need for land use legislation but I've visited enough to be very positive about one thing: *the situation in each state is unique.* They each have their own problems and require their own solutions.

If Congress tries to sit in Washington and write the environmental ten commandments—"Thou shall not touch steep slopes"—the states would be better off with no bill at all. There is no one in Washington who knows enough about all of the factors that affect the use of land that he can devise simple solutions for complicated land use problems. And no one who's been out trying to wrestle with the problems, whatever his point of view, will deny that they are complicated. Perhaps someday as our technical knowledge of land use increases it will be possible to sit in Washington and write sensible absolutes. But today there is no way it can be done.

What the states need is encouragement to set up a process by which they can rationally arrive at the policies that are most suitable for their particular state. This bill assists the states in setting up such a process. I hope that you will not let it be amended to incorporate prematurely a lot of substantive policies that sound good on their face but will present many awkward problems to the states.

The need for sanctions is the second point I would like to stress. My experience has made me strongly aware of the difficulty states will have in reaching a consensus on a rational land use policy. More and more groups are realizing the extent to which land use policy affects their interests. With each succeeding year more trade associations and special interest groups—from the homebuilders to the wilderness advocates—will try to use land use legislation as a vehicle for establishing their favorite policies. Many of these policies may be very appealing and important, but in the aggregate they will make it extremely difficult to achieve a consensus in the state legislatures on land use legislation.

There will be great temptation to avoid the hard decisions that need to be made. Meaningful sanctions in the federal legislation will help accomplish the head-knocking that will be needed.

In my opinion the sanctions contained in the version of this bill that passed this committee last session are eminently sensible. Why should the federal government pour airport funds into a state that can't even guarantee that the area under the runways won't quickly be occupied by homeowners who will loudly demand the airport's removal? Should federal funds be given to a state to buy wildlife refuges if the state can't even guarantee that the land upstream won't be polluted by strip mines or oil spills? And highway funds, especially, ought to be given to those states that demonstrate that they can control development around interchanges and avoid the necessity of widening highways before the asphalt is even dry.

Development of regional impact is the third and last issue on which I would like to comment. Again the committee's previous draft of the bill made it clear that the states were being encouraged to make strenuous efforts to solve the crucial problem of finding sites for those types of development that are absolutely essential to the welfare of a region but arouse vociferous opposition on the part of their immediate neighbors. After the floor amendments the bill became less than clear on this point.

Unless you encourage the states to serve as mediators in these thorny problems there is, in my opinion, no way we will ever accomplish the construction of the power plants necessary to meet the energy crisis, the low-income housing

needed to provide true equal opportunity for all races, the refuse disposal sites needed to provide the best environmental methods of disposing of our solid wastes, and the airport sites needed to prevent me from ending up living in a perpetual circle over O'Hare.

In conclusion, I would like to reiterate my support of S. 268 and say that it will be viewed as welcome encouragement by the many states that are already working on the modernization of their land use legislation.

Senator HASKELL. The next witness is Mr. Robert H. Marden, Assistant Secretary of Administration, the State of Massachusetts Executive Office of Administration and Finance.

STATEMENT OF ROBERT H. MARDEN, PRESIDENT OF THE COUNCIL OF STATE PLANNING AGENCIES

Mr. MARDEN. Mr. Chairman, I am Robert Marden, president of the Council of State Planning Agencies—which is the organization of the central State planning officers of all the States and territories. Personally, I am assistant secretary of administration in the Massachusetts Executive Office of Administration and Finance, working with the Office of State Planning and Management. The purpose of my appearance here today is to express the views of the State planning officials rather than those of Massachusetts—although my views are consistent with those of Gov. Francis W. Sargent. The Governor regrets that he could not participate in these hearings, but he will be filing a statement with the committee, repeating his support for the major thrust of the bill which he has expressed in person in previous years.

I will be concise in my prepared remarks, because the members of the committee may well have questions of key interest to yourselves.

First, I would express the strong support of the State planning officers of this country for the continuing effort of many Senators, including the chairman of this committee, to secure an effective expression of the policy of the National Government that all the States and their local governments should follow the lead of such pioneers as Hawaii and Vermont—now being joined by an increasing number of other States—in making the decisions that they should have a land-use policy, that they should have an adequate process for devising that policy, and that they should work out the authority and the coordinating organization at State and substate levels so that such policies can be carried out.

Mr. Chairman, in your remarks of January 9, introducing this legislation, you very aptly described it as providing an umbrella for the considerable range of more specialized legislation which the Federal Government has—by one process or another—enacted in recent years, including the air and water pollution control bills and amendments, the coastal zone management bill, the various provisions for economic development, rural development, and transportation planning, and so on.

Many States already are wrestling with the problem of coordinating these bills. We need your encouragement, a firm statement of Federal purposes which will help us in our cooperative endeavors with Federal agencies, and some additional funding to link together these various programs—often scattered in diverse State agencies and local governments.

Currently in Massachusetts, at Governor Sargent's direction, we are in fact coordinating the preparation for application of the Water Pollution Control Amendments of 1972, the Coastal Zone Management Act, and the Rural Development Act, with the existing activities funded through the HUD 701 program, transportation planning, and so on.

This coordination is being carried out by several of the Massachusetts cabinet secretaries established under our current massive effort at State reorganization. The Office of State Planning and Management of the Office of Administration and Finance is serving as the central secretariat for these efforts, with lead agency responsibility to the appropriate Secretary—such as Coastal Zone Management by the Secretary for Environmental Affairs, Charles H. W. Foster.

I cite the Massachusetts example not to be boastful—because we have a long way yet to go—but rather to assure your committee that States can achieve the type of overall coordination of land use and development policy you propose, each according to their current pattern of organization and the leadership of Governors and legislators.

On some specific questions, I offer the following comments, although due to the expedition which your committee evidenced in scheduling these meetings we do not have complete returns from all States on their current situation. These will be made to the committee as soon as possible.

Let me turn to some specific comments on the legislation.

1. LOCATION OF AUTHORITY IN THE FEDERAL GOVERNMENT

The States generally are anxious that some such bill on land use policy should be passed. We have had fine cooperation with the Department of the Interior in the past year, and this promises to continue. We would hope that there would be strong involvement of the States in drafting regulations to carry out whatever legislation may be passed on this topic—similar to the very positive relationships with the National Oceanic and Atmospheric Administration on the Coastal Zone regulations, and to a substantial degree with the Environmental Protection Agency on the 1972 amendments to the Federal Water Pollution Control Act.

On the basis of our experience in Massachusetts, I would strongly urge the point that the policy decisions relative to Federal policy on land use, broadly defined, must involve a wide range of Cabinet and independent agency officers.

The detailed administration of the program can be lodged with a single agency, but only so long as that agency has the continuing and high-level input from other key agencies and fields of interest—such as HUD, DOT, EPA, and so on. I realize that this need to assign administrative responsibility somewhere causes certain problems of jurisdiction for the Congress—but that is not a new problem at either the State or Federal level.

2. DATA AND FUNDING

The emphasis is on providing an "umbrella" to bring together the numerous facets of land use, and development and conservation policy—which means linking many existing programs of Federal, State,

regional, and local governments. We do not need to fund that effort as though we were starting from scratch—every effort should be made to shape and utilize the output from existing programs to contribute to the broader land use product.

However, both the past history of the individual States and their components in this field, and their current fiscal resources, are very diverse and some have hardly started. Even with the proposed additional data input from Federal agencies, I believe that we need substantially more to meet the needs of the States than $40 million annually on the two-thirds/one-third basis. Many other programs such as the HUD 701 program now are on the two-thirds/one third basis, and we could live with that, although I believe it would be easier to secure legislative concurrence on the 90/10 basis.

I would strongly urge that the relative percentages be held stable over the life of the act, rather than cutting back after the first 3 years. Such provisions cause real difficulty with State legislatures—and we would have 5 years to establish the immediate and practical value of this operation.

I would urge on the overall level of support that the Federal amount should be increased at least to $66 million—which, if the States all went along in full participation—would enable about a $100 million level of total effort, once the activity was fully geared up. I can provide the committee with more complete estimates on need and when we have further returns from the States, which we should have within a relatively short period of weeks.

3. SANCTIONS

I think most State planners would support some type of sanctions as an expression of the serious intent of the Congress that States should make some real progress over a reasonable period of years. We would take this position for two reasons:

First, to convince our own legislatures, in particular, that Congress is serious about this effort;

Second, to make sure that while each of us is achieving perfection in our own States, that our efforts are not undercut by the absence of similar action in neighboring States which are less foresighted, or where special interests have more influence.

Obviously, there are problems with sanctions of an across-the-board nature, as expressed in the debate last year. While, we would prefer to have some sanctions built in, there are significant sanctions actually existing in some of the component pieces of legislation—such as the Water Pollution Control Amendments of 1972—which can be used to help in this broader land use effort if the regulations which EPA finally issues emphasize this approach.

If a bill of this nature can only be passed lacking any specific sanctions, then we would prefer to have the bill in that form than not to have any bill at all.

SUMMARY

In summary, Mr. Chairman, I express the support of the Council of State Planning Agencies, and many regional and local planners and leaders of government as well, for this legislation.

Senator FANNIN. Thank you very much, Mr. Marden.

I notice you state that the $40 million is inadequate and that you would recommend up to $66 million with an overall total of $160 million.

Mr. MARDEN. Since I drafted these remarks I saw the first six State responses to our questionnaire, and I also heard the testimony of our two Governors, and I am willing to state this may be too modest a figure.

Senator FANNIN. If you do accumulate information from your questionnaire, would you be willing to give us the information?

Mr. MARDEN. Yes, we will. I believe it will be through the Governors' Conference, you will get some of these responses as soon as possible.

Senator FANNIN. Did you have an opportunity to compare the bill as originally introduced last year with the bill that is now under consideration?

Mr. MARDEN. Yes.

Senator FANNIN. Do you have any remarks to make as to the comparison of the two bills?

Mr. MARDEN. The sanctions and dollars are the main points of difference. We would like to have some type of sanctions but if the only way we can get the expression of congressional intent is a bill without sanctions, we will hold back.

Senator FANNIN. Do you think the severity of the sanctions, as included in the original bill, would cause problems in getting the States to welcome this legislation?

Mr. MARDEN. Many State legislatures will find it difficult to support the idea of sanctions. I might suggest that you elaborate upon Mr. Bosserman's suggestion of a statement of congressional intent, that if after 2 years of this 3-year period there is not significant or substantial universal problems by the States already moving, that you will then indeed add a sanction statement to it.

Senator FANNIN. Thank you, Mr. Marden. We appreciate your patience. We are anxious to find some way of assuring that the States will give cooperation without having the sanctions. Thank you very much.

Senator McClure.

Senator MCCLURE. I can't help but note in passing that you state that the States are capable of doing this job, then you turn around and say you can't do it without Federal money. It seems to me there is some degree of inconsistency here.

Mr. MARDEN. There are three major things that the bill proposes. There is the institution-building—that is, getting our heads together, tying together those agencies and parts of the bustle that are in being. We have tried this out in Massachusetts, and it can be done, but I suspect in many States there may be more difficulties than what we found.

Second, there is the data collection item. In that case there is the promise or prospect of substantial Federal input, but it is still not going to be chief, as the Governor of Connecticut mentioned.

Third, there is actually doing the work, you know, using the information and institutions, and that is going to take a class of profession that in many cases is in short supply.

If I had the $1 million to put on the planning staff tomorrow, maybe I can do it for Massachusetts, but I would not speak for the rest of the country. It is that kind of carrying forward of the purposes of the act. We are doing this to make real decisions, in next year's capital outlay budget in Massachusetts and also things that will affect matters down the line 5, 10, or 20 years——

Senator McCLURE. If the State is already doing this job, as implied by the statement of yourself and some others, they are doing it without their share——

Mr. MARDEN. We are doing it very inadequately, we cannot produce what is needed in Massachusetts solely with the resources we have available.

Senator McCLURE. I take your statement then is that you can do it, but do it inadequately without Federal assistance.

Mr. MARDEN. Yes, I think all of us are aware that things are happening very fast. I admired some of the ideas that Dr. McDonald brought up, but we can't wait 5 years, we are losing ground every month to the bulldozers. We can't wait on a slow boat to China to get some degree of control so the future does not escape us forever.

Senator McCLURE. You indicate you don't want Congress to start out with a level of funding and reduce it later. I share the feeling that so many State officials have expressed at various times. Would you rather start out a two-thirds/one-third, or would you rather start out with a 90 percent and reduce to two-thirds a year——

Mr. MARDEN. I think the 90 percent would be far more persuasive to legislatures.

Senator McCLURE. It might be viewed as an extra amount now rather than a reduction later?

Mr. MARDEN. Yes.

Senator McCLURE. And there may be some reason for that, because State budgets may not be set up to allow an immediate start, but could be formulated to continue it.

Mr. MARDEN. I think that is a very cogent argument.

Senator McCLURE. Thank you very much.

Senator FANNIN. Thank you, Mr. Marden.

The hearing will resume tomorrow at 10:30 a.m.

(Whereupon, at 5:10 p.m., the hearing was adjourned, to resume at 10:30 a.m., February 7, 1973.)

APPENDIX

(Under authority previously granted, the following statements and communications were ordered printed:)

STATEMENT OF JOE LAWRENCE, JR., CHAIRMAN, MAKAH TRIBAL COUNCIL

Mr. Chairman and Members of the Committee: I am Joe Lawrence, Jr., Chairman of the Makah Tribal Council.

Once again Indian Tribes have had to travel back here to Washington, D.C. to protect their sovereignty, their lands, and their rights. Senate Bill 268 is another in a long line of federal legislation intended to secure to the states powers of regulation and jurisdiction but which has forgotten that found in the midst of these states are Indian Reservations.

As you sit here in Washington, it is easy to forget that across this Nation are pockets of Indian Reservations guaranteed as independent sovereign units free from restrictions by the states with powers subject only to specific restrictions placed upon them by the Congress. We who live on the Reservations must at all times be prepared for the stripping away of our rights by those who would have our rights and our Reservations terminated.

Senate Bill 268 attempts to allow the states to regulate land use planning on a local level. Included in this land use planning proposal for the states is a program which conceivably might force sovereign Indian tribal governments to submit their own land use plans for approval by some state agency or commission. Such a proposal represents a dangerous interference with the sovereignty of Indian tribes and their governments. The courts have long recognized Indian tribes as having all the internal powers of a sovereign government. Using these powers, tribal governments have continued to tax, preserve law and order, and regulate the use and disposition of all property on reservations. We have been able to do this taking notice of local Indian problems and within the confines of the Indian heritage and culture.

In the past whenever state government has been given any opportunity whatsoever for regulation of any matter on an Indian reservation, there has been trouble. States have refused to recognize the fact that there can be a free sovereign government and land area situated within their boundaries. The Indian people have long suffered under attempts by states to assume jurisdiction over reservations. Senate Bill 268 opens the door to additional attempts by states.

There is no provision in this bill for Indian tribes to continue with their programs of land use planning and then to have any necessary state concurrence with the decisions of tribal governments. This leaves us at the mercy of a new state bureaucracy which can interfere with the strong programs of tribal development and building on reservations throughout this country.

Senate Bill 268 further opens the doors to what might possibly become a jurisdictional mess. Various federal agencies and the Bureau of Indian Affairs already are involved in planning and programs on Indian reservations. The United States is the trustee for lands on Indian reservations. It is the duty of the United States to see to it that Indian rights in land and development are protected. This legislation has the potential to affect adversely our protections and thus, to violate the trust responsibility of the federal government. A new state bureaucracy will be an additional hurdle set up to interfere with active tribal development. We will be subject to the whims of state bureaucrats who are waiting anxiously to do what they can to interfere with the jurisdiction and sovereignty of Indian tribes.

In addition, this Bill encourages spot-zoning. It creates the situation of many authorities having jurisdiction to zone and plan the use of land on reservations, including the possibility that the same piece of land may be zoned for different uses.

We who live and work on reservations know that the only successful planning for land use on Indian reservations has come and will come from Indian tribes themselves with the aid and concurrence of federal authorities. On the Makah Reservation we are building public housing units, putting in new sewage systems, making plans and building for tribal development projects, and exerting our authority to make the Reservation a better place on which to live. With the aid of federal authorities and our advisors, the Makah Reservation is becoming a well planned and well regulated land area. This new intrusion by the states into our development has the potential to destroy and interfere with the progress we have made.

Once again we have had to spend our tribal money to come to Washington to remind you that we exist and that you as a federal government have responsibilities to protect our powers and our existence. On behalf of the members of the Makah Tribe and the Makah Tribal Council, we urge that the proposed changes in Senate Bill 268 be included in this legislation. First our land was taken away. Then attempts were made to take away our sovereign rights. Now here are further attempts to take away from us the Indian people the right to regulate, plan and develop what land we have remaining. This surely cannot be the American way.

Thank you.

NATIONAL ASSOCIATION OF REAL ESTATE BOARDS,
Washington, D.C., March 13, 1973.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: The National Association of Realtors[1] wishes to take this opportunity to comment on S. 268, the proposed "Land Use Policy and Planning Assistance Act," now before your committee for consideration. It would be appreciated if this letter of comment is included in the printed transcript of the hearings just concluded.

Our Association concurs with the committee's recognition of the need for a rational and balanced decision-making process for the use of the nation's finite land resources. We also endorse attempts to aid state and local governments in the development and implementation of land use goals based upon an inventory and evaluation of existing and potential uses of the land.

Most of the development that determines land-use patterns in our country is privately sponsored and financed. The intent, then, of this legislation is to provide a mechanism for assuring that the private sector and the thousands of local government entities will work hand-in-hand, in the face of pressures caused by the nation's expanding urban development, to achieve sound land-use decisions in accordance with national environmental goals.

The high sounding goal carries with it institutionalized ramifications which are both good and bad. Under our present system, the private sector is facing a chaotic situation due to delays and conflicts stemming from limited efforts to balance economic development demands and environmental demands. Much has been said before this Committee about this balancing of demands, but nothing to indicate a fulcrum upon which rational land use policies will balance.

The adequate protection of private property rights should be the fulcrum. Although this bill, in the form approved by the Senate last year, includes one subsection covering just compensation to any person having a legal interest in land in cases where a state might restrict the use of such land, we are concerned that this is not a strong protective clause.

We therefore respectfully suggest that Sec. 303(f), page 26, be amended by deleting the word "full" in line 8 to make the subsection read:

"(f) Any person having a legal interest in land, of which a state has prohibited or restricted the full use and enjoyment thereof, . . ."

Further, we recommend that *Title I—Findings, Policy, and Purpose*—be modified to include a provision stating that unconstitutional violation of private property rights will not be tolerated.

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[1] Realtor—a professional in real estate who subscribes to a strict Code of Ethics as a member of the local and State boards and of the National Association of Real Estate Boards. The National Association of Realtors consists of approximately 1,600 local boards of Realtors in every State of the Union, the District of Columbia, and Puerto Rico. Combined membership of these boards is approximately 500,000 persons engaged in brokering, managing, and appraising residential, commercial, industrial, and farm real estate.

A second issue that we feel needs exploring in further depth involves the impact S. 268 could have as a tool to impede land use decisions in the short-term or near future in metropolitan areas where the great population demands are pressing. It is for this reason the Association feels that a national land use policy must be broadly drawn and extremely flexible during initial state action toward developing their land use planning processes. Otherwise, local and municipal county government decisions—the hard decisions—will grind to a halt. "No-growth moratoriums" already prevail in many communities. The predicted "wait-and-see" attitudes of local officials will act as fuel for the continuaton of such moratoriums and endanger our housing inventory.

Section 303(d) assures the lack of motivation to make immediate land use decisions where there is a pressing need. I quote:

"(d) Any method of implementation employed by the State shall include the authority of the State to prohibit, under State police powers, the use of land within areas which, under the State land use program, have been designated as areas of critical environmental concern, which are, or may be impacted by key facilities, or which have been identified as presently or potentially subject to development and land use of regional benefit, large-scale development, or large-scale subdivisions, which use is inconsistent with the requirements of the State land use program as they pertain to areas of critical environmental concern, key facilities, development and land use of regional benefit, large-scale development, and large-scale subdivisions."

The intent of the bill to act as a catalyst for state action thus would act as a deterrent to action by local officials and distort local priorities, unless additional language is provided which would permit local governments to function in a normal manner until such time as the states can complete the requirements of the legislation after enactment.

A third issue of concern to our Association is the stated desire by members of the Committee to re-insert "sanctions" against the states for failure to comply with the provisions of the bill. The requirements of Sec. 305(a), "Federal Review and Determination of Grant Eligibility," force review of the statewide land use program by the heads of nine or more federal agencies which "conduct or participate in construction, development, assistance, or regulatory programs significantly affecting land use . . ."

This seems to be a considerable constraint in the face of the likelihood of sanctions against highway, water and sewer, and airport development grants. It is reasonable to consider that a conceptually perfect statewide land use plan would never be able to meet all of the requirements of every federal agency involved.

Furthermore, the threat of sanctions, to which we had objected in testimony submitted by Realtor Donald I. Hovde on June 29, 1971, during consideration of S. 362 and S. 994 in th 92nd Congress, would force many divergent regions comprising states and within states to accept frustrating goals and objectives contrary to localized needs.

In summary, we find endorsement of national land use policy legislation subject to the solution of the three issues as outlined. The National Association of Realtors strongly recommends the addition of language in the pending bill to protect individual property rights, to permit local governments to function in a normal manner until statewide programs are functional, and the elimination of economic sanctions.

Respectfully submitted,

CHESTER C. SUDBRACK, JR.,
Chairman, Realtors' Legislative Committee.

SOCIETY OF REAL ESTATE APPRAISERS,
Chicago, Ill., March 20, 1973.

HON. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs, Dirksen Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: It is the responsibility of the real estate appraiser to measure and to estimate the present worth of future benefits that, in his judgment, may be derived from real property. In so doing, environmental and ecological factors influencing the use of real property are considered as they affect those benefits which are to be derived in the form of amenities or cash during a reasonable period of time into the future.

The Land Use Policy & Planning Act of 1973, if enacted and implemented by the states, will classify land as to its most effective ecological environmental, and economical purpose. This classification will enable an evaluator to minimize speculation concerning future use and therfore value of real property. And, it will allow him to conduct his analysis and estimate with a higher degree of accuracy. It is therefore of the utmost importance that the committee include in the bill 1) a clearer definition of highest and best use and 2) some measurement of damage in actions of eminent domain and in those instances where use and enjoyment are restricted by classification of land which is considered to be in the public interest.

As you know, a national policy concerning land use will be subject to interpretation according to the applicable state statutes. The inclusion of the clarifying definitions which we have suggested will add uniformity to the bill's intent and administration. We are concerned that the language in Sec. 303(f) of S. 268 will be subject to varying interpretation unless clarifying definitions are added.

The Society of Real Estate Appraisers believes that intelligent land use planning is an idea whose time has arrived. As a national organization with 17,000 members the Society is capable, through educational and training programs as well as through the medium of its publications, of training and advising its membership with regard to the intended objectives of this legislation. Uniformity of appraisal practice resulting in effective administration of the Act can occur if the legislation properly defines the two critical facets of the valuation process which are listed above.

If we can be of further assistance to your committee regarding your deliberations on this Act, our Public Affairs Committee would be pleased to have the opportunity to meet with you.

Very truly yours,

RICHARD A. BOWLER,
Chairman, Public Affairs Committee.

NATIONAL ASSOCIATION OF HOME BUILDERS,
Washington, D.C., March 20, 1973.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the National Association Home Builders, I request that the comments set forth in this letter be included in the hearing record on S. 268 and related bills concerning national land use policy.

The home building industry recognizes the need for national land use policy and planning assistance to make possible more productive governmental action in balancing the diverse demands upon our finite supply of land. We applaud efforts to recast land use planning in this country so as to take into account national and state interests as well as those of a strictly local nature. We commend you and your Committee for the years of work and thought which you have devoted to this subject.

While we favor the purpose of the Land Use Policy and Planning Assistance Act of 1973 and believe that it provides an improved framework for decision making with respect to land use, we are deeply concerned with the provisions of Section 306 of this bill as presently drafted. In our view, any national land use program must have as a primary objective the achievement of our Congressionally declared national housing goal of a "decent home and a suitable living environment for every American family." A fundamental precondition to the achievement of this goal is the elimination of exclusionary practices by local authorities which cause unwarranted restrictions on the provision of housing, especially housing for those of low and moderate income. Rather than eliminating such practices, Section 306 of this bill would hand the champions of exclusion a new and effective tool with which to frustrate freedom of housing choice.

Subsection 306(a) would require that all Federal projects significantly affecting land use be consistent with the state plan. Federal housing assistance programs are specifically identified as among those included. Since Federally assisted housing already must meet the same local housing code and zoning requirements as any other housing, there seems little justification for singling out such housing for special consideration. We firmly believe that Subsection 306(a) will

be viewed by some jurisdictions as an invitation to use state land use planning to promote exclusionary practices.

Likewise, the provisions of Subsection 306(b), if applied to assisted housing, would unfairly cause such housing to be placed in a category different from other housing. We, therefore, conclude that the provisions of Subsection 306(b) could encourage the resort to dilatory practices for the purpose of discouraging housing development.

Theoretically, states would be encouraged by the proposed legislation to overrule exclusionary practices in cases of development and land use of regional benefit, but it is doubtful that such encouragement will effectively counterbalance the impact of Section 306. Furthermore, "development and land use of regional benefit" is defined as that for which "there is a demonstrable need affecting the interests of constituents of more than one local government which outweighs the benefits of any appreciable restrictive or exclusionary local regulations." This vague definition fails to provide an objective basis upon which to determine improper exclusionary practices.

In addition to our deep concern about the exclusionary practices in this bill, we are disappointed that it does not place the responsibility for administering the proposed assistance program for state land use activities within the Department of Housing and Urban Development. There should be only one entity in the Federal Government principally responsible for state land use planning. HUD, with its preeminent responsibilities in urban matters—over 70 percent of our population lives in urban areas—and in administering planning programs, has established experience in the field. There are land use considerations, of course, which fall within the particular expertise of the Department of the 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 Department of the Interior are provided for.

In May of 1971 our Board of Directors adopted a resolution with respect to national land use policy. This resolution, a copy of which is attached, took cognizance of the bills pending in the Congress involving national land use programs and policy and recognized that HUD 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."

We are grateful for the opportunity to express our views on this subject which we believe is of crucial importance to all of us and to all future generations of Americans as well.

Sincerely,

GEORGE MARTIN, *President.*

Enclosure.

NATIONAL ASSOCIATION OF HOME BUILDERS—RESOLUTION

NATIONAL 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 oof 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.

AMERICAN PETROLEUM INSTITUTE
1801 K STREET, NORTHWEST
WASHINGTON, D.C. 20006
(202) 833-5580

Frank N. Ikard
PRESIDENT

February 6, 1973

Senator Henry M. Jackson, Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to submit this statement on behalf of the American Petroleum Institute and the Rocky Mountain Oil and Gas Association on the proposed Land Use Policy and Planning Assistance Act of 1973.

The degree of interrelation between land and energy gives this legislation great importance in the eyes of the energy industries, and the hearings and study being conducted by your committee into this vital matter can be of great benefit in achieving the goal of balanced, rational land use planning.

The American Petroleum Institute and the Rocky Mountain Oil and Gas Association appreciate this opportunity to express our views on this important legislation.

Sincerely,

Frank N. Ikard

FI:lr

STATEMENT OF

AMERICAN PETROLEUM INSTITUTE
ROCKY MOUNTAIN OIL AND GAS ASSOCIATION

on

S. 268

Mr. Chairman, Members of the Committee:

The American Petroleum Institute and the Rocky Mountain Oil and Gas Association appreciate this opportunity to offer for the record their views on S. 268, and wish to commend the Committee for its diligence in seeking solutions to the nation's growing and complex land use problems. In this statement, we will address those policy questions identified by the Committee in which the petroleum industry has particular expertise and interest.

We fully support the concept of land use planning, and particularly agree with the purposes of this legislation as explained in Section 103. We believe that legislative action to establish a national land use policy will be of assistance in conserving the environmental, esthetic, economic and social values of the nation and that enactment of S. 268 would further the achievement of this goal.

However, we do not feel the bill adequately delineates the appropriate Federal role in land use planning, which we believe

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must include machinery to insure that state land use programs achieve and maintain a balance among all the competing uses of land. Without substantive review on the part of the Federal Government to insure that full and adequate consideration is given to needs that are more than local in nature, the entire concept of a national land use policy act could be frustrated.

One purpose of the bill, stated in Section 103(c), is to establish "reasonable and flexible Federal guidelines" to which state land use programs must conform in order to be eligible for certain Federal funds. We support this concept. States which accept Federal funds have an obligation to use those funds for the purposes stated in the Act. However, where "reasonable and flexible Federal guidelines" are particularized in later sections, and especially in Title III, they revolve primarily around environmental and housing considerations.

The Secretary of the Interior must find that all areas of critical environmental concern to the nation are included in state plans; the Administrator of the Environmental Protection Agency must find that the programs are in compliance with existing pollution control laws; and the Secretary of Housing and Urban Development must find that they are in conformance with Section 701 of the Housing Act of 1954. If any of these three

officials deems a state program inadequate on these grounds, the state is ineligible for continued grants-in-aid.

Nowhere in the bill is there any similar requirement for a finding based on economic and national security needs. We believe that the absence of such a requirement is an unacceptable omission. We agree with the sponsors of the bill that it is reasonable and wise to ask that states accepting Federal money demonstrate that environmental and housing considerations have been given adequate attention. Yet, if the statement of policy in the bill and its stated purpose of developing balanced land use plans are to be implemented, it is equally important to require that economic development and national security needs have also been considered.

Under the bill as it is now written, it appears possible for a state to ban all industrial development throughout its entire land base and to receive Federal funds to do so. States should not be permitted to use Federal funds to develop land use plans which completely ignore the need for energy facility siting and other beneficial development.

As originally introduced in the 92nd Congress, the predecessor to S. 268 (S. 632) provided for a balanced review of state programs to see that all national needs were considered. Such a balanced review is not contained in S. 268.

One possible method of correcting this omission so as to insure that the intent of the bill may be fully implemented would be to insert a new Section 305(b)(3). (The basic language comes from Section 306(c)(8) of Public Law 92-583, the Coastal Zone Management Act, which Congress enacted last year):

> (3) The Secretary shall not make any grant to any State pursuant to this Act unless he has determined that the State land use program provides for adequate consideration of the national interest involved in the siting of key facilities and other facilities necessary to meet requirements with are other than local in nature.

In addition, we believe that Section 501(f), defining "key facilities," should be amended to make clear that facilities relating to the production, processing and transmission of energy resources are included. We believe that Section 501(f) was intended to include these facilities and our amendment serves merely to clarify this intent.

Section 501(f) should be amended to read:

> (f) The term "key facilities" means public facilities on non-Federal lands which tend to induce development and urbanization of more than local impact and major facilities on non-Federal lands for the development, production, processing, generation, and transmission of energy and energy resources. (New language underlined.)

Further, we believe that there should be additional recognition in the language of this legislation of the need to encourage exploration for and development of domestic energy resources. We would hope that such language, appropriate to Section 102, would be in line with the policy finding in Public Law 91-631 that "...it is in the national interest to foster and encourage private enterprise in the orderly and economic development of domestic mineral resources (and) reserves..."

On the whole, with the exceptions explained above, we believe that S. 268 represents an important contribution toward filling a nationwide land use planning void. Many of its provisions are particularly important.

For example, Section 101(d) reads, in part: "The Congress finds that a failure to conduct competent land use planning has, on occasion, resulted in delay, litigation, and cancellation of proposed significant development, including... facilities for the development, generation, and transmission of energy..."

Congressional recognition of this problem is a key to its resolution.

We applaud the declaration in Section 102(a) that national land use policy should "incorporate environmental, esthetic, economic, social, and other appropriate factors," and we believe that the following declaration of policy in Section 102(c) is a cogent description of the need for and value of national land use planning:

> "The Congress further declares that intelligent land use planning and management can and should be a singularly important process for preserving and enhancing the environment, encouraging beneficial economic development, and maintaining conditions capable of improving the quality of life."

As stated before, we fully support the purpose of the Act, as stated in Section 103; we agree that administrative authority should be vested in the Secretary of the Interior; and we believe that the allocation of Federal grants to the states can turn the concept of balanced land use planning into a much-needed reality.

Without such balanced policy, and programs based on that policy, this nation may not be able to provide the energy it needs to heat its homes and offices, to power its factories, and to fuel its trucks, cars, trains and planes.

Already, the deleterious effects of the absence of balanced land use plans are painfully apparent. As examples, we can point to the difficulties the petroleum industry is experiencing in finding suitable refinery and deep-water terminal sites along our eastern seaboard.

One state has prohibited such construction in its entire coastal zone. Similar restrictive legislation has been proposed in other states. In some instances, local environmental opposition has blocked development proposals.

Seven eastern states account for 40 percent of total domestic demand for oil products, but have only 12 percent of the nation's refining capacity. Unless sites can be found and made available for refinery development, this region will become even more dependent on supplies brought in from outside. The only alternatives would be to add to costs by building refineries in locations remote from major consuming areas -- or to build them abroad.

The refining situation is growing more and more serious. The Department of the Interior predicts that between now and 1980, U. S. consumption of oil products will rise from 16 million to almost 21 million barrels a day. If these products are to be made in the U. S., this will require the equivalent of 30 large refineries with

a capacity of 160,000 barrels a day apiece. To meet anticipated 1985 demands, the equivalent of 57 such refineries will be needed. Yet we know of only one refinery coming onstream this year, and we are aware of no firm plans to build any more refineries anyplace in the U. S. Since it takes about 2½ years to build a new refinery, or to expand an existing one, it will be 1976 at the earliest before significant amounts of new capacity can be made available.

The alternative of building refineries abroad and importing finished products is not a viable one. Economists in government and industry alike have estimated that by 1985, if we have to import over half of our crude oil due to inadequate domestic supplies, the nation would run a balance-of-trade deficit of $20 to $30 billion a year just on petroleum alone. If we were to import high-priced manufactured products instead of crude oil, this deficit would be much higher. The importation of a wide variety of finished products would increase the risk of supply interruptions. In addition, exportation of refining capacity would mean a potential loss of jobs and income to thousands of U. S. workers and their families.

We are having problems finding sites just to unload our present level of crude oil imports safely, efficiently and economically. U. S. ports are too shallow to handle the

very large crude carriers used to carry oil from Africa and the Middle East to Japan and Western European nations. Unless we are to clutter our sea lanes and harbors with hundreds of small and inefficient tankers, we must build offshore deep-water terminals in coastal waters connecting to onshore pipelines and facilities. Despite much study, no sites for such facilities have been selected.

If a wide variety of finished oil products were to be imported in addition to crude oil, this problem would intensify. If port facility development continues to be delayed by siting problems, we may not be able to obtain enough foreign oil to make up the shortfall caused by inadequate domestic supplies.

We have pointed to the particular problems of refinery siting and port development as examples of the inter-relation between energy supplies and land use planning. These problems and their impact are not only regional but national in scope and significance. We recognize that the administrative machinery of S. 268 does not require refinery construction or port development within the borders of any states. It will, however, if amended as we have suggested, require each state accepting Federal funds to balance its own localized needs and desires against the national interests involved in the siting of facilities necessary to meet needs which are more than local in nature.

Such balance, and the recognition of the national nature of certain land use requirements, will help to ease the energy supply situation. There is no segment of energy development which is not dependent on the effective use of land. We cannot bring new oil supplies from the ground unless we have access to the land; we cannot transport the crude oil to refineries unless we have places to put pipelines and other related facilities; we cannot refine the crude oil into finished products unless we have refinery sites; and we cannot move the finished products to consumers unless the transportation network is available.

These needs for energy facilities -- needs which are national in character -- can and should be met through balanced land use planning.

We believe that the measure before you, if modified along the lines that we have suggested, can serve as the basis for such planning. It can act as the vehicle for the development of a meaningful and effective national land use policy, and for the development of state land use programs and plans pursuant to that policy which are responsive to the present and future needs of the American people.

UNITED STATES SENATE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Hearings on S. 268, The "Land Use Policy and Assistance Act of 1973"

Statement of National Newspaper Association
March 21, 1973

INTRODUCTION

The National Newspaper Association (NNA) which represents the interests of more than 8500 community newspapers across the United States has a limited but significant interest in S. 268, the "Land Use Policy and Assistance Act of 1973".

It is not the purpose of this Association to support or oppose the enactment of this type of legislation.

Rather, NNA's interest lies in ensuring that the bill, should it become law, protects the public by guaranteeing opportunities for the public to become aware of various developments affecting the use of local lands and to participate actively in the decisions affecting such land use.

The bill as introduced by Senator Henry M. Jackson and 19 co-sponsors on January 9, 1973, already indicates a concern that the public be informed of developments and be provided with an opportunity to participate fully. (References herein are to the January 9 bill.)

For example, Section 204 of the bill assures "an opportunity for participation in the coordination process" by "members of the public engaged in activities which affect or are affected by state land use planning policies, and programs...".

Similar language is found in Section 302(a)(13).

Again, Section 302(b)(5) grants authority for "public hearings, with adequate public notice, allowing full public participation...". Also, Section

401(b) requires a public hearing "with adequate public notice" by Federal agencies when proposing new programs, policies or rules and regulations relating to Federal lands.

CONCEPT OF PUBLIC NOTICE

To the thousands of newspaper publishers whose interests are represented by NNA, "public notice" means an official notice in newspapers. It is our hope that the sponsors of this important legislation and the members of the Senate Committee on Interior and Insular Affairs share this concept. We firmly believe that today, any other type of notice to the public is woefully inadequate.

In earlier times, notice to the public was sometimes given by posting at the Court House, or the Post Office or other selected locations in the local community, or sometimes by mail, in addition to or instead of notices in newspapers. Some Federal laws even today require only that publication be made in the Federal Register.

To be fully adequate in the 1970's however, public notices, especially those that affect a broad range of the population in an area, must be designed to reach as many people in the affected area as possible. This is particularly true when interests in local lands are involved. Public notices in newspapers are designed to accomplish this end.

Local newspapers reach a substantial majority of the citizens in the local community. These people pay to receive a newspaper and they make it a point to read every part of it. The public has become accustomed to learning about developments affecting land in their area by reading public notices in their local papers.

State laws establish procedures for local zoning boards and planning commissions and other agencies dealing with lands and land use. Traditionally, those laws have required public notice in newspapers as the principal means of notifying the public of proposed changes.

SUGGESTED AMENDMENTS TO S. 268

It is with this in mind that NNA suggests that the following changes be made in S. 268. (NOTE: New language where suggested is underlined.)

1.) Amend Section 301(e) by inserting following the first sentence (line 25,p. 16): "The State shall cause said report to be published in one or more newspapers of general circulation published in the State and shall file with the office sworn proof of publication from the newspaper(s) with a copy of the published notice.

2.) Amend Section 302(a)(12) by inserting after the word 'hearings' (line 8, p. 20): "pursuant to adequate public notice".

3.) Amend Section 302(a)(13) by inserting the following after the word 'public' (line 13, p. 20): "pursuant to adequate public notice".

4.) Amend Section 302(b)(5) (line 25, p. 21) by substituting for "have authority to conduct public hearings, with adequate public notice..." the words: "be required to conduct public hearings pursuant to adequate public notice...".

5.) Amend Section 305(f) (line 14, p. 32) by substituting the period at the end with a colon and adding: "and provided further, that such revisions shall only be made following a public hearing pursuant to adequate public notice."

6.) Amend Section 305(g)(2) (line 20, p. 33) by changing the second sentence to read: "The hearing board shall hold public hearings pursuant to adequate public notice and receive such evidence as it deems necessary."

7.) Amend Section 307(b) (line 21, p. 37) by inserting after the word 'hearing': "pursuant to adequate public notice".

8.) Amend Section 401(b) (line 6, p. 39) by inserting following 'statement': "and a public notice as to the availability of each."

9.) Amend Section 401(b) (line 13, p. 39) by substituting for the word 'with': "pursuant to".

10.) Amend Section 405(a) (line 24, p. 44) by substituting for the word 'with': "pursuant to".

11.) Amend Section 405(a) (line 2, p. 45) by changing the second sentence to read: "Should no public hearing be held, the joint committee shall solicit, pursuant to adequate public notice, the views of the public and all affected parties and submit a summary of such views, together with its recommendations, to the Secretary."

12.) Amend Section 405(b) (line 11, p. 45) by inserting after 'hold further public hearings': "pursuant to adequate public notice".

13.) Add a Section 501(i) as follows: "The term 'adequate public notice' when used with respect to public hearings concerning specific lands means a publication in one or more newspapers of general circulation which are published in the political sub-division(s) wherein the affected land(s) lie(s). Such publication(s) shall be made at least one time per week for three successive weeks in the same newspaper(s) with the final publication occuring between the 45th and 20th days prior to the hearing. (Nothing shall prohibit an earlier voluntary notice or series of notices.) Such notice shall contain 1) a legal description; and 2) a topographical map of the affected land, which map shall indicate the names of major streets, highways, waterways, or other generally known points of reference; 3) a complete description of the use proposed to be made of the land, and 4) a statement of the time and place of any public hearing(s) to be held. The agency making the required publication shall obtain and keep on file sworn proof of each required publication from newspapers carrying the publication.

Where no public hearing is involved, "adequate public notice" means at least one publication in one or more newspapers of general circulation within the affected state. If affected lands lie in more than one state, publication shall be made in each such state. The agency making the publication shall obtain and keep on file sworn proof of publication from the newspaper(s).

14.) Finally, we note that no provision has been made for notifying the public of any decisions made by state or Federal agencies concerning proposed uses to be made of lands under this bill. NNA respectfully suggests that appropriate amendments be made in the bill to remedy this deficiency, by proper use of public notice.

CONCLUSION

From a cursory reading, it might appear that NNA is seeking a maximum use of public notice in S. 268. Actually, NNA is only seeking minimal public notice requirements for the protection of the public. NNA's objective is simply to protect the public by assuring, as the bill's sponsors originally intended, an opportunity for the public to become aware of proposed changes in land use and a chance for public participation in the decision-making processes concerning such proposals.

One may question our suggestion that there be at least three notices (once a week for three successive weeks) in advance of public hearings. Actually this only guarantees three publications over a 15-day period. This is a minimum requirement and is designed to assure that even persons who are away on two-week vacations will have an opportunity to read the notice. Two- and three-week vacations are common today and we believe this requirement to be a minimum.

The public notice requirements that this Association is suggesting will not delay any projects which the Act attempts to aid. The cost of public notice in newspapers is extremely reasonable, especially when its value to the public near the affected lands is taken into consideration.

It is this Association's sincere hope that the members of this Committee will take these views into favorable consideration when final decisions on S. 268 are made.

Respectfully submitted,

NATIONAL NEWSPAPER ASSOCIATION
BY: WILLIAM G. MULLEN
SECRETARY, GENERAL COUNSEL

491 National Press Building
Washington, D. C. 20004



910 17th Street, N.W.
Suite 728
Washington, D.C. 20006
(202) 872-1314

March 20, 1973

Honorable Henry Jackson
Chairman
Senate Interior & Insular
Affairs Committee
New Senate Office Building
Washington, D. C. 20510

Dear Senator Jackson:

On behalf of the League of New Community Developers, I would like to express our appreciation to you and the Committee for accepting our testimony on S. 268 and S. 924. The League made several recommendations, with respect to the legislation, which we would like the Committee to consider in marking up the bills and have included them below for your convenience.

1. New communities defined for coverage by the legislation. We were pleased that new communities were specifically included in the definition of "large scale development" in the Administration's bill, S. 924. While new communities were not included in the same definition in the Jackson bill we assume that they were intended to be covered. Even so, we believe new communities should not be included by implication and, therefore, recommend that Section 401(h) of S. 924 prevail as the definition of "large scale development" in any clean bill reported by the Committee.

Furthermore, we would recommend that the definition of "development and land use of a regional benefit" in both bills be amended to include direct reference to new communities. Section 401(g) of S. 924 should be amended as follows:

> On line 7 after "private development" insert a comma and add the following; "including new communities and large scale developments," and continue thereafter with the text.

Similar changes should be made in Section 501 of S. 268 (the definition section), Subsections (g) and (h).

Explanation: We feel that new communities are an important tool in the development of land use planning and management and are of direct importance to States in developing state-wide policies. They are large scale developments and can produce regional benefits and, therefore, should be included under both terms. In addition, we feel that inclusion of new communities within the definition of "development and land use of a regional benefit" will encourage States to take actions to help eliminate or minimize the multi-jurisdictional problems faced by developers in trying to provide some kind of areawide response to metropolitan problems.

2. Integral role of new communities in State land use planning process. We would recommend that a section from each bill be included in the legislation reported out by the Committee to insure a role for new communities in State-wide land use planning:

S. 924, Section 202(a)(13): for initial approval of a grant, the planning process must include a "policy for influencing the location of new communities and a method for assuring appropriate controls over the use of land around new communities."

S. 268, Section 302(a)(3): to insure continued eligibility for grants, the State planning agency must develop a process by which it can project the nature and quantity of land needed and suitable for "urban development, including the revitalization of existing communities, the development of new towns and economic diversification of existing communities which possess a narrow economic base; rural development..."

Explanation: The League welcomes State involvement in land use planning if that role will facilitate development of new community projects. We feel that both provisions create a positive climate to achieve this goal. Moreover, they attest to the important role new community projects play in overall land use planning and policy development.

3. Appeals procedure. We recommend inclusion of Section 303(e) of S. 268 in any bill reported out of the Committee.

Explanation: It has been the experience of some new community developers that local governments, in return for project approval, pressure the developers to deal with problems and provide services that are really the problem of local government. When such governmental requirements are made, we feel procedures should be set up whereby these actions can be appealed.

4. Cooperation with other State planning agencies. We believe Section 305(c) of S. 268 should be amended to give the State 701 agency sign-off on the land use plan. The amending language follows:

> On page 30, line 25 insert a comma after "Development" and include "through approval by the State agency designated to conduct comprehensive planning according to Section 701 of the Housing Act of 1954" and continue with the text.

Second, we would recommend that cooperation with the State 701 comprehensive planning agencies be made mandatory accordingly:

> S. 924: On page 14, at the end of line 6 insert the following words; "the planning activities of the Statewide comprehensive planning agencies established under Section 701 of the Housing Act of 1954" and continue with the text.

The same amendment should be applied to Section 302(b)(4), line of 22 of S. 268.

Explanation: We believe that the State 701 agencies should be involved in the development of the State land use plans. Many of the issues will be similar and we feel that, without such procedures, the institutional competition that has developed at the Federal level will be merely transferred to State government. Ideally, we believe the 701 agency should be designated by the Governor as the land use planning agency.

5. Involvement of the Domestic Council in the land use planning program. A new Section 203 (S.924) or Section 301(b) (S.268) should be drafted to give the Domestic Council a role, pursuant to the responsibilities it was assigned by Title VII of the Housing and Urban Development Act of 1970,

in the development and implementation of the land use planning program. Language could be as follows:

> "Pursuant to the responsibility assigned to the Domestic Council in Title VII of the Housing and Urban Development Act of 1970 to formulate a national growth policy, the Domestic Council shall
>
> (a) be responsible for establishing national goals and objectives by which individual State land use plans can be evaluated and;
>
> (b) have the authority to evaluate the progress of the land use planning program in meeting these national goals and objectives."

Explanation: The Domestic Council was charged by the Congress in Title VII of the 1970 housing bill with the responsiblity for developing a national growth policy. Interdependent State development, regional needs or conflicts, the vital balance between urban and rural growth -- issues which will be reflected in the State land use plans -- will be difficult to resolve or insure without national growth guidelines and priorities. The Domestic Council was given this responsibility and we believe that now, with fifty State land use plans to be submitted, it must fulfill its functions. Without the common thread of national priorities we are afraid the plans will be meaningless as a tool to guide national growth and development.

6. Local and State government investment decisions. A new Section 202(a)(19) (S.924) and a new Section 302(a)(15) (S.268) should be added to require that the statewide land use planning process include:

> "the establishment of a method for projecting and guiding investments to be made by local, State and Federal governments so that their location and impact will have the maximum effect on overall land use and development."

Explanation: The major impetus for new towns also lies in the key investments, either public or private, Federal, State or local, in the infrastructure of the community. In many cases the developer will urge location of hospital,

school or government office building in the community to stimulate and anchor other growth and investment in the area. Because of ths causal relationship between growth and government investment decisions, we believe the relationship should be identified and the decisions related to other investment decisions, such as the location and development of a new community.

We would appreciate your consideration of these recommendations during your Executive Sessions. Thank you.

Sincerely,

Mark Freeman

Mark Freeman
Executive Director

THE LEON BRIDGES CO.,
Baltimore, Md., March 12, 1973.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR "SCOOP": I am writing in support of amendments being considered to S. 268 The Land Use Policy and Planning Act of 1973.

I concur 100% in the testimony made to your Committee on Interior and Insular Affairs 27 February 1973 by Archibald C. Rogers, FAIA in support of amendments [1] to withhold Federal water-sewer, transportation, and recreation systems from states not developing a compresensive land use program after an initial five year planning period is over and, [2] to provide $100 million annually in 90% Federal share grants to help states improve their land use planning and management capabilities.

I will not insult the tremendous personal knowledge you have by going into further detail in support of this letter, nor will I attempt to "educate" those learned members of your Committee who are obviously fully aware of the implications of these two amendments.

However, I do urge you to do what is most certainly correct and right and that is that you and your Committee support the amendments totally.

Most cordially yours,

THE LEON BRIDGES CO.
LEON BRIDGES, *AIA.*

ROBERT A. BEZZO & ASSOCIATES, ARCHITECTS,
Edmonds, Wash., March 12, 1973.

Re Amendments to S. 268.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SIR: This is written to urge your support for the amendments to S. 268, the Land Use Policy and Planning Assistance Act of 1973. The amendments include the following provisions as understand them:

1. The withholding of Federal water-sewer, transportation, and recreation assistance from those states not developing land use programs after a period of five years.

2. The providing of $100 million annually at 90% Federal share grants to help states improve their land use planning and management capabilities.

Please let me know the results of the Committee's decision regarding the above legislation.

Very truly yours,

ROBERT A. BEZZO.

LEA, PEARSON & RICHARDS, ARCHITECTS,
Tacoma, Wash., March 13, 1973.

Hon. HENRY M. JACKSON,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: We urge your support of Amendments to Senate Bill 268, the Land Use Policy and Planning Assistance Act of 1973, to:

(1) Withold Federal water, sewer, transportation and recreation assistance from states not developing land use programs after five years, and

(2) Provide $100 million annually in 90% Federal share grants to help states improve their land use planning and management capabilities.

If possible we would greatly appreciate having a report of the action of the committee.

With best personal regards,

Sincerely,

CHARLES T. PEARSON, *F.A.I.A.*

MAHLUM & MAHLUM ARCHITECTS,
Seattle, Wash., March 13, 1973.

Hon. HENRY M. JACKSON,
U.S. Senator,
Senate Office Building, Washington, D.C.

DEAR SCOOP: You have our complete support in your continued strong efforts for a final version of S. 268, the Land Use Policy and Planning Assistance Act, that will:

(1) Withhold Federal water-sewer, transporation, and recreation assistance from states not developing land use programs after five years; and

(2) Provide $100 million annually in 90% Federal share grants to help states improve their land use planning and management capabilities.

Please let us know how your committee acts on this.

With considerable pride in your positive attitudes on important issues, and with our warmest personal wishes

Sincerely,

EDWARD MAHLUM, AIA, CSI.
JOHN MAHLUM, AIA.

BINDON & WRIGHT, ARCHITECTS,
Seattle, Wash., March 9, 1973.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: We believe in the importance of planning ahead, wherever possible, in order to assure the best opportunity to do the right thing. An incentive for State governments to plan ahead is contained in Amendments to S. 268, The Land Use Policy and Planning Assistance Act of 1973, as follows:

1. Withhold Federal water-sewer, transportation and recreational assistance from states not developing land use programs after five years.

2. Provide 100 million annually in 90 percent Federal share grants to help states improve their land use planning and management capabilities.

We believe that responsible people understand the values and responsibilities in such planning and hope you will support such incentives.

Sincerely,

ELTON C. GILDOW.

THE RICHARDSON ASSOCIATES,
ARCHITECTS, ENGINEERS, PLANNERS,
Seattle, Wash., March 9, 1973.

Hon. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: I am writing to you both as an architect, active in the community and in my practice, and as a member of the Washington State Land Planning Commission regarding S. 268, the Land Use Policy and Planning Assistance Act of 1973.

I suspect that my views coincide with yours on this issue, but I wish to express my strong support for an Act that will: (1) Withhold Federal water-sewer, transportation, and recreation assistance from states not developing land use programs after five years; and (2) Provide $100 million annually in 90% Federal sharing grants to help states improve their land use planning and management capabilities.

Strong Federal incentives are essential to the development of adequate State Planning. Adequate State Planning is essential to the continued health and prosperity of this Nation.

The members of the Washington State Land Planning Commission have spent eighteen months developing a proposed State Land Use Act in anticipation of the passage of the Federal Act. We came to the inescapable conclusion that good planning must be required not merely permitted and that good planning is going to cost money. We are convinced that funds thus expended can have a tremendous beneficial impact on the future of our State.

I urge your continued effort on behalf of a strengthened version of S. 268. I am confident that the bill, if passed with the provisions that I have described, will be a major landmark in national policy.

Very truly yours,

GERALD A. WILLIAMS.

BOTHELL, WASH., *March 8, 1973.*

Senator HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: I urge your support of amendments to S. 268.

Very truly yours,

HAROLD KEENEY.

FAIRBANKS, ALASKA, *February 5, 1973.*

Senator TED STEVENS,
U.S. Senate,
Washington, D.C.

The following telegram was sent to Senator Henry M. Jackson regarding the possible merging of the national coastal zone management law with the land use bill now before the Senate Committee on Interior and Insular Affairs. We strongly urge that the coastal zone management program is established by Public Law 92–583 be retained separately from the land use bill. The problems facing our Nation in the coastal zone are well documented in the recent MIT publications "The Waters Edge—Critical Problems of the Coastal Zone." Immediate forceful action is necessary to solve many of these critical problems. The National Oceanic and Atmospheric Administration in the Department of Commerce is best qualified to lead the efforts of solving these difficult problems. These problems are unique enough to be handled separately both in responsibility and in activities and therefore should not be merged with land use problems.

Very truly yours,

DONALD H. ROSENBERG,
Coordinator, University of Alaska.

SEATTLE, WASH., *March 7, 1973.*

Hon. HENRY M. JACKSON,
U.S. Senator, Washington, D.C.

DEAR SENATOR JACKSON: We have reviewed Senate Bill 268 concerning a national land use policy. Although the goals of this bill are meritorious in terms of overall national land use, the legislation as presently drafted, poses a grave threat to continued tribal sovereignty and the goal of Indian self-determination.

The bill appears to provide that states may, under certain conditions, qualify for grants to establish statewide land use policies and that federal projects affecting such use must be consistent therewith. Exempted from the operation of the act are those lands "held in trust for the benefit of Indians". (Section 501 of the Act)

Thus the act would not exempt lands held in fee, but subject to a restriction against alienation imposed by the U.S. government in the state of Washington (25 U.S.C. § 351) or fee land within the exterior boundaries of the reservation held by the tribe, individual Indian, or others. Thus, the possibility exists that a tribal government would be unable to provide for comprehensive planning, housing programs, etc. within the boundaries of its reservation without compliance to a state plan adopted pursuant to the provisions of the act. Such a result would run directly counter to the concept of Indian self-determination and tribal sovereignty.

Therefore, we suggest the following amendment to Section 501(c):

In place of ". . . except lands held in trust for the benefit of Indians, Aleuts, and Eskimos." insert the following:

"Except all lands within the exterior boundaries of any Indian reservation recognized by treaty, statute or other agreement with the United States government or by the Secretary of the Interior."

Section 501(d) should be amended as follows:

Delete ". . . held by the Federal Government in trust for the benefits of Indians, Aleuts, and Eskimos." and insert:

". . . within the exterior boundaries of any Indian reservation recognized by treaty, statute or other agreement with the United States government or by the Secretary of the Interior."

We urge that no legislation be contemplated which detracts or interferes with Indian self-determination and tribal sovereignty. Thank you.

Very truly yours,

ZIONTZ, PIRTLE & MORISSET.
By MASON D. MORISSET.

Senator HENRY M. JACKSON,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: Title I, Section 101, Paragraph (d) states:

"The Congress finds that a failure to conduct competent land use planning has, on occasion, resulted in delay, litigation and cancellation of proposed significant development, including, but not limited to, facilities for the development, generation and transmission of energy, thereby too often wasting human and economic resources, creating a threat to public services, . . .".

This is doubtless true, but I can't find anything in S. 268 that will correct it. The mere fact that an area is legally open (or zoned) to allow some activity is no protection in the fact of the present laws regarding environmental considerations. Particularly those laws which allow anybody, no matter how remote from the development in question, to initiate litigation to block such development. The Alaska Pipeline is a perfect example.

S. 268 may be helpful in providing better coordination for urban renewal and city planning type of activities, but I do not see where it will be helpful regarding significant industrial developments, and as a matter of fact, it may be in some respects detrimental. What will happen if Montana zones the southeast corner of the state as strictly agricultural. Or, Washington, zone the northeast corner of the state strictly mineral in the forestry area where both industries exist. The bill frequently emphasizes States Rights, and I see nothing to prevent Montana from cutting off Minnesota's fuel, or to prevent Minnesota from cutting off Chicago's iron ore, etc.

I think we'd better review this legislation with the recognition that we are one country and the states have got to help each other if the country is to survive.

Respectfully,

H. E. REED.

KNOXVILLE, TENN., *March 7, 1973.*

Senator HENRY JACKSON,
Chairman, Senate Interior Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: I have been authorizeed by the East Tennessee Group of the Tennessee Chapter of the Sierra Club to present their views regarding Senate Bill 268, the Land Use Policy and Planning Assistance Act of 1973. The following statement of the East Tennessee Group is intended for the hearings on Senate Bill 268:

STATEMENT FOR HEARINGS ON SENATE BILL 268, THE LAND USE POLICY AND PLANNING ASSISTANCE ACT OF 1973

The East Tennessee Group of the Tennessee Chapter of the Sierra Club wishes to indicate its basic support for Senate Bill 268. We would, however, like to see the bill modified in the following respects.

Title III, Sec. 302(b)(7) provides that the state land-use planning agency should have an advisory council composed of elected officials of local appointment of some citizens to this advisory council on the basis of their interest and/or expertise in land-use planning.

If the Act is to result in a truly "National Land Use Policy", all states must participate in the program outlined by the Act. Accordingly, we believe that Title III, Sec. 307 should be strengthened to guarantee this. One possible way would be a cut-off of federal funds for land- and water-resources development of any state which refused to participate in the program.

Certainly we wish to see the Act accomplish its intended purpose, but without funding over a sufficient period of time, Senate Bill 268 could become just another data-gathering study with little accrued value to the tax-paying citizen. We therefore suggest that Title V, Sec. 507, 510 be modified to provide for an annual appropriation of 100 million dollars for the next 10 years.

Sincerely,

E. KENNETH MCDONALD,
Wilderness Conservation Chairman.

THE SEATTLE CHAPTER,
THE AMERICAN INSTITUTE OF ARCHITECTS, INC.,
Seattle, Wash., March 15, 1973.

Hon. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs,
Washington, D.C.

DEAR SENATOR JACKSON: The Seattle Chapter of the American Institute of Architects, representing over five hundred registered architects in the northwestern part of the State of Washington, strongly supports your Land Use Policy and Planning Assistance Act of 1973.

We also urge your support of the amendments to S. 268, which withhold federal water, sewer, transportation and recreation assistance from states failing to develop land use programs within five years, and provide $100,000,000 annually in ninety percent federal grants to assist states in the improvement of their land use planning and management capabilities.

Please let us know what action is taken by your commitee on these amendments.

We are very pleased with your activities in the area of land use planning, and wish to assure you of our continued support in this regard.

Yours very truly,

DAVID HOEDEMAKER, *President.*

ENVIRONMENTAL DESIGN ASSOCIATES P.S. INC.,
Lacey, Wash., March 15, 1973.

Hon. HENRY M. JACKSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JACKSON: I urge your committee to support a final version of *S. 268*, The Land Use Policy and Planning Assistance Act, that will:

(1) *Withhold Federal water-sewer, transportation and recreation assistance from states not developing land use programs after five years;* and

(2) *Provide $100 million annually in 90% Federal share grants to help states improve their land use planning and management capabilities.*

I would appreciate hearing of your Committee's action.

Sincerely,

R. JUDGE OWENS, *A.I.A.*

NATIONAL LEAGUE OF CITIES,
U.S. CONFERENCE OF MAYORS,
Washington, D.C., February 1, 1973.

Hon. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, New Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: The National League of Cities and the United States Conference of Mayors appreciate the opportunity to testify on the "National Land Use Policy and Planning Assistance Act of 1973", S. 268 during the Committee hearings of February 6 and 7. This major bill has received one of the most thorough examinations of any piece of legislation before the Congress, we hope we can contribute to the dialogue. We are informed by Committee staff that time is reserved for us to testify on Wednesday, February 7. Our witness will be Mayor Wes Wise, Mayor of the City of Dallas, Texas, Chairman of the National League of Cities' Committee on Environmental Quality.

The National League of Cities and United States Conference of Mayors will submit a detailed statement for the record, and Mayor Wise will highlight several proposals that we feel will make S. 268 an even more effective mechanism for accomplishing national land use objectives.

Very truly yours,

ALLEN E. PRITCHARD, Jr.,
Executive Vice President,
National League of Cities.
JOHN J. GUNTHER,
Executive Director,
U.S. Conference of Mayors.

REP. JAMES C. WRIGHT, JR., CHAIRMAN
SEN. BIRCH BAYH
MR. ALFRED BLOOMINGDALE
MRS. MARION F. BROWN
SEN. JAMES L. BUCKLEY
REP. DON H. CLAUSEN
REP. ED EDMONDSON
SEN. MIKE GRAVEL
MR. MICHAEL RAPUANO
REP. FRED SCHWENGEL
SEN. ROBERT T. STAFFORD

LEO A. BYRNES
STAFF DIRECTOR AND COUNSEL

COMMISSION ON HIGHWAY BEAUTIFICATION
1121 VERMONT AVENUE NW.
Washington, D.C. 20005
(202) 254-3390

Senator Henry M. Jackson
Chairman
Committee on Interior and
Insular Affairs
3106 New Senate Office Building
Washington, D. C. 20510

Dear Senator Jackson:

As Chairman of the Commission on Highway Beautification, I am writing to express the interest of the Commission in S.268 and other legislation pending before this Congress for programs in land use planning and controls.

The Commission, created by the Federal-Aid Highway Act of 1970, and recently extended for one year, was directed to study federal, state, and local laws dealing with highway beautification. In particular, the Commission was directed to review the Highway Beautification Act of 1965 which, together with the 1958 "Bonus Law", marked earlier federal efforts to induce States to implement limited controls on land use. These two laws provide different approaches to induce these States to act adjacent to highways. In the 1958 "Bonus law" Congress attempted to induce States to control outdoor advertising adjacent to interstate highways by offering a bonus of one-half of one percent of additional federal participation in the financing of interstate highways. The 1965 Act provided for penalties of the loss of ten percent of federal assistance for highway construction for States which did not control outdoor advertising or junkyards adjacent to highways on the federally assisted interstate and primary systems. It also authorized funding for landscaping and scenic enhancement along federally assisted highways.

The Commission has not yet completed its review of these laws but did submit an Interim Report, a copy of which is attached.

Although the Commission has not completed its study, there are a few personal observations I would like to make at this time which might be of use to your Committee.

THIS IS RECYCLED PAPER

1) Programs to control outdoor advertising and junkyards, which represent a limited initial step to control land use adjacent to highways, should be coordinated with any land use programs developed because of the enactment of S.268 or similar federal legislation. Also aesthetic values should be given proper consideration in the development of State and local programs to control the use of land adjacent to highways.

2) Any State agency authorized to develop and implement new State programs for controls on land use should take adequate notice of the activities of other State agencies which have had, and will continue to have, a role in land use planning. These other agencies, such as the highway departments in many States, also have resources and expertise which should be properly used in any new State program.

3) Experience, thus far, in the administration of federal laws for the control of outdoor advertising has shown a strong tendency for federal standards to pre-empt local standards despite language in the federal law which was designed to allow States to adopt their own standards suitable to local conditions. Standards left to the discretion of the Secretary have tended to be detailed and inflexible; standards to be developed by agreement between the Secretary and the States have almost invariably been nearly uniform on terms advocated by the Secretary; and in some instances the Secretary has refused to accept standards which the law appears to leave to the discretion of the States.

4) One matter which section 131(d) of title 23 of the U. S. Code appears to me to leave to the full discretion of the States is the authority to zone areas as commercial or industrial. Yet, it appears that, because of concern over possible use of such zoning authority to zone areas commercial so that signs may be placed therein, the Department of Transportation has advised State and local officials that it will not accept as valid zoning any zoning limited to areas adjacent to major State highways. This position appears to conflict with efforts of others to direct States to place priorities on land use controls on areas impacted by key facilities.

5) The authority to impose a penalty of the loss of ten percent of federal highway funds appears to have been an effective device for the Secretary to induce the States to enact laws to control outdoor advertising which he considered satisfactory. Unfortunately, many State officials have indicated that they are not nearly as satisfied as the Secretary with laws enacted under such circumstances.

6) It should be noted that the penalty provisions which have been considered for non-Interstate highway funds together with the penalties of the Highway Beautification Act could cause a State to lose up to 41 percent of federal highway assistance for failure to adopt land use controls in compliance with federal requirements.

In closing I would like to commend the conscientious efforts of your Committee in studying these very important, but troublesome, questions of land use planning and controls.

Please let us know if this Commission can be of assistance.

Sincerely,

Jim Wright

Enclosure

REP. JAMES C. WRIGHT, JR., CHAIRMAN
SEN. BIRCH BAYH
MR. ALFRED BLOOMINGDALE
MRS. MARION F. BROWN
SEN. JAMES L. BUCKLEY
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INTERIM REPORT

The Commission on Highway Beautification was established by the Federal-aid Highway Act of 1970 (PL 91-605) to study and make recommendations concerning implementation of the Highway Beautification Act of 1965 (PL 89-285) and achievement of goals in the preservation and enhancement of natural beauty along America's highways which were not fully dealt with in that law.

It was directed to

> "recommend such modifications or additions to existing laws, regulations, policies, practices and demonstration programs as will, in the judgment of the Commission, achieve a workable and effective highway beautification program and best serve the public interest."

The authorizing legislation directed the Commission to make a final report not later than one year after it was funded. The Commission was funded in August, 1971, held its first meeting in October, 1971, and was not fully staffed and operational until December, 1971.

During the past few months the Commission has conducted six public hearings (in Atlanta; Los Angeles; St. Louis; Meriden, Connecticut; Syracuse; and Washington, D. C.) Several thousand people attended these hearings, and more than 200 witnesses gave verbal testimony. Recommendations were received from a wide spectrum of the public, 35 State highway departments and 15 other State agencies, the Departments

of Transportation, Commerce, Interior, and Housing and Urban Development, the Federal Communications Commission, Environmental Protection Agency, and Tennessee Valley Authority.

The staff of the Commission has also been in active contact with highway officials in all 50 States, visiting some of them, with 10 other Federal agencies and numerous representatives of local government, conservation groups, and industries concerned with highway beautification including outdoor advertisers, roadside businessmen, operators of tourist attractions, auto salvagers, scrap processors, utility companies, planners, architects, landscape designers, contractors, and operators of tourist information services. The Commission staff has assembled a substantial amount of reference information on the major aspects of the beautification program and developed liaison contacts among the principal public and private sector groups that have responsibilities under this program.

The Commission also has sponsored two nationwide public opinion surveys to ascertain the attitudes of the motoring public with respect to a number of aspects of the broad subject of highway beautification.

FINDINGS AND RECOMMENDATIONS

Inasmuch as the Congress is actively considering enactment of highway legislation during its current session, and probably will not do so again for approximately two years, the Commission feels that through this interim report it is timely to bring certain matters to the attention of Congress and the President which they may wish to

consider for possible action. In addition, there are other matters which the Commission feels it is appropriate to note at this time but which are not sufficiently well documented to justify specific recommendations.

The findings and recommendations of the Commission at this time, therefore, are as follows:

1. The Commission believes that the provisions of the Highway Beautification Act for control of outdoor advertising only up to 660 feet from the highway has permitted the original intent of Congress to be circumvented. In various locations throughout the United States, extremely large signs are being erected just beyond the 660 foot limitation.

   The Commission therefore recommends that Congress consider the advisability of extending the control of outdoor advertising along Interstate and Federal-aid Primary highways to those additional signs which are visible from the controlled highway and erected with the purpose of their message being read from the controlled roadway.

2. The Commission suggests that Congress may wish to consider making some distinction between outdoor advertising signs which simply advertise products and those which provide information of potential usefulness to motorists

regarding services and facilities in which highway travelers may be expected to have specific interest. In the latter category, it has been indicated that motorists frequently desire information containing directions, descriptions and distances concerning such traveler-oriented services and facilities as lodging, eating, automobile servicing, camping, tourist attractions, truckstops, and possibly other facilities for motorists. The need for such businesses to get information to motorists is important to the safety and convenience of motorists as well as to economic well-being of the businesses.

The Commission believes that the question of how to get such information to motorists in a most efficient manner consistent with highway beautification deserves more study before it makes any long-range recommendations. In the interim it is recommending that States be allowed, and encouraged, to remove first those non-conforming billboards which have no traveler-service orientation and to defer removal of non-conforming signs giving directional information to motorists.

At the same time, States are reminded of the importance of their responsibility for providing information to motorists on Interstate and Primary highways, and it

is recommended that States make greater use of the authority provided in their laws to carry out developmental work in the expansion and improvement of information systems which might be used in lieu of nonconforming outdoor advertising signs.

3. Based upon testimony received in our hearings, the Commission suggests that Congress might consider a reevaluation of standards promulgated for official and directional signs authorized by section 131 (c) (1) of Title 23 of the US Code and for signs giving specific information to travelers authorized by section 131 (f). It appears that improvements in the use of these types of signs can do much to get needed directional information to motorists.

It appears Congress could direct the Department of Transportation to review standards regarding businesses eligible to use such signs; content, size and placement of signs, criteria for public service signs, and other matters. Congress could also consider the language in section 131 (f) which now gives specific permission for signs giving information in the interest of the traveling public only within the right-of-way of Interstate highways.

4. The Commission finds that a particularly troublesome misunderstanding has arisen between States and the

Federal Government over the availability of Federal matching funds where "just compensation" is required by law in the removal of billboards. The States argue, with apparent justification, that present law and administrative interpretation place them in a highly untenable position. Law requires that compensation be paid for all signs removed but limits Federal participation to only those erected prior to 1965 and those "lawfully erected" subsequent to Jan. 1, 1968. There also has arisen a misunderstanding over the meaning of the term "lawfully erected." The result has been to place a heavy and probably unintended financial burden upon the States.

The Commission believes that Congress should reconsider the hiatus which exists, perhaps unintentionally, in the prescribed dates of erection of such billboards for purposes of Federal participation in the payment of just compensation. The Commission believes that Federal matching funds should be available wherever Federal law requires the payment of just compensation. The Commission further finds that it is State, not Federal law which renders any sign unlawful, and believes that the term "lawfully erected" clearly applies to any sign which was erected in conformity with applicable State law at the time of its erection.

5. The Commission notes with general approval the fact that all States now have laws regulating outdoor advertising on the Interstate and Primary systems. All such laws have the effect of arresting the uncontrolled growth of new signs in these States. Also the States are now in a position to implement sign removal programs for those which are in non-compliance.

The assurance that Congress will fund Federal aid for highway beautification is of critical importance to the success of the Highway Beautification Act, particularly in regard to those parts of the law requiring States to make compensation payments to owners of signs and junkyards. Fiscal and equitable considerations suggest that if Congress cannot assure funding for its share of certain costs, it should seriously reconsider whether these costs will be mandatory for the States to pay in full.

In order to carry out its responsibilities to the States under Title I of the Highway Beautification Act, it is recommended that Congress provide steady funding for removal of non-conforming outdoor advertising signs within a reasonable time, without impairing progress under other parts of Federal or State laws relating to highway beautification. When more complete information is available about the cost of

the sign removal program, it is also recommended that funding be scheduled to complete the program within a specified time.

6. From testimony at the Commission's hearings, it appears that in some jurisdictions there is a need for improved control over location, design, construction and maintenance of on-premise signs. Vast differences in local neighborhoods, regional characteristics, and community planning objectives indicate that local and State government should play primary roles in the development of regulations for such signs.

The Commission is not prepared at this time to recommend any Federal standards in this area but urges units of State and local government to address themselves to the development of appropriate local standards for the governance of on-premise signs.

7. The Commission believes that the Congress and the Department of Transportation should resolve the question of the rights of States to zone areas within their respective boundaries for commercial and industrial purposes. The law appears to be clear in this matter, but the Commission has received testimony of at least one pending Federal court action arising from the interpretation of this law by the Department of

Transportation.

The Commission does not recommend any change in Federal law at this time but believes that Congress and the Department of Transportation should resolve the position of the Federal Government regarding the rights of States to zone roadside lands, and resolve any uncertainties about the Federal acceptance of State action.

8. The above recommendations concern only the limited subject of outdoor advertising, surely the most controversial but perhaps not the most important phase of highway beautification. They involve merely the most obvious few of the great number and variety of problems brought to the attention of the Commission. It is clearly apparent that it will be enormously difficult to complete a truly comprehensive or professional evaluation of these problems prior to August of this year, at which time this Commission is scheduled to file its final report in accordance with existing law.

The Commission respectfully suggests that Congress may wish to consider extending the life of the Highway Beautification Commission for one additional year in order that it may come to grips with at least some of an enormously wide range of questions to which thus

far we have been able to gain merely an introduction. These include but are not necessarily limited to the following:

- reconsideration of agreements where there is dissatisfaction with terms on such matters as definition of unzoned commercial areas, interchange, spacing, etc.;

- examination of methods to get information to motorists efficiently in a manner consistent with highway beautification including implementation of pilot projects on official signing information centers, radio transmissions, and other means;

- implementation of programs, particularly pilot programs, to assist in getting abandoned cars and other equipment with no appreciable salvage value into recycling processes;

- methods for calculating compensation for the payment of compensation for sign removals and the effect of such compensation on State and local programs to control signs;

- clarification of effective date of controls imposed by the Highway Beautification Act of 1965;

- clarification, and possible modification, of relationship of controls under 1958 Bonus Act to controls

under 1965 Highway Beautification Act;

- revisions in Secretary of DOT's authority to impose a 10% penalty for failure to comply with Federal requirements for highway beautification;

- clarification of legality of Federal participation in certain payments made under laws covering outdoor advertising;

- modifications in standards for private commercial activities within the right-of-way;

- modifications in State-local relationship in sign control programs;

- feasibility of Highway Corridor Boards in sign control programs, zoning, and other land use planning;

- relationship of Uniform Relocation Assistance Act to compensation paid under State's laws enacted to comply with the Highway Beautification Act of 1965;

- clarification of regulations on outdoor advertising on Indian reservations and on Federally owned land, definition of on-premise signs, damages for sign companies forced out of business, and requirements for sign permits;

- penalties for destructive defoliation or vandalism along highway routes;

- junkyard controls in relation to overall solid waste disposal programs;

- economics of recycling scrap metal and other materials, including effect of depletion allowances and differentials in freight rates;

- possible Federal assistance for solid waste disposal programs;

- various proposals to hold registered owners of cars responsible for their disposal;

- esthetic considerations in planning, design, and contracting for new highways;

- development of scenic routes;

- State landscaping and maintenance of existing highways;

- relationship of beautification programs to programs for highway safety and air pollution abatement;

- relative priorities of highway beautification program;

- application to specific projects of design recommendations in Federally sponsored studies such as "The Freeway in the City," "Street Graphics," etc.

REP. JAMES C. WRIGHT, JR., CHAIRMAN
SEN. BIRCH BAYH
MR. ALFRED BLOOMINGDALE
MRS. MARION F. BROWN
SEN. JAMES L. BUCKLEY
REP. DON H. CLAUSEN
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STAFF DIRECTOR AND COUNSEL

COMMISSION ON HIGHWAY BEAUTIFICATION
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Washington, D.C. 20005
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JOINT STATEMENT OF REP. FRED SCHWENGEL AND MRS. MARION FULLER BROWN REGARDING THE INTERIM REPORT

We support adoption of the Interim Report with the following reservations:

(1) We believe there should be an additional recommendation to amend the Federal law to make it clear that States be allowed to elect to remove signs by use of police power without payment of compensation, except by compensating through amortization over a reasonable period.

(2) Although we agree that Federal participation should be available for compensation for removal of signs erected after October 22, 1965, if such participation is necessary to remove the signs, we believe that States which delayed enactment of legislation to conform with the Highway Beautification Act of 1965 should be subject to some penalty, perhaps in the form of a reduction in the percentage of Federal participation for removal of signs erected after a certain date or dates. As an alternative, States which enacted legislation promptly might be given some bonus.

(3) We agree that zoning determinations of State and local governments should be accepted by the Secretary of Transportation, but only if these units of government do not abuse their discretion. Zoning laws should not be used as a subterfuge to open areas for billboards.

REP. JAMES C. WRIGHT, JR., CHAIRMAN
SEN. BIRCH BAYH
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MR. MICHAEL RAPUANO'S POSITION REGARDING THE INTERIM REPORT

I concur with all the recommendations except those numbered four and five. The basis for my objection to these points is that they imply that compensation will be paid for sign removals. I believe that all signs visible from the highway should be prohibited, and that no compensation should be paid for their removal. I am firmly convinced that unless we prohibit all advertising, except on-premise signs, from the view of the interstate and primary roads, we are going to have a continual proliferation of billboards.

My opposition to the payment of compensation is based primarily on the following grounds:

(1) billboards are visible pollution and polluters should not be compensated;

(2) the courts have upheld State statutes for the removal of signs by police power without compensation;

(3) sign companies should not be paid for taking down signs when they can put the same signs up in other areas zoned commercial; and

(4) Congress may not provide adequate funding (estimated at approximately four hundred million dollars) to implement sign removals and that, in any case, this money could be spent for other matters of higher priority, including other programs relating to highway beautification.

In regard to Recommendation Number 7, I agree that matters of zoning should be left to the States. However, I am concerned about the possibility that States might indiscriminately zone areas along the highways as commercial thereby circumventing a sign removal program.

COLVILLE CONFEDERATED TRIBES,
Nespelem, Wash., March 28, 1973.

Hon. HENRY JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR JACKSON: Senate Bill 268 concerns the Colville Business Council since the implication in the Bill is that we would be unable tozone within our Reservation boundaries if this bill became an act.

We are facing many problems with some of the land that has passed into fee status on our Reservation, those with small acreages within our forest or recreation areas are subdividing into recreation homes or summer home lots. These lots can cause great damages to our forests by creating fire and disease hazards as well as destroying fish and game habitat yet they are quite attractive to the non-Indian who would like to make a playland of our resources. Power lines, telephone lines, additional roads, sewage and garbage create ecological conditions that we as original environmentalists cannot tolerate.

Our Council has undertaken the task of preparing a zoning ordinance to govern the entire Reservation. We cannot look to counties or the State to effectively zone these areas for the protection of our resources since they have the interest of increasing their property tax base and since those entities provide practically no services in these areas such improvement are seen to them as only a gain.

We feel that we can devise a zoning system that wil not only provide protection for our resources but will provide a basis for the fee owner to obtain a fair profit from his lands and not enrich those who would make a "fast buck" create problems then vanish. We believe both Indians and non-Indians who make their homes on the Reservation would gain from a system of planning and zoning within the Reservation boundaries.

We believe that Section 501(c) should be amended as follows:

In place of "except lands held in trust for the benefit of Indian, Aleuts, and Eskimos".

"Except all lands within the exterior boundaries of any Indian Reservation recognized by treaty, statute or other agreement with the United States government or by the Secretary of the Interior."

Section 501(d) should be amended as follows:

Delete ". . . held by the Federal Government in trust for the benefits of Indians, Aleuts, and Eskimos." and insert:

". . . within the exterior boundaries of any Indian reservation recognized by treaty, statute or other agreement with the Secretary of the Interior."

If such amendments cannot be accepted we would like you to withhold furher actions on 2–S68 until such time as we have the opportunities through hearings to adequately present our case.

Your consideration of this request is appreciated.

Sincerely yours,

MEL TONASKET,
Chairman, Colville Business Council.

NARAMORE BAIN BRADY & JOHANSON,
March 19, 1973.

Hon. HENRY M. JACKSON,
U.S. Senate,
Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: This is to urge you to continue your support of basic overall planning procedures by including in the final version of S. 268 the requirement that states develop land use programs in order to be eligible for Federal water-sewer, transportation, and recreation assistance.

Inclusion of the proposed $100 million annually in Federal grant shares to improve state planning is essential to implement the planning procedures.

With appreciation for your support.

Very truly yours,

PERRY B. JOHANSON, *FAIA.*

NARAMORE BAIN BRADY & JOHANSON,
March 19, 1973.

Hon. HENRY M. JACKSON,
U.S. Senate,
Senate Office Building, Washington, D.C.

DEAR SENATOR JACKSON: We in the Northwest think that support of amendments to S. 268 is very important—to (1) withhold Federal water-sewer, transportation, and recreation assistance from states not developing land use programs, and (2) provide 90% matching funds to help states improve their land use planning capabilities.

Sincerely,

WILLIAM J. BAIN, *FAIA.*

ADKISON LEIGH SIMS CUPPAGE, ARCHITECTS P. S.,
Spokane, Wash., March 21, 1973.

Hon. HENRY M. JACKSON,
Old Senate Office Building,
Washington, D.C.

DEAR SCOOP: Though I perhaps am not as well acquainted with the intricacies of S. 268, the Land Use Policy and Planning Assistance Act of 1973, as I might be, I would urge your support of this bill with certain amendments. In my opinion this is one of the important measures that will come before the Senate Interior Committee during this session.

If your knowledgeability and judgment allow you, I would appreciate your supporting a final version which would include amendments withholding certain Federal Assistance funds from states not developing a land use program after five years and another to provide 100 million dollars annually in 90% Federal share grants to help those states improve their land use planning and management. I am sufficiently involved in urban planning to appreciate that such a bill would go far toward assuring a more orderly plan for the future.

Very truly yours,

THOMAS R. ADKISON.

VIRGINIA CHAPTER,
THE AMERICAN INSTITUTE OF ARCHITECTS,
Roanoke, Va., March 26, 1973.

Hon. WILLIAM LLOYD SCOTT,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SCOTT: The Conservation Committee of the Virginia Chapter, American Institute of Architects met in Fredericksburg, Virginia on 22 March 1973. The content and progress of the Land Use Policy and Planning Assistance Act of 1973 was discussed in considerable detail. We are very much aware of the need for this legislation and are convinced of the need for amendments which would (1) withhold Federal water-sewer, transportation, and recreation assistance from states not developing land use programs after five years; and (2) provide $100 million annually in 90% Federal share grants to help states improve their land use planning and management capabilities.

It is our understanding the Senate Interior Committee has concluded it's hearings on S. 268 and is expected to meet and prepare its version of the 1973 legislation by the end of March. We are enclosing a list of the Senate Committee on Interior and Insular Affairs. Should it be possible to do so, your influence in effecting the suggested amendments are urged and will be appreciated.

Our committees support the concept of the amendments on the basis of the growing need for better planning in Virginia. Localities are often reluctant to establish and to develop land use programs for a variety of reasons, including lack of adequate finances. In the absence of proper advance planning, citizens groups are often able to prevent or at least complicate construction of needed facilities at a time when they are needed.

Your assistance in this effort will be greatly appreciated.

Yours very truly,

THOMAS A. KAMSTRA, AIA,
Commissioner of the Environment, Virginia Chapter, AIA.
J. OLIVER STEIN, AIA,
Chairman, Conservation Committee, Virginia Chapter, AIA.

CITY-COUNTY PLANNING BOARD,
COUNTY OF FORSYTH AND CITY OF WINSTON-SALEM, N.C.,
March 26, 1973.

Re National Land Use Policy and Planning Assistance Act.

Hon. HENRY M. JACKSON,
Chairman, Senate Interior and Insular Affairs Committee,
Senate Office Building, Washington, D.C.

DEAR SIR: Please take note of my support for adoption of a National Land Use Policy during the current session.

The minimum criteria for such enabling legislation should include:

(1) national policy guidelines for necessary elements of state land use plans;

(2) flexibility for states to plan at sub-state regional levels;

(3) negative sanctions for states not complying;

(4) increased funding to a realistic level; and

(5) adequate time allowance for state compliance, especially for those state legislatures meeting biannually.

It appears that S. 924 is somewhat closer to meeting the above five criteria than S. 268. However, I would prefer compromise if it is the only alternative to delaying passage of a National Land Policy Act.

Yours very truly,

(Mrs.) H. F. MAYA, AIP,
Head of Advance Planning, City-County Planning Board.

CLALLAM COUNTY PLANNING COMMISSION,
Port Angeles, Wash., March 29, 1973.

Senator HENRY M. JACKSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR JACKSON: I am writing in support of the Land Use Policy and Planning Assistance Act of 1973. I have been pleased to see you leading the field in promoting this legislation. Hopefully your efforts will be successful this year.

There are some specific concerns I have about the provisions to be included in the bill. I support the expansion of the National Land Use Policy and Planning Assistance Act into a program with strong national policy guidelines. However, I am in favor of keeping land use decisionmaking authority at the state and local level. If states refuse to develop their land use planning processes, I would support some form of negative sanctions. Finally, I know from past experience that the legislation will be effective only if funding is adequate.

In closing, I again express my appreciation for your efforts in sponsoring this legislation.

Sincerely,

KENNETH W. SWEENEY,
Planning Director.

[TELEGRAMS]

MADISON, WIS., *February 2, 1973.*

Hon. HENRY M. JACKSON,
Chairman, Senate Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.:

Thank you for inviting me to testify before the Senate Interior Committee regarding the Land Use Policy and Planning Assistance Act. I regret that I will not be able to appear at the hearing on February 6 or 7, but I would like to submit written testimony if that is appropriate.

I feel very strongly that some form of Federal land use legislation is needed to insure the adequate conservation of our land and human resources.

PATRICK J. LUCEY, *Governor of Wisconsin.*

GREAT LAKES RESOURCES MANAGEMENT PROGRAM,
UNIVERSITY OF MICHIGAN,
Ann Arbor, Mich., February 15, 1973.

Senator HENRY JACKSON,
Capitol Hill,
Washington, D.C.:

The coastal zone manager program recently signed into law by President Nixon is a vital step forward in insuring wise use of our Nation's invaluable coastal resources. I strongly believe that coastal zone management and general land use management are complimentary and compatiable concepts. Your efforts to obtain a national land use program are commendable. I urge you to recognize that the coastal zone is a distinct resource intity with problems similar to but distinct from general land use problems. It is in the best interest of the nation if both coastal zone and general land use programs can be implemented on the national level. Both programs are urgently needed. If enactment of land use legislation effectively precludes the important coastal zone law, both programs will suffer irreputable loss. I urge you to use the austices of your office to insure that the coastal zone program can proceed as intended.

DR. JOHN M. ARMSTRONG.

MCLEAN, VA., *February 6, 1973.*

SENATE INTERIOR COMMITTEE,
U.S. Senate,
Washington, D.C.

DEAR SIRS: In response to question 5:

There is no question that the Federal Government's policies, from its land management programs to its tax policies, have a great impact on land-use patterns in the United States. In light of this fact, it is surprising that land-use considerations play so unimportant a role in current decision-making processes. This omission has several detrimental effects. First, there is a lack of co-ordination of Federal programs that deal explicitly with land use. Second, some programs that were designed without consideration of land-use values might actually be found to have a net detrimental effect on society once their land-use impacts were discovered. Third, in an age in which the public is skeptical of the government's good will, the absence of a publicly declared national land-use policy not only feeds this doubt, but also frustrates the democratic process, which depends on an informed public.

But developing a national land-use policy, undeniably a worthy goal, is not easy to do. We can and should, however, take the first step, which would be an identification of the impact on land use of Federal programs. Therefore, I would recommend that the following be added to S. 268 between Sections 202(b) and 202(c):

Maintain a continuing study of the impact on land use of Federal programs, including, but not limited to, land management programs, grants-in-aid, and tax policies.

Respectfully Submitted,

HENRY RICHARDSON.

JOHN R. SWANSON
P. O. Box 922
Berkeley, California 94701

February 26, 1973.

MAR 12 1973

The Honorable Henry M. Jackson, chairman
Senate Committee on Interior and Insular Affairs
Washington, D C

Dear Senator Jackson:

Please add my statement, as follows, to your Official Public Hearings Record concerning 2510 Proposed Land Use Policy Bill, S 268.

I am in favor, generally, of such Proposed fully understanding the urgency of Proper Land Use Management in America. However, I strongly urge that this Proposal be amended in order to substantially strengthen Land Use Policy and Management as a National objective.

We need now a National Land, Water and Air Uses Policy and Program as these resources are closely interrelated and should be organized on a Federal, State and local level to further proper uses of these Resources. With each local government responsible for a comprehensive and workable Land, Water and Air Conservation Policy and Program. Including, strong Citizen support and intelligent participation. Along with careful local coordination with State and Federal Land, Water and Air Conservation Policy and Programs.

In short, a mandatory and equally strong Federal Law to that the Nation as a whole, plus, States and Local Governments do establish comprehensive and responsible Land, Water and Air Use Conservation Policy and Programs to Conserve and Properly Protect and Use our Nation's Natural Resources, Surface, sub-surface, water and air Resources; including Fauna and Flora. Also, establish Regional Governments where necessary, so that our Metropolitan Areas can function as a whole and so that such Metropolitan Areas can Preserve their respective remaining Open Space. In fact, we must Save our remaining Open Spaces not only in our Metropolitan Areas but throughout our entire Nation, as well.

And, Regional Governments for Rural Areas are necessary, too. So that once more Watershed and Basin Areas may be better concerned with its rural atmosphere sound and properly managed.

The foundation of a proper Land, Water and Air Use Conservation Policy and Program for our Nation is the Realization and implementation of a sound and comprehensive program to Save and Preserve our remaining Scenic Wilderness, Natural Areas, Wildlife and Outdoor-Recreation Resources.

For without such Resources we as a Nation are certainly doomed, no longer having an esthetic foundation for a meaningful and worthwhile life.

Sincerely, John R. Swanson.